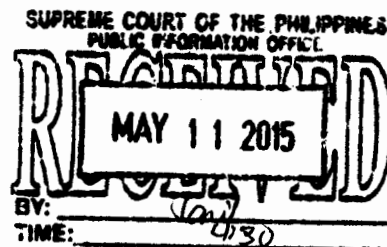




Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE



Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated February 23, 2015, which reads as follows:

“G.R. No. 215101 – MICHAEL MAHUSAY y TAMARES, Petitioner, v. PEOPLE OF THE PHILIPPINES, Respondent.-The petitioner’s motion for an extension of thirty (30) days within which to file a petition for review on certiorari is **GRANTED**, counted from the expiration of the reglementary period.

Before the Court is a Petition for Review on *Certiorari* filed by petitioner Michael T. Mahusay seeking the setting aside and reversal of the following: (1) the Decision¹ dated April 23, 2014 of the Court of Appeals in CA-G.R. CR No. 33953, which affirmed the Decision² dated September 24, 2010 of the Regional Trial Court (RTC) of Malabon City, Branch 170 in Criminal Case No. 31036-MN, finding petitioner guilty of Simple Robbery; and (2) the Resolution dated October 8, 2014 of the appellate court in the same case denying petitioner’s Motion for Reconsideration.

Petitioner, Bryan Rosales (Rosales), and Gilbert Gargoles (Gargoles) were charged as follows in an Information dated June 1, 2004 before the RTC:

That on or about the 31st day of May 2004, in the Municipality of Navotas, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating

- over eight (8) pages.....

17

¹ *Rollo*, pp. 31-43; penned by Associate Justice Myra V. Garcia-Fernandez with Associate Justices Fernanda Lampas Peralta and Francisco P. Acosta, concurring.

² *Id.* at 62-72; penned by Judge Zaldy B. Docena.

and helping one another, with intent to gain, by means of force, violence and intimidation, did, then and there, wilfully, unlawfully and feloniously take, rob and divest from RICARDA CERBETO Y FEDERNALES, One (1) "Dilantar" containing Twelve Thousand Pesos (P12,000.00) and One (1) Nokia 3210 owned and belonging to Ricarda Cerbeto y Federnales, to the damage and prejudice of the same for the total amount of P12,000.00.³

When arraigned, petitioner, Rosales, and Gargoles pleaded not guilty to the charge. Petitioner was granted provisional liberty upon posting bail.

Evidence for the prosecution consisted of the testimony of Ricarda Cerbeto (Cerbeto), the victim; and the Joint Affidavit of Arrest executed by Floresto Diego (Diego) and Manny Jake Ugot (Ugot), on-duty Patrol Guards of the Special Operations Group of the Philippine Fisheries Development Authority (PFDA).

Cerbeto narrated that on May 31, 2004, at about twelve midnight, she was at Saint Joseph Consignation, Market 1, Navotas Fish Port to buy fish. While walking along the street of Saint Joseph Consignation towards Market 1, she passed between two parked vans. No one else was on the street which was well lit by electric posts. Two men then blocked her way. One of the men, the taller one in a yellow t-shirt (later identified as Gargoles) grabbed Cerbeto by the neck while uttering, "*Akin na ang pera mo.*" The other man in a blue shirt (Rosales) grabbed Cerbeto's *delantar*, saying, "*Ibigay mo na ang pera mo, tanggalin mo nayan.*" A third man (petitioner) acted as look-out.

Cerbeto was only about six meters away from Market 1 where many people were already buying fish, but no one noticed that she was being robbed. Cerbeto struggled against the three men but they had already taken her *delantar*, which contained cash amounting to P12,000.00 (intended for buying fish) and Nokia cellphone 3210 (pledged to Cerbeto for P1,500.00). After successfully taking Cerbeto's *delantar*, petitioner, Rosales, and Gargoles ran toward the gate. It was only then that Cerbeto was able to shout and call the attention of other people. The three men were not immediately caught. Cerbeto had to seek assistance from the nearby Maritime Police who were able to arrest the three men about 100 meters from the Philippine National Police (PNP) Maritime Office. At the PNP Maritime Office, Cerbeto identified before Investigator Police Officer (PO) 2 Alfonso Paguro the three men – petitioner, Rosales, and Gargoles – as the perpetrators of the crime.

- over -

³ Id. at 62.

Cerbeto recognized petitioner as the look-out ("*nagmamasid*"). She claimed that she saw petitioner behind her as Gargoles held her by the neck and Rosales grabbed her *delantar*. According to Cerbeto, petitioner followed behind Gargoles and Rosales as the latter two walked away.

During trial, Cerbeto again identified all three men, specifically, Gargoles, the tall man who held her by the neck; Rosales, who grabbed her *delantar*; and petitioner, who served as look-out.

Diego and Ugot narrated in their Joint Affidavit of Arrest that while on duty on the night of May 31, 2004, they noticed three men running toward the exit gate. The three men passed by the PFDA compound and then disappeared. Immediately thereafter, Diego and Ugot heard on their two-way radio that a holdup took place at Market 1 and the suspects were wearing yellow and blue t-shirts. Diego and Ugot roamed around the PFDA premises and along the way to Market 3, they noticed two men coming out of the "*tambakan ng basura*" and hurriedly getting on board a pedicab. Diego and Ugot approached the two men who were wearing blue and yellow t-shirts and invited them to the guards' office. At the office, Cerbeto positively identified Rosales and petitioner as the "holduppers." While at the office, Rosales admitted that "Kumang" (referring to Gargoles) had Cerbeto's money. Diego and Ugot found Gargoles at Market 2, but when confronted, the latter denied any involvement in the holdup. Diego and Ugot turned over petitioner, Rosales, and Gargoles to the PNP Maritime Office for investigation.

Petitioner and Gargoles testified for the defense.

According to petitioner, he worked as a porter at the Navotas Fish Port. On May 31, 2004, after he and Rosales finished tending fish at Market 1, they went outside to cook the fish that they bought. They had walked about 10 meters away from Market 1 when they were stopped by a security guard who petitioner recognized by face. The security guard invited Rosales to the guardhouse. At the guardhouse, petitioner and Rosales saw a woman (Cerbeto), who they did not know, crying. Suddenly, the woman pointed to Rosales. The woman claimed that Rosales had a companion and, thus, implicated petitioner. Petitioner and Rosales were then mauled, brought to a medical facility for medical examination, and finally turned over to the PNP Maritime Office. Petitioner admitted knowing Rosales as an extra worker (not a porter) at the fish port. Although Gargoles frequented Market 1, petitioner averred that he saw the former for the first time inside the PNP Maritime Office.

Gargoles denied the accusation against him. He recounted that on May 31, 2004, he was sleeping when the Maritime Police arrested him for unexplained reasons. He confessed to previously knowing petitioner, Rosales, and Cerbeto.

On September 24, 2010, the RTC rendered its Decision finding petitioner, Rosales, and Gargoles guilty of Robbery committed in conspiracy with one another, and imposing upon them the following penalties:

In sum, this Court finds all three Accused: [petitioner], Rosales and Gargoles, guilty beyond reasonable doubt, of the crime of Robbery, as charged in the Information.

Article 294, paragraph 5 provides for the penalty:

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

x x x x

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

The range of the penalty is from four (4) years, two (2) months and one (1) day to ten (10) years.

In view of the absence of aggravating or mitigating circumstance, the penalty shall be imposed in its medium period of from six (6) years, one (1) month and eleven (11) days to eight (8) years and twenty (20) days as maximum.

Applying the Indeterminate Sentence Law, each of the Accused BRYAN ROSALES y YANGSON, MICHAEL MAHUSAY y AMAREZ and GILBERT GARGOLES y VILLANUEVA is imposed the indeterminate sentence of Four (4) Months and One (1) Day of *Arresto Mayor* as Minimum to Six (6) Years and One (1) Day of *Prision Mayor* as Maximum.

Each is jointly and severally liable to pay private complainant the amount of Thirteen Thousand Five Hundred Pesos (₱13,500.00) by way of restitution for the belongings taken from the victim.⁴

On November 8, 2010, the RTC ordered the release of Rosales and Gargoles from detention for having served the maximum penalty imposed by the RTC.

- over -

⁴ Id. at 71-72.

Petitioner though still appealed his conviction before the Court of Appeals.

