

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOHNNY CALABROSO, SONNY BOY MATOS, RICHARD SATA AND LEONARDO DUMRIQUE, ACCUSED-APPELLANTS.

G.R. No. 126368. September 14, 2000

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

JOHNNY CALABROSO, SONNY BOY MATOS, RICHARD SATA and LEONARDO DUMRIQUE were charged with carnapping for taking away on 19 May 1994, in conspiracy with one another, a TMX Honda motorized tricycle owned and driven by one Tranquilino Nacnac, with intent to gain and by means of force, violence and intimidation.[1] They were also charged with robbery with homicide for taking away on the same day P400.00 belonging to Nacnac, again in conspiracy with one another, also with intent to gain and by means of violence and intimidation; and, on the occasion and by reason thereof, inflicted upon Nacnac multiple stab wounds on different parts of his body which directly caused his death.[2]

On 15 March 1996 the trial court found all four (4) accused guilty of carnapping and sentenced them to life imprisonment, to pay the costs, and required the police of Roxas, Isabela, to return the tricycle to the widow of Nacnac. As regards the charge of robbery with homicide, only Johnny Calabroso and Leonardo Dumrique were found guilty thereof for which they were sentenced to reclusion perpetua and to indemnify the heirs of Nacnac in the amount of P50,000.00 without subsidiary imprisonment in case of insolvency, and to pay the costs. The court acquitted accused Richard Sata and Sonny Boy Matos.[3]

The factual backdrop: Danilo Cerveza was lining up his tricycle at the waiting lane in Centro, Barangay Nueva, Roxas, Isabela, at about six o'clock in the evening of 19 May 1994. Four (4) men, later identified as Johnny Calabroso, Sonny Boy Matos, Richard Sata and Leonardo Dumrique, ages eighteen (18) to twenty-one (21), boarded Cerveza's tricycle and asked him to take them to Gabit, Barangay Nueva, Roxas, Isabela. They offered him P35.00 for their fare but he wanted P40.00. Since they could not agree, the men alighted and proceeded westward. Some thirty (30) meters away they flagged down another tricycle. It was driven by Tranquilino Nacnac, Cerveza's compadre. Nacnac agreed to transport them to their destination.

The following morning, Nacnac was found dead in Gabit, Barangay Nueva. He bore twenty-two (22) stab wounds on the head, torso and upper limbs.[4]

The police authorities of Kiangnan, Ifugao, received a report that same morning that the sidecar of a motorcycle was spotted at the bottom of a ten (10) to fifteen (15) - meter deep ravine. They retrieved the sidecar. It was splattered with dried blood. A wallet containing a driver's license, an ID picture and a certificate of registration of the tricycle belonging to Tranquilino Nacnac were found therein. In the ensuing investigation, the police learned that a tricycle was seen parked the previous day at a certain house in the neighborhood. When Police Inspector Antonio Malingan visited the house he was informed that the owner had four (4) visitors the night before, or 19 May 1994, one of whom was his former houseboy, Sonny Boy Matos, who came in a motorized tricycle. He also

told Malingan that shortly thereafter the three (3) companions of Matos went away on board the motorcycle, at that time already stripped of its sidecar, while Matos stayed behind. Malingan then took Matos to the police station for investigation where he revealed that his three (3) companions went to Nueva Vizcaya to dispose of the motorcycle but promised to come back for him. Malingan sent two (2) of his men to Nueva Vizcaya. The two (2) however failed to find there the companions of Matos, so the police decided to wait instead for their return.

Two (2) days later, Calabroso, Sata and Dumrique returned to Kiangnan with the motorcycle, so the authorities invited them to the police station for investigation. Thereafter, the four (4) suspects, with the tricycle and the wallet of Nacnac, were turned over to the Roxas police, Isabela.

