SPECIAL TWELFTH DIVISION

[CA–G.R. CR No. 35586, June 11, 2014]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RAUL BERNARDO Y ELEGIDO, ACCUSED-APPELLANT.

D E C I S I O N

DICDICAN, J.:

Before this Court is an appeal[1] seeking the reversal of the Decision[2], dated February 20, 2013, rendered by the Regional Trial Court of Makati City, Branch 143, in Criminal Case No. 11-2605, finding accused-appellant Raul Bernardo y Eligido guilty beyond reasonable doubt of the crime of robbery as defined and punished under Article 294, paragraph 5 of the Revised Penal Code.

The undisputed facts, as found by the court *a quo*, are as follows:

> "On 29 October 2011 at around 1:00 in the afternoon, private complainant Arnel Bustamante was at the EDSA Mantrade loading bay when suddenly, his necklace was snatched by Raul Bernardo who also threatened to harm him. However, brave as he is, Arnel hit the accused with a tomb marker that made Raul Bernardo fall down. Subsequently, the MMDA Traffic Enforcers came and upon the information given to them by Arnel Bustamante, they arrested Raul and brought him to the police station for investigation."[3]

On October 30, 2011, the accused-appellant was brought to the Prosecutor's Office of Makati City for inquest proceedings on the charge of robbery and illegal possession of deadly weapon.[4] In a Resolution dated November 2, 2011, the Assistant City Prosecutor found that there was probable cause to charge accused-appellant of robbery. With respect to the charge of illegal possession of deadly weapon, however, the same was deemed absorbed in the crime of robbery.[5] Consequently, on November 3, 2011, an Information, was filed against accused-appellant in the Regional Trial Court of Makati City, charging him of robbery under Article 294, paragraph 5 of the Revised Penal Code, committed as follows:

> "On the 29th day of October 2011, in the City of Makati, the Philippines, accused, with intent of gain and by means of violence and intimidation, did then and there willfully, unlawfully and feloniously grab and take the gold necklace worth P30,000.00 belonging to Arnel Bustamante y De Los Reyes, to his damage and prejudice.
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> "CONTRARY TO LAW."[6]

On November 23, 2011, accused-appellant pleaded not guilty during the arraignment.[7] On the same day, pre-trial was terminated, there being no

admission to be made other than the identity of the accused and the jurisdiction of the court *a quo*.

Initial reception of prosecution evidence was thereafter scheduled and set.

During the trial, the public prosecutor presented Arnel Bustamante who testified that accused-appellant snatched his necklace and was armed with a *balisong* when he uttered "*sasaksakin kita*". After Arnel Bustamante hit accused-appellant with a tomb marker, they grappled for the possession of the necklace. When brought to the police for investigation, Arnel Bustamante was not able to recover his necklace worth P30,000.00 because, according to the accused-appellant, it was given to a companion. On cross-examination, Arnel Bustamante narrated that the accused was behind him when the necklace was grabbed from him but he was still able to see the accused-appellant.

MMDA Traffic Enforcer Rhonel Salvacion thereafter testified that he saw the fistfight between the accused-appellant and the private complainant. After his testimony, the parties stipulated that, if prosecution witnesses Rex Andrade and Vincent Santos would be called to testify, they will substantially corroborate the testimony of MMDA Traffic Enforcer Rhonel Salvacion.[8]

SPO2 Jenice Acosta was lastly presented but his testimony was dispensed with upon stipulation with regards to the authenticity and due execution of the Final Investigation Report[9] and with the observation that the said police officer was not present at the time of the commission of the offense.[10]

The prosecution thereafter formally offered its exhibits and rested its case.[11]

When called for initial reception of defense evidence, accused-appellant was presented and he testified that, on the day and time in question, he was at EDSA Mantrade waiting for a bus going to Cavite. While waiting for the bus, he was suddenly hit on the head by Arnel Bustamante with a hard object, thus causing him to fall on the ground. Arnel Bustamante shouted at him, accusing him of stealing a necklace. He told Arnel Bustamante that he did not have the necklace and the MMDA traffic enforcer arrived.

Upon manifestation of the defense counsel that accused-appellant was the lone witness and there was no documentary evidence to be presented, the accused-appellant rested his case.[12]

In a Decision dated February 20, 2013, the Regional Trial Court of Makati City found that the testimonies of the witnesses for the prosecution, all taken together, prove that the accused-appellant intimidated private complainant when he threatened to harm him with a *balisong*. The taking of the necklace, belonging to Arnel Bustamante, was likewise accompanied by intent to gain. The elements of robbery being present, the court a quo ruled in the dispositive portion of the assailed Decision as follows:

> "**WHEREFORE**, judgment is hereby rendered finding accused **RAUL BERNARDO y ELEGIDO GUILTY** beyond reasonable doubt of the crime of *ROBBERY* as defined and punished under Article 294, paragraph 5 of the Revised Penal Code, and sentencing him to suffer an indeterminate penalty of imprisonment from 6 months of *arresto mayor* as minimum to

8 years of *prision mayor* as maximum, and to pay the amount of P30,000.0 representing the value of the stolen necklace.

"SO ORDERED."[13]

On February 21, 2013, accused-appellant filed a Notice of Appeal[14] with the court *a quo*. On November 4, 2013, after filing three motions for extension to file brief,[15] accused-appellant filed his Brief,[16] submitting the following assignment of purported errors of the court *a quo* for resolution by this Court:

I.

THE COURT *A QUO* GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT DESPITE ARNEL BUSTAMANTE'S IMPROBABLE IDENTIFICATION OF ACCUSED-APPELLANT.

II.

EVEN ASSUMING THE GUILT OF ACCUSED-APPELLANT, THE COURT *A QUO* GRAVELY ERRED IN FINDING HIM GUILTY BEYOND REASONABLE DOUBT OF ROBBERY DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH THAT FORCE, VIOLENCE OR INTIMIDATION ATTENDED THE TAKING OF THE NECKLACE.

After a judicious study and scrutiny of the case, we find the appeal to be unmeritorious.

In his first assignment of supposed errors, accused-appellant argues that private complainant's act of identifying him as the culprit is unreliable. While insisting that the private complainant could not have properly identified the man who took his necklace, the accused-appellant cited a portion of the cross-examination of Arnel Bustamante at the presentation of prosecution witness on January 25, 2012, to wit:

"**Q:** Let me go back. At the time when he took the necklace, he was behind you, the person who took your necklace was behind you and he took the necklace from your neck?

A: Yes Sir.

Q: And you were never able to see who took the necklace, is that correct?

A: I saw him, sir. It was him, sir.

Q: Despite the fact that he was behind you at that time, you were able to see him?

A: Yes, Sir."

We are not persuaded. Contrary to the allegation of accused-appellant that private complainant must have "eyes at the back of his head" in order to see accused-appellant, we find that the narration of facts as testified to by the private complainant is credible and convincing as the events happened in the natural sequence of things. Obviously, the mere fact that a person is standing behind another person does not preclude the fact that the former cannot be seen as the

latter can just as easily turn his head and see the person standing behind him, specially so in this case when they were standing in such close proximity to each other that the accused-appellant was able to grab the necklace of private complainant and utter "*sasaksakin kita*". Thus, in the afore-quoted cross-examination of private complainant, he repeatedly confirmed that he saw the accused-appellant take his necklace. The private complainant never did exhibit any doubt as to the identity of the accused-appellant. Moreover, although the necklace was never recovered, it is herein noted that the *balisong*, which was used to threaten private complainant with, was later found in the possession of accused-appellant.

It is a hornbook doctrine that the findings of fact of the trial court are entitled to great weight on appeal and should not be disturbed except for strong and valid reasons, because the trial court is in a better position to examine the demeanor of the witnesses while testifying.[17] Indeed, the trial court correctly gave credence to the testimony of the private complainant that accused-appellant snatched his necklace. It is an oft-quoted doctrine that positive identification prevails over denial and alibi.[18] As between a categorical statement that has the earmarks of truth on the one hand and bare denial, on the other, the former is generally held to prevail. [19] Moreover, in the absence of evidence manifesting any ill motive on the part of the witness for the prosecution, it logically follows that no such improper motive could have existed and that, corollarily, his testimony is worthy of full faith and credit. Indeed, if an accused had nothing to do with the crime, it is against the natural order of events and of human nature and against the presumption of good faith that a prosecution witness would falsely testify against the former.[20]

In the second assignment of purported errors, accused-appellant averred that the elements of robbery were not duly established in the case. Intimidation, as an element of robbery, is allegedly missing in the instant case as the balisong was merely recovered from accused-appellant's pocket and the private complainant was still able to wrestle accused-appellant for the necklace. Assuming that the version of the prosecution is true, accused-appellant likewise points out that he supposedly already got hold of the necklace, rendering the subsequent threat inconsequential since the element of taking is deemed complete. Hence, accused-appellant points out the cross-examination of private complainant which states in part as follows:

> "**Q:** When he grabbed the necklace, did you immediately scuffle or struggle?
>
> **A:** When he grabbed the necklace and he told me that he would stab me, I immediately hit him with the tomb marker because I really thought that he would stab me. That was the reason why I immediately hit him."

Again, accused-appellant fails to convince us. The evidence on record indubitably shows that the elements of the crime charged are present in the case.

Thus, Article 293 of the Revised Penal Code provides:

> "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 or intimidation of any person, or using force upon anything shall be guilty of robbery."