

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FRANCISCO ZAFRA Y CARIAN, FELICIANO BRAGANZA Y AGLIBOT, CRESENCIO VELASCO Y TADUHAN, ACCUSED-APPELLANTS.

G.R. No. 110079. October 19, 1994

Ponente: MELO, J.

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MELO, J.:

Accused-appellants, together with Rolando Maranan alias "Boy Camia" alias "Joel" and John Doe, Peter Doe, Michael Doe, were charged with the crime of carnapping allegedly committed as follows:

That on or about November 21, 1991 at Alabang, Muntinlupa, Metro Manila, the accused above-named conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and feloniously, with intent to gain and without the knowledge and consent of the owner, take, steal and drive away an Isuzu Passenger type jitney with Plate No. DUK-382-UV-90 valued at P250,000.00 owned by Efren Cardinal and then driven by Candido Diongco towards Calamba, Laguna, within the jurisdiction of this Honorable Court and thereafter in pursuance of the commission of the crime, to ensure success and gain absolute control of the said vehicle accused with intent to kill, attack, assault, shot and stab Candido Diongco which directly caused his death and that accused while driving, in control and on board the said jitney were apprehended, to the damage and prejudice of the heirs of Candido Diongco and Efren Cardinal, the owner of the said jitney.

(p. 8, Rollo.)

Only Zafra, Braganza, and Velasco were arraigned and tried, the other accused having remained at large.

After trial, the court a quo, in a decision dated February 26, 1993, found the accused guilty as charged and were consequently:

. . . sentenced to suffer the penalty of life imprisonment; to jointly and severally indemnify the heirs of the victim Candido Diongco, the sum of P50,000.00: to pay jointly and severally actual damages in the sum of P20,500.00 representing burial expenses: to pay jointly and severally the sum of P200,000.00 for lost of income of the deceased who was only 33 years old at the time of his death: and to pay the costs.

(p. 30, Rollo.)

All three accused have interposed the instant appeal and would seek reversal upon the following alleged errors of the trial court:

I. The lower court erred in convicting all of the accused by believing the testimony of the policemen instead of the explanation of all the accused as to why they were inside the jeepney carnapped by the six (6) unidentified individuals;

II. The lower court erred in convicting the accused based on facts which are contrary to the testimony of the witnesses both by the prosecution and by the defense;

III. The lower court erred in convicting all the accused merely on circumstantial evidence:

IV. The lower court abused its discretion amounting to lack of jurisdiction in convicting all the accused on the basis of circumstantial evidence and that, the court did not have jurisdiction to try the case as the sites of the crime took place beyond its jurisdiction that is, in Alabang, Muntinlupa, Metro Manila.

(pp. 49-50, Rollo.)

The facts of the case, as established by the evidence and as correctly summarized by Solicitor General Raul I. Goco, Assistant Solicitor General Carlos N. Ortega, and Solicitor Emmanuel D. Laurea, are as follows:

On November 21, 1991 or 10:30 in the evening, appellant Francisco Zafra, with appellants Feliciano Braganza, Cresencio Velasco and three (3) other unidentified male companions on board, was driving a passenger jeep (with Plate No. DUK-382 and owned by Efren Cardinal along Turbina, Calamba going in the direction of Batangas (tsn, May 4, 1992, p. 15).

Upon reaching the bridge in Turbina, Calamba, appellant Zafra was stopped by SPO1 Reynaldo Sunan and PO3 Mario Villa of the Calamba Police as the passenger jeep had no lights and was being driven in an erratic manner (tsn, May 4, 1992, p. 12). When asked by the police about his destination, Zafra replied that he was going to Batangas. Then, as the police approached to search the vehicle which was unlighted, the three (3) unidentified companions of Zafra ran away (tsn, May 4, 1992, p. 14). The passenger jeep and the appellants were then taken into custody.

Appellants were investigated on the same evening by SPO3 Rolando Alcalde during which they revealed having killed the driver of the jeepney and threw his body in Barangay Real, Calamba (tsn, May 25, 1992, p. 4). As a result, on November 24, 1991, SPO4 Feliciano Masongsong, SPO2 Elly Vilia, SPO1 Rodolfo Hizon and other civilian agents accompanied the appellants to Barangay Real where they found the body of Candido Diongco, the jeepney driver, on a grassy portion near the end of the South Expressway (tsn, May 25, 1992, p. 5)

On November 27, 1991, the passenger jeep was released by the police and given back to the wife of Efren Cardinal (tsn, May 25, 1992, p. 13).

(pp. 107-108, Rollo.)

