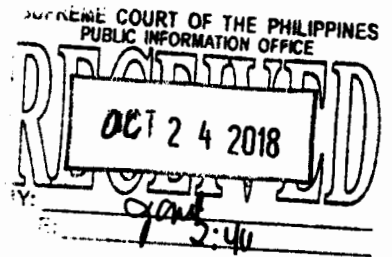




Republic of the Philippines
 Supreme Court
 Manila

FIRST DIVISION



JOMAR ABLAZA y CAPARAS,
Petitioner,

G.R. No. 217722


Present:

- versus -

LEONARDO-DE CASTRO, C.J.,
 BERSAMIN,
 DEL CASTILLO,
 JARDELEZA, and
 TIJAM, JJ.

PEOPLE OF THE PHILIPPINES,
Respondent.

Promulgated:
SEP 26 2018

X ----- 

DECISION

DEL CASTILLO, J.:

This Petition for Review on *Certiorari* assails the March 20, 2015 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR No. 36343, which affirmed with modification the December 3, 2013 Judgment² of the Regional Trial Court (RTC), Branch 75, Olongapo City in Crim. Case No. 384-10 finding Jomar Ablaza y Caparas (petitioner) and his co-accused Jay Lauzon y Farrales (Lauzon) guilty beyond reasonable doubt of Robbery with Violence Against or Intimidation of Persons under paragraph 5, Article 294 of the Revised Penal Code (RPC).

Factual Antecedents

Petitioner and Lauzon were charged in an Information³ which reads:

That on or about the twenty-ninth (29th) day of July, 2010, in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another, with intent to gain, and by



¹ CA rollo, pp. 112-126; penned by Associate Justice Ramon R. Garcia and concurred in by Associate Justices Leoncia R. Dimagiba and Melchor Quirino C. Sadang.
² Records, pp. 230-233; penned by Judge Raymond C. Viray.
³ Id. at 1-2.

means of force and violence against the person of Rosario S. Snyder, did then and there willfully, unlawfully, feloniously and forcibly grab, take, steal and carry away three (3) pcs. of necklaces worth ₱43,800.00, ₱12,800.00 and ₱13,500.00, respectively, or in the total amount of ₱70,100.00 x x x Philippine Currency, belonging to said complainant, to her damage and prejudice.

CONTRARY TO LAW.⁴

Petitioner pleaded not guilty to the charge.⁵ Lauzon, who was arrested after the conclusion of the pre-trial, also entered a plea of not guilty and adopted the pre-trial proceedings insofar as petitioner was concerned.⁶ Trial then ensued.

The prosecution presented as its lone witness the victim, Rosario S. Snyder (Snyder). Snyder narrated that at around 8:30 a.m. of June 29, 2010, she was using her cellphone⁷ while walking along Jolo Street, *Barangay Barreto*, *Olongapo City*⁸ when a motorcycle with two male persons on board stopped beside her.⁹ The backrider then suddenly grabbed her three necklaces:¹⁰ one big necklace worth ₱43,800.00 and two other necklaces each with pendants worth ₱13,500.00 and ₱12,800.00, respectively,¹¹ the prices of which were evidenced by the receipts issued by Eleanor Pawnshop and Jewelry Store where she bought them.¹² Snyder further recounted that after grabbing her necklaces, the two male persons moved a short distance¹³ and then looked back at her to check if all her necklaces were taken. Recovering from shock, Snyder managed to shout and ask for help. A tricycle passed by and so the male persons on board the motorcycle immediately sped away.¹⁴ Snyder asked the tricycle driver to run after the snatchers but he unfortunately missed them.¹⁵ Thus, Snyder went to the Police Station to report the incident.¹⁶

While at the police station, Snyder was shown some pictures from which she identified petitioner as the driver of the motorcycle.¹⁷ Snyder was certain about the identity of petitioner since she had a good look at the

⁴ Id. at 1.

⁵ Id. at 28.

⁶ Id. at 126.

⁷ TSN, June 22, 2011, p. 17.

⁸ Id. at 3-4.

⁹ Id. at 4-5.

¹⁰ Id. at 5-6.

¹¹ Id. at 7-8.

¹² Id. at 8-9; records, p. 8.

¹³ Id. at 18.

¹⁴ Id. at 20.

¹⁵ Id. at 7.

¹⁶ Id. at 9.

¹⁷ Id. at 10.

robbers' faces when they looked back at her before speeding away and also because petitioner was not wearing any helmet at that time.¹⁸

On the same day, a policeman accompanied Snyder to the house of petitioner¹⁹ who, when asked, denied any involvement in the snatching incident and claimed that he was asleep at that time.²⁰ After a while, Snyder and the policeman discovered that Lauzon, whom Snyder earlier learned to be the backrider,²¹ was also in petitioner's house hiding under the kitchen sink.²² Unfortunately, Snyder was not able to recover her necklaces.²³

Petitioner served as the sole witness for the defense. Petitioner claimed that on the date and time of the incident, he and Lauzon were asleep in his house in *Purok 6, Lower Kalaklan* in front of *Ocean View*²⁴ since they had a drinking spree the night before.²⁵ Petitioner only woke up²⁶ when a policeman arrived asking him if he was Jomar Ablaza.²⁷ Upon confirming that he was Jomar Ablaza, the policeman told him that a woman wanted to see him.²⁸ However, upon seeing petitioner, the woman told the policeman that he was not the one since the person she was looking for was "tisoy" with tattoo.²⁹ Upon hearing this, the policeman reminded the woman that petitioner already had a record with the police.³⁰ The policeman and the woman then simply left.³¹ After two months, however, petitioner was arrested in connection with this case.³²

On cross-examination, petitioner testified that he did not know Snyder prior to the alleged incident and that he was involved in two more cases of robbery and one for theft.³³

Ruling of the Regional Trial Court

In its Judgment³⁴ dated December 3, 2013, the RTC lent credence to Snyder's testimony for being candid, unwavering, clear, coherent and also

¹⁸ Id. at 11-12.

¹⁹ Id. at 13-14.

²⁰ Id. at 14.

²¹ Id. at 12.

²² Id. at 14.

²³ Id. at 25.

²⁴ TSN, September 5, 2013, p. 3.

²⁵ Id. at 4.

²⁶ Id.

²⁷ Id.

²⁸ Id. at 5.

²⁹ Id.

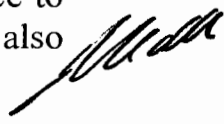
³⁰ Id.

³¹ Id. at 5-6.

³² Id. at 6.

³³ Id. at 6-7.

³⁴ Records, pp. 230-233.



because she was without any improper motive to wrongly implicate petitioner and Lauzon. The trial court also found the elements of the crime of robbery, to wit: (1) that there is taking of personal property; (2) the personal property belongs to another; (3) the taking is with *animus lucrandi*; and (4) the taking is with violence against or intimidation of persons or force upon things, to be present, ratiocinating as follows:

There is taking for sure. The act of the accused riding in tandem [in] forcibly grabbing the necklaces of Snyder from her neck exhibits not only *animus lucrandi*, but also violent taking. The accused did not simply “snatch” the necklaces; they grabbed them from Snyder’s neck. The accused ran away with the necklaces in an arrogant display of their intention to deprive Snyder of possession and dominion of her necklaces. And finally, the necklaces belonged to Snyder. She had receipts to prove her ownership. She bought them at a jewelry store.³⁵

Petitioner and Lauzon were likewise found to have conspired with each other in committing the crime charged.

Accordingly, the RTC adjudged petitioner and Lauzon as follows:

WHEREFORE, the court finds JAY LAUZON *y* FARRALES and JOMAR ABLAZA *y* CAPARAS guilty beyond reasonable doubt of Robbery defined and penalized under Article 294 (5) of the Revised Penal Code, and sentences them to each suffer the penalty of imprisonment ranging from four (4) years and two (2) months as minimum to eight (8) years and twenty (20) days as maximum.

The accused are also ordered solidarily to pay Rosario Snyder the amount of Php70,100.00 with interest at 6% *per annum* until the full amount is paid; and to pay the cost of suit.

SO DECIDED.³⁶

Petitioner filed a Notice of Appeal³⁷ which was given due course in an Order³⁸ dated December 17, 2013.

Ruling of the Court of Appeals

In his Brief,³⁹ petitioner argued that the RTC erred in giving credence to Snyder’s testimony which was incredible and full of inconsistencies.

³⁵ Id. at 232.

³⁶ Id. at 233.

³⁷ Id. at 238.

³⁸ Id. at 239.

³⁹ CA *rollo*, pp. 35-53.



Petitioner pointed out that it was unlikely that, after grabbing the necklaces and speeding away, he and Lauzon would still look back at their alleged victim, Snyder. According to him, logic and common experience dictate that they immediately leave the crime scene and not look back. Second, Snyder herself admitted that she was shocked; hence, it was highly unlikely that she would have the emotional stability and mental acuity to accurately remember the robbers' facial features. Also, Snyder did not at the outset describe the physical appearance of the persons who robbed her; instead, she identified petitioner only after she was shown the pictures. Moreover, Snyder was looking for a mestizo who was sporting a tattoo which thus rendered doubtful Snyder's identification of petitioner. Third, there were several inconsistencies in the testimonies of Snyder which tended to demonstrate the fickleness of her memory. Lastly, petitioner found it baffling why he was arrested only after two months and not immediately after a policeman and Snyder went to his house on the day itself of the incident. To petitioner, all these cast doubt on his supposed guilt.

Petitioner likewise argued that, even assuming he committed the acts imputed against him, the RTC should have convicted him only of theft citing *People v. Concepcion*⁴⁰ where the accused therein who snatched the victim's bag was held guilty of theft and not robbery.

The CA, however, was not swayed by petitioner's asseverations and found no merit in the appeal. It saw no reason not to believe Snyder's testimony and likewise found all the elements of robbery obtaining. In debunking petitioner's claim that the element of violence was absent, the CA stated that the only way that the necklaces could have been taken from Snyder was through the use of violence and physical force. The CA also concurred with the RTC's finding of conspiracy. However, it found fit to modify the penalty decreed by the trial court and clarified that the 6% interest imposed on the monetary award should be reckoned from the date of finality of the judgment until fully paid.

The dispositive portion of the assailed CA Decision reads:

WHEREFORE, premises considered, the appeal is hereby DENIED. The Judgment dated December 3, 2013 of the Regional Trial Court, Branch 75, Olongapo City is AFFIRMED WITH MODIFICATION in that accused-appellant Jomar Ablaza y Caparas is sentenced to suffer imprisonment of four (4) years and two (2) months of *prision correccional*, as minimum, to eight (8) years of *prision mayor*, as maximum. He is further ordered to pay private complainant Rosario Snyder interest on the award of civil liability assessed at the legal rate of

⁴⁰ 691 Phil. 542 (2012).

six percent (6%) per annum from date of finality of this judgment until fully paid.

SO ORDERED.⁴¹

In view of the above, petitioner is now before this Court through this Petition for Review on *Certiorari* imputing upon the CA the following errors:

X X X THE COURT OF APPEALS GRAVELY ERRED IN CONVICTING THE PETITIONER FOR THE CRIME CHARGED DESPITE THE FACT THAT HIS GUILT [HAD] NOT BEEN PROVEN BEYOND REASONABLE DOUBT.

ASSUMING *ARGUENDO* THAT THE PETITIONER COMMITTED THE ALLEGED ACTS, THE COURT OF APPEALS GRAVELY ERRED IN FINDING HIM LIABLE FOR ROBBERY INSTEAD OF THEFT.⁴²

Petitioner's Arguments

Petitioner argues that the CA erred in relying on Snyder's uncorroborated testimony concerning his identification as one of the alleged robbers. Said testimony did not inspire belief since, aside from being highly contrary to human nature and experience, it was tainted with several inconsistencies. Moreover, the same was insufficient to sustain petitioner's conviction. While petitioner admits that a lone witness' testimony may be sufficient to convict an accused, this is only true when the testimony is clear, consistent, and credible, which is not the case here. Also, while a denial cannot overcome a positive identification of the accused, the positive identification must first come from a credible witness and the witness's story must be believable and inherently contrived, which again is not true in this case. These, according to petitioner, negate his guilt beyond reasonable doubt.

Even assuming that he committed the acts imputed against him, petitioner contends that he may only be held liable for theft. He disagrees with the CA when it held that the only way that the necklaces could be taken from Snyder was through the use of violence and physical force. Notably, Snyder testified that her necklaces were grabbed from her. However, a necklace can be "grabbed" and taken away without the use of violence. In fact, Snyder did not at all allege that she was pushed or otherwise harmed by the persons who took her necklaces. In this regard, petitioner once again

⁴¹ CA *rollo*, p. 125.

⁴² *Rollo*, p. 16.

invokes the ruling in *Concepcion* which he believes to be squarely applicable to his case.

