

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ELGIN LATAYADA (AT LARGE), APPELLANT.

G.R. No. 146865. February 18, 2004

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

When the evidence falls short of proving all the elements of carnapping with homicide, but the killing is conclusively established, the accused may be convicted only of homicide when the Information does not allege any qualifying circumstance.

The Case

For automatic review before this Court is the December 29, 2000 Decision[1] of the Regional Trial Court (RTC) of Cagayan de Oro City (Branch 18) in Criminal Case No. 97-917, finding Elgin Latayada guilty beyond reasonable doubt of carnapping with homicide. The decretal portion of the Decision reads:

“WHEREFORE, in view of all the foregoing considerations, the Court hereby finds accused ELGIN LATAYADA, GUILTY beyond reasonable doubt of the crime of CARNAPPING WITH HOMICIDE, in violation of RA 6539, known as Anti-Carnapping Act of 1972, as amended by Sec. 20 of Republic Act 7659, and there being one generic aggravating circumstance of treachery without any mitigating circumstances, the said accused is hereby sentenced to suffer the supreme penalty of DEATH by lethal injection. He is also directed to pay the heirs of the victim the sum of P18,899.70 as hospitalization expenses, another P7,300.00 as burial expenses, P50,000.00 moral damages and further directed to pay the cost of this proceeding. Let another Warrant of Arrest be issued to the convict for him to serve his sentence. Pursuant to R.A. 7975 and Rule 122, Sec. 10 of the Rules of Court, let the entire records of this case be forwarded to the Supreme Court for automatic review.”[2]

In an Information dated March 7, 1997, appellant was charged with carnapping with homicide as follows:

“That on or about 6:00 o’clock in the evening, more or less, of October 29, 1995 at Sitio Hanopolan, Claveria, Misamis Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to gain and without the consent of the owner, did then and there, willfully, unlawfully and feloniously take, steal and drive away one (1) unit Honda TMX Motorcycle, color blue, bearing plate No. 9B-6096-T, with Serial Chassis No. 951-50025, with Motor No. KCOIE-028425 PH, Model 1995, owned and belonging to Rodrigo Estrada, valued at P63,000.00 to his damage and prejudice and in the course of the commission of the carnapping of the vehicle, accused with intent to kill, did then and there, willfully, unlawfully and feloniously stab one Pedro Payla, the driver of the motorcycle, with the use of a sharp bladed weapon, thus hitting the victim on different parts of his body causing his death thereafter.”[3]

During his arraignment on September 12, 1997,[4] appellant, with the assistance of his counsel de oficio, [5] pleaded not guilty to the charge. After trial in due course, the court a quo rendered the assailed Decision.

The Facts

Version of the Prosecution

In its Brief, the Office of the Solicitor General (OSG) quoted from appellant's Brief the summary of the evidence for the prosecution, which is as follows:

"Sometime on October 29, 1995 at about 6:00 o'clock in the evening, Pedro Payla arrived at the house of Vicenta Cordino at Sitio Hanopolan, Claveria, Misamis Oriental. Pedro Payla allegedly told Vicenta 'Don't be afraid, Nang, I am the son of Lucia Payla, I was stabbed by Elgin Latayada, bring me to the hospital.' Vicenta, who was already old, then called her neighbor Joseph Tion for help and the latter responded. Joseph treated the wounds of Pedro and asked what happened. Pedro allegedly told Joseph that Elgin asked to be brought to Hanopolan, Claveria, Misamis Oriental. On their way, Elgin told Pedro to stop because he wanted to answer the call of nature. After Elgin relieved himself, instead of boarding at the back of the motorcycle, he stabbed Pedro and escaped on board the motorcycle.

"When a passenger jeepney passed by, Pedro was loaded and brought to Claveria Hospital. When they passed by a police station, the conductor of the passenger jeep reported the stabbing incident. At Claveria Hospital, Pedro's wound was treated and sutured. However, due to inadequate medical facilities at Claveria Hospital, the doctor thereat advised Gina Payla, wife of Pedro, to bring Pedro to Cagayan de Oro. On that same night, Pedro Payla was brought to [the] Medical Center in Cagayan De Oro City. Pedro died on October 30, 1995.

"On October 30, 1995, at around 9:00 o'clock in the morning, Gina Payla, Pedro's wife, was able to converse with him. Again, Pedro pointed to appellant as his assailant and further narrated the circumstances surrounding his stabbing.

"At around 1:00 o'clock in the afternoon of the same day, SPO1 Victorino Busalla arrived at the hospital and then proceeded to take the ante-mortem statement of Pedro. Pedro could not write because of his injuries; hence, he placed his thumb mark using his own blood in lieu of his signature on the said statement. The same statement was signed by Gina Payla who was present when the statement was taken. Pedro died on the same day.

"The motorcycle driven by Pedro with Chassis No. 951-50025, color blue, was originally owned by Rodrigo Estrada. He later sold the same to [Kagawad Verano] Caabay for P10,000.00. It was [Kagawad] Caabay who had an arrangement with Pedro regarding the use of the motorcycle to transport passengers.

"The motorcycle was recovered only on November 4, 1995, already cannibalized, at Cugman, Cagayan de Oro City.

"After the prosecution rested its case on June 21, 2002, appellant escaped from prison which is evidenced by a Notice of Escape submitted to the court a quo. He has remained at large." [6] (Citations omitted)

Version of the Defense

In its Brief, the defense averred that the accused had escaped from jail after the presentation of the prosecution's evidence [7] and therefore failed to testify.

Ruling of the Trial Court

The RTC found appellant guilty beyond reasonable doubt of carnapping with homicide. Held as part of the res gestae were Pedro Payla's statements uttered before his death to his wife, Gina; and to Prosecution Witnesses Joseph Tion and Vicenta Cordino that it was appellant who had stabbed him. His Statement taken by a police officer a day after the incident and on the same day he died, was admitted by the court a quo as a dying declaration. It admitted these pieces of prosecution evidence as exceptions to the hearsay rule.

The lower court also ruled that circumstantial evidence indicated that appellant was responsible for the

disappearance of the motorcycle.

Further, the RTC upheld Joseph Tion's testimony that on the pretext of wanting to answer the call of nature, the accused had asked Payla to stop the motorcycle and, without any warning or provocation, stabbed the latter on the back. Finding treachery to have qualified the killing, the lower court imposed on the accused the supreme penalty of death.

Hence, this automatic review.[8]

The Issues

In his 7-page Brief, appellant raises this lone error for our consideration:

"The trial court gravely erred in imposing the penalty of death upon the accused-appellant when x x x treachery was not alleged in the Information either as [a] qualifying or as a generic aggravating circumstance." [9]

In addition to the issue raised by appellant, we find it proper to review first his conviction for carnapping with homicide, as well as the civil liabilities imposed therefor. Since an appeal in a criminal action opens the whole case for review, it becomes the duty of this Court to correct any error in the appealed judgment, whether it has been assigned or not.[10]

The Court's Ruling

The appeal is partly meritorious. Appellant is guilty of homicide only, not carnapping with homicide.

First Issue:

Culpability of the Accused

In every criminal conviction, the prosecution is required to prove two things beyond reasonable doubt: first, the fact of the commission of the crime charged, or the presence of all the elements of the offense; and second, the fact that the accused was the perpetrator of the crime.[11]

Elements of Carnapping with Homicide

The charge filed against appellant for which he was convicted —carnapping with homicide — is punishable under Section 2, in relation to Section 14 of RA 6539[12] as amended by RA 7659.[13] Under Section 2 of RA 6539, 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 with the use of force upon things. On the other hand, Section 14 of the same act, as amended by RA 7659, provides:

"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 the motor vehicle taken, be punished by imprisonment for not less than fourteen years and eight months and not more than seventeen years and four months, when the carnapping is committed without violence or intimidation of persons, or force upon things, and by imprisonment for not less than seventeen years and four months and not more than thirty years, when the carnapping is committed by means of violence against or intimidation of any person, or force upon things; and the penalty of reclusion perpetua to death shall be imposed when the owner, driver or occupant of the carnapped motor vehicle is killed or raped in the course of the commission of the carnapping or on the occasion thereof." (Italics supplied)

RA 7659 introduced three amendments to the last clause of Section 14:[14] (1) the change of the penalty from life

imprisonment to reclusion perpetua, (2) the inclusion of rape, and (3) the change of the phrase “in the commission of the carnapping” to “in the course of the commission of the carnapping or on the occasion thereof.”[15]

The Court has held that the third amendment clarifies the intention of the law to make the offense a special complex crime, in the same way that robbery with violence against or intimidation of persons is treated under paragraphs 1 to 4 of Article 294 of the Revised Penal Code (RPC).[16] Hence, the prosecution must prove not only that the essential requisites of carnapping[17] were present; but also that it was the original criminal design of the culprit, and that the killing was perpetrated “in the course of the commission of the carnapping or on the occasion thereof.”[18] In the present case, the prosecution had the burden of proving that 1) appellant took the motorcycle; 2) his original criminal design was carnapping; 3) he killed Payla; and 4) the killing was perpetrated “in the course of the commission of the carnapping or on the occasion thereof.”

It is undisputed that the motorcycle driven by Payla had been taken without his consent on October 29, 1995, and recovered days later in a cannibalized condition. The elements of taking and intent to gain were thus established. The prosecution also proved it was appellant who had killed him. It failed, however, to discharge its burden of proving the two other requisites of carnapping.

Insufficiency of Proof of Carnapping

The trial court’s finding was that there was indeed no direct evidence showing that appellant had taken the motorcycle driven by Payla.[19] The culpability of the former was deduced from the following pieces of circumstantial evidence: 1) the motorcycle was left with him after Payla had run for his life; 2) as shown by the police blotter, the stabbing and carnapping incident was immediately reported to the police; 3) the vehicle was recovered, its parts missing, five days after the accused had been arrested on June 2, 1997 in Cugman, Cagayan de Oro City, which was only about 25 kilometers from the scene of the crime; and 4) the accused escaped while in detention at the provincial jail, 33 days after the prosecution had rested its case.

To be sufficient for a conviction, circumstantial evidence must prove that (1) there is more than one circumstance; (2) the facts from which the inferences are derived have been established; and (3) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[20] The pieces of circumstantial evidence must also constitute an unbroken chain leading to one fair and reasonable conclusion: that the accused, to the exclusion of all others, is the guilty person.[21]

The circumstantial evidence in the instant case is not sufficient to show that appellant is guilty of carnapping. On the contrary, the records and the transcripts of stenographic notes of the proceedings cast doubt on the correctness of the trial court’s conclusion that after stabbing Payla, he fled on board the motorcycle or was the last person seen with it.

First, there is no mention in the purported antemortem Statement[22] of Payla or in his statement to his wife and the other prosecution witnesses that appellant carnapped his motorcycle. Payla merely stated that appellant had stabbed him twice in the back and once in the face. In fact, the former did not know why he had been stabbed, as he said in response to a query from his wife[23] and from Joseph Tion.[24] If appellant had wanted to carnap the motorcycle, Payla would have pointed this out as the reason for the attack. Yet, the records show that the former intended only to kill the latter. Tion testified as follows:

“PROS. B. APEPE: x x x

Q So after Pedro Payla told you that he was stabbed at the back twice by Elgin Latayada, what else happened according to Pedro Payla, if any?

A After he was stabbed twice, he asked Elgin what is this now and Elgin Latayada answered that [‘D]on’t ask questions anymore, this is killing already[‘] and after that, Elgin stabbed him (Pedro Payla) on his left cheek (witness pointing to portion of his left cheek below the ear) and Pedro Payla ran away leaving his motorcycle behind.

Q

Where did Payla go x x x when he ran away?

ATTY BAGABUYO:

We object, your Honor.

COURT:

On what ground?

ATTY. BAGABUYO:

He just ran away.

COURT: (to the witness)

Q Did he tell you where he ran away to?

A Yes, your Honor, to the house of Mrs. Condino.

PROS. B. APEPE:

Q Did he tell you where was Elgin Latayada after he ran towards the direction of the house of Mrs. Condino?

A No, sir, Elgin Latayada followed him (P. Payla) about 30 meters from where the motorcycle was and after that distance, I don’t know anymore where Elgin Latayada proceeded.”[25]

On the other hand, Gina Payla testified in this wise:

“Q When your husband told you that it was Elgin Latayada who stabbed him, did you ask him why?

A Yes, sir, I asked my husband why x x x Elgin Latayada stabbed him and he answered [‘I] do not know why he stabbed me[‘] and I told him maybe you have a misunderstanding with him and he told me they have no misunderstanding. In fact my husband and Elgin Latayada are schoolmates before and in fact they are also barkada or friend[s]. x x x [T]hat time, Elgin requested him to bring him to Hinopolan but my husband told him [‘]No Gaw, I cannot bring you there because I am going to go home[‘] but Elgin insisted to bring him to that place and he will pay P30.00. [M]y husband agreed and when they were in the isolated place just before the house of Condino, Elgin told my husband ‘Gaw, stop the motor because I am going to urinate’ so my

husband stopped the motor[cycle]. When Elgin rode at the back of the motorcycle], Elgin tapped the back of my husband (witness demonstrating by placing her two hands on her back just below the shoulder) and when my husband started the motor[cy]cle, put more gas on the engine, right there and then Elgin stabbed my husband (witness pointing to her back right below his left shoulder) and after that he pulled out the knife and again stabbed him (witness pointing to her back just below her right back) and my husband said ‘What is this Gaw, is this killing already?’ and Elgin answered ‘Yes, Gaw, accept your last moment’ and after that he was about to stab my husband x x x (witness pointing to the left side of her n[e]ck) but my husband was able to crouch and that is why he was hit on the left cheek and he was able to run towards the house of Condino.”[26] (Italics supplied)

Second, still according to Tion’s testimony, appellant followed Payla for about 30 meters from where the motorcycle stood, then stabbed the latter, who then ran to Vicenta Condino’s house for help.[27] There is no evidence showing that appellant went back to take the motorcycle; hence, there is no basis for concluding that he stole it. On cross-examination, Tion wavered on whether it was his neighbor — herein appellant — whom he had seen with the motorcycle when the former tried to retrieve it. It is likewise unclear from the testimony of Tion whether the motorcycle was already missing at the time. He further testified thus:

“ATTY. R. BAGABUYO: (x x x)

Q You stated here in this affidavit that you went to where the motorcycle was driven by Pedro Payla to use the same in transporting Pedro Payla to the hospital?

A Yes, sir.

Q

And were you alone in going there?

A Yes, sir.

Q And you saw the motorcycle driven by Pedro Payla, is it not?

A No, sir.

Q When you said, “sa diha ako na unta kuhaon ang Motor nga gimaniho ni Pedro, aron maoy among sakyan paingon sa hospital, naa may tawo nga nagsandig sa motor ug nag tanao kanamo nga nagpaingon dito sa motor . . . ,” which x x x in English means, when I was about to get the motorcycle driven by Pedro for the purpose of using it in transporting him (Pedro) to the hospital, I saw a person standing by the motorcycle[,] he was looking at us. What do you mean by that?

COURT: (to the witness)

Q Before that, which is which, you told the Court just now in your last answer that the motorcycle was not already there, you did not find the motorcycle there, but in your affidavit, you said the motorcycle was there and there was somebody standing near the motorcycle, which is which, which is correct? What is your answer?

A What happened, sir, was that as we were about to go to that direction, we met on the way some people and we were not sure if these were the ones who stabbed [Payla], so we were reluctant to proceed, that's why we did not go anymore.

Q When you say we, whom are you referring to, who was with you when you were on the way to go there?

A The members of Mrs. Condino's household particularly her grandchildren and children.

Q

How many were you who went there on the way?

A There were 4 or 5 of us, I was not so sure because they were only following me.

Q Did you not say a while ago that you were alone when you went to the motorcycle, you went by yourself?

A Actually, it was I who suggested to go to where the motorcycle was, I went ahead and they followed. x x x I believe it was only their apprehension as to what will happen to me that's why they followed.

Q You told the Court that you asked Pedro Payla when you arrived at the Condino's house or residence, you asked Pedro Payla several times who stabbed him. [And] several times he answered, he told you that it was Elgin Latayada, you remember telling the Court then?

A Yes, sir.

Q

And you also told the Court that even before that date you already knew Elgin Latayada for a long time because, in fact, you were neighbors, is not that correct?

A Yes, sir.

Q Alright, those people whom you met, by the way, you said you met some people when you were on the way to where the motorcycle was, how many were they whom you met on the way?

A Only one (1), sir.

Q This person whom you met on the way was not Elgin Latayada?

A It was not Elgin Latayada.

Q

And yet, you're telling the Court that you were somewhat reluctant or worr[ied] to proceed farther because

that person you met might have been the one x x x responsible, and yet you told the Court that what Pedro Payla told you that it was Elgin Latayada and the person you met was not Elgin Latayada, how come? Explain to the Court why did you think that probably this was the person that's responsible when Pedro Payla already told you that it was Elgin Latayada and this person you met was not Elgin Latayada? You explain to the Court.

A Actually, it did not enter my mind whether that person I met was the one responsible or the perpetrator in Pedro Payla's wounding, that did not enter my mind.

Q [W]hen you first testified on that particular point you said there were people you met that's why the question now did you not tell the Court a while ago that you were reluctant to go any farther because those might be the persons?

PROS. B. APEPE:

He said he met only one (1) person.

Q

Alright, let me clarify that point. Earlier on you said on the way to the motorcycle you met some people then later on x x x, you said there was only one person you met on the way, which statement is correct, your statement that you met some people or your latest statement that there was only one?

A I only met one person, sir. [I]n fact, when we pass[ed], he was at a distance and I could not clearly see who he was.

Q So, in effect, you are correcting what you said earlier that there were some people you met because actually, there was only one person you met?

A Yes, sir.

Q And you said just now that that person is somewhat at a distance, you could not recognize really who he was, that is what you said just now, is it not correct?

A Yes, sir.

Q Did you not tell the Court when I was asking you earlier, [and] that you sounded to be quite sure, that that person you met was not Elgin Latayada, you told the Court that earlier, isn't it?

A Yes, sir.

Q

Now you are telling the Court that you cannot clearly see or identify and yet you told the Court earlier that that was not Elgin Latayada?

PROS. B. APEPE:

What he said, Your Honor, was they did not actually meet each other.

COURT:

Q Yes, you said that you saw the person only from a distance that's why you could not clearly see or identify who he was but earlier you told the Court that the one you met was not Elgin Latayada? You try to explain to the Court.

A It was only my assumption. I based it on his physical appearance, built, the way he carr[ied] himself, the way he walk[ed] and I thought that this is not Elgin Latayada by the way he walk[ed].

Q Alright, proceed counsel. You have more questions?

ATTY. R. BAGABUYO:

Yes, Your Honor, based on this question and answer.

Q

Now, you said you met not many but one [person] on your way to the motorcycle, is that correct?

A Yes, sir.

Q And therefore, the person you met was not going to that motorcycle but away from the motorcycle, correct?

A He was going up, sir.

Q In your affidavit on paragraph 6, you said you saw a person standing by the motorcycle. Kindly look again at your affidavit?

A No, sir, this is not correct. We were on our way to the motorcycle when we met that person.

Q Is it not a fact that before I [had] this Affidavit marked, x x x I allowed you to read it and after reading it, I asked you whether you are going to affirm and confirm the statement in the affidavit?

A This portion was not very clear to me (witness referring to '1-B').

Q

Is it not also a fact that you x x x mentioned that you read that affidavit before you affixed your signature?

A Yes, sir.

Q At the time x x x you read the affidavit, you read the entire contents of this affidavit marked now as Exhibit 1, is it not?

A

Yes, sir.

Q And at that time, you found the Question and Answer on paragraph 6 to be true and correct, is it not?

A

Yes, sir.

Q Now, you are saying that that is not correct, is that what you are saying?

A No, sir, the policeman who was taking this affidavit did not get me correctly upon my statement here, maybe the policeman based this [on] the statement of Mrs. Condino x x x that her grandchildren went to the place where the motorcycle was[. B]ut actually, I did not go to where the motorcycle was[. Maybe] this statement here was based by the policeman who made this affidavit on what Mrs. Condino told them.

Q

But at the time when you read this one you did not tell the policeman that that is not correct, is it not?

A

I did not, sir.

Q As a matter of fact, you did not tell anybody until now that that is not correct?

A Yes, sir.

Q

What is the truth that you did not even attempt to go to where the motorcycle was, is that the truth?

A The truth is that we tried to go to where the motorcycle was but we were only 10 meters away from the house of the Condinos.

Q And what made you decide not to proceed?

COURT:

He already explain[ed] that.”[28] (*Italics supplied*)

On whether the stabbing and carnapping incident was immediately reported to the police, suffice it to state that

entries in the police blotter should not be given undue significance or probative value, for these are normally incomplete and inaccurate.[29] This dictum applies to the present case with greater force, because the report was made by a truck conductor[30] who was a complete stranger to the incident.

As the carnapping by appellant was not proved beyond reasonable doubt, it cannot be said that the killing of Payla was an incident thereof, or that it was committed “in the course of the carnapping or on the occasion thereof.” The provisions of the Anti-Carnapping Act are therefore inapplicable. The killing of Payla is punishable under the Revised Penal Code, either as homicide or as murder.[31]

Proof of Homicide Sufficient

We now go to the issue of the culpability of appellant for the killing of Payla. In his Comment[32] to the prosecution’s Formal Offer of Exhibits, the former questioned the admissibility of the latter’s alleged antemortem Statement or dying declaration, which had been taken by SPO1 Victorino Q. Busalla. Asking the RTC to disregard the Statement, appellant pointed out that when it was made, Payla was unaware of his impending death. He also averred that on it appeared a thumbprint that allegedly belonged to Payla, but that has not been authenticated.

A dying declaration pertains to one’s statement, made under a consciousness of impending death,[33] on the cause and the surrounding circumstances thereof. It is given credence on the premise that no one who knows of one’s impending death will make a careless and false accusation.[34]

For a dying declaration to be admissible in evidence, it must be shown that 1) death was imminent and the declarant was conscious of that fact; 2) the declaration refers to the cause and the surrounding circumstances of the death; 3) the declaration relates to facts that the victim was competent to testify on; 4) the declarant thereafter died; and 5) the declaration is being offered in a criminal case in which the declarant’s death is the subject of inquiry.[35]

True, Payla made no express statement showing that he was conscious of his impending death. The law, however, does not require the declarant to state explicitly a perception of the inevitability of death.[36] The foreboding may be gleaned from surrounding circumstances, such as the nature of the declarant’s injury and conduct that would justify a conclusion that there was consciousness of impending death.[37]

In this case, Payla could not talk when his wife arrived at the municipal hospital where he had first been brought.[38] He kept moaning in pain and bleeding profusely from the stab wounds on his back, while he was being transported to the medical center in Cagayan de Oro City.[39] Within minutes after arriving there, he lost consciousness[40] as a result of one of the stab wounds that penetrated his lungs.[41] On the morning before he died, in his wife’s presence he lamented that he could no longer raise his children as a result of his condition.[42] He died about eight hours after executing his written Statement before SPO1 Busalla.[43]

There is no merit in the averment that the thumbmark of the victim, imprinted on his Statement with his own blood, has not been authenticated. His wife, Gina, testified that he could not sign the Statement because of the wound on his back below his right shoulder.[44] Thus, SPO1 Busalla held the hand of her husband and imprinted the latter’s thumbmark on the Statement,[45] which she signed [46] as a witness.

Her testimony was corroborated by SPO1 Busalla. As the police officer[47] who had taken the Statement of the victim, the former identified the thumbprint appearing thereon as the latter’s.[48] Further testifying that Payla could no longer move his hand to sign the Statement, SPO1 Busalla allegedly placed the former’s right thumbprint on it, using as ink the blood drawn from the left side of the victim’s face.[49]

In the light of these circumstances, the trial court did not err in admitting Payla's antemortem Statement.

Res Gestae

No error was committed, either, when the trial court admitted the testimonies of Gina, Vicente Condino and Joseph Tion on the declaration of Payla that it was appellant who stabbed him. The utterances separately made by the victim to each of the witnesses were correctly appreciated as part of the res gestae, since they had been made immediately after a startling occurrence^[50] and had complied with the following requirements: 1) the statements were spontaneous; 2) they were made immediately before, during and after the startling occurrence; and 3) they related the circumstances thereof.^[51]

Most telling was the declaration made by Payla within minutes after the stabbing, and while he was calling for Vicenta Condino to ask for help. Condino testified thus:

“ATTY. I. LICO: x x x

Q Your residence is [in] what barangay?

A Anopolan.

Q What town?

A Claveria.

Q Do you own the house where you are living?

A Yes, sir.

Q

Where were you on October 29, 1995 at about 6:00 o'clock in the afternoon?

A

I was in the house.

Q Do you recall if there was an unusual incident that happened at th[at] time?

A Yes, sir.

Q Kindly relate to the Honorable Court what [was] this unusual incident that happened on October 29, 1995 at about x x x 6:00 o'clock.

A

At that time, we were about to take our supper. When I was on the table, somebody came up to the kitchen and I was afraid because I did not know him and he told me '[D]on't be afraid, Nang, I am the son of Lucia Payla, I was stabbed by Elgin Latayada and bring me to the hospital.'

Q And then what happened after that?

A I [had] my neighbor Joseph Tion called and when he arrived, I told him [he] will be the one to bring [Payla] to the municipal hospital and [to] inform his parents because I am old, I cannot manage anymore.”[52] (Italics supplied)

Verily, the utterances of Payla to Condino were instinctively made at a time when he had no more opportunity to concoct a fabricated version of the startling event; hence, the words he spoke were credible.[53]

In the same category were the statements uttered by Payla to his wife, Gina; and to Tion. The transcript of stenographic notes of the proceedings amply shows that the victim identified appellant as the assailant, and that the former narrated details of the stabbing to his wife and to Tion shortly after the incident.

Second Issue:

Treachery

Appellant contends that the RTC erred in appreciating treachery, since it was not alleged as an aggravating circumstance in the Information as required by Sections 8 and 9 of the Revised Rules of Court.[54] He argues that the maximum penalty that may be imposed on him is reclusion perpetua, not death. The OSG agrees with his submission.

We sustain their position that treachery should not have been considered by the court a quo. Sections 8 and 9 of Rule 110 of the Revised Rules of Court require that the complaint or information shall state, among others, the qualifying and aggravating circumstances as follows:

“SEC. 8. Designation of the offense. — The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

“SEC. 9. Cause of the accusation. — The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily those in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.” (Italics supplied)

Indeed, a perusal of the Information in this case readily reveals that treachery was not alleged as an aggravating or a qualifying circumstance in the commission of the crime charged. Consistent with the new Rules, treachery may not be appreciated, because it was not alleged in the Information.[55] It is settled that procedural rules are applicable to actions pending and undetermined at the time they were approved, especially when they are more favorable to the accused.[56] In the absence of any qualifying circumstance, appellant may be convicted of homicide only.

Third Issue:

Penalty and Indemnity

Under Article 249 of the Revised Penal Code, the impossible penalty for homicide is reclusion temporal, the range of which is 12 years and 1 day to 20 years. Since appellant escaped from confinement after the prosecution had rested, the Indeterminate Sentence Law is not applicable.[57] There being no aggravating or mitigating circumstances, he should be sentenced to reclusion temporal in its medium period.[58]

As to his civil liability, prevailing jurisprudence imposes the amount of P50,000 as indemnity ex delicto for

homicide.[59] The award of actual damages in the form of hospitalization and burial expenses, which were adequately proved by receipts,[60] is affirmed. Being adequately supported by the evidence on record, the grant of moral damages in the amount of P50,000 is also affirmed.

In addition, the heirs of the victim must also be indemnified for loss of earning capacity of the deceased.[61] The widow, Gina, testified that her husband's net daily income was P250.[62] She also testified that they had three children,[63] and that the deceased was 27 years old at the time of his death.[64] The loss of earning capacity is thus computed as follows:[65]

$$\begin{aligned}
 &\text{Net earning capacity} = \text{life expectancy}[66] \times (\text{gross annual income less living expenses}[67]) \\
 &= \\
 &2 (80 - 27) \\
 &3 \\
 &\times (\text{P90,000}[68] - \text{P45,000}) \\
 &= 35.33 \times \text{P45,000} \\
 &= \text{P1,589,850.00}
 \end{aligned}$$

Effect of Appellant's Escape

When an appellant escapes detention pending appeal, the appeal is normally dismissed, and the lower court's judgment thus becomes final and executory.[69] However, this Court has held in *People v. Esparas*,[70] *People v. Prades*,[71] and *People v. Raquino* [72] that this rule does not apply to death cases, in which an automatic review is mandated by law even if appellant has absconded.[73]

WHEREFORE, the appeal is PARTLY GRANTED. The Decision of the Regional Trial Court of Cagayan de Oro City (Branch 18) in Criminal Case No. 97-917 is hereby MODIFIED as follows:

1. Appellant is found GUILTY of HOMICIDE and is sentenced to suffer imprisonment of 14 years, 8 months and 1 day.
2. Appellant is likewise ordered to pay to the heirs of the deceased the amount of P50,000 as civil indemnity ex delicto, P26,199 as actual damages, P50,000 as moral damages, and P1 ,589,850 for loss of earning capacity.

No pronouncement as to costs.

SO ORDERED.

Davide, Jr., C.J., Puno, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., Azcuna, and Tinga, JJ., concur.

Vitug, J., in the result.

[1] Rollo, pp. 20-30. Written by Judge Edgardo T. Lloren.

[2] RTC Decision, p. 10; rollo, p. 29.

[3] Rollo, p. 10. Signed by Assistant Provincial Prosecutor Ma. Anita Esguerra-Lucagbo.

[4] See Order dated September 12, 1997; records, p. 59.

- [5] Atty. Rogelio Bagabuyo.
- [6] Appellee's Brief, pp. 3-5; rollo, pp. 96-98. Signed by Solicitor General Simeon V. Marcelo, Assistant Solicitor General Amparo M. Cabotaje-Tang, and Associate Solicitor Joseph Andrew R. Salazar.
- [7] Appellant's Brief, p. 4; rollo, p. 61. Signed by Atty. Teresita S. de Guzman and Atty. Francisco L. Salomon of the Public Attorney's Office (PAO).
- [8] This case was deemed submitted for decision on December 27, 2002, upon receipt by this Court of appellant's Reply Brief. Appellant's Brief was received by this Court on May 15, 2002; appellee's Brief, on September 27, 2002.
- [9] Appellant's Brief, pp. 4-5; rollo, pp. 61-62. Original in upper case.
- [10] *People v. Tolentino*, 380 SCRA 171, 174, April 3, 2002; *People v. Nuevo*, 420 Phil. 421, 431, October 26, 2001.
- [11] *People v. Santos*, 388 Phil. 993, 1004, June 8, 2000.
- [12] Entitled "Anti-Carnapping Act of 1972."
- [13] Otherwise known as the Death Penalty Law.
- [14] Prior to its amendment, the last clause of Section 14 of RA 6539 was as follows: "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."
- [15] *People v. Santos*, supra, p. 1005; *People v. Mejia*, 341 Phil. 118, 142, July 7, 1997.
- [16] *People v. Mejia*, pp. 142-143.
- [17] The elements of carnapping are the following: 1) there is a taking of a motor vehicle that belongs to another; 2) the taking is without the consent of the owner or by means of violence against or intimidation of persons or by the use of force upon things; and 3) the taking is done with intent to gain. (*People v. Calabroso*, 340 SCRA 332, 342, September 14, 2000)
- [18] *People v. Santos*, supra.
- [19] RTC Decision, pp. 7-8; rollo, pp. 71-72.
- [20] Section 4 of Rule 133 of the Rules of Court. See also *People v. Sirad*, 335 SCRA 114, 124, July 5, 2000.
- [21] *People v. Silvano*, 381 SCRA 607, 619, April 29, 2002, citing *People v. Comesario*, 366 Phil. 62, 67, April 29, 1999; and *People v. Canlas*, 372 SCRA 401, 411, December 14, 2001.
- [22] Records, p. 15. The English translation appears on p. 358.
- [23] TSN, November 10-12, 1997. pp. 67-68.
- [24] TSN, December 9, 1997, pp. 8-10.
- [25] TSN, December 9, 1997, pp. 8-10; pp. 10-11.
- [26] TSN, November 10-12, 1997, pp. 67-69.
- [27] Supra at note 23.

[28] *Id.*, pp. 34-43.

[29] *People v. Mejia*, 341 Phil. 118, 147, July 7, 1997; citing *People v. Casinillo*, 213 SCRA 777, 780, September 11, 1992.

[30] TSN, December 9, 1997, p. 13.

[31] *People v. Santos*, *supra*, p. 1006.

[32] Records, pp. 364-365.

[33] *People v. Calago*, 381 SCRA 448, 456, April 22, 2002; *People v. Preciados*, 349 SCRA 1, 19, January 5, 2001.

[34] *People v. Cortezano*, 375 SCRA 95, 112, January 29, 2002.

[35] *People v. Amaca*, 342 Phil. 900, 911, August 12, 1997; *People v. Calago*, *supra*, p. 459; *People v. Preciados*, *supra*.

[36] *People v. Narca*, 341 Phil. 696, 711, July 21, 1997.

[37] *People v. Calago*, *supra*.

[38] TSN, November 10-12, 1997, pp. 36-37.

[39] *Id.*, pp. 54 -55.

[40] *Id.*, p. 57.

[41] *Id.*, p. 44.

[42] TSN, November 10-12, 1997, p. 77.

[43] Exhibit "A"; records, p. 310. The Certificate of Death of Pedro Payla showed that he died at 9:30 p.m. at the CDG Medical Center in Cagayan de Oro City.

[44] TSN, November 10-12, 1997, p. 85.

[45] *Id.*, p. 87.

[46] *Id.*, pp. 85-86.

[47] TSN, January 23, 1998, pp. 15-16.

[48] *Id.*, p. 16

[49] *Id.*, pp. 22-23.

[50] *People v. Mosende*, 371 SCRA 446, 455, December 5, 2001.

[51] *People v. Amaca*, *supra*, pp. 914-915.

[52] TSN, November 10-12, 1997, pp. 92-94.

[53] *People v. Calago*, *supra*.

[54] Effective January 1, 2000.

[55] *People v. Baroy*, 382 SCRA 56, 70, May 9, 2002; *People v. Obosa*, 380 SCRA 22, 35, April 2, 2002; *People*

v. Vicente, 372 SCRA 765, 775, December 21, 2001.

[56] Ibid.; People v. Lab-eo, 373 SCRA 461, 474, January 16, 2002; People v. De Guzman, 418 Phil. 625, 641, October 2, 2001; People v. Vicente, id., pp. 775-776.

[57] Section 2 of the Indeterminate Sentence Law or Act No. 4103, as amended, provides that the “Act shall not apply x x x to those who shall have escaped from confinement or evaded sentence x x x.”

[58] Article 64 (1) of the Revised Penal Code.

[59] People v. Delim, GR No. 142773, pp. 45-46, January 28, 2003; People v. Yatco, 379 SCRA 432, 446, March 19, 2002; People v. Verde, 362 Phil. 305, 320, February 10, 1999.

[60] Exhibits “B” to “B-39”; records, pp. 311-347.

[61] Article 2206(1) of the Civil Code.

[62] TSN, November 10-12, 1997, pp. 14-15

[63] Ibid.

[64] Ibid.

[65] People v. Sirad, 335 SCRA 114, 128, July 5, 2000.

[66] Life expectancy is computed using the formula $\frac{2}{3} \times (80 - \text{age of the victim at the time of his death})$, which is based on the American Expectancy Table of Mortality.

[67] In the absence of proof, living expenses are estimated to be 50 percent of the gross annual income (People v. Dinamling, 379 SCRA 107, 124, March 12, 2002).

[68] Since Payla was earning P250 a day, his income was P7,500 monthly or P90,000 annually.

[69] Par. 2, Sec. 8, Rule 124, Rules of Court.

[70] 260 SCRA 539, August 20, 1996.

[71] 293 SCRA 411, July 30, 1998.

[72] 315 SCRA 670, September 30, 1999.

[73] For a discussion, see Panganiban, *Battles in the Supreme Court*, 1998 ed., pp. 68-71, and *Leadership by Example*, 1999 ed., pp. 96-97. The herein ponente is duty-bound to follow the ruling in these Decisions and to decide this case accordingly, although he dissented from them, and although he still believes that the review of death cases should be made by the Court only after appellant (who is at large) is apprehended and placed under the jurisdiction of the Court.

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