

## SECOND DIVISION

[ G.R. No. 156009, June 05, 2009 ]

**ROMMEL C. BRIONES, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

### D E C I S I O N

**BRION, J.:**

This is a Rule 45 petition for review on *certiorari* of the decision dated July 17, 2002<sup>[1]</sup> and the resolution dated November 13, 2002<sup>[2]</sup> of the Court of Appeals (CA) <sup>[3]</sup> in CA-G.R. CR No. 24127 finding petitioner Rommel C. Briones (*Briones*) guilty of the crime of robbery. The decretal portion of the assailed decision reads:

**WHEREFORE**, in view of the foregoing, the decision dated August 31, 1999 in Criminal Case No. 98-23 rendered by the Regional Trial Court, Parañaque City, Branch 257, is hereby **AFFIRMED with MODIFICATION**. Appellant is found guilty beyond reasonable doubt of the crime of robbery, under Article 293 of the Revised Penal Code, in relation to number five (5) of Article 294 of the same Code and is sentenced to suffer the indeterminate penalty of 6 months and 1 day of *prision correccional*, as minimum, to 6 years and 1 day of *prision mayor*, as maximum.

**SO ORDERED.**<sup>[4]</sup>

#### The Criminal Information and Plea

On January 8, 1998, a criminal information was filed against Briones before the Regional Trial Court (*RTC*), Branch 257, Parañaque City, for robbery. The case was docketed as Criminal Case No. 98-23. The accusatory portion of this criminal information states:

That on or about the 6th day of January 1998, in the Municipality of Parañaque, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to gain and against the will of the complainant S/G Dabbin Molina, and by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously divest from him a .38 cal. gun worth P8,000.00, more or less.

CONTRARY TO LAW.<sup>[5]</sup>

With the assistance of counsel *de parte*, Briones pleaded "not guilty" to the charge.<sup>[6]</sup>

#### The Facts

S/G Dabbin Molina (*S/G Molina*) is a security guard of Fuentes Security and Allied Services owned by Johnny Fuentes (*Fuentes*); in the course of his employment with the security agency, S/G Molina was issued a .38 caliber revolver (*firearm*).

On January 6, 1998, at around 11:00 p.m., S/G Molina and S/G George Gual (*S/G Gual*) were manning the northwest gate of BF Homes Northwest, Parañaque. Somewhere on Jakarta Street, they noticed Romulo Bersamina, a homeowner, being mauled by four (4) individuals, two (2) of whom were later identified as Briones and his brother, Vicente Briones (*Vicente*), who were both residents of BF Homes.

S/G Molina and S/G Gual approached the group to stop the mauling; it was at this point that S/G Molina lost his firearm to Briones. How he lost it - whether there was accompanying violence or intimidation - is the submitted issue in this case.

S/G Molina subsequently reported the incident to his supervisor, Arthur Alonzo, and to SPO1 Manuel Plete. The police arrested Briones after conducting an investigation.

Briones denied any participation in the mauling and the firearm grabbing, and claimed that he was in his house when the incident happened.

### **The RTC's Ruling**

In the decision<sup>[7]</sup> dated August 31, 1999,<sup>[8]</sup> the RTC found Briones guilty of simple theft under paragraph 3, Article 309 of the Revised Penal Code, as amended (*Code*). The RTC gave greater weight to the prosecution's evidence consisting of the positive testimony of S/G Gual, and rejected Briones' defenses of denial and alibi.

The RTC ruled that Briones can only be held liable for simple theft, as the elements of violence and intimidation - the attendant circumstances that must be present in the crime of robbery - were not duly proven. The RTC found that the principal prosecution witness, S/G Gual, merely testified that *he (Briones) grabbed the firearm of S/G Molina.*<sup>[9]</sup>

### **The CA's Ruling**

On appeal to the CA, Briones argued that: (1) his conviction was based solely on the testimony of S/G Gual who was not present at the scene and did not really see what happened; and (2) he cannot be convicted of simple theft under a criminal charge of robbery.

The CA turned down these arguments and ruled that S/G Gual's testimony is a credible eyewitness' account of the incident. S/G Gual was also categorical in his testimony; the defense did not even try to impugn his credibility as a witness since it opted not to cross-examine him.

