

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RENE UBALDO Y MANIPON, EMAN POSOS Y ARMENTO, LITO MONTEJO Y MAHINAY, ACCUSED-APPELLANTS.

G.R. Nos. 128110-11. October 09, 2000

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On automatic review is the consolidated decision of the Regional Trial Court of Urdaneta, Pangasinan, Branch 45, convicting appellants Rene Ubaldo, Eman Posos and Lito Montejo of the crimes of carnapping a tricycle and murder of its driver. In Criminal Case No. U-8666 for carnapping, appellants were sentenced to death. In Criminal Case No. U-8667 for the murder of Alfredo Buccat y Tabelin, appellants were sentenced to death, ordered to pay the heirs of the victim, jointly and severally, the amount of P50,000.00 as indemnity, P35,568.00 as actual damages, P300,000.00 as moral damages, and to pay the costs.

The facts, based on the records, are as follows:

On August 14, 1995, at around 5:00 o'clock in the afternoon at Barangay Sto. Domingo, San Manuel, Pangasinan, Alfredo Buccat y Tabelin was driving his tricycle with four passengers on board. The three appellants were seated inside the sidecar, while accused Aladin Calaos was seated behind the driver. When the tricycle passed by the ricefields, the tricycle stopped near the irrigation canal. Calaos ordered the victim to alight and as he got off, Calaos shot him in the neck with a .38 cal. revolver. Appellants also alighted from the tricycle. Ubaldo stabbed the victim, and with the help of Montejo, dragged the body towards the irrigation canal. Posos remained standing by the side of the tricycle. Thereafter, the four assailants boarded the tricycle. Calaos took the wheel and drove away fast. Uncontrolled, the tricycle rammed straight into a jeep driven by Benjamin Pasco. It turned turtle, throwing off its four passengers. Calaos managed to escape. He has eluded arrest to date. Ubaldo and Posos tried to flee but were arrested by the barangay officials. Montejo also managed to escape but was later arrested in his residence in Zamboanga del Sur.[1]

Appellants and Calaos were charged[2] with the crimes of carnapping and murder.

The Information for Carnapping[3] states:

"The undersigned hereby accuses RENE UBALDO Y MANIPON, EMAN POSOS Y ARMENTON, LITO MONTEJO AND ALADIN CALAOS, of the crime of CARNAPPING, committed as follows:

That on or about the 14th day of August, 1995, at barangay Sto. Domingo, municipality of San Manuel, province of Pangasinan, and within the jurisdiction of this Honorable Court, the said accused conspiring, confederating and helping each other with intent to gain and with violence against or intimidation of persons, did then and there wilfully, unlawfully and feloniously take and drive a motorized tricycle owned by, and without the consent of the owner thereof, ALFREDO T. BUCCAT, to the damage and prejudice of the latter.

CONTRARY to Presidential Decree No. 6539 otherwise known as the Anti-Carnapping Act.

Urdaneta, Pangasinan, October 20, 1995."

The Information for Murder[4] states:

"The undersigned accuses RENE UBALDO Y MANIPON, EMAN POSOS Y ARMENTON, LITO MONTEJO and ALADIN CALAOS of the crime of MURDER, committed as follows:

That on or about the 14th day of August, 1995, at Brgy. Sto. Domingo, Municipality of San Manuel, Province of Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, conspiring, and helping one another, with treachery and abuse of superior strength, did then and there, wilfully, unlawfully and feloniously attack, stab and shoot one Alfredo T. Buccat, inflicting him the following injuries:

- `1) 2 Circular stab Wounds - 1/2 cm. in diameter and 3/4 cm. Rt. lateral part of chest.
- 2) Bullet wound - 1 inch in diameter at left lateral part of neck projecting downward (Point of entrance).
- 3) Linear abrasion on left temple.'

which caused the death of said Alfredo T. Buccat to the damage and prejudice of his heirs.

Contrary to Article 248, Revised Penal Code.

Urdaneta, Pangasinan, October 20, 1995."

Upon arraignment, appellants pleaded not guilty.[5] Joint trial ensued.

The prosecution presented the following witnesses: (1) Dra. Esperanza V. Mendaros, Municipal Health Office of Binalonan, Pangasinan, who conducted the post-mortem examination on the victim; (2) Ernesto Saculles, brother-in-law of the victim, who witnessed the killing; (3) Rosita Buccat y Saculles, wife of the victim; and (4) Benjamin Pasco, driver of the jeepney which collided with the tricycle.

Dr. Mendaros testified that the victim sustained the following injuries: two circular stab wounds on the right side of the chest which could have been caused by an ice pick, a bullet wound on the left lateral part of the neck, and a scratch on the left temple. The cause of death was `severe hemorrhage due to bullet wound.' Considering the number of wounds, Dr. Mendaros testified that it was possible that there were two or more assailants.[6]

Ernesto Saculles, brother-in-law of the victim, testified[7] that he was on his way home from his ricefields when he witnessed the incident from a distance of about ten to twelve meters, thus:

"PUBLIC PROSECUTOR JORITO C. PERALTA TO ERNESTO SACULLES

Q:

How far were you from Alfredo Buccat and his tricycle with these four (4) persons forcing him to give his tricycle?

A:

The witness is pointing to a distance from his seat of the courtroom which the parties estimated to be 10-12 meters."

His testimony[8] is candid on the taking of the tricycle, which appears to be the motive for killing the driver, thus:

"CONT...

Q:

Where were these four (4) passengers at the time they alighted?

A:

One was at the back of the driver and the three (3) passengers were inside the tricycle, sir.

Q:

When the tricycle driven by Alfredo Buccat stopped what did the person riding at his back doing, if any?

A:

They were ordering Alfredo Buccat to alight from the tricycle but he refused but (sic) when he got down from his tricycle somebody fired at him, sir.

Q:

Who was that somebody who fired (sic) Alfredo Buccat?

A:

Aladin Calaos, sir.

Q:

Where was Aladin Calaos sitted before he alighted from the tricycle?

A:

He was at the back of the driver sir.

Q:

What did Aladin Calaos say before he shoot (sic) Alfredo Buccat?

A:

He was ordering Alfredo Buccat to alight from the tricycle, sir.

Q:

Do you know why he was ordering Alfredo Buccat to alight from his tricycle?

A:

Because they were forcing him to give the tricycle sir.

Q:

Did Alfredo Buccat acceded (sic) to their request?

A:

No sir, because they fired at him."

Rosita Buccat y Saculles testified that prior to the incident, her husband passed by their store driving their newly-acquired tricycle. She recognized accused Calaos as the one seated behind her husband. There were three other passengers inside the sidecar but she did not recognize them. She also testified as to the income of her husband and the damages suffered as a result of his death.[9]

Benjamin Pasco testified that the tricycle had four passengers. He only recognized Ubaldo and Montejo since they were thrown into the street. He did not recognize the other two since they ran away.[10]

For their defense, Montejo and Ubaldo testified. Their version of the incident, as summarized by the trial court, is as follows:[11]

"That sometime in July 1995, the accused Ubaldo went to Zamboanga del Sur more particularly at Bawang, Buug, where he visited his brother Master Sergeant Dominador Ubaldo who is the neighbor of the accused Montejo and Posos. The accused Montejo and Posos, craving to see the beautiful and wonder city that is Manila, voluntarily went with the accused Rene Ubaldo to have a sightseeing in the herein famous city. Montejo had P4,500.00 travel money which he derived from the copra he sold while Posos, the amount of P3,000.00 from the proceeds of the sale of his carabao.

The accused Ubaldo, Montejo and Posos stayed only for two days in Manila in the house of the uncle of the former. On July 29, 1995, the three went to Barangay Oltama, Urdaneta, Pangasinan, there they stayed thereat for several weeks in the house of Ubaldo, Montejo and Posos engaged in farming the land of Ubaldo without any wage as they had a free board and lodging.

