

EN BANC

[G.R. No. 146865, February 18, 2004]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ELGIN LATAYADA
(AT LARGE), APPELLANT.**

D E C I S I O N

PANGANIBAN, J.:

When the evidence falls short of proving all the elements of carnapping with homicide, but the killing is conclusively established, the accused may be convicted only of homicide when the Information does not allege any qualifying circumstance.

The Case

For automatic review before this Court is the December 29, 2000 Decision^[1] of the Regional Trial Court (RTC) of Cagayan de Oro City (Branch 18) in Criminal Case No. 97-917, finding Elgin Latayada guilty beyond reasonable doubt of carnapping with homicide. The decretal portion of the Decision reads:

“WHEREFORE, in view of all the foregoing considerations, the Court hereby finds accused ELGIN LATAYADA, **GUILTY beyond reasonable doubt** of the crime of CARNAPPING WITH HOMICIDE, in violation of RA 6539, known as Anti-Carnapping Act of 1972, as amended by Sec. 20 of Republic Act 7659, and there being one generic aggravating circumstance of treachery without any mitigating circumstances, the said accused is hereby sentenced to suffer the supreme penalty of **DEATH by lethal injection**. He is also directed to pay the heirs of the victim the sum of P18,899.70 as hospitalization expenses, another P7,300.00 as burial expenses, P50,000.00 moral damages and further directed to pay the cost of this proceeding. Let another Warrant of Arrest be issued to the convict for him to serve his sentence. Pursuant to R.A. 7975 and Rule 122, Sec. 10 of the Rules of Court, let the entire records of this case be forwarded to the Supreme Court for automatic review.”^[2]

In an Information dated March 7, 1997, appellant was charged with carnapping with homicide as follows:

“That on or about 6:00 o’clock in the evening, more or less, of October 29, 1995 at Sitio Hanopolan, Claveria, Misamis Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to gain and without the consent of the owner, did then and there, willfully, unlawfully and feloniously take, steal and drive away one (1) unit Honda TMX Motorcycle, color blue, bearing plate No. 9B-6096-T, with Serial Chassis No. 951-50025, with Motor No. KCOIE-028425 PH, Model 1995, owned and belonging to Rodrigo Estrada, valued at P63,000.00 to his damage and prejudice and in the course of the

commission of the carnapping of the vehicle, accused with intent to kill, did then and there, willfully, unlawfully and feloniously stab one Pedro Payla, the driver of the motorcycle, with the use of a sharp bladed weapon, thus hitting the victim on different parts of his body causing his death thereafter.”^[3]

During his arraignment on September 12, 1997,^[4] appellant, with the assistance of his counsel *de officio*, ^[5] pleaded not guilty to the charge. After trial in due course, the court *a quo* rendered the assailed Decision.

The Facts

Version of the Prosecution

In its Brief, the Office of the Solicitor General (OSG) quoted from appellant’s Brief the summary of the evidence for the prosecution, which is as follows:

“Sometime on October 29, 1995 at about 6:00 o’ clock in the evening, Pedro Payla arrived at the house of Vicenta Cordino at Sitio Hanopolan, Claveria, Misamis Oriental. Pedro Payla allegedly told Vicenta ‘Don’t be afraid, Nang, I am the son of Lucia Payla, I was stabbed by Elgin Latayada, bring me to the hospital.’ Vicenta, who was already old, then called her neighbor Joseph Tion for help and the latter responded. Joseph treated the wounds of Pedro and asked what happened. Pedro allegedly told Joseph that Elgin asked to be brought to Hanopolan, Claveria, Misamis Oriental. On their way, Elgin told Pedro to stop because he wanted to answer the call of nature. After Elgin relieved himself, instead of boarding at the back of the motorcycle, he stabbed Pedro and escaped on board the motorcycle.