In sum, petitioner prays that he be acquitted of the crime charged or, in the alternative, that he be held liable only for theft.

Respondent's Arguments

In its Comment,⁴³ Respondent People of the Philippines, through the Office of the Solicitor General (OSG), avers that Snyder was able to positively identify petitioner as she saw the faces of the perpetrators. This easily inspires belief as the incident happened at around 8:30 a.m. or in broad daylight; the robbers' faces were in open view; and that they were just a short distance away from Snyder when they looked back at her. Significantly, Snyder made the identification from the photographs shown to her just immediately after the incident. And, despite being shown several photographs of persons with police records, she was able to pinpoint petitioner as one of the perpetrators. On the other hand, that Snyder was allegedly looking for a "tisoy" was a mere allegation of petitioner. Anent the inconsistencies in Snyder's testimony, the OSG avers that the same referred to trivial matters that did not affect her credibility. It, thus, posits that the credible and convincing testimony of Snyder sufficiently established the identity of petitioner as one of the perpetrators.

The OSG likewise asserts that petitioner was correctly found guilty of robbery. According to it, *Concepcion* is not applicable to this case since therein, the victim testified that her shoulder bag was snatched but no violence, intimidation, or force was used against her by the perpetrators. However, here, Snyder testified that her necklaces were not merely snatched but grabbed from her. Hence, violence was used upon her person. In view of these, the OSG prays for the denial of the petition for lack of merit.

Our Ruling

There is partial merit in the petition.

"As a general rule, the Court's jurisdiction in a petition for review on *certiorari* under Rule 45 of the Rules of Court is limited to the review of pure questions of law. Otherwise stated, a Rule 45 petition does not allow the review of questions of fact because the Court is not a trier of facts."⁴⁴

⁴³ Id. at 166-194.

⁴⁴ *Bank of the Philippine Islands v. Mendoza*, G.R. No. 198779, March 20, 2017, 821 SCRA 41, 48.

Notably here, the arguments advanced by petitioner to support his contention that his guilt was not proven beyond reasonable doubt assail Snyder's credibility as witness, specifically with respect to the latter's identification of him as one of the perpetrators, which essentially is a question of fact. As held, if a question posed requires the reevaluation of the credibility of witnesses, the issue is factual.⁴⁵ And, although there are several exceptions to the rule that factual questions cannot be passed upon in a Rule 45 petition,⁴⁶ the Court does not find the existence of any in this case. At any rate, "[t]he assessment of credibility of witnesses is a task most properly within the domain of trial courts."⁴⁷

[T]he findings of the trial court carry great weight and respect due to the unique opportunity afforded them to observe the witnesses when placed on the stand. Consequently, appellate courts will not overturn the factual findings of the trial court in the absence of facts or circumstances of weight and substance that would affect the result of the case. Said rule finds an ever more stringent application where the said findings are sustained by the CA, as in the case at hand[.]⁴⁸

Accordingly, the Court shall not depart from the findings of the RTC as affirmed by the CA on the matter of Snyder's credibility as witness and that of her testimony identifying petitioner as one of the perpetrators of the crime.

Nevertheless, the Court finds that petitioner should be held liable only for theft. Indeed, the case of *People v. Concepcion*⁴⁹ is on all fours with the present case, viz.:

x x x Article 293 of the [Revised Penal Code (RPC)] defines robbery as a crime committed by 'any person who, with intent to gain, shall take any personal property belonging to another, by means of violence against or intimidation of any person, or using force upon anything.' x x x



⁴⁵ Id. at 49.

⁴⁶ (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record. [*Miano, Jr. v. Manila Electric Company (MERALCO)*, G.R. No. 205035, November 16, 2016, 809 SCRA 193, 199.]

⁴⁷ *People v. Gerola*, G.R. No. 217973, July 19, 2017.

⁴⁸ Id.

⁴⁹ *Supra* note 40.

Theft, on the other hand, is committed by any person who, with intent to gain but without violence against or intimidation of persons nor force upon things, shall take the personal property of another without the latter's consent. x x x

By definition in the RPC, robbery can be committed in three ways, by using: (a) violence against any person; (b) intimidation of any person; and/or (c) force upon anything. Robbery by use of force upon things is provided under Articles 299 to 305 of the RPC.

