

## SECOND DIVISION

**[ G.R. No. 115984, February 29, 2000 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
RUFINO GAMER Y MALIT, ACCUSED-APPELLANT.**

### DECISION

**QUISUMBING, J.:**

On appeal is the decision dated April 8, 1994, of the Regional Trial Court of Angeles City, Branch 57,<sup>[1]</sup> convicting appellant of the crime of carnapping, imposing upon him the penalty of life imprisonment, and ordering him to pay private complainant the amount of P50,000.00 as indemnity, P14,000.00 as funeral expenses, P45,000.00 as cost of the burial lot and P40,000.00 for the value of the properties stolen.

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

On September 25, 1989, at around 8:30 p.m., at the Villa Emilia Subdivision, Paralaya, Porac, Pampanga, Antonio Loremas and his wife, Corazon Nazal Loremas, were on their way home on board their owner-type stainless jeep. When the jeep slowed down to pass a hump, two (2) men went to each side of the jeep and announced a hold-up. Antonio stepped on the gas but one of the men shot him at the back. The jeep swerved to a stop. The two persons took away the spouses' money, clothing, assorted jewelries, imported and local cigarettes, car stereo and equalizer and tools, and drove off with the jeep in the direction of Angeles City. After the assailants fled, Corazon, with the help of passers-by, brought Antonio to the Angeles City Medical Center for medical treatment. Unfortunately, Antonio died that same night from the gunshot wound. The jeep was found abandoned the following day.<sup>[2]</sup>

Both Porac Police and Angeles City Police conducted investigations of the carnapping incident without any progress. Corazon then sought the help of Sr. Inspector Carlos L. Flores, Jr., Chief of the Criminal Investigation Service (CIS), Angeles City. Acting on Corazon's complaint, the CIS conducted intelligence gathering operations.

Some time in June 1992, Captain Flores ordered three CIS agents, namely, Galvez, Besana and Ganal, to "invite" appellant for questioning at the CIS Field Office in Diamond Subdivision, Balibago, Angeles City.<sup>[3]</sup> On June 17, 1992, at around 2:00 p.m., the CIS agents "picked up" appellant and his five year-old son while they were in front of a stall buying something.<sup>[4]</sup> Appellant and his son were made to board a car and then brought to CIS Field Office.<sup>[5]</sup> Appellant was investigated by the CIS until around 7:00 p.m.<sup>[6]</sup> At the same time, one Teodoro Siron, Jr., was also invited by the CIS Agents for questioning.<sup>[7]</sup> Thereafter, appellant and Siron, were placed in a police line-up where Corazon identified appellant as one of the carnappers.<sup>[8]</sup> That

same afternoon, Corazon executed her sworn statement (Exhibit "B") before the CIS agents. Appellant was made to sign a sworn statement (Exhibit "C") identifying his drinking companions who allegedly took part in the carnapping. Siron did not execute any sworn statement.

The following day, appellant was brought before a public prosecutor for inquest. Thereafter, the public prosecutor issued a Resolution<sup>[9]</sup> finding a *prima facie* case against five (5) persons, three (3) of whom were at-large. The other two (2), appellant and Siron, were charged with carnapping with robbery and homicide under the following Information:<sup>[10]</sup>

"That on or about the 25<sup>th</sup> day of September, 1989, at about 8:45 o'clock in the evening at Villa Emilia Subdivision, barangay Manibaug, municipality of Porac, province of Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, with the use of a .45 caliber gun, with intent of gain and by means of violence and intimidation on the person of the Spouses Antonio Loremas and Corazon Nazal, and without their consent, did then and there willfully, unlawfully and feloniously take, steal and carry away one (1) owner type-jeep bearing Plate No. CAV 218 and on the occasion thereof, shot and kill with a .45 caliber gun Antonio Loremas, the driver of the carnapped motor vehicle and carry away with them cash money in Philippine and U.S. currencies, assorted jewelries, clothings, imported and local cigarettes, stereo cassette, equalizer and tools with a total value of Forty Thousand Pesos (P40,000.00) belonging to said Spouses Antonio Loremas and Corazon Nazal, to the damage and prejudice of the said owner in the said sum of P40,000.00.

All contrary to law, and with the aggravating circumstances that the said offense was committed at nighttime, evident premeditation, treachery and with the use of superior strength to facilitate the commission of the crime."

Appellant and Siron filed separate Motions for Reinvestigation<sup>[11]</sup> with the trial court which granted<sup>[12]</sup> said Motions. As a result of the reinvestigation, the public prosecutor filed a Motion to Dismiss<sup>[13]</sup> as to accused Siron on the ground of insufficiency of evidence. The trial court granted<sup>[14]</sup> said motion. Hence, only appellant was tried for the crime of carnapping.

Upon arraignment on January 5, 1993, appellant, assisted by counsel *de parte*, entered a plea of not guilty.<sup>[15]</sup> Trial ensued.

Private complainant Corazon Loremas, the widow of the victim, identified appellant as the one who boarded her side of the jeep, and pointed a gun at her.<sup>[16]</sup> Zenaida Nazal, private complainant's sister, likewise testified that she witness the crime from a distance of twenty (20) meters and saw appellant take part in the carnapping.<sup>[17]</sup> Sr. Inspector Carlos L. Flores, Jr., Chief of the 304th CIS in Balibago, Angeles City, testified that after intelligence gathering, he ordered his men to "invite" appellant for questioning at the CIS office.<sup>[18]</sup> SPO4 Reynaldo T. Galang took down the

statements of the appellant and the private complainant.<sup>[19]</sup> SPO3 Ireneo C. Galvez testified that he was one of the operatives who extended the "invitation" to appellant.<sup>[20]</sup>

For the defense, appellant vehemently denied any participation in the offense charged. Appellant contends that on September 25, 1989, at around 6:00 p.m., he was driving a truck loaded with sand and gravel to Manila accompanied by two helpers and his employer, Renato Simbillo, and that they returned to Pampanga at around 4:00 a.m. of the following day.<sup>[21]</sup> He further recounted that on July 17, 1992, he and his son were picked up by the CIS agents, forcibly boarded on a car, and brought to the CIS Field Office. There he was stripped naked, and handcuffed. His legs were tied, his mouth was stuffed with a wet rug, water was poured on his nose and hot liquid poured on his genitals.<sup>[22]</sup> Finally, he was coerced into signing a sworn statement<sup>[23]</sup> wherein he named the persons who allegedly took part in the carnapping.<sup>[24]</sup> Appellant denied being placed in a police line-up.

Mr. Simbillo testified that on September 25, 1989, as early as 5:00 p.m., he was with appellant and two helpers preparing to deliver sand and gravel in Manila. They left Pampanga at around 6:00 p.m. and returned at around 5:00 a.m. the following day. He remembered the exact date because he heard a radio report about the Loremas carnapping on their way back to Pampanga.<sup>[25]</sup> Mr. Simbillo also testified that on June 17, 1992, appellant failed to report for work, and he later learned that appellant was picked up by the CIS and was detained at the Provincial Jail.<sup>[26]</sup>

Teodoro Siron, Jr., testified that on June 17, 1992, he was also picked up by CIS agents and brought to the CIS Office for questioning. He saw appellant in the CIS Office "handcuffed and both feet padlocked, naked and blindfolded." Siron and appellant were made to confront each other for about five (5) minutes. They were puzzled as to why they were allegedly implicating each other in the carnapping incident. Siron also denied that he was placed in a police line-up with appellant.<sup>[27]</sup>

On April 8, 1994, the trial court rendered a decision<sup>[28]</sup> finding appellant guilty as charged. The dispositive portion of the decision provides:

"WHEREFORE, premises considered, judgment is hereby rendered finding accused RUFINO GAMER GUILTY beyond reasonable doubt of the crime of Violation of Anti-Carnapping Act of 1972 as defined and penalized under R.A. 6539 and hereby accordingly sentences him to Life Imprisonment and to indemnify complainant Corazon Loremas the amount of P50,000.00 as life indemnity; the amount of P14,000.00 as cost of funeral expenses, P45,000.00 as cost of the burial lot and the amount of P40,000.00 for the value of the properties stolen.

With regard the other accused who are still unknown and have not properly been identified much less apprehended, send this case to the archives to be revived upon the apprehension of said accused.

SO ORDERED."

Hence, appellant now presents the following issues for resolution:<sup>[29]</sup>

I. WHETHER THE TRIAL COURT DEPRIVED ACCUSED RUFINO M. GAMER OF HIS SUBSTANTIAL RIGHT TO DUE PROCESS BY ADMITTING THE EVIDENCE OF THE PROSECUTION THAT POINT TO THE IDENTITY OF THE SAID ACCUSED IN AN ALLEGED POLICE LINE-UP WITHOUT BEING AFFORDED HIS VITAL RIGHTS AND GUARANTEES AS PROVIDED FOR IN OUR CONSTITUTION.

II. WHETHER THE TRIAL COURT IN RENDERING HIS JUDGMENT OF CONVICTION HAS FAILED TO OVERLOOK OR CONSIDERED CERTAIN ASPECT OF EVIDENCE BY THE ACCUSED THAT COULD HAVE SUBSTANTIALLY AFFECTED OR CHANGED THE CONCLUSION RENDERED IN THIS INSTANT CASE.

III. WHETHER THE TRIAL COURT ACTED IN GRAVE ABUSE OF DISCRETION WHEN IN THE PREPARATION AND PRESENTATION OF FACTS IN THE DECISION, IT FOCUSED ONLY IN JUSTIFYING THE PROSECUTION EVIDENCE BUT DISREGARDING SOME SIGNIFICANT FACTS THAT MAY BE IMPORTANT TO THE ACCUSED'S CHANCE OF ACQUITTAL.

In his brief, appellant decries the flagrant violation of his constitutional right against unreasonable seizures and his rights under custodial investigation. Appellant questions his identification by private complainant considering that no police line-up was conducted. Appellant also questions the credibility of Corazon's sister considering that she only surfaced during trial. Appellant further contends that the trial court erred in disregarding appellant's testimony of his ordeal in the hands of the CIS agents.

The Office of the Solicitor General, for the State, argues that as held by the trial court, the positive identification of the appellant by the prosecution witnesses must prevail over the appellant's defense of alibi and denial. The OSG recommends affirmance of the conviction and sentence imposed upon the appellant.

The substantial issue here, in our view, involves the admissibility as well as sufficiency of the evidence to convict appellant.

Appellant claims, and the prosecution admits, that he was arrested without a warrant on June 17, 1992. His arrest, however, cannot be justified under any of the circumstances allowing warrantless arrests under Section 5 of Rule 113 of the Rules on Criminal Procedure.<sup>[30]</sup> Hence, any evidence obtained in violation of appellant's rights under Section 2 of Article III of the 1987 Constitution<sup>[31]</sup> shall be inadmissible for any purpose and in any proceeding.<sup>[32]</sup> Granting that by entering a plea without first questioning the legality of his arrest, appellant is deemed to have waived any objection concerning his arrest,<sup>[33]</sup> the sworn statement (Exhibit "C") taken from appellant is clearly inadmissible for having been obtained in violation of his constitutional rights under custodial investigation. When appellant was invited to the CIS office, he was clearly placed under "custodial investigation" for there the questioning was never a "general inquiry into an unsolved crime" but already focused on appellant as a "particular suspect" in the Loremas carjacking.<sup>[34]</sup> At that very instance, appellant should have been afforded his rights under Section 12 (1) and (2) Article III of the 1987 Constitution.<sup>[35]</sup> Hence the sworn statement, which also contains mostly hearsay, should be thrown out for being patently inadmissible

in evidence against him.

It may be noted, further, that appellant was convicted by the trial court upon the identification of appellant made by Corazon Loremas and her sister, Zenaida Nazal, during the trial. As evidence, the value of the in-court identification, however, is here largely dependent upon an out-of-court identification made during an alleged police line-up. Both appellant and Siron, consistently denied that a line-up was conducted by the police, thus directly controverting the testimony of the prosecution's witnesses.

In *People v. Verzosa*,<sup>[36]</sup> the Court enumerated factors to be considered, following the *totality of circumstances test*, in order to resolve the admissibility of an out-of-court identification of suspects, *viz*:

"(1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at that time; (3) the accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and (6) the suggestiveness of the identification procedure."

These factors are pertinent to and applicable in this case. The totality test has been fashioned precisely to assure fairness as well as compliance with constitutional requirements of due process in regard to out-of-court identification. These cited factors must be considered to prevent the contamination of the integrity of in-court identifications better. In this case, the carnapping happened at 8:30 p.m., and the evidence does not disclose whether the *locus criminis* was sufficiently lighted for purposes of identification. In fact, while Corazon testified that the jeep was not lighted at the time of the incident,<sup>[37]</sup> her sister claimed that the jeep was in fact lighted, which enabled her to recognize appellant herein as one of the carnappers.<sup>[38]</sup> Although Corazon reported the incident to the Porac Police the following day, she did not furnish said policemen a description of the perpetrators of the crime.<sup>[39]</sup> Hence, the authenticity as well as accuracy of the present and future descriptions of the suspected assailants has been placed in doubt for lack of basis. Furthermore, the crime occurred some two (2) years and (8) months prior to the arrest of appellant. Because of this lapse of time, certain physical changes might have occurred in his physical appearance and other attributes already. Corazon also claimed that she viewed the police line-up through a jalousie window<sup>[40]</sup> while Capt. Flores testified that the persons in the police line-up were in full view of Corazon.<sup>[41]</sup> This and other contradictions in the testimony of prosecution witnesses weaken the reliability of the out-of-court identification of appellant. We are now constrained to agree that the in-court identification of the appellant made by private complainant and her sister could have been tainted by the out-of-court (police line-up) procedure, even if we grant, *arguendo*, that such line-up did take place.

In addition, the trial court overlooked certain material inconsistencies in the testimony of the prosecution witnesses. Corazon wavered in identifying who actually shot her husband. Initially, she said it was the person near her husband who shot him.<sup>[42]</sup> Later on she said that she did not see who actually shot her husband<sup>[43]</sup> and that she merely heard the gun shot.<sup>[44]</sup> According to Corazon, there were only two (2) carnappers,<sup>[45]</sup> while her sister testified that there were about five (5) men,