“When a passenger jeepney passed by, Pedro was loaded and brought to Claveria Hospital. When they passed by a police station, the conductor of the passenger jeep reported the stabbing incident. At Claveria Hospital, Pedro’s wound was treated and sutured. However, due to inadequate medical facilities at Claveria Hospital, the doctor thereat advised Gina Payla, wife of Pedro, to bring Pedro to Cagayan de Oro. On that same night, Pedro Payla was brought to [the] Medical Center in Cagayan De Oro City. Pedro died on October 30, 1995.

“On October 30, 1995, at around 9:00 o’clock in the morning, Gina Payla, Pedro’s wife, was able to converse with him. Again, Pedro pointed to appellant as his assailant and further narrated the circumstances surrounding his stabbing.

“At around 1:00 o’clock in the afternoon of the same day, SPO1 Victorino Busalla arrived at the hospital and then proceeded to take the **ante-mortem** statement of Pedro. Pedro could not write because of his injuries; hence, he placed his thumb mark using his own blood in lieu of his signature on the said statement. The same statement was signed by Gina Payla who was present when the statement was taken. Pedro died on the same day.

"The motorcycle driven by Pedro with Chassis No. 951-50025, color blue, was originally owned by Rodrigo Estrada. He later sold the same to [Kagawad Verano] Caabay for P10,000.00. It was [Kagawad] Caabay who had an arrangement with Pedro regarding the use of the motorcycle to transport passengers.

"The motorcycle was recovered only on November 4, 1995, already cannibalized, at Cugman, Cagayan de Oro City.

"After the prosecution rested its case on June 21, 2002, appellant escaped from prison which is evidenced by a Notice of Escape submitted to the court *a quo*. He has remained at large."^[6] (Citations omitted)

Version of the Defense

In its Brief, the defense averred that the accused had escaped from jail after the presentation of the prosecution's evidence^[7] and therefore failed to testify.

Ruling of the Trial Court

The RTC found appellant guilty beyond reasonable doubt of carnapping with homicide. Held as part of the *res gestae* were Pedro Payla's statements uttered before his death to his wife, Gina; and to Prosecution Witnesses Joseph Tion and Vicenta Cordino that it was appellant who had stabbed him. His Statement taken by a police officer a day *after the incident and on the same day* he died, was admitted by the court *a quo* as a dying declaration. It admitted these pieces of prosecution evidence as exceptions to the hearsay rule.

The lower court also ruled that circumstantial evidence indicated that appellant was responsible for the disappearance of the motorcycle.

Further, the RTC upheld Joseph Tion's testimony that on the pretext of wanting to answer the call of nature, the accused had asked Payla to stop the motorcycle and, without any warning or provocation, stabbed the latter on the back. Finding treachery to have qualified the killing, the lower court imposed on the accused the supreme penalty of death.

Hence, this automatic review.^[8]

The Issues

In his 7-page Brief, appellant raises this lone error for our consideration:

"The trial court gravely erred in imposing the penalty of death upon the accused-appellant when x x x treachery was not alleged in the Information either as [a] qualifying or as a generic aggravating circumstance."^[9]

In addition to the issue raised by appellant, we find it proper to review first his conviction for carnapping with homicide, as well as the civil liabilities imposed therefor. Since an appeal in a criminal action opens the whole case for review, it becomes the duty of this Court to correct any error in the appealed judgment,

whether it has been assigned or not.^[10]

The Court's Ruling

The appeal is partly meritorious. Appellant is guilty of homicide only, not carnapping with homicide.

First Issue: *Culpability of the Accused*

In every criminal conviction, the prosecution is required to prove two things beyond reasonable doubt: *first*, the fact of the commission of the crime charged, or the presence of all the elements of the offense; and *second*, the fact that the accused was the perpetrator of the crime.^[11]

Elements of Carnapping with Homicide

The charge filed against appellant for which he was convicted —carnapping with homicide — is punishable under Section 2, in relation to Section 14 of RA 6539^[12] as amended by RA 7659.^[13] Under Section 2 of RA 6539, carnapping is 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 with the use of force upon things. On the other hand, Section 14 of the same act, as amended by RA 7659, provides:

"SEC. 14. *Penalty for Carnapping.* — Any person who is found guilty of carnapping, as this term is defined in Section Two of this Act, shall, irrespective of the value of the motor vehicle taken, be punished by imprisonment for not less than fourteen years and eight months and not more than seventeen years and four months, when the carnapping is committed without violence or intimidation of persons, or force upon things, and by imprisonment for not less than seventeen years and four months and not more than thirty years, when the carnapping is committed by means of violence against or intimidation of any person, or force upon things; *and the penalty of reclusion perpetua to death shall be imposed when the owner, driver or occupant of the carnapped motor vehicle is killed or raped in the course of the commission of the carnapping or on the occasion thereof.*" (Italics supplied)

RA 7659 introduced three amendments to the last clause of Section 14:^[14] (1) the change of the penalty from life imprisonment to *reclusion perpetua*, (2) the inclusion of rape, and (3) the change of the phrase "in the commission of the carnapping" to "in the course of the commission of the carnapping or on the occasion thereof."^[15]

The Court has held that the third amendment clarifies the intention of the law to make the offense a special complex crime, in the same way that robbery with violence against or intimidation of persons is treated under paragraphs 1 to 4 of Article 294 of the Revised Penal Code (RPC).^[16] Hence, the prosecution must prove not only that the essential requisites of carnapping^[17] were present; but also that it was the original criminal design of the culprit, and that the killing was perpetrated

"in the course of the commission of the carnapping or on the occasion thereof."^[18] In the present case, the prosecution had the burden of proving that 1) appellant took the motorcycle; 2) his original criminal design was carnapping; 3) he killed Payla; and 4) the killing was perpetrated "in the course of the commission of the carnapping or on the occasion thereof."

It is undisputed that the motorcycle driven by Payla had been taken without his consent on October 29, 1995, and recovered days later in a cannibalized condition. The elements of taking and intent to gain were thus established. The prosecution also proved it was appellant who had killed him. It failed, however, to discharge its burden of proving the two other requisites of carnapping.

Insufficiency of Proof of Carnapping

The trial court's finding was that there was indeed no direct evidence showing that appellant had taken the motorcycle driven by Payla.^[19] The culpability of the former was deduced from the following pieces of circumstantial evidence: 1) the motorcycle was left with him after Payla had run for his life; 2) as shown by the police blotter, the stabbing and carnapping incident was immediately reported to the police; 3) the vehicle was recovered, its parts missing, five days after the accused had been arrested on June 2, 1997 in Cugman, Cagayan de Oro City, which was only about 25 kilometers from the scene of the crime; and 4) the accused escaped while in detention at the provincial jail, 33 days after the prosecution had rested its case.

To be sufficient for a conviction, circumstantial evidence must prove that (1) there is more than one circumstance; (2) the facts from which the inferences are derived have been established; and (3) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.^[20] The pieces of circumstantial evidence must also constitute an unbroken chain leading to one fair and reasonable conclusion: that the accused, to the exclusion of all others, is the guilty person.^[21]

The circumstantial evidence in the instant case is not sufficient to show that appellant is guilty of carnapping. On the contrary, the records and the transcripts of stenographic notes of the proceedings cast doubt on the correctness of the trial court's conclusion that after stabbing Payla, he fled on board the motorcycle or was the last person seen with it.

First, there is no mention in the purported antemortem Statement^[22] of Payla or in his statement to his wife and the other prosecution witnesses that appellant carnapped his motorcycle. Payla merely stated that appellant had stabbed him twice in the back and once in the face. In fact, the former did not know why he had been stabbed, as he said in response to a query from his wife^[23] and from Joseph Tion.^[24] If appellant had wanted to carnap the motorcycle, Payla would have pointed this out as the reason for the attack. Yet, the records show that the former intended only to kill the latter. Tion testified as follows:

"PROS. B. APEPE: x x x

Q So after Pedro Payla told you that he was stabbed at the back twice by Elgin Latayada, what else happened according to Pedro Payla, if any?