

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ISAIAS FERNANDEZ Y VERAS A.K.A. “ISAIAH FERNANDEZ,” ROBERT “BOBBY” KIWAS Y BINAWA, JOHN DOE, PETER DOE AND CHARLIE DOE, ACCUSED,

G.R. No. 132788. October 23, 2003

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

For automatic review is the decision[1] of the Regional Trial Court of Baguio City, Branch 6, dated January 14, 1998, in Criminal Case No. 14390-R, finding appellant Isaias Fernandez y Veras, guilty beyond reasonable doubt of violating Republic Act No. 6539,[2] as amended by Republic Act No. 7659, and sentencing him to death.

In an Information dated June 18, 1996, the Office of the City Prosecutor of Baguio City charged herein appellant, Robert "Bobby" Kiwas, and three Does with violation of the Anti-Carnapping Act as amended by Rep. Act No. 7659, allegedly committed as follows:

That on or about the 21[st] day of April 1996, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent of gain and without the consent of the owner thereof, conspiring, confederating and mutually aiding one another, did then and there willfully, unlawfully and feloniously take, steal and drive away a motor vehicle described as follows:

MAKE TOYOTA

SERIES TAMARAW FX

TYPE OF BODY WAGON

PLATE NO AVF-723

MOTOR NO. 2C 3020507

SERIAL/CHASSIS NO. CF50 0016027

belonging to SPOUSES JEFFRED ACOP & JOSEPHINE ACOP and driven by CLIFFORD GUINGUINO y GORIO and on the occasion and by reason of said carnapping, with intent to kill and with treachery and evident premeditation, the accused attacked, assaulted and shot the said Clifford Guinguino y Gorio, thereby inflicting upon the latter: Cardio Respiratory failure, Hypovolemic shock, Cardiac tamponade, Hemothorax Intra Abdominal Hemorrhage Secondary to Gunshot Wound, Multiple, which caused his death.

CONTRARY TO LAW.[3]

On May 21, 1997, appellant Fernandez, who was then at large, was arrested by elements of the Philippine National Police Criminal Investigation Group (PNP-CIG) in Baguio City, by virtue of a warrant of arrest issued

by the trial court.[4]

The following day, appellant was arraigned and with assistance of counsel, pleaded not guilty to the indictment.[5] He waived pre-trial. Thereafter, the case was set for continuous trial to terminate within sixty (60) days, pursuant to Supreme Court Adm. Order No. 104-96.[6] Appellant was tried separately as his co-accused, Robert "Bobby" Kiwas, had been earlier tried and convicted of the offense charged.

The facts of this case, as drawn from the records, are as follows:

Engineer Jeffred Acop, a resident of Baguio City was the owner and operator of two Tamaraw FX taxis, registered as "RAMA." [7] One of said taxis was maroon in color and bore registry plate no. AVF 723. Its regular driver was Clifford Guinguino.[8]

On the morning of April 21, 1996, Guinguino took out the maroon Tamaraw FX taxi to ply his daily rounds in Baguio City.[9] Later that day, sometime between 6:00 to 7:00 p.m., prosecution witness Arcadio Awal, Guinguino's brother-in-law[10] and a taxi driver by occupation, encountered the latter driving the "RAMA" taxi of Engr. Acop at Governor Pack Road, Baguio City[11] while Guinguino was driving the maroon Tamaraw FX "RAMA" taxi towards Marcos Highway. Awal used to drive the "RAMA" taxi that Guinguino was driving.[12] Guinguino had four or five male passengers on board.[13] Awal, however, failed to recognize the faces of Guinguino's passengers as it was already dark and the two vehicles were moving at a fast clip.[14] Awal and Guinguino's vehicles passed each other quickly and they blew the horns of the vehicles they were driving as an exchange of greetings. It was to be the last time that Guinguino was seen alive. Eng. Acop waited that whole night for Guinguino to return the taxi he was driving but in vain.[15]

At around 8:00 a.m. of April 22, 1996, Police Precinct No. 5 in Baguio City received a call informing them that a dead body was to be found at Interior Balacbac, Baguio City.[16] Immediately, SPO4 Lucio Alvarado, who took the call and his fellow law enforcer, SPO1 Wilfredo Cabayanan, proceeded to the area. On seeing that there was indeed a male corpse in the area, apparently the victim of foul play, SPO4 Alvarado immediately left to call a medico-legal officer, leaving SPO1 Cabayanan to secure the crime scene. The latter initially examined the cadaver and saw that it had sustained several gunshot wounds.[17]

After some minutes, Dr. Arsenio B. Avenido, a medico-legal officer of the Baguio City Health Department arrived. After his own preliminary examination of the victim's remains, Dr. Avenido surmised that the victim had been killed either late in the evening of the previous day or very early in the morning of April 22, 1996.[18] The corpse was then removed from the scene to enable Dr. Avenido to conduct a proper autopsy.

