

SEVENTEENTH DIVISION

[CA-G.R. CR No. 36197, February 23, 2015]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ORLANDO SIMEON Y MAGDALENA @ LANDO, ACCUSED-
APPELLANT.**

D E C I S I O N

GARCIA, R. R. J.:

Before Us is an appeal from the Decision^[1] dated November 4, 2013 of the Regional Trial Court, Branch 17, Manila in Criminal Case No. 12-293029 finding herein accused-appellant Orlando Simeon y Magdalena guilty beyond reasonable doubt of the crime of robbery by means of violence against or intimidation of persons, and imposing upon him the penalty of imprisonment of four (4) years and two (2) months of *prision correccional*, as minimum, to eight (8) years and twenty (20) days of *prision mayor*, as maximum, the dispositive portion of which reads:

WHEREFORE, premises considered, the Court finds accused ORLANDO SIMEON y Magdalena GUILTY beyond reasonable doubt of the crime of ROBBERY and hereby sentences him to imprisonment of from four (4) years and two (2) months of *prision correccional*, as minimum of the Indeterminate Sentence Law, to eight (8) years and twenty (20) days of *prision mayor*, as the maximum of the Indeterminate Sentence Law, subject to Article 29 of the Revised Penal Code.

Article 29 of the Revised Penal Code states and we quote:

"Art. 29. Period of preventive imprisonment deducted from term of time of imprisonment. - Offenders or accused who have undergone preventive imprisonment shall be credited in the service of their sentence x x x."

SO ORDERED.^[2]

THE FACTS

In an Information^[3] dated September 12, 2012, appellant Orlando Simeon y Magdalena @ "Lando" was charged with robbery by means of force and violence upon person committed as follows:

That on or about September 10, 2012, in the City of Manila, Philippines, the said accused, with intent to gain and by means of force and violence upon person, to wit: by then and there suddenly grabbing and forcibly snatching from one CHRISTOPHER IAN VIANA y CRUZ his Nokia C5 Cellphone valued at P9,000.00, did then and there willfully, unlawfully and feloniously take, rob and carry away the same, against his will, to

the damage and prejudice of the said CHRISTOPHER IAN VIANA y CRUZ in the aforesaid amount of [P9,000.00], Philippine Currency.

CONTRARY TO LAW.^[4]

During the arraignment on October 1, 2012, appellant, with the assistance of counsel, pleaded *not guilty*.^[5] Thereafter, trial on the merits ensued.

The prosecution presented two (2) witnesses, namely: victim Christopher Ian Viana^[6]; and PO3^[7] Jupiter Tajonera^[8].

The version of the prosecution may be summarized as follows:

On September 10, 2012, at around 8:30 a.m., victim Christopher Ian Viana was standing at the vicinity of the Manila City Hall, waiting for a jeepney while holding a *Nokia C5* cellular phone worth P9,000.00. As he was sending a text message, a man, whom he later identified as appellant, approached and forcibly took the cellular phone from him. Victim Viana was unable to run after appellant since his leg was in a metal cast at that time. Fortunately, just as appellant was about to board a passing jeepney to make his escape, one of the passengers shoved out appellant, causing the latter to lose his grip on the jeepney railing and to fall eventually.

Meanwhile, on that same day of September 10, 2012, PO3 Jupiter Tajonera was assigned by the Manila City Hall Police Assistance (CHAPA) to conduct a visibility patrol within the perimeter of the Manila City Hall and nearby streets. This directive was brought about by the numerous reports of snatching and robbery incidents in the area. At around 8:30 a.m., PO3 Tajonera was on board his motorcycle at Taft Burgos Street in front of the Manila City Hall when he saw appellant forcibly take the cellular phone of victim Viana, who was then sending a text message. After obtaining the cellular phone, appellant quickly made his escape and PO3 Tajonera chased him. Appellant tried to board a passenger jeepney, but one of the passengers inside prevented him from doing so. When appellant fell down from the jeep, PO3 Tajonera was able to reach him. Appellant was arrested and thereafter searched. PO3 Tajonera found the stolen cellular phone on the right pocket of appellant.

After appellant's arrest, victim Viana approached PO3 Tajonera and appellant. He identified appellant as the person who stole his cellular phone. Because they were out in the open, and fearing that appellant may have companions who may come to his rescue, PO3 Tajonera brought appellant and victim Viana to the police station for further investigation.

For the defense, appellant^[9] was the only witness presented.

Appellant raised the defense of denial. He denied stealing the cellular phone of victim Viana. On September 10, 2012, at around 8:30 a.m., he was walking on the way to SM Manila when he met PO3 Tajonera. At that time, appellant did not know that PO3 Tajonera was a police officer since he was not wearing a uniform. Without warning, PO3 Tajonera suddenly grabbed appellant, introduced himself as a police officer, and placed the latter under arrest. Appellant was brought to the CHAPA Office. PO3 Tajonera threatened appellant that a case would be filed against him

unless he pays the amount of P10,000.00. True enough, when appellant refused to give money to PO3 Tajonera, he was charged with robbery. Appellant also testified that it was only three (3) days after his arrest that he saw victim Viana for the first time. Since then, he saw victim Viana several times at the CHAPA Office and he appeared to be friends with PO3 Tajonera.

