

## SECOND DIVISION

[ G.R. No. 235739, July 22, 2019 ]

**EDWIN DEL ROSARIO, PETITIONER, VS. PEOPLE OF THE  
PHILIPPINES, RESPONDENT.**

### DECISION

**CAGUIOA, J:**

Before the Court is a Petition for Review on Certiorari<sup>[1]</sup> under Rule 45 of the Rules of Court filed by Edwin del Rosario (Edwin) assailing the Decision<sup>[2]</sup> dated May 12, 2017 and Resolution<sup>[3]</sup> dated November 6, 2017 of the Court of Appeals (CA) in CA-G.R. CR No. 01228-MIN, which affirmed the Decision<sup>[4]</sup> dated August 22, 2014 of the Regional Trial Court of Davao City, Branch 16 (RTC) in Criminal Case No. 71,449-11, finding Edwin guilty beyond reasonable doubt of the crime of robbery.

#### The Facts

Edwin, together with Roxan Cansancio<sup>[5]</sup> (Roxan), was charged with Robbery. The accusatory portion of the Information reads:

That on or about January 30, 2012, in the City of Davao, Philippines and within the jurisdiction of this Honorable Court, the above-mentioned accused, conspiring and confederating with one another with intent to gain and by means of violence or intimidation against person, willfully, unlawfully and feloniously took, stole and carried away by means of force an Italian Gold Necklace with pendant worth P18,000.00, belonging to private complainant CHARLOTTE CASIANO to the latter's damage and prejudice in the aforesaid

CONTRARY TO LAW.<sup>[6]</sup>

Upon arraignment, both Edwin and Roxan pleaded not guilty to the crime charged. However, before trial ensued, Roxan changed his mind and decided to withdraw his earlier plea.<sup>[7]</sup> He plea bargained the charge of consummated robbery to a lower offense of attempted robbery.<sup>[8]</sup> With the approval of the prosecution and with the conformity of Charlotte Diane<sup>[9]</sup> Evangelista Casiano (Charlotte), the private complainant, the RTC sentenced Roxan to suffer the straight penalty of six (6) months *arresto mayor*.<sup>[10]</sup>

As to Edwin, trial ensued thereafter.

### ***Version of the Prosecution***

In the afternoon of January 30, 2012, Charlotte and Kim Evangelista Casiano (Kim) flagged down a jeepney going to G-Mall.<sup>[11]</sup> After boarding said jeepney, two male persons, who were later identified to be Roxan and Edwin, also boarded the vehicle.<sup>[12]</sup> Roxan sat across Charlotte while Edwin sat on the side of Kim with a woman passenger in between them.<sup>[13]</sup>

While on board the jeepney, Charlotte and Kim heard Roxan and Edwin talking about who will pay the fare.<sup>[14]</sup> Upon reaching the corner of Quirino Street near the Villa Abrille Building, the jeepney stopped at a red light.<sup>[15]</sup> Kim saw Edwin giving the signal to Roxan and heard him say "*tirahi na nang babaye bai*".<sup>[16]</sup> Thereafter, Roxan snatched the necklace of Charlotte, disembarked from the jeepney, and ran away. Edwin also disembarked.<sup>[17]</sup>

Charlotte shouted "*magnanakaw*".<sup>[18]</sup> She and Kim disembarked from the jeepney and tried to run after Roxan but they were unable to catch him.<sup>[19]</sup>

They later learned that Roxan was apprehended.<sup>[20]</sup> With Roxan in custody, the police decided to conduct a follow-up operation.<sup>[21]</sup> PO3 Rizalito Clapiz III testified on cross-examination that Roxan provided the police with the information that his companion is a bald person.<sup>[22]</sup> The police went to the address of Edwin and upon Roxan's confirmation that he is his companion, Edwin was apprehended.<sup>[23]</sup>

On the same day, the police, at 10:00 in the evening, requested that Charlotte and Kim identify Edwin.<sup>[24]</sup> Due to health reasons, Charlotte and Kim were only able to go to the police station the next day.<sup>[25]</sup> They both identified Edwin as the bald person who was the companion of Roxan in the alleged robbery.<sup>[26]</sup>

### ***Version of the Defense***

Edwin's defense was that of an alibi. The defense presented four witnesses, namely Victoriano Lumosad (Victoriano), Emilyn<sup>[27]</sup> Batulan (Emilyn), Henry Parreno, Sr.<sup>[28]</sup> (Henry) and Edwin himself.

Victoriano claimed that about 3:30 to 4:00 in the afternoon of January 30, 2012, he saw Edwin driving.<sup>[29]</sup> Emilyn also testified that she saw Edwin take his usual jeepney route on January 30, 2012 and that she saw him pass by her residence at 10:00 in the morning and at 3:00 to 4:00 in the afternoon.<sup>[30]</sup> Henry, who is the father-in-law of Edwin, also testified that he saw him on January 30, 2012 at about 2:00 in the afternoon driving his jeepney from Talomo going to downtown.<sup>[31]</sup>

The defense also averred that the prosecution's witnesses failed to give sufficient identification of Edwin.<sup>[32]</sup> Their arguments relied heavily on the fact that Charlotte only identified Roxan's companion as a bald person.<sup>[33]</sup> The defense argued that there was no description provided as to the companion's complexion, built, and

other features. Thus, the description of Roxan's companion as a bald person is insufficient to properly identify Edwin as the perpetrator.

Additionally, the defense alleged that the in-court identification made by Charlotte and Kim was heavily tainted because even before they were able to identify Roxan's companion, the police already told them that the perpetrator has been arrested.<sup>[34]</sup>

### **Ruling of the RTC**

After trial on the merits, in its Decision<sup>[35]</sup> dated August 22, 2014, the RTC convicted Edwin of the crime charged. The RTC ruled that Edwin's alibi would not prosper because he was unable to comply with the requirements of time and place, since he was in Davao City. Hence, it was not physically impossible for him to be at the scene of the crime at the time of its commission.<sup>[36]</sup>

The dispositive portion of the said Decision reads:

**WHEREFORE, PREMISES CONSIDERED**, the Court finds the evidence sufficient to prove the guilt of accused **EDWIN DEL ROSARIO** beyond reasonable doubt. There being no mitigating nor aggravating circumstance and pursuant to paragraph 5 of Article 294 of the Revised Penal Code, the Court hereby sentences accused EDWIN DEL ROSARIO to suffer the indeterminate penalty, ranging from [s]ix (6) [m]onths and one (1) [d]ay, [p]rison correccional, as minimum, to six (6) [y]ears and [o]ne (1) [d]ay, [p]rison [m]ayor, as maximum.

No award of civil liability.

**SO ORDERED.**<sup>[37]</sup>

Aggrieved, Edwin appealed to the CA.

### **Ruling of the CA**

In the questioned Decision<sup>[38]</sup> dated May 12, 2017, the CA affirmed the RTC's conviction of Edwin. The CA explained that denial and alibi by Edwin cannot prevail over the positive and categorical testimony of the prosecution witnesses.<sup>[39]</sup> The CA also ruled that there was conspiracy because the commonality of criminal intent between Edwin and Roxan was apparent: (1) Edwin and Roxan rode the jeepney together; (2) Edwin said "*tirahi na ng babaye bai*"; (3) Roxan grabbed the necklace of Charlotte; and (4) both Roxan and Edwin disembarked from the jeepney and ran away.<sup>[40]</sup>

The CA, however, modified the penalty and disposed as follows:

WHEREFORE, the instant appeal is DENIED. The Decision of the Regional Trial Court, Branch 16, Davao City dated August 22, 2014 is Affirmed but Modified only as to the penalty imposed on the [prison] term which shall be six (6) months of arresto mayor as minimum to six (6) years of prision correccional as maximum.

SO ORDERED.<sup>[41]</sup>

### **Issue**

For resolution of the Court is the issue of whether the RTC and the CA erred in convicting Edwin of the crime of robbery.

### **The Court's Ruling**

At the outset, it must be stressed that an appeal in criminal cases opens the entire case for review, and it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.<sup>[42]</sup> The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.<sup>[43]</sup>

#### ***Edwin's guilt was proven beyond reasonable doubt***

In the case at bar, the Court adopts the CA's findings and conclusion as to Edwin's guilt. The Court is convinced that the elements of taking of personal property which belongs to another person without his consent have been established and such taking was with intent to gain. The Court consistently held that intent to gain is a mental state whose existence is demonstrated by a person's overt acts.<sup>[44]</sup>

As to Edwin's allegation that the prosecution failed to prove beyond reasonable doubt the required identification that he was one of the persons responsible for the crime charged, the Court agrees with the CA when it ruled as follows:

Indeed, a perusal of the testimonies [of] both witnesses on direct and cross-examinations would show that they were consistent on their narrative of the incident and of the participation of appellant Del Rosario. Thus, there is no reason to depart from the findings of the trial court especially since "[t]he direct appreciation of testimonial demeanor during examination, veracity, sincerity and candor was foremost the trial court's domain, not that of a reviewing court that had no similar access to the witnesses at the time they testified."<sup>[45]</sup>

As a matter of fact, the testimonies of Kim and Charlotte demonstrate that they are

certain that Edwin was the perpetrator:

[Kim's testimony:]

Q: Okay, are you positive that it is Del Rosario, who is in Court, who gave the signal to Cansancio?

A: Yes sir.

Q: How certain are you from 1 to 100%?

A: 101% sir.

Q: 101%?

A: Yes sir.

Q: 101%, your identification?

A: Yes sir.

Q: That means it is impossible for you to forget the face of accused Del Rosario?

A: Yes sir because it is our first time to meet this kind of incident.

x x x x

Q: x x x

What happened after you went to the San Pedro Police Station?

A: They made us identify the companion sir.

Q: Where (*sic*) you able to identify him?

A: Yes sir.

Q: Who was that?

A: Edwin Del Rosario sir.

Q: The Edwin del Rosario you just identified before this Court, what is his relation to the person you identified in San Pedro Police Station?

A: He is one and the same person sir.

Q: You are very sure that the person in Court who identified himself as Edwin Del Rosario is the same person, Edwin del Rosario you identified in San Pedro Police Station?

A: Very sure sir.<sup>[46]</sup>