

**People of the Philippines vs Arnel Nocum, et. al.  
G.R. No.179041, April 1, 2013**

**FACTS:**

On or about September 12, 1998 in Muntinlupa City, REYNALDO MALLARI together with ARNEL NOCUM, REY JOHNNY RAMOS, CARLOS JUN POSADAS, PANDAO POLING PANGANDAG took and carried away one Toyota Tamaraw FX valued at more or less Three Hundred Thousand Pesos (P300,000.00) to the damage and [prejudice] of its owner, Lourdes Eleccion. In the course of the commission thereof, Erico Medel, the driver of the said vehicle, was killed. When the case was called for arraignment on November 10, 2000, only Mallari appeared as his co-accused remain at-large. He pleaded “not guilty” to the charge. Thereafter, trial ensued.

The prosecution’s lone witness was Chris Mahilac (Mahilac), a self-confessed member of “FX gang,” a syndicate notorious for carjacking Toyota FX vehicles. Mahilac testified that the “FX gang” was active in Metro Manila and Mindanao. Nocum led the syndicate’s criminal activities in Metro Manila while Pangandag, who was the head of the Land Transportation Office in Lanao Del Norte, led the Mindanao operations. Ramos, Posadas and Mallari were members of the gang.

On December 15, 2003, the RTC rendered its Decision finding Mallari guilty beyond reasonable doubt of carnapping with homicide. The trial court ruled that the testimony of Mahilac that Mallari participated in the theft of the FX taxi and the killing of its driver, Medel, cannot be negated by Mallari’s denial and uncorroborated alibi. It also found that the commission of the crime was a result of a planned operation with Mallari and all the accused doing their assigned tasks to ensure the consummation of their common criminal objective.

On January 31, 2007, the CA rendered its Decision affirming with modification the ruling of the trial court. The appellate court held that Mahilac’s positive identification of Mallari as a member of the “FX gang” and his participation in the theft of the FX taxi and killing of its driver, Medel, sufficiently established his guilt beyond reasonable doubt of the crime charged.

According to the CA, the fact that the prosecution presented Mahilac as its sole witness is of no moment. His positive and credible testimony is sufficient to convict Mallari, whose defense of denial and alibi cannot prevail over the straightforward testimony of the former.

**ISSUE:**

WON there is a lack of material evidence to justify the accused’s conviction.

**RULING:**

We find no reason to deviate from these courts’ evaluation as to Mallari’s culpability.

***The crime of carnapping with homicide, as well as the identity of Mallari as one of the perpetrators of the crime, is duly established by circumstantial evidence.***

The culpability of Mallari for the complex crime of carnapping with homicide is duly established by the confluence of circumstantial evidence. Mahilac testified that he was present when Mallari and his co-accused, all members of the “FX Gang,” gathered in Muntinlupa City to plan and conspire to steal vehicles and sell them to unscrupulous buyers in Mindanao. Immediately after said meeting, Mahilac saw Mallari hail the FX taxi driven by Medel, talk to him, board it together with two other conspirators, and head south towards the direction of Quezon province. A few days later, Mallari and his companions met Mahilac in Cagayan De Oro City on board the same FX taxi they rode in Muntinlupa City. All these show that Mallari’s original criminal design was to carnap the taxi and that he accomplished his purpose without the consent of its owner.

In fine, all the elements of the special complex crime of carnapping with homicide, as well as the identity of Mallari as one of the perpetrators of the crime, were all proved beyond reasonable doubt. The foregoing circumstances inevitably lead to the lone, fair and reasonable conclusion that Mallari participated in stealing the FX taxi driven by Medel and in killing him.

***Mallari’s defense of alibi deserves no credence.***

Mallari’s claim that he was helping his wife with household chores at the time the crime was committed does not deserve credence. This defense of alibi cannot prevail over the testimony of Mahilac which, taken in its entirety, leads to the reasonable conclusion that Mallari participated in the commission of the crime. Moreover, alibi is inherently weak, unreliable, and can be easily fabricated.<sup>65</sup> Hence, it must be supported by credible corroboration from disinterested witnesses, and if not, is fatal to the accused. Petition is dismissed.

**FULL TEXT**

**DECISION**

**DEL CASTILLO, J.:**

This is an appeal from the January 31, 2007 Decision of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00930, which dismissed the appeal of appellant Reynaldo Mallari (Mallari) and affirmed with modification the December 15, 2003 Decision of the Regional Trial Court (RTC), Branch 276, Muntinlupa City in Criminal Case No. 00-551 finding Mallari guilty beyond reasonable doubt of the crime of camapping with homicide.

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### *Factual Antecedents*

On May 25, 2000, an Information was filed charging Mallari and co-accused Arnel Nocum (Nocum), Rey Johnny Ramos (Ramos), Carlos Jun Posadas (Posadas) and Pandao Poling Pangandag alias Rex Pangandag (Pangandag) with violation of Republic Act (RA) No. 6539, otherwise known as the Anti-Carnapping Act of 1972, as amended by RA 7659.

The accusatory portion of the Information reads:

That on or about September 12, 1998 in Muntinlupa City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping one another, with intent to gain for themselves and without the consent of the owner, did then and there, willfully, unlawfully and feloniously take and carry away one motor vehicle more particularly described as follows:

Make/Type : - Toyota Tamaraw FX

Motor No. : - 7K-0157101

Chassis No. : - KF52-011609

Plate No. : - PXT- 143

Color : - Med. Grey

Net valued at more or less Three Hundred Thousand Pesos (P300,000.00) to the damage and [prejudice] of its owner, Lourdes Eleccion, in the aforesaid amount and in the course of the commission thereof, Erico Medel, the driver of the said vehicle, was killed.

CONTRARY TO LAW.

When the case was called for arraignment on November 10, 2000, only Mallari appeared as his co-accused remain at-large. He pleaded "not guilty" to the charge. Thereafter, trial ensued.

### ***The Prosecution's Version***

The prosecution's lone witness was Chris Mahilac (Mahilac), a self-confessed member of "FX gang," a syndicate notorious for carjacking Toyota FX vehicles. The *modus operandi* of the gang is to carnap Toyota FX vehicles, transport them to Mindanao, and have them registered and sold to prospective buyers there. Together with Mallari and several others, Mahilac was previously charged with carnapping before the RTC of Parañaque City but was later on discharged to be a state witness. Consequently, Mahilac was placed under the Witness Protection Program of the Department of Justice (DOJ).

Mahilac testified that the "FX gang" was active in Metro Manila and Mindanao. Nocum led the syndicate's criminal activities in Metro Manila while Pangandag, who was the head of the Land Transportation Office in Lanao Del Norte led the Mindanao operations.<sup>12</sup> Ramos, Posadas and Mallari were members of the gang.

On September 6, 1998, while in Calamba, Laguna, Mahilac received a call from Nocum informing him of Pangandag's arrival in Manila on September 12, 1998.<sup>15</sup> Subsequently, Mahilac, Nocum, Pangandag, Ramos, Posadas and Mallari met in Chowking fastfood restaurant in Poblacion, Muntinlupa City. During the said meeting, Pangandag demanded that their group deliver two Toyota FX vehicles to him in Lanao Del Norte by Monday or Tuesday of the following week. Nocum agreed and gave Mallari P20,000.00 for operating expenses. Mahilac received P3,500.00 and was instructed to meet the group in Cagayan de Oro City. As the group was departing from the restaurant, a Toyota FX taxi with plate number PXT-143 passed-by. Mallari flagged it down, talked to the driver, and boarded the same together with Ramos and Posadas. They proceeded south.

On September 14, 1998, Mahilac arrived in Cagayan de Oro City and proceeded to McDonald's Restaurant on Limketkai Street. Mallari, Ramos and Posadas arrived at around 4:14 p.m. on board the same Toyota FX taxi that Mallari flagged down in Muntinlupa City. They agreed to proceed to Iligan City en route to Tubod, Lanao del Norte, where said vehicle was to be delivered to Pangandag. Mallari told Mahilac not to board the said vehicle because its back portion reeked of the dried blood of the FX taxi driver, Erico Medel (Medel), who was stabbed to death while resisting the group. Mallari also informed Mahilac that Medel's corpse was dumped somewhere in Atimonan, Quezon. Mahilac thus took a taxi to Iligan City.

Upon their arrival in Iligan City, Pangandag instructed them to take the vehicle to his residence in Tubod, Lanao del Norte.<sup>28</sup> They arrived at Pangandag's residence and were given P250,000.00 as consideration for the vehicle. Mahilac received P20,000.00 as his share. The gang continued to engage in this nefarious activity until Mahilac's arrest by law enforcement officers.

In the meantime, on September 27, 1999, a cadaver in advance state of decomposition was found along Zigzag Road, *Barangay* Malinao Ilaya, Atimonan, Quezon. It was interred in the municipal cemetery of Atimonan, Quezon but was later on exhumed for identification. Based on the four extracted teeth and a piece of white "FILA" shoe, the mother and the wife of the victim positively identified the cadaver to be that of Medel.

### ***Appellant's Version***

Mallari denied any knowledge of the carnapping incident. He also denied knowing Nocum, Ramos and Posadas. He testified that he was with his wife and two children in their home in Tunasan, Muntinlupa City at the time the alleged carnapping occurred. He claimed that on June 25, 1999, four men in civilian clothes came to his house and forced him to board a van where he was blindfolded. He was then taken to Camp Crame, Quezon City.

According to Mallari, Mahilac was his employer. He was unaware of Mahilac's reason for implicating him in the case. Mallari further testified that while in detention, he was made to sign a document which he cannot remember. He was taken to the DOJ and told that his case

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would be studied if he signs a document the contents of which were duly explained to him. Should he not sign the same, he will be charged immediately with carnapping with homicide. He therefore decided to sign the documents without the assistance of a lawyer, but continued to be detained in Camp Crame, Quezon City.

### ***Ruling of the Regional Trial Court***

On December 15, 2003, the RTC rendered its Decision finding Mallari guilty beyond reasonable doubt of carnapping with homicide. The trial court ruled that the testimony of Mahilac that Mallari participated in the theft of the FX taxi and the killing of its driver, Medel, cannot be negated by Mallari's denial and uncorroborated alibi. It also found that the commission of the crime was a result of a planned operation with Mallari and all the accused doing their assigned tasks to ensure the consummation of their common criminal objective.

The trial court further held that Mahilac would not have known about the killing of Medel if he had not been informed by Mallari. He had no reason to falsely accuse Mallari and even implicated himself by: (1) admitting his presence during the planned theft of the FX taxi; (2) admitting his presence in Cagayan De Oro City together with Mallari; (3) directing Mallari and his co-accused to proceed with him to Pangandag in Lanao Del Norte; and (4) receiving the sum of P20,000.00 as his share in the criminal operation. The dispositive portion of the Decision reads:

PREMISES CONSIDERED, Accused Reynaldo Mallari is found guilty beyond reasonable doubt for the crime of CARNAPPING WITH HOMICIDE and is hereby sentenced to die by lethal injection. The Jail Warden of Muntinlupa City is hereby directed to bring Reynaldo Mallari to the New Bilibid Prison where he may serve his sentence. It Is SO ORDERED.

### ***Ruling of the Court of Appeals***

On January 31, 2007, the CA rendered its Decision affirming with modification the ruling of the trial court. The appellate court held that Mahilac's positive identification of Mallari as a member of the "FX gang" and his participation in the theft of the FX taxi and killing of its driver, Medel, sufficiently established his guilt beyond reasonable doubt of the crime charged. The discovery of the remains of Medel in the vicinity mentioned by Mallari to Mahilac also gave credence to the latter's testimony.

The CA further held that the trial court's determination on the credibility of Mahilac must be given great respect and, as a rule, will not be reversed on appeal in the absence of cogent reason. The CA also found no ill-motive on the part of Mahilac to testify falsely against Mallari.

According to the CA, the fact that the prosecution presented Mahilac as its sole witness is of no moment. His positive and credible testimony is sufficient to convict Mallari, whose defense of denial and alibi cannot prevail over the straightforward testimony of the former. However, the CA modified the penalty from death to *reclusion perpetua* pursuant to RA 934650 which

prohibited the imposition of the death penalty. The dispositive portion of the CA Decision reads:

**WHEREFORE**, premises considered, the appeal is hereby **DISMISSED**. The assailed December 15, 2003 Decision of the Regional Trial Court of Muntinlupa City, Branch 276, in Criminal Case No. 00-551, is hereby **AFFIRMED** with **MODIFICATION** in that the death penalty imposed is reduced to *reclusion perpetua*, pursuant to Republic Act No. 9346, which did away with the imposition of death penalty. **SO ORDERED**.

Mallari filed a Notice of Appeal. On October 15, 2007,<sup>54</sup> we accepted the appeal and notified the parties to file their supplemental briefs. However, Mallari opted not to file a supplemental brief in the absence of new issues to be raised. For its part, the Office of the Solicitor General manifested that it is likewise adopting the Appellee's Brief it filed with the CA as its Supplemental Brief.

### ***The Assignment of Errors***

The errors assigned in the Appellant's Brief are as follows:

- I. THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT HAS BEEN PROVEN BEYOND REASONABLE DOUBT DESPITE THE LACK OF MATERIAL EVIDENCE TO JUSTIFY HIS CONVICTION; and
- II. GRANTING WITHOUT ADMITTING THAT THE ACCUSED-APPELLANT COMMITTED THE CRIME CHARGED, THE COURT A QUO GRAVELY ERRED IN IMPOSING THE SUPREME PENALTY OF DEATH DESPITE THE LACK OF EVIDENCE OTHER THAN THE MERE ALLEGATION BY THE LONE PROSECUTION WITNESS CHRIS MAHILAC THAT THE ACCUSED-APPELLANT PARTICIPATED IN THE KILLING OF ERIC MEDEL.

Mallari assails the credibility of Mahilac. He contends that as a state witness under the Witness Protection Program of the DOJ, Mahilac would implicate just any person as his cohort to justify his inclusion in the program. Mallari also argues that the evidence of the prosecution is not sufficient to prove his guilt beyond reasonable doubt.

On the other hand, the prosecution maintains that the circumstantial evidence was sufficient to convict Mallari. Finally, the prosecution sought civil indemnity and moral damages of P50,000.00 each.

### **Our Ruling**

The appeal is unmeritorious.

***Carnapping defined; Burden of the prosecution in a case for Carnapping with Homicide.***

Section 2 of RA 6539 defines carnapping as “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 by using force upon things.” The crime of carnapping with homicide is punishable under Section 1461 of the said law, as amended by Section 20 of RA 7659. To prove the special complex crime of carnapping with homicide, there must be proof not only of the essential elements of carnapping, but also that it was the original criminal design of the culprit and the killing was perpetrated “in the course of the commission of the carnapping or on the occasion thereof.” Thus, the prosecution in this case has the burden of proving that: (1) Mallari took the Toyota FX taxi; (2) his original criminal design was carnapping; (3) he killed the driver, Medel; and (4) the killing was perpetrated “in the course of the commission of the carnapping or on the occasion thereof.”

The trial and appellate courts held that the prosecution was able to discharge its burden of proving that Mallari was guilty beyond reasonable doubt of carnapping with homicide. These courts ruled that Mallari stole the FX taxi driven by Medel after he agreed to illegally supply his co-accused with this type of vehicle. The trial and appellate courts found that Mallari killed Medel in the course of the commission of the carnapping. We find no reason to deviate from these courts’ evaluation as to Mallari’s culpability.

***The crime of carnapping with homicide, as well as the identity of Mallari as one of the perpetrators of the crime, is duly established by circumstantial evidence.***

The culpability of Mallari for the complex crime of carnapping with homicide is duly established by the confluence of circumstantial evidence. Mahilac testified that he was present when Mallari and his co-accused, all members of the “FX Gang,” gathered in Muntinlupa City to plan and conspire to steal vehicles and sell them to unscrupulous buyers in Mindanao. Immediately after said meeting, Mahilac saw Mallari hail the FX taxi driven by Medel, talk to him, board it together with two other conspirators, and head south towards the direction of Quezon province. A few days later, Mallari and his companions met Mahilac in Cagayan De Oro City on board the same FX taxi they rode in Muntinlupa City. All these show that Mallari’s original criminal design was to carnap the taxi and that he accomplished his purpose without the consent of its owner. In addition, when the vehicle was brought to Cagayan de Oro City, its driver, Medel, was no longer with them. The vehicle also reeked of dried human blood. Upon inquiry by Mahilac, Mallari admitted that the dried blood belonged to Medel who had to be killed for resisting the group. Mallari also told him that Medel’s body was dumped along Zigzag Road in Atimonan, Quezon. Mallari and his co-accused received P250,000.00 upon delivery of the FX taxi to its final destination. These prove that Medel was killed in the course of the commission of the carnapping.

The identity of Medel as the driver of the taxi was established by his mother and wife who both stated that he was the driver of the taxi on the day it was stolen by Mallari and his co-conspirators. The two later on identified his corpse when it was discovered in the same vicinity which Mallari told Mahilac to be the place where they dumped the dead body of Medel.

In fine, all the elements of the special complex crime of carnapping with homicide, as well as the identity of Mallari as one of the perpetrators of the crime, were all proved beyond reasonable doubt. The foregoing circumstances inevitably lead to the lone, fair and reasonable conclusion that Mallari participated in stealing the FX taxi driven by Medel and in killing him.

***Mallari’s defense of alibi deserves no credence.***

Mallari’s claim that he was helping his wife with household chores at the time the crime was committed does not deserve credence. This defense of alibi cannot prevail over the testimony of Mahilac which, taken in its entirety, leads to the reasonable conclusion that Mallari participated in the commission of the crime. Moreover, alibi is inherently weak, unreliable, and can be easily fabricated. Hence, it must be supported by credible corroboration from disinterested witnesses, and if not, is fatal to the accused.<sup>66</sup> Here, Mallari could have presented evidence to support his alibi, but oddly, he did not. Thus, such a defense fails.

***The Penalty***

Under the last clause of Section 14 of the Anti-Carnapping Act of 1972 as amended by Section 20 of RA 7659, the penalty of *reclusion perpetua* to death shall be imposed when the owner or driver of the vehicle is killed in the course of the commission of the carnapping or on the occasion thereof.<sup>67</sup> In this case, the trial court considered as aggravating circumstance the commission of the offense by a member of an organized or syndicated crime group under Article 62 of the RPC as amended by RA 7659<sup>68</sup> and, hence, imposed upon Mallari the death penalty.

However, under Rule 110, Section 8 of the Rules of Court, all aggravating and qualifying circumstances must be alleged in the Information. This new rule took effect on December 1, 2000, but applies retroactively to pending cases since it is favorable to the appellant. Here, there is no allegation in the Information that Mallari was a member of a syndicate or that he and his companions “had formed part of a group organized for the general purpose of committing crimes for gain, which is the essence of a syndicated or organized crime group.” Hence, the same cannot be appreciated as an aggravating circumstance against Mallari. Thus, in consonance with Article 63(2) of the RPC, which provides that in the absence of any aggravating circumstance in the commission of the offense, the lesser penalty shall be applied. Mallari must, therefore, suffer the lesser penalty of *reclusion perpetua*. Mallari is also not eligible for parole pursuant to Section 372 of RA 9346.

***The Damages***

For the killing of Medel, we award to his heirs the amount of P50,000.00 as civil indemnity pursuant to prevailing jurisprudence. Said heirs are also entitled to an award of moral damages in the sum of P50,000.00 as in all cases of murder and homicide, without need of allegation and proof other than the death of the victim. We cannot, however, award actual damages due to the absence of receipts to substantiate the expenses incurred for Medel's funeral. The rule is that only duly receipted expenses can be the basis of actual damages. "Nonetheless under Article 2224 of the Civil Code, temperate damages may be recovered as it cannot be denied that the heirs of the victim suffered pecuniary loss although the exact amount was not proved." We therefore award the sum of P25,000.00 as temperate damages in lieu of actual damages to the heirs of Medel.. "In addition, and in conformity with current policy, we also impose on all the monetary awards for damages an interest at the legal rate of 6% from date of finality of this Decision until fully paid."

**WHEREFORE**, the appeal is **DISMISSED**. The Decision of the Court of Appeals in CA-G.R. CR-HC No. 00930 finding appellant Reynaldo Mallari guilty beyond reasonable doubt of the special complex crime of carjacking with homicide is **AFFIRMED** with the following modifications: ( 1) appellant Reynaldo Mallari is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole; and, (2) appellant Reynaldo Mallari is ordered to pay the heirs of Erico Medel the amounts of P50,000.00 as civil indemnity, P50,000.00 as moral damages, P25,000.00 as temperate damages in lieu of actual damages, and interest on all these damages assessed at the legal rate of 6% from date of formality of this Decision until fully paid.

**SO ORDERED.**