

SECOND DIVISION

[G.R. No. 135784, December 15, 2000]

RICARDO FORTUNA Y GRAGASIN, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

DECISION

BELLOSILLO, J.:

Perhaps no other profession in the country has gone through incessant maligning by the public in general than its own police force. Much has been heard about the notoriety of this profession for excessive use and illegal discharge of power. The present case is yet another excuse for such vilification.

On 21 July 1992 at about 5:00 o'clock in the afternoon, while Diosdada Montecillo and her brother Mario Montecillo were standing at the corner of Mabini and Harrison Streets waiting for a ride home, a mobile patrol car of the Western Police District with three (3) policemen on board stopped in front of them. The policeman seated on the right at the front seat alighted and without a word frisked Mario. He took Mario's belt, pointed to a supposedly blunt object in its buckle and uttered the word "evidence."^[1] Then he motioned to Mario to board the car. The terrified Mario obeyed and seated himself at the back together with another policeman. Diosdada instinctively followed suit and sat beside Mario.

They cruised towards Roxas Boulevard. The driver then asked Mario why he was carrying a "deadly weapon," to which Mario answered, "for self-defense since he was a polio victim."^[2] The driver and another policeman who were both seated in front grilled Mario. They frightened him by telling him that for carrying a deadly weapon outside his residence he would be brought to the Bicutan police station where he would be interrogated by the police, mauled by other prisoners and heckled by the press. As they approached *Ospital ng Maynila*, the mobile car pulled over and the two (2) policemen in front told the Montecillos that the bailbond for carrying a "deadly weapon" was P12,000.00. At this point, the driver asked how much money they had. Without answering, Mario gave his P1,000.00 to Diosdada who placed the money inside her wallet.

Diosdada was then made to alight from the car. She was followed by the driver and was told to go behind the vehicle. There, the driver forced her to take out her wallet and rummaged through its contents. He counted her money. She had P5,000.00 in her wallet. The driver took P1,500.00 and left her P3,500.00. He instructed her to tell his companions that all she had was P3,500.00. While going back to the car the driver demanded from her any piece of jewelry that could be pawned. Ruefully, she removed her wristwatch and offered it to him. The driver declined saying, "Never mind,"^[3] and proceeded to board the car. Diosdada, still fearing for the safety of her brother, followed and sat beside him in the car.

Once in the car, Diosdada was directed by the policeman at the front passenger seat to place all her money on the console box near the gearshift. The car then proceeded to Harrison Plaza where the Montecillos were told to disembark. From there, their dreadful experience over, they went home to Imus, Cavite.

The following day Diosdada recounted her harrowing story to her employer Manuel Felix who readily accompanied her and her brother Mario to the office of General Diokno where they lodged their complaint. Gen. Diokno directed one of his men, a certain Lt. Ronas, to assist the complainants in looking for the erring policemen. They boarded the police patrol car and scoured the Mabini area for the culprits. They did not find them.

When they returned to the police station, a line-up of policemen was immediately assembled. Diosdada readily recognized one of them as the policeman who was seated beside them in the back of the car. She trembled at the sight of him. She then rushed to Lt. Ronas and told him that she saw the policeman who sat beside them in the car. He was identified by Lt. Ronas as PO2 Ricardo Fortuna. A few minutes later, Gen. Diokno summoned the complainants. As they approached the General, they at once saw PO2 Eduardo Garcia whom they recognized as the policeman who frisked Mario. The following day, they met the last of their tormentors, the driver of the mobile car who played heavily on their nerves - PO3 Ramon Pablo.

The three (3) policemen were accordingly charged with robbery. After trial, they were found guilty of having conspired in committing the crime with intimidation of persons. They were each sentenced to a prison term of six (6) years and one (1) day to ten (10) years of *prision mayor*, to restitute in favor of private complainants Diosdada Montecillo and Mario Montecillo the sum of P5,000.00, and to indemnify them in the amount of P20,000.00 for moral damages and P15,000.00 for attorney's fees.^[4]

The accused separately appealed to the Court of Appeals. On 31 March 1997 the appellate court affirmed the lower court's verdict.^[5] Accused-appellant Ricardo Fortuna moved for reconsideration but the motion was denied. Hence, this petition by Fortuna alone under Rule 45 of the Rules of Court. He contends that the appellate court erred in holding that private complainants gave the money to the accused under duress, the same being negated by the prosecution's evidence, and in affirming the decision of the court below. He argued that the evidence presented by the prosecution did not support the theory of conspiracy as against him.^[6]

The issues raised by accused-appellant, as correctly observed by the Solicitor General, are purely factual. We have consistently stressed that in a petition for review on *certiorari* this Court does not sit as an arbiter of facts. As such, it is not our function to re-examine every appreciation of facts made by the trial and appellate courts unless the evidence on record does not support their findings or the judgment is based on a misappreciation of facts.^[7] The ascertainment of what actually happened in a controverted situation is the function of the lower courts. If we are to re-examine every factual finding made by them, we would not only be prolonging the judicial process but would also be imposing upon the heavily clogged dockets of this Court.