

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CARLO ELLASOS Y MAURICIO ALIAS “ROMMEL” AND SONNY OBILLO Y GANAYO, ACCUSED. SONNY OBILLO Y GANAYO, ACCUSED-APPELLANT.

G.R. No. 139323. June 06, 2001

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

This is an appeal by Sonny Obillo from the Decision[1] dated February 4, 1999 of the Regional Trial Court of San Jose City, Branch 39, in Criminal Case No. SJC-64 (92), finding Carlo Ellasos alias Rommel Reyes and Sonny Obillo guilty beyond reasonable doubt of the crime of Carnapping with Homicide.

On May 20, 1992, accused Carlo Ellasos alias Rommel and Sonny Obillo were charged with the crime of violation of R.A. 6539 or the Anti-Carnapping Act, with Homicide in an Information which reads, to wit:

"That on or about April 2, 1992, in the City of San Jose, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the said accused, conspiring together and mutually helping one another, with intent of gain and by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously take and carry away a motor tricycle with Plate No. CV-1275 owned by and belonging to Miguel de Belen, against the will of the latter; that on the occasion thereof and for the purposes of enabling them to take and carry away the motor tricycle above mentioned, the accused, in pursuance of their conspiracy, with evident premeditation, and taking advantage of their superior strength and with intent to kill, treacherously attack, assault and shoot the aforesaid Miguel de Belen with an unlicensed firearm, thereby inflicting wounds upon the latter which caused his instantaneous death. That as a consequence of the death of said Miguel de Belen, his heirs sustained actual compensatory and moral damages.

CONTRARY TO LAW, and committed at nighttime, which facilitated its commission."[2]

On July 21, 1992, Sonny Obillo was arraigned and pleaded not guilty to the charges. Trial proceeded against him. Carlo Ellasos escaped from the jail before arraignment and was only arrested four (4) years thereafter when the prosecution had already rested its case.[3] Ellasos was thereafter arraigned and pleaded not guilty to the charges. While the counsel of Ellasos was still reviewing the evidence presented by the prosecution against Obillo, Ellasos was convicted of another crime of robbery by the RTC of Roxas, Isabela, Branch 23, in Criminal Case No. 23-654, and was committed to the New Bilibid Prison in Muntinlupa.[4] Accused Sonny Obillo took the witness stand, after which the defense rested its case.[5] On July 10, 1997, the lower court issued an Order separating the trial of the case against the two accused, and transferring the trial of the case against Carlo Ellasos to the RTC of Muntinlupa while maintaining that against Sonny Obillo in the RTC of San Jose City.[6]

During the trial, the prosecution presented the following witnesses: (1) SPO2 Edgardo Santos and SPO1 Apolinario Agustin of the San Jose City Police Station; (2) Edgardo Galletes, the caretaker of the Iglesia ni Cristo chapel in Muñoz; (3) Fernando de Belen, the brother of the victim; (4) Elena de Belen, the widow of the victim;

(5) Antonio de Belen, another brother of the victim who testified as to the damages sustained by the carnapped tricycle; and (6) Dr. Raul Agliam who conducted the autopsy on the body of the victim. The testimonies of these witnesses were summarized by the trial court as follows:[7]

"SPO2 EDGARDO SANTOS testified that on April 3, 1992, P/Lt. Agustin of the Muñoz Police Station called by telephone to inform the San Jose City Police Station that the [probable] suspects in the killing of a tricycle driver at Tayabo, San Jose City were in the vicinity of the Iglesia Ni Cristo chapel at Muñoz, Nueva Ecija; that he together with his co-policemen went to the Iglesia Ni Cristo compound in Muñoz and coordinated with Jaime Dionisio, the Head Minister thereof; that Minister Jaime Dionisio turned over to them the persons of Sonny Obillo and Carlo Ellasos together with a .38 caliber revolver paltik with two (2) live ammunitions; that they brought Sonny Obillo and Carlo Ellasos to the Muñoz Police Station, then later on to the San Jose City Police Station where they endorsed said persons to the Investigator; that Lt. Agustin was the one who actually received the firearm from Minister Dionisio; that the gun is a police positive, colored black with rust, about six (6) inches barrel bearing the marking Smith & Wesson; that he positively identified the gun which was shown to him as the same gun that was turned over to them by the Minister.

SPO1 APOLINARIO AGUSTIN testified that on April 3, 1992, while he was at the police headquarters of San Jose City, the Chief of Police of the Muñoz Police Station informed the police of San Jose City that two unidentified persons who [might have something to do with] the killing of the tricycle driver on the night of April 2, 1992 at Tayabo, San Jose City were at the Iglesia Ni Cristo chapel in Muñoz, Nueva Ecija; that he together with SPO3 Renato Bautista, SPO2 Edgar Santos and PO3 Edmundo Afable responded and Muñoz Chief of Police Lt. Agustin and Minister Dionisio turned over to them the persons of Sonny Obillo and Carlo Ellasos; that Minister Dionisio also turned over to them a .38 caliber revolver bearing the mark Smith & Wesson which was taken from Ellasos.

EDGARDO GALLETES testified that he was one of those who actually apprehended Carlo Ellasos and Sonny Obillo in the compound of the Iglesia Ni Cristo at Muñoz, Nueva Ecija; that at about 3:00 o'clock in the morning of April 3, 1992, he saw Ellasos and Obillo sleeping at the gate of the church reeking with the smell of liquor;[8] that he noticed that Carlo Ellasos had a .38 revolver; that his companions Mario Cabotaje and Manolo Cabotaje roused Obillo and Ellasos, thereafter, apprehended them and brought them inside where they were interrogated;[9] that he summoned the police and informed them about the two persons; that he asked Ellasos why he was in possession of a gun and Ellasos told him that it was for his defense; that he asked also Obillo why he was in possession of a tricycle wheel and Obillo replied that he took the wheel from Muñoz; that they turned over the apprehended persons to the policemen and .38 caliber revolver with three (3) live ammunition.

FERNANDO DE BELEN testified that the deceased Miguel de Belen is his elder brother; that he does not know Ellasos, but he knows Sonny Obillo; that on April 2, 1992 at about 9:00 P.M., while he was a backrider of a tricycle driven by his cousin, Edgardo Camps, he saw the tricycle of his elder brother Miguel refueling at the Caltex Station; that he approached the said tricycle and he saw inside the sidecar Sonny Obillo seated with his elder brother Miguel while Ellasos was driving the tricycle; that he talked to his brother, who told him they were bound to [sic] Malasin; that he was not able to ask why somebody else was driving his tricycle; that Obillo was seated at the outer place of the side of the sidecar and did not notice anything unusual about his motion; that his brother and the two (2) accused proceeded towards the direction of Malasin and he waited for them at the station; that at about 12:00 o'clock that same evening, the tricycle of his elder brother passed by without his elder brother and it was only Obillo and Ellasos who were in the tricycle; that he and his other elder brother Leonardo de Belen followed the tricycle driven by Ellasos and Obillo; that they followed them up to the City Plaza, where they observed the tricycle pick up a passenger, and then sped towards the direction of Metrobank, then turned right to the direction of Sto. Niño; that they stopped at Tierra Hotel where they waited and when the accused passed by their place, they confronted Ellasos and Obillo about the whereabouts of their brother Miguel; that Ellasos told them that their brother was left behind in Malasin where he was in a drinking

session with his (Ellasos') father; that they proceeded to Malasin but they were not able to find Miguel; that the following morning, they reported the disappearance of their brother Miguel at the police station; that while they were at the police station, a certain policeman arrived and informed them that they were able to recover a cadaver at Tayabo and he might be their brother Miguel; that he together with the uncle of his wife and some policemen went to the area, where he saw his brother Miguel tied to a tree already dead; that the cadaver of his brother was brought to a funeral parlor.

ELENA DE BELEN testified that she is the widow of Miguel de Belen, who died on April 2, 1992; that the total expenses incurred with respect to the death of her husband is P30,000.00.

ANTONIO DE BELEN testified that the tricycle cab[10] of Miguel was damaged, both wheels were disaligned, the windshield, the headlight, the flasher, and the shock absorbers were all broken, the engine block was disaligned and the cover of the carburetor was missing; that the expenses incurred for the repair of the tricycle was P5,000.00 which was covered by receipts, while the repairs amounting to P400.00 for the body repair and P800.00 for the upholstery and P300.00 for labor were without receipts.

DR. RAUL AGLIAM testified that on April 3, 1992, he conducted [an] autopsy of the body of Miguel de Belen upon the request of the Chief of Police of San Jose City; that he prepared an autopsy report, one copy of which was given to the requesting party, another attached to the death certificate and another one used as file copy; that the cadaver was in the state of rigor mortis which meant that the deceased had been dead for more than five (5) hours; that there was a gunshot wound with point of entry on the left temporal region which was positive for gun powder burns around the wound; that there was abrasion on the skin and accumulation of blood clots around the neck caused by a rope; that there was a 3 x 4 cm. abrasion on the left subscapular region and a 2 x 3 cm. abrasion on the left lumbar region; that the cause of death was irreversible shock due to gunshot wound which damaged the vital center of the brain; xxx."

For his part, accused-appellant Sonny Obillo interposed the defense of denial and proffered the following testimony:[11]

"xxx on April 2, 1992 at about 6:05 P.M., he arrived at their house at Julia Street, Abar I, San Jose City and was invited by Rommel Reyes to a drinking session at the house of Lito del Rosario and Joey Igna also at Julia street; that Rommel Reyes bought three (3) bottles of Ginebra San Miguel and he together with Lito del Rosario, Joey Igna and Rommel Reyes consumed the three (3) bottles of Ginebra up to 8:00 P.M.; that when Joey Igna went home, Rommel Reyes invited him to Adela street where they continued drinking and consumed four (4) bottles of Red Horse beer; that he and Rommel proceeded to Tanibong and thereafter they proceeded to the city plaza where they stayed up to 10:00 P.M.; that after he invited Rommel to go home, they took a tricycle; that while in the tricycle, Rommel who was seated at the back of the driver poked a .38 caliber handgun at the driver and ordered him to get down; that the tricycle driver complied and sat beside him (Obillo) inside the sidecar; that Rommel Reyes drove the tricycle to the Caltex Station near the Catholic church for gasoline; that while the motorcycle was being refueled, the tricycle driver alighted and talked to somebody whom he did not recognize; that the tricycle driver returned and sat beside him without asking any help from anyone in that gasoline station; that Rommel Reyes drove the tricycle towards the direction of Tanibong; that instead of going to Tanibong, they proceeded to Tayabo; that when they reached the vicinity of Tayabo, Rommel Reyes told him to wait because Rommel Reyes and the tricycle driver would go somewhere; that while waiting for them to return, he fell asleep inside the tricycle because he was drunk; that when he woke up, they were already at the Iglesia Ni Cristo in Muñoz, Nueva Ecija; that the Security Guards of the Iglesia Ni Cristo woke them up with their guns pointed at them; that he and Rommel Reyes were the only ones there and the tricycle driver was no longer with them; that they were brought to the Minister inside the compound and when they were alone he asked Rommel the whereabouts of the tricycle driver; that Rommel told him that he killed the tricycle driver; that he was surprised about the disclosure by that Rommel Reyes; that the Minister brought with him policemen from Muñoz Police Station and then they were transported to the Muñoz Municipal jail; that they were manhandled by the policemen; that they were brought to the San Jose City jail

where they were again manhandled; that they were investigated, however, they were not informed of their constitutional rights and were not given a lawyer to assist them; that Rommel Reyes was tortured by the police officers, thereafter he confessed responsibility in the killing of the tricycle driver; that Rommel Reyes is the true name of Carlo Ellasos the latter being an alias used by the accused while inside the jail; that he met Rommel Reyes at Julia street through a gay named Odessa Ellasos and was acquainted with him for only a month; that it was only during that incident that they two of them were together; that he denied any participation in the killing of the tricycle driver."

After trial, the court a quo rendered judgment dated February 4, 1999, the dispositive portion of which reads:

"WHEREFORE, in view of the foregoing, the court finds accused Sonny Obillo and Carlo Ellasos alias Rommel Reyes[12], GUILTY beyond reasonable doubt of the crime of Carnapping with Homicide and hereby sentences both accused to suffer the penalty of Reclusion Perpetua and to pay to the heirs of Miguel de Belen the following:

1. P50,000.00 compensatory damages for the death of Miguel de Belen;
2. P30,000.00 as indemnification for funeral expenses;
3. P6,500.00 for damages incurred on the tricycle; and
4. P50,000.00 as exemplary damages.

Costs against the accused.

SO ORDERED."[13]

Only the accused Sonny Obillo filed the instant appeal which raises the following errors:

I.

THE TRIAL COURT GRAVELY ERRED IN HOLDING THAT THE CRIME OF CARNAPPING WITH HOMICIDE WAS COMMITTED.

II.

THE TRIAL COURT GRAVELY ERRED IN HOLDING THAT ACCUSED-APPELLANT SONNY OBILLO CONSPIRED WITH CARLO ELLASOS ALIAS ROMMEL REYES.

III.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT SONNY OBILLO DESPITE INSUFFICIENCY OF EVIDENCE AGAINST HIM.

At the outset, it must be pointed out that the trial judge gravely erred in rendering a judgment of conviction against both accused Sonny Obillo and Carlo Ellasos, despite the fact that he had ordered a separate trial of the case against them, and transferred the trial of accused Ellasos to the RTC of Muntinlupa. In his Order[14] dated July 10, 1997, the trial judge stated:

"As Carlo Ellasos, a co-accused in this case is presently detained at the New Bilibid Prison, Muntinlupa City, the Court is constrained to transfer the trial of accused Carlo Ellasos at the RTC, Muntinlupa and shall decide the case of accused Sonny Obillo separately from said accused. The records of these cases to be transmitted forthwith after the decision is rendered in these cases relative to accused Sonny Obillo.

Considering that the prosecution needs a period of time to study whether or not to present rebuttal evidence in these cases, he is given a period of fifteen days within which to inform the Court regarding the matter and if the prosecution fails to comply within the fifteen-day period granted them, these cases shall be deemed

submitted for decision as against accused Sonny Obillo."

Hence, since the trial of Ellasos did not take place the trial court should have rendered a decision only against Sonny Obillo.

Upon a review of the records, we affirm the judgment against Obillo.

Upon the first assignment of error, accused-appellant contends that the essential element of intent to gain was not proven by the prosecution; that had the purpose of the accused been to appropriate the tricycle, they could have taken the said vehicle to a place where it could not be easily found; that the taking of the wheel of the tricycle can, under the circumstances, be conclusively presumed to be a mere afterthought, and if indeed a crime has been committed it can only be theft of the wheel of the tricycle.

The contentions are unmeritorious.

Republic Act No. 6539, otherwise known as "An Act Preventing and Penalizing Carnapping", defines carnapping, thus:

"Carnapping" is 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." [Ibid., sec. 2]

Intent to gain, or *animus lucrandi*, as an element of the crime of carnapping, is an internal act and hence presumed from the unlawful taking of the vehicle.[15] Unlawful taking, or *apoderamiento*, is the taking of the 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.[16]

In the case before us, when the victim, Miguel de Belen, who is the registered owner of the tricycle subject of this carnapping case,[17] was last seen by his brother Fernando at the Caltex station at 9:00 p.m. on April 2, 1992, he (Miguel) was seated beside the accused Sonny Obillo inside the sidecar of his tricycle which was being driven by the other accused Carlo Ellasos. Three (3) hours later, Fernando again saw the two accused with the tricycle, but this time without his brother. When Fernando finally asked the accused about the whereabouts of his brother, Ellasos answered that Miguel was in a drinking session with his (Ellasos') father in Malasin. The following morning, the lifeless body of Miguel de Belen, with a gunshot wound on the head, was found in Tayabo. In the same morning, the two accused were found sleeping at the gate of the Iglesia ni Cristo chapel in Muñoz, and in possession of a gun and the wheel of Miguel's tricycle. The rest of the tricycle was later recovered in a culvert.

The chain of proven circumstances leads to the logical conclusion that the tricycle was unlawfully taken by the two accused from its owner, Miguel de Belen, and the latter was killed on the occasion thereof. Miguel was last seen with the two accused; three hours later, the two were again spotted riding the tricycle without Miguel. The following morning, the two accused were found in possession of a wheel of the tricycle. Such possession, which remained without any satisfactory explanation, raises the presumption that the two accused authored the carnapping.[18] This presumption remains unrebutted. In fact, the possession of the wheel of the tricycle subject of this carnapping case is not denied by the accused-appellant who, in his Brief, even argued thus: "The fact that part of the tricycle was found in possession of Sonny Obillo would not alter our theory [that the element of intent to gain is wanting] because considering all the circumstances, it could be conclusively presumed that the taking of the wheel was merely an afterthought. xxx If indeed a crime has been committed, it can only be theft of the wheel of the tricycle." [19] That only the wheel was found in possession of the accused and was intended to be appropriated by the latter is of no moment. The unlawful taking of the tricycle from the owner was already

completed. Besides, the accused may be held liable for the unlawful taking of the whole vehicle even if only a part thereof is ultimately taken and/or appropriated while the rest of it is abandoned. In the case of *People vs. Carpio*[20], this Court convicted the accused Carpio of theft of a car which was found abandoned one day after it was stolen but without three (3) of its tires, holding thus:

"xxx The act of asportation in this case was undoubtedly committed with intent on the part of the thief to profit by the act, and since he effectively deprived the true owner of the possession of the entire automobile, the offense of larceny comprised the whole car. The fact that the accused stripped the car of its tires and abandoned the machine in a distant part of the city did not make the appellant any less liable for the larceny of that automobile. The deprivation of the owner and the trespass upon his right of possession were complete as to the entire car; and the fact that the thieves thought it wise promptly to abandon the machine in no wise limits their criminal responsibility to the particular parts of the car that were appropriated and subsequently used by the appellant upon his own car." [21]

Anent the second and third assignments of error, the accused-appellant argues that there was no sufficient circumstantial evidence to prove that Sonny Obillo conspired with Carlo Ellasos who admitted responsibility for the killing of the victim. He points out that the evidences of the prosecution merely show that Obillo was seen with Ellasos on the night of April 2, 1992 and in the morning of April 3, 1992; and that Obillo made no attempt to refute the false statements of Ellasos regarding the whereabouts of the victim Miguel de Belen. He also stresses that there is no evidence on record to prove that he (Obillo) performed an overt act in furtherance of the alleged conspiracy.

The contentions are devoid of merit.

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[22] 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,[23] which are indicative of a joint purpose, concerted action and concurrence of sentiments.[24]

The following circumstances enumerated in Appellee's Brief provide sufficient basis from which it can be inferred that the two accused, Carlo Ellasos and Sonny Obillo, acted in concert in the series of events that took place on April 2 to April 3, 1992.

1. In the evening of April 2, 1992, accused flogged down the tricycle of Miguel de Belen. Accused Ellasos rode behind him while accused-appellant stayed inside the sidecar.
2. Around 9 o'clock, Fernando de Belen saw Miguel's tricycle at the Caltex Station. Accused Ellasos was at the driver's seat while Miguel was seated inside near the driver and accused-appellant at the outer side of the sidecar.
3. They left together to the direction of Malasin, but they went to Tayabo, where Miguel's body was later found.
4. At midnight, Fernando and Leonardo de Belen saw accused using Miguel's tricycle, but Miguel was not with them.
5. Upon inquiry by Leonardo, accused told them that Miguel was left behind at Malasin having a drinking spree with Ellasos' father. Accused-appellant who was awake at that time joined in the conversation but did not correct the wrong information given by accused Ellasos.
6. Fernando and Leonardo de Belen went to Malasin but did not find Miguel.
7. At 3:00 in the early morning, accused who were both drunk stopped in front of the Iglesia ni Cristo Church

in Muñoz where they fell asleep.

8. Around 6:00 in the morning, the INC security guards roused accused from their sleep as they were blocking the gate.

9. The INC guards found that accused Ellasos was carrying a gun and accused-appellant had a wheel of a tricycle.

10. Accused were brought inside the compound where they were interrogated. They admitted to be residents of 1[st] Abar, San Jose City where the de Belen's likewise reside.

11. The San Jose City Police found a dead male person tied hanging to a tree with a gunshot wound in the head.

12. Fernando and his wife's uncle reported the disappearance of Miguel.

13. The dead person at Tayabo was identified by Fernando to be his missing brother Miguel.

14. Miguel's badly damaged tricycle was found in a culvert.[25]

The testimony of the accused-appellant that he fell asleep while waiting for Ellasos and Miguel inside the tricycle and that when he woke up he was already in front of the guards at the Iglesia ni Cristo chapel deserves scant attention in light of the positive testimonies of two witnesses, namely: (1) Fernando de Belen testified that he saw Ellasos and Obillo riding the tricycle of his brother Miguel at about midnight of April 2, 1992, and even asked them regarding the whereabouts of his brother, to which Ellasos answered that Miguel was still in Malasin having a drinking session with his (Ellasos') father;[26] and (2) Edgardo Galletes testified that at about 3:00 in the morning of April 3, 1992, he saw Ellasos and Obillo arrive by foot at the Iglesia ni Cristo compound; when he asked the two where they came from, they answered "Munoz".[27] Between the self-serving testimony of the accused-appellant and the positive testimonies of the two witnesses negating the former, we have no cogent reason to disturb the trial court's finding giving more credence to the latter.

On the matter of conviction of the accused based on circumstantial evidence, the following requisites need to 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 a reasonable doubt.[28] Or, as jurisprudentially formulated, a judgment of conviction based on circumstantial evidence can be upheld only if the circumstances proven constitute "an unbroken chain which leads to one fair and reasonable conclusion which points to the defendant, to the exclusion of all others, as the guilty person, i.e. the circumstances proved must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with any other hypothesis except that of guilty." [29]

A careful perusal of the transcript of the testimonies of witnesses for both the prosecution and the defense shows adequate evidentiary bases to establish the aforementioned circumstances. The unbroken chain of these proven circumstances inevitably point to only one conclusion--that the accused Obillo and Ellasos are guilty of unlawfully taking the tricycle from its owner, Miguel de Belen, and of killing the latter. This Court has held that "[i]n the absence of an explanation of how one has come into the possession of stolen effects belonging to a person wounded and treacherously killed, he must necessarily be considered the author of the aggression and death of the said person and of the robbery committed on him." [30] The court a quo, thus, committed no error in convicting the accused beyond reasonable doubt on the basis of circumstantial evidence.

The aggravating circumstances of evident premeditation, taking advantage of superior strength and nighttime cannot be appreciated as no evidence was presented to prove the same. To establish the aggravating circumstance of evident premeditation, it must be shown that there was a period sufficient to afford full opportunity for

reflection and a time adequate to allow the conscience of the actor to overcome the resolution of his will as well as outward acts showing the intent to kill.[31] Abuse of superior strength is appreciated when the aggressors purposely use excessive force out of proportion to the means of defense available to the person attacked.[32] As aggravating circumstance, what should be considered is not that there are 3, 4 or more assailants as against one victim but whether the aggressors took advantage of their combined strength in order to consummate the offense.[33] With respect to nighttime as an aggravating circumstance, this circumstance must have specially been sought to consummate the crime, facilitate its success or prevent recognition of the felon.[34]

The circumstance of treachery was also not proven. Treachery exists when the offender commits a crime against persons, employing means or methods which directly and specially insure its execution without risk to himself arising from the defense which the offended party might make.[35] It must be proved by clear and convincing evidence, or as conclusively as the killing itself.[36]

When the body of the victim was found, it was loosely tied by the neck to a tree.[37] However, no one saw the killing, and there is no proof that the victim was tied to the tree prior to the killing. Neither is there proof that the act of tying was consciously and deliberately done by the accused to ensure the execution of the crime without affording the victim any opportunity to defend himself or retaliate. The hands and feet of the victim remained free and untied. At any rate, we can only surmise as to what actually transpired during the killing of Miguel de Belen, and thus cannot appreciate treachery which cannot be based on mere presumption.[38]

In connection with the penalty imposed, the Solicitor-General invites our attention to the erroneous imposition by the trial court of the penalty of Reclusion Perpetua upon the accused.

Section 14 of R.A. 6539 provides for the penalty for Carnapping, 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 life imprisonment to death shall be imposed when the owner, driver or occupant of the carnapped motor vehicle is killed in the commission of the carnapping." [Emphasis supplied]

This was amended by R.A. 7659, or the Death Penalty Law, which took effect on December 31, 1993, thereby changing the penalty contained in the last clause to read: "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". [Section 20, Ibid.]

The crime was committed before the effectivity of R.A. 7659. Therefore, we have to apply the original provision prescribing the penalty of "life imprisonment to death" where the "owner, driver or occupant of the carnapped motor vehicle is killed in the commission of the carnapping". As there is no aggravating circumstance present in this case, the maximum penalty imposable for the crime is life imprisonment.[39] Hence, the trial court erred in imposing the penalty of reclusion perpetua. Time and again, we have emphasized that life imprisonment is not synonymous to reclusion perpetua. Unlike life imprisonment, reclusion perpetua carries with it accessory penalties provided in the Revised Penal Code and has a definite extent and duration.[40] Life imprisonment is invariably imposed for serious offenses penalized by special laws, while reclusion perpetua is prescribed in accordance with the Revised Penal Code.[41]

With regard to the indemnification for funeral expenses in the amount of P30,000.00, records show that the same

is only partially supported by evidence. The receipt presented by the prosecution reflects only the amount of P15,000.00.[42] Hence, we should limit the award to the latter amount in accordance with the well-settled rule that only expenses supported by documents such as receipts and which appear to be expended in connection with the death of the victim are allowed to be recovered.[43] Bare allegations of witnesses as to the expenses incurred are not sufficient. As for the indemnification for the damages sustained by the recovered tricycle, this has no factual basis on record and therefore should be deleted.[44] The award of exemplary damages should likewise be deleted as no aggravating circumstance attended the commission of the crime.[45]

WHEREFORE, the questioned Decision is hereby AFFIRMED with the MODIFICATIONS that only Sonny Obillo is convicted of Carnapping with Homicide and is sentenced to suffer the penalty of Life Imprisonment and to indemnify the heirs of Miguel de Belen. The indemnification for funeral expense is reduced to P15,000.00, while the awards of P6,500.00 for the damages on the carnapped tricycle and P50,000.00 as exemplary damages are deleted.

The judgment convicting Carlo Ellasos in the same case is set aside. Upon finality of this decision, let the records of this case be forwarded to the Executive Judge, Regional Trial Court of Muntinlupa so that the criminal prosecution of Ellasos can proceed with dispatch.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Sandoval-Gutierrez, JJ., concur.

[1] Penned by Judge Reynaldo A. Alhambra.

[2] Rollo, p. 14.

[3] RTC Decision, p. 1; rollo, p. 24.

[4] Id.; RTC Records, pp. 305 and 321.

[5] Id.

[6] RTC Records, p. 335.

[7] Id., pp. 2-4; rollo, pp. 25-27.

[8] The transcript of stenographic notes of the testimony of Galletes reads that at about 3:00 in the morning of April 3, 1992, he saw the two accused arrive at the Iglesia Ni Cristo (INC) compound. Galletes approached the two accused and asked where they came from, to which the two answered that they came from Munoz. [TSN dated November 3, 1992, p. 6] He noticed that the two were drunk. [Id., p. 3] Later, between 5:00 and 6:00 in the morning, Galletes saw the two accused sleeping at and blocking the gate of the chapel, prompting him and his companions to wake them up. [Id., pp. 3 and 6.] He noticed that one of the accused had a gun. [Id.]

[9] Obillo mentioned in his testimony that he was told by the security guard of the INC chapel that there was a gun ban in the area at that time. [TSN dated April 4, 1997, p. 10]

[10] The damaged tricycle was later found in a culvert. [TSN dated June 22, 1993, p. 6]

[11] RTC Decision, pp. 4-5; Rollo, pp. 27-28.

[12] Although the alias of Carlo Ellasos under the Information is "Rommel", the RTC decision provides for the alias "Rommel Reyes" based on the testimony of Sonny Obillo to the effect that "Rommel Reyes" is the full alias

of Carlo Ellasos. [TSN dated April 4, 1997, pp. 3 and 14]

[13] RTC Decision, p. 7; Rollo, p. 30.

[14] RTC Records, p. 335.

[15] *People vs. Gulinao*, 179 SCRA 774 (1989), at p. 780.

[16] Luis B. Reyes, *The Revised Penal Code*, Book Two, 14th ed. (1998), p. 619.

Taking is defined as the act of depriving another of the possession of his personalty coupled with the intent of placing it under one's control and of making oneself the owner thereof. [Ramon C. Aquino and Justice (ret.) Carolina C. Grino-Aquino, *The Revised Penal Code*, vol. 3 (1997), pp. 197-198, citations omitted.]

[17] RTC Records, p. 10.

[18] *People vs. Zafra*, 237 SCRA 664 (1994), at p. 667, citing *People vs. Newman*, 163 SCRA 496 (1988), and *People vs. Repuela*, 183 SCRA 244 (1990); Aquino and Grino-Aquino, *supra.*, pp. 95, citing *U.S. vs. Soriano*, 9 PHIL 98 (1907).

Section 3 of Rule 131 of the Revised Rules of Evidence provides:

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

xxx xxx xxx

(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 exercises acts of ownership over, are owned by him;

xxx xxx xxx

[19] Appellant's Brief, p. 9; Rollo, p. 57.

[20] 54 Phil 48 (1929)

[21] *Ibid.*, p. 51.

[22] Article 8, par. 2, Revised Penal Code.

[23] *People vs. Panida*, 310 SCRA 66 (1999), at p. 94, citing *People vs. Alcantara*, 254 SCRA 384 (1996).

[24] *People vs. Manes*, 303 SCRA 231 (1999), at p. 242, citing *People vs. Parungao*, 265 SCRA 140 (1996).

[25] Appellee's Brief, p. 13; Rollo, p. 90.

[26] TSN dated May 13, 1993, p. 6.

[27] See note no. 8.

[28] *People vs. Tiozon*, 198 SCRA 368 (1991), at pp. 380-381, citing Sec. [4], Rule 133 of the Revised Rules of Court and *People vs. Alcantara*, 163 SCRA 783, 786.

[29] *Ibid.*, p. 381, citations omitted; *People vs. Bato*, 284 SCRA 223 (1998), at p. 232.

[30] *People vs. Prado*, 254 SCRA 531 (1996), at p. 540, citing *People vs. Kagui Malasugui*, 63 Phil 221 (1936); *People vs. Lorenzo*, 200 SCRA 207 (1991); *U.S. vs. Divino*, 18 Phil 425 (1911); *People vs. Alhambra*, 233 SCRA

604.

[31] People vs. Tabones, 304 SCRA 781; People vs. Real, 308 SCRA 244.

[32] People vs. Apelado, 316 SCRA 422; People vs. Agsunod, Jr., 306 SCRA 612.

[33] People vs. Platilla, 304 SCRA 339.

[34] People vs. Merino, 321 SCRA 199.

[35] People vs. Cabansay, G.R. No. 138646, March 6, 2001, p. 10, citing People vs. Realin, 301 SCRA 495 (1999).

[36] People vs. Tiozon, supra., p. 388.

[37] Exhibit "A", Folder on Exhibits, p. 2.

[38] People vs. Tiozon, supra., p. 388.

[39] It should likewise be noted that the 1987 Constitution proscribed the Death Penalty.

[40] People vs. Kulais, 292 SCRA 551 (1998), at pp. 578-579.

[41] Ibid.

[42] Exhibit "X", Folder on Exhibits, p. 4.

[43] People vs. Cabansay, supra., p. 12, citing David vs. Court of Appeals, 290 SCRA 727 (1998), and Fuentes vs. Court of Appeals, 253 SCRA 430 (1996).

[44] Although the receipts of the expenses incurred in repairing the tricycle were presented and even marked as exhibits in open court [TSN dated June 22, 1993, p. 4.], the same were not formally offered as evidence by the prosecution, and hence, cannot be considered by this Court. [Section 34 of Rule 132 of the Revised Rules of Court provides: "The court shall consider no evidence which has not been formally offered. xxx"]

[45] Art. 2230 of the New Civil Code provides: "In criminal offenses, exemplary damages as part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances xxx".

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