

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FRANCISCO FERRAS Y VERANCES, JESSIE FERRAS Y VERANCES, LOUIE LIMUECO Y DE GUZMAN AND TEDDY MACANAS, DEFENDANTS, FRANCISCO FERR...**

*G.R. No. 119495. April 15, 1998*

Ponente: KAPUNAN, J.

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**KAPUNAN, J.:**

Francisco Ferras y Verances appeals from the December 27, 1994 Decision of the Regional Trial Court of Cabanatuan City, Branch 30,[1] that disposed of Criminal Case No. 4154 as follows:

WHEREFORE, premises considered and conformably with the provisions of Sec. 14, RA 6539, otherwise known as the ANTI-CARNAPPING ACT of 1972, the accused FRANCISCO FERRAS AND LOUIE LIMUECO are hereby sentenced to suffer LIFE IMPRISONMENT, and to pay the cost. No pronouncement as to civil indemnity for the reason that the carnapped tricycle was recovered intact with no missing parts.

SO ORDERED.

Appellant, together with Jessie Ferras, Louie Limueco and Teddy Macanas was charged with the crime of carnapping in the amended information, reading as follows:

That on or about the 9th day of March, 1993, in the City of Cabanatuan, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding and abetting one another, and armed with an unlicensed short firearm, caliber .38 (paltik) with intent of gain and by means of violence and intimidation, did then and there, willfully, unlawfully and feloniously take, steal and carry away a motorized tricycle belonging to ROMEO F. SARENGO and more particularly described as follows:

MAKE ----- Suzuki (Red)

Chassis No. ----- SP-Bi2ON 206858

Motor No. ----- B100 487189

Side Car ----- No. 56 Cruz Roja (blue)

without the knowledge and consent of the owner thereof, of the total value of SEVENTY FIVE THOUSAND (P75,000.00) PESOS, Philippine Currency to the damage and prejudice of said owner in the said sum of P75,000.00.

CONTRARY TO LAW.[2]

Accused Teddy Macanas has not been apprehended and has remained at large. Upon arraignment on May 6, 1993, appellant, his brother Jessie and Louie Limueco pleaded not guilty to the crime charged.[3] Thus, trial on the

merits ensued with the prosecution presenting two witnesses, namely, SPO3 Romeo S. Turqueza of the Cabanatuan City Police Station who led the hot pursuit operation, and Romeo Sarengo, brother of the victim.

However, while trial was going on and before the prosecution had rested its case, accused Jessie Ferras changed his plea to that of guilty on January 12, 1994.[4] Judgment was thereby rendered against him, imposing the penalty of fourteen (14) years and eight (8) months imprisonment with the court appreciating the mitigating circumstance of plea of guilty in his favor.[5] Meanwhile, trial of the case proceeded with respect to appellant and his co-accused, Louie Limueco. The facts gathered therein are as follows:

In the morning of March 9, 1993, 16-year-old Edwin Sarengo drove the motorized tricycle of his elder brother, Romeo. The tricycle had a red Suzuki motorbike with Chassis No. SP-Bi2ON 206858 and Motor No. B100 487189, and a blue-colored sidecar with the number 56 written on its front[6] and with the name of barangay Cruz Roja also indicated thereon.

At around 3:00 o'clock in the afternoon, SPO3 Romeo S. Turqueza, chief of the investigation section of the Cabanatuan City Police, received a call from a concerned citizen informing him of the carnapping of a motorized tricycle and the killing of its driver at Sta. Arcadia, Cabanatuan City. His superior forthwith dispatched a team of seven (7) policemen, including SPO3 Turqueza and SPO2 Felipe Castro, in two mobile cars. Upon their arrival at Sta. Arcadia, they saw the lifeless body of a person who was later identified as Edwin Sarengo, lying on the road. The police learned that while Edwin Sarengo was driving a tricycle, unidentified persons forcibly took the tricycle from him and drove it southward.

Immediately after, the police conducted hot pursuit of the takers of the tricycle. When they reached Sto. Tomas, Aliaga, Nueva Ecija, they saw the motorized tricycle that had been described to them as bearing the number 56 and the name of barangay Cruz Rojo. It was parked in a vulcanizing shop along the highway. As the mobile car stopped, four (4) persons scampered away from the shop. They ran towards the looban where there were many houses. Inspector Hipolito Bernardo and SPO4 Gonzales first apprehended Louie Limueco, who was wearing an orange-colored T-shirt, which fitted the description of one of the carnappers earlier obtained by the policemen. He was about two hundred (200) meters away from the vulcanizing shop when the police caught up with him. Upon interrogation, Limueco readily identified who his companions were.