From the suspects it was gathered that at six-thirty in the evening of 19 May 1994 they boarded a tricycle driven by Nacnac to attend a dance party in Gabit. When they reached the place, Dumrique tendered P12.00 since he knew that the regular fare was P3.00/head. But Nacnac demanded P40.00. Dumrique refused to pay, so Nacnac boxed him five (5) times on the neck which caused him to fall to the ground. Matos pacified them but Nacnac simultaneously drew a *veinte nueve*[5] from his waist. Dumrique, who was still lying prostrate on the ground, saw Nacnac near his feet. Taking advantage of the situation to disable Nacnac, Dumrique kicked him at his sex organ. Nacnac doubled up in pain. Calabroso then grabbed the knife from Nacnac. When Calabroso was about to step backwards, Nacnac held his right elbow, so Calabroso stabbed Nacnac. For his part, Matos tried to stop Calabroso but the latter kept on swinging the knife. Sata, seated inside the tricycle, was stunned. Dumrique was not able to do anything because he was still reeling from the punches he received from Nacnac. Thereafter, Dumrique started the engine of the tricycle while Calabroso pulled Matos and joined Sata inside the tricycle. All four (4) companions fled to Kiangnan, Ifugao, leaving the bloodied Nacnac behind.

The trial court appreciated the presence of conspiracy among the four (4) accused in taking away the tricycle of Nacnac as aptly demonstrated by them when they all boarded the same tricycle and sped away from the crime scene.

As to the charge of robbery with homicide, the trial court ruled that the claim that the victim was robbed of his money was not duly established, but was nonetheless convinced that Calabroso and Dumrique were responsible for his death. The court ratiocinated that since it was already nighttime, Nacnac was justified in asking P40.00 from the four (4) passengers; in fact, it was the amount previously demanded by Cerveza. It further reasoned out that Dumrique started the fight by refusing to pay the amount demanded by Nacnac while Calabroso had no compelling reason to stab Nacnac, repeatedly at that, considering that the latter had already been reportedly disarmed and was in fact alone. Nevertheless, the lower court convicted Calabroso and Dumrique of robbery with homicide, instead of homicide alone, and exonerated Sata and Matos since it was its finding that Sata did not participate in the fight while Matos only attempted to pacify the protagonists.

Accused-appellants Calabroso and Dumrique argue that the trial court erred in convicting them of robbery with homicide since its discussion was clear that the prosecution failed to establish the robbery; besides, Dumrique did not participate in stabbing Nacnac while Calabroso acted in incomplete self-defense and in defense of his friends when he stabbed Nacnac even as he admitted that reasonable means to prevent or repel the unlawful aggression by Nacnac was wanting. Accused-appellants also submit that the trial court erred in awarding an indemnity of P50,000.00 because it was exorbitant and devoid of legal basis.

At the outset we must stress that the trial court was categorical in its finding that "[n]obody declared that the victim was robbed of anything." [6] Yet it convicted Calabroso and Dumrique of robbery with homicide. This is glaring error. Where a complex crime is charged and the evidence fails to support the charge as to one of the component offenses, the defendant can be convicted only of the offense proved. [7] To be specific, absent any

evidence that the accused indeed robbed the victim the special complex crime of robbery with homicide cannot stand.[8] Having ruled out robbery for want of evidence and satisfied of the equal liability of Calabroso and Dumrique for the death of Nacnac, the trial court should have convicted them only of homicide.

Where the accused invokes self-defense, as Calabroso does, it is incumbent upon him to prove by clear and convincing evidence that he indeed acted in defense of himself.[9] There are three (3) requisites to prove the claim of self-defense under Art. 11, par. 1, of the Revised Penal Code, namely, (a) unlawful aggression; (b) reasonable necessity of the means employed to prevent or repel it; and, (c) lack of sufficient provocation on the part of the person defending himself. In the same manner, an accused who invokes defense of a stranger pursuant to Art. 11, par. 3, of the same Code, has the burden of proving by clear and convincing evidence the exculpatory cause that would save him from conviction.[10] The first two (2) requisites of self-defense should also be present in defense of a stranger. A third requisite is that the person defending be not induced by revenge, resentment or other evil motive.[11]

