

## **TWELFTH DIVISION**

**[ CA-G.R. CR. No. 33280, May 20, 2014 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. BEN  
MANANGAN, ACCUSED-APPELLANT.**

### **D E C I S I O N**

**ELBINIAS, J.:**

Subject of this Appeal is the Decision<sup>[1]</sup> dated January 22, 2010 of the Regional Trial Court of Cabagan, Isabela, Branch 22 ("trial court" for brevity) in Criminal Case No. 22-1597 for "ROBBERY IN BAND".

The conviction of accused-appellant Ben Manangan ("accusedappellant" or "Manangan" for brevity) stemmed from an Information<sup>[2]</sup> dated March 8, 2001, which read as follows:

"That on or about the 5th day of February, 2001, in the [M]unicipality of Tumauini, [P]rovince of Isabela, Philippines and within the jurisdiction of this Honorable Court, the accused Ben Manangan, together with John Doe, Peter Doe, Richard Doe, Paul Doe and Albert Doe, whose identities are still to be determined, conspiring, confederating together and helping one another, all armed with assorted firearms, with intent to gain and by means of force and intimidation against person, that is: by poking their firearms, towards the persons of Ocampo U. Denna and members of his family including one Felix Denna and at gun point, did then and there, willfully, unlawfully and feloniously, take, steal and bring away cash money in the amount of P50,000.00, belonging to the said Ocampo U. Denna, against his will and consent, to the damage and prejudice of the said owner, in the aforesaid amount of P50,000.00.

CONTRARY TO LAW."<sup>[3]</sup>

The prosecution presented two (2) witnesses, namely: Jolita Denna ("Jolita" for brevity), and Fortunata Denna ("Fortunata" for brevity) in order to prove the following:

Witness Jolita testified that accused-appellant Manangan was the nephew of her husband, Ocampo Denna ("Ampoy" for brevity).

On February 5, 2001 at about 7:30 in the evening, Jolita, together with her daughter Jesusa Denna, her brother-in-law Mariano Denna, and her niece Fortunata, was inside Jolita's house at San Vicente, Tumauini, Isabela.<sup>[4]</sup>

Later in the evening, Jolita's husband, Ampoy, arrived.<sup>[5]</sup>

After turning the lights off, Jolita heard someone call, "Uncle Ampoy, Uncle Ampoy".<sup>[6]</sup> Jolita responded, "you wait I will just put on the light".<sup>[7]</sup> At that time, Jolita recognized that the voice was coming from accused-appellant Manangan, because Jolita knew him for a long time.<sup>[8]</sup>

Jolita then lit the lamp, opened the door and saw five (5) other armed men wearing bonnets along with accused-appellant, who was not wearing a bonnet.<sup>[9]</sup> However, accused-appellant blew the light out from the lamp held by Jolita. Afterwards, the group asked Jolita to cook food for them because they were hungry.<sup>[10]</sup> Jolita complied.<sup>[11]</sup>

According to Jolita, after eating, three of the armed men went to the nearby house of Jolita's brother-in-law while the others remained in their house.<sup>[12]</sup> Afterwards, the remaining men asked Jolita and her husband to surrender their money, saying, "hold up, hold up, Iyawa nu y kwartu", which meant "give me the money".<sup>[13]</sup>

Jolita and her husband replied that they did not have any money.<sup>[14]</sup> The men refused to believe the spouses, and made them choose for their life or money. Out of fear, Jolita cried and pleaded for her husband to give their money to the group.<sup>[15]</sup> Jolita then handed Fifty Thousand Pesos (Php 50,000.00) to one of the six armed men, all of whom were already in their house at that time.<sup>[16]</sup>

Witness Fortunata, who was also at the house of Jolita, stated that after the money was given by Jolita, accused-appellant Manangan and his group left.<sup>[17]</sup>

The defense, on the other hand, presented accused-appellant Manangan, and the admitted proffered testimony of Johnny Mamauag, in order to prove the following:

Accused-appellant testified that he knew the private complainant Jolita because she was the aunt of his wife, and because they were neighbors.<sup>[18]</sup>

