

ANTONIO ANDRES AND RODOLFO DURAN, PETITIONERS, VS. THE PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 185860. June 05, 2009

Ponente: BRION, J.

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BRION, J.:

Submitted for our review in this Petition for Review on Certiorari are the Decision[1] and Resolution[2] of the Court of Appeals (CA) in CA-G.R. CR No. 30243, affirming with modification the June 1, 2006 Decision[3] of the Regional Trial Court (RTC), Branch 18, Malolos City.

Petitioners Antonio Andres (Antonio) and Rodolfo Duran (Rodolfo) were charged with violation of Republic Act (R.A.) No. 6539[4] before the RTC, Branch 18, Malolos City, Bulacan, committed as follows:

That on or about the 6[th] day of September, 2002, in the Municipality of Sta. Maria, Province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating together and mutually helping each other, with intent of gain and without the knowledge and consent of the owner, did then and there willfully, unlawfully and feloniously take, steal and carry away with them one Motorized Kawasaki Tricycle worth P140,000.00 belonging to Catalino Eugenio to the damage and prejudice of the said Catalino E. Eugenio in the amount of P140,000.00.

Contrary to law.

The petitioners pleaded not guilty to the charge laid; trial on the merits thereafter followed.

In its decision of June 1, 2006, the RTC found petitioners Antonio and Rodolfo guilty of violating R.A. No. 6539, as amended, and sentenced them to suffer the penalty of seventeen (17) years and four (4) months to thirty (30) years imprisonment.

The petitioners appealed to the CA which affirmed the RTC decision with modification, as follows:

WHEREFORE, premised considered, the appeal is DISMISSED for lack of merit. The challenged decision of the court a quo in Criminal Case No. 429-M-2003 is hereby AFFIRMED, with the MODIFICATION that the accused-appellants shall suffer the indeterminate prison term of SEVENTEEN YEARS AND FOUR MONTHS, as minimum, to THIRTY YEARS, as maximum.

Costs against the accused-appellants.

The petitioners moved to reconsider this decision, but the CA denied their motion in its resolution of December 17, 2008; hence, the present recourse to us pursuant to Rule 45 of the Rules of Court.

The petitioners argue that the CA gravely erred -

(a) in giving full credence to the testimonies of the prosecution witnesses and in disregarding the theory of the defense;

- (b) in convicting them despite of the prosecution's failure to prove their guilt beyond reasonable doubt; and
- (c) in imposing upon them the penalty of seventeen (17) years and four (4) months to thirty (30) years.

In support of the first two (2) assigned errors, the petitioners alleged that it was unlikely for Eres Eugenio (Eres) to have recognized the suspects, considering that the light coming from the nearby canteen was not directed at the suspects' faces. The petitioners further argued that Eres' attention during the carnapping was not focused on the identities of the suspects; and that he (Eres) never had the full opportunity to look at their faces. Moreover, the prosecution failed to establish that the tricycle's headlight was directed at the faces of the suspects when they alighted from the tricycle. The petitioners also alleged that their out-of-court identification was improperly suggestive; thus, it fell short of the "totality of circumstances" test.

The petitioners also contend that assuming they were guilty of the crime charged, the penalty imposed by the lower courts was erroneous. They argue that the information failed to allege any circumstance that would warrant the imposition of a higher penalty.

We find the petition meritorious with respect to the penalty imposed and, thus, PARTIALLY GRANT the petition. In all other respects, we AFFIRM the decision and resolution of the CA in CA-G.R. CR No. 30243.

A petition for review on certiorari under Rule 45 of the Revised Rules of Court limits this Court's review to errors of law, not of fact,[5] unless the factual findings are devoid of evidentiary support or unless the assailed judgment is based on a misapprehension of facts. On factual matters, the factual findings of the CA are conclusive and beyond our review, particularly when the appellate court affirms the factual findings of the trial court, as we held in *Philippine Airlines, Inc. v. CA*. [6] We see no palpable error or any arbitrariness in the lower courts' findings of fact and, thus, do not have any basis to review these findings.

The appropriate question, a legal one, for our review is the third assigned error - the propriety of the penalty imposed. Section 14 of R.A. No. 6539, as amended by R.A. No. 7659,[7] provides:

SEC. 14. Penalty for Carnapping. - Any person who is found guilty of carnapping, as this term is defined in Section Two of this Act, shall, irrespective of the value of the motor vehicle taken, be punished by imprisonment for not less than fourteen years and eight months and not more than seventeen years and four months, when the carnapping is committed without violence or intimidation of persons, or force upon things, and by imprisonment for not less than seventeen years and four months and not more than thirty years, when the carnapping is committed by means of violence against or intimidation of any person, or force upon things; and the penalty of reclusion perpetua to death shall be imposed when the owner, driver or occupant of the carnapped motor vehicle is killed or raped in the course of the commission of the carnapping or on the occasion thereof. [Underscoring ours]

In the present case, the Information charging the petitioners with violation of R.A. No. 6539, as amended, did not allege that the carnapping was committed by means of violence against, or intimidation of, any person, or force upon things. While these circumstances were proven at the trial, they cannot be appreciated because they were not alleged in the Information. Thus, the lower courts erred when they took these circumstances into account in imposing the penalty which they pegged at seventeen (17) years and four (4) months to thirty (30) years imprisonment. In the absence of these circumstances, the charge against the petitioners is confined to simple carnapping whose imposable penalty should have been imprisonment for not less than fourteen (14) years and eight (8) months, and not more than seventeen (17) years and four (4) months.

Under the Indeterminate Sentence Law, as applied to an offense punishable by a special law, the court shall sentence the accused to an indeterminate sentence expressed at a range whose maximum term shall not exceed the maximum fixed by the special law, and the minimum term not be less than the minimum prescribed.[8]

WHEREFORE, premises considered, we PARTIALLY GRANT the instant petition and hereby SENTENCE the petitioners to an indeterminate penalty of fourteen (14) years and eight (8) months, as minimum, to seventeen (17) years and four (4) months, as maximum. We AFFIRM the decision and resolution of the Court of Appeals in CA-G.R. CR No. 30243 in all other respects.

SO ORDERED.

Quisumbing*, (Chairperson), Ynares-Santiago, Velasco, Jr., and Leonardo-De Castro**, JJ., concur.

[*] Designated additional Member of the Second Division per Special Order No. 645 dated May 15, 2009.

[**] Designated additional Member of the Second Division effective May 11, 2009 per Special Order No. 635 dated May 7, 2009.

[1] Dated May 28, 2008; penned by Associate Justice Amelita G. Tolentino, and concurred in by Associate Justice Lucenito N. Tagle and Associate Justice Marlene B. Gonzales-Sison; rollo, pp. 90-100.

[2] Dated December 17, 2008; id., pp. 115-116.

[3] Penned by Judge Victoria C. Fernandez-Bernardo; id., pp. 52-60.

[4] The Anti-Carnapping Act of 1992, as amended.

[5] A question of fact is involved when the doubt or difference arises as to the truth or falsehood of alleged facts or when the query necessarily invites calibration of the whole evidence, considering mainly the credibility of witnesses, existence and relevance of specific surrounding circumstances, their relation to each other and to the whole, and the probabilities of the situation.

[6] See *Fangonil-Herrera v. Fangonil*, G.R. No. 169356, August 28, 2007, 531 SCRA 486, citing *Philippine Airlines, Inc. v. Court of Appeals*, 274 Phil. 624 (1997).

[7] The Death Penalty Law.

[8] See: *People v. Bustinera*, G.R. No. 148233, June 8, 2004, 431 SCRA 284.

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