Not long after, the police caught the Ferras brothers in an uninhabited house around three hundred fifty (350) meters away from the vulcanizing shop. They found on Jessie Ferras' person a .38 caliber Smith and Wesson paltik, three (3) empty shells and one live ammunition. The two Ferras brothers and Limueco were then brought to the police station where they were interrogated further. Jessie Ferras admitted the commission of the crime. The police also learned that the tricycle belonged to Romeo Sarengo.

Aside from SPO3 Turqueza, the prosecution presented Romeo Sarengo, who was the brother of the slain tricycle driver and registered owner of the tricycle. He identified the tricycle through its photograph, presented documentary evidence on its value and testified that it was his brother Edwin who was driving it when it was forcibly taken from him.[7]

Appellant and Limueco denied participation in the crime. Appellant, who was 20 years old, testified that he was a carnival helper, employed by a certain Lope Verances. At around noon of March 9, 1993, he was at the jeepney terminal in Sta. Rosa, Nueva Ecija with Limueco looking for a jeepney that they could hire to transport the carnival equipment. Since they and the jeepney owner could not agree on the amount of rental, appellant and Limueco went to a nearby place to have soft drinks. Just as they finished drinking, a tricycle driven by Teddy Macanas with appellant's brother, Jessie riding in the side car stopped in front of them. Macanas and Jessie invited appellant and Limueco to go with them to La Torre, Nueva Ecija to see a friend. Appellant and Limueco acceded and boarded the tricycle. Before they could reach their destination, the tricycle had a flat tire. Macanas drove it slowly while looking for a vulcanizing shop.

When they found one along the highway, a patrol car of Cabanatuan City suddenly arrived. Upon seeing the police, Jessie and Macanas ran away while appellant and Limueco who were just behind the tricycle remained where they were. The police asked appellant and Limueco if they were companions of the two who were identified as carnappers. They denied being so. Neither were they aware that the tricycle had been carnapped. The police then told them to leave lest they be involved in the carnapping.

Appellant and Limueco then boarded a jeep from Sta. Rosa that would take them back to Cabiao. On second thought, the police overtook the jeep, boarded it, and told appellant and Limueco that they would be questioned. The police asked them to alight from the jeep and join them in the patrol car. On board the patrol car, appellant and Limueco's faces were covered. Appellant was hit on the head with a gun. They were brought to the police investigation room in Cabanatuan City. After around thirty minutes, Jessie arrived. When appellant talked with Jessie, the latter admitted carnapping the tricycle and killing the driver.[8]

Limueco corroborated appellant's narration of facts. He added that they went to Sta. Rosa to hire a vehicle for the purpose of hauling carnival equipment from Cabiao to San Jose City. Lope Verances, the husband of his cousin, owned the carnival or perya equipment. Limueco and appellant failed to hire a jeepney because they and the jeepney owner could not agree on the amount of rental. As they were waiting for a ride at the nearby Petron gas station, a tricycle stopped in front of them. Macanas was driving the tricycle while Jessie Ferras was riding in the sidecar. Macanas and Jessie asked Limueco and appellant where they were going. When the two replied that they failed to hire a jeep to transport the carnival equipment, Macanas and Jessie invited them to ride with them as they were going to a friend in La Torre, Talavera, Nueva Ecija.

As they were on the way, between 1:30 and 2:00 p.m., the tricycle had a flat tire. They were having the tire vulcanized when a police patrol car stopped in front of them. At that same instance, Macanas and Jessie ran away. The policemen asked them if the "fugitives" were their companions. After answering in the negative, Limueco and appellant boarded a jeep. The policemen then told them to get off the jeep as they would be questioned and to board the patrol car. They were made to cover their heads with their own shirts. Someone hit Limueco at the back of his head and, when he regained consciousness, he was already at the police station.[9]

Lope Verances, a perya operator, confirmed the claim of appellant and Limueco that they were in Sta. Rosa to look for a jeepney to hire so that they could transport the perya from Cabiao to San Jose City. Verances did not tell them who to negotiate with in hiring a jeepney as it was the two who knew the person to contact. He instructed them to return at 2:00 p.m. but the two failed to do so. Verances later learned from appellant's mother that appellant and Limueco had been taken to jail. He learned that they were accused of carnapping a tricycle.[10]

As stated earlier, appellant and Limueco were found guilty of the crime charged. However, only appellant filed a notice of appeal.[11]

Before this Court, appellant asserts innocence of the crime charged. He alleges that the lower court erred in: (a) not taking into account the fact that he should have been implicated in the case for homicide against Jessie if indeed he was a "co-carnapper" of the tricycle; (b) considering as incredible appellant's story that he was in Sta. Rosa looking for a jeepney for hire, and (c) convicting him notwithstanding the absence of a witness on his complicity in the carnapping of the tricycle.[12]

The first assigned error adverts to the fact that two other criminal cases had been filed against Jessie Ferras. Aside from the case for carnapping under Section 14 of Republic Act No. 6539, Jessie Ferras was named defendant in two other cases: Criminal Case No. 3591 for homicide for the death of Edwin Sarengo and Criminal Case No. 4155 for homicide with the use of an unlicensed firearm under Section 1, P.D. No. 1866, as amended.[13]

Appellant's contention that he could not be held responsible for carnapping because he was not implicated in the homicide case arising from the same incident is untenable. That matter was the concern of peace officers and the

government prosecutors.[14] As correctly explained by the Solicitor General, no reasonable inference of his innocence may be drawn from the fact of his exclusion in the case for homicide inasmuch as different crimes require different proofs.[15]

What deserves the Court's full attention is the basic issue of whether or not appellant's liability for the crime charged has been proven beyond reasonable doubt by the prosecution.

The prosecution proved the crime of carnapping principally by the testimony of a responding police officer. Because he testified to facts after the commission of the crime, he could only provide circumstantial evidence.

Section 4, Rule 133 of the Rules of Court provides that circumstantial evidence is sufficient for conviction if: (1) there is more than one circumstance; (2) the facts from which the inferences are derived are proven; (3) the combination of all the circumstances is such as to produce a conviction beyond a reasonable doubt. No greater degree of certainty is required when the evidence is circumstantial than when it is direct.[16] In either case, what is required is that there be proof beyond reasonable doubt that the crime was committed and that the accused committed the crime.

The Solicitor General points out nine (9) circumstances which allegedly "proved by testimonial and documentary evidence" that appellant was one of the persons who committed the offense of carnapping, namely: "(1) the dead body of a person lying along the road obviously the victim of a homicide; (2) bystanders who reported the killing and the carnapping describing the offenders and the carnapped vehicle; (3) the finding of the vehicle and persons described by the bystanders along the route pointed out and shortly after the crime was committed; (4) appellant and his co-accused were caught by the police officers in possession of the carnapped motor vehicle; (5) appellant and his co-accused scampered and ran away at the sight of the police officers indicating guilt; (6) appellant and the other accused are not only well-acquainted with each other but even relatives; thus, Jessie Ferras y Verances is appellant's brother and Louie Limueco and Teddy Macanas are his neighbors (while) Limueco's employer, Louie (sic) Verances, is a brother of the Ferrases's mother; (7) none of the appellant and his co-accused owned a tricycle and yet on March 9, 1993, Teddy Macanas was driving one; (8) appellant and his co-accused, on board the carnapped vehicle, travelled towards Sta. Rosa, Nueva Ecija then on to Aliaga, Nueva Ecija then from there, using the Cagayan Valley Road, to Talavera, a circuitous route more or less three (3) times the normal distance to Talavera from Cabanatuan City if they had travelled directly, which shows that they purposely used that route in order to loss (sic) their pursuers"[17]

Of these circumstances based on the testimony of SPO3 Turqueza, the following appear to be damaging to appellant: (1) he and Limueco were found by the police near the tricycle in the vulcanizing shop; (2) they allegedly scampered when they saw the police, and (3) they traveled in a circuitous route as if to delude pursuers. We find, however, that these circumstances are not enough to constitute proof beyond reasonable doubt that appellant and Limueco were indeed in connivance with Jessie Ferras and Macanas in taking the tricycle.

The trial court merely gave credence to the testimony of SPO3 Turqueza because he "testified on (sic) a very natural and straightforward manner as a professional police officer." And, as a police officer, he likewise enjoys the presumption of regularity of performance of duties, there being no evidence to the contrary.[18] Considering, however, that he was the only witness who testified on the principal aspects of the case, his testimony must be thoroughly examined since appellant's fate depended so much on him. His testimony on circumstantial matters must be air-tight, free from any loopholes so as to erase any lingering doubt that indeed appellant committed the crime charged. It is worth emphasizing, too, that no other witness corroborated his testimony. The owner of the tricycle, Romeo Sarengo, could not be of any help in this matter as he admitted that he acquired knowledge of his brother's death and the identity of his alleged killers only from the policemen of Cabanatuan City.[19] The

prosecution case, therefore, depended solely on the testimony of SPO3 Turquero who was not an eyewitness to the crime and who provided only circumstantial evidence to support the charges filed against appellant.

It appears that there were witnesses to the carnapping incident. If so, why did not the prosecution present at least one of the eyewitnesses, instead of relying on the circumstantial evidence which was the basis of the conviction of appellant. While no prejudicial inference can arise against a party who fails to call a witness where the only object of presenting him would be to produce corroborative or cumulative evidence,[20] in the case at bar, SPO3 Turqueza's testimony from which the trial court mainly drew circumstantial evidence against appellant is inadequate and insufficient to prove guilt beyond reasonable doubt.

The same may be said of the circumstance of appellant and Limueco having "scampered" when the police arrived at the vulcanizing shop. It would have been easy for the prosecution to present other witnesses to support SPO3 Turqueza's testimony on account of its claim that there were many bystanders in the crime scene that fateful afternoon. They could have been summoned to testify if other responding policemen could not appear in court as witnesses.

It should be remembered that the doctrine of long standing that the testimony of a lone witness, if credible and positive, is sufficient to convict an accused[21] applies only to eyewitnesses. On the other hand, an uncorroborated circumstantial evidence is certainly not sufficient for conviction when the evidence itself is in serious doubt.[22] While the two-witness rule applies only in cases specified by law, its application should be resorted to if the testimony of the sole witness on circumstantial matters leaves much to be desired. In the instant case, the testimony of a principal prosecution witness discloses a weakness in the case for the prosecution and cast crucial doubt on the guilt of appellant.[23]

Although it is not for this Court or the defense to decide whom to present as witness for the prosecution, for that matter is within the purview of the latter's prerogatives,[24] this lapse of the prosecution in failing to support the testimony of its sole witness on circumstantial matters has proven to be a costly one in the instant case. We find the prosecution's case to be weak. It does not measure up to the quantum of proof required for conviction in criminal cases - proof beyond reasonable doubt.

SPO3 Turqueza testified that appellant and Limueco were with the carnappers when the police chanced upon them. But the fact that they were together does not necessarily imply that they were engaged in the conspiracy to take possession of the tricycle illegally. SPO3 Turqueza did not mention any positive acts of cooperation exhibited by the accused with Jessie Ferras and Macanas. If mere presence in the crime scene may not necessarily be considered indicative of criminal conspiracy in the absence of any other proof of concerted criminal purpose,[25] with more reason, being with the culprits in a place other than the crime scene may not imply that the accused persons are co-conspirators. Notably, SPO3 Turqueza did not testify as to the number of persons allegedly seen taking the tricycle. This fact would have served as a measure for the inference that appellant could have been one of the carnappers.

If indeed appellant "scampered" from the vulcanizing shop upon seeing the policemen, such a reaction was but natural considering the hurried flight of his brother and Macanas. Appellant's story that he stayed put in the shop and even answered the query of the police appears to be even more credible considering that, unlike the uncorroborated testimony of SPO3 Turqueza, Limueco corroborated it.

Neither may appellant's admission of relationship with the principal perpetrator of the crimes of carnapping and homicide mean that he was in cahoots with the carnappers. Similarly, Limueco's acquaintance with both Jessie Ferras, who was also working in the perya and Macanas may not necessarily imply criminal conspiracy. Relationship alone does not imply conspiracy. An assumed intimacy between two persons does not have any legal

significance as far as conspiracy is concerned. Conspiracy transcends companionship.[26] Furthermore, conspiracy as a basis for conviction should be proved in the same manner as the criminal act itself. While conspiracy need not be established by direct evidence, for it may be inferred from the conduct of the accused before, during, and after the commission of the crime, all taken together, however, the evidence must reasonably be strong enough to show a community of criminal design.[27] Hence, absent any proof that appellant and Limueco were in conspiracy with the carnappers or even that they knew that the vehicle they were riding on was carnapped, their having taken that ride after it was forcibly taken from its possessor may not necessarily mean unity of criminal purpose with the culprits.

Neither may the circuitous route taken by the tricycle imply that all the riders thereon had a community of criminal purpose. Jessie Ferras and Macanas might have taken that particular route to avoid detection and apprehension by the authorities. However, that presumption may not extend to appellant and Limueco who, for lack of proof to the contrary, merely hitched a ride with them. Hitchhiking is not uncommon in rural areas where modes of transportation are minimal.

We are not in any way ruling out the possibility that appellant and Limueco were participants in the crime. It is simply that the prosecution failed to discharge properly the onus required by law. It miserably failed to prove beyond peradventure of doubt the connecting link showing community of design between appellant and the principals of the crime, specifically Jessie Ferras. As the well-entrenched doctrine states, where the circumstances obtaining in a case are capable of two inferences, one of which is consistent with the presumption of innocence while the others may be compatible with the finding of guilt, the court must acquit the accused because the evidence does not fulfill the test of moral certainty and therefore is insufficient to support a judgment of conviction.[28]

The judgment of acquittal should benefit not only appellant but Limueco as well considering the similarity in their situation.[29] This is in consonance with the following provision of Rule 122 of the Revised Rules on Criminal Procedure of 1985 that states:

SEC. 11. Effect of appeal by any of several accused.

(a) An appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is favorable and applicable to the latter.

xxx xxx xxx.

Considering the Court's pronouncements on the case with respect to appellant as also being definitely favorable and applicable to co-accused Limueco, he should not, therefore, be treated as the odd man out.[30]

WHEREFORE, the judgment of conviction for the crime of carnapping against appellant Francisco Ferras y Verances and Louie Limueco y de Guzman is hereby REVERSED and SET ASIDE for lack of proof beyond reasonable doubt that they violated Section 14 of Republic Act No. 6539. They are acquitted of the crime charged and, unless detained for other lawful causes, their immediate release from the New Bilibid Prisons is ORDERED.

A copy of this Decision shall be furnished the Department of Justice and the Department of Interior and Local Government in order that the immediate arrest of Teddy Macanas may be effected that he may be made answerable for the charges against him.

**SO ORDERED.**

Narvasa, C.J., Romero, and Purisima, JJ., concur.

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[1] Presided by Judge Federico B. Fajardo, Jr.

[2] The original information charged appellant, his brother Jessie, Louie Limueco and “John Doe alias ‘Teddy Macanas.’” On March 25, 1993, the information was amended to delete the name “John Doe” in the information thereby definitely naming Teddy Macanas as a defendant therein (Record, pp. 1 & 12).

[3] *Id.*, at 26-28.

[4] *Id.*, at 65-66.

[5] *Id.*, at 67-68.

[6] Exh. F.

[7] TSN, October 18, 1993, pp. 6-9.

[8] TSN, June 2, 1994, pp. 3-15.

[9] TSN, April 26, 1994, pp. 4-14.

[10] TSN, July 12, 1994, pp. 3-6.

[11] Record, p. 124.

[12] Appellant’s Brief, pp. 1-2; Rollo, pp. 34-35.

[13] *Id.*, at 3-4; *Id.*, at 36-37.

[14] *People v. Apawan*, 262 SCRA 564, 570 (1996).

[15] Appellee’s Brief, p. 15; Rollo, p. 101.

[16] *People v. Prado*, 324 Phil. 833, 843 (1996).

[17] Appellee’s Brief, pp. 12-13; Rollo, pp. 98-99.

[18] *People v. Alhambra*, 233 SCRA 604, 610 (1994).

[19] TSN, October 18, 1993, pp. 8-9.

[20] *People v. Paule*, 261 SCRA 649, 665 (1996).

[21] *People v. Abalos*, 258 SCRA 523, 530 (1996).

[22] *People v. Orpilla*, 196 Phil. 277, 288 (1981).

[23] *People v. Jalon*, 215 SCRA 680, 691 (1992).

[24] *People v. Porras*, 325 Phil. 858, 875-876 (1996).

[25] *People v. Estanislao*, 265 SCRA 810, 818 (1996).

[26] *People v. Sotto*, 312 Phil. 869, 893 (1995).

[27] *Magsuci v. Sandiganbayan*, 310 Phil. 14, 19 (1995).

[28] People v. Fider, 223 SCRA 117, 134 (1993).

[29] People v. Ganan, Jr., 265 SCRA 260, 298 (1996).

[30] Ladino v. Garcia, 265 SCRA 422, 427-428 (1996).

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