

LEONARDO MAGAT, PETITIONER, VS. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 55801. August 30, 1982

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

This is a petition for review of the Decision of the Court of Appeals[1] in CA-G.R. No. 23228-CR, affirming with modification the judgment of the Court of First Instance of Zambales, Branch I, Olongapo City, in Criminal Case No. 4163 for Robbery, convict-ing petitioner-accused, Leonardo Magat, of said crime.

The evidence for the prosecution has been summed up by the Trial Court and adopted by the Court of Appeals, as follows:

"James Philip Lanigan, Ame-rican businessman by profession came to Olongapo City as a tourist and was billeted at the Admiral Royal Hotel in Olongapo City. At about 2:00 to 3:00 o'clock in the afternoon of July 19, 1979, Lanigan decided to take a walk from the hotel to the US Naval Base. Out-side the main gate, he exchanged sixty dollars (\$60.00) into pesos and when he got the money equiva-lent of his dollars, he started to walk back towards the Admiral Royal Hotel. He had only walked four (4) blocks along Magsaysay Drive when a jeep proceeded to follow alongside Lanigan and the driver insisted that the said American ride with him as the driver has a sister who has a bar down the street. The driver re-quested favor from the American to give away some cards which Lanigan can, perhaps, distribute to some of his friends. Lanigan rejected the offer of the stranger to ride in the jeep, so he went to a bar to avoid him and had a bottle of beer to drink. After approximately fifteen (15) minutes, he went out of the bar and again he noticed that the same driver with his jeep was waiting for him outside. The driver was in-sistent that he take his ride in his jeep so he will bring him to his destination. So Lanigan agreed and boarded the jeepney. The driver drove away towards Admiral Hotel but made a right turn at Rizal Avenue into a side street. Lanigan complained to the driver why he is going into that street when that is not the direction of the Admiral Royal Hotel and the driver answered that he will get the card first at his house for distribu-tion. The driver later drove into a parking area in an address which was pointed as No. 8 Fontaine St. and he got off the jeep, followed by Lanigan who was told to come in. Lanigan was introduced to the owner of the house who was later identified as Leonardo Magat y Pineda alias 'Dolphy' who told him to sit down. While they were in the living room Magat talked to him saying that he should be careful in the Philippines because there are many pick-pockets and thereafter Magat then started to frisk him saying that he is going to make a demonstration of how a pick-pocket operates. Lanigan told him to get his hands out of his pocket and he pushed Magat's hands out of and started heading towards the door for his exit. The driver who was later on identified as Francisco Velasco Brosas, immediately ran towards the door and locked it. And there-after, a guy made a strangled hold on the American and the accused Magat together with his cohort emptied the pockets of Lanigan, consisting of eight hundred sixty American dollars (\$860.00) and the seventy dollars which was converted into pesos, his passport, wallet, traveller's checks, airline tickets without his cash money and he was warned not to say anything and not to report the matter to the police authorities as he will be killed. The accused even made gestures making the American believe that he has a knife hidden in one of his pockets. Thereafter, Lanigan was taken into another room, made to sit down before a table and told him that they will teach him to play blackjack. He was told that he can learn the game easily in

ten minutes but Lanigan repeatedly refused to play with them but they kept on insisting but since he did not like to play, the accused said that they are going to release him, but he should not make any attempt to report the matter to the police as they can frame him up with the charges of rape, pushing of marijuana and other similar crimes. Lanigan, however, went inside the US Naval Base where he reported the matter to the members of the shore patrol and told them that he was robbed. The military police officers from the US Naval Base accompanied him and pointed out several houses which are suspected in this kind of modus operandi in the crimes of robbery committed against American servicemen and they came up to No. 8 Fontaine Extension where Lanigan told the military police that it was the same house where he was robbed. Considering that they had no jurisdiction since it was outside the US Naval Base, the Base police instructed the complainant to report the matter to the Olongapo City Police Department and it was at this juncture that a police officer by the name of 'Danny' drove up. Later, the complaining witness was brought to the Olongapo City Police Department where his statement (Exhibit 'A') was taken by Pfc. Ciriaco Marcelino, Jr., on July 23, 1979 and the accused Magat was identified through his photograph taken in the gallery. On the following day, the complainant was again asked to come to the police headquarters for a supplemental statement (Exhibit 'B') wherein he identified Francisco Brosas y Velasco as the driver of the jeep who brought him to the place where he was robbed."^[2]

Petitioner-accused, on the other hand, denied the commission of robbery and claimed that complainant lost the money to him in a card game. His version was synthesized by respondent Court of Appeals thus:

"On the other hand, the defense' evidence discloses that in the afternoon of July 19, 1979, a certain driver named Brosas arrived with an American who turned out to be the herein complainant, at Magat's residence at No. 8 Fontaine Extension, Olongapo City. Brosas told Magat that the American was looking for a girl whom he will pay. Magat then told Brosas to look for a girl so that they could earn some money. Brosas left Magat's residence to look for a girl while complainant Lanigan waited for him in Magat's residence.

While they were waiting, Magat invited Lanigan to play poker/blackjack. Lanigan agreed. The two of them sat by the table and they played six games. Magat won in five games but lost in one. Lanigan's total loss amounted to a little over P500.00. Lanigan then told Magat that he will use his traveller's check since he had no more money. Magat did not agree and refused to play further with Lanigan. Magat's refusal irritated Lanigan. Lanigan then tried to grab the cash money in the possession of Magat at the time and the two of them struggled for possession of the money. In the meanwhile, Lanigan kept on shouting that he was cheated and that he wants his money back. Later, Lanigan told Magat that he is going to cash his traveller's check at Pag-asa where he has an American acquaintance. Lanigan, however, did not come back anymore that day.

The following day he appeared at the residence of Magat with a CIS agent named Rene who told Magat that a certain Captain Santos, Chief of the CIS, wanted to see him in connection with Lanigan's complaint. In the meantime, Patrolman Marcelino also arrived at the house of Magat who allegedly told the latter that if he will return the P500.00 of the complaining American, then the complaint against him will be settled."^[3]

On July 26, 1979, at 3:00 o'clock in the afternoon, an Information for Robbery was filed against Leonardo Magat, Francisco Brosas and four others in the Court of First Instance of Zambales, Branch I, at Olongapo City. The case was immediately raffled and set for arraignment and trial. Only petitioner-accused was arraigned at 4:35 that same afternoon, as the others had not been apprehended. Petitioner-accused entered a plea of "Not Guilty".

The post-arraignment proceedings were as follows:

"COURT

Enter a plea of not guilty in favor of the accused.

This is for immediate trial because according to the motion of the First Assistant City Fiscal, the complainant

is a tourist.

Are you now ready for trial?

ATTY BALINGIT

If your Honor please, I was hired about a few minutes ago and I was indeed surprised to be contracted.

Although I understand the extent of the law which requires the speedy trial of this case, however, if I may be given at least one (1) hour to confer with my witness, I will proceed with the trial.

FISCAL ANONAS

How many witnesses do you intend to present?

COURT

How about you, Fiscal?

FISCAL ANONAS

Two (2).

COURT

How about you, Atty. Balingit?

ATTY. BALINGIT

Two (2).

FISCAL ANONAS

I have no objection to the conference between counsel and his witness but after we have already submitted our case.

And besides, we have only twenty four (24) hours.

ATTY. BALINGIT

But just only one (1) hour to confer to give me the chance to defend my client.

COURT

You can do that after the prosecution presented its witness.

ATTY. BALINGIT

Provided ...

COURT

Before you could cross examine. For cross examination. You can consult your client from time to time."[4]

Trial proceeded and lasted up to 7:30 in the evening. The following day, trial was resumed at 8:30 o'clock in the morning when petitioner-accused and his witness, testified on direct, cross, and re-direct examination. At 11:35 that same morning, a judgment of conviction was promulgated, sentencing the accused to six (6) years and one (1) day to ten (10) years of prision mayor, to indemnify the offended party in the amount of P6,996.00, and to pay the costs.

Petitioner-accused appealed to the Court of Appeals. Instead of filing a Brief for the People, the Office of the Solicitor General filed a Motion and Manifestation joining the accused's cause, and recommending the reversal of the Trial Court's judgment on the ground that complainant is not a transient visitor; that said Court acted with unusual haste in the arraignment, trial, and rendition of the judgment of conviction; and that the evidence adduced failed to prove the guilt of the accused beyond reasonable doubt.

In its Decision promulgated on August 21, 1981, the Court of Appeals refuted the contentions of the Office of the Solicitor General, affirmed conviction, but modified the penalty.

"WHEREFORE, finding accused-appellant guilty beyond reasonable doubt as principal in the crime of ROBBERY as charged in the information, defined by Art. 293 of the Revised Penal Code and penalized under Art. 294, par. 5 thereof; and there being no aggravating nor any mitigating circumstance affecting his criminal liability, thus entitling him to the imposition of the penalty in its medium period, he is therefore hereby sentenced to an indeterminate penalty of 2 years, 4 months and 1 day of prision correccional as the minimum to 8 years of prision mayor as the maximum and to pay costs.

"Except with the aforesaid modification, the judgment appealed from is hereby AFFIRMED in all other respects."

Petitioner-accused appealed by Certiorari to this Court assigning the following errors to the Court of Appeals:

"1. The Respondent Honorable Court of Appeals erred in brushing aside the mute but clear import of lack of adherence to the basic fundamental formulation of due process whereby counsel and client must be accorded the right to be heard i.e., before proceedings to commence trial ample opportunity must be given for them to confer and prepare for the defense.

2. The Respondent Honorable Court of Appeals erred in not sustaining the submission for acquittal made by the state counsel, the Honorable Solicitor General in its Motion and Manifestation in lieu of appellee's brief anchored upon grave and conclusive circumstantial facts negating petitioner's guilt.

3. The Respondent Honorable Court of Appeals erred in merely modifying the judgment of conviction of the petitioner based upon mere assumptions and suspicion of guilt."

Required to comment by this Court, the Office of the Solicitor General adopted its Motion and Manifestation filed before the Court of Appeals and recommended the grant of the petition for Certiorari averring that the findings and conclusions of respondent Court of Appeals are not supported by substantial evidence.

In his first assigned error, petitioner-accused claims lack of due process because of the unusual speed with which the Trial Court disposed of his case. The record does show that the accused was arraigned at 4:35 P.M. on July 26, 1979. The request of defense counsel for one hour within which to confer with his client was deferred by the Trial Court till after the prosecution had presented its evidence but the Court clarified that it would allow counsel to consult his client from time to time during cross-examination. Trial commenced thereafter and continued until 7:30 in the evening, with the prosecution resting its case. The following day, trial was resumed, for the presentation of evidence for the defense, at 8:30 A.M., and judgment was promulgated at 11:35 that same morning.

Applicable to this case is General Order No. 39 amending General Order No. 12, dated September 30, 1972, which gave Civil Courts concurrent jurisdiction with Military Tribunals over crimes committed against tourists and transients, and mandates that cases involving tourists be disposed of within 24 hours from the filing of the complaint.

"23. Crimes where the offended party is a tourist or a transient.

The civil court shall have concurrent jurisdiction with the military tribunals over the said crimes, provided that civil courts shall dispose of such cases within 24 hours after the filing thereof by the arresting officer. The court or tribunal that first assumes jurisdiction shall exercise jurisdiction to the exclusion of all others."

Considering that explicit requirement, the Trial Court had no other alternative but to speed up trial. That defense counsel was aware of the prescribed time element is shown by the fact that he had asked for only one hour within which to confer with his client although normally he would have been entitled to at least 2 days to prepare for trial.[5] In point of fact, the Trial Court did not deny defense counsel's request for conference with petitioner-accused. The Trial Court merely deferred such conference till after the prosecution had presented its witnesses. It is to be noted further that defense counsel was not totally unprepared for trial for he was ready with two witnesses when asked by the Court. Moreover, after the prosecution had rested its case, trial was resumed the next day, thereby giving the defense enough time to prepare for the presentation of its direct evidence. Besides, notwithstanding the brief span of trial time, rebuttal and surrebuttal were presented by the prosecution and the defense, respectively.