The main issue is whether the snatching of the shoulder bag in this case is robbery or theft. Did Concepcion employ violence or intimidation upon persons, or force upon things, when he snatched Acampado's shoulder bag?

In *People v. Dela Cruz*, this Court found the accused guilty of theft for snatching a basket containing jewelry, money and clothing, and taking off with it, while the owners had their backs turned.

In *People v. Tapang*, this Court affirmed the conviction of the accused for frustrated theft because he stole a white gold ring with diamond stones from the victim's pocket, which ring was immediately or subsequently recovered from the accused at or about the same time it was stolen.

In *People v. Omambong*, the Court distinguished robbery from theft. The Court held:

Had the appellant then run away, he would undoubtedly have been guilty of theft only, because the asportation was not effected against the owner's will, but only without his consent; although, of course, there was some sort of force used by the appellant in taking the money away from the owner.

x x x x

What the record does show is that when the offended party made an attempt to regain his money, the appellant's companion used violence to prevent his succeeding.

x x x x

The crime committed is therefore robbery and not theft, because personal violence was brought to bear upon the offended party before he was definitely deprived of his money.

The prosecution failed to establish that Concepcion used violence, intimidation or force in snatching Acampado's shoulder bag. Acampado herself merely testified that Concepcion snatched her shoulder bag which was hanging on her left shoulder. Acampado did not say that Concepcion used violence, intimidation or force in snatching her shoulder bag. Given the facts, Concepcion's snatching of Acampado's shoulder bag constitutes the crime of theft, not robbery. x x x⁵⁰ (Citations omitted)

⁵⁰ Id. at 548-550.

Similarly in this case, Snyder's testimony was bereft of any showing that petitioner and his co-accused used violence or intimidation in taking her necklaces. She merely stated that the perpetrators grabbed her necklaces without mentioning that the latter made use of violence or intimidation in grabbing them, *viz.*:

Q: Do you recall any untoward incident that happened while walking on [July 29, 2010]?

A: Yes, sir.

Q: What is that incident?

A: **Suddenly somebody approached me and took my necklace.**

x x x x

Q: Can you tell us how these two persons approached you?

A: While I was walking, a motorcycle stopped[,] x x x [on board it were] the driver and a backrider.

Q: Where did this motorcycle stop?

A: [Beside] me.

Q: In front of you or beside you?

A: [Beside] me.

x x x x

Q: How did these persons grab your necklace?

A: **They suddenly grabbed my necklace and I was shocked.**⁵¹

The OSG argues that the use of the word "grabbed", by itself, shows that violence or physical force was employed by the offenders in taking Snyders' necklaces. The Court, however, finds the argument to be a pure play of semantics. Grab means to take or seize by or as if by a sudden motion or grasp; to take hastily.⁵² Clearly, the same does not suggest the presence of violence or physical force in the act; the connotation is on the suddenness of the act of taking or seizing which cannot be readily equated with the employment of violence or physical force. Here, it was probably the suddenness of taking that shocked Snyder and not the presence of violence or physical force since, as pointed out by petitioner, Snyder did not at all allege that she was pushed or otherwise harmed by the persons who took her necklaces.

Besides, the use of force is not an element of the crime of simple robbery committed under paragraph 5, Article 294 of the RPC.

⁵¹ TSN, June 2, 2011, pp. 4-5; emphases supplied.

⁵² <https://www.merriam-webster.com/dictionary/grab>; last visited on August 28, 2018.

The crime of robbery is found under Chapter One, Title Ten [Crimes Against Property] of the RPC. Chapter One is composed of two sections, to wit: Section One – Robbery with violence against or intimidation of persons; and Section Two – Robbery by the use of force upon things.

Robbery in general is defined under Article 293 of the RPC as follows:

Art. 293. *Who are guilty of robbery.* – Any person who, with intent to gain, shall take any personal property belonging to another, by means of violence against or intimidation of any person, or using force upon anything, shall be guilty of robbery.

“The elements of robbery are thus: (1) there is taking of personal property; (2) the personal property belongs to another; (3) the taking is with *animus lucrandi*; and (4) the taking is **with violence against or intimidation of persons or with force upon things.**”⁵³

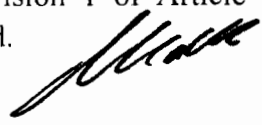
Note that while the fourth requisite mentions “with violence against or intimidation of persons” or “force upon things”, only the phrase “with violence against or intimidation of persons” applies to the kinds of robbery falling under Section One, Chapter One, Title Ten of the RPC. The phrase “with force upon things”, on the other hand, applies to the kinds of robbery provided under Section Two thereof.