The CA found Briones guilty of robbery under Article 293, in relation to paragraph 5 of Article 294, of the Code, and not of theft; the CA ruled that force and intimidation attended the taking of S/G Molina's firearm, as Briones approached S/G Molina with the intent of taking his firearm away.<sup>[10]</sup>

Briones thereafter filed an Omnibus Motion for Reconsideration, Motion for New Trial and Motion to Dismiss, and Supplemental Omnibus Motion for Reconsideration, Motion for New Trial and Motion to Dismiss<sup>[11]</sup> (collectively, *Omnibus Motion*) with the CA where he confessed his physical presence and participation on the alleged robbery of the firearm, but claimed that he was merely protecting his brother, Vicente, when he took the firearm.<sup>[12]</sup> The CA denied the Omnibus Motion; hence, this petition.

### **The Issues**

The issues may be summarized as follows:

- (1) Whether there are factual and legal bases to support his conviction of the crime of robbery; and
- (2) Whether a new trial is justified under the circumstances.

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

**We partly grant the petition and sustain Briones' conviction for the crime of theft, not robbery.**

We initially observe that the petition raises factual issues that call for a re-weighing of the evidence on record. As a rule, this is not allowed under Rule 45, as only questions of law are covered in a petition for review on *certiorari*. In this case, the Court is not a trier of facts, and thus, it is not tasked to make its own assessment and give its independent evaluation of the probative value of the evidence adduced by the parties in the proceedings below. However, the above rule admits of exceptions;<sup>[13]</sup> one of them is when there is a conflict in the factual findings of the lower courts.<sup>[14]</sup> When this happens, no reason exists for the lower courts' factual findings to be conclusive and the Court carries the burden of reviewing the evidence on hand.<sup>[15]</sup>

We note in this regard that the conflict in the factual findings of the RTC and CA does not relate to Briones' criminal culpability - both courts found his conviction under the criminal information to be supported by sufficient evidence. The conflict rather centers on the factual question of how the taking took place which must necessarily affect the characterization of the crime committed.

With these considerations in mind, we find no compelling reason to disturb the findings of the RTC and CA in their appreciation of the evidence *supporting Briones' culpability*. The records show that prosecution eyewitness S/G Gual positively identified Briones as the person who grabbed S/G Molina's firearm and, thereafter, ran away; S/G Gual also testified that this firearm was never recovered.<sup>[16]</sup> The RTC and CA found eyewitness S/G Gual's account credible; we find no reason to overturn these findings.

In this regard, we give special significance to the RTC's unique position in assessing the credibility of witnesses, as the RTC has the unrestricted opportunity to observe firsthand the conduct and demeanor of witnesses at the trial.<sup>[17]</sup> Unless the trial

judge plainly overlooked certain facts whose substance and value may affect the result of the case, we respect his assessment of the credibility of the witnesses. From our own reading of the records, we find that S/G Gual gave clear and precise answers; no inconsistencies existed materially affecting their veracity. Neither was it shown that S/G Gual was driven by any improper motive to falsely testify against Briones.

As S/G Gual is a credible eyewitness to the incident, we find no reason to doubt that he was with S/G Molina when the incident happened, and saw all the incidents of the crime.

As against this credible and positive testimony of S/G Gual, Briones could only set up denial and alibi as his defenses. We have previously ruled that for these defenses to deserve merit, they must be substantiated by clear and convincing proof.<sup>[18]</sup> Under the present facts, these defenses were without corroboration. On the contrary, Briones and his new counsel desperately now move to try the case again *at the expense of Briones' former counsel*; based on allegedly newly discovered evidence.<sup>[19]</sup> They blame the former counsel's allegedly erroneous legal strategy when he raised denial and alibi as Briones' defenses, instead of invoking self-defense or defense of a relative. They also now foist on this Court an Affidavit of Desistance dated July 29, 2002<sup>[20]</sup> executed by Fuentes, as well as an Affidavit dated July 22, 2002<sup>[21]</sup> executed by one Oskar Salud. These documents allegedly prove that Briones had no intent to gain and, in fact, threw away the firearm after grabbing it from S/G Molina.

