

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. AKMAD SIRAD, ORLIE SULTAN Y MASDAL AND SALIK AMINO Y LUGEOMAN, ACCUSED, ORLIE SULTAN Y MASDAL AND SALIK AMINO Y LUGEOMAN, ACCU...

G.R. No. 130594. July 05, 2000

Ponente: PARDO, J.

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PARDO, J.:

What is before us on appeal is the decision of the Regional Trial Court (RTC) of General Santos City, Branch 22, finding accused-appellants guilty of carnapping with homicide and sentencing each of them to the penalty of reclusion perpetua and to jointly and severally indemnify the heirs of the victim, P50,000.00 for death, P100,000.00 as moral damages and 100,000.00 as compensatory damages.[1]

On June 9, 1992, the 3rd Assistant City Prosecutor, General Santos City, filed with the Regional Trial Court, Branch 22, General Santos City an information charging accused Akmad Sirad, Orlie Sultan and Salik Amino with carnapping with homicide, as follows:

"That on or about 12:00 o'clock noon of February 4, 1992, at Sitio Cabuay, Barangay Sinawal, General Santos City, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and helping one another willfully, unlawfully and feloniously, and by means of violence and with intent to gain and without the consent of the owner thereof, did then and there take, steal and drive away a Kawasaki motorcycle with Engine No. 459530 and Serial No. KB-832480 belonging to Aniceto Dela and valued at P48,000.00, Philippine Currency, to the damage and prejudice of said owner in the said sum; that on the occasion of said carnapping and for the purpose of enabling them to take, steal and drive away the motorcycle mentioned above, herein accused, in pursuance of their conspiracy, did then and there willfully, unlawfully and feloniously, and with evident premeditation and taking advantage of their superior number and strength and with intent to kill, treacherously attack, assault and use personal violence upon one George Lozano, who was then driving the above-mentioned motorcycle when it was carnapped, inflicting upon said George Lozano fatal wounds and injuries which cause his instant death.

"Contrary to law."[2]

Upon arraignment on June 26, 1992,[3] accused entered a plea of not guilty, and trial ensued. After due trial, on June 27, 1997 the trial court rendered a decision, finding all the accused-appellants guilty of carnapping with homicide, the dispositive portion of which reads:

"WHEREFORE, based on the evidence adduced, the court finds the accused Akmad Sirad, Orlie Sultan and Salik Amino guilty beyond reasonable doubt of the crime of carnapping with homicide. In the absence of either mitigating or aggravating circumstance, they are each sentenced to RECLUSION PERPETUA and to jointly and severally indemnify the heirs of the victim represented by Nenita Lozano P50,000.00 for the death of the victim George Lozano, to pay moral damages in the amount of P100,000.00 compensatory damages of P100,000.00, plus costs.

"SO ORDERED.

"Given this 27th day of June, 1997 at the city of General Santos, Philippines.

"/s/ ABEDNEGO O. ADRE

"Judge"[4]

On July 22, 1997, accused Orlie Sultan and Salik Amino filed their notice of appeal.[5] Accused Akmad Sirad did not appeal.

The facts of the case are as follows:

George Lozano, the victim in this case, made a living by delivering bread around General Santos City using a red Kawasaki motorcycle owned by his employer Aniceto Dela. In the morning of February 4, 1992, he left his house early at around 5:00 a.m. to get bread from the bakery of Aniceto Dela. He returned to his house two hours later and after taking his breakfast, left again at past 7:00 A.M. proceeding towards Barangay Sinawal.

At about 9:00 a.m. Martillano Lozano was picking cotton at a cotton farm in Sitio Cabuay (Cabuway), Barangay Sinawal, General Santos City when he saw his cousin George Lozano pass by riding his red Kawasaki motorcycle with the bread box attached at its side. At around 12:00 noon he again saw the red motorcycle pass by, but this time it was not George who was riding the motorcycle but three men and the bread box was no longer attached to the motorcycle. Rita Pino, a co-worker of Martillano Lozano at the cotton farm also saw the red Kawasaki motorcycle pass by the cotton farm at around noon of February 4, 1992, driven by accused-appellant Akmad Sirad with the other accused-appellants Orlie Sultan and Salik Amino riding at the back.

At around 1:00 in the afternoon, Martillano Lozano reported to Nenita Lozano, wife of the victim George Lozano, that he saw the motorcycle of George Lozano ridden by another person and that the bread box was no longer attached to the motorcycle. Around 5:00 in the afternoon Nenita Lozano was worried because George Lozano who usually arrived at that time had not arrived. She then went to the wake of Bernardino Lozano where she could ask the people there about her husband's whereabouts. A search party was organized and they looked for George Lozano by tracing the usual routes he would take in delivering bread.