The defense narrated that Nacnac and Dumrique continuously argued over the tricycle fare from Centro to Gabit. Nacnac insisted on P40.00 but Dumrique believed it should only be P12.00 at P3.00/person. Their verbal clash escalated into a full blown fight. Nacnac initiated the blows which landed on the neck of Dumrique. As a consequence, Dumrique fell down. Matos pacified them but Nacnac simultaneously drew a veinte nueve from his waist and nicked the left wrist of Matos. Still lying on the ground, Dumrique saw Nacnac standing near his feet. Dumrique aimed at the sex organ of Nacnac and kicked it. Nacnac grimaced in pain and bent his body. While Nacnac was in this position and about to stab Dumrique, Calabroso grabbed the knife. Calabroso was about to step backward when his right elbow was caught by Nacnac so Calabroso stabbed Nacnac in self-defense.

As the trial court opined, Nacnac was right in charging P40.00 since it was already nighttime and this was the same amount earlier demanded by Cerveza when accused-appellants offered to hire his tricycle. Dumrique drew the ire of Nacnac when he refused to pay the higher fare. The trial court thus concluded that Nacnac was not an unlawful aggressor.

We share the view of the trial court although our reasoning springs from a different perspective. Dumrique claimed there was no understanding with Nacnac as to the fare. He merely assumed that Nacnac would be charging the regular fare of P3.00 per passenger,[12] implying that they readily rode in the tricycle without bothering to inquire about the fare. This claim is hard to believe. According to Cerveza, accused-appellants offered him P35.00 for their tricycle fare but he turned it down because he wanted P40.00; thereafter they flagged down the tricycle of Nacnac. The trial court assessed the testimony of Cerveza to be credible, and we find no cogent reason to believe otherwise because no material fact appears to have been overlooked nor was any palpable error committed in the process.[13] What was more in accord with the natural course of events was that accused-appellants must have also offered to pay Nacnac P35.00 but Nacnac likewise demanded P40.00. Considering that they boarded the tricycle of Nacnac they must have accepted his counter-offer. However, upon reaching their destination, Dumrique presumably reneged on their agreement and insisted instead on paying only P12.00.

The P28.00 - difference to some may be just a drop in the bucket. But to a tricycle driver every centavo counts. The circumstance that Nacnac boxed Dumrique on the neck, when taken by itself, may appear to be a sufficient provocation. But it should not be taken in isolation from the other antecedents. All significant details must be pieced together to complete the scenario which was immediately preceded by the denial of accused-appellants to pay the agreed fare. If indeed Nacnac struck the first blows, it could have only been provoked by their reneging on their undertaking. Thus, the initial blows delivered by Nacnac could hardly be treated as the unlawful aggression contemplated in the law as an element of self-defense.[14]

Calabroso also made it appear that Nacnac was the unlawful aggressor when the latter allegedly held his right elbow when he was about to step back. But this version of Calabroso is at best self-serving. For, not even one (1) of his co-accused corroborated his version. On the contrary, Dumrique,[15] Sata[16] and Matos[17] were one in their narration that when Nacnac was in a bent position Calabroso grabbed Nacnac's knife and stabbed him several times. It also surfaced from the evidence that Matos tried to stop Calabroso but the latter was beyond control. Self-defense to be successfully invoked must be established with certainty and proved with sufficient, satisfactory and convincing evidence that excludes any vestige of criminal aggression on the part of the person invoking it. It may not be justifiably entertained when it is uncorroborated by separate competent evidence.[18]

Assuming arguendo that there was unlawful aggression by Nacnac against Dumrique, it ceased to exist after Nacnac was disarmed by Calabroso. By then, there was nothing else to prevent or repel.[19] Again assuming that unlawful aggression originated from Nacnac, but this time against Calabroso, the means Calabroso employed, as he himself admitted, was unreasonable. The examining physician found that twenty-two (22) stab wounds were inflicted on Nacnac, nine (9) on the chest, ten (10) above the right nipple and three (3) lateral to the nipple.[20] The location, number and severity of the wounds obviously belie the claim of self-defense.[21] Moreover, Calabroso did not raise self-defense, nor even hint at it, when apprehended by the police. A protestation of innocence or justification could have been the logical and spontaneous reaction of a man who finds himself in such an inculpatory predicament.[22] Hence, there can be no other conclusion than that Calabroso is liable for homicide for the death of Tranquilino Nacnac.

