

## **NINTH DIVISION**

**[ CA-G.R. CR No. 33953, April 23, 2014 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BRYAN ROSALES Y YANGSON, MICHAEL MAHUSAY Y AMAREZ, AND GILBERT GARGOLES Y VILLANUEVA, ACCUSED.**

**MICHAEL MAHUSAY Y AMAREZ, ACCUSED-APPELLANT.**

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

**GARCIA-FERNANDEZ, J.:**

This is an appeal from the decision dated September 24, 2010 of the Regional Trial Court, Branch 170, Malabon City, in Criminal Case No. 31036-MN which found accused-appellant Michael Mahusay y Amarez guilty of robbery.

Michael Mahusay (accused-appellant), Bryan Rosales (Rosales) and Gilbert Gargoles (Gargoles) were charged in an Information<sup>[1]</sup> which reads:

"That on or about the 31st day of May 2004, in the Municipality of Navotas, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping one another, with intent to gain, by means of force, violence and intimidation, did then and there, willfully, unlawfully and feloniously take, rob and divest from RICARDA CERBETO Y FEDERNALES, One (1) "Dilantar" containing Twelve Thousand Pesos (P12,000.00) and One (1) Nokia 3210 owned and belonging to Ricarda Cerbeto y Federnales, to the damage and prejudice of the same for the total amount of P12,000.00.

During their arraignment, accused-appellant, Rosales and Gargoles pleaded not guilty to the charge. Accused-appellant was granted provisional liberty upon posting of bail.<sup>[2]</sup>

The prosecution presented private complainant Ricarda Cerbeto as sole witness.<sup>[3]</sup> Accused-appellant and Gargoles, on the other hand, testified for the defense.<sup>[4]</sup>

The prosecution's version of the facts, as found by the trial court, is as follows:

"x x x

On May 31, 2004, at about twelve midnight, Cerbeto was at the Navotas Fish Port to buy fish ("namakyaw") in St. Joseph Consignation I. While walking along the street of Saint Joseph Consignation towards Market I, she passed between two parked vans. No one else was on the street which was well lit by electric posts. Then two men blocked her way. One of them, the taller one and in yellow t-shirt (later identified as Accused

Gargoles) grabbed her by the neck while uttering, "Akin na ang pera mo." Accused Rosales, in blue t-shirt, on the other hand, grabbed her "dilantar," saying, "Ibigay mo na ang pera mo, tanggalin mo na yan" (Sworn Affidavit, Exh. "A"). The third one, Accused Mahusay, acted as look out.

Cerbeto was only about six (6) meters away from Market I where she was going to buy fish and where many people were already buying fish. But no one noticed that she was being held up. She struggled against the three Accused but they had already taken her "dilantar" which contained cash amounting to P12,000.00 intended as payment for the fish she would buy, as well as the Nokia cellphone 3210 that was just mortgaged to her for P1,500.00. After successfully taking her "dilantar", all three Accused ran away towards the gate. Only then she was able to shout and only then did people notice the robbery. The three Accused, however, were not arrested until after ten (10) minutes have passed after she asked assistance from the Maritime Police who were nearby. Accused was arrested in about 100 meters away from the Maritime Office. At the Maritime Office, Cerbeto identified before Investigator PO2 Alfonso Paguro the three Accused: Mahusay, Rosales and Villanueva (sic) Gargoles.

Cerbeto pointed to Mahusay as the one who served as a lookout ("nagmamasid"). She claimed to have seen Mahusay behind her while her neck was being held by Accused Gargoles and her "dilantar" was also being held by Accused Rosales (TSN, November 8, 2004 Hearing, p. 4). Further, Cerbeto testified that while Accused Gargoles and Rosales were walking, Accused Mahusay was following the two.

In Court, Cerbeto again identified all three Accused and specifically pointed to the tall guy (Accused Gargoles) as the one that held her neck, Accused Rosales as the one that grabbed her "dilantar" and Accused Mahusay as the one that served as the lookout.

x x x"

The arresting officers, Floresto S. Diego and Manny Jake O. Ugot, in their "Pinagsamang Sinumpaang Salaysay"<sup>[5]</sup> stated that on May 31, 2004 at about 12:15 in the early morning, when they were on duty as Patrol Roving Guards of the Special Operation Group of the Philippine Fisheries Development Authority (PFDA), they noticed three persons running towards the exit gate, passed by the PFDA Compound, then disappeared. Immediately thereafter, they heard from their two-way radio that there was a hold-up in Market I and the suspects were wearing yellow and blue t-shirts. The police officers went around PFDA's premises and somewhere at the "tambakan ng basura" going to Market 3, they noticed two persons going out of the "basurahan" hurriedly getting on board a pedicab (padyak). They immediately approached the two persons who were wearing blue and yellow t-shirts and invited them to their office. Cerbeto positively pointed at the two, later identified as Rosales and Mahusay. Rosales admitted that it was "Kumang", later identified as Gargoles, who held the money. Thus, the police officers searched for Gargoles and found the latter in Market 2. When confronted, Gargoles denied the accusation. They brought accused-appellant, Rosales and Gargoles to PNP Maritime

Office for investigation.

