

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ARTEMIO GARCIA Y CRUZ, JR. AND REGALADO BERNABE Y ORBE, ACCUSED.

G.R. No. 138470. April 01, 2003

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This is an appeal from the decision[1] dated March 10, 1999 of the Regional Trial Court of Malolos, Bulacan, Branch 21, in Criminal Case No. 830-M-98, finding Artemio Garcia y Cruz, Jr. and Regalado Bernabe y Orbe guilty beyond reasonable doubt of the crime of Carnapping with Homicide and sentencing them to suffer the penalty of reclusion perpetua.

On June 3, 1998, Artemio Garcia, Jr. and Regalado Bernabe were charged with the crime of Carnapping with Homicide as defined in Republic Act No. 6539. The Information against them reads:

That on or about the 21[st] day of December, 1996, in the municipality of San Rafael, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and helping with each other, with intent of gain, did then and there willfully, unlawfully and feloniously and by means of violence and intimidation, forcibly take from the driver Wilfredo Elis a brand new Toyota Tamaraw FX with Plate No. UJL-761 owned by Fernando Ignacio;

That during the commission of the offense, or by reason thereof, the said accused, armed with bladed weapons, conspiring, confederating and helping each other, did then and there, with intent to kill, willfully, unlawfully and feloniously attack, assault and stab Wilfredo Elis in different parts of his body causing mortal wounds which directly resulted in his death.

Contrary to law.[2]

Upon arraignment, both accused pleaded “not guilty” to the crime charged. Thereafter, the case was tried on the merits.

It appears from the record that on December 17, 1996, Joselito Cortez, a taxicab operator based in Marilao, Bulacan, was approached by Garcia and Bernabe because they wanted to borrow his brand new Mitsubishi L300 van for their trip to the Bicol region. Cortez refused, saying that the van was unavailable.

Instead, he got in touch with Ferdinand Ignacio, who had just purchased a brand new Toyota Tamaraw FX for P475,500.00.[3] Ignacio agreed to lease his vehicle to Cortez for two days at the daily rate of P2,000.00. Bernabe and Garcia, on the other hand, rented the vehicle from Cortez for P4,000.00 a day inclusive of the P500.00 driver’s fee. They agreed to pay the rental fee upon their return from Bicol.[4]

In the early morning of December 18, 1996, Cortez and his driver, Wilfredo Elis, picked up Ignacio’s Tamaraw FX at his residence in Meycauayan, Bulacan. Elis drove the same back to Marilao, Bulacan and, at 8:00 a.m., he and the two accused left for Bicol.[5]

Four days passed without a word from Garcia and Bernabe. Cortez began to worry about the vehicle he had

borrowed from Ferdinand Ignacio so he informed the Barangay Captain of Saog, Marilao, Bulacan. Meanwhile, Elis' wife, Nancy, approached Cortez and asked where her husband was.[6]

In the afternoon of December 23, 1996, SPO2 Emmanuel Lapurga of the Moncada, Tarlac Police notified the Chief of Police that two suspicious looking persons were seen selling a vehicle in Anao, Tarlac at the grossly inadequate price of P50,000.00. The Chief of Police immediately formed a team,[7] but when they reached Anao, Tarlac, they found out that the two accused had already left for Nampicuan, Nueva Ecija. The team thereafter coordinated with the Nueva Ecija Police. The two accused were seen in front of a store in Brgy. Pangayan, Nampicuan, Nueva Ecija. When they failed to produce documents of ownership over the Tamaraw FX, they were brought to the Moncada Police Station for investigation.[8]

Garcia and Bernabe admitted to the Moncada Police that they attempted to sell the Tamaraw FX belonging to Ferdinand Ignacio. In the early morning of December 24, 1996, a joint team of police officers composed of members of the Moncada and Marilao Police, together with the Barangay Captain of Saog, Marilao, Bulacan, were accompanied by Cortez to Moncada, Tarlac, where the latter positively identified Ignacio's Tamaraw FX.

