

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANILO DELA CRUZ Y RUADO, ROMEO SALVADOR Y MENDOZA, DANTES BELOSO Y DE CASTRO, DEFENDANTS-APPELLANTS.

G.R. NO. 83798. March 29, 1990

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

A case of Carnapping with Homicide, as defined and penalized under Section 14 of Republic Act No. 6539, also known as the Anti-Carnapping Act of 1972.

There is no question that on 5 December 1984, a Ford Telstar automobile, TX-5, bearing Plate No. N-PDW-382, was carnapped, and that ANTHONY Banzon, the registered owner of said car, was shot and killed.

The Trial Court decided* that the three accused, Danilo DE LA CRUZ y Ruado, Romeo SALVADOR y Mendoza, and Dantes BELOSO y de Castro, had "conspired to steal away as they in fact stole and carried away the TELSTAR of ANTHONY Banzon"; held them "liable as principals by direct participation" for the crime of Carnapping with Homicide; and sentenced them as follows:

"WHEREFORE, finding accused Danilo de la Cruz y Ruado, Romeo Salvador y Mendoza and Dantes Beloso y de Castro, guilty beyond reasonable doubt of the crime of carnapping with homicide, penalized under section 14 of R.A. 6539, the Court hereby sentences each of them to suffer the penalty of reclusion perpetua, instead of the supreme penalty of death, inasmuch as the latter penalty has been deleted under the new constitution; for each accused to jointly and severally indemnify the heirs of the deceased Anthony Banzon in the amount of P30,000.00; also to pay, jointly and severally, P200,000.00 for moral damages; P200,000.00 for lost earnings; P6,002.50 for food expenses during the wake; P8,000.00 for coffin and memorial services; P2,530.00 for interment fees; P800.00 for transportation expenses; and P2,947.00 for the hospitalization expenses of Dionisia Alvarez Banzon, the mother of the deceased."

Challenging their conviction, the three accused interposed the present appeal. However, during the pendency hereof, Danilo DE LA CRUZ withdrew his appeal on 1 December 1989. This appeal is thus confined to Dantes BELOSO and Romeo SALVADOR.

By piecing together the voluminous testimonial evidence and documentary exhibits, the factual background from the viewpoint of the prosecution may be narrated thus: Danilo DE LA CRUZ, Dantes BELOSO and Romeo SALVADOR were acquaintances. DE LA CRUZ, 31, claimed to be a 1st Lieutenant of the Philippine Army as well as a customs broker. BELOSO, 29, single was a jobless individual. SALVADOR, 36, married, was also unemployed. SALVADOR had known DE LA CRUZ since 16 November 1984 when they first met at Hot City Disco Restaurant. They then met again on 4 December 1984 (pp. 5-6, TSN, 5 March 1986). BELOSO, for his part, had known DE LA CRUZ since April of 1984 and had met with him for about 4 or 5 times thereafter (p. 6, TSN, 9 October 1985). BELOSO stayed with DE LA CRUZ in the latter's house for several months. BELOSO also met SALVADOR once sometime in November 1984 at a night club somewhere in Roxas Boulevard.

Evidence further shows that on the eve of 4 December 1984, DE LA CRUZ, BELOSO and SALVADOR met at the Kool King Restaurant along Pasong Tamo Street on Makati to discuss a certain “car deal” that would take place the following day – 5 December 1984 (p. 13, TSN, 6 January 1986).

On 29 November 1984, BELOSO caused the placing of an advertisement in the Bulletin Today, page 29, column 3, reading:

"Wanted to Buy Car
Balikbayan 82-83 Silver
Edition or Lancer
Call 8164865 8164866
Mr. Garcia 9-5"
(Exhibit "DD-1," p. 673-B, Records)

The victim, ANTHONY Banzon, a 23-year old student of aeronautical engineering, was among those who responded to the advertisement and signified his interest to sell his 1983 model Telstar.

On 5 December 1984, at around 9:00 A.M., Dionisia Alvarez Banzon, mother of ANTHONY, received a telephone call from a certain Mike Garcia who informed her that he was the buyer of her son's car. ANTHONY, arriving home a little later, was informed by his mother of the telephone call. The victim, together with his mothers, then left for Garcia's office located at the Centrum Condominium, Makati, Metro Manila, on board the Telstar. They arrived at their destination a little after 11:00 A.M. Once there, a man just across the street where their car was parked was pointed to by ANTHONY as Mr. Garcia, the person interested in buying the car. In the identification made by Dionisia Alvarez Banzon during the trial, that man turned out to be accused Dantes BELOSO. Dionisia then proceeded to Shoemart on a taxi, leaving ANTHONY at the Centrum (pp. 53-58, TSN, 29 May 1985), little suspecting that it would be the last time that she would see her son.