The charge against Dumrique should be treated differently. While Dumrique was lying on the ground, Nacnac was beside his feet attacking Matos with a knife. Dumrique saw this as an opportunity to neutralize Nacnac; so he kicked the latter's groin. The evidence clearly disclosed that the intention of Dumrique was merely to disable Nacnac, not to kill him, and his attack was confined only to that. Dumrique did not actively participate in killing Nacnac nor did he join in any other manner to further the objective of Calabroso.[23] Conspiracy, which exists when two (2) or more persons come to an agreement concerning the commission of the felony and decide to commit it,[24] was not established between Dumrique and Calabroso. The trial court, while ruling out conspiracy between the two (2) in the killing of Nacnac, erroneously held that Dumrique was equally responsible with Calabroso for the victim's death; hence, Dumrique must be acquitted.

Accused-appellants assail the trial court for concluding that they conspired in carnapping the tricycle of Tranquilino Nacnac. They assert that their individual participations were distinct from each other's, i.e., Sata was seated quietly inside the tricycle; Matos was merely pulled into the tricycle by Calabroso; Dumrique drove the vehicle, while Calabroso was only a passenger. Moreover, they allege that they used the tricycle only as a getaway vehicle, without intent to gain, for when they reached Kiangán the following morning they intended to surrender it, as they did, to the police. Lastly, they argue that the trial court erred in imposing life imprisonment because such penalty is no longer provided in Sec. 14 of RA 6539 as amended.

Carnapping is defined in Sec. 2, par. 2, RA 6539, as the taking, with intent to gain, of a motor vehicle belonging to another without the latter's consent, or by means of violence against or intimidation of persons or by using force upon things. The elements of carnapping therefore are: (a) the taking of a motor vehicle which belongs to another; (b) the taking is without the consent of the owner or by means of violence against or intimidation of persons or by using force upon things; and, (c) the taking is done with intent to gain.

As mentioned earlier, the trial court was of the view that when accused-appellants fled the crime scene on board the tricycle conspiracy was established. We agree. All the elements of carnapping were present in the instant case. After Nacnac was fatally stabbed Dumrique started the engine of the tricycle, while Calabroso dragged Matos into the tricycle to join Sata who was already seated inside. They fled to Kiangán, Ifugao. Intent to gain is presumed

when one takes a property belonging to another against his will.[25] The following morning of the incident, the police retrieved from a ravine the sidecar of the motorcycle belonging to Nacnac. Police Inspector Malingan gathered from his investigation that upon reaching Kiangnan, the group proceeded to the house of the former employer of Matos. After a while, Matos was left behind while his three (3) companions went to Nueva Vizcaya to dispose of the motorcycle. They promised to fetch Matos afterwards. When the three (3) returned two (2) days later, the motorcycle was still in their possession. They were invited for questioning by the policemen. The intent to gain became an established fact when accused-appellants remained in possession of the motorcycle even after the lapse of two (2) days from the commission of the crime. Given the choice between their gratuitous claim that they utilized the vehicle only as a means of escape and surrendered it to the police upon reaching Kiangnan the following morning, and that of the police, we sustain the latter. When police officers have no motive for testifying falsely against the accused, as Inspector Malingan and members of his team were not so falsely motivated, courts will uphold the presumption of regularity in the performance of their duties.[26]

To hold an accused guilty as a co-principal by reason of conspiracy, he must be shown to have performed an overt act in pursuance or furtherance of the conspiracy. That overt act may consist of active participation in the actual commission of the crime itself or moral assistance to his co-conspirators by being present at the time of the commission of the crime or by exerting moral ascendancy over the other co-conspirators moving them to execute or implement the conspiracy.[27] When Calabroso, Matos and Dumrique joined Sata inside the tricycle and fled towards Kiangnan after Nacnac was stabbed they performed well-coordinated acts indicating a common purpose to steal the vehicle.[28] Conspiracy is also inferred not only from their conduct before and during the commission of the crime but also thereafter, showing that they acted in unison with each other.[29] Calabroso, Dumrique and Sata proceeded to Nueva Vizcaya to dispose of the motorcycle. Matos stayed behind as his companions promised to pick him up later. As promised, they returned to Kiangnan still with the vehicle. Conspiracy having been proven, accused-appellants are equally liable for carnapping the tricycle of Nacnac.[30]

The penalty for carnapping is provided in Sec. 14 of RA 6539 as amended by Sec. 20 of RA 7659 - [31]

Sec. 14. Penalty for Carnapping. - Any person who is found guilty of carnapping x x x shall, irrespective of the value of the motor vehicle taken, be punished by imprisonment for not less than fourteen years and eight months and not more than seventeen years and four months, when the carnapping is committed without violence or intimidation of persons, or force upon things, and by imprisonment for not less than seventeen years and four months and not more than thirty years, when the carnapping is committed by means of violence against or intimidation of any person, or force upon things; and the penalty of reclusion perpetua to death shall be imposed when the owner, driver or occupant of the carnapped motor vehicle is killed or raped in the course of the commission of the carnapping or on the occasion thereof.

Prior to the amendment of Sec. 14 abovequoted, the last clause of its original version read: "x x x and the penalty of life imprisonment to death shall be imposed when the owner, driver or occupant of the carnapped vehicle is killed in the commission of the carnapping." In still imposing the penalty of life imprisonment on accused-appellants, the trial court clearly overlooked the 1993 amendment of Sec. 14.

The theory of the Solicitor General is that the killing of Nacnac is deemed absorbed in the "graver offense of qualified carnapping or carnapping in an aggravated form." The carnapping and killing can be considered as a "single or indivisible crime" or "a special complex crime" which is not covered by Art. 48 of the Penal Code.[32] Hence, accused-appellants Dumrique and Calabroso should be held liable for qualified carnapping and penalized with reclusion perpetua.

We disagree. The taking away of the tricycle of Nacnac followed the killing apparently as an afterthought of accused-appellants. In fact, their original design was not to commit any crime but to attend a dance party. There is

no direct relation, a causal connection, between the carnapping and the killing, i.e., whether the killing be prior or subsequent to the carnapping, or whether both crimes be committed at the same time.[33] Therefore, the penalty applicable is imprisonment of not less than fourteen (14) years and eight (8) months and not more than seventeen (17) years and four (4) months, since the carnapping was committed without violence or intimidation of persons or force upon things. Applying the Indeterminate Sentence Law, the Court may impose upon accused-appellants a prison term of fourteen (14) years, eight (8) months and ten (10) days as minimum, to fifteen (15) years, four (4) months and twenty (20) days as maximum.

As regards the homicide of which we find accused-appellant Johnny Calabroso guilty, the imposable penalty under Art. 249 of the Revised Penal Code is reclusion temporal the range of which is twelve (12) years and one (1) one day to twenty (20) years. Applying the Indeterminate Sentence Law, the Court may impose upon accused-appellant a prison term of eight (8) years, four (4) months and ten (10) days of prision mayor medium as minimum, to fourteen (14) years, ten (10) months and twenty (20) days of reclusion temporal medium as maximum.[34]

The award by the trial court of P50,000.00 in favor of the heirs of the victim without subsidiary imprisonment in case of insolvency was properly granted. When death occurs as a result of a crime, the heirs of the deceased are entitled to such amount as indemnity for the death without need of any evidence or proof of damages.[35]

WHEREFORE, the Decision appealed from finding accused-appellants Johnny Calabroso, Sonny Boy Matos, Richard Sata and Leonardo Dumrique guilty beyond reasonable doubt of carnapping is **AFFIRMED** subject to the **MODIFICATION** that the indeterminate prison term imposed is fourteen (14) years, eight (8) months and ten (10) days as minimum, to fifteen (15) years, four (4) months and twenty (20) days as maximum.