Cortez went to visit Garcia and Bernabe in detention. They admitted to him that they stabbed Elis and dumped him along the highway near the "sabana" in San Rafael, Bulacan. They claimed that they were compelled to eliminate Elis when he refused to join their plan to sell the Tamaraw FX. Garcia brought the policemen, together with Cortez and the Barangay Captain, to San Rafael, Bulacan where he pointed to the place where they killed Elis. However, the police were unable to find Elis' body. After returning to Moncada, Cortez immediately inspected the interior of the vehicle and found bloodstains on the side and back of the driver's seat. He also found several personal items belonging to Elis, such as his clothes and driver's license,[9] as well as Garcia's bag which contained bonnets, tear gas, the warranty card and the car registration papers.[10]

On December 29, 1996, the Moncada police received information that a male cadaver was found in San Rafael, Bulacan, submerged in mud ten meters away from where they searched earlier. The cadaver was identified as that of Wilfredo Elis by his wife, Nancy.[11]

Dr. Benito Caballero, Municipal Health Officer and Medico-Legal Officer of the province of Bulacan, who performed the autopsy, found four stab wounds in the posterior, one stab wound in the lateral and one on the left side of the thorax. He opined that the wounds which penetrated the abdomen and lungs were fatal.[12]

In their defense, Garcia and Bernabe alleged that they agreed to rent the subject vehicle for a period of five days from December 18, 1996; that Garcia and Elis had a fight because the latter allegedly did not want to go with them to Nueva Ecija; that Elis, while driving the Tamaraw FX, bumped a passenger jeepney along Baliuag Highway; that they left Elis along the Baliuag Highway at 3:30 a.m. so he can inform Cortez that they were already in Bulacan and were en route to Nueva Ecija to have the dented portion of the vehicle fixed.[13]

After trial, the court a quo rendered a decision, the dispositive portion of which reads:

WHEREFORE, all premises considered, this Court finds and so holds that the prosecution has been able to establish the accused's criminal culpability. In view thereof, Artemio Garcia y Cruz, Jr. and Regalado Bernabe y Orbe are hereby found GUILTY beyond reasonable doubt of the special complex crime of Carnapping with Homicide in violation of Republic Act No. 6539 as amended by Republic Act No. 7659. Accordingly, absent any circumstances that will aggravate the commission thereof, both of them are hereby sentenced to suffer the penalty of Reclusion Perpetua. Further, both accused are hereby ordered jointly and severally to indemnify the heirs of Wilfredo Elis, the sum of P50,000.00; to pay them the amount of P100,000.00 for moral damages; P15,290.00 for actual/ compensatory damages; and P250,000.00 for loss of earnings.

With costs against the accused.

SO ORDERED.[14]

Both accused appealed from the decision of the trial court. On March 31, 2000, accused Garcia filed an Urgent Motion to Withdraw Appeal,[15] which was granted in a Resolution dated September 27, 2000.

Appellant Bernabe raises the following assignment of errors:

I

THE HONORABLE TRIAL COURT ERRED IN HOLDING THAT ALL THE ELEMENTS OF CARNAPPING AS DEFINED IN REPUBLIC ACT 6539 (ANTI-CARNAPPING ACT) AS AMENDED ARE PRESENT AND DULY PROVEN.

II

THE HONORABLE TRIAL COURT ERRED IN HOLDING THAT ACCUSED-APPELLANT BERNABE WAS PART OF AN ALLEGED CONSPIRACY TO COMMIT CARNAPPING.

III

THE HONORABLE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT BERNABE ON THE BASIS OF HIS ALLEGED ADMISSION OF THE CRIME TO PRIVATE INDIVIDUALS.

Republic Act No. 6539, otherwise known as “An Act Preventing and Penalizing Carnapping”, defines “carnapping” 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.”[16] More specifically, the elements of the crime are as follows:

- That there is an actual taking of the vehicle;
- That the offender intends to gain from the taking of the vehicle;
- That the vehicle belongs to a person other than the offender himself;
- That the taking is without the consent of the owner thereof; or that the taking was committed by means of violence against or intimidation of persons, or by using force upon things.[17]

A careful examination of the evidence presented shows that all the elements of carnapping were proved in this case.

Unlawful taking is the taking of a vehicle without the consent of the owner, or by means of violence against or intimidation of persons, or by using force upon things; it is deemed complete from the moment the offender gains possession of the thing, even if he has no opportunity to dispose of the same.[18]

In the case at bar, it cannot be denied that the nature of the appellant’s possession of the Tamaraw FX was initially lawful. Nevertheless, the unlawful killing of the deceased for the purpose of taking the vehicle radically transformed the character of said possession into an unlawful one. Cortez categorically stated that during his first visit to the Moncada Police Station where appellant and his co-accused were detained, the two separately admitted to him that they killed the deceased when the latter refused to join their plan to sell the vehicle. Their confession, having been freely and voluntarily given to Cortez, a private individual, is admissible against the appellant.[19] Thus, the duration of the lease of the Tamaraw FX, whether for an indefinite period as contended by the defense, or only for 4 days, as claimed by the prosecution, has no bearing on the culpability of the appellant. It does not matter whether the unlawful taking occurred within the period of the lease. What is decisive here is the purpose of appellant and his co-accused in killing the victim. Such is the vital point on which the crime and the nature thereof is to be determined. To reiterate, the prosecution was able to establish that appellant and his co-accused stabbed the victim to death because he refused to join them in their plan to appropriate the vehicle. This undoubtedly

satisfied the element of unlawful taking through violence, rendering appellant liable for the crime charged.

Moreover, it must be stressed that the acts committed by appellant constituted the crime of carnapping even if the deceased was the driver of the vehicle and not the owner. The settled rule is that, in crimes of unlawful taking of property through intimidation or violence, it is not necessary that the person unlawfully divested of the personal property be the owner thereof. What is simply required is that the property taken does not belong to the offender. Actual possession of the property by the person dispossessed suffices. So long as there is apoderamiento of personal property from another against the latter's will through violence or intimidation, with animo de lucro, unlawful taking of a property belonging to another is imputable to the offender. [20]

Furthermore, at the time of their apprehension, appellant Bernabe and Garcia were unable to give a plausible explanation why they still had the Tamaraw FX in their possession. Appellant Bernabe claims that he and his co-accused went to Nampicuan, Nueva Ecija to have the dent on the vehicle repaired. Garcia, on the other hand, testified that there was no such damage. A person in possession of a stolen article is presumed guilty of having illegally and unlawfully taken the same unless he can satisfactorily explain his possession of the thing.[21]

Appellant contends that he did not conspire with his co-accused to commit the crime of carnapping.

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy need not be proved by direct evidence and may be inferred from the conduct of the accused before, during and after the commission of the crime,[22] which are indicative of a joint purpose, concerted action and concurrence of sentiments.[23] In conspiracy, the act of one is the act of all. Conspiracy is present when one concurs with the criminal design of another, indicated by the performance of an overt act leading to the crime committed. It may be deduced from the mode and manner in which the offense was perpetrated.[24]

In the case at bar, it was sufficiently proved that Garcia and Bernabe, through Joselito Cortez, hired the brand new Toyota Tamaraw FX belonging to Ferdinand Ignacio for their trip to Bicol; that at 8:00 a.m. of December 18, 1996, they left for Bicol on board the Tamaraw FX driven by Elis; that on December 23, 1996, SPO2 Emmanuel Lapurga of Moncada, Tarlac reported to the Chief of Police that two suspiciously looking persons, who turned out to be Garcia and Bernabe were offering to sell a brand new Toyota Tamaraw FX for a mere P50,000.00 in Anao, Tarlac; and that the two were finally apprehended with the subject vehicle at Nampicuan, Nueva Ecija by elements of the Tarlac and Nueva Ecija Police.

While there may be no direct evidence of the commission of the crime, the foregoing constitute circumstantial evidence sufficient to warrant Garcia's and Bernabe's conviction. The following requisites for circumstantial evidence to sustain a conviction were met, to wit: (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.[25] The circumstances indeed form an unbroken chain which leads to a fair and reasonable conclusion that Bernabe and Garcia were the perpetrators of the crime. It has been held that facts and circumstances consistent with guilt and inconsistent with innocence constitute evidence which, in weight and probative force, may surpass even direct evidence in its effect upon the court.[26]

The records show that Garcia and Bernabe admitted to Cortez and Ignacio that they were responsible for taking the vehicle and killing the victim, Elis. On December 24, 1996, Cortez went to the Moncada Municipal Jail and talked to them while they were detained. Both admitted to him that they forcibly took the said vehicle from Elis, stabbed him and thereafter dumped him at San Rafael, Bulacan.[27] Subsequently, on December 26, 1996, Cortez and Ignacio went to Moncada and confronted the two in their cells. Garcia admitted to Cortez and Ignacio that they stole the vehicle because they were in dire need of money, while Bernabe kept quiet.[28]

Appellant Bernabe maintains that the trial court erred in admitting in evidence his admission to Cortez and Ignacio on the grounds that (a) he did not make such admission; (b) the admission made by Garcia should not prejudice him; and (c) assuming he made such admission, it should be excluded for having been made under duress and intimidation.[29]

In *People v. Andan*,[30] it was held that the constitutional procedures on custodial investigation do not apply to a spontaneous statement, not elicited through questioning by the authorities, but given in an ordinary manner whereby appellant orally admitted having committed the crime. What the Constitution bars is the compulsory disclosure of incriminating facts or confessions. The rights under Article III, Section 12 of the Constitution are guaranteed to preclude the slightest use of coercion by the state as would lead the accused to admit something false, and not to prevent him from freely and voluntarily telling the truth. Hence, appellant's voluntary admission to Cortez that he and his co-accused conspired in killing the deceased when the latter opposed their plan to sell the vehicle is admissible as evidence against him.

Anent Garcia's extrajudicial confession implicating appellant in the commission of the offense, it appears that the latter did not oppose or affirm Garcia's statement. Neither did he make an attempt to refute the same insofar as his participation in the commission of the crime was concerned. As correctly observed by the Office of the Solicitor General, "he cannot invoke his silence during this crucial moment as his right. He ought to speak and failing to do so, his silence weighs heavily on him. Thus, it was not accused-appellant's Garcia's admission that prejudiced accused-appellant Bernabe, but his own silence when it was 'such as naturally to call for action or comment if not true'." [31]

Rule 130, Section 32 of the Rules of Court provides that an act or declaration made in the presence and within the hearing or observation of a party who does or says nothing when the act or declaration is such as naturally to call for action or comment if not true, and when proper and possible for him to do so, may be given in evidence against him.

We likewise find no merit in the allegation that duress was employed on appellant. Suffice it to state that such bare allegation of force and duress is not enough to prove that he was indeed tortured to admit complicity in the offense charged.

The penalty for carnapping is provided in Section 14 of RA 6539, as amended by Section 20 of RA 7659, to wit:

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.[32] (Emphasis supplied)

Hence, the trial court correctly imposed the penalty of reclusion perpetua on appellant Bernabe and his co-accused, Garcia.

The award by the trial court of P50,000.00 in favor of the heirs of the victim should be affirmed. 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 of proof of damages.[33] This is in addition to the actual damages of P15,290.50 which was duly substantiated by proof.[34] We, however, reduce the award of moral damages to P50,000.00, in

line with current jurisprudence.[35]

Lastly, we find the court a quo's award of P250,000.00 for loss of earning capacity to be without basis. Nancy testified that her husband Wilfredo was earning P600.00 a day prior to his death,[36] however, she failed to produce evidence to substantiate her claim. As held in the case of *People v. Panabang*,[37] a self-serving statement is not enough; the indemnification for loss of earning capacity must be duly proven.

WHEREFORE, the decision dated March 10, 1999, of the Regional Trial Court of Malolos, Bulacan, Branch 21, finding appellant Regaldo Bernabe y Orbe guilty of Carnapping with Homicide, sentencing him to suffer the penalty of reclusion perpetua, and ordering him to pay the heirs of the victim, Wilfredo Elis, the sums of P50,000.00 as civil indemnity and P15,290.00 as actual damages, is **AFFIRMED** with the following **MODIFICATIONS**: Appellant is further ordered to pay the heirs of the victim, Wilfredo Elis, moral damages in the reduced amount of P50,000.00. The award of P250,000.00 for loss of earnings is **DELETED** for lack of factual basis.

Costs de officio.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Vitug, Carpio, and Azcuna, JJ., concur.

[1] Penned by Judge Cesar M. Solis; Rollo, p. 111.

[2] Rollo, p. 7.

[3] See Exhibits "M, M1 and O".

[4] TSN, October 14, 1998, pp. 2-4; TSN, October 21, 1998, p. 4.

[5] TSN, October 14, 1998 (9 a.m.), pp. 4-5; TSN, October 14, 1998 (9:35 a.m.), p. 4; TSN, October 21, 1998, p. 4; TSN, December 2, 1998, pp. 3-4.

[6] TSN, October 21, 1998, pp. 5-6; TSN, December 2, 1998, pp. 4-5.

[7] The team was composed of SPO4 Guardin, SPO1 Roberto Calibusan, SPO4 Sergio Sapon, SPO2 Virgilio Pajarillo, SPO4 Jaime Lagasa, SPO2 Danilo Damaso and SPO4 Samuel Aban.

[8] TSN, October 9, 1998, pp. 4-6.

[9] Exhibit "D".

[10] TSN, October 21, 1998, pp. 6-9.

[11] TSN, September 28, 1998, pp. 5-6.

[12] TSN, October 9, 1998, pp. 1-2.

[13] TSN, February 1, 1999, pp. 3-5.

[14] Rollo, p. 118.

[15] Rollo, p. 42.

[16] R.A. 6539, Sec. 2; *People v. Ellasos*, 411 Phil 139 (2001).

[17] *People v. Calabroso*, G.R. No. 126368, 14 September 2000, 340 SCRA 332.

[18] *People v. Ellasos*, *supra*.

[19] *People v. Andan*, 336 Phil. 91, 112-113 (1997); citing *Navallo v. Sandiganbayan*, G.R. No. 97214, 18 July 1994, 234 SCRA 175; *People v. Olvis*, G.R. No. L-71092, 30 September 1987, 154 SCRA 513; *People v. Marti*, G.R. No. 81561, 18 January 1991, 193 SCRA 57; *People v. Maqueda*, 312 Phil. 646 (1995); *Quinn v. Buchanan*, 298 S.W. 2d 413, 417 [1957], citing *Cooley, A Treatise on the Constitutional Limitations* 93, 358; 16 C.J.S., Constitutional Law, Sec. 199, pp. 975-976.

[20] *People v. Gavina*, 332 Phil. 488, 495-496 (1996), citing *U.S. v. Albao*, 29 Phil. 86 (1914).

[21] *People v. Zafra*, G.R. No. 110079, 19 October 1994, 237 SCRA 664.

[22] *People v. Panida*, 369 Phil 311 (1999).

[23] *People v. Manes*, 362 Phil 569 (1999).

[24] *People v. Bato*, G.R. No. 127843, 15 December 2000, 348 SCRA 253.

[25] *People v. Gaballo*, G.R. No. 133993, 13 October 1999, 316 SCRA 881.

[26] *People v. Dacibar*, 382 Phil 618 (2000).

[27] TSN, October 21, 1998, pp. 6-7.

[28] TSN, October 19, 1998, pp. 2-4.

[29] Appellee's Brief, p. 155.

[30] *Supra*.

[31] Rollo, pp. 156-157.

[32] Prior to the amendment of Section 14, 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."

[33] *People v. Española*, 338 Phil 403 (1997); *People v. Bayang*, G.R. No. 134402, 5 February 2001, 351 SCRA 175.

[34] Exhibit "C".

[35] *People v. Ereño*, G.R. No. 124706, 22 February 2000, 326 SCRA 157.

[36] TSN, September 28, 1998, p. 11.

[37] *People v. Panabang*, G.R. Nos. 137514-15, 16 January 2002.

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