

SIXTEENTH DIVISION

[CA-G.R. CR NO. 34949, June 30, 2014]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. OSCAR DOON Y FRANCISCO, ACCUSED-APPELLANT.

DECISION

CORALES, J.:

This is an appeal^[1] from the April 11, 2012 Decision^[2] of the Regional Trial Court (RTC), Branch 269, Valenzuela City in Criminal Case No. 396-V-11 finding accused-appellant Oscar Doon (Doon) guilty of carnapping as defined and penalized under Section 2 of Republic Act (R.A.) No. 6539, otherwise known as the Anti-Carnapping Act of 1972.

The Antecedents

Doon was charged under an Information^[3] which reads:

The undersigned Asst. City Prosecutor accused OSCAR F. DOON, of the crime of VIOLATION OF R.A. 6539, committed as follows:

That on or about the January 29, 2011, in Valenzuela City, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to gain, did then and there willfully, unlawfully and feloniously take and carry away with one (1) Suzuki Sky Drive with plate no. 5489-UG, with Engine No. F4C9209290, with chassis no. CF48X109290 belonging to VIRGINIA DE GUIA y GALANG (complainant), to the damage and prejudice of the said complainant in the amount of P128,356.00.

Contrary to Law.

On the strength of the warrant of arrest^[4] issued by Presiding Judge Emma C. Matammu, Doon was arrested on May 23, 2011.^[5] However, he was released on May 25, 2011^[6] after posting a reduced surety bond^[7] of P135,000.00.

When arraigned, Doon pleaded not guilty to the crime charged.^[8]

The facts of the case were aptly summarized by the Office of the Solicitor General (OSG) as follows:^[9]

Private complainant Virginia de Guia is the owner of a Suzuki Skydrive motorcycle with plate number 5498-UG which she purchased on October 16, 2010 from Motortrade, Caloocan City. Virginia bought the subject motorcycle on installment basis in the total amount of P71,482.00.

On January 29, 2011, around 1:00 p.m., Edgardo de Guia, son of Virginia, was invited by his high school classmates, Melvin Gebaga and

Rexson Lacamento to go to the house of Melvin at Santolan Road, *Barangay* Parada, Valenzuela City. Edgardo agreed and proceeded to the house of Melvin riding on his mother's motorcycle, while Melvin and Rexson rode on board the Sniper motorcycle. Edgardo arrived at Melvin's house around 2:30 p.m. and found Melvin, Rexson and another high school classmate, herein appellant, and joined the group in their drinking spree. They drank until 4:30 p.m. consuming almost one (1) case of Red Horse beer. Appellant borrowed Edgardo's motorcycle and returned the same to Edgardo around 5:00 p.m. of the same day.

Around 5:15 p.m., appellant, Melvin, Rexson and Edgardo went to Edgardo's house, but Melvin immediately left. Subsequently, appellant, Edgardo and Rexson proceeded to the house of another high school classmate, Ian Sayede. For the second time, appellant borrowed Edgardo's motorcycle. According to appellant, he will use Edgardo's motorcycle to go home and get the bag of Rexson which the latter left thereat. Appellant, however, failed to return.

Around 8:00 p.m., Edgardo borrowed his brother-in-law's motorcycle and, together with Rexson, tried to find appellant. At that time, Rexson was also looking for his bag. Edgardo and Rexson saw the subject motorcycle parked at appellant's house. When Edgardo and Rexson asked appellant to return the motorcycle and Rexson's bag, appellant reasoned out that his cousin has kept the said bag. Instead of returning the subject motorcycle, appellant invited Edgardo and Rexson to go and eat first. Around 9:30 p.m., appellant brought Edgardo and Rexson to his sister's *videoke* bar where they resumed drinking. Around 9:40 p.m., appellant left the bar on board Edgardo's motorcycle. Edgardo and Rexson stayed at the bar until 10:30 p.m. waiting for appellant, but the latter did not return.

Rexson and Edgardo went to the houses of the appellant's relatives to locate appellant. Unfortunately, while Edgardo and Rexson were looking for appellant, they met an accident.

While confined at the hospital from January 31, 2011 to February 3, 2011, Edgardo asked his siblings to report the accident and retrieve the motorcycle from appellant. On February 2, 2011, Edgardo's mother, his aunt and younger sister talked to appellant's mother and they were informed that said motorcycle has been mortgaged by appellant for P2,000.00. Appellant's mother requested that they be given enough time to return the motorcycle.

On February 3, 2011, Virginia proceeded to the Valenzuela Police Station to report the incident. The report was recorded in the police blotter. Virginia also requested a flash alarm for she feared that her motorcycle may be used in a wrongdoing. On February 4, 2011, appellant's relatives asked Edgardo's brother-in-law to retrieve the subject motorcycle from appellant's house.

The Ruling of the RTC

In its April 11, 2012 Decision,^[10] the RTC ruled that the prosecution sufficiently proved all elements of carnapping; the motorcycle belongs to Virginia de Guia

(Virginia), Doon's possession of the vehicle became unlawful when he failed to return it to Virginia despite demand, and intent to gain was presumed from the act of taking. The court *a quo* did not give credence to Doon's bare and uncorroborated testimony that he was not able to return the vehicle because he was too drunk and stressed that there is no reason to doubt the testimonies of the prosecution's witnesses considering that there is no showing of malicious intent or ill motive on their part.

The dispositive portion of the Decision reads:

WHEREFORE, accused OSCAR F. DOON is hereby found GUILTY beyond reasonable doubt of carnapping, as defined under Section 2 of Republic Act No. 6539; and hereby imposed an indeterminate prison sentence of 14 years and eight months, as minimum, to 16 years, as maximum. The accused may be credited with the period that he has served under preventive imprisonment, in accordance with Article 29 of the Revised Penal Code, as amended, and applicable rules.

Cost against the accused.

SO ORDERED.

Unconvinced, Doon filed the present appeal with the following assignment of errors:

I. THE HONORABLE REGIONAL TRIAL COURT ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF CARNAPPING AND SENTENCING HIM TO SUFFER IMPRISONMENT OF 14 YEARS AND 8 MONTHS TO 16 YEARS CONSIDERING THAT THE ACCUSATORY PORTION OF THE INFORMATION FOR CARNAPPING DOES NOT CONSTITUTE THE CRIME OF CARNAPPING AS ONE ELEMENT OF THIS CRIME IS LACKING, THUS, ACCUSED CANNOT BE CONVICTED OF THE CRIME OF CARNAPPING, OTHERWISE, IT IS VIOLATIVE OF HIS BASIC CONSTITUTIONAL RIGHT TO BE INFORMED OF THE NATURE AND CAUSE OF ACCUSATION AGAINST HIM.

II. ASSUMING BUT WITHOUT ADMITTING THAT THE ACCUSATORY PORTION OF THE INFORMATION CONTAINS ALL THE ELEMENTS OF THE CRIME OF CARNAPPING, THE HONORABLE REGIONAL TRIAL COURT ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF CARNAPPING SINCE THE PROSECUTION FAILED TO PROVE THE PRESENCE OF THE ELEMENTS OF INTENT TO GAIN AND TAKING WITHOUT CONSENT OR BY MEANS OF VIOLENCE AGAINST OR INTIMIDATION OF PERSON, OR BY USING FORCE UPON THINGS.

Doon argues that the Information failed to state how the taking of the motorcycle became unlawful, an essential element in carnapping, thus, it failed to apprise him of the nature and cause of the accusation against him. He further insists that the prosecution failed to prove his guilt beyond reasonable doubt because the elements of taking a motor vehicle without consent of its owner and intent to gain have not been established.^[11]

On the other hand, the OSG maintains that the indictment against Doon alleges every element of carnapping and the prosecution was able to prove the same. Citing the case of *People v. Bustinera*,^[12] the OSG contends that the nature of Doon's

possession was initially lawful as he was allowed by Edgardo to borrow the motorcycle but his failure to return the vehicle and mortgaging it against or without the consent of the owner transformed the character of the possession into an unlawful one.^[13]

This Court's Ruling

The appeal is meritorious.

The Facts Charged in the Information Do Not Constitute an Offense

Section 14, Article III of the Constitution^[14] guarantees to an accused the right to be informed of the nature and cause of accusation against him. In implementing this right, the Rules of Court specifically require that the acts or omissions complained as constituting the offense, must be stated in ordinary and concise language or in terms sufficient to enable a person of common understanding to know what offense is being charged so that the accused can properly defend himself and the court can pronounce judgment. Thus, Information must allege clearly and accurately the elements of the crime charged. Otherwise, the Information should be quashed for failure to allege the acts constituting the offense.^[15]

In carnapping under Section 2 of R.A. No. 6539, the following elements must be present:

1. That there is an actual taking of the vehicle;
2. That the vehicle belongs to a person other than the offender himself;
3. That the taking is without the consent of the owner thereof; or that the taking was committed by means of violence against or intimidation of persons, or by using force upon things; and
4. That the offender intends to gain from the taking of the vehicle.^[16]

The indictment in this case merely stated that the "*accused, with intent to gain, did then and there willfully, unlawfully and feloniously take and carry away with one (1) Suzuki Sky Drive with plate no. 5489-UG, with Engine No. F4C9209290, with chassis no. CF48X109290 belonging to VIRGINIA DE GUIA y GALANG (complainant), to the damage and prejudice of the said complainant in the amount of P128,356.00*". Obviously, the factual or material allegations in the Information against Doon do not charge an offense because the element of taking without consent of the owner or that the taking was committed by means of violence against or intimidation of persons, or by force upon things was absent.

As held in *Burgos v. Sandiganbayan*,^[17] two requirements must be met in order that the complaint or Information may be said to be sufficient. The first requirement refers to substance, the second to form. The substantial matter is the allegation of facts constituting the offense charged and the jurisdiction of the court, and the other matters are merely of form. The first is not waivable, however the second is, by failure to move to quash on the ground that it does not conform substantially to the prescribed form. Accordingly, Doon's failure to file a motion to quash the Information against him cannot amount to a waiver of his constitutional right to be informed as explicitly mandated by Section 9, Rule 117 of the Rules of Court, viz.:

SEC. 9. *Failure to move to quash or to allege any ground therefor.* - The failure of the accused to assert any ground of a motion to quash before