The post-mortem examination conducted by Dr. Avenido showed that the victim had sustained the following injuries:

HEAD —

No evidence of external physical injury

NECK —

Gunshot wound 3 cm. x. 0.3 cm., 2.4 cm. in depth latero medial neck right point of exit once

THORAX —

Wound gunshot 1.4 x 0.7 cm., 3 cm. in depth hypochondrium left

ABDOMEN —

Gunshot wound 1.4 cm. x 1 cm., 4 cm. in depth anterior lumbar right.[19]

In the course of his examination, Dr. Avenido recovered a slug from the body, which a ballistic examination showed had been fired from a .22 caliber firearm.[20] He turned over the slug to the police for a ballistic examination.[21] Dr. Avenido found the cause of death to be:

Cardio respiratory failure, hypovolemic shock, cardiac tamponade, hemothorax intra abdominal hemorrhage due to gunshot wound, multiple.[22]

Meanwhile, on April 23, 1996, Engr. Acop accompanied by Awal and Magdalena Guinguino, the victim's mother, went to Baguio City Police Precinct No. 5 to report that Acop's Tamaraw FX taxi and its driver were missing. When shown the corpse found by the police at Interior Balacbac, Acop identified it to be the remains of his missing driver, Clifford Guinguino. The Baguio City police force then conducted a series of search and recovery operations to find and get back the missing motor vehicle, but to no avail. Having come up empty through their efforts, the Baguio City police then spread the word about the missing vehicle to the police units in the nearby provinces and requested their assistance in locating it.[23]

While the Baguio City police were still busy with what proved to be fruitless efforts to locate the "RAMA" Tamaraw FX taxi, which seemed to have vanished from the face of the earth, late one evening in the last week of April 1996, prosecution witness Laurencio Ducusin, the barangay captain of Casanfernandoan, Pozorrubio, Pangasinan, was informed by some of the barangay tanods, that a Tamaraw FX had stopped at one of their checkpoints. Ducusin and the tanods were at that time doing the nightly ronda in the barangay.[24]

Ducusin proceeded to the checkpoint and saw a maroon Tamaraw FX driven by his brother-in-law, the appellant herein.[25] He had four male companions with him aboard the vehicle, one of whom was referred to as "Kiwasi".[26] Ducusin then got aboard the vehicle and they proceeded to his house, with the appellant driving.

On reaching his house, Ducusin exerted all efforts to be hospitable to his visitors.[27] The appellant then informed Ducusin that the vehicle he was driving was owned by the appellant's kumapare. Ducusin noticed, however, that they were armed with firearms of various calibers,[28] but gave no further thought to it since he knew for a fact that the appellant was working as a security officer for a Baguio-based security agency.[29]

The appellant and his group stayed for two (2) days at the house of Ducusin. They left the vehicle with him, saying that they would be back for it.[30]

Several days later, three of appellant's companions, one of whom Ducusin recognized as Kiwas, returned to Ducusin's place and took the vehicle with them.[31] After leaving for places unknown, they returned and stayed with Ducusin for another two days. When they departed, they left the vehicle with Ducusin, on the pretext that it had a defect.[32]

After several more days, Kiwas together with four companions returned and like the last time, Kiwas drove away the vehicle only to return after several hours.[33] When Ducusin asked why they were using the vehicle although it supposedly had a defect, Kiwas replied that they would have it repaired.[34] The group then left, leaving Ducusin again in possession of the vehicle. They promised to return for the vehicle with the appellant whom they referred to as "sir".[35]

After the lapse of several days, a mechanic arrived at Ducusin's house saying that the appellant's group had sent him to effect repairs on the vehicle.[36] Meanwhile, Ducusin had parked the vehicle inside the camalig of his mother, Catalina Ducusin, which was some two hundred (200) meters away from his house.[37]

The mechanic worked for several days. He changed its chassis[38] and then repainted the vehicle, changing its

color from maroon to gold.[39]

Ducusin was made suspicious by this turn of events and fearful that the vehicle was not really owned by his brother-in-law's kumpare, he confided his suspicions to SPO2 Maximiano Balelo of the Pozorrubio Police Station on June 5, 1996.[40] SPO2 Balelo recalled that on April 23, 1996, the Baguio City Police Command advised them to be on the lookout for a carnapped maroon Tamaraw FX taxi with the marking "RAMA," which had been taken by unidentified men in Marcos Highway in the evening of April 21, 1996.[41] The Pozorrubio police conducted surveillance operations to determine if the vehicle was in their area of jurisdiction.

SPO2 Balelo then advised his superior officer, Chief Inspector Lorenzo Pedro, Pozorrubio Chief of Police, about the information he received from Ducusin. Elements of the Pozorrubio police immediately conducted surveillance operations in barangay Casanfernandoan to verify Ducusin's report.[42]

On June 5, 1996, the police confirmed the information given by Ducusin that a Tamaraw FX was indeed to be found in Casanfernandoan. The next day, the police recovered said vehicle at the camalig of Ducusin's mother. They called up Engr. Acop in Baguio City and asked him to go to Pangasinan to see if the vehicle recovered was his missing Tamaraw FX taxi.

Despite the change in its color, Engr. Acop was able to identify the vehicle recovered by the Pozorrubio police as his missing RAMA taxi. His identification was made through the stickers that he placed on the vehicle, the floor mats, the steering wheel cover, and the several dents on its body.[43] He also tried his spare key in the vehicle's ignition to determine if this would fit. It turned out to be a perfect fit.[44] Engr. Acop could not identify the vehicle through its engine number or chassis number, leading him to believe that both the engine and the chassis had been changed, but nonetheless, the vehicle recovered bore the same production number (JY 999-02) as his missing Tamaraw FX. The recovered vehicle was then brought back to Baguio City.

In Baguio City, a macro-etching examination was conducted by Alma Margarita D. Villaseñor, the PNP Forensic Chemist at Camp Bado Dangwa, La Trinidad.[45] The examination showed that the engine number of the recovered vehicle had not been tampered with, but the chassis number (EVER 96-49729-C) was different from that in its certificate of registration (CF-50-0016027).[46] This led Villaseñor to conclude that the chassis had been replaced.[47] Nonetheless, Villaseñor observed that the vehicle could still be identified through its production number (JY 999-02), a secret manufacturer's number used to distinguish a particular vehicle from others of the same make or model.[48]

One of the witnesses presented by the prosecution, Robert Reyes, a marketing executive of Toyota Cubao, Inc., testified that there are three (3) ways by which a Toyota vehicle may be identified: (1) by the engine number; (2) by the chassis number; and (3) its production number. Reyes categorically declared that no two (2) Toyota vehicles would have identical engine, chassis, and production numbers.[49] Reyes also identified the production number of the Toyota (JY 999-02) as that indicated in the sales invoice prepared by Toyota Cubao, Inc. when the said vehicle was sold by them to NORCAR Allied Motors in Baguio City.[50]

Honorio Danganan, owner of NORCAR Allied Motors, an authorized Toyota dealer in Baguio City declared on the witness stand that he sold a Toyota Tamaraw FX to the spouses Acop with the following vehicle identification markings: (1) Engine number: 2C-302507; (2) Chassis number CF-50-0016027; and (3) Production number JY 999-02.[51] Danganan stated that although the recovered vehicle now had a different chassis number, it still bore the original production number JY 999-02, thus leading him to conclude that there is a very big possibility that it was the same vehicle he sold to the spouses Acop.[52]

To prove that appellant's group is a syndicate organized for carnapping activities, the prosecution adduced in

evidence the information filed against appellant, Kiwas, and four other men, before the RTC of La Trinidad, Benguet for carnapping with violence of another Toyota Tamaraw FX belonging to a certain James Advincula.[53]

At the trial, herein appellant raised the defense of denial and alibi in his bid to escape culpability. He claimed that on April 21, 1996, the date when Clifford Guinguino was killed, he was working at the office of BISAI until 11:00 p.m.[54] Among the things he did was to prepare his belongings as he was scheduled to go to Balatoc, Antamok, Sangilo to deliver the pay of the guards stationed there. After he was through with his preparations, he went straight home to Brookside, Baguio City.[55]

Appellant further claimed that on April 28, 1996, he went home to Bued, Binalonan, Pangasinan, after office hours. He said his family was throwing a thanksgiving party for his daughter Carla Joy Fernandez, who just graduated from St. Louis University with a nursing degree.[56] Carla Joy, however, was not present at said affair as she was already attending board review classes in Manila.[57] He added that it was in the midst of the family party that at about 11 p.m. Kiwas arrived. He said Kiwas was one of the security personnel of BISAI. Together with five (5) male companions, Kiwas came on board a Toyota Tamaraw FX with "RAMA" markings on the sides.[58]

According to appellant, Kiwas introduced to him one of his companions, "Benny," as a kumpare. "Benny" was supposedly in need of money and willing to mortgage the vehicle to the appellant.[59] As the latter had no money with him, Kiwas asked if they could go to the appellant's sister in Pozorrubio, Pangasinan, to mortgage the vehicle.[60]

Appellant stated that he accompanied Kiwas and his group to his sister's residence in Pozorrubio. They arrived in town at around 11:00 p.m. There they ran into a checkpoint manned by the barangay police. Appellant informed them that he was looking for the barangay captain, Laurencio Ducusin, who happened to be his brother-in-law.[61]

When Ducusin arrived, the appellant claimed that he informed him about the offer of "Benny" to mortgage the vehicle. As Ducusin was agreeable, appellant then asked Kiwas to take him back to Binalonan as it was already late and he had to report for work the following day in Baguio City.[62] He denied staying at the Ducusin residence for two days. He said Ducusin and two of the companions of Kiwas brought him back to Binalonan right away, arriving there at around two o'clock in the morning.[63]

To buttress his alibi that he was at work in BISAI the night of April 21, 1996, when Clifford Guinguino was killed and the Toyota Tamaraw FX vehicle he was driving disappeared, the appellant presented Rolanda Paraan, former Administrative Manager of BISAI and two accounting clerks of said security agency, namely: Emma Ruth Alcantara and Evelyn Madarang.

Alcantara and Madarang corroborated appellant's alibi that he worked from 7:00 a.m. to 7:00 p.m. on April 21, 1996.[64] Appellant's defense presented the payroll of BISAI and his daily time record. But on cross-examination, none of the defense witnesses could state with certainty where appellant was from the time he reported to work in the morning to the time he left in the evening.[65] As appellant's own testimony showed, his work as security operations officer was mainly in the field, supervising and inspecting the security guards deployed in various places in Baguio City.[66] Neither Alcantara nor Madarang could categorically state whether appellant had in fact returned to the office from his rounds of the security postings to log out at 7:00 p.m. since both ladies left the BISAI offices at 5:00 p.m.

On January 14, 1998, the trial court promulgated its judgment as follows:

WHEREFORE, the Court finds the accused ISAAH FERNANDEZ Y VERAS, also known as Isaias Fernandez, guilty beyond reasonable doubt of violation of Section 14 of Republic Act 6539, as amended by Section 20 of Republic Act 7659 (Qualified Carnapping where the driver of the carnapped vehicle, Clifford Guinguino, was killed in the course of the commission of the carnapping or on the occasion thereof) as charged in the Information in conspiracy with Robert Kiwas (who was already convicted after a separate trial earlier) and others whose identities and whereabouts are yet unknown, and hereby sentences him to suffer the supreme penalty of DEATH to be implemented in accordance with law; to indemnify jointly and severally with his confederates, the heirs of Clifford Guinguino the sum of P50,000.00 for his death, P74,945.00 as actual damages, P200,000.00 as moral damages, and P1,590,000.00 as unearned income; and to likewise indemnify jointly and severally with his confederates, the spouses Jeffred Acop and Josephine Acop, the owners of the carnapped subject taxi, the amount of P373,500.00 as value of the carnapped vehicle, all indemnifications are without subsidiary imprisonment in case of insolvency; and to pay the proportionate costs.

SO ORDERED.[67]

In view of the imposition of the death penalty, the records of Criminal Case No. 14390-R were elevated to this Court for automatic review.

Before us, the appellant assigns the following errors:

I

THE TRIAL COURT ERRED IN FINDING THAT FERNANDEZ IS GUILTY BEYOND REASONABLE DOUBT OF QUALIFIED CARNAPPING.

- THE TRIAL COURT ERRED IN HOLDING THAT THERE IS SUFFICIENT CIRCUMSTANTIAL EVIDENCE ON RECORD TO PROVE THAT FERNANDEZ COMMITTED QUALIFIED CARNAPPING.

- THE TRIAL COURT ERRED IN LENDING UNDUE CREDENCE TO WITNESS LAURENCIO DUCUSIN'S PATENTLY UNRELIABLE TESTIMONY.

- THE TRIAL COURT ERRED IN HOLDING THAT THERE IS SUFFICIENT CIRCUMSTANTIAL EVIDENCE ON RECORD TO PROVE THAT FERNANDEZ CONSPIRED WITH ROBERT KIWAS AND THREE (3) JOHN DOES TO COMMIT QUALIFIED CARNAPPING.

- THE TRIAL COURT ERRED IN RELYING ON PATENTLY INADMISSIBLE EVIDENCE TO SUPPORT ITS FINDING OF GUILT AGAINST FERNANDEZ.

- THE TRIAL COURT ERRED IN REFUSING TO LEND CREDENCE TO FERNANDEZ' VERSION OF THE EVENTS.

- THE TRIAL COURT VIOLATED FERNANDEZ' CONSTITUTIONAL RIGHT TO BE PRESUMED INNOCENT UNTIL PROVEN GUILTY.

II

THE TRIAL COURT ERRED IN IMPOSING ON FERNANDEZ THE SUPREME PENALTY OF DEATH.

