Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames

Please take notice that the Court, Third Division, issued a Resolution dated **February 8, 2023**, *which reads as follows:*

"G.R. No. 263313 (Romald De Rosales *y* Candelaria a.k.a. "Umad/Matmat," Christian Maximo *y* Mariñas a.k.a. "Chris," *Petitioners* v. People of the Philippines, *Respondent*). — The Court **NOTES** petitioners' Manifestation dated October 7, 2022, submitting a Universal Serial Bus containing the soft copy of the petition, Annex A (Court of Appeals decision) and the verified declaration of electronic submission of the filed soft copy of the petition in compliance with the Rules on E-Filing (A.M. No. 10-3-7-SC) and the Efficient Use of Paper Rule (A.M. No. 11-9-4-SC).

Before the Court is a Petition for Review on *Certiorari*[1] filed by Romald De Rosales *y* Candelaria a.k.a. "Umad/Matmat" (Matmat) and Christian Maximo *y* Mariñas a.k.a. "Chris" (Chris) (petitioners) which assails the Decision[2] dated August 31, 2022 of the Court of Appeals (CA) in CA-G.R. CR No. 45577. The CA affirmed with modification the Decision dated December 20, 2019 and the Order dated October 8, 2020 of Branch 118, Regional Trial Court (RTC), Pasay City in Criminal Case No. R-PSY-18-1754-CR that found petitioners guilty of Robbery (Extortion) under Article 293 in relation to Article 294(5) of the Revised Penal Code (RPC).[3]

The Court resolves to deny the present petition for failure of the petitioners to sufficiently show that the CA committed any reversible error in finding them guilty beyond reasonable doubt of the crime of Robbery/Extortion.

As a general rule, the Court's jurisdiction in a petition for review on *certiorari* under Rule 45 of the Rules of Court is limited to the review of pure questions of law; a Rule 45 petition does not allow the review of questions of fact because the Court is not a trier of facts.[4]

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1 *Rollo*, pp. 3-20.
2 Id. at 22-34. Penned by Associate Justice Florencio M. Mamauag, Jr. and concurred in by Associate Justices Victoria Isabel A. Paredes and Jose Lorenzo R. Dela Rosa.
3 Id. at 22.
4 *Ledesma v. People*, G.R. No. 238954, September 14, 2020.

Notably, the arguments advanced by petitioners to support their contention that their guilt was not proven beyond reasonable doubt assail National Bureau of Investigation (NBI) Special Investigator (SI) Joel Otic's credibility as a witness, which essentially is a question of fact. If a question posed requires the reevaluation of the credibility of witnesses, the issue is factual.[5]

The findings of fact of the trial court, especially when sustained by the CA as in this case, carry great weight and respect due to the unique opportunity afforded them to observe the witnesses when placed on the stand.[6] And, although there are several exceptions[7] to the rule that factual questions cannot be passed upon in a Rule 45 petition, the Court does not find the existence of any in the case.

In any event, the CA did not err when it affirmed petitioner's conviction for Simple Robbery.

Under Article 293 of the RPC, Simple Robbery is committed by means of violence against or intimidation of persons. For the successful prosecution of robbery, 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.[8]

Verily, 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.[9] "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."[10]

All of the accused employed intimidation to obtain money from the complainants by representing themselves as NBI agents who could help release Xiaowu Fu (Fu) from prison. SI Otic categorically testified

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5 *Ablaza v. People*, G.R. No. 217722, September 26, 2018.

6 *Geroy, Jr. v. People*, G.R. No. 256578 (Notice), December 7, 2021.

7 (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record. (*Miano, Jr. v. MERALCO*, 800 Phil. 118 (2016). See also *Imperial v. People*, G.R. No. 230519, June 30, 2021.)

8 *Flores v. People*, 830 Phil. 635, 645 (2018).

9 Id.

10 *People v. Talban*, G.R. No. 233658 (Notice), January 29, 2020.

that Chris demanded and coerced Fu and Joan Diez Golfere (Golfere) into paying the amount of ₱40,000.00 in exchange for the release of Fu's travel documents.[11] This was bolstered by the fact that Chris had in his possession Fu's passport and visa application for no justifiable reason;[12] the marked money was also recovered from Chris when they were arrested during the entrapment, which proves that he was able to gain possession of Fu's money.[13]

Petitioners, however, contend that the element of unlawful taking was not duly established because there was no fluorescent powder found on the hands of Chris.[14] This detail is irrelevant. The presence of ultraviolet fluorescent powder is not an indispensable evidence to prove that the accused received the marked money; the failure of the police operatives to use fluorescent powder on the boodle money is not an indication that the entrapment operation did not take place.[15] What is essential is that the prosecution was able to establish that at the time of the arrest, the marked money was recovered from the accused.[16]

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; actual gain is irrelevant as the important consideration is the intent to gain.[17] Notably, Section 3(j), Rule 131 of the Rules of Court provides the presumption that a person found in possession of a thing taken in the doing of a recent wrongful act is the taker and the doer of the whole act.[18]

Plainly, all the elements of Simple Robbery are present in the case.

On petitioner's assertion that the trial court erred in relying on the testimony of SI Otic, which they alleged to be considered as hearsay, considering that he had no personal knowledge of the transaction between private complainants and the accused, the Court agrees with the CA's findings:

> The fact that the private complainants did not testify at the trial is not fatal to the prosecution's case. SI Otic witnessed the commission of the crime. He had personal knowledge of what transpired. Prior to the entrapment operation, he was in the NBI office when private complainants reported the extortion. He heard [Chris] and Golfere talk about the accused-appellants' demand for money. Upon

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[11] *Rollo*, p. 30.
[12] Id. at 27.
[13] Id. at 31.
[14] Id.
[15] *Flores v. People*, 830 Phil. 635, 645 (2018).
[16] *People v. Avancena*, 810 Phil. 672, 691 (2017).
[17] *Geroy, Jr. v. People*, G.R. No. 256578 (Notice), December 7, 2021; *People v. Cariño*, G.R. No. 232624, July 9, 2018.
[18] *People v. Donio*, 806 Phil. 578, 592 (2017).

> verification that they are not members of the NBI, SI Otic and his team planned and implemented the entrapment operation. During the operation, he was inside his car which was parked in the parking area and he saw everything that was taking place between private complainants and Chris. He saw Chris approach private complainants and demand money from them. During all those times, he also coordinated with SA Dela Cruz by phone for the real time update on the transaction. When private complainants gave the money to Chris, SA Dela Cruz gave the pre-arranged signal which led to the apprehension of Chris. SI Otic and his team also recovered the marked money, passport and visa application of Fu from Chris.
>
> SI Otic's testimony cannot, therefore, be considered as hearsay. His testimony is based on what he actually heard, perceived and witnessed during the whole operation from the time that the private complainants came to the NBI office to complain, to the planning of the entrapment operation until its full implementation under his command. His team was there to watch the transaction from a distance, to act as furtively as possible, and to close in and act only when the opportunity arose.[19]

Petitioners also argue that the prosecution failed to adduce evidence to prove that Matmat and John conspired with Chris in committing the crime considering that while they were both found inside the Mercedes Benz with Chris during the entrapment operation, they were not together when Chris received the money from Fu. They ratiocinate that the mere presence of Chris' co-accused at the scene of the crime or even knowledge of the plan or acquiescence thereto is not sufficient to hold them liable as conspirators; their presence inside the car used by Chris is not proof of a concerted action at all.[20]

The argument fails.

The matter of who actually received the money from Fu is inconsequential in the case as both the RTC and the CA found that all the accused conspired in committing the robbery in question.

There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it; any active participation in the commission of the crime with a view to the furtherance of the common design and purpose constitutes conspiracy.[21] In terms of proving its existence, proof of conspiracy need not be based on direct evidence; it may also be inferred from the acts of the accused evincing a joint or common purpose and design, concerted action, and community of interest.[22]

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[19] *Rollo*, p. 31.
[20] Id. at 28.
[21] *People v. Boringot*, G.R. No. 245544, March 21, 2022.
[22] *People v. Casabuena*, G.R. No. 246580, June 23, 2020.

As correctly observed by the CA, after Chris' arrest, the NBI team found John and Matmat inside the car along with the fake NBI IDs, firearms, and cash; they were with Chris the whole time from the moment he demanded money from the complainants until he was arrested after receiving the marked money. There was also no reasonable explanation given by John and Matmat as to why they were inside Chris' car and in possession of the fake NBI IDs, firearms, and cash, when they were apprehended.[23] Consequently, once a conspiracy has been established, the act of one malefactor is the act of all.[24] "One who joins a criminal conspiracy adopts the criminal designs of his co-conspirators and can no longer repudiate the conspiracy once it has materialized."[25]

All told, the Court of Appeals correctly sustained the RTC's conviction of petitioners for Simple Robbery.

On the matter of the penalty to be imposed, Simple Robbery under Article 294(5) of the RPC is punishable by *prision correccional* in its maximum period to *prision mayor* in its medium period or four years, two months and one day to ten years. Applying the Indeterminate Sentence Law, the minimum imposable penalty is *arresto mayor* in its maximum period to *prision correccional* in its medium period, or four months and one day to four years and two months. The maximum term shall be *prision correccional* in its maximum period to *prision mayor* in its medium period, or four years, two months, and one day to 10 years. There being no modifying circumstances, the CA correctly imposed against the petitioners the penalty of four years and two months of *prision correccional*, as minimum, to eight years of *prision mayor*, as maximum.[26]

WHEREFORE, the petition is **DENIED**. The Decision dated August 31, 2022 of the Court of Appeals in CA-G.R. CR No. 45577 is hereby **AFFIRMED**. Petitioners Romald De Rosales *y* Candelaria a.k.a. "Umad/Matmat" and Christian Maximo *y* Mariñas a.k.a. "Chris" are found **GUILTY** beyond reasonable doubt of Simple Robbery under Article 293 in relation to Article 295(5) of the Revised Penal Code. They are sentenced to suffer an indeterminate term of four (4) years and two 2) months of *prision correccional* as minimum to eight (8) years of *prision mayor* as maximum.

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[23] *Rollo*, p. 32.
[24] *People v. Cariño*, G.R. No. 232624, July 9, 2018.
[25] *People v. Casabuena*, supra.
[26] *People v. Daguman*, G.R. No. 219116, August 26, 2020.

SO ORDERED."

By authority of the Court:

MISAEL DOMINGO C. BATTUNG III
Division Clerk of Court

By:

RUMAR D. PASION
Deputy Division Clerk of Court 04.19.23

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