SECOND DIVISION

[G.R. No. 247501; October 11, 2021]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee, v.* **ROMEO CARCUEVA TOGON, JR.,** *Accused-Appellant.*

D E C I S I O N

INTING, *J.*:

This is an appeal[1] assailing the Decision[2] dated May 14, 2019 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01696-MIN which affirmed the Decision[3] dated June 9, 2017 of Branch 16, Regional Trial Court (RTC), Davao City in Criminal Case Nos. 79,351-14 and 79,352-14 finding Romeo Carcueva Togon, Jr. (accused-appellant) guilty beyond reasonable doubt of violation of Section 3 of Presidential Decree No. (PD) 1866, as amended by Republic Act No. (RA) 9516;[4] and of Robbery with Violence Against or Intimidation of a Person under Article 293 of the Revised Penal Code (RPC).

The Antecedents

The case stemmed from two (2) Informations that read:

Criminal Case No. 79,351-14

That on or about August 8, 2014, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, with intent to possess, willfully, unlawfully and consciously

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[1] See Notice of Appeal dated April 5, 2019, *rollo*, p. 17.

[2] *Id*. at 5-16; penned by Associate Justice Evalyn M. Arellano-Morales, with Associate Justices Oscar V. Badelles and Florencio M. Mamauag, Jr., concurring.

[3] CA *rollo*, pp. 33-42; penned by Presiding Judge Emmanuel C. Carpio.

[4] Entitled, "An Act Further Amending the Provisions of Presidential Decree No. 1866, as Amended, Entitled 'Codifying the Laws on Illegal/Unlawful Possession, Manufacture, Dealing in, Acquisition or Disposition of Firearms, Ammunition or Explosives or Instruments Used in the Manufacture of Firearms,

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had in his possession and custody one (1) Fragmentation Hand Grenade without first securing the necessary license or written authority to possess it.

CONTRARY TO LAW.[5]

Criminal Case No. 79,352-14

That on or about August 8, 2014, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused armed with a gun by means of violence or intimidation and with intent to gain, willfully, unlawfully, and feloniously pointed the said gun at private complainant MARIA LOURDES DEPE[Ñ]A then took the latter's bag containing the ₱60,000.00 to the damage and prejudice of said complainant.

CONTRARY TO LAW.[6]

When arraigned, accused-appellant pleaded not guilty to the charges against him.[7]

Trial ensued.

Version of the Prosecution

The prosecution presented the following witnesses, namely: Maria Lourdes Ubas Depeña (Depeña), Police Officer III Rico Adlawan (PO3 Adlawan), and Senior Police Officer II Consorcio Gerones, Jr. (SPO2 Gerones).[8]

On August 8, 2014, at around 8:00 a.m., Depeña was working at her junk shop when six persons riding in motorcycles suddenly arrived. One of them pointed a gun at her and forcibly took her bag that contained ₱60,000.00, two ATM cards, one postal ID, and a Samsung cellular phone worth ₱1,500.00.[9]

Ammunition or Explosives, and Imposing Stiffer Penalties for Certain Violations Thereof, and for Relevant Purposes,'" approved on December 22, 2008.

[5] Records, p. 1.

[6] *Id*. at 13.

[7] *Rollo*, p. 7.

[8] *Id*.

[9] *Id*.

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At around 9:00 a.m., Depeña immediately reported the incident to Police Station 8, Toril, Davao City. The police officers presented to her an array of pictures of possible suspects. She pointed to the picture of the person she identified as the one who pointed a gun at her during the incident.[10] The police officers identified the person in the picture as herein accused-appellant.

The police officers then conducted an immediate follow-up operation. At around 9:00 p.m. of the same day, they spotted accused-appellant. When accused-appellant noticed their presence, he brought out something from his pocket. At that point, PO3 Adlawan quickly grabbed the hand of accused-appellant. They found out that accused-appellant was holding a fragmentation grenade (subject hand grenade). They confiscated the subject hand grenade and brought accused-appellant to the police station for investigation.[11]

Version of the Defense

On the other hand, the defense presented two witnesses, namely: Elsie Amad (Amad) and accused-appellant.[12]

Amad testified that she is the *Barangay Kawagad* of Bangkas Heights, Toril, Davao City. She averred that on August 8, 2014, at around 9:00 a.m., she issued a *Barangay* Clearance and a Community Tax Certificate to accused-appellant.[13]

For his part, accused-appellant insisted that it was impossible for him to commit the crimes because on the alleged date of the incident, he went to the *barangay* hall to secure a *Barangay* Clearance. He asserted that on the evening of the same day, he was on his way to buy a cellular phone load when the police officers arrested him and struck him on the head.[14]

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[10] *Id*.

[11] *Id*. at 8.

[12] *Id*.

[13] *Id*. at 9.

[14] *Id*.

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The RTC Ruling

On June 9, 2017, the RTC rendered its Decision[15] finding accused-appellant guilty of violation of Section 3 of PD 1866, as amended by RA 9516, and Robbery with Violence against or Intimidation of a Person. The dispositive portion of the Decision provides:

> WHEREFORE, PREMISES CONSIDERED, this Court finds the evidence of the prosecution sufficient to prove the guilt of accused ROMEO TOGON, JR. beyond reasonable doubt and hereby sentences him to suffer the following:
>
> 1. FOR CRIMINAL CASE NO. 79,351-14, the penalty of Reclusion Perpetua; and
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> 2. FOR CRIMINAL CASE NO. 79,352-14, the Indeterminate Sentence penalty ranging from Two (2) years, Ten (10) Months and 20 days, as minimum (*Medium Period of Arresto Mayor in its Maximum Period to Prision Correccional in its Medium Period*) to Six (6) Years, One (1) Month and Eleven (11) Days, as maximum, (*Medium Period of Prision Correccional in its Maximum to Prision Mayor in its Minimum Period*).
>
> Accused Romeo Togon, Jr., is further sentenced to pay private complainant the amount of ₱60,000.00 as civil liability in Criminal Case No. 79,352-14.
>
> SO ORDERED.[16]

Undaunted, accused-appellant appealed to the CA.

The CA Ruling

In the assailed Decision, the CA denied the appeal and affirmed the RTC Decision; thus:

> WHEREFORE, foregoing premises considered, the ordinary appeal is DENIED. Accordingly, the 09 June 2017 Decision rendered by the Regional Trial Court (RTC), 11th Judicial Region, Branch 16, Davao City, in Criminal Case Nos. 79,351-14 and 79,352-14 is AFFIRMED.
>
> Appellant Romeo C. Togon, Jr. is found GUILTY for Violation of Section 3 of Presidential Decree (PD) No. 1866, as amended by Republic

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[15] CA *rollo*, pp. 33-42.

[16] *Id*. at 42.

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Act No. 9516, and Robbery with Violence Against or Intimidation of a Person and is sentenced to suffer the following penalties: 1) In Criminal Case No. 79,351-14, the penalty of *Reclusion Perpetua*; 2) In Criminal Case No. 79-352-14, the indeterminate penalty of imprisonment ranging from Two (2) years, Ten (10) Months and Twenty (20) Days, as minimum, to Six (6) Years, One (1) Month and Eleven (11) Days, as maximum.

Appellant Romeo Togon, Jr. is further ordered to pay private complainant the amount of Sixty Thousand Pesos (₱60,000.00) as civil liability in Criminal Case No. 79,352-14.

SO ORDERED.[17]

The CA held that all the elements of Robbery with Violence or Intimidation Against a Person were proven by the prosecution beyond reasonable doubt. It found that Depeña positively identified accused-appellant as the one who pointed a gun at her and took her belongings.[18]

The CA also upheld the conviction of accused-appellant for violation of Section 3 of PD 1866, as amended by RA 9516. It ruled that it was beyond doubt that accused-appellant was found in possession of the subject hand grenade and tried to throw it away.[19] It further ruled that the arrest of accused-appellant was valid because the police officers had probable cause to believe that accused-appellant was the perpetrator of the robbery committed against Depeña.[20]

Hence, the instant appeal.

The Office of the Solicitor General (OSG) manifested that it already discussed exhaustively the issues and legal arguments in its Appellee's Brief; thus, it will no longer file a Supplemental Brief.[21]

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[17] *Rollo*, p. 15.

[18] *Id*. at 11.

[19] *Id*. at 12.

[20] *Id*. at 13.

[21] *Id*. at 23.

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In its Brief for the Plaintiff-Appellee[22] filed before the CA, the OSG contended: (1) that accused-appellant was validly arrested during a hot pursuit operation by the police officers; (2) that there was no planting of evidence, torture, and mauling; and (3) that accused-appellant's identity as the perpetrator of the crimes charged was proven beyond reasonable doubt.

On the other hand, in his Supplemental Brief[23] filed before the Court, accused-appellant argued: (1) that the crime of Robbery was not proven beyond reasonable doubt; (2) that Depeña's statements were not supported by any evidence; (3) that he was illegally arrested; thus, the subsequent search on his person was unreasonable; (4) that he was a victim of planting of evidence committed by the police officers; and (5) that the subject hand grenade was merely planted by the police officers, as he had no means of securing much less having a hand grenade in his possession.

Issue

Whether the CA erred in affirming accused-appellant's conviction for violation of Section 3 of PD 1866, as amended by RA 9516; and for Robbery with Violence Against or Intimidation of a Person.

The Court's Ruling

The appeal is partly meritorious.

Well settled is the rule that the matter of ascribing substance to the testimonies of witnesses is best discharged by the trial court, and the appellate courts will not generally disturb the findings of the trial court in this respect.[24] Findings of the trial court which are factual in nature and which involve the credibility of witnesses are accorded with respect, if not finality by the appellate court, when no glaring errors, gross misapprehension of facts, and speculative, arbitrary, and unsupported conclusions can be gathered from such

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[22] CA *rollo*, pp. 48-67.

[23] *Rollo*, pp. 39-47.

[24] *Estrella v. People*, G.R. No. 212942, June 17, 2020.

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findings.[25] The reason is quite simple: the trial judge is in a better position to ascertain the conflicting testimonies of witnesses after having heard them and observed their deportment and mode of testifying during the trial.[26]

However, in criminal cases, an appeal throws the entire case wide open for review.[27] The reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors.[28] The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.[29]

After a judicious perusal of the records of the instant appeal, the Court finds no compelling reason to depart from the RTC and the CA's uniform factual findings in Criminal Case No. 79,352-14, the charge for Robbery with Violence Against or Intimidation of a Person, defined under Article 293 of the RPC.

However, in Criminal Case No. 79,351-14, or the charge for illegal possession of hand grenade, the Court finds that accused-appellant should be acquitted on the ground of reasonable doubt.

The elements of Robbery were proved beyond reasonable doubt.

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[25] *Id*., citing *People v. Aspa, Jr.*, 838 Phil. 302, 311-312 (2018), citing *People v. De Guzman*, 564, 282, 290 (2007).

[26] *Id*.

[27] *People v. Victoria*, G.R. No. 238613, August 19, 2019, citing *Miguel v. People*, 814 Phil. 1073, 1081 (2017), further citing *People v. Alejandro*, 807 Phil. 221, 229 (2017).

[28] *Casilac v. People*, G.R. No. 238436, February 17, 2020, citing *Ramos v. People*, 803 Phil. 775, 783 (2017).

[29] *Yap v. People*, G.R. No. 234217, November 14, 2018, citing *Ramos v. People*, 803 Phil. 775, 783 (2017), further citing *People v. Bagamano*, 793, Phil. 602, 607 (2016).

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Article 293 of the RPC defines Robbery as a crime committed by "[a]ny 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."

The crime of Robbery has the following elements: (a) intent to gain, (b) unlawful taking, (c) personal property belonging to another, and (d) violence against or intimidation of person or force upon things.[30] In the instant case, all of the foregoing elements were proven by the prosecution beyond reasonable doubt.

Arguing that the prosecution failed to establish all the elements of Robbery in the case, accused-appellant prays for his acquittal. He insists that Depeña's allegations that he robbed her are self-serving and uncorroborated by any other evidence.

The Court is not persuaded.

Depeña positively identified accused-appellant as the person who pointed a gun at her and took her belongings. In her testimony, Depeña asserted that she was certain that it was accused-appellant who robbed her because she stared at his face long enough for her to remember and identify him. She recalled that accused-appellant had a tattoo on his right arm.[31] Thus, it was established that accused-appellant was the one who unlawfully took her personal property through violence or intimidation.

The element of intent to gain was likewise proven. *Animus lucrandi* or intent to gain, is an internal act which can be established through the overt acts of the offender. The intent to gain is the usual motive to be presumed from all furtive taking of useful property appertaining to another, unless special circumstances reveal a different intent on the part of the perpetrator. Intent to gain may be presumed from the proven unlawful taking.[32] In the case, accused-appellant's intent to gain is presumed from his act of unlawfully taking Depeña's personal belongings.

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[30] See *People v. Basao*, 697 Phil. 193, 209 (2012).

[31] *Rollo*, p. 11.

[32] *People v. Del Rosario*, 411 Phil. 676, 686 (2001).

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Moreover, accused-appellant's bare-faced defense of denial cannot surmount the positive and affirmative testimony offered by the prosecution. A defense of denial which is unsupported and unsubstantiated by clear and convincing evidence becomes negative and self-serving, deserving no weight in law, and cannot be given greater evidentiary value over convincing, straightforward, and probable testimony on affirmative matters.[33]

Accused-appellant tried to substantiate his defense of alibi by presenting Amad, the *Barangay Kagawad* of Bangkas Heights, Toril, Davao City, who testified that she issued a *Barangay* Clearance and a Community Tax Certificate to accused-appellant on the day of the alleged robbery incident.[34]

The Court is not convinced that the documents presented by the defense support accused-appellant's defense of denial.

Oft-repeated is the rule that for alibi to countervail the evidence of the prosecution confirming the accused's guilt, he must prove that he was not at the *locus delicti* when the crime was committed and that it was physically impossible for him to have been at the crime scene at the time it was perpetrated.[35] The fact that he was at the *barangay* hall of Bangkas Heights, Toril, Davao City on the day of the incident does not foreclose the possibility that he was at the victim's junk shop, which was also located in Toril, right before or immediately after the crime was committed. Alibi, just like denial, is a very weak defense which easily crumbles if he fails to prove that he was in another place when the crime was committed or that it was physically impossible for him to be present at the crime scene or its immediate vicinity at the time of its commission.[36]

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[33] *People v. Villanueva*, 822 Phil. 735, 745 (2017), citing *People v. Mateo*, 582 Phil. 369, 384 (2008), further citing *People v. Gonzales*, 417 Phil. 342, 353 (2001).

[34] *Rollo*, p. 9.

[35] *People v. Roelan*, G.R. No. 241322, September 8, 2020, citing *People v. Hernandez*, 476 Phil. 66, 84 (2004), further citing *People v. Vallejo*, 461 Phil. 672, 694 (2003).

[36] *People v. Spinilla*, G.R. No. 224922 (Notice), October 14, 2020, citing *People v. Apattad*, 671 Phil. 95, 111 (2011), further citing *People v. Alfredo*, 653 Phil. 435, 447-448 (2010).

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A finding of guilt based on the testimony of a lone witness is also not uncommon.[37] Although the number of witnesses may be considered a factor in the appreciation of evidence, preponderance is not necessarily with the greatest number and conviction can still be had on the basis of the credible and positive testimony of a single witness.[38] Corroborative evidence is necessary when there are reasons to warrant the suspicion that the witness falsified the truth or that his observation had been inaccurate.[39]

Thus, the Court finds that the positive and clear statements of Depeña pointing to accused-appellant as the perpetrator of the crime of robbery are credible enough for the lower court to form a belief that accused-appellant is guilty beyond reasonable doubt. Further, accused-appellant failed to attribute any improper motive on the part of Depeña to falsely testify against him. The presumption is that her testimony was not moved by any ill will, untainted by bias, and thus, entitled to full faith and credit.[40]

Accused-appellant argues that the prosecution failed to prove the crime of Robbery as the alleged stolen items were not recovered from or found in accused-appellant's possession.[41]

The argument is untenable.

In *People v. Ebet*,[42] the Court held that the conviction of the accused in Robbery is justified even if the property subject of the crime is not presented in court; thus:

Intent to rob is an internal act but may be inferred from proof of violent unlawful taking of personal property. When the fact of asportation has been established beyond reasonable doubt, conviction of the accused is

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[37] *People v. Jalbonian*, 713 Phil. 93, 104 (2013), *People v. Tulop*, 352 Phil. 130, 148 (1998).

[38] *Id*.

[39] *People v. Rodriguez*, 818 Phil. 626, 639 (2017), citing *Rabanal v. People*, 518 Phil. 734, 748 (2006), further citing *Rivera v. People*, 501 Phil. 37, 49 (2006).

[40] See *People v. Manulit*, 649 Phil. 715 (2010).

[41] *Rollo*, p. 41.

[42] 649 Phil. 181 (2010).

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justified even if the property subject of the robbery is not presented in court. After all, the property stolen may have been abandoned or thrown away and destroyed by the robber or recovered by the owner.[43]

Beyond doubt, even if Depeña's property was not recovered in accused-appellant's possession, his conviction is justified as the fact of asportation was proven through the unwavering testimony of Depeña.

The arrest of accused-appellant without a warrant was valid.

Likewise, accused-appellant's contention that he was unlawfully arrested without a warrant deserves scant consideration.

Section 5(b), Rule 113 of the Revised Rules on Criminal Procedure provides that a peace officer may, without warrant, arrest a person when an offense has just been committed, and the peace officer has probable cause to believe based on personal knowledge of facts and circumstances that the person to be arrested has committed it. The contemplated offense was qualified by the word "just," connoting immediacy, and the determination of probable cause by the arresting officer should be based on his personal knowledge of facts and circumstances that the person to be arrested has committed it.[44]

In the case, the police officers conducted a hot pursuit follow-up operation immediately after Depeña reported the robbery at their police station at 9:00 a.m. of August 8, 2014. Depeña complained of a robbery that occurred an hour earlier and was able to identify the perpetrator through an array of pictures of suspects. Although the police officers only spotted accused-appellant at 9:00 p.m.[45] of the same day, they clearly had personal knowledge that a crime was just committed and had probable cause to believe, based on personal knowledge of facts and circumstances, that the person to be arrested had committed it. The police officers knew that a

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[43] *Id*. at 189, citing *People v. De Jesus*, 473 Phil. 405, 427-428 (2004).

[44] See *Pestilos v. Generoso*, 746 Phil. 301 (2014).

[45] *Rollo*, pp. 7-8.

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crime had just been committed about 13 hours beforehand per complainant Depeña. Hence, accused-appellant's warrantless arrest was valid.

The CA erred in affirming accused-appellant's conviction for illegal possession of an explosive.

As to the charge for violation of PD 1866, as amended by RA 9516, the Court acquits accused-appellant.

Section 1 of RA 9516, amending Section 3 of PD 1866, explicitly provides:

> Section 1. Section 3 of Presidential Decree No. 1866, as amended, is hereby further amended to read as follows:
>
> "Section 3. *Unlawful Manufacture, Sales, Acquisition, Disposition, Importation or Possession of an Explosive or Incendiary Device*. - The penalty of *reclusion perpetua* shall be imposed upon any person who shall willfully and unlawfully manufacture, assemble, deal in, acquire, dispose, import or possess any explosive or incendiary device, with knowledge of its existence and its explosive or incendiary character, where the explosive or incendiary device is capable of producing destructive effect on contiguous objects or causing injury or death to any person, including but not limited to, hand grenade(s), rifle grenade(s), 'pillbox bomb', 'molotov cocktail bomb', 'fire bomb', and other similar explosive and incendiary devices.
>
> "*Provided*, That mere possession of any explosive or incendiary device shall be *prima facie* evidence that the person had knowledge of the existence and the explosive or incendiary character of the device."

To convict an accused of illegal possession of an explosive device under PD 1866, as amended, jurisprudence has held that two (2) essential elements must be indubitably established: (a) the existence of the subject firearm or explosive which may be proved by the presentation of the subject firearm or explosive or by the testimony of witnesses who saw accused in possession of the same, and (b) the negative fact that the accused had no license or

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permit to own or possess the firearm or explosive which fact may be established by the testimony or certification of a representative of the Philippine National Police (PNP) Firearms and Explosives Unit.[46]

After a judicious scrutiny of the records of the instant case, the Court finds that the prosecution utterly failed to prove all the above-mentioned elements.

The PNP Criminal Investigation Manual (Revised 2011), Chapter II, 2.2.3 provides the outline of the investigation procedures and the preservation of physical evidence from markings, handling of evidence, to laboratory examination until its presentation in court. The manual provides:

g. Preservation of Evidence

It is the investigator's responsibility to ensure that every precaution is exercised to preserve physical evidence in the state in which it was recovered/ obtained until it is released to the evidence custodian.

x x x x

i. Chain of Custody

A list of all persons who came into possession of an item of evidence, continuity of possession, or the chain of custody, must be established whenever evidence is presented in court as an exhibit. *Adherence to standard procedures in recording the location of evidence, marking it for identification, and properly completing evidence submission forms for laboratory analysis is critical to chain of custody. Every person who handled or examined the evidence and where it is at all times must be accounted for*.

As a rule, all seized evidence must be in the custody of the evidence custodian and deposited in the evidence room or designated place for safekeeping.

x x x x

Proper handling of physical evidence is necessary to obtain the maximum possible information upon which scientific examination shall

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[46] *People v. Velasco*, G.R. No. 231787, August 19, 2019, citing *People v. Cortez*, 381 Phil. 345, 353 (2000).

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be based, and to prevent exclusion as evidence in court. Specimens which truly represent the material found at the scene, unaltered, unspoiled or otherwise unchanged in handling will provide more and better information upon examination. Legal requirements make it necessary to account for all physical pieces of evidence from the time it is collected until it is presented in court. With these in mind, the following principles should be observed in handling all types of evidence:

> 1. The evidence should reach the laboratory in same condition as when it was found, as much as possible.
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> 2. The quantity of specimen should be adequate. Even with the best equipment available, good results cannot be obtained from insufficient specimens.
>
> 3. Submit a known or standard specimen for comparison purposes.
>
> 4. Keep each specimen separate from others so there will be no intermingling or mixing of known and unknown material. Wrap and seal in individual packages when necessary.
>
> 5. Mark or label each of evidence for positive identification as the evidence taken from a particular location in connection with the crime under investigation.
>
> 6. *The chain of custody of evidence must be maintained. Account for evidence from the time it is collected until it is produced in court. Any break in this chain of custody may make the material inadmissible as evidence in court*. (Italics supplied)

In the case, there is no documentary evidence proving that the police officers complied with the chain of custody rule under the PNP Criminal Investigation Manual. The prosecution failed to establish that the subject hand grenade was properly turned over to the investigating officer for investigation and later to the evidence custodian for safekeeping.

A perusal of the records reveals that there was no chain of custody form that was accomplished and presented by the police officers in court. Granting there was a proper turnover of the subject evidence to the investigating officer and the evidence custodian, there is a complete absence of proof as to how the subject hand grenade was handled from one hand to another until

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it was turned over to the PNP Firearms and Explosives Unit and for identification in court. Hence, there was a break in the chain of custody; thus, the evidentiary value of the subject grenade was not preserved.