On August 14, 1995, at around 11:30 o'clock in the morning, the accused Calaos arrived in the house of accused Ubaldo where they were staying. Said Calaos was introduced by Ubaldo to Montejo and Posos. After taking their lunch, they, Calaos, Ubaldo, Montejo and Posos, left the house at 1:00 o'clock in the afternoon and proceeded to Binalonan, Pangasinan where Calaos was to visit a friend. Calaos engaged in a conversation with a man, after which, at 4:30 to 4:35 o'clock in the afternoon, they took a tricycle and proceeded towards San Manuel, Pangasinan, Calaos riding at the back of the tricycle driver and the other three (3) accused were seated inside the sidecar of the said tricycle. The accused Calaos ordered the tricycle driver to stop and forced him to alight. Calaos pushed the driver at the back of the tricycle and at this instant, Ubaldo and Montejo alighted, followed the accused Calaos and the driver at the back of the tricycle. Accused Ubaldo and Montejo tried to pacify accused Calaos to (sic) shoot at the victim extending his arms and by the two pushing away Calaos who told them to get out.

After the accused Calaos had shot at the deceased, he took the driver's wheel, Ubaldo at the former's back while accused Montejo and Posos were inside the sidecar. Calaos executed a U-turn to Binalonan, driving very fast. That They (sic) were bumped by a jeep. Ubaldo and Posos lost consciousness and when they regained their consciousness, they ran away but Ubaldo and Posos were arrested by barangay officials while Montejo was able to take a ride to Balungao, Pangasinan then to Manila and finally to Zamboanga del Sur but later on arrested in said place. Calaos is still at-large and nowhere to be found."

On October 30, 1996, the trial court rendered a consolidated decision,[12] declaring:

IN CRIMINAL CASE NO. U-8666:

the accused RENE UBALDO y Manipon, EMAN POSOS y Armenton and LITO MONTEJO y Mahinay, GUILTY beyond reasonable doubt of the crime of CARNAPPING defined and penalized under Republic Act No. 7659 otherwise known as the Heinous Crimes Law, the offense having been committed with the attendant aggravating circumstances of treachery, abuse of superior strength, evident premeditation and that the owner-driver ALFREDO T. BUCCAT of a tricycle is killed by the accused in the course of the commission of the carnapping on the occasion thereof, hereby sentence them to the ultimum supplicium of DEATH to be executed pursuant to Rep. Act. No. 8177 known as the Lethal Injection Law, and to pay the costs.

IN CRIMINAL CASE NO. U-8667:

the accused RENE UBALDO y Manipon, EMAN POSOS y Armenton, and LITO MONTEJO y Mahinay, GUILTY beyond reasonable doubt of the crime of MURDER defined and penalized under Republic Act No.

7659 otherwise known as the Heinous Crimes Law, the offense having been committed with the attendant aggravating circumstances of evident premeditation and abuse of superior strength, hereby sentence them the supreme penalty of DEATH to be executed pursuant to Republic Act No. 8177 known as the Lethal Injection Law, to pay jointly and severally the heirs of ALFREDO T. BUCCAT in the amount of P50,000.00 as indemnity; P35,568.00 as actual damages; P300,000.00 as moral damages, and to pay the costs.

`Dura lex, sed lex,' interpreted as `The law is harsh, but that is the law!.'

SO ORDERED.

Hence, the present automatic review.

In their joint brief,[13] Posos and Montejo contend that the trial court gravely erred in finding that their guilt has been proven beyond reasonable doubt, and in finding the existence of conspiracy. Said appellants insist that they did not participate in the killing of the victim. They stress that their mere presence in the crime scene does not establish conspiracy. Further, Montejo claims that he even tried to stop Calaos from shooting the victim.