Accused-appellant presented his own version of the facts, to wit:

"On May 31, 2004, accused appellant **Michael Mahusay**, together with accused Rosales, was tending some fish inside the fish port in Market 1, Navotas. Afterwards, they asked permission to cook outside and thus carried with them some extra fish that they bought. After walking for about ten (10) meters, a security guard stopped them and invited them to the guard of the fish port. Upon their arrival, they saw a woman crying who, upon seeing accused Rosales, pointed immediately at him. Thereafter, he was also implicated in the robbery incident.

Accused **Gilbert Gargoles** denied that he participated in the said robbery incident, as he was sleeping at that time and date. They were just suddenly picked up by the fish port police. He knew Cerbeto as well as accused Rosales and accused-appellant Mahusay."

On September 24, 2010, the trial court rendered the assailed decision<sup>[6]</sup> which reads in part:

"In sum, this Court finds all three Accused: Mahusay, Rosales and Gargoles, guilty beyond reasonable doubt, of the crime of Robbery, as charged in the Information.

Article 294, paragraph 5 provides for the penalty:

Art. 294. Robbery with violence against or intimidation of persons – Penalties. – Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

xxx

The penalty of prision correccional in its maximum period to prision mayor in its medium period, in other cases.

The range of the penalty is from four (4) years, two (2) months and one (1) day to ten (10) years.

In view of the absence of aggravating or mitigating circumstance, the penalty shall be imposed in its medium period of from six (6) years, one (1) month and eleven (11) days to eight (8) years and twenty (20) days as maximum.

Applying the indeterminate Sentence law, each of the Accused BRYAN ROSALES y YANGSON, MICHAEL MAHUSAY y AMAREZ and GILBERT GARGOLES y VILLANUEVA is imposed the indeterminate sentence of Four (4) Months and One (1) Day of Arresto Mayor as Minimum to Six (6) Years and One (1) Day of Prision Mayor as Maximum.

Each is jointly and severally liable to pay private complainant the amount of Thirteen Thousand Five Hundred Pesos (P13,500.00) by way of

restitution for the belongings taken from the victim.

SO ORDERED.”

On November 8, 2010, the trial court ordered the release of Rosales and Gargoles from detention for having served the maximum penalty imposed by the trial court in its decision.<sup>[7]</sup>

Aggrieved, accused-appellant filed a Notice of Appeal<sup>[8]</sup>. He assigned the following errors to the trial court:

“I.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE PROSECUTION’S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

II.

ASSUMING ARGUENDO THAT ACCUSED-APPELLANT WAS ONE OF THE PERPETRATORS OF THE CRIME CHARGED, THE TRIAL COURT GRAVELY ERRED IN HOLDING THAT CONSPIRACY EXISTS.”<sup>[9]</sup>

Accused-appellant contends that his identification and implication in the crime charged suffer from infirmity. According to him, Cerbeto, whose neck had been held by one of the robbers, could not have seen him as one of the robbers. Accused-appellant asserts that he was erroneously identified to be the third accused and he was implicated only because he was found to be with Rosales at the time of arrest. As to the second issue, accused-appellant asseverates that he cannot be deemed a co-conspirator by his mere presence at the scene of the crime, without proof of overt act showing concurrence with the criminal design of the other perpetrators.

The contentions of the accused-appellant are unmeritorious.

The crime of robbery is defined under Article 293 of the Revised Penal Code, to wit:

“Art. 293. Who are guilty of robbery. — 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 or using force upon anything shall be guilty of robbery.

x x x”

The elements of robbery as defined in Article 293 of the Revised Penal Code are the following: a) that there is personal property belonging to another; b) that there is unlawful taking of that property; c) that the taking is with intent to gain; and d) that there is violence against or intimidation of persons or force upon things.<sup>[10]</sup>

There is concurrence of the foregoing elements in the instant case. The amount of P12,000.00 and the Nokia 3210 cellphone taken by Rosales, Gargoles and accused-