

## EN BANC

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

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

### DECISION

#### 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.<sup>[1]</sup>

Appellants and Calaos were charged<sup>[2]</sup> with the crimes of carnapping and murder.

The Information for Carnapping<sup>[3]</sup> 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<sup>[4]</sup> 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.<sup>[5]</sup> 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.<sup>[6]</sup>

Ernesto Saculles, brother-in-law of the victim, testified<sup>[7]</sup> 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<sup>[8]</sup> 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.<sup>[9]</sup>

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.<sup>[10]</sup>

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

"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, afterwhich, 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,<sup>[12]</sup> 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 ultimuum 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,<sup>[13]</sup> 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<sup>[14]</sup> 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