Martillano Lozano went to the house of Sinawal Barangay Captain Boy Olarte and they looked for George Lozano. Later, the group of Nenita and Captain Olarte joined in looking for George Lozano. At around 10:00 in the evening the group of Martillano Lozano found the body of George Lozano at the ranch of Bernardino Lozano, approximately three meters away from the road going to Barangay Sinawal. The body of George Lozano was lying on its side with lacerations on the stomach and the intestines spilled out. His face and body bore contusions and the motorcycle he was driving was missing.

The PNP Theft and Robbery section investigated the death and disappearance of the motorcycle of George Lozano. Police Officer Leozaldy Domantay a member of the theft and robbery team contacted one of his informants to look for leads as to the whereabouts of the motorcycle. On February 7, 1992, an informant provided information that a motorcycle was hidden in Purok Islam, General Santos City and that it would soon be transferred to Cotabato.

An operation was organized and Police Officer Domantay and other police operatives posted themselves along the roadside in Barangay Klinan, at around 9:00 in the morning of February 8, 1992. At around 1:30 in the afternoon, a motorcycle with two men on board approached the police roadblock. The motorcycle sped up when its driver Akmad Sirad recognized police officer Domantay. The police officers gave chase on board their motorcycles and were able to overtake and apprehend Akmad Sirad and his companion Orlie Sultan. When Akmad Sirad was asked to explain why they have the motorcycle of the deceased George Lozano, accused told Domantay that he

was instructed by Salik Amino to deliver the vehicle to Sultan Kudarat.

The police then took the accused Akmad Sirad and Orlie Sultan into custody. Soon Salik Amino was also arrested. They were all brought to the police station with the motorcycle. Prosecution witnesses Rita Pino and Martillano Lozano identified the accused as the persons they saw riding the motorcycle of George Lozano on February 4, 1992 while it was passing by the cotton farm.

In this appeal, accused-appellants imputes to the trial court error in holding that circumstantial evidence sufficed to sustain a judgment of conviction against the appellants, and that the confessions of the accused-appellants were taken in violation of their rights during custodial investigation.

The witness for the prosecution Rita Pino testified that she saw the motorcycle of George Lozano ridden by three men when it passed by the cotton farm in barangay Cabuway, General Santos City.[6] She was able to identify the accused. She was unwavering in her declaration. According to the accused-appellants, there were inconsistencies between the signed statement of Rita Pino that "she was invited to go to the police station to identify the suspects"[7] and her statements in open court that "she came to the police station out of her own volition"[8] which placed a doubt on her credibility. This is not the first time that the Court will hold that discrepancies between the statements of an affiant in his affidavit and those made by him on the witness stand do not necessarily discredit him since ex-parte affidavits are generally incomplete. Affidavits are generally subordinate in importance to open court declarations.[9]

The other witness Martillano Lozano, also testified that on February 4, 1992, while he was at the cotton farm, he saw the motorcycle of George Lozano at around 9:00 in the morning driven by George with the bread box attached to the motorcycle. However, at around 12:00 noon, he again saw the motorcycle but this time it was ridden by three men and the bread box was gone. Again, the testimony of Martillano is direct and definite as to who he saw riding the motorcycle of George Lozano at 12:00 noon of February 4, 1992.

There may be inconsistencies in the statements of the witnesses but the inconsistencies are minor and not on the identification of the accused-appellants. Appellants argue that it would be impossible for the witnesses Rita and Martillano to see who was riding the motorcycle at that time because they were at a far distance from the road. A perusal of the transcript of stenographic notes would reveal that Rita Pino was ten meters away from the road. Considering that the road was not a paved road, the motorcycle although moving at a considerably fast speed would have to slow down because of the bumps and the ruggedness of the road. It is not unlikely therefore that Rita could see the faces and the clothing of the ones riding the motorcycle. In her testimony she even described the garments worn by accused-appellants, and she was definite in her statements. There is no evidence of ill motive on the part of Rita to testify against accused-appellants. The only conclusion is that she was telling the facts as she witnessed or saw them.

As to the witness Martillano Lozano, he was also unwavering in his statement before the court during direct and cross-examinations. He categorically declared that he saw the accused-appellants riding the motorcycle of George Lozano at noon of February 4, 1992. His being a relative of the victim does not necessarily make his testimony tainted with bad faith. We have held that "where the defense fails to prove that witnesses are moved by improper motives, the presumption is that they are not so moved and their testimonies are therefore entitled to full weight and credit".[10]

We thus advert to the all too-familiar doctrine that findings of the trial court, especially in assessment of the credibility of the witnesses, are not to be disturbed on appeal, absent facts and circumstances that the trial court might have overlooked.