In the assailed Decision^[10] dated November 4, 2013, the court *a quo* found appellant guilty beyond reasonable doubt of the crime of robbery. It gave credence to the testimonies of the prosecution witnesses that appellant forcibly took the cellular phone of victim Viana. The positive statements of the two eyewitnesses cannot prevail over appellant's bare denial. The pertinent portions of the decision are quoted:

After going through the versions of both sides, the Court finds that [*the*] prosecution has established the guilt of accused beyond reasonable doubt. Accused vehemently denied committing the offense and claimed that he was charged with Robbery because he failed to come up with the demanded amount of TEN THOUSAND PESOS (P10,000.00) by PO Tajonera, his arresting officer. However, private complainant positively identified and pointed to him as the one who perpetrated the offense by snatching his cellphone while texting. Accused failed to refute such accusation as he merely denied the same. In fact, he pointed to his arresting officer, PO Tajonera who allegedly demanded money from him by harassing him that a complaint be filed against him and in fact, PO Tajonera had a ready complainant in the person of the victim Christopher Ian Viana.

The denial of the accused is self-serving that should not be given credence as the private complainant, Christopher Ian Viana pointed and positively identified him as the one who snatched his cellphone. He, together with PO Tajonera who arrested accused after witnessing the robbery-snatching and retrieved the cellphone from the possession of the accused had no grudge to impute a grievous offense. Thereby, it is a positive proof that it was accused who snatched the cellphone of complainant. Categorical and consistent positive identification, absent of any showing of ill-motive on the part of the eyewitness testifying on the matter, prevails over the appellant's defense of denial and alibi. x x x

Denial and alibi are inherently weak and unreliable defenses which cannot overcome the positive identification of the accused by the victim himself. x x x The testimonies of private complainant Christopher Ian Viana and PO Tajonera are worthy of credence and belief as they are clear, straightforward, and eminently plausible under the circumstances not like accused who often changed his testimony. At one time, accused claimed that he often saw Viana and PO Tajonera inside the CHAPA police station but, after sometime, changed his mind and alleged that it was the first time that he saw them at the said police station.

As stated earlier, Viana's testimony was made in a straightforward and categorical manner regarding the identity of his malefactor. He did not waver despite the incessant questioning fielded by the defense.

As to the discrepancy of the time when the incident happened as reflected on the Medico-Legal Report x x x, the attending physician who made the Report was not presented nor cross-examined. Thus, the Medico-Legal Report was admitted only as to existence but not to the veracity and truthfulness thereof. This is, likewise, true with the non-appearance of external injury on the person of the accused.^[11]

Hence, this appeal in which appellant raised the lone **ASSIGNMENT OF ERROR**^[12], to wit:

THE COURT A QUO GRAVELY ERRED IN FINDING APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.

THE ISSUE

The sole issue in the instant case is whether or not the court *a quo* correctly found appellant guilty beyond reasonable doubt of the crime of robbery by means of violence against or intimidation of persons.

THE RULING

The instant appeal is not impressed with merit.

Appellant contends that the court *a quo* gravely erred in convicting him of robbery with violence against or intimidation of persons on the basis of the incredible and inconsistent testimonies of the prosecution witnesses.

We are not persuaded.

After a thorough and careful review of the records, this Court is convinced that the prosecution has sufficiently proven beyond reasonable doubt appellant's guilt of robbery by means of violence against or intimidation of persons.

To sustain a conviction for robbery by means of violence against or intimidation of persons, the prosecution must prove the following elements: 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.^[13]

Here, victim Viana proved all the above-mentioned elements of robbery. He testified that in the morning of September 10, 2012, while waiting for a jeepney to take him home, he was sending a text message on his *Nokia C5* cellular phone. All of a sudden, appellant forcibly grabbed the phone from his hands and ran away. Victim Viana was unable to immediately respond because of fear and shock, coupled with the fact that his leg was in a metal cast. Appellant took advantage of victim Viana's fright to make an immediate getaway. Just as appellant was about to board a passing jeepney, one of the passengers inside shoved appellant, causing him to fall from the vehicle. A policeman then appeared and placed appellant under arrest. Victim Viana identified appellant as the person who forcibly took his cellular phone moments earlier. A search of appellant's pockets revealed the stolen phone. The pertinent portions of victim Viana's testimony are quoted:

FISCAL POSECION:

You said that the said accused robbed you or snatched your cellphone from you?

A: Yes, Ma'am.

FISCAL POSECION:

When did that incident happen?

A: September 10, 2012, Ma'am.

FISCAL POSECION:

Where?

A: Beside City Hall in front of Intramuros, Ma'am.

x x x

FISCAL POSECION:

You said you were then using your cellphone?

A: Yes, Ma'am.

x x x

FISCAL POSECION:

How did it happen that the accused snatched your cellphone?

A: While I'm texting suddenly a person robbed my cellphone.

x x x

FISCAL POSECION:

After that what happened next?

A: He was about to board a jeepney but a person inside the jeep [*suddenly pushed*] him and hit him and causing him to [*fall*] down on the ground.

FISCAL POSECION:

What happened next after that

A: I saw Sgt. Tajonera grabbed the accused.

x x x

FISCAL POSECION:

What happened to your cellular phone after that?

A: I was able to recover my cellular phone because when I saw Sgt. Tajonera grabbed the accused I got my cellphone.

x x x

FISCAL POSECION: