

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. MARLON DELA CRUZ @ #8220;DAGUL,” ADRIANO MELECIO, JESSIE REYES @ #8220;PISO,” AND JEPOY OBELLO, APPELLANT.

G.R. No. 174658. February 24, 2009

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Two Informations, one for violation of Republic Act No. 6539 (the Anti-Carnapping Law), and the other for Robbery with Homicide, were filed against appellant Marlon dela Cruz (dela Cruz), together with Adriano Melecio (Melecio), Jessie Reyes (Reyes), and Jepoy Obello (Obello) before the Regional Trial Court (RTC) of Dagupan City.

The accusatory portion of the Information in Criminal Case No. 2001-0423-D, for violation of the Anti-Carnapping Law, reads:

That on or about the 4th day of June, 2001, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, MARLON DELA CRUZ @ Dagul, ADRIANO MELECIO y Sendo, JESSIE REYES y Evangelista @ Piso and JEPOY OBELLO, with intent to gain and by means of violence or intimidation against persons, confederating, together, acting jointly and helping one another, did then and there, willfully, unlawfully and criminally take, steal, and drive away a Yamaha motorized tricycle with sidecar, belonging to one JULIANA [sic] TAMIN, without her knowledge and consent, to the damage and prejudice of the latter.[1]

The accusatory portion of the Information in Criminal Case No. 2001-0424-D, for robbery reads:

That on or about the 4th day of June, 2001, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, MARLON DELA CRUZ @ Dagul, ADRIANO MELECIO y Sendo, JESSIE REYES y Evangelista@ Piso and JEPOY OBELLO, with intent to gain and by means of violence or intimidation against persons, confederating together, acting jointly and helping one another, did then and there, willfully, unlawfully and criminally, rob one TEOFILO TAMIN SR. of his earnings and cash money in the amount of P6,000.00 and drive away his motorized vehicle, and with intent to kill the latter, attack, assault, and use personal violence upon said TEOFILO TAMIN SR. by hitting his head several times, thereby causing his death thereafter due to "intracranial injury, brain hemorrhage and laceration secondary to depress fracture" as per Autopsy Report and Certificate of Death, both issued by Dr. Benjamin M. Bautista, to the damage and prejudice of the legal heirs of said deceased, TEOFILO TAMIN SR., in the amount of P50,000.00.00 and other consequential damages.[2]

Melecio and Obello have remained at large. Dela Cruz and Reyes, on arraignment, pleaded "not guilty." [3] Reyes was later to be acquitted.

From the evidence for the prosecution, the following version is gathered:[4]

At 2:00 in the morning of June 4, 2001, Teofilo Tamin Sr. (the victim) was discovered dead beside his "push cart"

stall along Perez Boulevard, Dagupan City. A motorized tricycle which the victim and his son jointly owned was missing and which appears to have been parked near the stall, as was the victim's belt bag containing P17,000. The missing cash included the amount which was intended to pay for two months amortization of the motorcycle.

Autopsy of the victim yielded the following:

EXTERNAL FINDINGS

Cadaver was in rigor mortis and small body built.

Contusion hematoma, 15x16 cm, left periorbital area and zygomatic area (in front of left ear).

Contusion hematoma, 5x4 cm, mid left parietal area, level 12 cm above the right ear.

Contusion hematoma, 6x5 cm, mid right parietal area, level 6 cm above the right ear.

Contusion hematoma, 14x10 cm, occipital area with depress skull fracture 4x3 cm.

Linear skin abrasion, P shape, 4 cm, left mid clavicular line, level 4.5 cm below the left nipple.

INTERNAL FINDINGS

Intracranial hemorrhage, moderate.

Cerebral hemorrhage, 10x8 cm, left parietal temporal area with laceration.

Cerebral hemorrhage, 10x9 cm, right parietal temporal area with laceration.

Depress skull fracture, 4x3 cm, occipital area.

Cerebellum hemorrhage, 9x6 cm, midline more in right with laceration.

Cause of death: intracranial injury, brain hemorrhage and laceration secondary to depress fracture.

Due to: mauling.[5] (Emphasis and underscoring supplied)

Dr. Benjamin Marcial O. Bautista who conducted the autopsy opined that the injuries on the victim's head were caused by the employment of a hard object while the wound on the chest was caused by a sharp instrument.

The Dagupan City police recovered the sidecar attached to the motorcycle a kilometer away from the crime scene at a roadside corner.

From information gathered from bystanders, the police learned that de la Cruz, a notorious thief who had previously been convicted for theft, and an unidentified man were seen riding on a red Yamaha motorcycle on June 4, 2001; that from a surveillance conducted, de la Cruz was not in his Dagupan residence; and that his mother Maria Rosario (Maria) is living in the municipality of San Quintin.

On June 8, 2001, the San Quintin police reported to the Dagupan City police that a red motorcycle was recovered from de la Cruz's mother Maria's house in San Quintin, and that Melecio was apprehended, while de la Cruz[6] and Obello escaped. De la Cruz's friends Angelica Perez (Angelica) and Anna Datlag (Anna), who were at the time staying at Maria's house, were invited for questioning.

Anna related to the police, which she echoed at the witness stand, as follows: On June 2, 2001, while she, Angelica, de la Cruz, and Obello were on vacation in Lupao, Nueva Ecija, de la Cruz left for Dagupan City and returned on June 4, 2001 on board a red motorcycle together with Melecio. When she asked where he got the motorcycle, de la Cruz replied that it came from his uncle. Also on June 4, 2001, the group proceeded to de la

Cruz's mother Maria's house in San Quintin, with de la Cruz and Angelica on board the motorcycle, while the rest boarded a bus. The group stayed in Maria's house for four days.

Anna further related: On June 6, 2001, she asked de la Cruz who owns the red motorcycle to which he replied that he took it from an old man who was sleeping after he hit the old man with a stone and Melecio stabbed him at the right side of his body, following which they took the money of the old man.

As a result of follow-up investigations, the police invited Reyes for custodial investigation. The police later returned the motorcycle to the victim's wife Julita after she identified it as the one attached to the sidecar of the victim.

Upon the other hand, de la Cruz put up alibi,[7] claiming that he was asleep in his house at Callejon Extension, Dagupan City on the night of January 3, 2001; that on waking up the following day, January 4, 2001, Obello and Melecio arrived and invited him to, as he did join them to San Quintin on board a motorcycle which the two claimed belongs to their uncle; that the group went first to Lupao, Nueva Ecija where they met Anna and Angelica who, on his invitation, joined them in San Quintin where they stayed for a few days.

De la Cruz went on to claim as follows: While they were in San Quintin, Melecio and Obello asked him to look for a buyer of the motorcycle, drawing him and his mother Rosario to scold the two and ask them to go home. The two insisted on staying in San Quintin, however, until they could find a buyer of the motorcycle. The two eventually admitted that they took the motorcycle from an old man whom they had hit. His mother thereupon asked him to send his friends away, which he did, but they refused to leave. Not wanting to be implicated in a crime, he went home to Dagupan on June 7, 2001.

After trial, Branch 43 of the Dagupan City RTC convicted dela Cruz of both charges. As reflected early on, it acquitted Reyes. The trial court disposed:

WHEREFORE, the Court finds accused MARLON DELA CRUZ alias "Dagul" GUILTY beyond reasonable doubt for the felonies of robbery with Homicide AND Violation of R.A. No. 6539 (An act preventing and penalizing carnapping) and in conformity with law, he is sentenced to suffer the penalty of RECLUSION PERPETUA in each case.

Accused JESSIE REYES is ordered acquitted on ground of reasonable doubt.

Further, accused is ordered to pay the victim's wife the following to wit:

- P50,000.00 as indemnity;
- P50,000.00 as moral damages;
- P30,000.00 as exemplary damages;
- P31,234.00 representing funeral/burial miscellaneous expenses;
- P17,000.00 representing victim's money intended to pay two (2) months installment of his new motorized tricycle;

Be it stressed that victim's carnapped motorized tricycle was recovered.

The BJMP of Dagupan City is ordered to commit the person of the accused to the National Penitentiary immediately and without unnecessary delay.

SO ORDERED.[8]

On appeal before the Court of Appeals, de la Cruz faulted the trial court

I

X X X IN RELYING HEAVILY ON SUPPOSITIONS AND PRESUMPTIONS TO JUSTIFY THE CONVICTION OF ACCUSED-APPELLANT MARLON DELA CRUZ SINCE THERE WAS NO EYEWITNESS TO THE CRIMES COMMITTED AGAINST THE PERSON OF TEOFILO TAMIN, SR.

II

X X X IN BELIEVING THE TESTIMONY OF PROSECUTION WITNESS ANNA DATLAG DESPITE THE REMARKABLE MOTIVE BEHIND HER ACT OF PINNING DOWN ACCUSED-APPELLANT MARLON DELA CRUZ.[9]III

XXX IN IMPOSING THE PENALTY OF RECLUSION PERPETUA FOR EACH CASE.

IV

XXX IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE COMPLEX CRIME OF ROBBERY WITH HOMICIDE SANS EVIDENCE TO PROVE THE SAME.[10]
(Underscoring supplied)

The Court of Appeals affirmed de la Cruz's conviction, but modified the penalty in light of the following observations:[11]

x x x [T]he trial court erred in imposing the penalty of reclusion perpetua in both cases, for the crime of carnapping, considering that the information only alleged that DELA CRUZ committed the crime by means of violence or intimidation against persons and did not allege that the victim was killed in the course of the commission of the carnapping or on occasion thereof. In the same way that recidivism cannot be appreciated against DELA CRUZ notwithstanding his admission in court that he was priorly convicted of theft, a crime punished under the same title of the Code as the crime of robbery with homicide, and was just released from Muntinlupa at the time of the trial of the second case. Said aggravating circumstances were not alleged in the information in consonance with the requirement of Section 9, Rule 110 of the Rules of Criminal Procedure.

Also, while the Court acknowledges that certain losses and expenses were actually incurred by the wife of the victim and her family, the Court notes that except for the amount of P13,000.00 representing the payment made to Funeraria Dagupan, the other expenses for funeral/burial of the victim were not properly substantiated by receipts. For which reason, We cannot grant the same. The allegation also that the earnings of the day, taken by DELA CRUZ and MELECIO from TEOFILO, SR., amounted to P10,000.00 [sic] was not sufficiently proven. It is so exuberant [sic] considering the nature of the business of the victim at the time the incident occurred. The grant of exemplary damages is also deleted in the absence of aggravating circumstances attending the commission of the crime as alleged in the information.[12] (Underscoring supplied)

The Court of Appeals thus disposed:

WHEREFORE, premises considered, finding no error committed by the trial court in arriving at the assailed decision, the same is AFFIRMED with modifications:

(a)

Finding accused-appellant Marlon dela Cruz @ Dagul guilty of robbery with homicide and sentencing him [to] the penalty of reclusion perpetua;

(b)

Finding accused-appellant Marlon dela Cruz @ Dagul guilty of the crime of carnapping by means of force and violence upon person and sentencing him [to] the indeterminate penalty of imprisonment of 17 years and four

months as minimum to 30 years as maximum.

(c)

Ordering the accused-appellant Marlon dela Cruz @ Dagul to pay the victim's wife:

- (1) P50,000 as indemnity;
- (2) P50,000 as moral damages;
- (3) P13,000 as funeral and burial expenses;
- (4) P7,008 [P3,504 x 2] representing the two months earnings set aside for the amortization of the vehicle;
- (5) P20,000 as temperate damages.

SO ORDERED.[13] (Emphasis and italics in the original; underscoring supplied)

Hence, the present appeal of de la Cruz (hereafter appellant).[14]

The appeal is bereft of merit.

There being no eyewitness to the commission of the crime, the following provision of Section 4 of Rule 133 of the Rules of Court on circumstantial evidence applies:

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

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

Conviction based on circumstantial evidence can be sustained, provided the circumstances proven constitute an unbroken chain which lead to one fair and reasonable conclusion that points to the accused, to the exclusion of all others, as the guilty person.[15]

In the cases at bar, the prosecution proved the following facts:

- Appellant left Lupao, Nueva Ecija for Dagupan on June 2, 2001 and returned to Lupao on June 4, 2001, this time on board a red Yamaha motorcycle;
- On June 4, 2001, the victim was found dead near his stall, and his money and the tricycle (motorcycle cum side car) were missing;
- The result of the autopsy of the victim showed that, among other things, he had a wound on the head which was opined to have been caused by a hard object;
- On June 4, 2001, appellant together with his friends, left Lupao for his mother's house at San Quintin. Appellant and his friend Angelica boarded the red Yamaha motorcycle;
- The sidecar forming part of the tricycle was eventually recovered a kilometer away from the locus criminis;
- Appellant and his friends stayed in his mother's house at San Quintin for four days or up to June 8, 2001 in the course of which appellant confessed to Anna that he took the red Yamaha motorcycle and some money from an

old man whom he had hit with a stone and whom Melecio stabbed; and

- The red Yamaha motorcycle to which the sidecar was attached was recovered on June 8, 2001 from the house of appellant's mother at San Quintin and was returned to the victim's wife Julita after she identified it to be that of the victim's.

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."^[16]

Robbery with homicide, on the other hand has the following elements:

- the taking of personal property is committed with violence or intimidation against persons;
- the property taken belongs to another;
- the taking is characterized by intent to gain or *animo lucrandi*;
- by reason of the robbery or on occasion thereof, homicide is committed.^[17]

From the combination of the above-enumerated proven circumstances, the existence of the elements of carnapping and robbery with homicide, as well as the identity of appellant as the one or one of those who committed the crimes, can be reasonably inferred.

Appellant impugns prosecution witness Anna's testimony about his confession to her as hearsay, however. This Court is not persuaded. Section 33 of Rule 130 of the Rules of Court provides that "[t]he declaration of an accused acknowledging his guilt of the offense charged, or of any offense necessarily included therein, may be given in evidence against him." *People v. Licayan*^[18] instructs:

Accused-appellant cannot validly claim that the statement made by Rogelio "Jun-jun" Dahilan, Jr. as to the location of the victim's body is hearsay. Any oral or documentary evidence is hearsay by nature if its probative value is not based on the personal knowledge of the witnesses but on the knowledge of some other person who was never presented on the witness stand, because it is the opportunity to cross-examine which negates the claim that the matters testified to by a witness are hearsay. In the instant case, Rogelio Dahilan, Jr. testified that accused-appellant indeed told him where the victim's body can be found.^[19] (*Italics in the original; emphasis and underscoring supplied*)

The records show that appellant cross-examined prosecution witness Anna. Her testimony about appellant's confession to her is not thus hearsay. Such confession is in fact corroborated by the evidence for the prosecution, viz: the victim's body bore injuries on the head which the doctor opined to have been caused by a hard object; and the motorcycle was eventually recovered on June 8, 2001 from the house of appellant's mother to which appellant and company repaired to on June 4, 2001^[20] and stayed up to June 8, 2001.

Appellant goes on to brand as biased Anna's testimony by "trying to pin [him] . . . in order to save herself." Not only was Anna not charged of complicity in the commission of the crimes, however. She has not been shown to have any motive to testify falsely against him.

Finally, appellant argues that even if the allegation on the loss of some cash were true, the same should be absorbed in carnapping since carnapping and robbery have the same element of taking with intent to gain.^[21] The Court is likewise not persuaded. Carnapping refers specifically to the taking of a motor vehicle. It does not cover the taking of cash or personal property which is not a motor vehicle. As the Court of Appeals noted,

x x x Two (2) articles were taken from TEOFILLO, SR., his tricycle and some cash. The taking of the tricycle constitutes a violation of the anti-carnapping law, RA 6539, while the taking of the cash from TEOFILO, SR.

by hitting him with a stone and stabbing him in the chest constitutes the crime of robbery with homicide under Article 294 of the Revised Penal Code.[22]

WHEREFORE, the challenged June 30, 2006 Decision of the Court of Appeals is AFFIRMED.

SO ORDERED.

Quisumbing, (Chairperson), Velasco, Jr., Nachura,[*] and Brion, JJ., concur.

* He is the only appellant.

* Additional member per Special Order No. 571 dated February 12, 2009 in lieu of Justice Dante O. Tinga's sabbatical leave.

[1] Records (Criminal Case No. 2001-0423-D), p. 1.

[2] Records (Criminal Case No. 2001-0424-D), p. 1.

[3] Records (Criminal Case No. 2001-0423-D), p. 99.

[4] TSN, October 2, 2001, pp. 2-27; TSN, October 9, 2001, pp. 2-40; TSN, October 12, 2001, pp. 2-15; TSN, October 23, 2001, pp. 2-10; TSN, October 26, 2001, pp. 2-25; TSN, October 30, 2001, pp. 1-15; TSN, November 6, 2001, pp. 2-26; TSN, November 16, 2001, pp. 2-36; RTC records (Criminal Case No. 2001-0423-D), pp. 191-236.

[5] Exhibit "A," records (Criminal Case No. 2001-423-D), p. 198.

[6] In a handwritten Return of Warrant of Arrest dated August 21, 2001 (records, (Criminal Case No. 2001-0423-D, p. 91), SPO2 Ramon T. Valenterina of the Dagupan City Police Station stated that "subject person (MARLON DELA CRUZ) [is] presently detained" at the Bureau of Jail Management NS Penology (BJMP)."

[7] TSN, February 19, 2002, pp. 2-23; TSN, February 27, 2002, pp. 2-12; TSN, March 11, 2002, pp. 2-14; TSN, April 12, 2002, pp. 2-10; TSN, April 16, 2002, pp. 2-13.

[8] Records (Criminal Case No. 2001-0423-D), pp. 311-312.

[9] CA rollo, p. 86.

[10] Id. at 90.

[11] Decision of June 30, 2006 penned by Court of Appeals Associate Justice Andres B. Reyes, Jr. with the concurrence of Associate Justices Hakim S. Abdulwahid and Estela M. Perlas-Bernabe. CA rollo, pp. 187-208.

[12] Id. at 205-207.

[13] Id. at 207-208.

[14] Id. at 209-210.

[15] People v. Padua, G.R. No. 169075, February 23, 2007, 516 SCRA 590, 601.

[16] Republic Act No. 6539, Section 2.

[17] People v. Cabbab, Jr., G.R. No. 173479, July 12, 2007, 527 SCRA 589, 604.

[18] 428 Phil. 332 (2002).

[19] Id. at 345.

[20] Vide RULES OF COURT, Rule 133, Section 3: "An extrajudicial confession made by an accused shall not be sufficient ground for conviction, unless corroborated by evidence of corpus delicti."

[21] CA rollo, p. 93.

[22] Id. at 203.

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