

## EN BANC

**[ G.R. Nos. 127125 & 138952, July 06, 1999 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALEX PANIDA, ERNESTO ECLERA, AND ALEX HORA, ACCUSED-APPELLANTS.**

### DECISION

**MENDOZA, J.:**

Accused-appellants were charged with the slaying of a tricycle driver and the taking of his vehicle on April 11, 1994 in two informations filed with the Regional Trial Court of Pangasinan.

The information for the crime of carnapping charges:<sup>[1]</sup>

That on or about the 11th day of April, 1994 at Poblacion, municipality of Asingan, province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping one another with intent to gain, did then and there wilfully and unlawfully and feloniously take, steal and carry away one (1) motorcycle (Suzuki), bearing Plate No. 2N-13220-92, Motor No. GP 100278040 and Chassis No. Spg-100 UN-110614, worth P57,000.00 belonging to Sylvia Eclera without her knowledge and consent, thereafter, said accused brought said motorcycle to Agoo, La Union and mortgaged it to Romulo de Vera in the amount of P4,000.00, to the damage and prejudice of the said owner in the aforestated amount of P57,000.00.

CONTRARY to Republic Act No. 6539 in relation to Art. 19 of the Revised Penal Code.

That charging the crime of murder reads:<sup>[2]</sup>

That on or about the 11th day of April, 1994 at barangay Lomboy, municipality of San Manuel, province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping one another, with intent to kill, with treachery and evident premeditation, abuse of superior strength and armed with knives and stone, did then and there willfully, unlawfully and feloniously attack, assault and stab one ANDRES ILDEFONSO, inflicting upon him fatal wounds in the different parts of his body which directly caused his instantaneous death, to the damage and prejudice of his heirs.

CONTRARY to Art. 248 of the Revised Penal Code.

The case for carnapping was originally tried before Branch 38 of the Regional Trial Court at Lingayen, Pangasinan. The case was later transferred to Branch 47 of the same court at Urdaneta.<sup>[3]</sup>

On the other hand, the case for murder was assigned to Branch 46 of the court, also at Urdaneta. On motion of accused-appellants, the case was consolidated with the carnapping case pending before Branch 47 of the Regional Trial Court of Urdaneta.<sup>[4]</sup>

Accused-appellants, who had pleaded not guilty to the charge of carnapping when the case was still pending in Branch 38 at Lingayen, likewise pleaded not guilty to the charge of murder. Thereafter, the two cases were jointly tried.<sup>[5]</sup>

At the initial presentation of evidence by the prosecution relative to the carnapping case before Branch 38 at Lingayen, Pangasinan, three witnesses testified for the prosecution. Their testimonies are summarized in the following portion of the decision of the trial court:

1) ROCKY ECLERA, 16 years old, a resident of San Vicente West, Asingan, Pangasinan, testified that on 11 April 1994 at about 7:00 A.M., while he and the accused ALEX HORA, ALEX PANIDA and ERNESTO ECLERA were at the Poblacion of Asingan, Pangasinan, ALEX HORA invited the group to go to San Manuel, Pangasinan. They took a motorized tricycle for their ride from Asingan to San Manuel. It was driven by ANDRES ILDEFONSO.

Somewhere in Barangay Lomboy, San Manuel, a more or less deserted place, accused ALEX HORA ordered the tricycle driver to stop the vehicle. Suddenly and unexpectedly ALEX HORA repeatedly stabbed the tricycle driver with the use of a knife. Afterwards when the driver appears to be still alive, hit the head of the driver with stone. Thereafter, Alex Hora called the witness and the others, and they boarded the same tricycle with Alex Hora as the driver.

They proceeded to the irrigation dike at Macalong, Urdaneta, Pangasinan. At such place, ALEX HORA, with the help of ALEX PANIDA and ERNESTO ECLERA detached the sidecar. After the sidecar was detached, they (all four of them) boarded the motorcycle and went to Balite, Tarlac.

They stayed at Tarlac for three days and three nights. On the third day, upon his urging, he was accompanied by accused ALEX PANIDA to Urdaneta, Pangasinan. At Urdaneta, he parted ways with Alex Panida.

Accused ALEX HORA and ERNESTO ECLERA were left behind at Tarlac.

In connection with the cases, he remembered having executed a sworn statement given at the police station at Asingan, Pangasinan. He identified a xerox copy of the same and admitted having signed the statement (EXHIBITS "D", and "D-1", the same exhibit was marked in evidence by the accused as EXHIBIT "1").

He identified pictures of a motorcycle and a sidecar. The pictures

admittedly show the motorcycle stolen and the sidecar that was detached.

2) ROMULO DE VERA, 38 years old, market vendor, married and a resident of San Nicolas, Agoo, La Union, testified that on May 2, 1994, he saw accused ALEX HORA with VIOLETA BAUTISTA talking with his uncle, Alfredo Gali. The latter informed him that Alex Hora and Violeta Bautista were mortgaging to him a motorcycle, but he does not have money. So Alex Hora and Violeta Bautista pleaded that he instead take the mortgage. The two were badly in need of money. He agreed.

The motorcycle allegedly was first mortgaged to one Mariano Kuan, a resident of San Nicolas Central, Agoo, La Union for P2,000.00. So what they did was to first pay Mariano Kuan the mortgage obligation of P2,000.00. He gave ALEX HORA another P2,000.00, as he was willing to give P4,000.00 only for the mortgage.

He and ALEX HORA executed a mortgage document notarized by Arturo dela Rosa. Alex Hora signed for the registered owner Gilbert Eclera because the latter was allegedly arrested at Dagupan City, precisely it was for this predicament that they needed the money.

On May 22, 1994, police officers from Asingan, Pangasinan accompanied by a police officer from Agoo, went to his place looking for a motorcycle which was allegedly lost. He admitted that the motorcycle that they were looking for was in his possession. It was brought to the police station of Agoo. Thereat, he signed a document known as RECEIPT OF CONFISCATION.

3) ALFREDO GALI, 64 years old, married, retired government employee, and a resident of San Nicolas Norte, Agoo, La Union, testified that on 02 May 1994, ALEX HORA and Violeta Bautista went to his residence and offered to mortgage a motorcycle. Since he did not have money at that time, when he saw his nephew Romulo de Vera passed by, he called him and informed him of the purpose of Alex Hora and Violeta Bautista. He asked if Romulo had money. The latter answered in the affirmative. So they went to a notary public. At the office of the Notary Public, ALEX HORA and ROMULO DE VERA signed a mortgage document. He was there to witness the mortgage. He saw the parties signed the document. (Citations omitted)

The prosecution wanted to present Rocky Eclera<sup>[6]</sup> as witness also in the murder case, but he could not be served with subpoena. Despite an order issued by the trial court for his arrest, the prosecution was not able to present him as witness.<sup>[7]</sup> For this reason, the prosecution simply adopted the testimony of Rocky Eclera in Criminal Case No. U-8202 (carnapping) as its evidence in the murder case. The defense did not object.<sup>[8]</sup> The prosecution then presented two additional witnesses, whose testimonies are set forth in the trial court's decision, thus:<sup>[9]</sup>

The other witness presented by the prosecution with respect to the carnapping case was SYLVIA ECLERA, 38 years old, married and a resident of Poblacion, Asingan, Pangasinan. She testified that she is the

owner of a Suzuki motorcycle with Plate No. 2N-13220-92. The vehicle was registered in the name of her husband Gilbert Eclera.

At about 10:00 P.M., on 11 April 1994, she received a report from Investigator Sonaco of the PNP Asingan that her tricycle driver was missing. PNP Asingan was informed by PNP Urdaneta that a sidecar was located at Macalong, Urdaneta. PNP Asingan sought the help of PNP Urdaneta. With the help of the PNP Urdaneta, they were brought to Macalong, Urdaneta, where the sidecar of the tricycle was located. The motorcycle was missing.

On the following day, they located the dead body of the driver of the tricycle at Lomboy, San Manuel, Pangasinan. The cadaver of the driver was taken by Funeraria Mercado to Asingan Municipal Cemetery. The name of the driver was ANDRES ILDEFONSO.

On 18 May 1994 she was informed by PNP Asingan that her motorcycle was in Agoo, La Union. Together with some elements of PNP Asingan, they proceeded to Agoo, La Union. The motorcycle was in the possession of one Romulo de Vera. The latter claimed that the motorcycle was mortgaged to him by one Alex Hora, one of the accused in these cases. This Romulo de Vera showed her a written mortgage contract or Salda in Ilocano, which was the same as Exh. "A". For the recovery of the motorcycle, she was asked to sign a receipt by Romulo de Vera.

