Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

NILO MACAYAN, JR. y MALANA, Petitioner,	**G.R. No. 175842** Present:
-versus-	CARPIO, *Chairperson,* VELASCO, JR., DEL CASTILLO, MENDOZA, and LEONEN, *JJ.*
PEOPLE OF THE PHILIPPINES, Respondent.	**Promulgated:** MAR 18 2015

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DECISION

LEONEN, *J.*:

This resolves a Petition for Review on Certiorari praying that the assailed Decision[1] dated June 31, 2006 of the Court of Appeals be reversed and set aside and that a new one be rendered acquitting petitioner Nilo Macayan, Jr.

The assailed Decision of the Court of Appeals affirmed with modification (by increasing the duration of the penalty) the Decision[2] dated November 15, 2002 of the Regional Trial Court, Quezon City, which found Nilo Macayan, Jr. (Macayan) guilty beyond reasonable doubt of the crime of robbery.

Designated Acting Member per S.O. No. 1910 dated January 12, 2015.

1 *Rollo*, pp. 122–144. The Decision, docketed as CA-G.R. CR. No. 23830, was penned by Associate Justice Andres B. Reyes, Jr. and concurred in by Associate Justices Hakim S. Abdulwahid and Estela M. Perlas-Bernabe (now an Associate Justice of this court) of the Tenth Division, Court of Appeals Manila.

2 Id. at 66–76. The Decision, docketed as Crim. Case No. Q-01-98670, was penned by Judge Normandie B. Pizarro.

In the Information dated February 20, 2001, Macayan was charged with robbery as follows:

> That on or about the 16th day of February 2001, in Quezon City, Philippines, the said accused, with intent to gain and by means of force and intimidation, did then and there willfully, unlawfully and feloniously rob / divest one ANNIE UY JAO of the amount of P4,000.00 in cash in the manner as follows: on the date and in the place afore-mentioned, said accused threatened complainant that he would destroy her and her entire family and that he will have her and members of her family kidnapped unless she gives to him the amount of P200,000.00, Philippine Currency and thereafter negotiated with said Annie Uy Jao at McDonald's located at Quezon Avenue, this City, thus creating fear in the mind of said complainant who was compelled to give as in fact she gave and delivered to the accused the amount of P4,000.00, Philippine Currency, to the damage and prejudice of said Annie Uy Jao in the amount aforementioned.
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> CONTRARY TO LAW.[3]

The case was docketed as Criminal Case No. Q-01-98670 and raffled to Branch 101 of the Regional Trial Court, Quezon City.[4]

During trial, the prosecution presented as it witnesses: Annie Uy Jao, the private complainant; Rodrigo Mapoy, team leader of the NBI operatives who conducted the supposed entrapment operation that led to Macayan's arrest; and Resurreccion R. Bajado, a forensic chemist. Macayan was the sole witness for the defense.[5]

Annie Uy Jao (Jao) is the owner of Lanero Garments Ext (Lanero). In 1995, she hired Macayan as a sample cutter and to undertake materials purchasing for her garments business.[6]

In her testimony, Jao acknowledged that in 2000, when her business was doing poorly, she allowed her employees to accept engagements elsewhere to augment their income, provided they prioritize their work at Lanero. It came to her attention that Macayan and his wife (also an employee at Lanero) accepted work for a rival company. Thus, Jao confronted Macayan to impress upon him the need to prioritize work at Lanero. Macayan still took his work at Lanero for granted, so Jao confronted him again. In this confrontation, Macayan allegedly responded, "*Kung gusto mo, bayaran mo na lang ako at aalis ako*." Macayan then stopped reporting for work.[7]

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3 Id. at 124.
4 Id. at 91.
5 Id.
6 Id. at 66 and 93.
7 Id. at 67 and 93–94.

Following this, Jao was surprised to find out that Macayan had filed a Complaint for illegal dismissal against her (docketed as NLRC-NCR Case No. 00-09-05057-00). Several conferences were set for this illegal dismissal case. Immediately after the postponement of the conference on February 12, 2001, Macayan allegedly threatened Jao that her family would be harmed and/or kidnapped if she did not give him □200,000.00. Marjorie Angel (Angel), Jao's secretary, was supposedly present when she was threatened. The following day, Macayan allegedly called Jao to reiterate his threat and to specify the time and place — February 16, 2001, sometime between 6:00 and 7:00 p.m. at McDonald's Banawe Branch — in which the □200,000.00 should be handed to him. Jao claimed that she was sure it was Macayan speaking to her, as the person on the phone addressed her as "Madam," which was how he customarily called her.[8]

Fearing for her family's safety, Jao sought assistance from the National Bureau of Investigation (NBI). She asked that an entrapment operation be set up. The NBI operatives asked her to prepare bills totalling □4,000.00 to be marked and used in the operation.[9]

On February 16, 2001, Jao, Angel, and the NBI operatives arrived at McDonald's Banawe. They stayed there for about 30 minutes before Macayan called Angel and told her that they were to meet at McDonald's Quezon Avenue instead. They arrived there at about 7:30 p.m. Macayan called Angel again and told her that he was moving the venue to McDonald's EDSA. They then proceeded to McDonald's EDSA and waited for Macayan, while the NBI operatives waited outside. Macayan arrived and proceeded to where Jao and Angel were seated. Jao handed him an envelope containing the marked bills. Macayan pulled the bills halfway out of the envelope, and the NBI operatives accosted him.[10]

Prosecution witness Rodrigo Mapoy, team leader of the NBI operatives who arrested Macayan, testified to the circumstances before and the conduct of the entrapment operation. The testimony of forensic chemist Resurreccion R. Bajado regarding the marked bills handed to Macayan was subject of a joint stipulation by the prosecution and the defense.[11]

Macayan, testifying for himself, emphasized that he enjoyed a relatively trouble-free employment with Lanero. However, sometime in 1999, after his wife gave birth to their first child, he discovered that Jao had not been remitting required premiums to the Social Security System.[12]

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8 Id. at 13, 67–68, and 94.
9 Id.
10 Id. at 13–14, 68–69, and 94–95.
11 Id. at 14–15 and 69–70.
12 Id. at 95.

On August 18, 2000, as his child was confined in a hospital, Macayan inquired with Jao regarding his Medicare benefits. This displeased Jao. The following day, she prevented him from performing his tasks at work. Construing this as harassment, he stopped reporting for work.[13]

Thereafter, Macayan filed a Complaint for illegal dismissal against Jao. In the course of the proceedings for this illegal dismissal case, no less than 11 conferences/hearings were set. As evidenced by these conferences' minutes or constancias, at no instance did Jao ever attend, as it was either her legal counsel or Angel who did so. Macayan recalled that in one of these conferences, he expressed to Angel his willingness to settle the case for □40,000.00.[14]

On February 16, 2001, at about 9:00 a.m., Angel called Macayan. She told him that Jao was ready to settle the illegal dismissal case. She added that Jao wanted to pay him already, as Jao was leaving for Hong Kong. Angel set a rendezvous later in the day at McDonald's Banawe. At about 11:00 a.m., Angel called him again, resetting the rendezvous to McDonald's EDSA. She even reasoned that this venue was more convenient for her since she was going home to Zambales.[15]

Macayan arrived at the agreed venue at about 9:00 p.m. He saw Angel standing outside McDonald's. He approached Angel, who then accompanied him inside and led him to a four-seat corner table. He was surprised to see Jao present. Jao then brought out of her bag a piece of paper indicating that Macayan received the settlement amount for the illegal dismissal case. Macayan signed this as he was of the understanding that this was necessary to the settlement. Jao then pulled out a white envelope, handed it to Macayan, and told him to count its contents. While counting the contents, a flash bulb went on somewhere to his right. Then, a man who claimed to be an NBI operative struck a blow on the right side of Macayan's face and told him, "*Tatanga-tanga ka. Pupunta ka rito ng walang kasama, ikaw ngayon ang me* [sic] *kaso*."[16]

Handcuffed, he was taken aboard a minivan and physically abused. He was taken to several police stations in the hope that an inquest fiscal was available. It was only at 10:00 a.m. of the following day that an inquest fiscal, Prosecutor Hilda Ibuyan, became available.[17]

The Information charging him with robbery dated February 20, 2001 was then prepared, and the criminal case (docketed as Criminal Case No. Q-

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13 Id. at 96.
14 Id. at 71 and 96–97.
15 Id. at 71 and 97.
16 Id. at 98–99.
17 Id. at 99.

01-98670) was filed and raffled to Branch 101 of the Regional Trial Court, Quezon City.

In the meantime, on October 31, 2001, the illegal dismissal case was decided in Macayan's favor by Labor Arbiter Daisy G. Cauton-Barcelona. A total of □186,632.00 was awarded to him.[18] On appeal, the National Labor Relations Commission would find that Macayan was entitled to unpaid benefits though he was legally dismissed. The Decision of the National Labor Relations Commission was subsequently affirmed by the Court of Appeals with modification as to the applicable rate of interest.[19]

After trial, the Regional Trial Court, Quezon City rendered the Decision[20] convicting Macayan of robbery. The trial court found the prosecution's version of events "from the time of the telephone overtures of the Accused which is consistent with the elements of intimidation and/or extortion, up to complainant Annie Uy Jao's reporting the matter to the NBI, to the time of the NBI entrapment" as "ring[ing] a loud bell of truth and consistency, not to say credibility."[21] It accorded the presumption of regularity to the entrapment operation and held that the forensic findings connecting the marked money to Macayan militated against his defense.[22]

The dispositive portion of the trial court's Decision reads:

> *PREMISES CONSIDERED, this Court, therefore, finds the Accused GUILTY BEYOND REASONABLE DOUBT of the crime of robbery and hereby sentences him to suffer the indeterminate penalty (there being no mitigating/aggravating circumstance) of FOUR (4) MONTHS and ONE (1) DAY of ARRESTO MAYOR as minimum to FOUR (4) YEARS, TWO (2) MONTHS and ONE (1) DAY of PRISION CORRECCIONAL as maximum.*
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> *Lastly the P4,000.00 marked money exhibit, which has been claimed to be owned by the private complainant, is ORDERED RELEASED to her after the finality of this Decision.*
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> *SO ORDERED*.[23] (Emphasis and underscoring in the original)

Macayan then appealed to the Court of Appeals. He filed his Appellant's Brief[24] on August 25, 2004.

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18 Id. at 77–78.

19 Id. at 77–87. The Decision, docketed as CA-G.R. SP No. 72892 and dated October 28, 2003, was penned by Associate Justice Jose C. Mendoza (now an Associate Justice of this court) and concurred in by Associate Justices B.A. Adefuin-De la Cruz and Eliezer R. De Los Santos of the Ninth Division, Court of Appeals Manila.

20 Id. at 66–76.

21 Id. at 75.

22 Id. at 74–75.

23 Id. at 75–76.

24 Id. at 41–65.

The Office of the Solicitor General, representing the People of the Philippines at the appellate stage, did not file an appellee's brief. Instead, it filed a Manifestation and Motion in Lieu of Appellee's Brief[25] recommending that Macayan be acquitted. It asserted that his guilt was not established beyond reasonable doubt.

Noting that Jao was never present in any of the conferences for the illegal dismissal case and that the sole witness who could confirm if she was indeed threatened or intimidated on or immediately after such an occasion (i.e., Angel) was never presented, the Office of the Solicitor General asserted that the fourth requisite of the offense of robbery (i.e., violence against or intimidation of a person) could not have been made by Macayan on the occasion of a conference for the illegal dismissal case. It added that the other occasion when Macayan was supposed to have threatened Jao was equally dubious since Jao's sole reason for claiming that it was Macayan speaking to her (i.e., her having been addressed as "Madam") was insufficient to ascertain that person's identity.[26]

On July 31, 2006, the Court of Appeals Tenth Division rendered the assailed Decision[27] affirming Macayan's conviction and increasing the duration of the penalty imposed. It reasoned that Jao's sole, uncorroborated testimony was nevertheless positive and credible. As regards Jao's having been threatened after the postponement of the February 12, 2001 conference in the illegal dismissal case, the Court of Appeals reasoned that constancias are "not the best evidence of attendance"[28] and that, in any case, Jao was threatened *after* and not during the conference.

The dispositive portion of this Decision reads:

> **WHEREFORE**, premises considered, the decision of the Regional Trial Court of Quezon City, Branch 101, in Criminal Case No. Q-01-98670 is hereby **AFFIRMED** with the **MODIFICATION** that the accused-appellant is hereby sentenced to an indeterminate sentence of one (1) year, seven (7) months and eleven (11) days of prision correccional as **MINIMUM**, to six (6) years, one (1) month and eleven (11) days of prision mayor as **MAXIMUM**.
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> **SO ORDERED**.[29] (Emphasis in the original)

On December 18, 2006, the Court of Appeals Tenth Division rendered the Resolution[30] denying Macayan's Motion for Reconsideration.[31]

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25 Id. at 89–120.
26 Id.
27 Id. at 122–144.
28 Id. at 139.
29 Id. at 144.
30 Id. at 155.
31 Id. at 145–150.

Hence, this Petition was filed.[32]

Asked by this court to file a Comment, the Office of the Solicitor General instead filed a Manifestation and Motion[33] to adopt as its Comment the same Manifestation and Motion in Lieu of Appellee's Brief that it filed with the Court of Appeals. Thus, the Office of the Solicitor General reiterated its position that Macayan's guilt beyond reasonable doubt has not been established and that he must be acquitted.

On September 11, 2007, Macayan filed the Manifestation in Lieu of Reply[34] in view of the Office of the Solicitor General's earlier Manifestation and Motion.

For resolution is the sole issue of whether Macayan's guilt beyond reasonable doubt has been established.

We reverse the Decision of the Court of Appeals and acquit petitioner Nilo Macayan, Jr. of the charge of robbery.

I

Rule 133, Section 2 of the Revised Rules on Evidence specifies the requisite quantum of evidence in criminal cases:

> Section 2. Proof beyond reasonable doubt. — In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof, excluding possibility of error, produces absolute certainly. Moral certainly only is required, or that degree of proof which produces conviction in an unprejudiced mind.

This rule places upon the prosecution the task of establishing the guilt of an accused, relying on the strength of its own evidence, and not banking on the weakness of the defense of an accused. Requiring proof beyond reasonable doubt finds basis not only in the due process clause[35] of the Constitution, but similarly, in the right of an accused to be "presumed innocent until the contrary is proved."[36] "Undoubtedly, it is the

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32 Id. at 10–37.
33 Id. at 157–159.
34 Id. at 162–164.
35 CONST, (1987), art. III, sec. 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.
36 CONST, (1987), art. III, sec. 14 (2): In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public

constitutional presumption of innocence that lays such burden upon the prosecution."[37] Should the prosecution fail to discharge its burden, it follows, as a matter of course, that an accused must be acquitted. As explained in *Basilio v. People of the Philippines*:[38]

> We ruled in *People v. Ganguso*:
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> > An accused has in his favor the presumption of innocence which the Bill of Rights guarantees. Unless his guilt is shown beyond reasonable doubt, he must be acquitted. This reasonable doubt standard is demanded by the due process clause of the Constitution which protects the accused from conviction except upon proof beyond reasonable doubt of every fact necessary to constitute the crime with which he is charged. The burden of proof is on the prosecution, and unless it discharges that burden the accused need not even offer evidence in his behalf, and he would be entitled to an acquittal. Proof beyond reasonable doubt does not, of course, mean such degree of proof as, excluding the possibility of error, produce absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. The conscience must be satisfied that the accused is responsible for the offense charged.
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> Well-entrenched in jurisprudence is the rule that the conviction of the accused must rest, not on the weakness of the defense, but on the strength of the prosecution. The burden is on the prosecution to prove guilt beyond reasonable doubt, not on the accused to prove his innocence.[39] (Citations omitted)

II

The determination of the guilt of an accused hinges on how a court appreciates evidentiary matters in relation to the requisites of an offense. Determination of guilt is, thus, a fundamentally factual issue.

This court, however, is not a trier of facts. Consistent with Rule 45 of the Rules of Court, "[a]s a rule, only questions of law, not questions of fact, may be raised in a petition for review on *certiorari* under Rule 45."[40] More specifically, "in a criminal case, factual findings of the trial court are

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trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

37 *People of the Philippines v. Solayao*, 330 Phil. 811, 819 (1996) [Per J. Romero, Second Division].

38 591 Phil. 508 (2008) [Per J. Velasco, Jr., Second Division].

39 Id. at 521–522.

40 *Heirs of Deauna v. Fil-Star Maritime Corporation*, G.R. No. 191563, June 20, 2012, 674 SCRA 284, 302 [Per J. Reyes, Second Division], *citing Antiquina v. Magsaysay Maritime Corporation,* 664 Phil. 88 (2011) [Per J. Leonardo-De Castro, First Division].

generally accorded great weight and respect on appeal, especially when such findings are supported by substantial evidence on record."[41]

Nevertheless, there are exceptions allowing this court to overturn the factual findings with which it is confronted. Speaking specifically of criminal cases, this court stated in *People of the Philippines v. Esteban*[42] that "in exceptional circumstances, such as when the trial court overlooked material and relevant matters . . . this Court will re-calibrate and evaluate the factual findings of the [lower courts]."[43] Below are the recognized exceptions to the general rule binding this court to the factual findings of lower courts:

> (1) When the conclusion is a finding grounded entirely on speculation, surmises, and conjectures;
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> (2) When the inference made is manifestly mistaken, absurd or impossible;
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> (3) Where there is a grave abuse of discretion;
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> (4) *When the judgment is based on a misapprehension of facts*;
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> (5) When the findings of fact are conflicting;
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> (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;
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> (7) When the findings are contrary to those of the trial court;
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> (8) When the findings of fact are conclusions without citation of specific evidence on which they are based;
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> (9) When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and
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> (10) *When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record*. [44] (Emphasis supplied)

Here, Macayan asserts that the lower courts committed a serious misapprehension of facts, thereby wrongly concluding that he is guilty beyond reasonable doubt. He argues that the evidence adduced by the

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41 *People of the Philippines v. Esteban*, G.R. No. 200290, June 9, 2014, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/june2014/200920.pdf> 6 [Per J. Reyes, First Division].

42 Id.

43 Id.

44 *Cirtek Employees Labor Union v. Cirtek Electronics, Inc.,* G.R. No. 190515, June 6, 2011, 650 SCRA 656, 660 [Per J. Carpio-Morales, Third Division].

prosecution falls seriously short of the quantum of evidence required to convict him. He specifically draws attention to the following:

First, Jao's claim that, *immediately after* the postponement of the February 12, 2001 conference in the illegal dismissal case *and in the presence of Angel*, Macayan threatened to harm and/or kidnap the members of her family, despite the records in the same case showing that *Jao never attended any of the 11 conferences that were set or conducted*;

Second, the prosecution's unjustified failure to present Angel as a witness and its sole reliance on Jao's testimony, considering that it was Angel who can confirm if, indeed, Macayan threatened Jao's family immediately after the postponement of the February 12, 2001 conference;

