

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LOPE VIENTE Y MAPILI, ACCUSED-APPELLANT.

G.R. No. 103299. August 17, 1993

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

In an information filed on 4 April 1989 with the Regional Trial Court (RTC) of Manila, accused Lope Viente y Mapili was charged with the violation of Republic Act No. 6539, otherwise known as the Anti-Carnapping Act, in that:

"x x x on or about the 29th day of January, 1989, in the City of Manila, Philippines, the said accused, conspiring and confederating with two others whose true names, identities and whereabouts are still unknown and helping one another, did then and there wilfully, unlawfully and feloniously, with intent of (sic) gain and by means of force, violence and intimidation, to wit: by then and there poking a gun at the nape of one Narciso Cabatas y Limora, driver of an Isuzu passenger jitney with Plate No. DVB-424, with Motor Number 386028 and Chassis Number SPMM-10408-86-C, valued at P150,000.00, owned by Lucila Crispino y Manzanalan, grabbing the wheels (sic) of the said vehicle and pushing the said driver off the same, take, steal and carry away the said passenger jitney, against the will of said Narciso Cabatas y Limora, to the damage and prejudice of the said owner in the aforesaid sum of P150,000.00, Philippine Currency." [1]

The case was docketed as Criminal Case No. 89-72203 and was assigned to Branch 28 (Pilot Court) of the said court.

Trial on the merits ensued after the accused had entered a plea of not guilty at his arraignment on 6 June 1989. [2]

The prosecution presented as its witnesses Narciso Cabatas, Lucila Crispino and Sgt. Wilfredo Bautista for its evidence in chief. The witnesses for the defense were Jaime Nuay, Jesus Benitua, Romeo Rosales, Nona Nuay, Atty. Elpidio Unto (defense counsel) and the accused. The prosecution recalled Mrs. Crispino and Sgt. Bautista as rebuttal witnesses while the defense presented the accused and his brother, Vaselides Viente, as surrebuttal witnesses.

A demurrer to evidence filed by the defense after the prosecution had rested its case was denied by the court. [3]

On 17 October 1991, the trial court, per Judge Rosalio G. De la Rosa, promulgated its decision, the dispositive portion of which reads as follows:

"WHEREFORE, the accused is found guilty beyond reasonable doubt of the crime of carnapping or violation of Republic Act 6539 and is sentenced to suffer imprisonment of thirty (30) years and to indemnify the offended party the sum of P150,000.00 without subsidiary imprisonment in case of insolvency, and to pay the costs." [4]

The accused (hereinafter referred to as the Appellant) seasonably filed a notice of appeal which the trial court approved. This Court accepted the appeal in the Resolution of 19 February 1992.

On 7 May 1992, the appellant wrote this Court a letter[5] wherein he stated that his counsel, Atty. Elpidio D. Unto, had failed to file a formal offer of evidence in the court below and had later abandoned him. He asks that a counsel de oficio be assigned to him.

On 10 June 1992, this Court relieved Atty. Unto as counsel for the appellant and subsequently appointed Atty. Abel C. Coloma of Quasha Asperilla Ancheta Pena & Nolasco as counsel de oficio.[6]

The appellant and the appellee filed their main briefs on 25 September 1992 and 9 March 1993, respectively. The former filed a Reply Brief on 20 April 1993.

The facts of this case, as culled from the records and the pleadings, are as follows:

Narciso Cabatas is the driver of an Isuzu passenger jeepney owned by Lucila Crispino which plies the Baclaran-Cubao route. At about 4:00 a.m. of 29 January 1989, Cabatas left Libertad, Pasay on board the jeepney in order to ply his route.[7] At the corner of Gil Puyat and Taft Avenues, three men boarded the passenger jeepney and sat at the back. One of the men sat directly behind Cabatas on the left side of the jeepney while the other two sat at the right side opposite the first one. Upon reaching the corner of Taft Avenue and Malvar Street near the Philippine Women's University at about 4:15 to 4:30 a.m., one of the three men signaled Cabatas to stop. When Cabatas stopped the jeepney in front of the Philippine Women's University, one of the two men seated at the right side poked a gun at Cabatas' nape and ordered the other passengers to alight from the jeepney. The other passengers got down from the jeepney; thereafter, one of the men pulled Cabatas to the right front seat while the man seated directly behind Cabatas transferred to the driver's seat. It was at this point that Cabatas saw the face of the one who had taken hold of the steering wheel. Cabatas was then shoved out of the jeepney by one of the men at the back. While on the pavement, Cabatas heard one of the men utter: "Pareng Lope, patakbuhan mo na ang jeep!" The three men then drove off.[8]

Cabatas immediately reported the incident to the Western Police District (WPD) Anti-Carnapping Section at the WPD Headquarters in U.N. Avenue, Manila.[9] He was advised to return at 8:00 a.m. of the following day with the registration papers of the vehicle. He went to Lucila Crispino, told her of what transpired and mentioned to her the statement uttered by one of the carnappers.[10]

The next day, Cabatas and Mrs. Crispino went to the WPD. He was assured by the officers of the WPD Anti-Carnapping Section that they would immediately send out an "Alarm Report" of the incident.[11]

Cabatas and Mrs. Crispino also reported the incident to the PC/INP Anti-Carnapping Section at Camp Crame, Quezon City as well as to the PC CAPCOM at Camp Bagong Diwa, Bicutan, Tagig on 15 April 1989.[12] Cabatas told the CAPCOM officers that he had twice seen the suspect riding in passenger jeepneys plying the Baclaran-Divisoria route.[13] Thereupon, Lt. Alfredo Orbeta, Sgt. Wilfredo Bautista and Sgt. Eduardo Bautista asked him to accompany them in a surveillance operation along Taft Avenue. The first day of surveillance proved unfruitful. On the second day of surveillance or on 31 March 1989, Cabatas and the CAPCOM officers posted themselves at the corner of Taft Avenue and Pedro Gil Street. Cabatas then spotted the suspect aboard a north-bound passenger jeepney and pointed him out to the CAPCOM officers. The CAPCOM officers told Cabatas to go home and, afterwards, to proceed to the CAPCOM headquarters the next day. The CAPCOM officers then followed the suspect and apprehended him along Taft Avenue in front of the Jai Alai Building. The person arrested was identified as Lope Viente, the herein appellant. The following day at the CAPCOM headquarters, Cabatas positively identified the appellant from a five-man line-up as the one who had grabbed the steering wheel of the jeepney.[14]

It appears that the day before the appellant's arrest, Atty. Elpidio Unto had visited Lucila Crispino in her

residence, accompanied by a man and a woman, both of whom he did not introduce to Mrs. Crispino. Atty. Unto pleaded to Mrs. Crispino not to suspect his nephews who he said were good people.[15] Lucila was cordial enough, but told Atty. Unto she would file a case against whoever stole her jeepney. The man who had accompanied Atty. Unto was later identified as the appellant.[16]

While in the custody of the CAPCOM, the appellant executed a "Sinumpaang Salaysay" (Exhibit "L") dated 31 March 1989. He was also brought to the Department of Justice (DOJ) where he executed a handwritten statement (Exhibit "N"). The handwritten statement contains the certification of State Prosecutor Hernani T. Barrios that he had personally examined the appellant and that he is satisfied that the appellant voluntarily executed and understood his affidavit. Both statements were given without the assistance of counsel.

The appellant relies on the defense of alibi which his witnesses tried to weave. Jaime Nuay testified that he is a driver-jeepney operator and that he has known the appellant since childhood. The appellant was his alternate driver, a conductor of one of his jeepneys and a pig butcher. During the incident in question, the appellant was at his (Nuay's) residence at 2230 Muñoz Street, Malate, Manila butchering hogs from 2:00 a.m. to 5:00 a.m. and then slicing and cooking the meat from 5:00 a.m. until 10:00 a.m.[17]

Jesus Benitua, who is a resident of 2240 Muñoz Street, Malate, Manila, knows the appellant to be a driver and conductor. Benitua testified that the latter stays at the residence of Jaime Nuay, his (Benitua's) next-door neighbor. On 29 January 1989 at 2:00 a.m., he saw the accused butchering pigs at the house of Jaime Nuay.[18]

Romeo Rosales, a former driver of Mrs. Crispino, testified that at about 7:00 or 8:00 o'clock in the morning of 29 January 1989, he was with the appellant eating and drinking at the latter's place. The appellant is his "barkada" and the brother of his "compadre," Vaselides Viente.[19]

Nona Nuay, the wife of Jaime Nuay, corroborated the testimony of the other witnesses that the appellant was at their residence butchering and cooking pigs. The appellant is a third cousin of her husband, Jaime Nuay.[20]

Atty. Elpidio Unto, then counsel for the defense, testified for the appellant,[21] acting as both the examining lawyer and the defense witness. He declared that he, together with the appellant and the sister of Derio Punto, went to the residence of Mrs. Crispino and pleaded to the latter not to suspect his relatives as they are good people.[22] He did not bother to introduce the appellant to Mrs. Crispino.[23] The appellant was his former bodyguard who is probably capable of killing somebody but not of stealing.[24] He averred that he had filed administrative and court cases against the CAPCOM officers and that he would submit a formal offer of documents anent these matters. The record shows, however, that he failed to do so.[25]

The appellant testified that he worked as an alternate driver and conductor from Monday to Saturday each week, and as a pig butcher on Sundays. He is known to the Crispino spouses and Narciso Cabatas. He was arrested on 31 March 1989 and brought to the CAPCOM where he was tortured and forced to execute a statement (Exhibit "L"). He was then brought to the DOJ where he executed another statement (Exhibit "N") under threat of death from the accompanying CAPCOM officers.[26]

In his main brief, the appellant makes the following assignment of errors:

"THE TRIAL COURT GRAVELY ERRED IN DISREGARDING THE DEFENSES OF DENIAL AND ALIBI GIVEN BY THE ACCUSED-APPELLANT

THE TRIAL COURT GRAVELY ERRED IN DISREGARDING THE CREDIBLE AND CORROBORATIVE TESTIMONIES OF ACCUSED'S WITNESSES IN SUPPORT OF THE DEFENSES OF DENIAL AND ALIBI

THE TRIAL COURT GRAVELY ERRED IN FINDING THAT THE ACCUSED-APPELLANT WAS GUILTY BEYOND REASONABLE DOUBT OF VIOLATING REPUBLIC ACT NO. 6539."[27]

In support of the first assigned error, the appellant insists that Narciso Cabatas is not a credible witness because he readily admitted that the owners of the stolen jeepney are his relatives and employers; hence, he is "specifically inclined to color his statements, to suppress the truth, or to state what is false." Furthermore, he points out the inconsistency between Cabatas' court testimony that he was shoved out of the jeepney and his statement entered in the Alarm Report (Exhibit "A") that he decided to jump off for fear of his life. He also questions the failure of Cabatas to immediately inform the police or Lucila Crispino concerning the statement one of the carnappers uttered.

We are not persuaded.

The relationship of Cabatas with the owners of the stolen jeepney neither disqualifies him from testifying nor renders his testimony unworthy of belief considering the lack of showing of any improper motive compelling him to testify falsely against the appellant. The latter's suggestion that "Cabatas was pressured to point to anyone as the probable carnapper since it was he who lost the vehicle subject of this case" is nothing but a self-serving conclusion which finds no support whatsoever. We have held that a witness' relationship to a victim, far from rendering his testimony biased, would even render it more credible as it would be unnatural for a relative who is interested in vindicating the crime to accuse somebody other than the real culprit.[28] Nor is the testimony of a witness discredited by the mere fact that he is an employee of the complainant.[29]

The claimed inconsistency is more apparent than real. We adopt what the appellee said in refutation thereof:

"The sworn statement imputed to Cabatas is not what appellant claims it to be. Exhibit "A" is merely an Alarm Report prepared by the Anti-Carnapping Section of the Western Police District, U.N. Avenue, Manila, which very briefly summarizes the events reported by Cabatas. Worse, it is not under oath. It seems that said report was prepared solely by the investigating officers after hearing Cabatas' narration. Moreover, Exhibit "A" is in English, a language alien to Cabatas x x x. On cross examination, Cabatas testified that his highest educational attainment was merely Grade 6. He cannot speak or write English (tsn. Oct. 4, 1989, p. 59). Whatever inaccuracies and omissions in the translation of Cabatas' story, therefore, can not be taken against him or be regarded as in any way detracting from his credibility as a witness.

x x x

Appellant conveniently fails to mention, however, that Cabatas' Sinumpaang Salaysay dated March 30, 1989, given before the Office of the Regional Investigation Unit, Camp Bagong Diwa, Bicutan, corroborates practically all material points of his testimony at the trial. x x x In Exhibit "B," Cabatas categorically stated that he was pushed/shoved out of the jeepney and that he later heard one of appellant's companions utter the alleged statement. Exhibit "B" is a real affidavit, subscribed and sworn to by Cabatas, unlike Exhibit "A," which is merely an Alarm Report. If consistency between extrajudicial statement/affidavit and testimony in open court is appellant's yardstick of a witness' credibility, surely, Cabatas more than adequately measures up to this standard."[30]

The allegation that Cabatas failed to forthwith inform Lucilla Crispino about the statement he heard from one of the carnappers, viz., "Pareng Lope, patakbuhin mo na ang Jeep!" is traversed by the testimonies of Narciso Cabatas and Mrs. Crispino that the former had informed the latter of the said utterance on the day of the incident.[31]

The reticence of Cabatas to immediately reveal the said statement to the police officers was satisfactorily explained: he was then afraid.[32] The natural reluctance of witnesses to volunteer information to the police

authorities in criminal cases is a matter of judicial notice.[33] He might have deemed it the better part of valor not to give the name of the accused who was still at large and who probably recognized him. Such reluctance should not affect his testimony. The decisive factor is that he in fact identified the accused.[34]

Finally, the appellant argues that it is highly improbable for him to forcibly take a jeepney from someone who could easily identify him. He states that he is known to both Narciso Cabatas and Mrs. Crispino, which, however, the two deny. Defense witness Romeo Rosales declared that Cabatas and the appellant know each other because "this is the Visayan custom, that when we met we became (sic) close to each other." Yet, in the same breath he stated that he knew Cabatas only by face,[35] although both he and Cabatas are Visayans. Jaime Nuay, who used to drive for Mrs. Crispino, also testified that he did not know the name of one of the drivers.[36] Considering the fact that there were more than thirty drivers employed by Mrs. Crispino[37] and that Romeo Rosales took the appellant as his conductor without the permission and knowledge of Mrs. Crispino, and even paid the appellant out of his own pocket,[38] it is not improbable that the appellant was not known to Cabatas and Mrs. Crispino.

The appellant's attempts to discredit Narciso Cabatas not having met with success, the issue then boils down to whether his defense of alibi should be favorably considered.

Axiomatic is the rule that the said defense cannot prevail over the positive identification of an accused.[39] In the instant case, there is no doubt in our minds that the appellant was positively identified by Cabatas. The efforts of the defense counsel during cross-examination to cast doubt thereon only succeeded in strengthening Cabatas' testimony. Thus:

"ATTY. UNTO:

Q Mr. Witness, you said during the last session that you looked at the person who took the wheel of the jeepney from you and you saw his face, is that right?

WITNESS:

A Yes, sir.

Q And how long and how many seconds or minutes were you able to see his face?

A It was like this, sir. That man who took the wheel from me came from the backseat of the jeepney. So that when he transferred to the driver's seat I looked at him and then he shoved me and then this man pushed me towards the right portion of the front seat.

ATTY. UNTO:

Q And in fact, at that time you did not know his name yet, is that right?

A Yes, sir. I did not know his name yet as of that date.

Q And did you ever come to know his name?

A Yes, sir. I came to know his name later.

Q How?

A Well, I heard his companion called him by his name. I heard his companion said: 'Pareng Lope, patakbuhin mo na ang jeep.' 'Pareng Lope, you may now drive the jeep.'

COURT:

Q How many were his companions?

A He has two companions and his companions told him: 'Pareng Lope, patakbuhin mo na.'

ATTY. UNTO:

Q And please tell us, before his companions uttered those words you never recognized his face and you never knew his name is 'Lope'?

A I was able to recognize the face of the accused.

Q How did you recognize his face or what is your basis on how you were able to recognize his face?

A Because the place was already well lighted.

COURT:

Q Was the interior of your passenger jeepney with lights on?

WITNESS:

A Yes, Your Honor. As a matter of fact the lights in the interior part of the jeepney were on." [40]

Besides, we agree with the observation of the appellee that the appellant's testimony "does not contain any information as to his activities on the date and time of the carnapping incident." In short, he was completely silent regarding vital facts in support of the defense of alibi. His tongue stubbornly refused to express it. Only his witnesses testified on what he did and where he was at the time the carnapping took place. Thus, we have here a situation where, as aptly put by the appellee, "appellant's alibi is not really his," or the witnesses concocted the alibi for the appellant which the latter did not even bother to corroborate. All told, the alibi in question cannot convince any rational mind and miserably fails to cast any dubiety on the positive identification of the appellant.

