

EIGHTEENTH DIVISION

[CA-G.R. CR. NO. 01694, August 28, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BOYAX
PACAÑA, ACCUSED-APPELLANT.**

D E C I S I O N

INGLES, G. T., J.:

The Case

This is an appeal filed by accused-appellant of the Decision^[1] dated June 2, 2011 of the Regional Trial Court, Seventh Judicial Region, Branch 14, Cebu City in Crim Case No. CBU-83440 which found accused-appellant guilty beyond reasonable doubt of the crime of robbery under paragraph 4, Art. 294 of the Revised Penal Code.

The Facts

Version of the Prosecution

On May 26, 2007, around 9:00 PM, AAA^[2] was tending their billiard hall outside their residential subdivision at Phase 2, St. Jude Acres, Bulacao, Cebu City. While AAA's back was turned from the door, somebody appeared behind him who was later identified as accused-appellant Boyax Pacana.

Accused-appellant boxed AAA's nape which caused him to stagger. Accused-appellant then took this opportunity to grab from AAA his Samsung T809 cellular phone valued at P20,000.00. When AAA turned his back, he saw accused-appellant about two meters away, staring at him. Upon recognizing accused-appellant's face, accused-appellant then scampered towards the interior portion of San Vicente, Bulacao, Cebu City.

AAA did not bother asking for help from the people inside the billiard hall. AAA, instead, rushed home to report the incident to his brother and had the accident blotted at the Police Station.

The Charge

In the Information^[3] dated September 5, 2007 filed against him, accused-appellant was charged with the crime of Robbery, as follows:

"That on or about the 26th day of May, 2007, at about 9:00 o' clock in the evening in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, with intent to gain and by means of violence and intimidation upon person, to wit: by boxing one VNA, a minor, 16 years of age, while he was tending to their billiard hall located near the skywalk in Bulacao, Cebu City, thereby hitting him on his nape, and causing the latter to stagger, and without the consent of said VNA, did then and there take, steal and carry away a Samsung 1809 Cellular phone worth P20,000.00 belonging to said VNA, to the damage and prejudice of the latter, in the amount aforestated.

CONTRARY TO LAW."

Subsequently, accused-appellant was arraigned and pleaded "not guilty" to the crime charged.

Trial ensued. The prosecution presented AAA as witness. On the other hand, the defense presented accused-appellant and Mirasol Pacana.

Version of Accused-appellant

Accused-appellant narrated that during the incident in question, AAA pointed a pistol at him prompting him to flee. He did not, however, report the incident to the police. Subsequently, AAA and his brother, as well as the driver, went to their house armed with a baseball bat and hand gun. Again, he ran away but accused-appellant shot at him using the gun. He was not, however, hit.

On June 27, 2007, AAA's brother punched him and fired a warning shot at him. Accused-appellant's sister then reported the incident to the police.

The RTC Ruling

Thereafter, on June 2, 2011, the RTC rendered a Decision^[4] against accused-appellant, the pertinent portion of which reads:

"Violence was inflicted upon VNA when, before the taking of the Samsung 1809 cellular phone, he was hit by the accused on his nape which caused him to be a little bit dizzy and is described and punishable under the fourth paragraph of Art. 294 of the Revised Penal Code with prision mayor in its maximum period to reclusion temporal in its medium period.

Since the above penalty consists of at least one (1) year imprisonment, the beneficent effects of the Indeterminate Sentence Law (Act No. 4103, as amended) is applicable which would result in lowering the above penalty to one (1) degree lower which would be under Appendix "A" of the Table of Penalties: prision correccional in its maximum period to prision mayor in its medium period. In the absence of any aggravating nor mitigating circumstance, the said penalty shall be imposed in its

medium period.

As the cellphone was not recovered, accused is liable to pay VNA the price thereof in the amount of Php 20,000.00 as his civil liability to him.

Wherefore, in view of the foregoing premises, judgment is rendered finding accused BOYAX PACANA a.k.a. DIONESIA PACANA, JR. GUILTY beyond reasonable doubt of Robbery under paragraph 4, Art. 294 of the Revised Penal Code, and is sentenced to a penalty of imprisonment of SIX (6) YEARS, ONE (1) MONTH and ELEVEN (11) DAYS to EIGHT (8) YEARS and TWENTY (20) DAYS of prision correccional in its maximum period to prision mayor in its medium period, medium.

Accused is also ordered to pay the costs of these proceedings.

SO ORDERED."

Aggrieved, accused-appellant now comes to this Court seeking a reversal of his conviction and assigning the following errors:

I.

"THE TRIAL COURT ERRED IN FINDING THAT THERE WAS POSITIVE IDENTIFICATION OF ACCUSED-APPELLANT AS PERPETRATOR OF THE CRIME;

II.

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

THIS COURT'S RULING:

I.

Positive Identification

The primary issue for resolution in the case at bar is the determination of whether or not the prosecution was able to prove the guilt of accused-appellant of the crime of robbery.

Accused-appellant contends that the court a quo erred in convicting him of the crime of robbery considering that there was no ratio decidendi on how positive identification was made. After a narrative summary of AAA's testimony, the trial court incorrectly made a ready conclusion that neither cross-examination nor re-cross on AAA destroyed what was established in the direct examination. Accused-appellant points out that during the trial of AAA, he himself admitted that after he was boxed on the nape, he lost consciousness so that he could not have identified

the perpetrator of the crime. He attested, thus:

"Q: And where was this person situated in relation to you when he delivered the blow to your nape?

A: He was right at my back, I was right near the door of the billiard hall.

Q: And you mentioned that when you staggered he took your cellphone from you, is that correct?

A: Yes Sir."

TSN, June 18, 2009

"Q: and why was he able to get the cellphone from you?

A: It's when somebody punches you at your nape, you feel conscious a little while and then I did not have enough strength to take my phone from him, so he grabbed it right away.

Xxx xxx xxx

Q: So, he was already running away, Mr. witness, when you saw him?

A: Yes sir.

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xxx xxx xxx

Cross and re-cross examination by Atty. Bagacay:

Q: You also mentioned that when you were punched on your nape, you lost consciousness for a while, am I correct?

A: Yes sir.

Xxx xxx xxx

Q: You said that you were punched on the nape that is why as you said you lost consciousness, am I correct?

A: Yes sir.

Q: And after that punch was delivered you will agree with me that you were moved by that punch, am I correct?

A: Yes sir.

Q: So considering that the same was delivered from your back side, you were moved forward, am I correct?

A: Yes sir.

Q: So you were not facing the accused or the one who punches you from behind, am I correct?

A: I face him after he attacked me.

Q: But you mentioned that you lost your strength, am I correct?

A: Yes sir.

Q: That is why you were not able to immediately turn your head to where the punch came from, am I correct?

A: Yes sir."

TSN, June 18, 2009

Accused-appellant claims his version is more believable, alleging that there was an altercation which transpired between him and the complainant AAA. Since AAA pointed his gun at him, accused-appellant protected himself by punching AAA. Accused-appellant posits that if there were a few people in the area as testified by AAA, any one of them could have come to the rescue of AAA after he was allegedly boxed and robbed. After all, accused-appellant added that he did not immediately run away after the taking of the cellphone. It is also accused-appellant's submission that it was surprising that instead of calling for immediate assistance on the spot, AAA went home to seek help from his family.

Accused-appellant argues that in instances such as this where the identification is tainted with irregularity, serious doubt exists on the culpability of the accused and as such, there is no need to avail of the defense of denial or alibi. While the defenses of alibi and denial are inherently weak, they are so only in the face of an effective identification. Relying on *People vs Crispin, GR No. 128360, March 2, 2000*, the Supreme Court held that before the doctrine that positive identification prevails over mere denial and alibi can be made applicable, it is necessary that the credibility of the eyewitness be first put beyond question.

Accused-appellant further asseverates that evidence to be believed must not only proceed from the mouth of a credible witness but it must be credible in itself. There can be no better gauge by which a witness' testimony may be evaluated and analyzed than the ordinary common human experience. Thus, as between the testimonies of two contending parties, accused-appellant asserts that it is the testimony of the accused that is more credible.

We reject accused-appellant's argument.

The issue of whether or not accused-appellant was identified by the prosecution eyewitness as the perpetrator of the crime is a question of credibility.^[5] It is well-entrenched in this jurisdiction that factual findings of the trial court on the credibility of witnesses and their testimonies are entitled to the highest respect and will not be disturbed on appeal in the absence of any clear showing that it overlooked, misunderstood or misapplied some facts or circumstances of weight and substance that would have affected the result of the case. Having seen and heard the witnesses themselves and observed their behavior and manner of testifying, the trial judge was in a better position to determine their credibility.^[6]

Accused-appellant's insistence that AAA could not have identified the perpetrator of the crime since he lost consciousness and staggered after a blow was delivered to his neck cannot bolster his position. Records show that AAA was consistent and straightforward in recounting the incident while positively identifying accused-appellant as the one who hit him and grabbed his Samsung T809 cellular phone valued at P20,000.00. In fact, during the re-direct examination, AAA sufficiently explained that he felt dizzy only for a split second after he was hit on the nape, but that there was enough time for him to identify and recognize accused-appellant as perpetrator thereof. AAA testified, as follows: