

SECOND DIVISION

[G.R. No. 179462, February 12, 2009]

**PEDRO C. CONSULTA, APPELLANT, VS. PEOPLE OF THE
PHILIPPINES, APPELLEE,**

D E C I S I O N

CARPIO MORALES, J.:

The Court of Appeals having, by Decision of April 23, 2007,^[1] affirmed the December 9, 2004 Decision of the Regional Trial Court of Makati City, Branch 139 convicting Pedro C. Consulta (appellant) of Robbery with Intimidation of Persons, appellant filed the present petition.

The accusatory portion of the Information against appellant reads:

That on or about the 7th day of June, 1999, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent of gain, and by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously take, steal and carry away complainant's NELIA R. SILVESTRE gold necklace worth P3,500.00, belonging to said complainant, to the damage and prejudice of the owner thereof in the aforementioned amount of P3,500.00.

CONTRARY TO LAW.^[2] (Emphasis in the original, underscoring supplied)

From the evidence for the prosecution, the following version is gathered:

At about 2:00 o'clock in the afternoon of June 7, 1999, private complainant Nelia R. Silvestre (Nelia), together with Maria Viovicente (Maria) and Veronica Amar (Veronica), boarded a tricycle on their way to Pembo, Makati City. Upon reaching Ambel Street, appellant and his brother Edwin Consulta (Edwin) blocked the tricycle and under their threats, the driver alighted and left. Appellant and Edwin at once shouted invectives at Nelia, saying "*Putang ina mong matanda ka, walanghiya ka, kapal ng mukha mo, papatayin ka namin.*" Appellant added "*Putang ina kang matanda ka, wala kang kadala dala, sinabihan na kita na kahit saan kita matiempuhan, papatayin kita.*"

Appellant thereafter grabbed Nelia's 18K gold necklace with a crucifix pendant which, according to an "alajera" in the province, was of 18k gold, and which was worth P3,500, kicked the tricycle and left saying "*Putang ina kang matanda ka! Kayo mga nurses lang, anong ipinagmamalaki niyo, mga nurses lang kayo. Kami, marami kaming mga abogado. Hindi niyo kami maipapakulong kahit kailan!*"

Nelia and her companions immediately went to the Pembo barangay hall where they

were advised to undergo medical examination. They, however, repaired to the Police Station, Precinct 8 in Comembo, Makati City and reported the incident. They then proceeded to Camp Crame where they were advised to return in a few days when any injuries they suffered were expected to manifest.

Nine days after the incident or on June 16, 1999, Nelia submitted a medico-legal report and gave her statement before a police investigator.

Denying the charge, appellant branded it as fabricated to spite him and his family in light of the following antecedent facts:

He and his family used to rent the ground floor of Nelia's house in Pateros. Nelia is his godmother. The adjacent house was occupied by Nelia's parents with whom she often quarreled as to whom the rental payments should be remitted. Because of the perception of the parents of Nelia that his family was partial towards her, her parents disliked his family. Nelia's father even filed a case for maltreatment against him which was dismissed and, on learning of the maltreatment charge, Nelia ordered him and his family to move out of their house and filed a case against him for grave threats and another for light threats which were dismissed or in which he was acquitted.

Appellant went on to claim that despite frequent transfers of residence to avoid Nelia, she would track his whereabouts and cause scandal.

Appellant's witness Darius Pacaña testified that on the date of the alleged robbery, Nelia, together with her two companions, approached him while he was at Ambel Street in the company of Michael Fontanilla and Jimmy Sembrano, and asked him (Pacaña) if he knew a bald man who is big/stout with a big tummy and with a sister named Maria. As he replied in the affirmative, Nelia at once asked him to accompany them to appellant's house, to which he acceded. As soon as the group reached appellant's house, appellant, on his (Pacaña's) call, emerged and on seeing the group, told them to go away so as not to cause trouble. Retorting, Nelia uttered "*Mga hayop kayo, hindi ko kayo titigilan.*"

Another defense witness, Thelma Vuesa, corroborated Pacaña's account.

The trial court, holding that intent to gain on appellant's part "is presumed from the unlawful taking" of the necklace, and brushing aside appellant's denial and claim of harassment, convicted appellant of Robbery, disposing as follows:

WHEREFORE, premises considered, this Court finds accused PEDRO C. CONSULTA guilty beyond reasonable doubt, as principal of the felony of Robbery with Intimidation of Persons defined and penalized under Article 294, paragraph No. 5, in relation to Article 293 of the Revised Penal Code and hereby sentences him to suffer the penalty of imprisonment from one (1) year, seven (7) months and eleven (11) days of *arresto mayor*, as minimum, to eight (8) years, eight (8) months and one (1) day of *prision mayor*, as maximum, applying the Indeterminate Sentence Law, there being no mitigating or aggravating circumstances which attended the commission of the said crime.

The said accused is further ordered to pay unto the complainant Nelia

Silvestre the amount of P3,500.00 representing the value of her necklace taken by him and to pay the costs of this suit.

SO ORDERED. (Italics in the original, underscoring supplied)

The appellate court affirmed appellant's conviction with modification on the penalty.

In his present appeal, appellant raises the following issues:

- (1) Whether or not appellant was validly arraigned;
- (2) Whether or not appellant was denied due process having been represented by a fake lawyer during arraignment, pre-trial and presentation of principal witnesses for the prosecution;
- (3) Whether or not appellant has committed the crime of which he was charged; and
- (4) Whether or not the prosecution was able to prove the guilt of the appellant beyond reasonable doubt. (Underscoring supplied)

The first two issues, which appellant raised before the appellate court only when he filed his Motion for Reconsideration of said court's decision, were resolved in the negative in this wise:

On the matter of accused-appellant's claim of having been denied due process, an examination of the records shows that while accused-appellant was represented by Atty. Jocelyn P. Reyes, who "seems not a lawyer," during the early stages of trial, the latter withdrew her appearance with the conformity of the former as early as July 28, 2000 and subsequently, approved by the RTC in its Order dated August 4, 2000. Thereafter, accused-appellant was represented by Atty. Rainald C. Paggao from the Public Defender's (Attorney's) Office of Makati City. Since the accused-appellant was already represented by a member of the Philippine Bar who principally handled his defense, albeit unsuccessfully, then he cannot now be heard to complain about having been denied of due process.^[3] (Underscoring supplied)

That appellant's first counsel may not have been a member of the bar does not dent the proven fact that appellant prevented Nelia and company from proceeding to their destination. Further, appellant was afforded competent representation by the Public Attorneys' Office during the presentation by the prosecution of the medico-legal officer and during the presentation of his evidence. *People v. Elesterio*^[4] enlightens:

"As for the circumstance that the defense counsel turned out later to be a non-lawyer, it is observed that he was chosen by the accused himself and that his representation does not change the fact that Elesterio was undeniably carrying an unlicensed firearm when he was arrested. At any rate, he has since been represented by a member of the Philippine bar, who prepared the petition for *habeas corpus* and the appellant's brief." (Underscoring supplied)