The rendition of the judgment not long after the trial was terminated is not necessarily indicative of inordinate haste. On the contrary, Judge Regino T. Veridiano II, the Trial Fiscal, and the defense counsel are to be commended for their punctilious compliance with the explicit mandate of the law. A reading of the transcript and of the judgment rendered will also reveal that petitioner-accused was duly and amply heard in his defense. He was not denied procedural due process.

The submission of the State that complainant is "not a transient visitor" for his testimony shows clearly that he has been in Olongapo City many times for the past fifteen years"[6] is not well taken, the exact declaration of complainant having been "a number of times" and not "many times". And even if complainant has been in Olongapo City a number of times, that does not make him any less a transient, or one whose stay is "of uncertain duration" or for a "short time", or for a "brief period" only each time.[7] There is no question either that notwithstanding the number of times that he has been to this country, complainant is a "tourist" or one who travels from place to place for pleasure or culture.[8] As a "tourist" or a "transient", complainant falls within the coverage of General Order No. 12, as amended, *supra*.

We likewise find it difficult to agree with the Solicitor General's position that the guilt of petitioner-accused has not been established beyond reasonable doubt. Complainant was categorical in his identification of petitioner-accused and emphatic as to the latter's direct and active involvement in the robbery. Petitioner-accused's version of the occurrence does not ring with truth. As pointed out by the Court of Appeals:

"Appellant advances the argument that if robbery was his intention, then he would not have done it in the very premises of his home. This explanation appeared lame and weak. He did so, because he never expected that their victim being a tourist will have the insistence and temerity of lodging and pushing through a complaint against him and his cohorts for forcibly divesting him of his money. No doubt, appellant and his confederates must have been emboldened by the fact that even if their victim complained but considering his unfamiliarity with the place, it will be almost next to impossible for him (the American victim) to trace his way back to appellant's place and pinpoint their identities. In fact, the American MP's were able to track down his (Magat's) place only because of its notoriety for assaults and acts as that perpetrated against the complainant. Then too appellant and Brosas were identified only by their photos in the files of the police. Both happened to be notorious police characters having been previously involved in a series of robbery and theft cases. They were readily pointed to and identified by complainant upon seeing their photos as among the persons who divested him of his money on the day of the incident in question."[9]

Moreover, if as petitioner-accused testified, Lanigan was shouting at petitioner-accused "you cheated me, give my

money back"[10] it is incredible that "after that the American suggested that he was going to leave the place because he will cash the traveller's check x x x".[11] One who has been allegedly cheated would refuse to return to play some more.

Again, complainant had been to Olongapo City a number of times in the past, and, therefore was not a complete stranger to the place. He would have had more or less, an idea where to go for entertainment, so that petitioner-accused's allegation that complainant was looking for a girl when brought to his place hardly deserves credence.

In the last analysis, the issue simmers down to one of credibility. The well established rule is that the conclusions of a Trial Court on the question of credibility are entitled to utmost respect and will remain undisturbed on appeal unless substantial facts, which might affect the result of the case, have been overlooked, which is not the case herein. Suffice it to quote some notable observations of the Court of Appeals on the matter of credibility even as it refuted some of the contentions advanced by the Office of the Solicitor General in support of the latter's bid for acquittal of the accused.

"The second point raised by the state counsel is that allegedly complainant admitted having been strangled by his neck and yet he did not sustain any physical injury or bodily harm as could be gleaned from his testimony of July 26, 1979 (p. 12 of the motion and manifestation). That complainant did not suffer any injury whatsoever did not make his version of the incident incredible because as the accused together with his confederates tried to divest the complainant of his money, the latter struggled and it was at that juncture when complainant was choked. What possible injury must he necessarily sustain in a situation of that sort? Maybe only the reddening of the portion choked which however, was no longer visible to the naked eye after a couple of hours or so.

"The third circumstance advanced by the Honorable State Counsel is that it was rather incredible and absurd for one who had robbed another to still endeavor to teach his victim how to play a game of cards. The argument appears plausible but not conclusive. Complainant was brought to another room and taught the rudiments of poker blackjack preparatory to the theory to be set up by the defense that if the American victim has lost his money - - it was in gambling where cards were utilized during the game. And secondly, to properly appease the victim and condition his mind making him cool in the process so that whatever he may have in mind by way of retaliation may no longer be pursued by him. But the victim-complainant happened to be a person not of the type the accused thought of him to be. In short, he was underestimated by the culprits.

"Lastly, it is likewise claimed that when the complainant first appeared before the police officer on July 19, 1979, the day when the robbery was committed, he allegedly told the police that 'a jeepney driver picked him up and with the use of flowery words was able to take his money.' On the fourth day, however, following the incident or on July 23, complainant in his sworn statement stated that he was choked and strangled by two or three persons and the accused took his money from his pocket while they were in a house at No. 8 Fontaine Extension, Olongapo City.

"The statement referred to appeared embodied in Exhibit 'A' which was allegedly prepared by a certain Pfc. Alberto dela Isla, the contents of which reads as follows:

"This is in connection with Police Blotter Entry No. 2387, (p. 453 dated 19 July, 1979. Complainant alleged that on or about 2:00 P.M. to 3:00 P.M. July 1979, at the above mentioned location, suspect with intent to gain and with intimidation took and carted away his cash money amounting to \$940.00 more or less. Complainant further alleged that while he was walking along Magsaysay Drive, Q.C., when a jeepney driver picked him up and with the use of flowery words was able to take his money. Furthermore, suspect/s choked him while others were holding his hand and at the same time threatened him that if he did not stop strangling he will be killed. Complainant pointed the person of LEONARDO MAGAT as one of the suspects when a picture of the said suspect was showed to him. (Underscoring supplied)"

"Pfc. Isla was never placed on the witness stand to testify on the alleged report. The contents therein appearing therefore is decidedly hearsay . . . the prosecution being denied of the right to cross-examine him on the truth thereof. But what appears confusing is the fact that when complainant-victim made a follow-up of his complaint with the police, since nothing appeared to have been done in connection therewith, no records whatsoever pertaining to his complaint could be found. And yet here comes this alleged police report.

"But let it be assumed that complainant when interviewed made the statement that now appears in this Exhibit 'A'. Analyzing the said statement in its entirety, the conclusion arrived at appeared not warranted for if complainant was divested of his money merely through the use of flowery words then why was there a necessity for choking him and holding his hands and threatening him and, further, that if he did not stop then he will be killed. Interpreted in the light of the testimony of the complainant, it would appear that the first step that led into complainant's being divested of his money were the flowery words made by Brosas to him that ultimately brought him to Magat's place whereby, through force and intimidation the offenders took his money from his pocket." [12]

All told, we find the second and third assigned errors also without merit, and like the Trial Court and the Appellate Court, we find petitioner-accused's guilt proven beyond reasonable doubt.

WHEREFORE, this Petition for Review is denied and the judgment of the Court of Appeals hereby affirmed.

Costs against petitioner.

SO ORDERED.

Makasiar, Plana, Vasquez, Relova, and Gutierrez, Jr., JJ., concur. Teehankee, (Chairman), J., no part.

[1] Fourth Division, composed of Justices Crisolito Pascual, Serafin R. Cuevas (ponente) and Carolina Griño-Aquino.

[2] pp. 38-41, Rollo.

[3] p. 41, *ibid*.

[4] Tsn., July 26, 1979, 4:35 P.M. pp. 2-5.

[5] Section 7, Rule 118, Rules of Court.

[6] Tsn., July 26, 1979, 5:45 P.M., p. 7.

[7] Webster's New International Dictionary, Second Edition (Unabridged).

[8] *Ibid*.

[9] pp. 7-8, Decision, pp. 43-44, Rollo.

[10] Tsn., July 27, 1979, p. 13.

[11] *Ibid*., p. 14.

[12] pp. 8-10, Decision, pp. 44-46, Rollo.

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