

FIRST DIVISION

[CA – G.R. CR No. 35452, December 18, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
HERALD GONZALES Y DAVID AND CHRISTOPHER AZORES Y DE
ASIS, ACCUSED,**

HERALD GONZALES Y DAVID, ACCUSED-APPELLANT.

D E C I S I O N

BRUSELAS, JR. J.:

Accused-appellant Herald Gonzales ("Gonzales") appeals from the Judgment^[1], rendered on 05 November 2012 by the Regional Trial Court (RTC), finding him and his co-accused Christopher Azores ("Azores") guilty of robbery as principal and accomplice, respectively, the dispositive portion of which reads:

"PREMISES CONSIDERED, the Court finds accused HERALD GONZALES y DAVID guilty beyond reasonable doubt of the crime charged as principal by direct participation and is hereby sentenced to suffer the penalty of imprisonment ranging from 3 years and 1 day of *prision correccional* as minimum to 8 years and 20 days of *prision mayor* as maximum. Accused CHRISTOPHER AZORES Y DE ASIS is found guilty beyond reasonable doubt of the crime charged as accomplice and is sentenced to suffer the penalty of imprisonment ranging from 4 months and 1 day of *arresto mayor* as minimum to 3 years, 6 months and 1 day of *prision correccional* as maximum.

Both accused are ordered to restitute Eldrin Cabrigas his ZTC Nokia mobile phone or its value of P2,000.00 and his cash amounting to P600.00. Being a mere accomplice, Christopher Azores is held solidarily liable with Herald Gonzales only for half the amount.

Without cost.

SO ORDERED."^[2]

After the arrest of Gonzales and Azores on 14 May 2012, PO2 Feliciano Cristobal prepared the corresponding Arrest Reports and Booking Sheets^[3] while private complainant Eldrin Cabrigas executed his *Sinumpaang Salaysay ng Pagrereklamo*^[4]. The arresting officers likewise executed their Joint Affidavit of Apprehension^[5] and, thereafter, Gonzales and Azores underwent inquest proceedings. The accusatory portion of the Information dated 16 May 2012 reads:

"That on or about May 14, 2012, in the City of Manila, Philippines, the said accused, conspiring and confederating together and mutually helping each other, with intent to gain and by means of force, violence and intimidation, to wit: while ELDRIN CABRIGAS y GUEVARRA was walking along Perla corner Quezon Streets, Tondo, this City, accused blocking his way, poking a bladed weapon upon him and uttering "HOLD-UP TO", did then and there willfully, unlawfully and feloniously take, rob and carry away one (1) "ZTC" cellular phone worth Php2,000.00, one (1) shoulder bag containing cash amounting to Php600.00, or all with a total amount of Php2,600.00, belonging to said ELDRIN CABRIGAS y GUEVARRA against his will, to the damage and prejudice of the said owner in the aforesaid amount of Php2,600.00, Philippine Currency.

Contrary to law"^[6]

With the assistance of their counsel *de officio*, Gonzales and Azores entered their plea of not guilty to the offense with which they were charged. The plaintiff-appellee presented as witnesses: private complainant Eldrin Cabrigas and his niece Angelica Gone and the arresting officer PO1 Michael Salinas. The plaintiff-appellee's version of the facts are as follows:

On 14 May 2012, at around 12:00 to 12:20 o'clock in the morning, Eldrin Cabrigas ("Cabrigas"), his niece Angelica Gone ("Lyka") and a friend named EJ went out to buy some snacks at a store located at Perla corner Quezon Streets in Tondo, Manila. Because the store had already closed for the night, they went back home. While on their way back, Cabrigas had been texting on his cellphone. Gonzales suddenly approached Cabrigas from the right side, poked a knife at the latter and said, "*Hold-up to*". Meanwhile, Azores stood by the door of a house three to four meters away from them and served as a lookout. Lyka and EJ were just two arm stretches away from Cabrigas and saw the incident but did nothing out of fear and, instead, they walked away from Cabrigas. Gonzales took Cabrigas' ZTC-Nokia cellphone worth P2,000.00 and bag which contained P600.00 cash. Overwhelmed by shock, Cabrigas could not do anything and simply let Gonzales and Azores leave with his valuables. Cabrigas and his companions immediately went to the Don Bosco Police Station to report the incident. Thereafter, they were accompanied by four police officers to the place of incident on board a patrol vehicle. As they did not see the perpetrators at the area of the robbery, they roved around and headed to Sta. Fe and Canlas Streets which were near the area where the robbery had transpired. There, they saw Gonzales and Azores sitting on a bench in the company of other persons. Cabrigas and his companions pointed to Gonzales and Azores as the perpetrators and the latter two were immediately brought to the Don Bosco Police Station. A search of their persons yielded nothing.