Third, Jao's reliance on nothing more than how she was addressed as "Madam" by the person speaking to her on the phone as basis for concluding that it must have been Macayan who was supposedly calling and threatening her and her family;

Fourth, the inconsistency and absurdity of Jao's conduct in considering Macayan's threats of such serious nature that she needed to report it to the National Bureau of Investigation for the prospective conduct of an entrapment operation, and yet not telling her husband about the threats simply because he would easily get annoyed; and

Lastly, the inconsistent claims of Jao and prosecution witness Rodrigo Mapoy, the NBI operations team leader, as to who Macayan called on the evening of February 16, 2001 to reset the rendezvous to McDonald's EDSA. Jao claimed that Macayan called Angel, while Rodrigo Mapoy claimed that Macayan called Jao herself.

Macayan's position is buttressed by the Office of the Solicitor General, the public institution otherwise charged with the task of pursuing the prosecution's case on appeal. As the Office of the Solicitor General stated:

> In the instant case, however, clues of untruthfulness in the testimony of Annie Uy Jao are abundant while incentives for fabrication of a story [are] not wanting. The only way to eliminate any doubt in Annie Uy Jao's assertions would have been to find independent confirmation from the other sources, as by way of unambiguous testimony of a competent and credible witness. Sadly, no such confirmation could be had as the prosecution's evidence on the most crucial elements of the crime was limited to that testified on by Annie Uy Jao.
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> It is respectfully submitted that had the trial court seen and

> understood these realities laid on clearly in the records of this case, it would have concluded reasonable doubt as to acquit appellant.[45] (Underscoring in the original)

The position taken by the Office of the Solicitor General has resulted in the peculiar situation where it is not the prosecution but, effectively, the trial court and the Court of Appeals arguing for Macayan's guilt beyond reasonable doubt.

With the backdrop of these assertions, we deem it proper to reevaluate the factual findings and the conclusions reached by both the trial court and the Court of Appeals.

III

Article 293 of the Revised Penal Code provides for who are guilty of robbery:

> ARTICLE 293. Who are Guilty of Robbery. — 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.

Accordingly, the following elements must be established to sustain a conviction for robbery:

> 1) there is a taking of personal property [i.e., unlawful taking]; 2) the personal property belongs to another; 3) the taking is with *animus lucrandi* [i.e., intent to gain]; and 4) the taking is with violence against or intimidation of persons or with force upon things.[46]

As pointed out by the Office of the Solicitor General, the "bone of contention"[47] centers on the elements of unlawful taking and of violence against or intimidation of persons. This is precisely Macayan's contention: that he neither intimidated nor threatened Jao, and that he could not have unlawfully taken money from her on account of any act of intimidation and/or threats made by him.

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45 *Rollo*, pp. 118 and 147.

46 See *Consulta v. People of the Philippines*, 598 Phil. 464, 471 (2009) [Per J. Carpio-Morales, Second Division].

47 *Rollo*, p. 105.

IV

Consistent with the rule on burden of proof, the requisite quantum of evidence in criminal cases, and in light of the points highlighted by both Macayan and the Office of the Solicitor General, we find that the prosecution failed to establish Macayan's guilt beyond reasonable doubt. Thus, a reversal of the rulings of the trial court and Court of Appeals is in order. Macayan must be acquitted.

As correctly pointed out by the Office of the Solicitor General, the resolution of this case hinges on whether Jao was indeed threatened and/or intimidated by Macayan into giving him money, that is, whether he extorted money from Jao. Per Jao's own testimony, there were two (2) instances in which she was threatened and/or intimidated: first, *immediately after* the postponement of the February 12, 2001 conference in the illegal dismissal case; and second, when Macayan called her on February 13, 2001 and set a rendezvous for handing over the extorted money.

Contrary to the conclusions of the trial court and the Court of Appeals, we find Jao's testimony regarding these occasions (and ultimately, the presence of the requisite of violence against or intimidation of a person) dubious and unreliable.

Macayan and the Office of the Solicitor General are one in pointing out that the records of NLRC-NCR Case No. 00-09-05057-00 are bereft of any indication that Jao was present in any of the 11 conferences held or set (only to be postponed even if both parties were represented). The defense introduced as its Exhibits "2" to "12" the minutes and/or constancias of these conferences. Exhibit "2" was the minutes/constancia of the February 12, 2001 conference. During his testimony, Macayan specifically referred to this document as proof that he never saw, met, or spoke to Jao on the occasion of or immediately after the conference set on that date:

> Q: Mr. Witness, you were present when complaining witness Annie Uy Jao told this Honorable Court that sometime on February 12, 2001, during the hearing of the labor case in the NLRC, at Banawe, Quezon City, you threatened her that you will kidnap her and her family if she will not give P200,000.00. What can you say about this?
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> A: That is not true, Sir.
>
> Q: Why did you say there is no truth in it?
>
> A: Because we did not meet on February 12.
>
> Q: Do you mean to tell this Honorable Court that Annie Uy Jao

was not present during the hearing of that case?

A: She was not there.

Q: Has she an [sic] representative?

A: Yes, Sir.

Q: Who is that?

A: Marjorie Angel, the secretary.

Q: Do you have any proof that she was not present?

A: Yes, Sir.

Q: I am showing to you constancia, date of hearing 2/12/03. Will you please examine this document. Does it have anything to do with what you said?

A: This is the Minutes of Hearing on February 12, 2001.

Atty. Oliva: We would like to request that this constancia be marked as Exhibit "2."

Court: Mark it. On its face, this is a form by the NLRC containing the caption, the name of the parties and the case number, date of hearing and the time.

Atty. Oliva: Mr. Witness, there are signature [sic] below this constancia, complaining witness, there is a signature above the complainant.

A: This is my signature and this is the signature of Marjorie Angel.

Q: How do you know that this is her signature[?]

A: Because I was with her for five (5) months.[48]

Jao's absence in the intended conference (though subsequently postponed despite both parties to the illegal dismissal case being represented) places serious doubt on the occurrence of the supposed first instance of intimidation on February 12, 2001.

The Court of Appeals reasoned that a constancia "would not be the best evidence of attendance in any of the National Labor Relations Commission hearings."[49] It added that, in any case, the act of intimidation happened after, and not during, the conference. This is a strained consideration of the facts of this case.

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48 Id. at 28–29, *citing* TSN, pp. 19-21, April 25, 2002.
49 Id. at 139.

First, consistent with the presumption "[t]hat official duty has been regularly performed"[50] and "[t]hat a person takes ordinary care of his concerns,"[51] both the personnel of the Labor Arbiter's office who prepared the minutes of the February 12, 2001 conference and the persons who signed it must be considered as having taken the necessary care to make it a faithful and accurate record of what transpired and of who were present in the conference. Thus, the minutes' indication that only Angel was present should be taken as accurate and reliable absent any proof to the contrary. If the principal, Jao, were present, there would not have been a need for Angel, her representative, to sign in such capacity.

Second, much is made of how the threats were delivered after and not during the conference. To recall the prosecution's allegation, the intimidation took place immediately after the conference, outside the Labor Arbiter's office, along the corridor of the National Labor Relations Commission Building.[52] As there was neither an appreciable duration of time between the conference and the subsequent threatening exchange nor a significant distance between where the conference was held and where the subsequent threatening exchange took place, it may be deduced that whatever exchange, if any, that transpired must have been between those who were present at the conference. Conversely, those who were absent from the conference must have been equally unavailable to engage in an exchange with Macayan.

Apart from these, that the rest of the minutes of the illegal dismissal case shows that Jao never attended any conference gives rise to the question of why she chose to be personally present in, of all conferences, the postponed February 12 conference. If, indeed, she was present in this despite her absence in all others, some particular significance must have characterized this conference, something that Jao has not accounted for. In any case, if there was any particular significance to this February 12 conference, then, all the more, her presence or attendance should have been indicated in the records.

Of course, many explanations — well within the realm of possibility — could be offered for why Jao's attendance was not indicated in the minutes. For instance, Jao could have simply chosen to wait outside the Labor Arbiter's office, or she could have declined from having her attendance specified in the minutes. What is crucial, however, this being a criminal case, is for the prosecution to establish the guilt of an accused on the strength of its own evidence. Its case must rise on its own merits. The prosecution carries the burden of establishing guilt beyond reasonable doubt; it cannot merely rest on the relative likelihood of its claims. Any lacunae in

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50 REV. RULES ON EVID., Rule 131, sec. 3 (m).
51 REV. RULES ON EVID., Rule 131, sec. 3 (d).
52 *Rollo*, pp. 112 and 139.

its case gives rise to doubt as regards the "fact[s] necessary to constitute the crime with which [an accused] is charged."[53]

Here, there is serious doubt on whether Jao was actually threatened or intimidated at the time she specified. Thus, there is serious doubt on the existence of the fourth requisite for robbery — violence against or intimidation of a person — in relation to the alleged February 12, 2001 incident.

The prosecution could have addressed the deficiency in Jao's allegation that she was threatened on February 12, 2001 by presenting as witness the other person who was supposedly present in the incident: Angel, Jao's secretary. However, she was never presented as a witness.

The Court of Appeals noted that corroborative testimony is dispensable; "the lack of it does not necessarily condemn a lone witness' recital of the crime *for as long as that single witness' testimony is credible*."[54]

People of the Philippines v. Cleopas,[55] which the Court of Appeals cited, states that the testimony of a lone witness "may suffice for conviction if found trustworthy and reliable."[56]

Precisely, conviction resting on a singular testimony is warranted if this is, in the words of *Cleopas*, "trustworthy and reliable,"[57] or, in the words of the Court of Appeals, "credible."[58] This could not be said of Jao's testimony. As previously discussed, her very presence in the February 12, 2001 conference that she claimed to have been immediately followed by Macayan's threats, is in serious doubt. Nothing casts greater doubt on the reliability of Jao's claim than her having not been at the time and place of the supposed intimidation.

With the first alleged instance of intimidation being discredited, the prosecution is left to rely on the second supposed instance of intimidation: the phone call made by Macayan to Jao on February 13, 2001, during which he not only reiterated his threats but also set a rendezvous for the handover of the extorted money. Even this, however, is doubtful.

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53 *Basilio v. People of the Philippines*, 591 Phil. 508, 521–522 (2008) [Per J. Velasco, Jr., Second Division].
54 *Rollo*, p. 135.
55 384 Phil. 286 (2000) [Per J. Quisumbing, Second Division].
56 Id. at 297.
57 Id.
58 *Rollo*, p. 136.

The prosecution itself acknowledged that there is no basis for ascertaining the identity of Macayan as the caller other than the caller's use of "Madam" in addressing Jao. The following excerpt is taken from Jao's direct examination:

> Atty. Garena: Madam Witness, you said you received another call after February 12, 2001. Is that from the accused or from another person?
>
> A: From the accused.
>
> Q: What was the call about?
>
> A: He repeated the threat again that I have to give him P200,000.00 or else, he will harm y [sic] family; and he set a place to give the money.
>
> . . . .
>
> Court: The first word uttered by him. You narrated, more or less. Did he introduce himself?
>
> *A: He never stated his name because he knew I know his name.*
>
> *Court: That is your presumption, but what was the first word uttered by him and what was your reply, line by line*[?]
>
> *A: He always calls me madam.*
>
> Court: You answer the question of the Court now. How did the conversation go?
>
> A: He said, Madam, Kung hindi mo ibibigay sa akin ang P200,000.00, ipapakidnap ko ang pamilya mo. (Madam, if you don't give me that P200,000.00, I am going to ask somebody to kidnap you and your family.)
>
> Court: That was the first line. Was that the end of the first line of the accused?
>
> A: Those were the only words that he told me. I cannot say anything. I just put down the phone.
>
> Court: After he said those lines, you put down the telephone?
>
> A: After he said the date and time.
>
> Court: The Court is asking you to narrate line by line. What he said. What you said.
>
> A: If you will not give me P200,000.00, I will ask somebody to kidnap you, your child and your husband.
>
> Court: That was the first line. Did you reply to him?

> A: No, sir. I did not ask. The next line, he said he was going to wait for me at McDo Banawe at around 6:00 [to] 7:00 in the evening.
>
> Court: Did he state the date?
>
> A: February 16.
>
> Court: You are impressing to this Court that the accused had said two lines already without you uttering any word. How did the accused knew [sic] that it is Annie Uy Jao on the other line?
>
> A: Because the first word [sic] that I said, Hello, then he replied, Madam.
>
> Court: You uttered the hello, that is why the accused recognized you on the line.
>
> A: Yes, your Honor. Because he knew that only two persons are answering [sic] the phone, my secretary and me.[59] (Emphasis supplied)

The prosecution should have offered more convincing proof of the identity of the supposed caller. Even if it were true that Macayan customarily addressed Jao as "Madam," merely being called this way by a caller does not ascertain that he is the alleged caller. The prosecution never made an effort to establish how addressing Jao as "Madam" is a unique trait of Macayan's and Jao's relationship. Other persons may be equally accustomed to calling her as such; for instance, "Madam" may be Jao's preferred manner of being addressed by her subordinates or employees. Likewise, it was established that Macayan and Jao have known each other since 1995. Their relation was more than that of employer and employee, as Jao was Macayan's godmother in his wedding.[60]

Certainly, Jao could have offered other, more reliable means of ascertaining that it was, indeed, Macayan with whom she was conversing. The second alleged instance of intimidation is likewise cast in serious doubt. Left with no other act of intimidation to rely on, the prosecution fails in establishing the fourth requisite of the crime of robbery.

Apart from these, another point underscores the unreliability of Jao's allegations. As pointed out by Macayan and acknowledged by the prosecution, Jao never saw it proper to warn her family, more specifically, her husband, of the threat of being kidnapped. Nevertheless, she supposedly perceived Macayan's alleged threat as being of such a serious nature that she must not only report the matter to the National Bureau of Investigation, but

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[59] Id. at 21–23.
[60] Id. at 106.

also entreat its officers to conduct an entrapment operation.

Jurisprudence has established the standard for appreciating the credibility of a witness' claim:

> [F]or evidence to be believed, however, it must not only proceed from the mouth of a credible witness but must be credible in itself such as the common experience and observation of mankind can approve under the circumstances. The test to determine the value of the testimony of a witness is whether such is in conformity with knowledge and consistent with the experience of mankind. Whatever is repugnant to these standards becomes incredible and lies outside of judicial cognizance.[61]

Jao's inconsistent conduct, coupled with flimsy justifications for acting as she did, betrays the absurdity and unreliability of her claims and ultimately, of her as a witness:

> Court: You did not inform anybody about that call?
>
> A: Only my secretary. She was beside me.
>
> Court: What about your husband? At that time, where was he?
>
> A: He was outside.
>
> Court: Does he have a cellular phone at that time?
>
> A: Only a pager.
>
> Court: Did it not occur to you to inform your husband about the call?
>
> A: No, your Honor.
>
> Court: How about the words uttered to you in the Labor hearing, did you inform you [sic] husband?
>
> A: No, your Honor.
>
> Court: What was the reason?
>
> A: I was afraid because he might accused (sic) me of what happened?
>
> Court: This is a very private question. That date of hearing in the NLRC, you slept together [with] your husband?
>
> A: Yes, your Honor.

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[61] *People of the Philippines v. Cantilla*, 442 Phil. 641, 651 (2002) [Per J. Quisumbing, Second Division], *citing People of the Philippines v. Supnad*, 414 Phil. 637 (2001) [Per J. Puno, En Banc].

> Court: That night, you did not inform him?
>
> A: He knows about the labor case.
>
> Court: You did not inform him about the extortion threat of the Accused?
>
> A: No, sir.[62]

On cross examination, Jao explained:

> Q: During the direct examination, the Honorable Court asked you whether you told this matter to your husband and you said you did not?
>
> A: I am not [the] type of person who don't usually tell [sic] everything to my husband specially [sic] regarding things like this *because he is medyo makulit and I don't want him asking same questions again and again* (sic).
>
> Q: Instead of telling your husband, you went to the NBI to report the matter?
>
> A: Yes, sir.[63] (Emphasis supplied)

The Court of Appeals stated that "the subsequent and contemporaneous actions of the private complainant from the time the threat was made bolsters the veracity of her story."[64] This cannot be farther from the truth. On the contrary, inconsistencies and absurdities in Jao's actions cast serious doubt on the veracity of her claims.

Finally, the trial court made much of how Macayan is supposedly estopped by the joint stipulation that the prosecution and the defense made as regards the "existence, authenticity, due execution and contents of [the] NBI Physics Report on the powder dusting/ positive results."[65]

The defense's accession to these is inconsequential. These only prove that Macayan handled the bills used in the alleged entrapment operation, a fact that he does not dispute. It remains, however, that they do not establish any certainty as to the circumstances surrounding his handling of the bills, among these: whether there was, indeed, unlawful taking by Macayan, and whether Jao did hand him the bills because he extorted them from her.

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62 *Rollo*, pp. 114–115.
63 Id. at 115–116.
64 Id. at 136.
65 Id. at 35.

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In sum, the prosecution failed to establish the elements of unlawful taking and of violence against or intimidation of a person. Reasonable doubt persists. As is settled in jurisprudence, where the basis of conviction is flawed, this court must acquit an accused:

> In criminal cases, the prosecution has the *onus probandi* of establishing the guilt of the accused. *Ei incumbit probatio non qui negat.* He who asserts — not he who denies — must prove. The burden must be discharged by the prosecution on the strength of its own evidence, not on the weakness of that for the defense. Hence, circumstantial evidence that has not been adequately established, much less corroborated, cannot be the basis of conviction. Suspicion alone is insufficient, the required quantum of evidence being proof beyond reasonable doubt. Indeed, "the sea of suspicion has no shore, and the court that embarks upon it is without rudder or compass."
>
> It must be stressed that in our criminal justice system, the overriding consideration is not whether the court doubts the innocence of the accused, but whether it entertains a reasonable doubt as to their guilt. Where there is no moral certainty as to their guilt, they must be acquitted even though their innocence may be questionable. The constitutional right to be presumed innocent until proven guilty can be overthrown only by proof beyond reasonable doubt.[66] (Emphasis in the original, citations omitted)

With the prosecution having failed to discharge its burden of establishing Macayan's guilt beyond reasonable doubt, this court is constrained, as is its bounden duty when reasonable doubt persists, to acquit him.

WHEREFORE, the Petition is **GRANTED**. The Decision of the Court of Appeals in CA G.R. CR No. 28380 is **REVERSED** and **SET ASIDE.** Petitioner Nilo Macayan, Jr. y Malana is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. If detained, he is ordered immediately **RELEASED**, unless he is confined for any other lawful cause. Any amount paid by way of a bailbond is ordered **RETURNED**.

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

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[66] *People of the Philippines v. Asis*, 439 Phil. 707, 727–728 (2002) [Per J. Panganiban, En Banc].

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

PRESBITERO J. VELASCO, JR.
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.

ANTONIO T. CARPIO
Acting Chief Justice