

## **TWELFTH DIVISION**

**[ CA–G.R. CR HC No. 05750, March 11, 2014 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
VIRGILIO BRAZIL Y ABAD, ACCUSED-APPELLANT.**

### **D E C I S I O N**

**DICDICAN, J.:**

Before this Court is an appeal seeking the reversal of the Decision dated March 5, 2012<sup>[1]</sup> rendered by the Regional Trial Court (RTC) of Quezon City, Branch 219, finding accused-appellant Virgilio Brazil y Abad guilty beyond reasonable doubt of robbery with homicide in conspiracy with one Raul Ocampo, Jr. y Baltazar. Likewise assailed is the Order dated July 10, 2012<sup>[2]</sup> issued by the same court denying Appellant's Motion for Reconsideration.<sup>[3]</sup>

In an Information dated November 26, 2002,<sup>[4]</sup> accused-appellant was charged of robbery with homicide, in conspiracy with Raul Ocampo, Jr. y Baltazar and the deceased Ildefonso Gratela II y Casia, committed as follows:

"That on or about the 24<sup>th</sup> day of November 2002, in Quezon City Philippines, the said accused, conspiring, confederating with one ILDEFONSO GRATELA II Y CASIA (now deceased) and mutually helping one another, with intent of gain, by means of force, violence and/or intimidation, did then and there willfully, unlawfully and feloniously rob one MARIFE AYSON-DUMADAG Y RUSIANA in the following manner, to wit: on the date and place aforementioned while complainant was walking along N. Domingo Street, Brgy. Valencia, this City, on her way to a nearby church, accused by means of conspiracy, who were on board a red Toyota Corona with plate No. NCY-627 suddenly alighted therefrom, and at gunpoint, forcibly grabbed, snatched, and carried away one (1) unit 3310 Nokia cellphone valued at P3,000.00 Philippine Currency, belonging to MARIFE AYSON-DUMADAG Y RUSIANA, to the damage and prejudice of said offended party; that on the occasion of said Robbery, accused sped-off towards the direction of Cubao resulting in a running gunbattle between accused and the apprehending police officers, as a result thereof, accused ILDEFONSO GRATELA II Y CASIA was shot and killed in the firefight, to the damage and prejudice of offended party, Marife Ayson-Dumadag y Rusiana.

"CONTRARY TO LAW."

The accused-appellant pleaded not guilty during the arraignment.<sup>[5]</sup> A pre-trial was conducted by the trial court. Thereafter, trial on the merits ensued.

During the trial, on April 3, 2003 and April 24, 2003, the prosecution presented Marife Dumadag, the victim of the robbery. On the latter date, or on April 24, 2003,

accused-appellant's counsel conducted his cross examination. She confirmed and reiterated material facts as set out in the Information as follows:

On November 24, 2002, she (Marife Dumadag) was walking along Domingo St., Quezon City when a red car, carrying three people, passed her by. A man from that car later alighted and chased her. The man started talking to her but before he could finish his own sentence, he drew out a gun, pointed it at her stomach and demanded for and snatched her cellphone. The man was later identified by Marife Dumadag as herein accused-appellant. Fortunately for Marife Dumadag, policemen were in the area at that time. The policemen saw accused-appellant rushing back to the red car while Marife Dumadag was shouting, hence, the policemen, aboard their mobile police car, chased the red car of Appellant. A second police mobile car picked up Marife Dumadag and joined the car chase all the way to Pasig City where the red car bumped a parked van and a lamp post. Two persons inside the red car were subsequently arrested by the police. The third man inside the car was left there in the meantime as he was already dead, as a result of a firefight or gun-battle between the police officers and the offenders.<sup>[6]</sup>

On succeeding trial dates, the Public Prosecutor presented SPO2 Moises Tacdol and PO3 Ronaldo Amar as witnesses, both finishing their testimonies on cross-examination.<sup>[7]</sup> The testimony of SPO1 Crescenciano Bajao was dispensed with as the parties agreed to stipulate that he was the investigator of the case and that he took down the statement of Mary Ayson-Dumadag.<sup>[8]</sup> The Public Prosecutor then formally offered his evidence and rested his case.<sup>[9]</sup>

On April 6, 2010, Raul Ocampo, Jr. was called to the witness stand<sup>[10]</sup> and his testimony on cross-examination was completed on May 25, 2010.<sup>[11]</sup>

Raul Ocampo, Jr's co-accused, herein accused-appellant Virgilio Brazil, was then called to testify on direct and cross examination on October 21, 2010.<sup>[12]</sup> He narrated that on November 17, 2002, he was at the residence of his sister in Pasay City, waiting for Spouses Rey and Trinidad Esguerra. When Mrs. Esguerra arrived, accused-appellant went with her to Maybunga Street in Pasig City to look for a junk shop where they may find scrap metals which they will buy and sell for profit as Mrs. Trinidad is engaged in a junk shop business. While walking along Maybunga Street, Pasig City, a red car suddenly appeared and hit a public utility jeep. A mobile police car followed and a policeman soon came out and started shooting at the red car. As a result, people in the area ran for safety, including accused-appellant. The policeman however shouted for accused-appellant to stop running, otherwise he would be shot. The accused-appellant complied and he was subsequently ordered to lay face-down while the police officer handcuffed him and forcibly placed him in the police car without explaining why he was being arrested. Accused-appellant was then brought to Camp Panopio where he was beaten by the arresting officer and robbed of the P15,000.00 that he had with him, which amount was intended for the purchase of scrap metals. An hour later, he was brought to Camp Karingal where he met Raul Ocampo, Jr. for the first time. On November 24, 2002, an Information for robbery with homicide was filed against him and Raul Ocampo, Jr.<sup>[13]</sup>