For his part, Ubaldo filed a separate brief[14] raising similar issues. He assails the findings of facts of the trial court as unsupported by the evidence. His version of the story is that the tricycle stopped because Calaos had to urinate. Thereafter, Calaos poked his gun at the driver. When Ubaldo and Montejo saw what was happening, they alighted from the tricycle and tried to stop Calaos. Calaos however told them to go away or else he would shoot them. After Calaos shot the victim, Calaos rode the tricycle and drove away. Afraid to be left behind, Ubaldo and Montejo chased the tricycle and boarded the same. Ubaldo contends that he, Montejo and Posos merely went with Calaos to visit some places in Pangasinan, and that carnapping, much more killing, was the farthest from their mind. Ubaldo further assails the finding of conspiracy for lack basis in the records. He stresses the fact that the original complaint filed in the Municipal Trial Court was dismissed due to lack of eyewitnesses. Considering that the prosecution eyewitnesses merely surfaced after the dismissal of the case, he claims they are coached witnesses whose testimonies were fabricated.

For the State, the Office of the Solicitor General contends that the trial court properly gave credence to the testimonies of the prosecution witnesses, there being no showing that they were actuated by ill-motive in so testifying. Conspiracy need not be proven by either direct evidence or proof of previous agreement to commit the crime, as it may be inferred from the acts of the accused, whose conduct before, during, and after the commission of the crime can show its existence.

The issues now raised for the Court's consideration pertain to the assessment of CREDIBILITY of witnesses and the finding of CONSPIRACY among appellants.

The assessment of credibility of witnesses made by the trial court is generally accorded great weight and respect in view of its unique opportunity to observe the demeanor of the witnesses during their testimonies.[15] In the absence of any matters of substance which may have been overlooked by the trial court, we find no cogent reason to overturn the findings of facts of the trial court.[16] The mere fact that the sole eyewitness presented in court is the brother-in-law of the victim does not affect his credibility. Mere relationship of a witness to the victim, whether by consanguinity or affinity, does not necessarily impair his credibility as a witness nor does it impair his positive and clear testimony and render it unworthy.[17] On the contrary, relationship with a victim would deter a witness from indiscriminately implicating anybody to the crime. His natural and usual interest would be to identify the malefactor and secure his conviction to obtain true justice for the death of a relative.[18] More importantly, the eyewitness account as to the manner of the attack and the location of the wounds is corroborated by the post-mortem examination conducted by Dr. Mendaros.[19] Hence, appellants' bare denials cannot overcome their positive identification by the prosecution witness.[20]

The chain which binds appellants together is the finding of conspiracy. Conspiracy implies concert of design and not participation in every detail.[21] Consequently, the presence of the concurrence of minds which is involved in conspiracy may be inferred from proof of facts and circumstances which, taken together, apparently indicate that they are merely parts of some complete whole.[22] Conspiracy to exist does not require an agreement for appreciable period prior to the occurrence. From the legal standpoint, conspiracy exists if, at the time of the commission of the offense, the accused had the same purpose and were united in its execution.[23]

The following circumstances lead to the inescapable conclusion that conspiracy existed in the commission of the crimes of murder and carnapping:

First, appellants were with Calaos before and during the commission of the crime.

Second, appellants were all present at the locus criminis, as likewise witnessed by Ernesto Saculles.

Third, after Calaos shot the victim, Ubaldo and Montejo dragged the victim's body to the canal, which shows concert in criminal design. As to Posos, he stood beside the tricycle while the killing was going on, giving a sense of security and indicating community of purpose with his companions who actually dealt the fatal blows. There is no showing Posos inflicted actual injuries on the victim. But he could not be held innocent. "It is settled that to hold an accused liable as co-principal by reason of conspiracy, he must be shown to have performed an overt act in pursuance or furtherance of the conspiracy. The overt act may consist of active participation in the actual commission of the crime or moral assistance to his co-conspirators by being present at the time of the commission of the crime. One who participates in the material execution of the crime by standing guard or lending moral support to the actual perpetrator is criminally responsible to the same extent as the latter." [24]

Lastly, appellants fled not just once but twice, first from the scene of the crime, then from the vehicular accident. Flight is a strong indication of guilt.[25] Montejo even managed to return to far Zamboanga where he was eventually netted by the authorities and brought back to Pangasinan for trial.

The facts proven in this case, as found by the trial court, constitute the special complex crime of qualified carnapping or carnapping in an aggravated form[26] under Section 14 of Republic Act No. 6539, the Anti-Carnapping Act of 1992, as amended by Section 20 of Republic Act No. 7659, the Death Penalty Law. The crime was committed on August 14, 1995, after the effectivity of the death penalty law on December 31, 1993. Under the amendatory law, "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." Appellants, however, were charged with the separate crimes of carnapping and murder. We cannot convict appellants of the crime of qualified carnapping constitutive of the various crimes alleged in the two information without running afoul of the constitutional right to be informed of the nature and cause of the accusation against them.[27]

In *People v. Legaspi*, 246 SCRA 206, 213 (1995) appellants were charged in two separate Informations for murder and for carnapping. They were convicted of the special complex crime of robbery with homicide. But on review, the Court held:

"...Their conviction can only be limited to the crime alleged or necessarily included in the allegations in the separate informations. What controls is the description of the offense as alleged in the information (citation omitted). While the trial court can hold a joint trial of two or more criminal cases and can render a consolidated decision, it cannot convict the accused of a complex crime constitutive of the various crimes alleged in the two informations. Thus, the accused were deprived of their constitutional right to be informed of the nature and cause of the accusation against them (citation omitted)."

Hence, for the separate charges in this case which strongly reminds us of *People v. Panida*, 310 SCRA 66 (1999), appellants were properly convicted of two separate crimes of simple carnapping and murder. In the carnapping case before us, however, the trial court improperly imposed the death sentence, considering that the Information failed to allege that the victim was killed in the course of the commission of the carnapping or on occasion thereof. We find that appellants can only be convicted appropriately of the crime of carnapping "committed by means of violence against or intimidation of any person," which is penalized by imprisonment of not less than seventeen years and four months and not more than thirty years under Section 14 of R.A. No. 6539, as amended by Section 20 of R.A. No. 7659.

In the murder case, the killing was qualified by treachery. The essence of treachery is the swiftness and the unexpectedness of the attack upon the unsuspecting and unarmed victim, who does not give the slightest provocation.[28] The victim was merely plying his tricycle. He had no inkling that he would be shot and stabbed by the passengers who chartered his tricycle. When treachery qualifies the crime of murder, the generic aggravating circumstance of abuse of superior strength is necessarily included in the former.[29] Moreover, we also find that evident premeditation was not proved by clear and convincing evidence.[30] Murder is penalized under Article 248 of the Revised Penal Code, as amended by R.A. No. 7659, with reclusion perpetua to death. In the absence of any aggravating or mitigating circumstances, the penalty of reclusion perpetua should be imposed.

The amount of P50,000.00 was correctly awarded as death indemnity.[31] However, as to P300,000.00 imposed as moral damages, the amount is excessive and may be reduced to P50,000.00,[32] pursuant to prevailing jurisprudence. The amount of P35,568.00 as actual damages is supported by receipts,[33] and should therefore be affirmed. Further, we must also award damages for the loss of the victim's earning capacity. The formula for loss of earning capacity is: life expectancy x (gross annual income - living expenses), with living expenses computed as 50% of gross annual income.[34] As computed, for loss of earning capacity, the amount of P1,962,500.00[35] must be awarded to the heirs of the victim.

