

## THIRD DIVISION

[ CA-G.R. CR No. 35815, March 10, 2015 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. TOMAS PEREZ Y FRANCO, ACCUSED-APPELLANT.**

### DECISION

**CARANDANG, J.:**

This instant appeal questions the Decision<sup>[1]</sup> dated 20 May 2013 of the Angeles City Regional Trial Court Branch 59 convicting the accused-appellant Tomas Perez y Franco (accused) in Criminal Case No. 06-2490 for the crime of robbery.

The accusatory portion of the Information in Criminal Case No. 06-2490 reads:

“That on or about the 31<sup>st</sup> day of August 2006, in the Municipality of Mabalacat, province of Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, TOMAS PEREZ y FRANCO, with intent of gain, and with violence, force and intimidation, did then and there willfully, unlawfully and feloniously rob, steal and take the amount of ONE THOUSAND (P1,000.00) PESOS, Philippine Currency, from Zenaida Aquino Garcia, to the latter's damage and prejudice.

Contrary to law”<sup>[2]</sup>

When arraigned on 19 September 2006, the accused pleaded not guilty to the above charge, whereupon trial commenced.

During the trial, the prosecution presented the testimony of private complainant Zenaida A. Garcia (private complainant). The prosecution's version is as follows:

“On August 31, 2006 at around 10:30 p.m., Zenaida G. Aquino (Aquino) bought sugar from a store located five (5) meters away from her house. She then had money amounting to more than a thousand pesos (P1,000.00). On her way home, she was not aware that accused Perez, who was drunk, was behind her. Perez brought out a knife, pointed it at Aquino's neck and asked for money. For fear that she might be killed, Aquino gave Perez P1,000.00. Thereafter, Perez inserted his hand inside Aquino's shirt and held and mashed her breast. Aquino pushed Perez away, who thereafter removed his hand from her shirt. Perez hurriedly left after the incident.

Aquino went to her house. Then, she went to the precinct to report the incident. Prior thereto, Aquino had seen Perez for a long time; he only passes by her house.<sup>[3]</sup>

The parties agreed to dispense with the testimony of PO2 Abigail P. Reyes and stipulated as follows:

1. The supposed testimony of the Arresting Officer as the one before whom the complainant gave her statement.
2. The marking of the Affidavit of Arrest executed by PO2 Abigail P. Reyes as Exhibit C, and the name and signature of the said police officer, as Exhibit C-1.
3. The name of PO2 Abigail P. Reyes appearing on the caption of the Sworn Statement of private complainant Zenaida Aquino Garcia, Exhibit B, is marked as Exhibit B-3.<sup>[4]</sup>

On the other hand, the defense presented the testimony of the accused. The version of the defense of the incident is as follows:

"On August 31, 2006, Perez was at home at Barangay Tabun, Mabalacat, Pampanga heating water for coffee. With Perez were two (2) barangay officials who were roaming in the vicinity and who happened to drop by his house. Perez knows the barangay officials only by their faces; he does not know their names.

Past 5:00 o'clock in the afternoon of said date, Perez was picked up by a police officer assigned at Mabalacat Police Station named Lagasca. Lagasca formerly resided at Perez's house. Perez asked Lagasca to leave the house because he and his wife were always quarreling. There was also an incident when a delivery truck of Red Horse met an accident and Lagasca stored the bottles of Red Horse beer in Perez's house. Perez asked Lagasca to transfer the Red Horse beer bottles, fearing that he might get involved in the incident. Lagasca moved to Zenaida Garcia's house after Perez asked him to transfer. Lagasca was living at Zenaida Garcia's house when the alleged incident occurred.

Lagasca was accompanied by Zenaida Garcia when he picked up Perez. Zenaida Garcia was complaining that Perez poked her ("Tinutukan ko daw po sya.") Perez is not related to Zenaida Garcia but he has known her for a long time."<sup>[5]</sup>

### **Ruling of the RTC**

After the trial has ended, the lower court rendered the assailed decision, the dispositive portion of which reads:

"WHEREFORE, premises considered, the court finds accused TOMAS PEREZ y FRANCO GUILTY BEYOND REASONABLE DOUBT of the crime of Robbery embodied in the Information dated September 4, 2006.

There being no aggravating or mitigating circumstance alleged and proved, accused TOMAS PEREZ y FRANCO is hereby sentenced to suffer an indeterminate penalty of four (4) years and two (2) months of *prision correccional* as the minimum term to six (6) years, one (1) month and

eleven (11) days of *prision mayor* as the maximum term, with credit of his preventive imprisonment, and to pay the costs.

In accordance with the foregoing, accused TOMAS PEREZ y FRANCO is hereby ordered to pay private complainant Zenaida Aquino-Garcia One thousand Pesos (P1,000.00) as compensatory damages.

SO ORDERED.”<sup>[6]</sup>

In convicting the accused, the lower court ruled that all the elements of simple robbery under 293 and 294 (5) of the Revised Penal Code was proven by the prosecution beyond reasonable doubt.

The lower court held that the positive identification of the accused by the private complainant outweighs the weak defense of denial of the accused. It noted that private complainant was firm and consistent in her testimony that it was Perez whom she saw in the evening of August 31, 2006, and who poked a knife to her neck and demanded money from her. The lower court also emphasized the fact that the private complainant and the accused are both residents of Barangay Tabun, Mabalacat, Pampanga and have known each other for a long time. Thus, even if private complainant saw the face of the accused only for a passing moment at the time of the robbery incident, it was enough for the former to identify the latter. The lower court likewise dismissed the insinuation of the accused that the private complainant had ill motives in the filing of the case against him for being uncorroborated.

Hence, this appeal which assigned the following errors:

I

THE COURT A QUO GRAVELY ERRED IN DISREGARDING THE ACCUSED-APPELLANT'S DEFENSE.

II.

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF ROBBERY DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.<sup>[7]</sup>

**Our Ruling**

We rule for the People. The prosecution has established beyond reasonable doubt a case of robbery against the accused.

Article 293 of the Revised Penal Code defines robbery to be one committed by any "person who, with intent to gain, shall take any personal property belonging to another, by means of violence against or intimidation of any person xxx."

The elements of robbery under Article 293 are as follows:

- a) that there is personal property belonging to another;