As mentioned, the RTC convicted petitioner of simple robbery under paragraph 5, Article 294, which article falls under Section One. Article 294 provides:

ART 294. *Robbery with violence against or intimidation of persons. – Penalties.* - Any person guilty of robbery with use of violence against or intimidation of any person shall suffer:

1. The penalty of from *reclusion perpetua* to death, when by reason or on occasion of the robbery, the crime of homicide, shall have been committed; or when the robbery shall have been accompanied by rape or intentional mutilation or arson.

2. The penalty of *reclusion temporal* in its medium period to *reclusion perpetua*, when or if by reason or on occasion of such robbery, any of the physical injuries penalized in subdivision 1 of Article 263 [Serious Physical Injuries] shall have been inflicted.



⁵³ *Consulta v. People*, 598 Phil. 464, 471 (2009).

3. The penalty of *reclusion temporal*, when by reason or on occasion of the robbery, any of the physical injuries penalized in subdivision 2 of the article mentioned in the next preceding paragraph, shall have been inflicted.

4. The penalty of *prision mayor* in its maximum period to *reclusion temporal* in its medium period, if the violence or intimidation employed in the commission of the robbery shall have been carried to a degree clearly unnecessary for the commission of the crime, or when in the course of its execution, the offender shall have inflicted upon any person not responsible for its commission any of the physical injuries covered by subdivisions 3 and 4 of said Article 263.

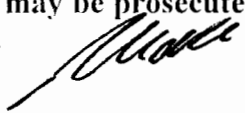
5. The penalty of *prision correccional* in its maximum period to *prision mayor* in its medium period in other cases.

Hence, in determining the existence of the fourth requisite in cases of simple robbery under Article 294, courts should look into whether the taking of personal property is with violence against or intimidation of persons and not on whether there was force.

Now, on how to construe the phrase "by means of violence against or intimidation of persons" as used in Article 294, the case of *People v. Judge Alfeche, Jr.*⁵⁴ is enlightening:

Accordingly, the phrase 'by means of violence against or intimidation of persons' in Article 312 must be construed to refer to the same phrase used in Article 294. There are five classes of robbery under the latter, namely: (a) robbery with homicide (par. 1); (b) robbery with rape, intentional mutilation, or the physical injuries penalized in subdivision 1 of Article 263 (par. 2); (c) robbery with physical injuries penalized in subdivision 2 of Article 263 (par. 3); (d) robbery committed with unnecessary violence or with physical injuries covered by subdivisions 3 and 4 of Article 263 (par. 4); and (e) robbery in other cases, or simply robbery (par. 5), where the violence against or intimidation of persons cannot be subsumed by, or where it is not sufficiently specified so as to fall under, the first four paragraphs.

Paragraphs one to four of Article 294 indisputably involve the use of violence against persons. The actual physical force inflicted results in death, rape, mutilation or the physical injuries therein enumerated. **The simple robbery under paragraph five may cover physical injuries not included in paragraphs two to four. Thus, when less serious physical injuries or slight physical injuries are inflicted upon the offended party on the occasion of a robbery, the accused may be prosecuted for and convicted of robbery under paragraph five.**



⁵⁴ 286 Phil. 936 (1992).

It seems obvious that intimidation is not encompassed under paragraphs one to four since no actual physical violence is inflicted; evidently then, it can only fall under paragraph five.

But what is meant by the word intimidation? It is defined in Black's Law Dictionary as 'unlawful coercion; extortion; duress; putting in fear'. To take, or attempt to take, by intimidation means 'wilfully to take, or attempt to take, by putting in fear of bodily harm.' As shown in *United States vs. Osorio* material violence is not indispensable for there to be intimidation, intense fear produced in the mind of the victim which restricts or hinders the exercise of the will is sufficient. x x x⁵⁵

Clearly, for the requisite of violence to obtain in cases of simple robbery, the victim must have sustained less serious physical injuries or slight physical injuries in the occasion of the robbery. Or, as illustrated in the book of Justice Luis B. Reyes, *The Revised Penal Code (Book Two)*, there should be some kind of violence exerted to accomplish the robbery, as when:

Snatching money from the hands of the victim and *pushing* her to prevent her from recovering the seized property.

x x x x

Where there is nothing in the evidence to show that some kind of violence had been exerted to accomplish the snatching, and the offended party herself admitted that she did not feel anything at the time her watch was snatched from her left wrist, the crime committed is not robbery but only on simple theft.⁵⁶

In this case, Snyder did not sustain any kind of injury at all. And as already mentioned, her testimony was bereft of any showing that violence was used against her by petitioner and his co-accused in that she was pushed, or otherwise harmed on the occasion of the robbery. While one can only imagine how pulling three necklaces at the same time from the victim's neck could not have caused any mark, bruise, or pain to the latter, suffice it to state that such a matter must have been adequately proved by the prosecution during trial as the Court cannot rely on mere assumptions, surmises, and conjectures especially when it is the life and liberty of the petitioner which is at stake.

As to intimidation, its non-existence in this case is not in dispute. And even if otherwise, the Court will just the same rule against it. Per the victim's testimony, the act of the perpetrators in grabbing her necklaces was

⁵⁵ Id. at 948-949.


⁵⁶ Reyes, Luis, B., *The Revised Penal Code, Book Two*, 2008 ed., p. 681.

so sudden. Hence, it could not have produced fear or duress in the victim's mind as to deprive her of the exercise of her will.

“Fundamental is the precept in all criminal prosecutions, that the constitutive acts of the offense must be established with unwavering exactitude and moral certainty because this is the critical and only requisite to a finding of guilt.”⁵⁷ Here, the fourth requisite of the crime of robbery is not obtaining considering that the prosecution failed to sufficiently establish that the taking of the necklaces was with violence against or intimidation of persons. Accordingly, petitioner must be held liable only for the crime of theft, not robbery.

Under Article 309(3) of the RPC as amended by Republic Act No. 10951,⁵⁸ any person guilty of theft shall be punished by the penalty of *prision correccional* in its minimum and medium periods, if the value of the property stolen is more than ₱20,000.00 but does not exceed ₱600,000.00. Since petitioner is guilty of the crime of theft of property valued at ₱70,100.00 and, in the absence of any mitigating or aggravating circumstance, the maximum term of the penalty should be within the range of one (1) year, eight (8) months and twenty-one (21) days to two (2) years, eleven (11) months and ten (10) days of *prision correccional*. Applying the Indeterminate Sentence Law, the minimum term of the penalty shall be within the range of the penalty next lower to that prescribed by the RPC for the crime, which is *arresto mayor* in its medium and maximum periods which ranges from two (2) months and one (1) day to six (6) months. For this reason, the Court imposes upon petitioner the indeterminate penalty of six (6) months of *arresto mayor* as minimum, to two (2) years, eleven (11) months and ten (10) days of *prision correccional* as maximum.

WHEREFORE, the Petition for Review on *Certiorari* is **PARTIALLY GRANTED**. The assailed March 20, 2015 Decision of the Court of Appeals in CA-G.R. CR No. 36343, which affirmed with modification the December 3, 2013 Judgment of the Regional Trial Court, Branch 75, Olongapo City in Criminal Case No. 384-10 finding petitioner Jomar Ablaza y Caparas guilty beyond reasonable doubt of Robbery with Violence Against or Intimidation of Persons under paragraph 5, Article 294 of the Revised Penal Code, is **MODIFIED** in that he is instead found **GUILTY** beyond reasonable doubt of the crime of **THEFT** and sentenced to suffer the indeterminate penalty of six (6) months of *arresto mayor* as minimum, to two (2) years, eleven (11) months and ten (10) days of *prision correccional* as maximum.



⁵⁷ *Balerta v. People*, 748 Phil. 806, 821(2014).

⁵⁸ An Act Adjusting The Amount Or The Value Of Property And Damage On Which A Penalty Is Based, And The Fines Imposed Under The Revised Penal Code. Amending For The Purpose Act No. 3815, Otherwise Known As “The Revised Penal Code.” As Amended. Approved August 29, 2017.

SO ORDERED.


MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:


TERESITA J. LEONARDO-DE CASTRO
Chief Justice


LUCAS P. BERSAMIN
Associate Justice

(On official leave)
FRANCIS H. JARDELEZA
Associate Justice


NOEL GIMENEZ TIJAM
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


TERESITA J. LEONARDO-DE CASTRO
Chief Justice