



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames

Please take notice that the Court, Third Division, issued a Resolution dated March 27, 2023, which reads as follows:

G.R. No. 226884 – PETER ZIMMERMAN y REYES @ “Moking” and ERWIN EVASCO y PORNESA, petitioners, versus PEOPLE OF THE PHILIPPINES, respondent.

The Court resolves to **DENY** the Petition for Review on *Certiorari*¹ for failure to sufficiently show that the Court of Appeals (CA) committed any reversible error in its Decision,² dated March 29, 2016, in CA-G.R. CR No. 35449. The CA affirmed the conviction of Peter Zimmerman y Reyes (**Zimmerman**) and Erwin Evasco y Pornesa (**Evasco**) for the crime of Robbery, defined and penalized under Article 293 of the Revised Penal Code, as amended (**RPC**).

At the outset, it must be emphasized that the Court is not a trier of facts. In petitions for review on *certiorari* under Rule 45 of the Rules of Court, only questions of law may be raised, and not questions of fact. The factual findings of the trial court, especially when affirmed by the CA, are generally binding upon this Court. Although this rule admits of exceptions,³ none are present in this case.

Article 293 of the RPC provides that any person who, with intent to gain, shall take any personal property belonging to another, by means of violence against or intimidation of any person, or using force upon anything, shall be guilty of Robbery. Thus, the elements of Robbery are: (1) there is a taking of personal property; (2) the personal property belongs to another; (3) the taking is with *animus lucrandi*; and (4) the taking is with violence against or intimidation of persons or with force upon things.⁴

The Court finds that the elements of Robbery are present in this case. It is undisputed that Zimmerman and Evasco demanded and received from

¹ *Rollo*, pp. 12-26.

² *Id.* at 34-46. Penned by Associate Justice Victoria Isabel A. Paredes and concurred in by Associate Justices Magdangal M. De Leon and Melchor Quirino C. Sadang.

³ *Pascual v. Burgos*, 776 Phil. 167, 182-183 (2016).

⁴ *Consulta v. People*, 598 Phil. 464, 471 (2009).

Vibal and his companions Rebisco products, personal property belonging to Mendoza. As to the manner of taking, the prosecution adequately established that the Rebisco products were taken by Zimmerman and Evasco from Vibal through force and intimidation when Evasco put his arm around Vibal's neck, while Zimmerman took the products.

Likewise, the taking was accompanied with intent to gain, or *animus lucrandi*. *Animus lucrandi* is an internal act which can be established through the overt acts of the offender, and is presumed from the unlawful taking.⁵ In this case, Zimmerman and Evasco's taking of the Rebisco products, without paying for the same, evinces their intent to gain.

Thus, the Court finds no reason to deviate from the factual findings of the RTC, as affirmed by the CA, there being no indication that they overlooked or misapplied the facts of the case. As such, Zimmerman and Evasco's conviction for Robbery must be upheld.

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED**. The Decision, dated March 29, 2016, of the Court of Appeals in CA-G.R. CR No. 35449, finding petitioners Peter Zimmerman y Reyes @ "Moking" and Erwin Evasco y Pornesa **GUILTY** beyond reasonable doubt of the crime of Robbery, is **AFFIRMED**. Accordingly, petitioners Peter Zimmerman y Reyes @ "Moking" and Erwin Evasco y Pornesa are sentenced to suffer the penalty of imprisonment of four (4) years and two (2) months of *prision correccional*, as minimum, to eight (8) years of *prision mayor*, as maximum.

Petitioners Peter Zimmerman y Reyes @ "Moking" and Erwin Evasco y Pornesa are likewise ordered to pay jointly and severally private complainant Frederick Albert Mendoza y Gatmaitan the total amount of ₱500.00, representing the value of the unrecovered stolen items.

The monetary awards granted shall earn legal interest at the rate of six percent (6%) per annum from the date of the finality of this Resolution until fully paid.

SO ORDERED.

By authority of the Court:

Misael Domingo C. Battung III
MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court *JB 5/2/23*

⁵ *People v. Manlao*, 839 Phil. 481, 491 (2018).

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