The Court of Appeals promulgated its Decision on April 23, 2014 with a dispositive portion that reads:

WHEREFORE, the appeal is DENIED. The decision dated September 24, 2010 of the Regional Trial Court, Branch 170, Malabon City finding [petitioner] guilty of robbery beyond reasonable doubt and sentencing him to suffer an indeterminate penalty of 4 months and 1 day of *arresto mayor* as minimum to 6 years and 1 day of *prision mayor* as maximum is AFFIRMED.⁵

Hence, the instant Petition for Review.

Petitioner assigned two errors on the part of the Court of Appeals, to wit:

I

THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE CONVICTION OF THE PETITIONER DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

II

ASSUMING ARGUENDO THAT PETITIONER WAS AT THE CRIME SCENE[, THE] COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT CONSPIRACY EXISTS.⁶

There is no merit in the present Petition.

Petitioner is essentially challenging the credence and weight accorded by the RTC and the Court of Appeals to the testimony of Cerbeto and the Joint Affidavit of Arrest of Diego and Ugot.

Time and again, the Court declared that factual findings of the trial court, when affirmed by the Court of Appeals, are generally binding and conclusive upon the Supreme Court. Except for compelling or exceptional reasons, such as when they were sufficiently shown to be contrary to the evidence on record, the findings of fact of the RTC will not be disturbed by this Court. Thus, once a guilty verdict has been rendered, the appellant has the burden of clearly proving on appeal that the lower court committed

⁵ Id. at 43.

⁶ Id. at 17-18.

errors in the appreciation of the evidence presented.⁷ Herein petitioner was not able to discharge this burden.

Also corollary to the principle that appellate courts generally will not interfere with the factual findings of the trial court is the rule that when the credibility of an eyewitness is at issue, due deference and respect is given by the appellate courts to the assessment made by the trial courts, absent any showing that the trial courts overlooked facts and circumstances of substance that would have affected the final outcome of the case. As consistently adhered to by this Court, the matter of assigning values to declarations on the witness stand is best and most competently performed by the trial judge, who had the unmatched opportunity to observe the witnesses and to assess their credibility by the various *indicia* available but not reflected on the record.⁸

Quoted below are the relevant findings of fact of the RTC, affirmed by the Court of Appeals:

This Court finds Cerbeto's testimony straightforward, candid and believable. Being the victim, she had direct personal knowledge of the crime. She has her experience clearly narrated during her examination in court – in both direct and cross-examination.

Cerbeto's testimony – that the Accused who blocked her way and took her "dilantar" were wearing a yellow and a blue t-shirt respectively – was credible because Accused Rosales and Mahusay were still in yellow and blue t-shirts when accosted immediately after the lapse of only ten minutes from the time Cerbeto sought the assistance of the Maritime Police. Also, Cerbeto, without hesitation, from the moment she saw them, immediately pinpointed to Accused Rosales and Accused Mahusay when they entered the Office of the Maritime Police. And finally, in court during trial, she was steadfast in differentiating the roles of the three Accused: the tall one (Accused Gargoles) was the one that grabbed her neck, accused Rosales was the one that grabbed her "dilantar" and Accused Mahusay was the one that acted as the lookout.

Likewise, this Court assigns the same probative value and weight to the Joint Affidavit of the arresting security guards (Ugot and Diego). As the three Accused ran out of the exit gate, it was the two arresting security guards that witnessed the series of events: from the time the three Accused [were] running out of the exit gate passing by the compound of the PFDA, their disappearance from the said gate, and finally their arrest.

- over -

17

⁷ *People v. Credo*, G.R. No. 197360, July 3, 2013, 700 SCRA 633, 643.
⁸ *Id.*

The objection of the Defense that the arresting officers were not the security guards but the Maritime Police is belied by the testimony of Accused Mahusay himself that the security guard whom he knew by face stopped them and invited them to the guard of the fishport. x x x.

