

EN BANC

[G.R. No. 142380, September 05, 2002]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SPO1
DANILO LOBITANIA, ACCUSED-APPELLANT.**

D E C I S I O N

PER CURIAM:

On automatic appeal is the decision^[1] of Regional Trial Court of Urdaneta City, Branch 48, Pangasinan, in Criminal Case No. U-10024, convicting accused-appellant SPO1 Danilo Lobitania of the crime of aggravated carnapping with murder and sentencing him to suffer the penalty of death. The dispositive portion of the decision reads: "WHEREFORE, JUDGMENT is hereby rendered CONVICTING SPO1 DANILO LOBITANIA beyond reasonable doubt of the crime of Aggravated Carnapping with Murder and the Court sentences him to suffer the penalty of DEATH to be implemented in the manner as provided for by law; Danilo Lobitania is likewise ordered to indemnify the heirs of the victim, Alexander de Guzman, the sum of P75,000.00 as moral damages and another sum of P25,000.00 as exemplary damages and to reimburse the heirs of Alexander de Guzman the sum of P60,000.00 spent for the funeral and other incidental expenses incurred in connection thereto. "The Branch Clerk of Court is hereby ordered to prepare the mittimus and to transmit the whole records of this case to the Honorable Supreme Court of the Philippines for automatic review, fifteen days from date of promulgation of this Decision.

"The Jail Warden, Bureau of Jail Management and Penology, Urdaneta District Jail, Urdaneta City, is hereby ordered to deliver the person of SPO1 Danilo Lobitania to the National Bilibid Prisons, Muntinlupa City, fifteen days from receipt of this Decision.

"Let copies of this Decision be furnished the Director General, PNP, Camp Crame, Quezon City and the Chief of Police, PNP, Navotas, Quezon City, for their information.

"SO ORDERED." ^[2]

The amended information charging accused-appellant of carnapping with murder reads as follows:

"That on or about December 6, 1998, in the City of Urdaneta and within the jurisdiction of this Honorable Court, accused SPO1 Danilo Lobitania with grave abuse of authority being a member of the Navotas PNP-NPD Command, Navotas, Metro Manila, together with three still unidentified companions, armed with firearms by means of force and intimidation with intent to gain, conspiring with one another, did, then and there willfully, unlawfully, and feloniously take, steal and carry away one

Yamaha motorized tricycle with Plate No. 2N-7910 owned by David Sarto and driven at the time by Alexander de Guzman against the latter's will and without his consent, and on the occasion of the kidnapping or by reason thereof, accused with intent to kill, treachery and taking advantage of superior strength conspiring with one another, did, then and there willfully, unlawfully and feloniously box, hogtie, shoot and push out of the moving tricycle which caused the instantaneous death of said Alexander de Guzman, to the damage and prejudice of his heirs.

"CONTRARY to R.A. 6539, as amended by Arts. 248, Revised Penal Code, as amended by R.A. 7659." [3]

When arraigned on August 17, 1999, accused-appellant, assisted by counsel, pleaded not guilty.[4]

The facts of the case as culled from the testimonies of witnesses and records are as follows:

Prosecution witness Jolito Sanchez was a cargador at the Navotas Fishport. He first met accused-appellant, Danilo Lobitania, on December 4, 1998 outside a beerhouse at the fishport when the latter ordered fish from him. On December 5, 1998, after the delivery of the fish, accused-appellant offered him a job as a helper in an ice plant in Pangasinan. Sanchez agreed and, together with accused-appellant and his companions Montolo, Sidro, Daniel and Jr. Saburin, they boarded a bus bound for Urdaneta, Pangasinan at around nine o'clock in the evening.

At the instance of accused-appellant, the group alighted at Barangay Nancayasen and flagged down a tricycle driven by victim Alexander de Guzman. Daniel and Jr. Subarin rode at the back of the driver while accused-appellant, Montolo and Sidro were inside the tricycle with Sanchez in the sidecar. Following accused-appellant's instruction, the driver turned left at an alley and after traveling a short distance, the driver was shot at the right side of his chest below the armpit by Montolo. Sidro then grabbed the driver from his seat, tied his hands behind his back and then shoved him out of the tricycle. Sanchez and Jr. Saburin tried to help the driver but Montolo and accused-appellant poked their guns at them and threatened that the same thing would happen to them if they did not go with accused-appellant's group.

The group took the tricycle, now driven by Daniel and proceeded towards the direction of Manila. The tricycle driver, shouting "*saklolo, saklolo,*" was left behind. Upon reaching a sugarcane plantation, Sanchez and Jr. Saburin, on orders of accused-appellant, detached the sidecar from the motorcycle and left them in separate places inside the plantation.

It was already around three o'clock in the morning when the group boarded a different tricycle which brought them to the fish market in Urdaneta. At the fish market, Sanchez and Jr. Saburin were told by accused-appellant to stay and wait. However, after two hours of waiting, Sanchez and Jr. Saburin decided to leave and head back for Manila.

After Sanchez' arrival at his house in Navotas, accused-appellant's companion, Daniel, arrived and warned him not to squeal lest something happened to him. Sanchez then went out to look for Jr. Saburin whom he later found out was at the Presidential Anti-Organized Task Force (PAOCTF) in Camp Crame. Sanchez decided

to follow Jr. Saburin to Camp Crame and there they revealed to Major Danny Salvador (PAOCTF member) what they knew of the incident in Pangasinan.

Sanchez and Jr. Saburin were accompanied by Major Salvador and Police Officer Nolasco to the sugarcane plantation located in Barangay San Agustin, San Manuel Tarlac where the sidecar^[5] and motorcycle ^[6] were left but they found only the chain and cover. They did not find the sidecar and motorcycle because these were already in the custody of the barangay captain of San Agustin, San Manuel, Tarlac who recovered the items on December 6, 1998. Thereafter, they went to the Urdaneta Police Station where Sanchez and Jr. Saburin gave their sworn statements regarding the theft of the tricycle and the killing of its driver whom they later identified as victim Alexander de Guzman.

The Urdaneta police received the report of the killing of de Guzman, the recovery of the sidecar on December 6, 1998 and of the tricycle on December 12, 1998 from the police authorities of San Manuel, Tarlac where these items were found. The owner, David Sarto, went to the San Manuel police station, identified the sidecar and motorcycle as his, and stated that the vehicle was regularly driven by victim de Guzman.

Based on the autopsy report of Dr. Ramon Gonzales, City Health Officer of Urdaneta City, driver de Guzman died due to "hypovolemic shock due to gunshot wound, lungs, right."^[7]

Accused-appellant assails the credibility of prosecution eyewitness Sanchez. He alleges that Sanchez is a member of the "Tirtir Gang," a syndicate led by Rizalito Galinato, alias Boy Muslim, who was arrested by accused-appellant on November 4, 1998. Accused-appellant claims that Sanchez, on orders of Boy Muslim, concocted his testimony to avenge Boy Muslim's publicized arrest^[8] by accused-appellant. According to accused-appellant, a multi-awarded policeman of seventeen years, the testimony of Sanchez, a mere "cargador" who had no permanent employment, should not be believed over his.

Accused-appellant likewise puts up the defense of denial and alibi. At the trial, he presented defense witness SPO1 Michael Legaspi, the leader of the SMART-SWAT Team to which accused-appellant belongs, who testified that accused-appellant reported for work on December 6 and 7, 1998, from eight o'clock in the morning until eight o'clock at night. Accused-appellant also presented his wife, Valeriana Lobitania, to corroborate his alibi that, on the night of the incident, he was at home in Commonwealth Avenue, Quezon City, from ten o'clock onwards.

On 21 December 1999, the trial court rendered a decision finding accused-appellant guilty beyond reasonable doubt of aggravated carnapping with murder and sentenced him to suffer the supreme penalty of death.

The accused-appellant raises the following errors in his brief:

I. THE LOWER COURT ERRED IN CONVICTING HIM WHEN THE EVIDENCE PRESENTED BY THE PROSECUTION WAS INSUFFICIENT TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

II. THE LOWER COURT ERRED IN ORDERING THAT THE APPELLANT COMPENSATE THE PRIVATE COMPLAINANTS WITH DAMAGES.

We affirm the decision of the trial court.

After a thorough review of the records, we find that the prosecution was able to prove that accused-appellant's guilt beyond reasonable doubt. Based on the facts proven, the offense committed by accused-appellant is the special complex crime of qualified carnapping or carnapping in an aggravated form^[9] 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, which took effect on 31 December 1993.

Section 2 of R. A. 6536 as amended, defines the crime of carnapping 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. It becomes qualified when in the course of the commission or on occasion of the carnapping, the owner, driver or occupant of the carnapped vehicle is killed or raped.^[10] When the carnapping is qualified, the penalty imposable is *reclusion perpetua* to death.^[11] In the case at bar, all the elements were duly proven by the prosecution. Based on the testimony of Sanchez,^[12] accused-appellant and his companions shot the driver of the tricycle, abandoned him and took possession of the vehicle.^[13] The testimony of Sanchez that the driver was unknown to the group clearly establishes the fact that the motive of accused-appellant was to steal the tricycle and that the killing of the driver was incidental thereto.

"COURT:

"Q: You know if the driver of the tricycle was known to Lobitania when he was flagged down?

"A: No, sir.

"xxx xxx xxx

"Q: Was Montolo known to the driver?

"A: No, sir." ^[14]

Accused-appellant assails the credibility of the lone eyewitness, Jolito Sanchez. We do not share his doubts. The defense was unable to prove that prosecution witness Sanchez was impelled by an improper motive - allegedly to avenge his supposed gang leader's (Boy Muslim) arrest - in testifying against accused-appellant. No evidence was adduced to show that Sanchez was a member of the Tirtir Gang and that his testimony was a vengeful fabrication. Furthermore, the defense failed to prove that Sanchez was not present at the scene of the crime. The witness' testimony thus leaves no other conclusion but that he, indeed, witnessed the killing of victim de Guzman and the taking of his tricycle. Sanchez' testimony was clear, categorical and consistent despite exhaustive cross-examination:

"ATTY. BINCE:

"Q: How long have you traveled the alley when you heard the gunshot?

"A: I do not know, sir.

"Q: Have you traveled already a long distance when you heard the gunshot?

"A: No when there was a gun fired the tricycle stopped.

"Q: When the driver stopped after you heard the gunshot did you see who fired the gun?

"A: Yes, sir.

"Q: After you saw Montolo fired the shot Sidro pulled the tricycle driver pushed into the sidecar of the tricycle?

"A: Sidro pulled the driver from the seat.

"Q: After Sidro pulled the driver from his seat where was the driver pulled?

"A: He pulled and pushed him inside the tricycle.

"Q: After he was pulled into the sidecar of the tricycle according to you he was pushed outside by the tricycle by Sidro?

"A: Not yet he was tied.

"Q: What was tied?

"A: Witness demonstrating the hands at the back then tied.

"Q: And the person who did this was Sidro is that correct?

"A: Yes, sir.

"Q: And after the driver's hands were tied by Sidro what happened next if any?

"A: Montolo went outside the sidecar and pushed the driver on the road.

"Q: And what happened to the driver when he was pushed by Montolo into the road?

"A: The driver told 'SAKLOLO, SAKLOLO.'

"Q: In your testimony you said that you were about to help him when Danilo Lobitania allegedly pointed a gun at you is that correct?

"A: Yes, sir.

"Q: Montolo and Danilo Lobitania told you 'come with us if you do not want to be involved' is that correct?

"A: Yes, sir.

"Q: In other words you are telling the court that Danilo Lobitania acted only after Montolo fired at the driver after Sidor tied him after Montol pushed him outside the tricycle that is what really happened is it not?

"A: Yes, sir." [15]

Besides, well-settled is the rule that the assessment of the witnesses' credibility and their testimonies is a matter best undertaken by the trial court.^[16] Thus, appellate