- THE TRIAL COURT ERRED IN HOLDING THAT FERNANDEZ IS A MEMBER OF AN ORGANIZED GROUP OR SYNDICATE ENGAGED IN AN ILLEGAL CARNAPPING SCHEME.[68]

Briefly stated, the issues for our resolution are: (1) the sufficiency of the evidence to sustain appellant's conviction; and (2) the propriety of the penalty imposed.

On the first issue, appellant argues that the prosecution failed to prove the essential elements of carnapping as defined in Section 14 of the Anti-Carnapping Act of 1972, as amended. He contends that, assuming arguendo

there is on record circumstantial evidence against appellant, nonetheless such evidence could not be relied upon by the trial court to constitute proof beyond reasonable doubt that he participated in the unlawful taking of the vehicle and fatal shooting of its driver. Instead, according to appellant, the most that could be attributed to him is that he accompanied the group of Kiwas in bringing the stolen vehicle to Laurencio Ducusin in Pangasinan.

For the appellee, the Office of the Solicitor General (OSG) counters that the undisputed factual circumstances established by the prosecution constitute an unbroken chain of events which lead fairly and reasonably to but one conclusion, namely: that the appellant is guilty of the offense charged.

For circumstantial evidence to be a sufficient basis for a conviction, the following requisites must be satisfied: (1) there must be 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.[69]

Considering the evidence on record, with the submission of the parties, we find the prosecution evidence sufficient to sustain appellant's conviction beyond reasonable doubt. Thus, we find no reason to deviate from the trial court's assessment as to appellant's culpability for carnapping with homicide.

The trial court found appellant and his companions were in control and possession of the subject vehicle soon after the shooting of the driver, Clifford Guinguino. Witness Laurencio Ducusin testified that when the group of appellant arrived in Pozzorubio, Pangasinan, appellant who was addressed as "Sir" by his companions, was the one driving the vehicle. Appellant himself admitted that the taxi he rode in going to the Ducusin's had the marking "RAMA" on it.[70]

In the absence of an explanation of how one has come into the possession of stolen effects belonging to a person shot, wounded and treacherously killed, he must necessarily be considered the author of the aggression, the death of the person, as well as the robbery committed.[71] This presumption is consonant with Rule 131 (3) (j) of the Rules of Court[72] and validly applies to a case of carnapping for, indeed, the concept of unlawful taking in theft, robbery and carnapping is the same and, had it not been for the enactment of the Anti-Carnapping Act, the unlawful taking of the motor vehicle would certainly fall within the purview of either theft or robbery. This presumption extends to cases where such possession is either unexplained or that the proffered explanation is rendered implausible in view of independent evidence inconsistent thereto.[73] Appellant having failed to give a plausible explanation for his possession of the stolen Tamaraw FX, perforce, he is presumed to have taken the vehicle away from the rightful owner or possessor thereof.

We have no reason to doubt Ducusin's credibility as a witness. Ducusin is appellant's own brother-in-law, but he is also a Barangay Captain. Despite his relationship with appellant, his sense of justice proved unerring. He bared his suspicion to the police that the vehicle left in his care was a hot item. Appellant tried to ascribe ill-motive on Ducusin for testifying against him, but appellant failed in this regard. Absent a showing that the witness was actuated by an improper motive, the presumption is that he was not so actuated and his testimony is entitled to full faith and credit.[74] This rule has a more compelling application when the witness testifies against a relative, for no person would implicate in a crime his own kin, disregarding the unspeakable social stigma it may cause against his entire family, unless that person seeks only the truth, for justice to prevail.

We find that sufficient circumstantial evidence exists, consistent with appellant's guilt, and inconsistent with his innocence. [75] Against appellant are the following circumstances: (1) He and his group were in possession of the stolen Tamaraw FX after its driver was shot to death. (2) The victim, Clifford Guinguino, was last seen between 6 to 7 p.m. that night, with five men aboard the FX dovetailing with the testimony of Ducusin that appellant's party of five men were on board the vehicle when they arrived in Pangasinan before midnight sometime in the latter part of April. (3) Appellant who was addressed as "Sir" by the group, was the one driving the vehicle when he,

Kiwas, and three John Does arrived in Pangasinan hours after the Guinguino's fatal shooting. (4) On arrival in Pangasinan, appellant and Kiwas were armed with .22 caliber guns while the others were carrying .38 caliber guns, which match the wounds of the victim, some of which were characteristic of .22 caliber bullets while the others were bigger, typical of a .38 caliber. (5) Appellant and his group left the vehicle at the Ducusins at the pretext that it needed repairs, although it was brand new and was able to run all the way from Baguio. (6) Instead of just repairing it, a man sent by appellant's group changed the engine and chassis of the vehicle and repainted its body from maroon to gold. (7) Appellant did a vanishing act from his work a day after the stolen car was identified by its owner and placed in custodia legis. (8) He went into hiding and was unheard of until his arrest.

The foregoing factual circumstances constitute evidence of weight and probative force which may even surpass direct evidence in its effect upon the Court.[76] The peculiarity of circumstantial evidence under Sec. 4, Rule 133 of the Rules of Court [77] is that the guilt of the accused cannot be deduced from scrutinizing just one particular piece of evidence. Circumstantial evidence is like a rope composed of many strands and cords. One strand might be insufficient, but five together may suffice to give it strength.[78] Here, strands of evidentiary facts weaved together compels to conclude that the crime of carjacking with homicide has been committed, and that the appellant cannot hide behind the veil of presumed innocence.

Lastly, we find appellant's defense of alibi inadequate to support his exculpation.

According to appellant, on April 21, 1996, he was at work from 7:00 a.m. to 11:00 p.m. and the next day, April 22, from 7:00 a.m. to 7:00 p.m. He presented in this regard his payroll receipts as supporting evidence. However, as found by the trial court, his claim that he worked on April 21, 1996 in BISAI from 7 a.m. to 11 p.m. is contradicted by his own daily time record, which stated that he was at work from 7 a.m. to 7 p.m. only that day. Also, the Accounting Clerk from BISAI who prepared the said payroll, said there was no way of ascertaining whether appellant was in fact present at his post of duty because, as roving supervisor, he checked security guards in their posts located at various client-establishments.

Appellant claims that he went down to Binalonan to attend his daughter's graduation thanksgiving party on April 28, 1996. There at about 11 p.m., Kiwas and five companions whom he had not met before arrived on board the subject "RAMA" taxi and spoke to him about their dire need of cash and their willingness to mortgage the subject taxi, according to appellant. Since he was cash-strapped himself, appellant said, he accompanied them to the house of his sister and brother-in-law, Laurencio Ducusin, in Pozorrubio, Pangasinan. They arrived in Pozorrubio at about midnight. But, according to appellant, it was not he but only Kiwas and his group who transacted business with his sister. Thereafter, at 2 a.m. the next day, the group brought him back to Binalonan while Kiwas and others spent the rest of the night in Pozorrubio with the Ducusins.

As the trial court observed, appellant's version of events runs contrary to ordinary human experience. His story taxes one's credulity too much.

Why would appellant's family set the celebration of his daughter's graduation on a date when supposedly the celebrant was in Manila already reviewing for the board exams? What's the logic behind Kiwas' driving all the way from Baguio to Pangasinan in the middle of the night just to borrow money from appellant? Why was Kiwas accompanied by five men just to get the alleged loan? What prompted appellant to rush with a group of strangers to his sister's house in Pozorrubio, Pangasinan, in the middle of the night? Why borrow only P10,000, but leave a new FX taxi worth P400,000 as collateral? All these questions beg to be answered, but in vain, as we try to make sense of appellant's tale.

As a supervisor of the security agency, appellant was not a novice in the nuances of the law. Seeing the taxi's "RAMA" markings boldly written on it, appellant should have been more circumspect as to vehicle's ownership.

Why didn't he inquire for the registration papers of the FX? For someone of his stature and experience, it was rather odd that he did not inquire into the basics of a rush transaction.

Even more puzzling, appellant did not present his sister to corroborate the essentials of his story. The defense had no corroborating witnesses at all to back appellant's version. His denial and alibi have no leg to stand on.

In sum, we find no reason nor justification to reverse the findings and conclusions of the trial court. In affirming convictions, the evidence required remains, as always, one beyond reasonable doubt, though we do not ask for proof that excludes all possibility of error.[79] Only moral, not absolute, certainty is what the fundamental law requires. In this case, considering the circumstances of the case, we entertain no doubt on appellant's guilt.

As to the penalty, the trial court imposed the death sentence on appellant. Pursuant to the last clause of Section 14 of the Anti-Carnapping Act, amended by Section 20 of Republic Act 7659, the penalty of reclusion perpetua to death is imposable when the owner or the driver of the vehicle is killed in the course of the commission of the carnapping or on the occasion thereof. [80] Considering as aggravating the commission of the offense by a person belonging to an organized or syndicated crime group under Article 62 of the Revised Penal Code, as amended by R.A. 7659,[81] the trial court imposed the extreme penalty on appellant. But appellant's defense now questions the propriety of imposing on him the death sentence.

Under Rule 110, Section 8 of the Revised Rules of Criminal Procedure, both aggravating and qualifying circumstances must be alleged in the information. Being favorable, to the appellant, this new rule can be given retroactive effect as they are applicable to pending cases.[82]

In this case, the allegation of being part of a syndicate or that appellant and companions had formed part of a group organized for the general purpose of committing crimes for gain, which is the essence of a syndicated or organized crime group,[83] was neither alleged nor proved by the prosecution. Hence, we agree that it was error for the trial court to sentence appellant under Article 62 of the Revised Penal Code, as amended by R.A. 7659.