Also, worthy of note is the testimony of the arresting security guards Ugot and Diego that when Accused Mahusay and Accused Rosales were invited by them to their office, and when they asked them where the money was that they had taken from Ricarda, Accused Rosales immediately pointed to Accused Gargoles ("Kumang") as the one that kept the money (Exh. "B"). This admission of Accused Rosales caused the subsequent arrest of Accused Gargoles whom they found at Market II. If accused Rosales did not point to Accused Gargoles as the one that kept the money taken from Ricarda, the security guards would have had no way of determining who the third person involved in the robbery of Cerbeto that they had seen go out of the exit gate that particular moment.

x x x x

x x x [W]here no improper motive can be attributed to the witnesses (Cerbeto and the security guards) for testifying against the Accused and wherein the locus criminis afforded good visibility (place of the crime was well lit by electric posts), their version of the story deserves full faith and credit.

x x x x

Further, the Prosecution was able to establish beyond reasonable doubt the existence of conspiracy among Accused Gargoles, Mahusay and Rosales. The crime was executed in each of the Accused's presence. Cerbeto testified that there were three persons that robbed her. Each of the three persons (Accused Rosales, Mahusay, Gargoles) has executed a distinct part in consummating the crime of robbery. Accused Gargoles grabbed her by the neck, Accused Rosales grabbed her "dilantar" and Accused Mahusay acted as the lookout. The execution of distinct roles was done simultaneously by each of the Accused. Using violence on Cerbeto, the three accused, with intent to gain, fled with her "dilantar" and went out of the gate of the PFDA premises.

These acts taken together show that there was, among Accused, unity of purpose and design in the execution of the unlawful act, establishing beyond reasonable doubt the existence of conspiracy (People v. Ariel Pedroso y Ciabo, G.R. No. 125128, July 19, 2000 citing People v. Versosa, 294 SCRA 466 [1993]).⁹

The aforequoted findings are binding and conclusive on this Court as petitioner failed to present any compelling or exceptional reason for the Court to review and disturb the same.

- over -

17

⁹ Rollo, pp. 68-71.

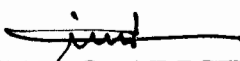
However, the Court modifies the penalty imposed upon petitioner by the RTC and affirmed by the Court of Appeals.

For the crime of Simple Robbery, Article 294, paragraph 5 of the Revised Penal Code prescribes the penalty of *prision correccional* in its maximum period to *prision mayor* in its medium period. There being no mitigating or aggravating circumstance attending the commission of the crime, the penalty imposed should be in its medium period¹⁰ which is within the range of six (6) years, one (1) month, and eleven (11) days to eight (8) years and twenty (20) days. Applying the Indeterminate Sentence Law, the penalty shall be an indeterminate sentence, the minimum term of which shall be taken from the penalty next lower in degree, namely, *arresto mayor* in its maximum period to *prision correccional* in its medium period, the range of which shall be four (4) months and one (1) day to four (4) years and two (2) months. Thus, appellant may be sentenced to an indeterminate penalty ranging from four (4) months and one (1) day of *arresto mayor* as minimum to six (6) years, one (1) month, and eleven (11) days of *prision mayor* as maximum.

WHEREFORE, the Petition is **DENIED**. However, the Decision dated April 23, 2014 of the Court of Appeals in CA-G.R. CR No. 33953, which affirmed the Decision dated September 24, 2010 of the Regional Trial Court of Malabon City, Branch 170, is **AFFIRMED with MODIFICATION** as to the penalty imposed. For the crime of Simple Robbery, petitioner Michael T. Mahusay is **SENTENCED** to suffer the indeterminate penalty of imprisonment of four (4) months and one (1) day of *arresto mayor* as minimum to six (6) years, one (1) month, and eleven (11) days of *prision mayor* as maximum.

SO ORDERED.”

Very truly yours,


EDGAR O. ARICHETA
Division Clerk of Court *mlhr*
17

PUBLIC ATTORNEY'S OFFICE
Special and Appealed Cases Service
5/F DOJ Agencies Bldg., NIA Rd. cor.
East Ave., Diliman 1104 Quezon City

Public Information Office (x)
Library Services (x)
Supreme Court
(For uploading pursuant to A.M. No. 12-7-1-SC)

Judgment Division (x)
Supreme Court

Court of Appeals (x)
Manila
(CA-G.R. CR No. 33953)

The Solicitor General (x)
Makati City

The Presiding Judge
Regional Trial Court, Br. 170
1470 Malabon City
(Crim. Case No. 31036-MN)

¹⁰ Revised Penal Code, Article 64(1).