WHEREFORE, the consolidated decision convicting appellants RENE UBALDO y MANIPON, EMAN POSOS y ARMENTO, and LITO MONTEJO y MAHINAY is hereby **AFFIRMED** with the following **MODIFICATIONS** as to the penalty imposed and the amount of damages awarded:

- (1) In Criminal Case No. U-8666 for carnapping, appellants are sentenced to a minimum of seventeen (17) years and four (4) months to a maximum of twenty (20) years of imprisonment;
- (2) In Criminal Case No. U-8667 for murder, appellants are sentenced to reclusion perpetua, and ordered to pay the heirs of the victim the amount of P50,000.00 as death indemnity, P35,568.00 as actual damages, P50,000.00 as moral damages, and P1,962,500.00 for loss of the victim's earning capacity.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Purisima, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., JJ., concur.

[1] TSN, June 17, 1996, pp. 2-10; TSN, July 1, 1996, pp. 8-9, 13-17.

[2] Appellants and Calaos were also charged with illegal possession of firearms. Since only Calaos had possession of the firearm, and has eluded arrest to date, the illegal possession case did not prosper.

[3] Records, Crim. Case No. U-8666, pp. 30-31.

[4] Records, U-8667, pp. 1-2.

- [5] Records, Criminal Case No. U-8666, pp. 49-51; Records, Criminal Case No. U-8667, p. 70.
- [6] TSN, March 4, 1996, pp. 6-9.
- [7] TSN, June 17, 1996, p. 4.
- [8] Id. at 4-6.
- [9] TSN, August 30, 1996, pp. 4, 12-16.
- [10] Id. at 26.
- [11] Records, Crim. Case No. U-8666, pp. 216-217.
- [12] Records, pp. 190-235.
- [13] Rollo, p. 91-103.
- [14] Id. at. 154; Also discussed in the Reply Brief for Accused-Appellant Rene Ubaldo dated December 1, 1998.
- [15] *People v. Obello*, 284 SCRA 79, 88-89 (1998).
- [16] Ibid.
- [17] *People v. Batidor*, 303 SCRA 335, 349 (1999); *People v. Sotes*, 260 SCRA 353, 365-366 (1996).
- [18] *People v. Sotes* at 366.
- [19] *People v. Mallari*, G.R. No. 103547, July 20, 1999, p. 9; *People v. Molina*, 213 SCRA 52, 69 (1992).
- [20] *People v. Sotto*, 275 SCRA 191, 202-203 (1997).
- [21] *People v. Aniel*, 96 SCRA 199, 209 (1980).
- [22] *People v. Nullan*, 305 SCRA 679, 701 (1999).
- [23] *People v. Cadag*, 2 SCRA 388, 394 (1961).
- [24] *People v. Diaz*, 271 SCRA 504, 515 (1997).
- [25] *People v. Hilario*, 284 SCRA 344, 355 (1998).
- [26] *People v. Mejia*, 275 SCRA 127, 153 (1997).
- [27] *People v. Manilili, et. al.*, 294 SCRA 220, 252 (1998).
- [28] *People v. Rebamontan*, 305 SCRA 609, 618 (1999).
- [29] *People v. Violin*, 266 SCRA 224, 233 (1997).
- [30] *People v. Eribal*, 305 SCRA 341, 350-351 (1999).
- [31] *People v. Suplito*, G.R. No. 104944, September 16, 1999, p. 12.
- [32] *People v. Tambis*, G.R. No. 124452, July 28, 1999, pp. 11-12.
- [33] Exhibits D, D-1 to D-7, Records, pp. 98-107.
- [34] *People v. Nullan*, 305 SCRA 679, 706-707 (1999).
- [35] Following actuarial practice we determine the life expectancy of the victim using the formula: $\frac{2}{3} (80 - \text{age})$

of victim at time of death). The victim was 43 years old at the time of death. He can be said to have a life expectancy of 25 years. Then we determine the gross annual income based on the evidence on record, which we find to be in the amount of P157,000.00 a year. Gross annual income was computed based on the testimony of the victim's wife that the victim was employed as a security guard with a monthly salary of P4,200.00, earns P200.00 a day from plying their tricycle, and as a farmer, earns 100 cavans of palay per harvest season, at P10.50 per kilo, there being more or less 40 kilos per cavan. See TSN, August 30, 1996, p. 12.

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