Inside the Centrum office ANTHONY and BELOSO discussed the price of the car, which ANTHONY fixed at P188,000.00. BELOSO then advised ANTHONY to wait for Danilo DE LA CRUZ to arrive as he would be the one to decide whether or not to buy the car. After a while, DE LA CRUZ arrived and BELOSO introduced ANTHONY to the former. At around 1:00 P.M., DE LA CRUZ and ANTHONY left the office to go to the former's house. ANTHONY brought with him an envelope containing the certificate of registration, official receipt, and other papers pertaining to the car (pp. 9-12, TSN, 9 October 1985). When they arrived at the house, SALVADOR was already there.

SALVADOR recounted in his Sworn Statement (Exhibit "B-1") that DE LA CRUZ had told him to have some snacks at a nearby "lugawan" while he and ANTHONY talked. When SALVADOR returned, he saw DE LA CRUZ and ANTHONY seated near the dining table. SALVADOR then went to the comfort room and while inside, he heard a shot. When he got out, he found ANTHONY sprawled on the floor, the latter's head bathed in his own blood, and saw DE LA CRUZ holding a gun (pp. 640-641, Records).

Strangely enough, the dyphenylamine paraffin tests done on DE LA CRUZ on 6 December 1984 showed negative results (Exhibit "N"), while those on BELOSO and SALVADOR proved positive (Exhibits "O" and "P"). The paraffin casts on the latter two were taken on 7 December, which were then sealed and preserved until the actual testing on 11 December 1984.

Continuing with the facts – at around 3:00 P.M., Dantes BELOSO, who was at the Centrum office, received a call from DE LA CRUZ, who instructed him to proceed to his (DE LA CRUZ) house at Obrero Street, Makati, Metro Manila. On arrival, BELOSO called for DE LA CRUZ, who came out and handed to him the key of the Telstar.

DE LA CRUZ instructed BELOSO to drive for SALVADOR who did not know to drive. BELOSO then boarded the car and waited for SALVADOR who came out of the house some 15 to 20 minutes later. In his Affidavit (Exhibit "C-11"), BELOSO recounted that SALVADOR related to him that he had seen a dead man in the house of DE LA CRUZ but that they were to keep it to themselves because he (SALVADOR) was scared of DE LA CRUZ. SALVADOR then showed to BELOSO a phone number of a certain Mr. Hernandez who was interested in buying the car. After driving a short distance, BELOSO stopped at a telephone booth to call Hernandez to ask for the latter's address. They then started to look for the place but failed to locate it. Since BELOSO was already hungry, he parked the car at the Brunch Restaurant in front of UERM and took his snack thereat while SALVADOR took a taxi and proceeded to Hernandez (pp. 13-16, TSN, 9 October 1985).

SALVADOR was able to reach Hernandez' place at about 4:00 P.M., Rodolfo Hernandez recalled during the trial that SALVADOR introduced himself as ANTHONY Banzon and offered to sell a car, which was parked at a nearby Caltex station. They proceeded to the station to look at the car. Hernandez then looked at the certificate of registration of the car in the name of ANTHONY Banzon and the residence certificate presented to him by SALVADOR, which was also in the name of ANTHONY Banzon. Believing that SALVADOR was really ANTHONY Banzon, Hernandez then suggested that they go to the actual buyer at the Metropolitan Pawnshop at P. Campa Street, Sampaloc, Metro Manila, leaving BELOSO at the UERM. At the pawnshop, they met Hernandez' contact, Patrolman Rosauro de la Rosa, who is the brother of the owner of the pawnshop. Again, SALVADOR introduced himself as ANTHONY Banzon, the owner of the car and offered to sell it for P130,000.00. Hernandez then left the pawnshop (pp. 85-95, TSN, 1 March 1985; pp. 4-13, TSN, 8 March 1985).

During the negotiation, Pat. de la Rosa became suspicious that the car had been stolen because of the low price of P130,000.00, and when told that he would be paid the next day, SALVADOR insisted that if possible, the former pay P100,000.00 in advance as he was in need of money very badly. On top of that, when Pat. de la Rosa declined to pay immediately, SALVADOR left the car behind. Pat. de la Rosa then reported his suspicions to Sgt. Reynaldo Roldan of the Quezon City Police (pp. 8-19, TSN, 8 March 1985). Sgt. Roldan forthwith dispatched Pfc. Damaso Osma, Pat. Edgardo de Leon, Pat. Anthony Name and Pat. Justiniano Estrella, Jr., to P. Campa Street (pp. 95-96, TSN, 27 February 1985; p. 4, TSN, 25 March 1985).

At P. Campa Street, the dispatched policemen, together with Pat. de la Rosa, posted themselves and waited for SALVADOR to arrive. At about 8:00 P.M., SALVADOR did arrive together with BELOSO. They got inside the car with BELOSO taking the steering wheel. The policemen approached and asked the two to alight. BELOSO started shouting that he was ANTHONY Banzon, the owner of the car and showed the car registration and a residence certificate, all in the name of ANTHONY Banzon. This all the more aroused Pat. de la Rosa's suspicion for earlier it was SALVADOR who claimed to be ANTHONY. The policemen decided to take the two to the Quezon City Police Headquarters for questioning (pp. 97-102, TSN, 29 February 1985; pp. 21-28, TSN, 8 March 1985; pp. 26-31, TSN, 13 March 1985; pp. 71-76, TSN, 18 March 1985).

Meanwhile, at around 9:00 P.M. of the same day, Cynthia Juarez a boarder of the house of DE LA CRUZ, reported to Pfc. Evelio Bactad of the Makati Police that when she arrived at the boarding house she found it unlocked but with the lights on and a dead man in the kitchen. The house is located at Obrero Street, Makati, Metro Manila. Bactad proceeded to the place to conduct an investigation and there found a lifeless body of a man, already in the state of rigor mortis, with a gunshot wound on the forehead, and an empty super .38 caliber shell about two feet away from the left side of his body (pp. 14-21, TSN, 25 February 1985). Cynthia Juarez mistakenly identified the body to be that of her landlord Danilo DE LA CRUZ.

At about 2:00 A.M. of 6 December 1984, a male person went to the same Makati police station to report that his house has been ransacked by someone. He introduced himself as Danilo DE LA CRUZ. Pfc. Bactad, perplexed as

to the identity of the dead body, held DE LA CRUZ for further questioning (pp. 14-25, TSN, 25 February 1985). Pfc Bactad then coordinated with the Quezon City Police anti-carnapping unit, which had given notice that they had apprehended two persons, Romeo SALVADOR and Dantes BELOSO. These two were later turned over to the Makati Police Precinct. Pfc. Bactad was subsequently able to straighten out the identity of the victim to be ANTHONY Banzon (pp. 22-27 and 95, TSN, *ibid.*).

The medical examination conducted by a medico-legal officer of the NBI on the cadaver of the victim on 6 December 1984 revealed the cause of death to be "hemorrhage, intracranial severe, secondary to gunshot wound." The bullet used was identified as a .38 caliber gun, fired at short distance from the victim, entered the back of the head and exited through his forehead. The same physician placed the time of death at about four (4) hours, more or less, after he had taken his last meal (pp. 57-59, TSN, 27 February 1985).

Sgt. Reynaldo Roldan, a Quezon City policeman, who was called by Pat. De la Rosa to report the latter's suspicion about a carnapped vehicle, interrogated BELOSO and SALVADOR and elicited their *modus operandi* as follows: 1) blank residence certificates were secured and kept by the three accused; 2) their "business" of buying of cars was advertised in the newspapers; 3) the ads yielding fruitful results, prospective sellers would be asked about their respective certificates of registration and other documents; 4) when the portion for the signature of the owner is found to be blank, the accused would pretend to test the car, demand the certificate of registration, and fill in the signature space with their own signature; 5) present the same certificate of registration bearing their own signature, along with the residence certificate supplied by DE LA CRUZ which is made to coincide with the name and signature appearing in the certificate of registration, to the prospective buyers; and 6) pretend to test the car although, in fact, just waiting for the opportunity to leave the owner of the car behind so that the accused could dispose of the same in the meantime.

All accused, on the other hand, profess innocence. BELOSO claims that he was merely hired to man the office at Centrum Condominium; that he had nothing to do with the carnapping of ANTHONY's vehicle; that he went to the house of DE LA CRUZ at about 3:00 P.M. of 5 December 1984, but was not allowed to enter the same; and that while he was by the gate, he was given the key of ANTHONY's car by DE LA CRUZ to drive for SALVADOR who did not know how to drive; that, in turn, the registration papers of the car and other documents were handed to SALVADOR with specific instructions to bring the vehicle to the prospective buyer, Hernandez.

For his part, SALVADOR claims that he was merely called by DE LA CRUZ to go to the latter's house to assist BELOSO in the sale of the car. He denies having been a long acquaintance of either DE LA CRUZ or BELOSO. He claims that on 5 December 1984 DE LA CRUZ instructed him to go to the Royal Beauty Parlor between 10:00 and 11:00 A.M., which he did. After waiting for some ten (10) to fifteen (15) minutes, DE LA CRUZ arrived on board a taxi cab. They proceeded to DE LA CRUZ's house. Arriving thereat and finding it closed, they went to Lugawan sa Makati for a snack. After eating, they returned to DE LA CRUZ's house around 12:00 noon. A few minutes later, Elmer Mabunga, driver of DE LA CRUZ arrived (pp. 14-15, TSN, March 5, 1986). At 12:30 P.M., the three of them left the house. Elmer rode in a jeepney while they took a taxi. DE LA CRUZ dropped him off at the Royal Beauty Parlor while DE LA CRUZ proceeded to Centrum Condominium. He was instructed by DE LA CRUZ to wait from 2:00 to 2:30 P.M. after which he should go back to the house. At around 3:00 P.M., he went back and after calling DE LA CRUZ name, the latter came out of the house, opened the first door, and told him to wait for BELOSO. At around 3:20 to 3:30 P.M., BELOSO arrived. From here on, the testimonies of BELOSO and SALVADOR are substantially similar in that they were given the keys of the car and some documents and told to go to a certain Hernandez, a prospective buyer.

In a nutshell, it is BELOSO's and SALVADOR's position that they were unaware of any carnapping; that they were in a regular business transaction to sell a car with promise of a commission; that they were not in the house

of DE LA CRUZ in the early afternoon of 5 December 1984 when ANTHONY was killed; that they were unaware of the killing of ANTHONY which, according to SALVADOR was DE LA CRUZ' own doing.

Both BELOSO and SALVADOR are in unison in claiming that their statements, marked as Exhibits "B" for SALVADOR, and "C" and "K" for BELOSO, are inadmissible in evidence as the same were extracted by force and without the presence of counsel.

The Trial Court gave no credence to the exculpatory allegations of BELOSO and SALVADOR and convicted them, as well as DE LA CRUZ, of Carnapping with Homicide. Hence this appeal, filed originally by all three accused.

Appellants BELOSO and SALVADOR ascribe the following errors to the Trial Court:

By Dantes BELOSO:

"I. The Trial Judge who had no occasion to observe demeanors of witnesses as he merely prepared the decision in this case as the trial was entirely heard by Justice Elbinas erred in concluding that at around 9:00 A.M. of December 5, 1984 the late Anthony Banzon was called by Beloso.

"II. The Lower Court, with due respect, gravely erred in holding that the three (3) accused conspired in stealing the car subject of this case.

"III. The Lower Court again, with due respect, gravely erred in applying the case of *People vs. Mangulabnan, et al.* in concluding that the three (3) accused were liable in the death of Anthony Banzon and that Beloso could have been present at the time the victim was shot.

"IV. The Court a quo gravely erred in ruling that all the accused conspired in the killing of Anthony Banzon and Beloso 'could have been inside the house and was present at the time Banzon was shot' because if he were not present, 'he could have been found negative of gun powder nitrates'.

"V. All in all, the Lower Court, as far as Beloso is concerned, as shown by indubitable facts heretofore and/or hereinafter discussed and as facts and evidence on records will show, committed grave error in convicting Beloso of the crime charged.

By Romeo SALVADOR:

"The Court a quo erred:

"I. Gravely in admitting Salvador's alleged extrajudicial confession. (Exhibit 'B') taken by police officers during custodial investigation without assistance of counsel.

"II. In giving equal weight and effect on the prosecution's evidence presented during the joint trial which are not applicable to appellant Salvador.

"III. In finding Salvador a co-conspirator of the crime charged although his admitted participation was only to assist in the aborted sale of the car without knowledge that it was a 'carnapped' vehicle and without knowledge that the registered owner was earlier killed.

"IV. In convicting Salvador in the absence of proof beyond reasonable doubt."

It may, indeed, be that Judge Phinney C. Araquil, who penned the Trial Court Decision, had not heard the case at all, the trial having been conducted by then Judge Jesus M. Elbinias, who was elevated to the Court of Appeals. Nonetheless, the transcripts of stenographic notes taken during the trial were extant and complete and there was no impediment for Judge Araquil to have decided the case. It is not unusual for a Judge who did not try a case to decide it on the basis of the record (*People vs. Escalante*, L-37147, 22 August 1984, 131 SCRA 237). The fact

that the Judge who heard the evidence is not the one who rendered the judgment and that for that reason the latter did not have the opportunity to observe the demeanor of the witnesses during the trial but merely relied on the records of the case does not render the judgment erroneous (Co Tao vs. Court of Appeals, 101 Phil. 188 [1957]).

The rest of the assigned errors center on the findings of conspiracy and guilt by the Trial Court and may be considered jointly.

The evidence sustains those findings.

The three accused had known one another some time before 4 December 1984 at relatively different periods. Before Pfc. Bactad at the police station, BELOSO and SALVADOR identified DE LA CRUZ as an "associate" although the latter denied it (p. 29, TSN, 25 February 1985). BELOSO had been hired through DE LA CRUZ to man the office at Centrum Condominium, Perez Street, Legazpi Village, Makati. On 4 December 1984, they had gotten together at the Kool King Restaurant at Pasong Tamo, Makati, to discuss a "car deal" to be consummated the next day. Dantes BELOSO, masquerading for Mike Garcia, had caused an advertisement to be published in the 28 and 29 November issues of the Bulletin Today. On the same dates, BELOSO had rented an office space at the Centrum Condominium under the name of said Garcia for the two days mentioned, and again on 5 December 1984 at P50.00 per hour, complete with staff facilities. BELOSO held himself out as in the business of buying cars. The victim, ANTHONY, responded to the ad, went to said office and offered to sell his Telstar, Model '83. Posing again as Mike Garcia, BELOSO called ANTHONY's house at around 9:00 A.M. on 5 December 1984 and informed the latter's mother that he was the buyer of the car. When ANTHONY went to the Centrum office, BELOSO told ANTHONY to wait for DE LA CRUZ. Upon the latter's arrival, he had a talk with ANTHONY. DE LA CRUZ made sure that ANTHONY's certificate of registration, official receipt and other pertinent papers of the Telstar were in order (pp. 9-12, TSN, October 9, 1985). ANTHONY and DE LA CRUZ then proceeded to the latter's house at Barrio Obrero, Makati.

Meanwhile, SALVADOR was instructed by DE LA CRUZ also to wait at the latter's house. When DE LA CRUZ and ANTHONY arrived, the former told SALVADOR to take a snack somewhere while he (DE LA CRUZ) and ANTHONY talked. It was after SALVADOR returned to the house that the killing of ANTHONY transpired between 12:00 noon and 2:00 P.M. Later, at about 3:00 P.M., DE LA CRUZ then allegedly called for BELOSO at the Centrum office. When BELOSO arrived, DE LA CRUZ handed him the keys to the car, which was parked nearby. DE LA CRUZ also handed to SALVADOR a brown envelope containing papers of the Telstar, with the instruction to bring the car to a certain Hernandez, who was buying the car. Following that bidding, the two left and looked for Hernandez. But unable to locate him, SALVADOR went on his own in a taxi. BELOSO was left with the car at the Brunch Restaurant near UERM. After having located Hernandez, SALVADOR, Hernandez, and a driver went back to where BELOSO was, took the car and proceeded to the Metropolitan Pawnshop leaving BELOSO behind. At this place, the three alighted. SALVADOR introduced himself as ANTHONY Banzon, the owner of the car and the name appearing in the car's Certificate of Registration, to Pat. Rosaura de la Rosa, brother of the pawnshop owner who was the real buyer of the car. SALVADOR even showed the Registration Certificate and a Residence Certificate, purportedly ANTHONY's, as proof thereof. SALVADOR then asked for P130,000.00 as selling price. Pat. de la Rosa agreed but asked that payment be made the following day as banks were already closed. SALVADOR, however, insisted on payment that evening as he was badly in need of money. This made Pat. de la Rosa suspicious that the car had been stolen, and reported to the Quezon City police. Pat. de la Rosa then instructed SALVADOR to return to the pawnshop the next day. As SALVADOR did not know how to drive he left the Telstar at the pawnshop, went to the Brunch Restaurant near UERM, picked up BELOSO so the latter could drive the car back to DE LA CRUZ. When they returned that night and boarded the car, elements of the Quezon City police approached them and asked them questions. BELOSO got down from the car and

started shouting that he was ANTHONY, the owner of the car (p. 23, TSN, March 8, 1985). Notwithstanding, the police brought them to the Quezon City police headquarters. Here, the investigators recovered some documents inside BELOSO's clutch bag, among them, a residence certificate in ANTHONY's name (Exhibit "H-1"). In BELOSO's possession were also found a motor registration certificate in ANTHONY's name, two (2) blank residence certificates and one residence certificate in the name of Mark Garcia (p. 120, TSN, 27 February 1985).

BELOSO's and SALVADOR's protestations of innocence do not inspire belief. Both of them posed as ANTHONY at one time or another during the "negotiations." When SALVADOR offered to sell the car to Rodolfo Hernandez, he introduced himself as ANTHONY Banzon. He even presented to Hernandez a car registration certificate and a residence certificate all in the name of ANTHONY Banzon. Later, when Hernandez introduced SALVADOR to Pat. de la Rosa, the former's contact, SALVADOR again introduced himself as ANTHONY Banzon (pp. 85-95, TSN, 1 March 1985; pp. 4-13, TSN, 8 March 1985). These misrepresentations are indication that he knew the car was stolen. What further bolsters the conclusion that he had a hand in the commission of the crime was the fact that when he and BELOSO were arrested by the Quezon City anti-carnapping unit, it was now BELOSO claiming to be ANTHONY Banzon (pp. 97-102, TSN, 29 February 1985; pp. 21-28, TSN, 8 March 1985; pp. 26-31, TSN, 13 March 1985; pp. 71-76, TSN, 18 March 1985). BELOSO's claim that he was ANTHONY Banzon and SALVADOR's silence in the face of such claim, despite the fact that he had earlier misrepresented himself as ANTHONY, all the more reveal that the two of them were one in keeping secret the true ownership of the car.

A more perfect example of a conspiracy cannot be contrived. BELOSO and SALVADOR shared the same purpose with DE LA CRUZ in carnapping the vehicle with a view to selling it at a low price and making money which they badly needed. They were united in its execution as may be inferred from the facts and circumstances established by the evidence. Conspiracy need not be established by direct evidence of the acts charged, but may and generally must be proved by a number of indefinite acts, condition and circumstances which vary according to the purpose to be accomplished (People vs. Colman, et al., G. R. Nos. L-6652-54, 28 February 1958, 103 Phil. 6). The existence of conspiracy may be inferred from acts tending to show a community of design or purpose (People vs. Mada-I, Santalani, G.R. No. L-29979, 28 September 1979, 93 SCRA 315).

What of the killing of ANTHONY? There is no question that he was killed "in the commission of the carnapping" (Sec. 14, RA 6539). It is clear from the evidence as well that he was killed in the house of DE LA CRUZ between 1:30 and 2:00 P.M. on 5 December 1984 (Brief, Danilo de la Cruz, p. 19). It was at that house where ANTHONY was found dead by a boarder by the name of Cynthia Juarez at around 9:00 P.M. of the same date. DE LA CRUZ tried to camouflage the killing by ostensibly reporting to the police that his place had been ransacked and that a person had been killed. As Pat. Bactad testified, however, when he and a police team went to the house, belongings therein were found wrapped and ready to be transferred.

BELOSO claims that he was sent for by DE LA CRUZ from the Centrum office only at 3:00 P.M. on 5 December 1984 and was not, therefore, at the DE LA CRUZ residence at the time the killing was perpetrated in the early afternoon of that date. Similarly, SALVADOR claims that he went to the DE LA CRUZ house only at 3:00 P.M. and when he did he was merely at the gate and did not enter the house. Consequently, they conclude that neither of them can be held culpable for ANTHONY's death.

Those denials, however, cannot prevail over the physical evidence that BELOSO and SALVADOR were found positive for nitrates, which means that they were within the vicinity when the gun was fired.

"When a paraffin or nitrate test is applied, there appears gunpowder nitrates which are dark blue color. These specks are nothing more or less than minute particles of nitrate which have been blown into the skin by what might be termed the invisible backfire of the pistol, but they do not appear unless a hand has been instrumental

in pulling the trigger, (Robinson, *Science Catches the Criminal*, pp. 99-100)."

The fact that DE LA CRUZ was found negative for powder burns, although he was tagged by SALVADOR as the triggerman, can only mean that he knew how to sufficiently protect himself, a knowledge that must have been derived from his stint as an officer of the Philippine Army.

The identical claims of BELOSO and SALVADOR that they were heavy smokers, of about 3 packs of Marlboro cigarettes a day, which accounts for the presence of nitrates in both their right and left hands, is contradicted by the testimony of the forensic chemist that nitrates produced by cigarette smoking have different characteristics from those caused by powder burns.

BELOSO's and SALVADOR's complicity in the killing is, therefore, established not by any of the extrajudicial confessions (Exhibits "B", "C" and "K") but by the physical evidence on record. So that, even if those sworn statements are declared inadmissible for having been given without the presence of counsel, their culpability is borne out by evidence independent of the same.

That the respective participations of BELOSO and SALVADOR in the killing is not clearcut is of no moment:

"In order to determine the existence of the crime of robbery with homicide, it is enough that homicide would result by reason or on the occasion of the robbery and it is immaterial that the death would supervene by mere accident provided that the homicide be produced by reason or on occasion of the robbery inasmuch as it is only the result obtained, without reference or distinction as to the circumstances, causes, modes or persons intervening in the commission of the crime that has to be taken into consideration" (People vs. Mangulabnan, et al., 99 Phil. 992 [1956]).

Moreover, conspiracy having been adequately proven, all the conspirators are liable as co-principals regardless of the extent and character of their participation because in contemplation of law, the act of one is the act of all. The degree of actual participation by each of the conspirators is immaterial (People vs. Loreno, G. R. No. 54414, 9 July 1984, 130 SCRA 311). As conspirators, each is equally responsible for the acts of their co-conspirators.

At this juncture, we find it apropos to state that earmarks of the voluntariness of the extrajudicial confessions exist. For one, there is no convincing evidence of maltreatment. For another, SALVADOR subscribed and swore to his Statement before Sr. State Counsel Norberto C. Ponce who certified "I have personally examined the affiant and that I am satisfied that he voluntarily executed and understood his affidavit." Signing as witness was Atty. Florito S. Macalino of CLAO (Exhibit "B-5"). Similarly, BELOSO subscribed and swore to his Affidavit before 2nd Asst. Fiscal Dennis M. Villa Ignacio, with Atty. William T. Uy of CLAO. Makati, as witness (Exhibit "C-4"). Of record also is the fact that during the execution of the extrajudicial confessions, Tim Olivares, a police reporter of the newspaper "Tempo" was present. This would further negate the alleged maltreatment suffered by BELOSO and SALVADOR at the hands of police authorities. That reporter would surely have pounced upon any sign or report of maltreatment (People vs. Ladrera, G.R. No. 55539, 21 May 1987, 150 SCRA 113). Further, in BELOSO's Affidavit, Exhibit "C," erasures appear, duly countersigned by him, which clearly negate his claim that his confession was made involuntarily (People vs. Tanchico, G.R. No. L-23690, 23 October 1979, 93 SCRA 575).

The crime committed is Carnapping with Homicide, with carnapping defined as "the taking, with intent to gain, of a motor vehicle belonging to another without the latter's consent, or by means of violence against or intimidation of persons, or by using force upon things" (Sec. 2. RA. No. 6539. The penalty prescribed by the same law reads:

"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" (Sec. 14, *ibid.*).

In this case, the owner of the carnapped vehicle was killed in the commission of the carnapping obviously to gain possession of the car, its registration certificate and other pertinent papers, get the owner out of the way, and thus facilitate its sale to a third party, in keeping with the *modus operandi* of the perpetrators.

WHEREFORE, the judgment appealed from is hereby **AFFIRMED**, with proportionate costs against accused-appellants Dantes Beloso and Romeo Salvador.

SO ORDERED.

Padilla, Sarmiento, and Regalado, JJ., concur.

Paras, J., no part. Son is a partner of Sycip, Salazar law office.

* Penned by Judge Phinney C. Araquil.

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