Trinidad Esguerra was then presented as a witness on succeeding trial dates, after which, accused-appellant's counsel rested his case, there being no other witnesses to be presented.<sup>[14]</sup>

In the assailed Decision dated March 5, 2012, the lower court found accused-appellant Virgilio Brazil and Raul Ocampo, Jr. guilty beyond reasonable doubt of the crime of robbery with homicide, the dispositive portion of the said decision states as follows:

“WHEREFORE, finding the accused VIRGILIO BRAZIL Y ABAD and RAUL OCAMPO JR. y BALTAZAR guilty beyond reasonable doubt, they are hereby sentenced to suffer the penalty of RECLUSION PERPETUA , with both accused eligible for parole, pursuant to the provisions of the Revised Penal Code.”<sup>[15]</sup>

Herein accused-appellant filed a Motion for Reconsideration of the above-quoted Decision in the lower court while co-accused Raul Ocampo, Jr. prayed to be released on parole.<sup>[16]</sup> In the assailed Order dated July 10, 2012, the lower court denied Appellant’s Motion for Reconsideration.

Hence, this appeal wherein the accused-appellant submits the following issues for resolution:

I.

WHETHER OR NOT ACCUSED-APPELLANT WAS PART OF THE GROUP OF RAUL OCAMPO IN THE COMMISSION OF THE ALLEGED ROBBERY.

II.

WHETHER OR NOT THERE IS ADMISSIBLE EVIDENCE TO SHOW THAT ACCUSED-APPELLANT WAS THE PERSON WHO TOOK THE CELLPHONE OF PRIVATE COMPLAINANT.

III.

WHETHER OR NOT THE TRIAL COURT CAN CONSIDER IN EVIDENCE THE TESTIMONY OF PRIVATE COMPLAINANT NOTWITHSTANDING THE UNJUSTIFIED FAILURE OF THE SAME TO RETURN TO THE WITNESS STAND FOR THE COMPLETION OF HER CROSS-EXAMINATION.

IV.

WHETHER OR NOT THE DEATH OF A ROBBER AT THE HANDS OF A POLICEMAN DURING A RUNNING GUN BATTLE CAN MAKE THE CRIME OF ROBBERY A COMPLEX CRIME OF ROBBERY WITH HOMICIDE.

V.

WHETHER OR NOT THE ACCUSED-APPELLANT COULD BE LIABLE FOR THE DEATH OF ANOTHER ACCUSED LAWFULLY SHOT BY A POLICEMAN.

VI.

WHETHER OR NOT THE PENALTY OF RECLUSION PERPETUA IS COMMENSURATE TO THE CRIME IMPUTED UPON ACCUSED-APPELLANT<sup>[17]</sup>.

The appeal has no merit.

The first two issues raised by the accused-appellant are factual in nature. It is well entrenched in this jurisdiction that factual findings of the trial court on the credibility of witnesses and their testimonies are entitled to the highest respect and will not be disturbed on appeal in the absence of any clear showing that it overlooked, misunderstood, or misapplied some facts or circumstances of weight and substance that would affect the result of the case. Having seen and heard the witnesses themselves and observed their behavior and manner of testifying, it was in a better position to decide the question of credibility.<sup>[18]</sup>

Certainly, the lower court properly found that accused-appellant was part of the group of Raul Ocampo in the commission of the crime as he was positively identified by Marife Dumadag as the one who threatened her with a gun and snatched her cellphone. Hence, the case for the prosecution rests on the positive identification of the accused-appellant by his victim while the defense of accused-appellant rests on alibi.

The Supreme Court in *People vs Villarico*<sup>[19]</sup> elucidated that “truly, a positive identification that is categorical, consistent, and devoid of any showing of ill or vile motive on the part of the prosecution witnesses always prevails over alibi and denial that are in the nature of negative and self-serving evidence. To be accepted, the denial and alibi must be substantiated by clear and convincing evidence establishing not only that the accused did not take part in the commission of the imputed criminal act but also that it was physically impossible for the accused to be at or near the place of the commission of the act at or about the time of its commission”.

Hence, given Marife Dumadag’s positive and unequivocal identification of herein accused-appellant, absent any ill-will or motive on the part of the witness, the accused-appellant’s defense of denial and alibi must fail.

As to the third issue, accused-appellant is of the opinion that the testimony of Marife Dumadag should have been stricken off from the records because she did not return to the witness stand for completion of her cross-examination. We find that this issue had long been duly laid to rest by the lower court on February 18, 2005 as reflected in the Order of the same date, pertinent portion of which states as follows:

“For consideration is the motion of the defense counsel to strike off from the records of this case the testimony of private complainant Marife Dumadag on the ground of her repeated failure to appear in court despite notice for the continuation of her cross-examination.

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However, upon perusal of the transcript of stenographic notes of the witness, the court came to the conclusion to DENY the motion. As enunciated in the case of *People vs Barasina* GR No. 10993, July 21, 1994, what is proscribed by statutory norm (Section 1 [f], Rule 115 of the Rules of Criminal Procedure) and its jurisprudential precept is the absence of the opportunity to cross-examine the witness (*US vs Javier* 37 Phil 449 (1918); 2 Regalado Remedial Law Compendium, 1988 ed., p. 296) and certainly does not cover the situation where the witness had been extensively examined on material points and thereafter failed to appear (*People vs Gorospe* 129 SCRA 233 {1984}; Regalada Vide at p.