Accused-appellants argued that the trial court failed to consider the evidence they presented, based on the general view that alibi and denial are the weakest forms of defense. Accused-appellants contend that the trial court altogether brushed aside their documentary and testimonial evidence without assessing their probative value.

Admittedly, accused-appellants' defense is based on alibi and denial.

On the part of Orlie Sultan, his alibi is that on the day and time of the crime, he was at work at the irrigation canal of Stanfilco under the supervision of Fernando Aparente. He signed under a different name, Rolando Dizon, but his foreman knew that his real name was Orlie Sultan. Fernando Aparente the foreman testified that Rolando Dizon "aka" Orlie Sultan was present as he was no. 9 in the accomplishment report or attendance which he checked at the end of the day, which was at 3:00 in the afternoon. But as to the whereabouts of Orlie Sultan from 6:30 a.m. and prior to 3:30 p.m., he could not account for it. The distance between Barangay Sinawal and the Stanfilco irrigation canal is just 5 kilometers. So it is highly probable that Orlie would have been with Akmad and Salik at the time of the crime and he was able to get back to work before 3:30 p.m.

Alibis are generally considered with suspicion and are always received with caution, not only because they are inherently weak and unreliable, but also because they can be easily fabricated. "Ergo, for alibi to serve as a basis for acquittal, the accused must establish by clear and convincing evidence (a) his presence at another place at the time of the perpetration of the crime and (b) that it would be physically impossible for him to have been at the scene of the crime." [11] Salik Amino's alibi is that he was at his house on February 4, 1992, but he was unable to present witnesses to corroborate his testimony. This is due to the lapse of time since his arrest and the trial and presentation of evidence on his part, at which time, all his possible corroborating witnesses had transferred residence.

We, however, can not sustain credence to this allegation.

The issue is what is the quantum of circumstantial evidence that will be sufficient to convict the accused-appellants. This Court had on many occasions ruled that circumstantial evidence would suffice when, "(1) there is more than one circumstance; (2) the facts from which the inferences are derived are proven; and (3) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt." [12]

The peculiarity of circumstantial evidence is that the guilt of the accused cannot be deduced from scrutinizing just one particular piece of evidence. It is more like weaving a tapestry of events that will culminate in a clear picture that will reveal a convincing scenario pointing towards the accused as the author of the crime.

In the case at bar, the circumstances are as follows:

- Martillano Lozano and Rita Pino saw the familiar red motorcycle of George Lozano passed by the cotton farm at around 9:00 a.m. on February 4, 1992;
- At around 12:00 noon, Martillano and Rita Pino saw the motorcycle of George Lozano without the bread box pass by with the three accused riding on it;
- At about 10:00 p.m. the dead body of George Lozano was found at the ranch of Bernardino Lozano about three (3) meters away from the cotton farm where Rita and Martillano was gathering left over cotton;
- The three accused riding the motorcycle were driving away from the direction where the body of George Lozano was found;
- Orlie Sultan and Akmad Sirad were riding the motorcycle of the victim, when they were apprehended by police officers on February 8, 1992;

- Akmad Sirad explained to the police officers that he was in possession of the motorcycle because he was instructed by Salik Amino to deliver it to Sultan Kudarat; and

- Rita Pino and Martillano Lozano identified accused-appellants and their co-accused Akmad Sirad.

The above circumstances established by the prosecution successfully overcome the constitutional presumption of innocence and established the guilt of the accused-appellants beyond reasonable doubt.

In a last ditch effort to exculpate themselves from the crime charged, accused-appellants raise the issue of the illegality of their identification by the prosecution's witnesses at a police line-up. According to accused-appellants, the identification was in violation of their constitutional right to counsel because there was no counsel present at the time. Further, they alleged that their investigation shifted from investigatory to accusatory for they were considered as primary suspects.

We disagree with accused-appellants. When they were apprehended, they were riding the motorcycle of the deceased George Lozano, and to make things worse, they fled when they were asked by the police to stop. Possession of a stolen property creates the presumption that the possessor stole it. Adding the fact that they fled when asked by the police to stop, it is just normal and more likely that they would be considered primary suspects.

Accused-appellants hold the view that their identification in the "police line-up" was a violation of their constitutional rights and thereby inadmissible in evidence. We disagree. In *People vs. Timon*,^[13] we held that "[I]n resolving the admissibility of and relying on out of court identification of suspects, courts have adopted the totality of circumstances test where they consider following factors, viz: (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at that time; (3) the accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and (6) the suggestiveness of the identification procedure."

Applying this totality of circumstances test to the case at bar, we rule that there is no violation of the constitutional rights of accused-appellants. The witnesses positively identified the three accused inside the jail. The three accused were in the company of other inmates. Thus, they were in a group. The police officers did not in any way influence the witnesses. All they did was to ask the witnesses to identify the three accused they saw riding the motorcycle. The identification took place on February 10, 1992, only a few days after the incident.