According to accused-appellant Manangan, on the evening of February 5, 2001, he was inside his house located at San Vicente, Tumauni, Isabela.<sup>[19]</sup> Accused-appellant said that around 7:30 in the evening, he was drinking at their house together with his brother-in-law, Johnny Mamauag.<sup>[20]</sup> They finished drinking at 9:00 in the evening. Afterwards, accused-appellant Manangan went to bed.<sup>[21]</sup>

In the morning of February 6, 2001, accused-appellant was awakened by his wife because police officers were looking for him.<sup>[22]</sup> Accused-appellant Manangan went outside their house and saw policeman Rey Magaru ("Magaru" for brevity) together with other policemen.<sup>[23]</sup> They brought accused-appellant to the police station where he saw Jolita's husband, Ocampo, and Mariano Denna.<sup>[24]</sup> There, the policemen asked accused-appellant about the robbery. Despite saying that he had no knowledge of it<sup>[25]</sup>, the police officers imprisoned accused-appellant Manangan for a month.<sup>[26]</sup>

Subsequently, an Information<sup>[27]</sup> for "Robbery in Band" was filed against accused-appellant, John Doe, Peter Doe, Richard Doe, Paul Doe, and Albert Doe.<sup>[28]</sup>

Upon arraignment, accused-appellant pleaded "NOT GUILTY".<sup>[29]</sup>

Eventually, the trial court rendered the Decision<sup>[30]</sup> appealed from, convicting accused-appellant Manangan of "Robbery in Band".

The dispositive portion of the Decision disclosed the following:

**"WHEREFORE**, in the light of the foregoing ratiocination, the Court finds accused **Ben Manangan 'GUILTY'** beyond reasonable doubt of the crime of robbery in band and sentences him to:

1. suffer the indeterminate prison term of six (6) years of prison correccional as its minimum to ten (10) years of prison mayor as its maximum period;
2. indemnify the private complainant the amount of Fifty Thousand (P50,000.00) Pesos.

**SO DECIDED."**<sup>[31]</sup> (*Emphasis was made in the original*)

In appealing from the Decision, accused-appellant prayed that "judgment be immediately rendered reversing the Decision of the trial court dated 22 January 2010 and to put an end to his mental torture, acquitting accused Ben Manangan for the crime of Robbery in Band for failure of the prosecution to establish beyond reasonable doubt his participation in the conspiracy as alleged in the Information."<sup>[32]</sup>

Accused-appellant Manangan raised this sole assignment of error:

"With all due respect, the Honorable Regional Trial Court erred:

IN FINDING ACCUSED GUILTY WHEN IT APPLIED ITS 'HONEST BELIEF' THAT ACCUSED IMPLIEDLY CONSPIRED WITH UNIDENTIFIED MEN DESPITE ITS FINDINGS THAT 'THERE IS NO EVIDENCE SHOWING THAT THE CO-ACCUSED DOES HAVE AN AGREEMENT WITH ACCUSED BEN MANANGAN TO COMMIT ROBBERY AND DECIDED TO COMMIT IT.'"<sup>[33]</sup>

To begin with, in the prosecution for "Robbery in Band", the following elements must be proven: a) the unlawful taking, (b) of personal property belonging to another, (c) with intent to gain, (d) with violence against or intimidation of person or force upon things, and; (e) more than three armed malefactors take part in the commission of Robbery.<sup>[34]</sup>

Prosecution witnesses positively identified accused-appellant Manangan as one of the (6) six armed men who, through intimidation, unlawfully took Php 50,000.00 from Spouses Jolita and Ampoy ("Spouses Denna" for brevity). This positive identification of the accused-appellant Manangan by the prosecution's witnesses triumphs over accused-appellant's defense of denial and alibi, in that when the alleged robbery was committed, accused-appellant alleged that he was in his house "drinking"<sup>[35]</sup> with his brother-in-law from 7:30 until 9:00 in the evening, and that afterwards, accused-appellant went to sleep.<sup>[36]</sup> Such a defense is negative and is self-serving evidence undeserving of weight in law.<sup>[37]</sup>

Besides, it was not physically impossible for accused-appellant to be at the house of Spouses Denna at the time the crime of Robbery was committed. This is because,

accused-appellant and Spouses Denna were neighbors at San Vicente, Tumainin, Isabela.<sup>[38]</sup>

The testimonies of the prosecution's witnesses were credible, considering that no ill-motive was shown to have existed on the part of prosecution witnesses Jolita and Fortunata to testify against accused-appellant.<sup>[39]</sup>

All of these were as similarly found by the trial court, to wit:

**"To the mind of the Court, the private complainant could not possibly make an error in positively identifying Ben Manangan to be one among the armed persons who robbed them due to the fact, that, Ben is known to them, they being neighbors of good standing. Likewise, Ben confirmed, that, he and Jolita are neighbors and know each other. Moreover, there is no ill or evil motive shown or manifested by Jolita Denna to implicate Ben Manangan in the instant case. Ben is her nephew, Ben having been married to the niece of Jolita's husband. It is for these reasons, that, Jolita's testimony must be given weight and probative value.**

On the other hand, the defense of the accused is alibi and general denial.

He claims, he is in his house sleeping together with his wife and child at the time the alleged robbery incident happened.

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**For the defense of alibi to prosper, the accused must prove, that, he was not at the locus delicti at the time the crime was committed and, that, it was physically impossible for him to be at the scene of the crime at the time of its commission xxx**

**Culled from the testimonies of the victim and the accused, it was shown, that, they are neighbors at San Vicente, Tumauni, Isabela, hence, there is no physical impossibility for accused Ben Manangan to be at the locus delicti.**

The defense tried its best to debase the credibility of Jolita Denna but failed. She was subjected to a rigid and lengthy cross-examination by the defense counsel. However, she clung to her testimony, that, she positively identified Ben Manangan the herein accused as one among the persons who robbed them and carted away the amount of P50,000.00.

In short, **accused's gallant defense of alibi and general denial crumbled with the positive identification of Jolita Denna pointing accused Ben Manangan as one among the persons who robbed them.**<sup>[40]</sup> (*Emphasis supplied*)

Contrary to accused-appellant's *sole assignment of error*, conspiracy existed between accused-appellant Manangan and the five (5) unidentified men.

Accused-appellant Manangan had argued as follows:

"To justify its Decision, the trial court, one by one, discussed the elements of Robbery in Band and relate its findings based on the evidence adduced by the prosecution. The Decision carefully considered the relevant evidence to prove all elements of Robbery in Band. But it failed to consider one thing: the participation of Ben Manangan in the commission of the crime.

**In order for the trial court to link Ben Manangan to the unidentified perpetrators whom it found to have committed the crime, it applied the concept of implied conspiracy. And for this, it erred.**

There is an implied conspiracy if it is proven that two or more persons aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their acts, though apparently independent, were in fact connected and cooperative, indicating a closeness of personal association and a concurrence of sentiment, a conspiracy may be inferred though no actual meeting among them to concert means is proved.

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Applying said jurisprudence in the case at bar, **there can be no implied conspiracy since both Fortunata Denna and Jolita Denna testified that Ben Manangan did not do anything. In fact, he merely stood outside the house. And when the masked men announced 'hold up, hold up!' both witnesses also testified that they do not know where Ben Manangan was anymore. Also, they both testified that Ben Manangan did not receive the P50,000.00 nor was he there when Jolita handed it to a tall person.**

Furthermore, both testified that Ben Manangan was the only person who was not wearing bonnet to cover his face. How could there be conspiracy when it would seem that he was out of the loop as far as the plan to cover their faces? It could even be possible that Ben Manangan was also threatened to accompany the masked men.

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What is then (sic) the proof that they have a common design and purpose? The Trial Court in its Decision provided the answer: None. It would seem that the Prosecution failed to establish express conspiracy considering the pronouncement in page 8 of the Decision:

'Express Conspiracy was not shown by the prosecution. It means that there is no evidence showing that the co-accused do have an agreement with accused Ben Manangan to commit robbery and decided to commit it.'

What then is the basis for the trial court to sustain its conviction? In the same page 8 of the Decision, the trial court relied in its 'honest belief'. Its honest belief that due to the inaction of Ben Manangan, he impliedly conspired with the perpetrators.

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