

SECOND DIVISION

[G.R. No. 204990, February 22, 2017]

RAMON AMPARO Y IBAÑEZ, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

DECISION

LEONEN, J.:

This resolves a Petition for Review on Certiorari^[1] assailing the Court of Appeals Decision^[2] dated January 31, 2012 in CA-G.R. CR No. 33336.

Information was filed against Ahmed Alcubar y Sabiron (Alcubar), Roberto Guarino y Capnao (Guarino), Juanito Salmeo y Jacob (Salmeo), and Ramon Amparo y Ibañez (Amparo) for robbery. The Information^[3] reads:

That on April 26, 2007, in the City of Manila, Philippines, all the accused conspired and confederated together and helped one another armed with deadly bladed weapons and therefore in band, with intent of gain and by means of force, violence and intimidation, that is, by boarding a passenger jeepney with Plate No. DGM-407 at the corner of C.M. Recto Avenue and T. Mapua Street, Sta. Cruz, Manila and immediately poked said arms upon RAYMOND IGNACIO y GAA, and announced the holdup, did then and there willfully, unlawfully and feloniously took, robbed and carried away the Nokia 6680 worth [P]14,000.00, Philippine Cu[r]rency, of said Raymond G. Ignacio against his will, to the damage and prejudice of the said owner in the same amount as aforesaid.

Contrary to law.^[4]

The accused were arraigned and they pleaded "not guilty."^[5] Trial on the merits ensued.

Raymond Gaa Ignacio (Ignacio) testified that on April 26, 2007, he was riding a jeepney going to Lawton when two (2) men boarded the jeepney along T. Mapua Street.^[6] One of them sat beside him, pointed a knife at him and declared a hold-up.^[7] He was ordered to take his necklace off and hand over his mobile phone.^[8]

Ignacio then heard a gunshot, causing the robbers to be rattled and drop their knives on the jeepney bench.^[9] A police officer arrived and ordered the robbers to alight from the jeepney.^[10] Four (4) men, later identified as Alcubar, Guarino, Salmeo, and Amparo, were handcuffed and taken to the police station.^[11]

Ignacio identified Alcubar as the man who poked a knife at him, and Guarino as the one who announced the hold-up.^[12] He also identified Salmeo and Amparo as the

ones who sat in the front seat beside the driver.^[13] He admitted that he did not know what Salmeo and Amparo were doing at the time of the incident.^[14] However, he testified that he saw them place their knives on the jeepney bench when the police fired the warning shot.^[15]

SPO3 Renato Perez (SPO3 Perez) testified that on the day of the incident, he was about to report for work when he noticed a commotion inside a passenger jeepney.^[16] He then saw Alcubar embracing a man later identified as Ignacio, while pointing a "stainless one[-]foot long double bladed fan knife" at him.^[17] He followed the jeepney and fired a warning shot.^[18] Later, he arrested Alcubar.^[19]

SPO3 Perez ordered the other three (3) men to alight from the jeepney when the other passengers pointed them out as Alcubar's companions.^[20] Another police officer arrived and helped him make the arrest.^[21] Upon frisking the men, he recovered a *balisong* from Guarino, an improvised kitchen knife from Salmeo, and a fan knife from Amparo.^[22] He also testified that he invited the other passengers to the police station to give their statements but only Ignacio went with him.^[23]

Amparo, on the other hand, testified that on April 26, 2007, he was in Carriedo, Quiapo, Manila, working as a parking attendant when a person he did not know arrived and arrested him. Later, he was brought to the Philippine National Police Anti-Carnapping Unit where he saw Ignacio for the first time.^[24]

On March 3, 2010, the Regional Trial Court of Manila, Branch 34 rendered a Decision^[25] finding the accused guilty of robbery in band. The dispositive portion reads:

WHEREFORE, finding the accused GUILTY beyond reasonable doubt of the crime of Robbery in band defined and punished under Art. 294 in relation to Article 295 of the Revised Penal Code without any mitigating or aggravating circumstances attendant to its commission granting the accused the benefit of the Indeterminate Sentence Law, all the accused is hereby sentenced to suffer an indeterminate prison term ranging from four (4) years and two (2) months of *prision correccional* as minimum to ten (10) years of *prision mayor* maximum, as maximum.

The accused shall be credited with the full extent of their preventive imprisonment under Art. 29 of the Revised Penal Code.

Their bodies shall be committed to the custody of the Director of the Bureau of Correction, National Penitentiary, Muntinglupa (sic) City thru the City Jail Warden of Manila.

SO ORDERED.^[26]

All the accused appealed to the Court of Appeals.^[27] Amparo, in particular, argued that he and Salmeo should be acquitted since the witnesses for the prosecution did not testify that they performed any act in furtherance of the robbery.^[28]

On January 31, 2012, the Court of Appeals rendered its Decision^[29] dismissing the appeal.