With the blunders committed by the police officers in the handling of the subject hand grenade, there is no assurance that the hand grenade identified in court was the same hand grenade allegedly confiscated from accused-appellant. The prosecution failed to prove that the police officers exercised every precaution to preserve the subject hand grenade in the state in which it was obtained until it was identified in court; and that the police officers kept the subject hand grenade separate from other hand grenades while it was in their possession to avoid intermingling or substitution.

In the case of *People v. Velasco*,[47] the accused therein was acquitted of illegal possession of fragmentation hand grenade for failure of the prosecution to establish an unbroken chain of custody of the subject grenade. This was because the testimonies of the prosecution's witnesses and the documentary evidence were silent as to how the investigator handled and stored the evidence and what precautions were taken to ensure that the condition of the seized item would not change. A police officer even admitted on cross-examination that the authorities failed to execute a chain of custody form. Thus, the Court held:

> Jurisprudence explains that the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. This would include testimony about every link in the chain, from the moment the item was picked up to the time it was offered in evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.
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> x x x x

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[47] *Id.*

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In connection with the foregoing incontrovertible facts, the Court has previously held that in the criminal prosecution of violation of P.D. 1866 "[*r*]*eceipts for seized items are mandatory on the part of apprehending and seizing police officers. To reiterate, such mandatory requirement was not met by the authorities in the instant case*.[48] (Italics supplied.)

In sum, accused-appellant should be acquitted of the charge for illegal possession of explosive for failure of the police officers to comply with the chain of custody rule.

The imposed penalty for Robbery should be modified.

To recapitulate, the Court affirms only the conviction of accused-appellant for Robbery in Criminal Case No. 79,352-14. Thus, the Court modifies the penalty imposed.

Paragraph 5 of Article 294 of the RPC provides that, in other cases of Robbery with violence or intimidation of persons, the penalty is *prision correccional* in its maximum period to *prision mayor* in its medium period or four (4) years, two (2) months, and one (1) day to ten (10) years.

Applying the Indeterminate Sentence Law, the minimum penalty to be imposed is *arresto mayor* in its maximum period to *prision correccional* in its medium period, or four (4) months and one (1) day to four (4) years and two (2) months. The maximum term shall be *prision correccional* in its maximum period to *prision mayor* in its medium period, or four (4) years, two (2) months and one (1) day to ten (10) years. Thus, in the absence of any modifying circumstances, the penalty to be imposed on accused-appellant is four (4) years and two (2) months of *prision correccional*, as minimum, to eight (8) years of *prision mayor*, as maximum.

The award of ₱60,000.00 as civil liability shall be deleted for failure of the prosecution to provide documentary evidence to substantiate such amount.

WHEREFORE, the appeal is **PARTLY GRANTED**. The Decision dated May 14, 2019 of the Court of Appeals in CA-

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[48] *Id*. Citations omitted.

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G.R. CR-HC No. 01696-MIN is **AFFIRMED** with the following modifications in that:

1. In Criminal Case No. 79,351-14, accused-appellant Romeo Carcueva Togon, Jr., is **ACQUITTED** of illegal possession of explosive based on reasonable doubt;
2. In Criminal Case No. 79,352-14, accused-appellant Romeo Carcueva Togon, Jr., is found **GUILTY** beyond reasonable doubt of Robbery with Violence or Intimidation of Persons penalized under Article 294, paragraph 5 of the Revised Penal Code. He is hereby sentenced to suffer the penalty of four (4) years and two (2) months of *prision correccional*, as minimum, to eight (8) years of *prision mayor,* as maximum;
3. The award of ₱60,000.00 as civil liability is **DELETED**.
4. The period of preventive imprisonment undertaken by accused-appellant Romeo Carcueva Togon, Jr., shall be credited in his favor.

SO ORDERED.

Hernando[*] *(Acting Chairperson)*, *Gaerlan,* and *Dimaampao, JJ.,* concur.

Perlas-Bernabe, S.A.J. (Chairperson), on official leave.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

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[*] Per Special Order No. 2846 dated October 6, 2021.