

## THIRD DIVISION

[ G.R. No. 222861, April 23, 2018 ]

**PO2 JESSIE FLORES Y DE LEON, PETITIONER, VS. PEOPLE OF  
THE PHILIPPINES, RESPONDENT.**

### DECISION

**GESMUNDO, J.:**

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the Decision<sup>[1]</sup> dated August 13, 2015 and Resolution<sup>[2]</sup> dated February 3, 2016 of the Court of Appeals (CA) in CA-G.R. CR No. 36187. The CA affirmed with modification the May 28, 2013 Decision<sup>[3]</sup> of the Regional Trial Court, Quezon City, Branch 91 (RTC) finding PO2 Jessie Flores y De Leon (*petitioner*) guilty beyond reasonable doubt of Simple Robbery (extortion) as defined and penalized under Article 294 (5) of the Revised Penal Code (RPC).

#### *The Antecedents*

On June 29, 2000, petitioner was arrested via an entrapment operation conducted by the Presidential Anti-Organized Crime Task Force (PAOCTF) pursuant to a complaint lodged by private complainant Roderick France (*France*). The accusatory portion of the Information<sup>[4]</sup> dated July 3, 2000 reads:

That on or about the 29<sup>th</sup> day of June 2000 in Quezon City, Philippines, the above-named accused taking advantage of his official position as a member of the Traffic Enforcement Group, Central Police Traffic Enforcement Office, with intent to gain and by means of intimidation, did then and there, willfully, unlawfully and feloniously rob Roderick S. France of P2,000.00 in cash in the following manner, to wit: on June 26, 2000, the driven taxi of Roderick S. France figured in a vehicular accident with a passenger jeepney and the said accused confiscated his Driver's License then issued a Traffic Violation Receipt indicating therein his alleged violations and demanded from him the amount of P2,000.00 as a condition for the return of his Driver's License thus creating fear in the mind of said Roderick S. France who was compelled to give to the said accused P2,000.00 in cash on June 29, 2000 to the damage and prejudice of the said offended party.

CONTRARY TO LAW.<sup>[5]</sup>

Petitioner posted a bail bond of P100,000.00 for his conditional release.

Upon arraignment, petitioner entered a plea of "not guilty".

The prosecution presented the following witnesses: France, PO2 Aaron Ilaog (PO2

*Ila*) and PO2 Richard Menor (*PO2 Menor*) of the PAOCTF. The defense, on the other hand, presented petitioner, Robert Pancipanci (*Pancipanci*) and photographer Toto Ronaldo (*Ronaldo*) as its witnesses.

The facts, as found by the CA, are as follows:

xxx. The People's version of the facts are as follows:

On 26 June 2000, at around 6:00 o'clock in the evening, private complainant France figured in a vehicular collision with a passenger jeepney at the corner of E. Rodriguez and Aurora Blvd., Quezon City. Soon thereafter, a traffic enforcer arrived at the vicinity and prepared a sketch of the incident. Then, France and the jeepney driver proceeded to Station 10, Kamuning Police Station. At the station, appellant PO2 Flores investigated the incident. The jeepney driver was told to go home while France was asked to remain at the station. He was told to return to the station after two days and prepare the amount of P2,000.00 so he can get back his driver's license. Because France could not raise the said amount in two days, he was told by PO2 Flores to just return on the third day in the evening because he was on a night shift duty then. Subsequently, a Traffic Violation Receipt (*TVR*) No. 1022911 was issued and signed by PO2 Flores who told France that the same would serve as the latter's temporary driver's license. France became suspicious as he recalled that on a previous occasion when his driver's license was confiscated due to a traffic violation the same was claimed from the office of the Metro Manila Development Authority (*MMDA*) or City Hall and not from the officer who confiscated his license.

Sensing that something was not right, France went to the headquarters of the PAOCTF in Camp Crame to file a complaint against PO2 Flores. Meanwhile, France was asked to provide the amount of P2,000.00 which he heeded and four (4) 500-peso bills were dusted with ultraviolet fluorescent powder. Thereafter, France executed a *Sinumpaang Salaysay*.

Headed by PO2 Ila, the PAOCTF team proceeded to Station 10, Kamuning Police Station together with France. When France entered the station, PO2 Flores asked him if he brought with him the money. After an hour, PO2 Flores called France to his table. He opened a drawer and told France to drop the money inside. PO2 Flores then counted the money inside the drawer using his left hand. As soon as France asked for his driver's license, the PAOCTF team suddenly materialized (*sic*) at the scene through PO2 Ila's pre-arranged signal. They arrested PO2 Flores and confiscated the things inside his drawer including the marked money. The team subsequently proceeded to Camp Crame where PO2 Flores was turned over for ultraviolet examination. France was further asked to execute a "*Karagdagang Sinumpaang Salaysay*" regarding the incident. PO2 Menor also executed an affidavit in connection with the incident that lead to the arrest of Flores.

After the People rested its case, the trial court directed PO2 Flores to present his evidence. To exculpate himself from criminal liability, Flores interposed the defense of denial and "frame-up". He adduced his own

testimony and the testimonies of Robert Pancipanci and photographer Toto Ronaldo which hewed to the following version of the facts:

On 26 June 2000, PO2 Flores received a report in his office that there was a vehicular collision in his area of assignment. Upon investigation, PO2 Flores determined that the accident was due to France's fault. He confiscated the driver's license of France, issued a citation ticket and told France that he could claim his driver's license from the Quezon City Redemption Center upon payment of the amount of P2,000.00. On 29 June 2000, PO2 Flores had no idea why France returned to his office in the evening. Because he had to interview Robert Pancipance at that time, France was told to wait. France was, however, persistent in giving him the TVR with the enclosed money. On the third attempt, France convinced him to receive the TVR and money but PO2 Flores refused to receive them. While PO2 Flores was at the comfort room, France took the chance to place the money inside PO2 Flores' drawer. When PO2 Flores returned, the operatives from the PAOCTF arrested him and brought him to Camp Crame.<sup>[6]</sup>

### *The Ruling of the RTC*

In its May 28, 2013 decision, the RTC found petitioner guilty of simple robbery (extortion). It ruled that the prosecution established all the elements of the crime beyond reasonable doubt. The dispositive portion of the decision reads:

WHEREFORE, premises considered, accused is found GUILTY beyond reasonable doubt of the crime of SIMPLE ROBBERY (Extortion) under Article 294(5) of the Revised Penal Code and is hereby sentenced to a penalty of Two (2) Years, Ten (10) Months and Twenty One (21) Days as minimum to Six (6) Years and One (1) Month and Eleven (11) days as maximum.

SO ORDERED.<sup>[7]</sup>

Petitioner filed a motion for reconsideration but it was denied in the RTC's Order<sup>[8]</sup> dated July 11, 2013.

Aggrieved, petitioner appealed before the CA.

In his Brief,<sup>[9]</sup> petitioner averred that the RTC incorrectly convicted him of simple robbery by giving weight on pieces of evidence in violation of the Best Evidence Rule. He argued that the prosecution's exhibits were mere photocopies and the original pieces of the marked money were never even presented. He also assailed the failure of the prosecution to present the forensic chemist who made the laboratory report which found traces of ultraviolet powder on his index finger. He further argued that the RTC disregarded the testimonies of the defense witnesses which clearly showed that he did not extort any money from France. Moreover, he reiterated that his exoneration from the administrative case arising from the same set of facts should have been sufficient basis for the dismissal of the criminal case.

The prosecution, thru the Office of the Solicitor General (OSG), argued that all the elements of the crime charged were adequately established. The OSG further

asserted that the dismissal of the administrative case should not affect the criminal case since only a summary hearing was conducted for the former while a full blown trial was done for the latter. It added that the photocopies of the exhibits were sufficient and admissible since they were public records. It also said in its brief that the testimonies of the prosecution witnesses were enough to prove the elements of the crime and that the presentation of the original marked money was no longer necessary.<sup>[10]</sup>

### *The Ruling of the CA*

In its decision, the CA denied the appeal. It held that the best evidence rule admits of some exemptions which were present in this case. It stated that the Complaint Sheet dated June 28, 2000 and *Karagdagang Sinumpaang Salaysay* executed by France were public records under the custody of a public officer, hence, the presentation of the photocopies as evidence, was deemed sufficient. It further held that the said documents were identified by the private complainant during trial and he attested to the veracity of the contents thereof. With regard to the photocopy of the TVR, the CA ruled that the same should be admitted since petitioner himself admitted in his direct testimony that he indeed issued it. As to the marked money, the CA held that the non-presentation of the original marked money did not create a hiatus in the evidence for the prosecution as the serial numbers were duly recorded in the memorandum prepared by the PAOCTF requesting the ultraviolet fluorescent powder dusting after the entrapment operation. The CA, however, modified the penalty after appreciating the aggravating circumstance of abuse of authority. The *fallo* of the decision reads:

WHEREFORE, we DENY the appeal. The decision appealed from is AFFIRMED with MODIFICATION that PO2 Jessie Flores is sentenced to a penalty of Two (2) years, Four (4) months, and One (1) day as minimum to eight (8) years and One (1) day of *prision mayor* as maximum.

IT IS SO ORDERED.<sup>[11]</sup>

Upon denial of his motion for reconsideration,<sup>[12]</sup> petitioner is now before the Court *via* a petition for review on *certiorari* raising the following-

### **ASSIGNMENT OF ERRORS**

THE COURT OF APPEALS DECIDED IN A MANNER CONTRARY TO LAW AND JURISPRUDENCE WHEN IT ISSUED THE ASSAILED DECISION AND RESOLUTION, WHICH AFFIRMED THE RTC ORDERS, IN THAT:

A.

THE COURT OF APPEALS GRIEVOUSLY ERRED AND ABUSED ITS PREROGATIVES WHEN IT AFFIRMED THE PETITIONER'S CONVICTION, DESPITE THAT IT IS GLARING FROM THE EVIDENCE ON RECORD THAT THE RESPONDENT MISERABLY FAILED TO ESTABLISH HIS GUILT BEYOND REASONABLE DOUBT.

B.

THE COURT OF APPEALS COMMITTED A PALPABLE MISTAKE WHEN IT UNCEREMONIOUSLY OVERLOOKED THAT UNDER THE PRINCIPLE OF CONCLUSIVENESS OF JUDGMENT, THE ISSUE ON THE ALLEGED TAKING OF THE PROPERTY SUBJECT OF THIS ACCUSATION CAN NO LONGER BE RE-LITIGATED IN THIS CRIMINAL ACTION.<sup>[13]</sup>

### **The Court's Ruling**

The petition has no merit.

In petitions for review on *certiorari* under Rule 45 of the Rules of Court, only questions of law may be raised, not issues of fact. The factual findings of the RTC, especially when affirmed by the CA, are generally binding upon this Court. Though this rule admits of some exceptions,<sup>[14]</sup> the Court finds no compelling reason to disturb the factual findings of the lower court, as affirmed by the CA.

*The prosecution sufficiently established all the elements of the crime charged.*

Simple robbery is committed by means of violence against or intimidation of persons, but the extent of the violation or intimidation does not fall under paragraphs 1 to 4 of Article 294 of the RPC.<sup>[15]</sup> For the successful prosecution of this offense, the following elements must be established: 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>[16]</sup>

In robbery, there must be an unlawful taking, which is defined as the taking of items without the consent of the owner, or by means of violence against or intimidation of persons, or by using force upon things.<sup>[17]</sup> As ruled in a plethora of cases, taking is considered complete from the moment the offender gains possession of the thing, even if he did not have the opportunity to dispose of the same.<sup>[18]</sup> Intent to gain or *animus lucrandi*, on the other hand, is an internal act that is presumed from the unlawful taking of the personal property belonging to another.<sup>[19]</sup>

In the present case, there is no doubt that the prosecution successfully established all the elements of the crime charged. France, the private complainant categorically testified that that petitioner demanded and eventually received from him the amount of Two Thousand Pesos (P2,000.00) in exchange for the release of his driver's license. When the marked money was placed inside petitioner's drawer, who counted it afterwards, he was deemed to have taken possession of the money. This amount was unlawfully taken by petitioner from France with intent to gain and through intimidation. As aptly observed by the CA, petitioner was a police officer assigned as an investigator at the Traffic Sector of Kamuning Police Station whose main duties and responsibilities included conducting inquiries involving traffic law violations and making reports of his investigation. While petitioner had the authority to confiscate the driver's license of traffic violators, nowhere in the law is he authorized to keep an offender's license and receive any payment for its return.

The Court likewise agrees with the courts *a quo* that petitioner employed intimidation to obtain the amount of P2,000.00 from France as the act performed by