The Court of Appeals noted that Amparo had abandoned his earlier defense of alibi, and was arguing that there was no evidence that he actively participated in the commission of the robbery.^[30] It found, however, that he was "caught red-handed"^[31] with a weapon during the robbery, which was sufficient to establish that he had a common unlawful purpose with the rest of the accused.^[32]

Amparo filed a Motion for Reconsideration,^[33] which was denied in the Resolution^[34] dated November 29, 2012. Hence, the Petition for Review^[35] was filed.

Petitioner argues that Ignacio did not implicate him as a co-conspirator in his testimony since he did not even witness how the weapon was allegedly recovered by the police.^[36] He points out that the bank employee who allegedly pinpointed him as part of the group, and the police officer who allegedly recovered the bladed weapon from him were not brought to court to testify.^[37] He asserts that he was arrested, not for his participation during the robbery, but due to his alleged possession of a bladed weapon, which was a violation of the city ordinance.^[38]

In its Comment,^[39] the Office of the Solicitor General maintains that the prosecution was able to prove petitioner's guilt beyond reasonable doubt. It points out that direct proof is unnecessary to prove conspiracy since conspiracy can be inferred from the acts of the accused that they all had a common purpose.^[40] It argues that the prosecution was able to show that petitioner and his co-accused had the common objective of committing an armed robbery inside the jeepney and armed themselves with knives to accomplish their objective.^[41]

In his Reply,^[42] petitioner insists that the testimonies of the prosecution's witnesses failed to implicate him as a co-conspirator.^[43] He also argued that there was no proof that a knife was recovered from his person, and other than this allegation, the prosecution was unable to prove that he committed any other overt act constituting the crime of robbery.^[44]

The sole issue in this case is whether the trial court and the Court of Appeals erred in finding that petitioner was guilty beyond reasonable doubt of the crime of robbery with band.

Robbery is the taking, with the intent to gain, of personal property belonging to another by use of force, violence or intimidation.^[45] Under Article 294 (5)^[46] in relation to Article 295,^[47] and Article 296^[48] of the Revised Penal Code, robbery in band is committed when four (4) or more malefactors take part in the robbery. All members are punished as principals for any assault committed by the band, unless it can be proven that the accused took steps to prevent the commission of the crime.^[49]

Even if the crime is committed by several malefactors in a motor vehicle on a public

highway, the crime is still classified as robbery in band, not highway robbery or brigandage^[50] under Presidential Decree No. 532.^[51] It is highway robbery only when it can be proven that the malefactors primarily organized themselves for the purpose of committing that crime.^[52]

In this instance, the prosecution was able to prove beyond reasonable doubt that petitioner was guilty of robbery in band.

Ignacio testified on cross-examination that Guarino announced a holdup, and that Alcubar pointed a weapon at him, forcing him to take off his necklace and hand over his mobile phone.^[53] He did not see what petitioner was doing at the time of the incident since petitioner and his co-accused Salmeo were seated beside the driver.^[54] Ignacio's failure to see what petitioner was doing during the robbery is justified considering that the configuration of a jeepney bench makes it hard to see precisely what passengers seated in the front seat are doing.

Ignacio was also able to testify that he saw both Salmeo and petitioner place their knives on the jeepney bench when the police fired a warning shot.^[55] SPO3 Perez corroborated this, and testified that there were eight (8) other passengers in the jeepney, who pointed out all four (4) of the accused.^[56] After making the arrests, the four (4) accused were frisked, and a fan knife was recovered from petitioner.^[57]

Petitioner initially offered a defense of alibi before the trial court.^[58] He abandoned this defense on appeal after the trial court concluded that petitioner's alibi was not enough to overcome Ignacio's positive identification.^[59] He then argued before the Court of Appeals that while Ignacio might have seen him at the scene of the crime, there was no evidence of petitioner's exact involvement.^[60] His changing defenses, however, only show the weakness of his arguments. Nevertheless, a conviction stands not on the weakness of the defense, but on the strength of the prosecution's evidence.^[61] As discussed, the evidence of the prosecution was strong enough to overcome the presumption of innocence.

Under Article 294 (5) of the Revised Penal Code, as amended, the imposable penalty for robbery is *prision correccional* in its maximum period to *prision mayor* in its medium period. Article 295 of the same Code, however, qualifies the penalty to its maximum period if the robbery is committed by a band. Thus, the proper penalty is *prision mayor* in its maximum period.^[62]

Applying the Indeterminate Sentence Law, in the absence of any mitigating or aggravating circumstance, the minimum penalty shall be within the range of the penalty next lower in degree, *prision mayor* minimum, or from six (6) years and one (1) day to eight (8) years. The maximum of the penalty shall be within the range of the medium period of *prision mayor* medium, or from eight (8) years, eight (8) months and one (1) day to nine (9) years and four (4) months.^[63]

The trial court imposed a penalty of four (4) years and two (2) months as minimum and ten (10) years as maximum,^[64] which is not within the prescribed range. Thus, the imposable penalty must be modified to six (6) years and one (1) day of *prision mayor* minimum to nine (9) years and four (4) months of *prision mayor* medium as