Lyka testified that she and EJ had been walking ahead of Cabrigas on their way home at around 12:00 to 12:30 in the morning of 14 May 2014. While walking, Lyka every so often looked behind her and noticed Cabrigas texting with his cellphone. She also noticed two men who came from Quezon Street. One of them was shirtless, wore a cap and had his face covered with a red t-shirt. The other one had yellow hair and missing teeth. He too covered his face with a towel. Every now and then, Lyka could see their faces because the coverings often fell off their faces. Suddenly, the shirtless man uttered, "*Putang ina hold-up ito.*" The other man just

laughed while the shirtless man poked a knife at Cabrigas and took his bag and cellphone. Lyka could not shout for help for fear that the robbers might hurt Cabrigas. They immediately went to the nearest police station to report soon after the incident.

Police Officer 1 Michael Salinas ("PO1 Salinas") had been on duty at Manila Police District Police Station 1 (MPD PS1) Don Bosco Police Community Precinct (PCP) together with other police officers at the time of the incident. He had been patrolling at Capulong Street, Tondo, Manila when he received a phone call from the desk officer. He and his fellow police officers were directed to return to the precinct due to a reported robbery incident. PO1 Salinas was told by Cabrigas that the latter could identify the perpetrators if he sees them again. The officers thus took the victim with them and proceeded to the crime scene on board a patrol vehicle, but they did not see the perpetrators there. When they traversed the corner of Sta. Fe and Kamias Streets, Cabrigas saw two men sitting on a wooden bench. He immediately pointed to them as the perpetrators. Thus, PO1 Salinas and police officer Sunga apprehended the two men. The police officers, however, were not able to recover a cellphone or money from these men. The suspects were apprised of their constitutional rights.

After the plaintiff-appellee rested its case, the trial court directed Gonzales and Azores to present their evidence. To exculpate themselves from criminal liability, the two interposed the defense of denial and alibi. They adduced their own testimonies which hewed to the following version of the facts:

Azores worked at a salon in Tutuban Mall and usually stayed until 10:00 o'clock in the evening. In the evening of 13 May 2012, he left the salon and arrived home at 10:00 o'clock in the evening. He later went out to buy cigarettes at a store located at the vicinity of Sta. Fe and Kamias Streets. It was five streets away from his house. He had seen Gonzales at the store talking with five men. He knew Gonzales having known him for three years. After he had bought cigarettes, he stood in front of the store. Right then and there, some police officers arrived and suddenly arrested him. The police officers also arrested Gonzales while the other men escaped. He had no idea why he was arrested and handcuffed but he was told, "*Basta sumama ka na lang.*" When they arrived at the police station in Don Bosco, he saw Cabrigas talking with the police officers and who later pointed at him. He has not met Cabrigas before.

For his part, Gonzales recalled that about 11:00 o'clock in the evening of 13 May 2012, he was at a computer shop inside a store watching a music video. Thereafter, he left the store to see his friends at their meeting place along Sta. Fe Street. Although he had not done anything wrong, some police officers arrived at the place and poked their guns at him. He was arrested without being informed of the reason of his arrest. He was simply told, "*Sumama ka na lang sa amin.*" When they arrived at the Don Bosco PCP, a person named Eldrin Cabrigas pointed at him and Azores who had been arrested too because the latter allegedly told the police officers that he was his cohort. He learned that Azores had been arrested at a store two meters away from their meeting place.

On 05 November 2012, the trial court rendered a decision finding Gonzales and Azores guilty of robbery as principal by direct participation and accomplice, respectively. In giving credence to the testimonies of the prosecution witnesses, the

trial court ratiocinated as follows:

"Eldrin and Angelica both said the place of the incident was not well-lit; the light from the Meralco post was not very bright but there was light emanating from the houses 2 meters away. The fact that the crime was committed in a dark and unlighted place does not cast doubt on the complainant's positive identification of the culprits [People versus Banela, 301 SCRA 84].

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Eldrin and Angelica were categorical in their identification of Herald as the robber. Where there is nothing to show that the witnesses for the prosecution were actuated by improper motive, their positive and categorical declaration on the witness stand, under the solemnity of an oath, deserve full faith and credence [People versus Asis, 624 SCRA 509].

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Both accused failed to convince the Court that it was physically impossible for them to be at the scene of the crime. Physical impossibility refers to a distance between the place where the accused was when the crime was committed as well as to the facility of access between the two places [People versus Atadero, 634 SCRA 327].

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There being insufficient evidence to prove conspiracy between the two accused, Christopher could only be held liable as an accomplice. As a rule, if there is lack of complete evidence of conspiracy, the liability, is that of an accomplice and not as principal since any doubt in the commission of the crime is always resolved in favor of lesser responsibility [People versus Tulin, 364 SCRA 10].^[7]

Aggrieved, Gonzales solely appeals his conviction to us and assigns the following errors allegedly committed by the trial court, to wit:

"I.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO COMPLETELY PROVE HIS IDENTITY AS THE PERPETRATOR OF THE CRIME CHARGED.

II.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT."

Gonzales contends that the prosecution witnesses' respective accounts about his alleged participation in the robbery are far from being credible due to the attendant improbabilities and inconsistencies. The attending circumstances, such as: (a) the place of the incident which had poor illumination; (b) the faces of the perpetrators that had been covered during the incident and; (c) the distance between Cabrigas and Lyka and her position that made it impossible for the latter to recognize the perpetrators, engender doubt as to Gonzales' culpability. He further contends that the disposition of the witnesses, being frightened, as well as the swiftness of the incident, affected their ability to accurately perceive the unfolding events.

The contentions of the accused-appellant are devoid of merit.

Positive and categorical assertions of a witness prevail over bare denial^[8], which is a negative and self serving evidence. It cannot be given greater weight than the testimony of credible witnesses who testified on affirmative matters. Between the positive declarations of the prosecution witnesses and the negative statements of the accused, the former deserve more credence.^[9]

In his *Sinumpaang Salaysay ng Pagrereklamo*^[10] Cabrigas narrated that Gonzales approached him and suddenly poked a knife at him saying, "*Holdap to!*" His cellphone worth P2,000.00 and shoulder bag which contained P600.00 cash were grabbed by Gonzales while Azores, who stood nearby, acted as a look-out. He likewise positively confirmed the identity of accused-appellant Gonzales when he saw him again not far from the crime scene. Thus he averred:

"xxx maya-maya pa ng malapit na kami sa kanto ng Sta. Fe at Kamias Street ay aming nakita ang mga dalawang Suspek kaya agad naming sinabi sa mga Pulis na aming kasama at positibo kong itinuro at ng aking mga kasamahan ang dalawa na silang nanutok at nangholdap at kumuha ng mga gamit kong nabanggit sa itaas, kaya agad nilang hininto ang sasakyan at nilapitan ang dalawa (mga Suspek) na tatakbo pa sana papatakas, mabuti nalang ay naharang na sila kaagad ng mga Pulis at naaresto, tinanong ulit ako ng mga Pulis kung sigurado ako na ang dalawang kanilang inaresto ay silang nangholdap sa akin, na positibo ko at ng aking mga kasamahan na itinuro na ang dalawang inaresto ay ang nangholdap sa akin, dahil tandang tanda namin ang kanilang mga itsura, xxx"^[11]

From the foregoing averments, it is clear that Gonzales was positively identified by Cabrigas and his companions when they spotted him within the vicinity of the crime scene. Nothing can be inferred from the sworn statement of Cabrigas that he had doubts as to the identity of Gonzales as one of the perpetrators. Further, the contents of his statement are consistent with his testimonial declarations which remained straightforward despite attempts by the defense counsel to mislead him and impeach his credibility on cross-examination, thus:

"CROSS-EXAMINATION BY ATTY. RABE: