



Republic of the Philippines  
 Supreme Court  
 Manila

THIRD DIVISION

JOURNEY KENNETH ASA y G.R. No. 236290  
 AMBULO,

*Petitioner,* Present:

LEONEN, J.,  
 Chairperson,  
 HERNANDO,  
 INTING,  
 DELOS SANTOS, and  
 ROSARIO,\* JJ.

- versus -

Promulgated:

PEOPLE OF THE PHILIPPINES;  
*Respondent.*

January 20, 2021

*MisDocBatt*

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DECISION

DELOS SANTOS, J.:

Before the Court is a Petition for Review on *Certiorari*<sup>1</sup> under Rule 45 of the Rules of Court, assailing the Decision<sup>2</sup> dated August 30, 2017 and the Resolution<sup>3</sup> dated December 13, 2017 of the Court of Appeals (CA) in CA-G.R. CR No. 39019, which affirmed the Decision<sup>4</sup> dated November 12, 2015 of the Regional Trial Court (RTC) of Imus, Cavite, Branch 21 in Criminal Case No. 8293-11, finding Journey Kenneth Asa y Ambulo (petitioner) guilty beyond reasonable doubt of the crime of Robbery with Intimidation of Persons.

\* On official leave.

<sup>1</sup> *Rollo*, pp. 12-30.

<sup>2</sup> Penned by Associate Justice Ramon R. Garcia, with Associate Justices Edwin D. Sorongon and Victoria Isabel A. Paredes, concurring; *id.* at 32-47.

<sup>3</sup> *Id.* at 49-50.

<sup>4</sup> Penned by Executive Judge Norberto J. Quisumbing, Jr.; *id.* at 62-67.

### Antecedents

In an *Information* dated January 25, 2010 filed before the RTC, petitioner was charged with the crime of Robbery under Article 293 of the Revised Penal Code (RPC), the accusatory portion of which reads:

That on or about the 30<sup>th</sup> day of December 2010, in the City of Dasmariñas, Philippines, the above-named accused, with intent [to] gain and by the use of intimidation, to wit: that said accused will expose publicly the memory card containing the intimate relationship between the complainant Erica Dela Cruz Varias and her fiancé, thereby causing fear upon said the complainant of being exposed to public ridicule and humiliation, by did then and there unlawfully and feloniously take, steal and carry away cash money in the amount of Php5,000.00 belonging to and owned by said Joyce Erica Dela Cruz Varias, without her consent, to the damage and prejudice of the said offended party in the amount aforementioned.

CONTRARY TO LAW.<sup>5</sup>

Upon arraignment, petitioner entered a plea of “not guilty.” Trial ensued thereafter.

The prosecution offered in evidence the oral testimonies of four (4) witnesses, namely: Joyce Erica Varias<sup>6</sup> (private complainant), Police Officer III (PO3) Ronald Lorenzo (PO3 Lorenzo), PO3 Aaron Abesamis (PO3 Abesamis), and Police Senior Inspector (PSI) Karen Palacios, as well as documentary evidence, which included the print-out of the private messages among private complainant, petitioner, and Alyanna Cassandra (Alyanna).<sup>7</sup> Taken together, the prosecution’s evidence established the facts recited below.

On December 23, 2010, petitioner, using the *Facebook* account name *Indho Than*, sent Alyanna a private message by way of *Facebook Messenger*, threatening to post provocative photos of her friend, private complainant. Alyanna immediately contacted private complainant. Using Alyanna’s *Facebook* account, private complainant sent a private message to petitioner, asking him to take down the fake *Facebook* account with her photo as profile. Instead of doing what private complainant requested, petitioner threatened private complainant that he would make a public post on *Facebook* of her private and post-coital photos with her partner.<sup>8</sup>

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<sup>5</sup> Id. at 33.

<sup>6</sup> Also referred to as Erica Dela Cruz Varias and Joyce Erica Dela Cruz Varias in some parts of the *rollo*.

<sup>7</sup> *Rollo*, p. 34.

<sup>8</sup> Id.

From December 24 to 27, 2010, private complainant and petitioner exchanged a series of private messages, where the former begged the latter not to release her photos because a lot of people would be affected. In desperation, private complainant told petitioner that she would do anything to get back her photos. Petitioner then told her that he would delete all the photos in his possession and take down her fake *Facebook* account if she would agree to have sex with him. Private complainant replied that she would not have sex with petitioner but she could give him ₱5,000.00. Petitioner agreed but told her that he wanted to meet her in an apartelle. They agreed to meet at McDonald's Fastfood (McDonald's) in Walter Mart, Dasmariñas City on December 30, 2010, where private complainant would hand to petitioner ₱5,000.00 in exchange for the memory card containing the private photos and that they would then go to Quatro Pasos Apartelle together.<sup>9</sup>

On December 28, 2010, private complainant told her mother that someone was blackmailing her on *Facebook*. The two went to Dasmariñas City Police Station to ask for assistance. The police immediately created a team to conduct an entrapment operation against petitioner.<sup>10</sup>

In the morning of December 30, 2010, as agreed with petitioner, private complainant went to McDonald's. Petitioner approached her and introduced himself as the one private complainant was exchanging private messages with. He brought out his cellular phone and showed private complainant the contents of the memory card inserted therein. After verifying that the memory card indeed contained her private photos, private complainant handed to petitioner an envelope containing the marked money amounting to ₱5,000.00. Petitioner counted the money in front of private complainant before removing his phone's memory card and giving it to the latter. Private complainant then removed her glasses to alert the entrapment team, who then rushed to the scene and immediately arrested petitioner. Afterwards, the entrapment team brought petitioner to Dasmariñas City Police Station.<sup>11</sup>

For his part, petitioner vehemently denied the charge against him. He claimed that he went to McDonald's to buy food. He saw private complainant thereat whom he recognized as a schoolmate in high school. He then approached private complainant and told her, "Your face looks familiar."<sup>12</sup> He left her alone and sat on a table near hers. While eating, petitioner felt the urge to urinate so he went to the toilet and left his bag on the table. When he returned, petitioner noticed that his bag was open. He looked inside his bag and saw an envelope. He examined the contents of his

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<sup>9</sup> Id at 34-35.

<sup>10</sup> Id at 35-36.

<sup>11</sup> Id. at 36.

<sup>12</sup> Id. at 36-37, 63.

bag, which included two (2) or three (3) memory cards containing his family photos. Without any warning, a man handcuffed him and that man introduced himself as a police officer. Afraid of the police officer, petitioner followed whatever they asked him to do. He was then brought to Dasmariñas City Police Station.<sup>13</sup>

### **Ruling of the RTC**

In a Decision<sup>14</sup> dated November 12, 2015, the RTC found petitioner guilty beyond reasonable doubt of the crime charged, ruling that all the elements of Robbery by means of Intimidation of Persons were present.

Aggrieved, petitioner appealed to the CA.

### **Ruling of the CA**

In the now assailed Decision<sup>15</sup> dated August 30, 2017, the CA affirmed with the modification the Decision of the RTC. The CA agreed with the RTC that petitioner is guilty beyond reasonable doubt of Robbery by means of Intimidation of Persons under Article 293 of the RPC. The CA pointed out that all the elements of the crime charged were proven through the intelligible, candid, and unwavering testimony of private complainant, which was corroborated in all material points by PO3 Lorenzo and PO3 Abesamis insofar as the entrapment operation was concerned. The CA also noted that private complainant had no motive to testify falsely against petitioner. The CA brushed aside the argument of petitioner that there was no proof that he and *Indho Than*, the person private complainant was communicating with on *Facebook*, were one and the same person. The CA held that private complainant clearly and categorically stated on the witness stand that petitioner approached her and introduced himself as the one she was talking to on *Facebook*. She also positively identified him in her testimony and pointed at him in the court room. The CA also noted that petitioner had knowledge of the private messages between *Indho Than* and private complainant and that he was found in possession of the photos of private complainant. Further, the CA stressed that the RTC was correct in characterizing the crime committed as Robbery with Intimidation of Persons, explaining that there was sufficient intimidation by petitioner on private complainant in as much as his acts engendered the fear in the mind of his victim and brought in a sense of mental distress in view of his threat to publicly expose her private photos on *Facebook*. The CA, however, deleted

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<sup>13</sup> Id. at 37.

<sup>14</sup> Id. at 62-67.

<sup>15</sup> Id. at 32-47.

the award of exemplary damages since there was no aggravating circumstance that attended the robbery.<sup>16</sup>

Dissatisfied with the Decision of the CA, petitioner filed a Motion for Reconsideration<sup>17</sup> but the same was denied in the now assailed Resolution<sup>18</sup> dated December 13, 2017. Hence, the instant petition.

### **The Petition and Arguments of the Parties**

Petitioner submits that the prosecution failed to establish his guilt beyond reasonable doubt in view of private complainant's contradictory statements in her judicial affidavit and in her court testimony as to whether petitioner demanded money from private complainant or it was the latter who offered money to him. According to petitioner, private complainant's contradictory statements make her an incredible witness. In addition, petitioner argues that he should not be convicted of Robbery with Intimidation of Persons since there was no "unlawful taking" to speak of in this case as he did not demand any amount of money from private complainant. Rather, it was private complainant who offered money to him.<sup>19</sup>

Respondent People of the Philippines, through the Office of the Solicitor General (OSG), counters that all the elements of the crime of Robbery with Intimidation of Persons were established in this case. The OSG also opines that the crime charged can be consummated regardless of whether petitioner demanded ₱5,000.00 from private complainant. This does not change the fact that petitioner unlawfully took money from private complainant after intimidating her.<sup>20</sup>

### **The Issue**

The issue for the Court's resolution is whether or not the CA committed a reversible error in affirming the RTC's Decision convicting petitioner of the crime of Robbery with Intimidation of Persons.

### **The Court's Ruling**

The petition is not meritorious.

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<sup>16</sup> Id. at 41-46.

<sup>17</sup> Id. at 75-80.

<sup>18</sup> Id. at 49-50.

<sup>19</sup> Id. at 19-22.

<sup>20</sup> Id. at 111-112.

The Court stressed in *Cu v. Ventura*:<sup>21</sup>

The Rules of Court requires that only questions of law should be raised in petitions filed under Rule 45. This Court is not a trier of facts. It will not entertain questions of fact as the factual findings of the appellate courts are “final, binding[,] or conclusive on the parties and upon this [c]ourt” when supported by substantial evidence. Factual findings of the appellate courts will not be reviewed nor disturbed on appeal to this court.

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A question of fact requires this court to review the truthfulness or falsity of the allegations of the parties. This review includes assessment of the “probative value of the evidence presented.” There is also a question of fact when the issue presented before this court is the correctness of the lower courts’ appreciation of the evidence presented by the parties.<sup>22</sup> (Citations omitted)

In this case, petitioner contends that he should not be convicted of the crime charged because the prosecution’s witness, particularly private complainant, is not credible for making contradictory or inconsistent statements in her judicial affidavit and in her open court testimony. Likewise, contrary to the findings of the CA and the RTC, petitioner posits that the evidence of the prosecution failed to prove that he demanded money from private complainant so as to constitute the element of unlawful taking in the crime of Robbery with Intimidation of Persons. Obviously, petitioner asks the Court to review and examine the probative value of the evidence presented during the trial and the factual findings of the CA and the RTC in seeking the Court’s reversal of his judgment of conviction. Clearly, this is not the role of this Court because the issue he presented is factual in nature. On this score, the petition must fail.

The Court is not oblivious to the prevailing exceptions to the rule prohibiting factual review in Rule 45 petitions. As declared in *Active Wood Products Co., Inc., v. State Investment House, Inc.*,<sup>23</sup> findings of fact by the CA may be passed upon and reviewed by the Court in the following instances, to wit:

- (1) the conclusion is grounded on speculations, surmises or conjectures;
- (2) the inference is manifestly mistaken, absurd or impossible;
- (3) there is grave abuse of discretion;
- (4) the judgment is based on misapprehension of facts;
- (5) the findings of fact are conflicting;
- (6) there is no citation of specific evidence on which the factual findings are based;
- (7) the findings of absence of facts are contradicted by the presence of evidence on record;

<sup>21</sup> G.R. No. 224567, September 26, 2018.

<sup>22</sup> Id.

<sup>23</sup> G.R. No. 240277, October 14, 2020.

(8) the findings of the CA are contrary to those of the trial court; (9) the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the CA are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties.<sup>24</sup>

Also, the above-mentioned exceptions similarly apply in petitions for review filed before the Court involving civil, labor, tax, or criminal cases.<sup>25</sup>

In the instant petition, however, none of the aforementioned exceptions is present which would warrant a review of the factual findings of the CA.

Contrary to the argument of petitioner, the CA did not commit grave abuse of discretion in the appreciation of facts when it found that petitioner demanded money from private complainant in exchange for the memory card containing the latter's private photos, which made him liable for Robbery with Intimidation of Persons. It may be recalled that petitioner originally demanded for private complainant to have sex with him in exchange for the return of the private photos. Private complainant refused and offered ₱5,000.00 instead. It must be stressed, however, that private complainant's counter-offer does not make it "with her consent," as the same was made as a result of petitioner's existing and continuing threat of posting the private photos on *Facebook*. It is worthy to note that petitioner did not offer to voluntarily and unconditionally return the photos of private complainant but instead asked for something in exchange for him not to post the same on *Facebook*. In effect, when petitioner accepted private complainant's counter-offer of ₱5,000.00 instead of sex, his demand was merely amended or changed from sexual into a monetary one. Accordingly, it is not entirely wrong for the RTC and the CA to conclude that, in the end, petitioner demanded money in the amount of ₱5,000.00 from private complainant, which he took at McDonald's against private complainant's consent. Concurrently, the second element in the crime of Robbery with Intimidation of Persons is present in this case – that there is unlawful taking of property belonging to another. So is the fourth element of the crime charged anent the presence of intimidation of persons, as petitioner's threat to post the subject private photos on *Facebook* if his demand is not met produced fear in the mind of his victim, private complainant, so that the latter was forced to give to petitioner the amount of ₱5,000.00, against or without her consent.

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<sup>24</sup> *Id.*, citing *Carbonell v. Carbonell-Mendes*, 762 Phil. 529, 537 (2015).

<sup>25</sup> *Cu v. Ventura*, supra note 21.

Relatedly, and even if the Court is to review the testimony of private complainant, she did not make contradictory and inconsistent statements on the fact that petitioner demanded from her ₱5,000.00 in exchange of her private photos and so as not to post the same publicly on *Facebook*. As explained, she refused to accede to the original demand of petitioner to have sex and offered money instead in the amount of ₱5,000.00. Nonetheless, the acceptance of petitioner of the money effectively amended his demand into a monetary one. Thus, it was not entirely inconsistent or contradictory at all for private complainant to say that she counter-offered to give petitioner ₱5,000.00 instead of having sex with him while also saying that petitioner demanded ₱5,000.00 from her. At any rate, even if the Court is to consider the statements of private complainant to be inconsistent, the same only refers to a minor detail, which will not impinge on the integrity of private complainant's testimony in its material whole. As astutely observed by the OSG, the issue of whether the amount of ₱5,000.00 was offered or demanded by petitioner is irrelevant in the prosecution against him for the crime of Robbery with Intimidation of Persons. It does not change the fact that unlawful taking occurred as a result of petitioner's use of intimidation on private complainant. As the Court consistently held, "[i]nconsistencies on minor details do not impair the credibility of the witnesses where there is consistency in relating the principal occurrence and positive identification of the assailant."<sup>26</sup> Such inconsistencies reinforce, rather than weaken, credibility.<sup>27</sup>

**WHEREFORE**, the Petition is **DENIED**. The Decision dated August 30, 2017 and the Resolution dated December 13, 2017 of the Court of Appeals in CA-G.R. CR No. 39019, affirming the Decision dated November 12, 2015 of the Regional Trial Court of Imus, Cavite, Branch 21, in Criminal Case No. 8293-11 finding petitioner Journey Kenneth Asa y Ambulo guilty beyond reasonable doubt of the crime of Robbery with Intimidation of Persons is hereby **AFFIRMED**.

**SO ORDERED.**



**EDGARDO L. DELOS SANTOS**  
Associate Justice

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<sup>26</sup> *People v. Alfon*, 447 Phil. 138 (2003).

<sup>27</sup> *Id.*

**WE CONCUR:**

  
**MARVIC MARIO VICTOR F. LEONEN**  
Associate Justice  
Chairperson

  
**RAMON PAUL L. HERNANDO**  
Associate Justice

  
**HENRI JEAN PAUL B. INTING**  
Associate Justice

(On Official Leave)  
**RICARDO R. ROSARIO**  
Associate Justice

**ATTESTATION**

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**MARVIC MARIO VICTOR F. LEONEN**  
Associate Justice  
Chairperson, Third Division

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**DIOSDADO M. PERALTA**  
Chief Justice