

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ISAGANI GULINAO Y ALZONA, ACCUSED-APPELLANT.

G.R. Nos. 82264-66. December 04, 1989

Ponente: PARAS, J.

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PARAS, J.:

In three (3) separate Informations filed before the Regional Trial Court of Valenzuela, Metro Manila, Isagani Gulinao was charged with -

1. Illegal Possession of Firearm with Murder (Proper designation of the offense on the basis of the allegations in the Information should be Murder committed with the use of an unlicensed firearm) - Crim. Case No. 8016 -V-87;
2. Robbery - Crim. Case No. 8017-V-87; and
3. Carnapping - Crim. Case No. 8048-V-87 allegedly committed as follows:

1. Criminal Case No. 8016-V-87, For Violation of PD 1866 (Illegal Possession of Firearm with Murder)

"That on or about the 4th day of March, 1987, in the municipality of Valenzuela, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have in his possession and control one (1) Colt Caliber .45 pistol with SN C-1039161, without authority and/or permit to do and with evident premeditation, treachery and intent to kill Samson Chua, use said firearm to attack, assault and shoot said Samson Chua, hitting the latter on his body, thereby causing his instantaneous death.

2. Criminal Case No. 8017-V-87, For Robbery

"That on or about the 4th day of March, 1987, in the municipality of Valenzuela, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously, and with violence upon the person of Samson Chua, with intent to gain take rob and carry away with him one (1) gold men's ring with twelve (12) diamond stones worth P85,000.00 belonging to said Samson Chua, to the damage and prejudice of the latter in the sum of P85,000.00.

3. Criminal Case No. 8048-V-87, For Carnapping

"That on or about March 4, 1987, in the municipality of Valenzuela, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously, with intent to gain and by means of force, violence and intimidation, to wit: by then and there shooting to death Samson Chua y Domingo, the person to whom the owner entrusted the aforementioned motor vehicle, and intimidating with gunshots Virgilio Caguioa y Dionisio, the driver/occupant of said motor vehicle, and then did take, steal and carry away, without the owner's consent, a Toyota Corona Silver Edition, Colored Blue, bearing plate No. PNB '870 and valued at P250,000.00 to the damage and prejudice of the owner, Chua Ang Sing, in the aforesaid sum of P250,000.00, Philippine Currency."

(pp. 1-3, Brief for the Appellee; p. 106, Rollo)

Gulinao pleaded "not guilty" to the "Robbery" and "Carnapping" charges. But, he refused to enter any plea to the charge of "Illegal Possession of Firearm with Murder", hence, the trial court entered for him a plea of "not guilty" pursuant to Sec. 1 (c), Rule 116, 1985 Rules of Court on Criminal Procedure. However, Gulinao moved to quash the Information charging him with "Illegal Possession of Firearm" on the ground that there was another Criminal Case No. 87-52928 for "Illegal Possession of Firearm" pending before the Regional Trial Court of Manila. In an Order dated April 24, 1987, the trial court denied Gulinao's motion to quash. Whereupon, Gulinao assailed the Order in a petition for certiorari (CA-G.R. SP No. 12412) before the Court of Appeals. In a Decision dated September 22, 1987, the Court of Appeals dismissed the petition for lack of merit.

The aforesaid three (3) criminal cases were jointly tried. After the prosecution had completed the presentation of its evidence, the case was set on October 28, 1987 for the reception of evidence for the defense. On the said date Gulinao refused to take the witness stand. Atty. Ricardo Perez, his counsel de oficio who was representing him in the case for "Illegal Possession of Firearm with Murder", manifested in open court that Gulinao even refused to be interviewed. On motion of Atty. Perez to give him more time to talk to Gulinao or to withdraw from the case, the hearing was re-set to Nov. 6, Nov. 16, Nov. 25 and Dec. 2, 1987, with warning that Gulinao's failure to present evidence in the next hearing without valid grounds would be deemed a waiver of presentation of evidence for his defense.

Meanwhile, on Nov. 4, 1987, Atty. Reynaldo Garcia, Gulinao's counsel de parte in the cases for "Robbery" and "Carnapping" withdrew his appearance with the conformity of Gulinao.

In the scheduled hearing on Nov. 6, 1987, Gulinao did not present evidence. In the next hearing on Nov. 16, 1987, two (2) young men tried to move for postponement, but they were found by the trial court as not full-pledged lawyers. Gulinao refused to present evidence despite the willingness of Atty. Perez to assist him. Atty. Perez later filed a motion to withdraw appearance due to the uncooperativeness of Gulinao.

In view of the previous warning given by the trial court, Gulinao's failure to present evidence without valid ground was considered as waiver of his right to present evidence. In the Order dated Nov. 16, 1987, the trial court noted:

"Today when these cases were called for hearing the Court's appointed counsel de oficio, manifested that the accused again did not want to cooperate and manifested that in fairness to himself as lawyer and in fairness to the accused he is withdrawing his appearance. The Court commiserates with the predicament of defense counsel who was much interested to help the accused and the Court to give due process and to expedite the hearing but the Court noted that it is the accused who has stubbornly refused to present his defense evidence. Prior to his having been accused he was a full-pledged police officer and he used to investigate cases for less than 3 years."

(p. 6, Brief for the Appellee; p. 106, Rollo)

On Nov. 23, 1987, the trial court rendered a Decision, the dispositive portion of which reads -

"WHEREFORE, in view of the foregoing the Court finds the accused Isagani Gulinao guilty beyond reasonable doubt of the following crimes:

'1. Illegal Possession of Firearm with Murder and hereby sentences him to suffer life imprisonment which is one degree lower than the death penalty considering that the Court can no longer impose the penalty of death as mandated by the New Constitution.

'2. Robbery under Art. 294 par. 5 and hereby sentences him to suffer the penalty of prision correccional in its

maximum period to prison mayor in its medium period or four (4) years, two (2) months and one (1) day to six (6) years one (1) month and ten (10) days.

'3. Carnapping and hereby sentences him to suffer imprisonment of fourteen (14) years and eight (8) months as minimum to seventeen (17) years and four (4) months as maximum.

'4. To indemnify the heirs of the victim Dr. Samson Chua in the sum of P500,000.00, and to pay the costs. The entire period of the previous imprisonment of accused shall be credited in his favor."

(p. 7, Brief for the Appellee; p. 106, Rollo)

From the aforesaid decision, Gulinao interposed this appeal to this Court on the following assignment of errors:

I

THE TRIAL COURT GRAVELY ERRED IN NOT ALLOWING THE ACCUSED-APPELLANT TO PRESENT HIS EVIDENCE.

II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME OF ILLEGAL POSSESSION OF FIREARM WITH MURDER.

III

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF ROBBERY UNDER ARTICLE 294, PARAGRAPH 5, OF THE REVISED PENAL CODE.

IV

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME OF CARNAPPING.

(p. 8, Brief for the Appellee; p. 106, Rollo)

As established by the evidence of the prosecution, the facts of the case are as follows -

"On March 3, 1987, at about 9:00 P.M., Dr. Chua, appellant Gulinao (driver-bodyguard of Dr. Chua), Virgilio Caguioa (secretary of Dr. Chua), Vice Mayor Teofilo Reyes of Malabon, Dante Reyes (nephew of Vice Mayor Reyes), Boy Salazar and other politicians were having a caucus in the house of a certain Torre in Acacia, Malabon. After the caucus at about 11:00 P.M., the group of Dr. Chua boarded Dr. Chua's car and that of Vice Mayor Reyes and proceeded to the Bar-Bar Disco House along McArthur Highway, Valenzuela, Metro Manila (pp. 5-10, TSN April 6, 1987)

"Upon arriving at the disco house, Gulinao, who had in his possession an Ingram machine pistol, swapped the same with a .45 caliber pistol in possession of Dante Reyes. Gulinao then tucked the .45 caliber pistol in his right waist (pp. 11-13, TSN May 18, 1987).

"Inside the disco house, Dr. Chua, Gulinao and companions occupied 2 tables which were joined together near the stage (pp. 14-18, TSN April 6, 1987). Later, Gulinao went to the comfort room and cocked the .45 caliber pistol. He then returned to his seat beside Dr. Chua (pp. 14-15 TSN May 18, 1987).

"While Dr. Chua was watching the floor show, Gulinao stood up and shot him on the head at close range with the .45 caliber pistol (pp. 16-17 TSN May 22, 1987). When Gulinao was about to leave the disco house, he turned

back to Dr. Chua and took the latter's gold ring embedded with 12 diamonds (p. 11 TSN October 5, 1987; pp. 28-29 TSN April 6, 1987; Exhs. "H" and "L-1"). Thereupon, Gulinao rushed outside the disco house to the car of Dr. Chua (p. 27 TSN April 6, 1987).

"Poking the gun at Caguioa who was inside the car, Gulinao ordered the former to leave the car. While Caguioa was getting out of the car, Gulinao fired at him but missed (pp. 27--29 TSN April 6, 1987). On the other hand, Dante Reyes tried to fire at Gulinao with the Ingram machine pistol, but the Ingram jammed. (pp. 16-17 TSN May 18, 1987).

"Gulinao drove the car towards Monumento (p. 29 TSN April 6, 1987). However, he was constrained to leave the car and take a taxi when the car he was driving figured in an accident in Malabon (p. 15 TSN July 10, 1987; Exh. "L-1").

"Dr. Chua, who sustained gunshot wounds on the head, was brought to the nearby Our Lady of Fatima Hospital where he died on arrival (p. 17 TSN May 18, 1987)."

(pp. 8-11, Brief for the Appellee; p. 106, Rollo)

The contention of Gulinao in his first assignment of error is false. The record shows that he was given several opportunities to present his defense but it was he who refused to take the witness stand or to present any evidence.

Gulinao's second assignment of error raises a question of double jeopardy. It is claimed that "the indictment for violation of Presidential Decree No. 1866 (Illegal Possession of Firearm) against the accused-appellant in Crim. Case No. 8016-V-87 after he was already slapped of the same violation before the Regional Trial Court of Manila (in Crim. Case No. 87-52928) involving the same firearm and ammunition is a classic case of putting the accused-appellant in jeopardy" (pp. 10-11, appellant's brief).

This issue had already been raised by Gulinao in a petition for certiorari (CA-G.R. SP No. 12412) before the Court of Appeals which in a Decision dated September 22, 1987 held that -

"Since the incident that spawned Criminal Case No. 87-52928 in Manila happened on March 5, 1987, while that in Criminal Case No. 8016-V-87 pending before RTC, Valenzuela, happened on March 4, 1987; and since in the first case the charge is that of illegal possession of firearms and that in the second case the commission of murder with the use of an illegally possessed firearms, it follows that there is no identity of the crime charged and hence, no double jeopardy.

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As stated by the court a quo, there is no possibility of double jeopardy, as the possession thereof had taken place in two separate and distinct places and jurisdiction and the two informations state different dates of commission. (pp. 164 and 169, Rec.; Underlining supplied; See also *Lu Hayco vs. Court of Appeals*, 138 SCRA 227 [1985])."

(pp. 15-16, Brief for the Appellee; p. 106, Rollo)

In respect to his third assignment of error, Gulinao should have been convicted of the crime of theft under Art. 308, Revised Penal Code, not robbery with the use of violence against or intimidation of a person under par. 5, Art. 294 Revised Penal Code. As the trial court itself noted, on the basis of Patino's testimony, the taking of the ring of Dr. Chua was merely an afterthought. The force employed in the killing of Dr. Chua has no bearing on the taking of his ring.

Gulinao's contention in his fourth assignment of error that there was no proof of intent to gain in the taking of Dr. Chua's car is bereft of merit. Intent to gain, being an internal act, is presumed from the unlawful taking of the car.

This presumption was un rebutted.

IN VIEW OF THE FOREGOING, the appealed Decision dated Nov. 23, 1987, with respect to the cases for "Illegal Possession of Firearm with Murder" (Crim. Case No. 8016-V-87) and "Carnapping" (Crim. Case No. 8048-V-87) is AFFIRMED in toto, it being in accordance with the law and evidence.

With respect to the case for "Robbery" (Crim. Case No. 8017-V-871), par. 2 of the dispositive portion of the appealed Decision is MODIFIED to the effect that Gulinao is convicted of the crime of Theft and sentenced to suffer the indeterminate penalty of 3 years, 6 months and 21 days to 4 years, 9 months and 10 days of prision correccional as minimum and 7 years, 4 months and 1 day to 8 years and 8 months of prision mayor, as maximum.

SO ORDERED.

Padilla, Sarmiento, and Regalado JJ., concur.

Melencio-Herrera, J., (Acting Chairman), on leave.

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