A change of Briones' defense from denial and alibi to self-defense or defense of a relative is effectively a change of theory of the case *brought only during appeal*. We cannot allow this move. Law and fairness to the adverse party demand that when a party adopts a particular theory and the case is tried and decided on the basis of that theory in the court below, neither party can change his or her theory on appeal.<sup>[22]</sup> While this rule is not absolute, no exceptional reasons in this case exist to justify a deviation.<sup>[23]</sup>

Additionally, an error or mistake committed by a counsel in the course of judicial proceedings is not a ground for new trial. In *People v. Mercado*,<sup>[24]</sup> we declared:

It has been repeatedly enunciated that "a client is bound by the action of his counsel in the conduct of a case and cannot be heard to complain that the result might have been different if he proceeded differently. A client is bound by the mistakes of his lawyer. If such grounds were to be admitted as reasons for reopening cases, there would never be an end to a suit so long as new counsel could be employed who would allege and show that prior counsel had not been sufficiently diligent or experienced or learned. x x x Mistakes of attorneys as to the competency of a witness, the sufficiency, relevancy or irrelevancy of certain evidence, **the proper defense**, or the burden of proof, x x x failure to introduce certain evidence, to summon witnesses, and to argue the case are not proper grounds for a new trial, unless the incompetency of counsel is so great that his client is prejudiced and prevented from properly presenting his case. [Emphasis supplied]<sup>[25]</sup>

From the facts, it does not appear that Briones was denied competent legal representation in the proceedings before the RTC.

Lastly, for new trial to be granted on the ground of newly discovered evidence, the concurrence of the following conditions must obtain: (a) the evidence must have been discovered after trial; (b) the evidence could not have been discovered at the trial even with the exercise of reasonable diligence; (c) the evidence is material, not merely cumulative, corroborative, or impeaching; and (d) the evidence must affect the merits of the case and produce a different result if admitted.<sup>[26]</sup> In this case, although the firearm surfaced after the trial, the other conditions were not established.

Evidence, to be considered newly discovered, must be one that could not, by the exercise of due diligence, have been discovered before the trial in the court below.<sup>[27]</sup> The determinative test is the presence of due or reasonable diligence to locate the thing to be used as evidence in the trial.

Under the circumstances, Briones failed to show that he had exerted reasonable diligence to locate the firearm; his allegation in his Omnibus Motion that he told his brothers and sisters to search for the firearm, which yielded negative results, is purely self-serving. He also now admits having taken the firearm and having immediately disposed of it at a *nearby house, adjacent to the place of the incident*.<sup>[28]</sup> Hence, even before the case went to court, he already knew the location of the subject firearm, but did not do anything; he did not even declare this knowledge at the trial below.

In any case, we fail to see how the recovery of the firearm can be considered material evidence that will affect the outcome of the case; the recovery of the subject firearm does not negate the commission of the crime charged.

Neither are we convinced that the admission and consideration of the affidavits executed by Fuentes and Oskar Salud will result in a different outcome for the case. Fuentes' affidavit shows that he is no longer interested in pursuing the case because he has already recovered his firearm, while Oskar Salud only stated that he found the subject firearm in his property. At face value, these statements do not remove nor erase the prosecution's evidence establishing that a crime has been committed, with Briones as the perpetrator. We additionally note that these affidavits were executed on the entreaties by Briones' widowed mother to Fuentes and Salud,<sup>[29]</sup> rendering the intrinsic worth of these documents highly suspect; they appear to have been executed solely out of human compassion and for no other reason.

From another perspective, we also consider that in petitions for new trial in a criminal proceeding where a certain evidence was not presented, the defendant, in order to secure a new trial, must satisfy the court that he has a good defense, and that the acquittal would in all probability follow the introduction of the omitted evidence.<sup>[30]</sup> We find that Briones' change of defense from denial and alibi to self-defense or in defense of a relative will not change the outcome for Briones considering that he failed to show unlawful aggression on the part of S/G Molina and/or S/G Gual - the essential element of these justifying circumstances under Article 11 of the Code. The records show that prior to the taking of the firearm, S/G Molina and S/G Gual approached Briones and his companions to stop the fight