No aggravating circumstance having been alleged or proved properly in this case, the provisions of Article 63 (2) of the Revised Penal Code should be applied. Without mitigating nor aggravating circumstance found in the commission of the offense, the lesser penalty for the offense, which is reclusion perpetua, should be imposed on appellant.

As to damages, the amount of the trial court's award for lost earnings needs to be recomputed and modified accordingly.

The Court notes that the victim was 27 years old at the time of his death and his wife testified that as a driver of the Tamaraw FX taxi, he was earning at least P250.[84] Hence, the damages payable for the loss of the victim's earning capacity following the formula[85] used by the Court in *People v. Visperas*, G.R. No. 147315, January 13, 2003, is computed thus:

Gross Annual Earnings

=

P250 x 261 working days in a year

=

P 65,250

Net Earning Capacity

=

$\frac{2}{3} \times (80-27) \times [P\ 65,250 - P\ 32,625]$

=

$35.33 \times P\ 32,625$

Lost Earnings

=

P 1,152,641

With respect to the award by the trial court of P200,000 in moral damages, in line with prevailing jurisprudence, it should be deleted for lack of needed proof. The award of P74,945 as burial and other expenses is also deleted for lack of adequate proof, but the victim's heirs are entitled to temperate damages in the amount of P25,000 pursuant to case law. The award of P373,500 to the Spouses Jeffred and Josephine Acop, as restitution of the value of their FX taxi, should also be upheld because it is supported by evidence on record. [86]

WHEREFORE, the decision of the Regional Trial Court of Baguio City, Branch 6, dated January 14, 1998, in Criminal Case No. 14390-R, finding appellant ISAIAS FERNANDEZ y VERAS a.k.a. "ISALAH FERNANDEZ" guilty beyond reasonable doubt of violation of Republic Act No. 6539 is AFFIRMED with MODIFICATIONS. Appellant is sentenced to suffer the penalty of reclusion perpetua and to pay the heirs of the victim CLIFFORD GUINGUINO the sum of P50,000 as civil indemnity, P1,152,641 representing lost earnings, and P25,000.00 as temperate damages. Appellant is also ORDERED TO PAY the owners of the FX taxi, Spouses Jeffred and Josephine Acop, the amount of P373,500, as restitution for the stolen vehicle. Costs de oficio.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Panganiban, Sandoval-Gutierrez, Carpio, Austria-Martinez, Carpio-Morales, Callejo, Sr., Azcuna, and Tinga, JJ., concur.

Ynares-Santiago, J., on official leave.

Corona, J., on leave.

[1] Records, pp. 175-206.

[2] The Anti-Carnapping Act of 1972.

[3] Supra, note 1 at 175-176.

[4] Id. at 20.

[5] Id. at 25-26.

[6] RE: Designation of Special Courts for Kidnapping, Robbery, Carnapping, Dangerous Drugs Cases and Other Heinous Crimes; Intellectual Property Rights Violations and Jurisdiction in Libel Cases.

[7] TSN, 20 August 1997, pp. 16-18, 21-22; Exh. "FF," Folder of Exhibits, p. 31.

[8] Id. at 19-20.

[9] Id. at 23.

- [10] Id. at 3.
- [11] TSN, 19 August 1997, p. 5.
- [12] Id. at 4.
- [13] Id. at 6.
- [14] Id. at 6-7, 12-13, 15-16.
- [15] TSN, 20 August 1997, pp. 24-25.
- [16] TSN, 24 June 1997, p. 5.
- [17] Id. at 7.
- [18] Id. at 8.
- [19] Exh. "V," Folder of Exhibits, p. 22.
- [20] TSN, 11 August 1997, pp. 31-32, Exh. "Y," Folder of Exhibits, p. 25.
- [21] TSN, 24 June 1997, p. 14.
- [22] See dorsal side of Exh. "X," Folder of Exhibits, p. 24. See also TSN, 11 August 1997, pp. 49-51.
- [23] TSN, 30 July 1997, p. 5; TSN, 20 August 1997, pp. 28-30. See also Exh. "II," Folder of Exhibits, p. 43.
- [24] TSN, 9 July 1997, pp. 25-26.
- [25] Id. at 21-22.
- [26] Id. at 23.
- [27] Id. at 22-23.
- [28] Id. at 27-28.
- [29] Id. at 21, 29.
- [30] Id. at 30.
- [31] Id. at 30-33, 38-39.
- [32] Id. at 33-34.
- [33] Id. at 34-36.
- [34] Id. at 36.
- [35] Id. at 36-37.
- [36] Id. at 37, 40; TSN, 10 July 1997, pp. 1-3.
- [37] TSN, 10 July 1997, p. 13.
- [38] Id. at 6, 10-12.
- [39] TSN, 9 July 1997, pp. 42-44; TSN, 10 July 1997, pp. 4-5. See Exhs. "A" to "D," Folder of Exhibits, pp. 1-2.
- [40] TSN, 30 July 1997, pp. 5-6.