In connection with the funeral and church services of her deceased driver, she spent about P20,650.00. She also spent about P5,000.00 in connection with the recovery of the motorcycle. She was deprived of the use of her tricycle for more than one year. She received a daily income from the operation of the vehicles in the amount of P100.00. The motorcycle was bought for P43,000.00 and the cost of the sidecar was P14,000.00.

DR. LEONARDO GUERRERO, the Rural Health Officer of the Municipality of Asingan was presented as witness to testify on the Medico-Legal Autopsy Report relative to the autopsy he conducted on the deceased ANDRES ILDEFONSO. The defense in respect to the offer of his testimony, admitted the same. Accordingly, his testimony was dispensed with. (Citations omitted)

Thereafter, the prosecution offered its documentary exhibits to which the defense did not interpose any objection.<sup>[10]</sup> Accordingly, all exhibits of the prosecution were admitted for the purpose for which they were offered and as part of the testimonies of the witnesses who identified them.<sup>[11]</sup> Among the documentary evidence was Exhibit D which is a sworn statement given by Rocky Eclera to the police of Asingan on May 20, 1994, in which he pointed to all of the accused-appellants as the ones who killed the tricycle driver, Andres Ildefonso, and took his vehicle.

Accused-appellants Alex Panida and Ernesto Eclera testified in their defense. They likewise presented Rocky Eclera who had previously testified for the prosecution. Their testimonies are summarized in the trial court's decision as follows:<sup>[12]</sup>

ROCKY ECLERA substantially testified that on 11 April 1994 while he and the accused, namely, ALEX PANIDA, ALEX HORA and ERNESTO ECLERA were at the Poblacion of Asingan to attend the town fiesta, accused ALEX HORA invited them to go to San Manuel, Pangasinan to attend the birthday of one of his friends. When he asked where in San Miguel, Alex Hora just responded, "just come with me and I'll take care of our ride."

They took a tricycle at the parking area in Poblacion, Asingan for their ride to San Manuel. He, Alex Panida and Ernesto Eclera rode inside the cab, while Alex Hora sat at the rear of the tricycle driver.

On their way to San Manuel, they again asked Alex Hora where they were going, but the latter just said they will go to the house of his friend who is celebrating his birthday.

After passing the town proper of San Manuel, and when they were near the slope of the mountain, and while the tricycle was still running, Alex Hora suddenly stabbed the driver with the use of a knife. When the tricycle stopped, the witness ran away. The other accused, Alex Panida and Ernesto Eclera tried to pacify Alex Hora, but the latter faced them menacingly with his knife.

The tricycle driver uttered pleading words like no more sir ("Saanen Apo" in the Ilocano dialect). Thereafter, Alex Hora pulled the prostrate body of the driver at the slope of the mountain. Then he hit the head of the driver with a big stone. The stone was as big as a man's head.

All the time that the driver was being stabbed and then hit with a stone, the other accused, Alex Panida and Ernesto Eclera were inside the tricycle. They did not inflict any blow to the driver. On the other hand, the witness ran to the mountain and hid himself.

After the killing of the driver, Alex Hora called his companions to board the tricycle as they will proceed to his best friend in Tarlac. Witness did not know the place.

They went to the irrigation dike site at Urdaneta, where Alex Hora detached the side car of the tricycle. Alex Hora alone detached the side car as nobody helped him. Thereafter, all four of them proceeded to Tarlac at the residence of Alex Hora's friend.

They stayed there for three days. Then he asked Alex Panida to accompany him home, Alex Panida accompanied him up to Urdaneta. They took a mini bus as ride to Urdaneta. At Urdaneta, he proceeded home to Asingan, while Alex Panida told him that he will watch a movie in Urdaneta. Alex Hora and Ernesto Eclera were left at Tarlac.

He was subsequently arrested at Sison, Pangasinan by police officers of Asingan Police Department, he was investigated. His statement was taken, which he signed. His statement was written in English, which he did not understand. The contents of his statement were not translated in Ilocano dialect by the police investigator. He was never informed of his