The conviction for robbery with homicide of Johnny Calabroso and Leonardo Dumrique is **SET ASIDE**. We find Calabroso alone guilty of homicide and impose upon him an indeterminate prison term of eight (8) years, four (4) months and ten (10) days of prision mayor medium as minimum, to fourteen (14) years, ten (10) months and twenty (20) days of reclusion temporal medium as maximum. In addition, he is ordered to pay death indemnity to the heirs of Tranquilino Nacnac in the amount of P50,000.00. Dumrique is **ACQUITTED** for failure of the prosecution to present the quantum of proof mandated by law to establish conspiracy in the killing of Tranquilino Nacnac. Costs de oficio.

SO ORDERED.

Mendoza, Quisumbing, Buena, and De Leon, Jr., JJ., concur.

[1] Filed pursuant to RA 6539, The Anti-Carnapping Act of 1972.

[2] Filed pursuant to Art. 294, par. 1, The Revised Penal Code.

[3] Decision penned by Judge Wilfredo Tumaliuan, RTC-Br. 23, Roxas, Isabela; Rollo, p. 107.

[4] Certificate of Death, Exh. "B;" Records of Crim. Case No. 23-587, p. 14.

[5] A "veinte nueve" is a local term for a deadly knife measuring 29 cm. long together with its handle.

[6] Decision, p. 10; Rollo, p. 116.

[7] *United States v. Lahoylahoy*, 38 Phil. 330 (1918).

[8] *People v. Bajar*, G.R. No. 118240, 28 October 1997, 281 SCRA 262.

- [9] People v. Sazon, G.R. No. 89684, 18 September 1990, 189 SCRA 700,
- [10] People v. Almeda, G.R. No. 120853, 13 March 1997, 269 SCRA 643.
- [11] People v. Tobias, G.R. No. 114185, 30 January 1997, 267 SCRA 229.
- [12] TSN, 18 October 1995, p. 24.
- [13] People v. Julian, G.R. Nos. 113692-93, 4 April 1997, 270 SCRA 733.
- [14] People v. Bayocot, G.R. No. 55285, 28 June 1989, 174 SCRA 285.
- [15] TSN, 18 October 1995, pp. 10 and 20.
- [16] TSN, 13 October 1995, pp. 10, 17, 21-22.
- [17] TSN, 11 September 1995, p. 11.
- [18] People v. Mercado, No. L-33492, 30 March 1988, 159 SCRA 453.
- [19] People v. Masangkay, G.R. No. 73461, 27 October 1987, 155 SCRA 113.
- [20] TSN, 13 January 1995, p. 15.
- [21] People v. Batas, G.R. Nos. 84277-78, 2 August 1989, 176 SCRA 46.
- [22] People v. Manansala, No. L-23514, 17 February 1970, 31 SCRA 401.
- [23] People v. Alas, G.R. Nos. 118335-36, 19 June 1997, 274 SCRA 310.
- [24] People v. Bergonia, G.R. No. 89369, 9 June 1997, 273 SCRA 79.
- [25] People v. Cabiles, G.R. No. 113785, 14 September 1995, 248 SCRA 207.
- [26] People v. Guiamil, G.R. No. 119696, 18 August 1997, 277 SCRA 658.
- [27] People v. De Roxas, G.R. No. 106783, 15 February 1995, 241 SCRA 369.
- [28] People v. Navales, G.R. No. 112977, 23 January 1997, 266 SCRA 569.
- [29] People v. Apongan, G.R. No. 112369, 4 April 1997, 270 SCRA 713.
- [30] People v. Mercado, G.R. No. 111165, 17 July 1997, 275 SCRA 581.
- [31] The Death Penalty Law took effect on 31 December 1993. Crime subject of instant case was committed on 19 May 1994.
- [32] Brief for the Appellee; Rollo, p. 164.
- [33] Applying by analogy People v. Libre, 93 Phil. 5 (1953) which involved robbery with homicide.
- [34] Art. 65 in relation to Art. 64 of The Revised Penal Code.
- [35] People v. Espanola, G.R. No. 119308, 18 April 1997, 271 SCRA 689.

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