

## TWENTY-SECOND DIVISION

[ CA-G.R. CR. NO. 00937-MIN, February 04, 2015 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
GODOFREDO CALDOZA, ACCUSED-APPELLANT.**

### DECISION

**PEREZ, J.:**

Assailed in this appeal<sup>[1]</sup> filed by Godofredo Caldoza is the *Decision*<sup>[2]</sup> dated 25 November 2011 rendered by the Regional Trial Court (RTC), 10<sup>th</sup> Judicial Region, Branch 22, Cagayan de Oro City, in Criminal Case No. 2001-348 entitled "*People of the Philippines v. Godofredo Caldoza, Gilbert Mangayan and 3 John Does,*" finding him guilty beyond reasonable doubt of the crime of Robbery in an Inhabited House.

### THE ANTECEDENTS

The conviction of accused-appellant Godofredo Caldoza ("Caldoza") stemmed from an Information<sup>[3]</sup> filed by the Provincial Prosecutor of Misamis Oriental on 2 August 2001 against the accused-appellant Caldoza, Gilbert Mangayan and 3 John Does, the accusatory portion reads as follows:

On May 4, 2001, at about 7:00 o'clock in the evening, at Sitio Tigkawayan, Barangay Sinaloc, El Salvador, Misamis Oriental, which is within the jurisdiction of the Honorable Court, the above-named accused, with intent to gain, and in conspiracy with each other, did then and there, willfully, unlawfully, and feloniously gain entrance into an inhabited house owned by one Danilo Buna by breaking forcibly open the rooftop of the kitchen and took and carried away the following personal properties, to wit:

Cash money----- P3,000.00

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Wrist watch----- P800.00

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Table clock----- P125.00

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Cellular phone----- P6,000.00

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Underwear----- P150.00

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Travelling bag----- P350.00

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All valued in the total amount of P11,425.00 to the great damage and prejudice of the owner thereof, said Danilo Buna.

Contrary to and in violation of Article 299 of the Revised Penal Code.<sup>[4]</sup>

When arraigned, accused-appellant pleaded not guilty to the charge. Meanwhile, the prosecution moved to discharge co-accused Gilbert Mangayan, a minor, to utilize him as state witness.<sup>[5]</sup>

Pre-trial was conducted and terminated. Trial ensued thereafter.

At the trial, the prosecution presented Mangayan as witness even without an order granting the Motion to Discharge Mangayan as State Witness. After Mangayan testified on 5 August 2004,<sup>[6]</sup> the pending motion to discharge him as witness was ruled by the trial court to have become moot and academic. The minor Mangayan testified to prove the following:

On 4 May 2001, Mangayan chanced upon accused-appellant Caldoza driving a vehicle. He was called by the accused-appellant and told to rob the house of Mangayan's uncle, Danilo Buna (also known as "Uncle Presko"). Mangayan was accompanied by a certain Patrick and the accused-appellant in going to Buna's house. Upon reaching the victim's house, Mangayan and Patrick went up to the roof of the house and destroyed its ceiling to gain entrance to the house. Once inside, Mangayan and Patrick took the victim's money from a piggy bank. They also took a cellphone and some toys. After taking those things, they went out through the kitchen door. Once outside, the money they got was divided among five (5) other companions including appellant. Mangayan did not take any money but was only given the toys as his share. The group proceeded to another house to rob again but retreated after the owner of the house woke up.<sup>[7]</sup>

The testimony of Danilo Buna ("Buna") was likewise presented to prove the following:

On 6 May 2001, Buna was in Cagayan de Oro City driving a taxicab. His mother went to his house at Regency, Iponan, Cagayan de Oro City to tell him that their house at Tigkawayan, Sinaloc, El Salvador was robbed on 4 May 2001. He immediately went to his house at El Salvador and verified the things that were missing as a consequence to the alleged robbery that took place. After checking his belongings, he found out that among those that were lost were cash in the amount of P3,000.00, a wrist watch worth P800.00, a table clock worth P125.00, 3 pieces of sunglasses worth P500.00, a cellphone worth P6,000.00, underwear worth P150.00 and a travelling bag worth P150.00, with a sum total of P11,425.00. Thereafter, Buna reported the incident to the El Salvador, Misamis Oriental Police Station. The police found that the robbers gained entrance by destroying the upper part of the house near the kitchen. Later, police officers recovered from Mangayan several toys and a dismantled cellphone. Buna talked to Mangayan regarding the incident and the latter admitted to the crime and confirmed the items that he and his companions took from the former's house. Mangayan also told Buna that he was with Godofredo Caldoza and a certain Patrick during the commission of the crime.<sup>[8]</sup>

After the prosecution completed its evidence, the Public Attorney's Office filed an Omnibus motion to Dismiss,<sup>[9]</sup> on account of Mangayan's minority. The trial court, in an Order dated 28 July 2006,<sup>[10]</sup> dismissed the case as to Gilbert Mangayan, who

was 11 years old at the time of the commission of the crime and thus, exempted from criminal liability pursuant to Republic Act 9344.<sup>[11]</sup>

On the other hand, the defense presented four (4) witnesses, namely: Rosita Catiil ("Catiil"), Reynan Asan ("Asan"), Carmelita Omongos ("Omongos") and the accused-appellant Caldoza. Their testimonies were presented to prove the following:

On 4 May 2001 at around 5:00 o'clock in the afternoon, Catiil was with her child at Sinaloc and went home around 7:00 o'clock in the evening. On her way home, she passed by the house of Buna and did not notice anything unusual. Catiil also did not notice accused-appellant Caldoza in the neighborhood, although they were neighbors who often see each other in that place.<sup>[12]</sup> Catiil only knows that at that time, accused-appellant Caldoza was working at the house of Jesus Palasan at Alo, located about 5 kilometers away from Tigkawayan.<sup>[13]</sup>

Around 7:00 o'clock in the evening on the same day, Asan was at Plaza of Cogon, El Salvador, Misamis Oriental which is 8 kilometers away or less than an hour by land vehicle from Tigkawayan, Sinaloc, El Salvador. Asan was with accused-appellant Caldoza and other companions who were hauled here to attend a political rally. Asan, accused-appellant Caldoza and their companions stayed at El Salvador until 12 midnight and was later sent home by Jesus Palasan.<sup>[14]</sup>

Omongos testified that she was at her house doing nothing around 7:00 o'clock in the evening and she does not know if accused-appellant Caldoza visited her house that time because as his neighbor, accused-appellant usually drops by her house when he passes by in an elf vehicle he drives accompanied by his employer, Jesus Palasan. She knows that the accused-appellant has resided in Alubijid, Misamis Oriental since 2000. However, she knew of the rally at Cogon, El Salvador, Misamis Oriental on that same night.<sup>[15]</sup>

The accused-appellant himself testified that on 4 May 2001, he was working as a driver of an elf van owned by Jesus Palasan. At about 7:00 o'clock in the evening of that day, he was at Alo, El Salvador, together with Jesus Palasan. Thereafter, he went to Cogon, El Salvador to watch a political rally and left at around 1:00 o'clock in the morning the next day or on 5 May 2001.<sup>[16]</sup>

On 25 November 2011, the trial court rendered the appealed Decision, the dispositive portion of which states as follows:

"WHEREFORE, the foregoing premised (sic) considered, judgment is hereby rendered finding the accused GODOFREDO CALDOZA GUILTY beyond reasonable doubt of the crime of robbery in an inhabited house punishable under Article 299 of the Revised Penal Code, and considering that there is no aggravating nor mitigating circumstance present, he is hereby ordered to suffer an indeterminate sentence of two (2) years four (4) months and one (1) day as the minimum period, to eight (8) years as the maximum period. The accused is likewise ordered to pay the private complainant Danilo Buna the amount of P9,000.00, representing the value taken from him.

SO ORDERED."<sup>[17]</sup>

From said decision, accused-appellant Caldoza appealed before Us and prayed that the trial court's decision be reversed and dismissed for failure of the prosecution to prove his guilt beyond reasonable doubt, ascribing the following errors committed by the trial court:

I

THE TRIAL COURT ERRED IN NOT SETTING ASIDE GILBERT MANGAYAN'S DECLARATIONS AS IT WERE NULL AND VOID BECAUSE HE WAS AN ACCUSED (MINOR) WHEN HE TESTIFIED, HE WAS NOT REPRESENTED BY COUNSEL, AND HE WAS NOT INFORMED OF HIS RIGHTS UNDER SEC. 12(1), ART. III OF THE CONSTITUTION.

II

THE TRIAL COURT SERIOUSLY ERRED IN CONVICTING ACCUSED-APPELLANT CALDOZA BECAUSE THE PROSECUTION FAILED TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

III

THE TRIAL COURT SERIOUSLY ERRED IN CONSIDERING GILBERT MANGAYAN AS CREDIBLE WITNESS DESPITE HIS BEING A PRINCIPAL IN THE CRIME CHARGED, HENCE A POLLUTED SOURCE, HIS DECLARATIONS ARE UNCORROBORATED AND HIS "SLIPUPS" ARE SERIOUS, HIS DECLARATIONS WERE ELICITED BY LEADING QUESTIONS, FURTHER HE ADMITTED TO HAVE BEEN FORCED IN EXECUTING HIS TWO AFFIDAVITS RELIED UPON BY THE PROSECUTION, ASIDE FROM HIS EVIDENT INTEREST TO BE EXCULPATED OF THE CRIME HE HAD DONE.

IV

THE TRIAL COURT ERRED IN RULING THAT ACCUSED- APPELLANT CALDOZA COULD ONLY OFFER ALIBI AS DEFENSE, BECAUSE HE IS NOT CALLED BY LAW TO PRESENT HIS EVIDENCE AS THE CHARGE AGAINST HIM SHOULD HAVE BEEN DISMISSED AFTER THE PROSECUTION RESTED ITS CASE, ASIDE FROM THE FACT THAT HIS DEFENSE IS SUPPORTED BY CREDIBLE WITNESSES AND THE PRESUMPTION OF HONESTY IN HIS FAVOR WAS NOT EVEN OVERTURNED.<sup>[18]</sup>

### **THIS COURT'S RULING**

For an accused to be found guilty of Robbery in an Inhabited House under Article 299 of the Revised Penal Code, the following elements must be proven: (1) That the offender entered (a) an inhabited house, or (b) public building, or (c) edifice devoted to religious worship. (2) That the entrance was effected by any of the following means: (a) Through an opening not intended for entrance or egress; (b) By breaking any wall, roof, or floor or breaking any door or window; (c) By using false keys, picklocks or similar tools; or (d) By using any fictitious name or pretending the exercise of public authority. (3) That once inside the building, the offender took personal property belonging to another with intent to gain.

Based principally on the testimony of the minor Mangayan, the trial court found all the above elements established beyond reasonable doubt, in that accused-appellant Caldoza, as principal by inducement, committed robbery by ordering the minor Mangayan and a certain Patrick to enter private complainant's house by destroying the ceiling of the house to gain entrance and taking several personal properties for their personal gain.<sup>[19]</sup>

We quote the pertinent portions of Mangayan's testimony:

[Prosecutor Zaidah Zayas-Bernardez]

Q Do you know the accused in this case Godofredo Caldoza?

A Yes.

Q If you know the accused, will you please look at this room if he is present in court this morning?

A Yes.

Q Will you please point to him?

A (Witness is pointing to a man wearing white t-shirt named Godofredo Caldoza)

x x x x

Q Do you remember if you have seen Godofredo Caldoza on May 4, 2001?

A Yes.

Q Where did you see him?

A At the vehicle.

Q What was he doing in the vehicle?

A He was driving.

Q And aside from driving what was he doing?

A He commanded me.

Q What was his command to you?

Atty. Capadocia:

Objection, your honor. Leading.

COURT:

Follow up question.

A To rob.

[Prosecutor. Bernardez]

Q Whose house did he ask you to rob?

A He asked me to rob the house of my uncle Frisco.

Q Who is this Frisco, do you know him?

A Yes, he is my uncle.

Q What did you do in the house of your uncle Frisco?

A I robbed.