Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

ALEMAR A. BANSILAN,
Petitioner,

- *versus* -

PEOPLE OF THE PHILIPPINES,
Respondent.

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G.R. No. 239518

Present:

PERALTA, *C.J.*, *Chairperson*,
CAGUIOA,
CARANDANG,
ZALAMEDA,
GAERLAN, *JJ.*

Promulgated:
NOV 03 2020

RESOLUTION

PERALTA, *C.J.*:

This resolves the Letter,[1] dated October 21, 2018, of petitioner Alemar[2] A. Bansilan (*Bansilan*) seeking to withdraw his appeal filed before the Court.

The facts and procedural antecedents of the case are as follows:

Bansilan was indicted for Robbery in an Inhabited House, defined and penalized under Article 299 of the Revised Penal Code, in an Information, dated November 13, 2012, filed before the Regional Trial Court (*RTC*), Branch 10, Davao City and docketed as Criminal Case No. 73,790-12.

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1 *Rollo*, p. 102.
2 Also spelled as Alimar in some parts of the *rollo*.

Bansilan was arrested by virtue of a warrant of arrest issued on December 28, 2012 and was committed to the Ma-a City Jail pending the termination of his case. When arraigned, Bansilan pleaded not guilty to the charge.[3] After pre-trial was terminated, trial on the merits ensued.

To substantiate its charge against Bansilan, the prosecution presented private complainant Jayme Malayo (*Malayo*), Senior Police Officer 1 Roland Arado (*SPO1 Arado*), Police Officer 1 Jessy Perlado (*PO1 Perlado*) and SPO1 Nelio Tambis (*SPO1 Tambis*) as its witnesses.

Malayo narrated that on May 18, 2012, at around 1:30 o'clock in the morning, he was awakened by his wife over some noise coming from the living room of their house. They proceeded to the sala where they discovered that their jalousie window was broken, and his laptop and its charger, including the ₱500.00 he left on the divider, were missing. He reported the incident to the police on the following day. On June 30, 2012, he learned that a suspect for robbery and carnapping was apprehended by the Marilog police. He wasted no time in going to the Marilog Police Station to check. Said suspect turned out to be Bansilan. He sought permission from the police to see Bansilan. Upon questioning, Bansilan admitted that he was responsible for the robbery in Malayo's house and that he pawned the missing laptop to a woman along Sta. Cruz Crossing General Santos Highway. He and Bansilan were 20 meters away from the police officers when he made such inquiry. He relayed Bansilan's statement to the police through a text message which the Baguio Police Station's radio operator promptly sent to SPO1 Arado.[4]

SPO1 Arado testified that armed with the information given by Malayo, he and some other police officers proceeded to Sta Cruz Crossing, Purol 1, Barangay Binugao, Toril District. They brought Bansilan along with them, so the latter could guide them in finding the woman who owned a carinderia to whom said accused pawned Malayo's laptop. The woman turned out to be Lanie Maduay (*Maduay*). Upon questioning, Maduay admitted that a laptop had indeed been pawned to her for ₱500.00 and when Bansilan was shown to her, she readily identified the latter as the person who transacted with her. Maduay turned over the laptop to the police and after a week, the said missing laptop was returned to Malayo.[5]

The testimony of PO1 Perlado was dispensed with after the prosecution and the defense entered into a stipulation that said witness entered the details of their operation into the police blotter. Likewise, SPO1 Tambis' testimony was dispensed with after the parties stipulated that said witness was the desk

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3 *Id.* at 71.
4 *Id.*
5 *Id.* at 71-72.

officer who made the entry in the police blotter regarding the recovery of the missing laptop.[6]

Thereafter, the defense presented Bansilan as its lone witness. Bansilan interposed the twin defenses of denial and alibi, claiming that he could not have committed the crime charged because he was at Barangay Sinuda, Bukidnon on May 18, 2012. He explained that he left Baguio District on May 17, 2012 at around 2:00 o'clock in the afternoon to visit his girlfriend's mother in Bukidnon where he stayed for one week. He denied any involvement in the robbery incident that took place at Malayo's house. He also denied that he was the one who pawned the subject laptop to a certain Lanie Maduay.[7]

On December 15, 2016, the RTC rendered a Decision[8] finding Bansilan guilty beyond reasonable doubt of the crime of Robbery in an Inhabited House. The RTC declared that the prosecution has convincingly established the criminal culpability of Bansilan through the credible and sufficient evidence it adduced, which led to the inescapable conclusion that said accused committed the offense charged to the exclusion of others. Accordingly, the RTC sentenced Bansilan to suffer the penalty of imprisonment of four (4) years, two (2) months and one (1) day of *prisión correccional* in its maximum period, as minimum, to eight (8) years and one (1) day of *prisión mayor* in its medium period, as maximum, and ordered him to pay Malayo the amount of ₱500.00.[9]

Not in conformity, Bansilan appealed the verdict of conviction to the Court of Appeals (*CA*). Insisting on his innocence, Bansilan averred that the extrajudicial admission he allegedly made to Malayo, which became the basis for his conviction, is inadmissible in evidence for being hearsay and uncorroborated, and even if true, the same was done orally and without the presence of a counsel of his choice in violation of his rights under custodial investigation. Further, Bansilan maintained that SPO1 Arado's testimony that Maduay identified him as the person who pawned the missing laptop to her is also hearsay since Maduay was never presented during trial to confirm said police officer's claim.[10]

On April 20, 2018, the CA rendered the assailed Decision[11] in CA-G.R. CR No. 01519-MIN, affirming the judgment of the RTC. According to the CA, Bansilan's extrajudicial confession, coupled with the circumstantial evidence proffered by the prosecution, is sufficient to sustain his conviction.

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6 *Id.*

7 *Id.* at 72.

8 Penned by Judge Retrina E. Fuentes; *id.* at 70-83.

9 *Id.* at 83.

10 Appellant's Brief; *id.* at 53-69.

11 Penned by Associate Justice Oscar V. Badelles with Associate Justice Romulo v. Borja and Associate Justice Tita Marilyn Payoyo-Villordon, concurring; *id.* at 38-47.

The CA ruled that the extrajudicial verbal confession of Bansilan to Malayo is admissible because such statement was freely and voluntarily made and not elicited through questioning by the authorities and thus, not covered by Section 12 (1) and (3) of Article III of the Constitution. The CA observed that such extrajudicial confession pointed where the missing laptop can be found, which detail only the perpetrator of the crime could have known. The CA found that the following circumstantial evidence adduced by the prosecution amply corroborated the extrajudicial confession: (1) Bansilan was positively identified by Maduay as the person who pawned the laptop to her; and (2) Bansilan actually lived near DOLE-Stanfilco compound, the scene of the crime. Lastly, the CA rejected Bansilan's twin defenses of denial and alibi for being self-serving and unsupported by any plausible proof.

Undaunted, Bansilan filed on July 5, 2018 a petition for review on *certiorari*[12] seeking to reverse and set aside the April 20, 2018 Decision of the CA. By way of an alternative relief, he prays that if the judgment be affirmed, this Court will order his release on account of his having been detained for a period equivalent to the minimum period of the penalty imposed against him.

On November 9, 2018, the Court received a hand-written Letter signed by petitioner Bansilan, dated October 21, 2018, requesting for the withdrawal of his appeal, and for the issuance of an entry of judgment, so that he can avail of the parole review for his release from prison. He claims that he already accepted the decision of the lower court and is about to fully serve the maximum period of the indeterminate sentence imposed against him. Attached to this letter is the Letter-Reply[13] of Nelsie Loja (*Loja*), Records Officer II, JRS-Archives and Receiving Unit of the CA, Cagayan de Oro City, dated September 17, 2018, sent to Bansilan in response to the latter's September 8, 2018 letter expressing his intent to withdraw his appeal of the case. In the same letter, Loja informed Bansilan that his case is already appealed to the Supreme Court and advised him that all inquiries, requests, motions and/or pleadings should now be addressed to the Court.

On April 3, 2019, the Office of the Solicitor General (*OSG*) filed its Comment[14] on the petition.

The Court's Ruling

The Court resolves to treat the October 21, 2018 Letter of Bansilan as a Motion to Withdraw the Petition and hereby grants the same.

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12 *Id.* at 15-32.
13 *Id.* at 103.
14 *Id.* at 121-137.

Section 1, Rule 13 of the Internal Rules of the Supreme Court[15] provides that "[a] case shall be deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum that the Court or its Rules require." Considering that Bansilan's October 21, 2018 letter was filed before the case is submitted for decision, the withdrawal of his petition is permissible. By withdrawing the appeal, petitioner is deemed to have accepted the decision of the CA.[16] In *Southwestern University v. Hon. Salvador*,[17] we ruled that "an appellant who withdraws his appeal x x x must face the consequence of his withdrawal, such as the decision of the court *a quo* becoming final and executory."

At any rate, the Court finds no compelling reason to reverse the similar conclusions reached by the RTC and the CA insofar as Bansilan's guilt is concerned. The evidence submitted by the prosecution negates the innocence of the petitioner.

Bansilan contends that Malayo's testimony to the effect that he admitted to said private complainant the authorship of the robbery and that he pawned the missing laptop to a woman along Sta. Cruz Crossing General Santos Highway, and that SPO1 Arado's testimony that Maduay pointed to Bansilan as the person who pawned said laptop, are inadmissible being mere hearsay. The argument is bereft of merit.

The testimonies of Malayo and SPO1 Arado cannot be considered as hearsay for three reasons. *First*, Malayo was indisputably present and has heard Bansilan when the latter made an admission of guilt. On the other hand, SPO1 Arado was also present and heard Maduay when she identified Bansilan as the one she transacted with concerning the missing laptop. Hence, these two prosecution witnesses testified to matters of fact that had been derived from their own perception. *Second*, what was sought to be admitted as evidence were the fact that the utterance was actually made by Bansilan to Malayo, and that Maduay actually identified said accused-petitioner as the one who pawned the subject laptop in the presence of SPO1 Arado, not necessarily that the matters stated were true. In *Bon v. People*,[18] the Court wrote:

> Testimony of what one heard a party say is not necessarily hearsay. It is admissible in evidence, not to show that the statement was true, but that it was in fact made. If credible, it may form part of the circumstantial evidence necessary to convict the accused. (Underscoring Ours)

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15 A.M. No. 10-4-20-SC.

16 *Central Luzon Drug Corp. v. Commissioner of Internal Revenue*, 659 Phil. 496, 502 (2011).

17 179 Phil. 252, 257 (1979).

18 464 Phil. 125, 130 (2004).

Third, even assuming *arguendo* that the foregoing testimonies Malayo and SPO1 Arado were hearsay, Bansilan is barred from assailing the admission of the testimonies of Malayo and SPO1 Araga for failure to object to these testimonies at the time they were offered. It has been held that where a party failed to object to hearsay evidence, then the same is admissible.[19]

In *Maunlad Savings & Loan Association, Inc. v. Court of Appeals*,[20] the Court wrote:

> The rule is that objections to evidence must be made as soon as the grounds therefor become reasonably apparent. In the case of testimonial evidence, the objection must be made when the objectionable question is asked or after the answer is given if the objectionable features become apparent only by reason of such answer, otherwise the objection is waived and such evidence will form part of the records of the case as competent and complete evidence and all parties are thus amenable to any favorable or unfavorable effects resulting from the evidence.[21] (Citations omitted; underscoring supplied)

Besides, with respect to Bansilan's oral admission, under Section 26 of Rule 130 of the Rules of Court, "the act, declaration or omission of a party as to a relevant fact may be given in evidence against him." Said rule is based upon the notion that no man would make any declaration against himself, unless it is true.[22] The Court cannot overlook the fact that Bansilan's verbal confession to Malayo is replete with details which only the culprit of the crime could have supplied and which could not have been concocted by someone who did not take part in its commission.

Anent Bansilan's alleged uncounseled admission, suffice it to state that the same was not given during a custodial investigation, and certainly, not to police authorities. His spontaneous and voluntary verbal confession given to an ordinary individual (Malayo) was correctly admitted in evidence because it is not covered by the requisites of Section 12 (1) and (3) of Article III of the Constitution. It has been held that the constitutional procedure on custodial investigation does not apply to spontaneous statement not elicited through questioning by the authorities, but given in an ordinary manner whereby the accused orally admitted having committed the crime.[23]

Notwithstanding the withdrawal of the appeal and our concurrence with the findings of the RTC and the CA, we deemed it proper to modify the

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19 *SCC Chemicals Corporation v. Court of Appeals*, 405 Phil. 514, 522 (2001).
20 399 Phil. 590 (2000)
21 Id. at 600.
22 *People v. Lising*, 349 Phil. 530, 559 (1998).
23 *People v. Licayan*, 428 Phil. 332, 347 (2002).

penalty meted upon Bansilan in accordance with Republic Act No. 10951[24] (*R.A. No. 10951*). The retroactive application of the provisions of R.A. No. 10951 has already been settled in *Hernan v. Sandiganbayan*.[25] Also, Section 100 thereof states that this retroactivity applies not only to persons accused of crimes but have yet to be meted their final sentence, but also to those already serving sentence by final judgment.[26] Section 79 of R.A. No. 10951 provides:

> SEC. 79. Article 299 of the same Act. as amended by Republic Act No. 18, is hereby further amended to read as follows:
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> ART. 299. *Robbery in an inhabited house or public building or edifice devoted to worship.* - Any armed person who shall commit robbery in an inhabited house or public building or edifice devoted to religious worship, shall be punished by *reclusion temporal,* if the value of the property taken shall exceed Fifty thousand pesos (P50,000). and if -
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> (a) The malefactors shall enter the house or building in which the robbery was committed, by any of the following means:
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> x x x x
>
> 2. By breaking any wall, roof, or floor or breaking any door or window.
>
> x x x x
>
> When the offenders do not carry arms, and the value of the property taken exceeds Fifty thousand pesos (P50,000) the penalty next lower in degree shall be imposed.
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> The same rule shall be applied when the offenders are armed, but the value of the property taken does not exceed Fifty thousand pesos (P50,000).
>
> **When said offenders do not carry arms and the value of the property taken does not exceed Fifty thousand pesos (P50,000), they shall suffer the penalty prescribed in the two (2) next preceding paragraphs, in its minimum period.**
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> x x x x.

There being no modifying circumstances in the commission of the Robbery in an Inhabited House, Bansilan should be meted an indeterminate penalty, the maximum term of which shall be taken from the medium period[27]

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[24] An Act Adjusting the Amount or Value of Property and Damage on Which a Penalty is Based, and the Fines Imposed Under The Revised Penal Code, Amending For The Purpose Act No. 3815, Otherwise Known as 'The Revised Penal Code", As Amended.

[25] G.R. No. 217874, December 5, 2017, 847 SCRA 552.

[26] Republic Act No. 10951, Section 100.

[27] Article 64 of the Revised Penal Code provides:

of *prisión mayor* in its minimum period, ranging from six (6) years, eight (8) months and one (1) day to seven (7) years and four (4) months. On the other hand, the minimum term, under Section 1 of the Indeterminate Sentence Law, shall be "within the range of the penalty next lower to that prescribed by the Code for the offense." The penalty next lower should be based on the penalty prescribed by the Code for the offense, without regard to any modifying circumstance attendant to the commission of the crime. The minimum penalty can be anywhere within the range of the penalty next lower without any reference to the periods into which it might be subdivided.[28] Accordingly, the minimum term of the penalty in the case at bench shall be taken from the entirety of *prisión correccional*, ranging from six (6) months and one (1) day to six (6) years, which is the penalty next lower in degree to the prescribed penalty of *prisión mayor*.

It may be argued that the minimum term should be taken from *prisión correccional* in its maximum period, which ranges from four (4) years, two (2) months and one (1) day to six (6) years, inasmuch as the same is one degree lower to *prisión mayor* in its minimum period. This proposition, however, is incorrect.

It must be emphasized that the deliberate design of the legislature in Section 79 of R.A. No. 10951 is to prescribed a lower penalty against unarmed robbers *vis-à-vis* robbers who are armed. To take then the minimum term from *prisión correccional* in its maximum period will possibly create an absurd situation wherein the minimum term of the penalty against the unarmed robbers is much higher than that against armed robbers considering that in case of the latter offenders, the minimum term is anywhere within the range of *prisión correccional* (6 months and 1 day to 6 years). Indeed, a ridiculous situation will arise if the courts impose the penalty of four (4) years, two (2) months and one (1) day, as minimum, against robbers who are not armed while imposing only the penalty of six (6) months and one (1) day, as minimum, against armed robbers. It is a general rule of statutory construction that a law should not be so construed as to produce an absurd result.[29] The law does not intend an absurdity or that an absurd consequence shall flow from the enactment. Statutes should receive a sensible construction, such as will give effect to the legislative intention and so as to avoid an unjust or an absurd conclusion.[30]

Art. 64. *Rules for the application of penalties which contain three periods.* –In cases in which the penalties prescribed by law contain three periods, x x x, the courts shall observe for the application of the penalty the following rules, according to whether there are or are no mitigating or aggravating circumstances:

1. When there are neither aggravating nor mitigating circumstances, they shall impose the penalty prescribed by law in its medium period.

x x x x.

28 *People v. Gabres*, 335 Phil. 242, 257 (1997).

29 *Paras v. Commission on Election*, 332 Phil. 56, 64 (1996).

30 *Consico, Jr. v. National Labor Relations Commission*, 338 Phil. 1080, 1089 (1997).

In view of the recovery of the laptop and considering that the property stolen from private complainant Malayo is his cash of ₱500.00, the Court determines that the proper imposable penalty should be three (3) years and two (2) months of *prisión correccional*, as minimum, to six (6) years and ten (10) months of *prisión mayor* in its minimum period, as maximum.

WHEREFORE, the Letter to Withdraw Appeal is hereby **GRANTED**. The Petition for Review on *Certiorari* is hereby **DISMISSED** and the case is now considered **CLOSED** and **TERMINATED**.

The Court, however, **MODIFIES** the imposable penalty against petitioner Alemar A. Bansilan pursuant to Article 299 of the Revised Penal Code, as amended by Section 79 of Republic Act No. 10951, in that he is sentenced to suffer the penalty of Three (3) years and Two (2) months of *prisión correccional*, as minimum, to Six (6) years and Ten (10) months of *prisión mayor* in its minimum period, as maximum. He is also ordered to pay private complainant Jayme Malayo the amount of ₱500.00 as restitution for the cash taken during the Robbery in an Inhabited House.

No further pleadings or motions shall be entertained herein. Let an entry of judgment be issued.

SO ORDERED.

DIOSDADO M. PERALTA
Chief Justice

WE CONCUR:

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

ROSMARI D. CARANDANG
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Resolution 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