[41] Id. at 5.

[42] Id. at 7-8.

[43] TSN, 20 August 1997, pp. 32-39.

[44] Id. at 42.

[45] TSN, 29 August 1997, pp. 2-3.

[46] Id. at 4-5.

[47] See Exh. "L," Folder of Exhibits, p. 14.

[48] TSN, 29 August 1997, pp. 5-7, 9-10.

[49] TSN, 5 September 1997, pp. 10-12, 14-15.

[50] Id. at 17-18, 28.

[51] TSN, 17 September 1997, pp. 5, 7-8.

[52] Id. at 9-10.

[53] Records, pp. 187-189.

[54] TSN, 20 November 1997, pp. 7-9.

[55] Id. at 9.

[56] Id. at 9-10.

[57] Id. at 10.

[58] Id. at 10-11.

[59] Id. at 12.

[60] Id. at 13-14.

[61] Id. at 15.

[62] Id. at 16.

[63] Ibid.

[64] TSN, 20 October 1997, pp. 5-7 (The appellant logged out of the BISAI office at 10:00 p.m. in the evening of April 21, 1996, as per Paraan).

[65] See TSN, 20 October 1997, pp. 32-33; TSN, 5 November 1997, p. 24; TSN, 13 November 1997, pp. 18-19.

[66] TSN, 20 November 1997, pp. 4-5.

[67] Records, pp. 205-206.

[68] Rollo, pp. 148-149.

[69] *People v. Sia*, G.R. No. 137457, 21 November 2001, 370 SCRA 123, 132.

[70] TSN, 20 November 1997, p.11.

[71] *People v. Sia*, supra, at 134; *People v. Zafra*, G.R. No. 110079, 19 October 1994, 237 SCRA 664, 667.

[72] SEC. 3. Disputable presumptions.- The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

...

(j) That a person found in possession of a thing taken in the doing of a recent wrongful act is the taker and the doer of the whole act; otherwise, that thing which a person possesses, or exercised acts of ownership over, are owned by him.

...

[73] *People v. Santos*, G.R. No. 127500, 8 June 2000, 333 scra 319,334.

[74] *People v. Bayang*, G.R. No. 134402, 5 February 2001, 351 scra 175,180.

[75] See *People v. Ellasos*, G.R. No. 139323, 6 June 2001, 358 SCRA 516, 532.

[76] See *People v. Bayang*, supra, at 181.

[77] SEC. 4. Circumstantial evidence, when sufficient.-- Circumstantial evidence is sufficient for conviction if:

- (a) There is more than one circumstance;
- (b) The facts from which the inferences are derived are proven; and
- (c) The combination of all circumstances is such as to produce a conviction beyond reasonable doubt.

[78] *Francisco*, Evidence, 3[rd] Ed, citing *Reg. v. Exall*, 4 F. & F. 922, 929.

[79] *People v. Bayang*, G.R. No. 134402, 5 February 2001, 351 SCRA 175, 180.

[80] SEC. 14. Penalty for Carnapping - Any person who is found guilty of carnapping, as this term is defined in Section Two of this Act, shall, irrespective of the value of 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. (Underscoring supplied.)

[81] ART. 62. Effects of the attendance of mitigating or aggravating circumstances and of habitual delinquency. - Mitigating or aggravating circumstances and habitual delinquency shall be taken into account for the purpose of diminishing or increasing the penalty in conformity with the following rules:

...

The maximum penalty shall be imposed if the offense was committed by any person who belongs to an organized/syndicated crime group.

An organized/syndicated crime group means a group of two or more persons collaborating, confederating or mutually helping one another for purposes of gain in the commission of any crime.

... (Emphasis supplied.)

[82] *People v. Court of Appeals and Tangan*, G.R. Nos. 105830 & 103613, 23 February 2001, 352 SCRA

599,614.

[83] *People v. Napalit*, G.R. Nos. 142919 and 143876, 4 February 2003, p. 16.

[84] TSN, 20 August 1997, p. 79.

[85] Net Earning Capacity = $[2/3 \times (80 - \text{age at time of death}) \times (\text{gross annual income} - \text{reasonable and necessary living expenses at 50\% of the gross earnings})]$. See also *People v. Sia*, *supra*, at 140.

[86] Records, p. 47.

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