Furthermore, appellant's allegation of suggestiveness in the identification is unsubstantiated. The identification of accused-appellants was effected through a zealous investigation of the police. The accused-appellants' allegation of irregularity, maltreatment and torture has not been proven, ergo, the investigators are presumed to have performed their duties regularly and in good faith.

Also, in *People vs. Lapura*^[14] and *People vs. Pacistol*^[15] we ruled that "[T]he uncounselled identification made at the police station, however, did not foreclose the admissibility of the independent in-court identification."

It is, however, necessary for the Court to correct the error of the trial court in convicting the accused of the crime of carjacking with homicide. During the commission of the crime, which was on February 4, 1992, there was no crime denominated as carjacking with homicide. The proper denomination for the crime is carjacking as defined and penalized under of Republic Act No. 6539, Sections 2 and 14. Under Republic Act No. 6539, Section 14, the penalty for carjacking in case the owner, driver or occupant of the carjacked motor vehicle is killed in the course of the commission of the carjacking shall be reclusion perpetua to death. Considering that at the time of the commission of the crime the death penalty was suspended, accused are hereby sentenced to reclusion perpetua.

In conformity with prevailing jurisprudence, the trial court correctly awarded the amount of P50,000.00 as civil indemnity for the death of the victim. Anent moral damages, the victim's widow testified that the death of her husband left her with six children to support, thus, she does not know what to do. Moral damages which include physical suffering and mental anguish, may be recovered in criminal offenses resulting in physical injuries and the victim's death as in this case.[16]

The trial court failed to consider the fact that under Article 2206 of the Civil Code, in addition to civil indemnity of P50,000.00 for the death of the victim, the accused-appellants are also jointly and severally liable for the loss of the earning capacity of the deceased and such indemnity should be paid to the heirs of the latter. The widow Nenita Lozano testified that her husband was employed as a deliveryman for bread and was earning P300.00 a day before his death and that they had six children and the deceased was 42 years old.

The deceased's loss of earning capacity is computed as follows:

Net earning = life expectancy
Capacity

x

Gross less living annual
expenses income (50% of GAI)

$$X = 2(80 - 42 \text{ (age at death)}) \times P108,000.00 - P54,000.00$$

3

$$X = 2(38) \times P54,000.00$$

3

$$X = 25.33 \times P54,000.00$$

$$\mathbf{X = P1,367,999.99}$$

IN VIEW WHEREOF, we AFFIRM with MODIFICATION the decision of the Regional Trial Court, Branch 22, General Santos City, in Criminal Case No. 8265 and find accused-appellants Orlie Sultan and Salik Amino guilty beyond reasonable doubt of carnapping defined and penalized under R. A. No. 6539, Section 14, and sentence each of them to reclusion perpetua. We further sentence accused-appellants to jointly and severally indemnify the heirs of the victim in the sum of P50,000.00 as death indemnity, P50,000.00 as moral damages, and P1,367,999.99 as loss of earning capacity. With costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Ynares-Santiago, JJ., concur.

- [1] Original Record, Decision, Judge Abednego O. Adre, presiding, pp. 156-162.
- [2] Docketed as Criminal Case No. 8265, Original Record, Information, pp. 1-2.
- [3] Original Record, p. 26.
- [4] RTC Decision, Rollo, pp. 21-27.
- [5] Rollo, p. 28.
- [6] TSN, November 4, 1992, p. 6.
- [7] Original Records, Sworn Statement of Rita Pino, p. 5.
- [8] TSN, November 4, 1992, p. 37.
- [9] People vs. Yanson, G.R. Nos. 133527-28, December 13, 1999, citing People vs. Padoa, 267 SCRA 64 (1997)
- [10] People vs. Galido, G. R. No. 128883, February 22, 2000, citing People vs. Obello, 284 SCRA 79 (1998)
- [11] People vs. Suelto, G. R. No. 126097, February 8, 2000, citing People vs. Balmoria, 287 SCRA 316 (1998); People vs. Ravanes, 284 SCRA 634 (1998)
- [12] People vs. Fabon, G. R. No. 133226, March 16, 2000; People vs. Dacibar, G. R. No. 111286, February 17, 2000, citing, People vs. Mahinay, 302 SCRA 455, 469 (1999)
- [13] 281 SCRA 577, 589 (1997), citing People vs. Teehankee, Jr., 249 SCRA 54, 95 (1995)
- [14] 325 Phil. 346, 358 (1996)

[15] 284 SCRA 520, 537 (1998)

- [16] People vs. Monte, G. R. No. 125332, March 2, 2000.

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