That three witnesses [41] testified in support of the appellant's defense of alibi will not suffice to exonerate the latter. In determining the sufficiency of evidence, what matters is not the number of witnesses but the credibility, nature and quality of the testimony. [42] Witnesses are weighed, not numbered, and the testimony of a single witness may suffice for conviction if otherwise trustworthy and reliable. [43] The matter of assigning values to declarations at the witness stand is best performed by a trial judge who is in a far advantageous position than us to distinguish more competently the prevaricators among the witnesses from those who testified the truth. [44]

In passing, it may be noted that although the appellant's Sinumpaang Salaysay (Exhibit "L") and handwritten statement (Exhibit "N") were obtained from him without the assistance of counsel, their inadmissibility under paragraphs (1) and (3), Section 12, Article III of the 1987 Constitution has not been squarely raised before us. In any event, we find it unnecessary to dwell on their inadmissibility since the evidence on record is more than adequate to warrant the appellant's conviction. Where there is independent evidence, apart from the appellant's uncounselled confession that he is truly guilty, he accordingly faces a conviction. [45]

We agree with the Solicitor General that the trial court erred in imposing upon the appellant a straight penalty of imprisonment for thirty years. The carnapping in this case was committed by means of violence against or intimidation of persons. The penalty prescribed therefor under Section 14 of R.A. No. 6539 is "imprisonment for not less than seventeen years and four months and not more than thirty years." Under Section 1 of the Indeterminate Sentence Law, [46] if an offense is punished by a special law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by the said law and the minimum shall not be less than the minimum term prescribed by the same. The proper penalty to be imposed should not, therefore, be thirty years, but an indeterminate penalty which is hereby set at seventeen (17) years and four (4) months as minimum to thirty (30) years as maximum.

WHEREFORE, except as to the modification regarding the penalty, the appealed judgment is hereby AFFIRMED in all other respects. As modified, appellant is hereby sentenced to suffer an indeterminate penalty of imprisonment ranging from seventeen (17) years and four (4) months as minimum to thirty (30) years as maximum.

Costs against the appellant.

SO ORDERED.

Cruz, (Chairman), Griño-Aquino, Bellosillo, and Quiason, JJ., concur.

[1] Original Records (OR), 1; Rollo, 1.

[2] OR, 26.

[3] Id., 96.

[4] Id., 179-180; Rollo, 40-41.

[5] Rollo, 48.

[6] Id., 53-54.

[7] TSN, 31 August 1989, 9.

[8] TSN, 31 August 1989, 8, 11-17.

[9] Id., 18.

[10] TSN, 5 October 1989, 14, 30; TSN, 12 October 1989, 77.

[11] TSN, 31 August 1989, 17-22.

[12] TSN, 4 October 1989, 52-53.

[13] TSN, 5 October 1989, 10.

[14] TSN, 31 August 1989, 27, 31-32; TSN, 6 October 1989, 10-11.

[15] TSN, 16 July 1990, 3-6.

[16] TSN, 12 October 1989, 94, 98-99.

[17] TSN, 8 March 1990, 3-21.

[18] TSN, 16 May 1990, 3-12.

[19] TSN, 17 May 1990, 13-14, 43.

[20] TSN, 11 July 1990, 4-7.

[21] Rule 12.08 of Canon 12 of the Code of Professional Responsibility provides that, except in the cases therein stated, a lawyer shall avoid testifying in behalf of his client.

[22] TSN, 16 July 1990, 4-6.

[23] TSN, 12 October 1989, 105.

[24] TSN, 16 July 1990, 12.

[25] OR, 177.

[26] TSN, 18 July 1990, 3-47.

[27] Rollo, 65.

[28] People vs. Almario, 171 SCRA 291 [1989].

[29] Santos vs. Concepcion, 103 Phil. 596 [1958].

[30] Appellee's Brief, 10-12.

[31] TSN, 12 October 1989, 77; TSN, 5 October 1990, 14, 30.

[32] TSN, 29 September 1989, 19.

[33] People vs. Caringal, 176 SCRA 404 [1989].

[34] People vs. Untalasco, 125 SCRA 159 [1983].

[35] TSN, 17 May 1990, 20.

[36] TSN, 9 March 1990, 26.

[37] TSN, 17 May 1990, 50.

[38] Id., 32-33.

[39] People vs. Florida, 214 SCRA 227 [1992].

[40] TSN, 29 September 1989, 14-17.

[41] A fourth witness, Romeo Rosales, testified that he only saw the appellant between 7:00 a.m. to 8:00 a.m. of 29 January 1989, long after the carnapping had occurred.

[42] People vs. Maloloy-on, 189 SCRA 250 [1990].

[43] People vs. Nulla, 153 SCRA 471 [1987].

[44] People vs. Kamlon Hadji, 9 SCRA 252 [1963].

[45] People vs. Como, 202 SCRA 200 [1991].

[46] Act No. 4103, as amended.

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