Accused-appellants contend that the trial court erred in convicting them on the basis of mere circumstantial evidence, said to be weak and insufficient to sustain a conviction. Accused-appellants' contention is clearly untenable. To be taken strongly against them is the fact that they were caught red-handed in possession of the stolen passenger jeepney, concerning which possession they failed to give any explanation. This Court has uniformly adhered to the rule that a person in possession of a stolen article is presumed guilty of having illegally and unlawfully taken the same unless he can satisfactorily explain his possession thereof (*People vs. Newman*, 163 SCRA 496 [1988]; *People vs. Repuela*, 183 SCRA 244 [1990]). Accused-appellants having failed to explain their possession of the stolen jeepney, perforce, they are to be presumed to have stolen the same from the rightful owner or possessor thereof. Moreover, the body of Candido Diongco, the victim and driver of the stolen jeepney, was found at the very place indicated by accused-appellants where they dumped the body. No one could possibly have known where the body of the victim was dumped except the perpetrators of the killing. This fact, coupled with the possession of accused-appellants of the stolen jeepney, is strong and indisputable evidence that accused-appellants were the authors of the killing of the victim and of the robbery involving the jeepney.

Next, accused-appellants assert that the trial court erred in holding that they acted in conspiracy with one another. Conspiracy exists when two or more persons come to an agreement concerning the commission of a crime and decide to commit it (*People vs. Villanueva*, 211 SCRA 403 [1992]). Conspiracy may be inferred from the acts of

the accused and need not be proven by direct evidence (People vs. Pinzon, 206 SCRA 93 [1992]; People vs. Ocimar, 212 SCRA 646 [1992]). The fact that, when accused-appellants were apprehended, they were together and in possession of the stolen jeepney, is strong evidence of the existence of conspiracy among them. Their possession of the stolen vehicle totally negates their disclaimer of conspiracy.

Accused-appellants Feliciano Braganza and Cresencio Velasco also maintain that they should be acquitted for they were not identified in court by the arresting officer, citing the following testimony of SPO4 Ricardo Maximo, one of the arresting officers:

Q. Will you please point them if they were in Court.

A. They are here but I cannot tell who is Braganza and Velasco, sir (p. 15, tsn, May 4, 1992).

Accused-appellants' argument is misleading.

By his quoted testimony, SPO4 Ricardo Maximo merely meant that he could not point out who is who; that is he could not identify who among the accused then in the court room was Braganza and who was Velasco. At any rate, accused-appellants Braganza and Velasco were definitely and positively identified in court by the investigating officer, SPO3 Rolando Alcalde:

Q. Did you come to know the names of these persons whom you said you investigated?

A. Yes, sir.

Q. What are their names?

A. Francisco Zafra, Feliciano Braganza and Cresencio Velasco.

Q. Please point them if they are now in court.

(witness pointing the three accused)

(p. 4, tsn, May 25, 1992)

Finally, accused-appellants contend that the Regional Trial Court of the Fourth Judicial District stationed in Calamba, Laguna has no jurisdiction over the case as the killing took place in Alabang, Muntinlupa. The contention clearly runs counter to Paragraph (b), Section 14, Rule 110 of the Rules of Court which reads:

(b) Where an offense is committed on a railroad train, in an aircraft, or in any other public or private vehicle while in the course of its trip, the criminal action may be instituted and tried in the court any municipality or province through which such train, aircraft or other vehicle passed during such trip.

As accused-appellants were apprehended in Calamba while they were in the carnapped jeepney, the information was validly filed in Calamba.

The Solicitor General recommends that in the imposition of the penalty, Republic Act No. 7659, which amended Republic Act No. 6539, the Anti-Carnapping Act of 1972, should be followed. We agree. Section 20 of Republic Act No. 7659 expressly amended Section 14 of Republic Act No. 6539, as amended. In the determination of the proper penalty that may be imposed upon accused-appellants, resort may be made to the provisions of the Revised Penal Code in a supplementary character in accordance with Article 10 of said Code for Republic Act No. 7659 adopts penalties provided for under the Revised Penal Code. Since the penalty imposed under Republic Act No. 7659 for carnapping when the owner, driver, or occupant of the carnapped vehicle is killed consists of two indivisible penalties, namely, reclusion perpetua and death, and considering further that the crime was not attended by any mitigating nor aggravating circumstance, the lesser penalty, in accordance with the second

paragraph of Article 63 of the Revised Penal Code, shall be applied.

WHEREFORE, the appealed decision is hereby affirmed, with the modification that accused-appellants are sentenced to reclusion perpetua instead of life imprisonment.

In all other respects, the decision is affirmed.

SO ORDERED.

Romero and Vitug, JJ., concur.

Feliciano, (Chairman), and Bidin, JJ., on leave.

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