Republic of the Philippines
SUPREME COURT
Manila

THIRD DIVISION

G. R. No. 148233 June 8, 2004

PEOPLE OF THE PHILIPPINES, appellee,
vs.
LUISITO D. BUSTINERA, appellant.

D E C I S I O N

CARPIO MORALES, *J.:*

From the decision[1] of the Regional Trial Court, Branch 217, Quezon City finding appellant Luisito D. Bustinera guilty beyond reasonable doubt of qualified theft[2] for the unlawful taking of a Daewoo Racer GTE Taxi and sentencing him to suffer the penalty of reclusion perpetua, he comes to this Court on appeal.

In an information[3] dated June 17, 1997, appellant was indicted as follows:

> The undersigned accuses LUISITO D. BUSTINERA of the crime of Qualified Theft, committed as follows:
>
> > That on or about the 25th day of December up to the 9th day of January, 1997, in Quezon City, Philippines, the said accused being then employed as one [of] the taxi Drivers of Elias S. Cipriano, an Operator of several taxi cabs with business address at corner 44 Commonwealth Avenue, iliman (*sic*), this City, and as such has free access to the taxi he being driven, did then and there willfully, unlawfully and feloniously with intent to gain, with grave abuse of confidence reposed upon him by his employer and without the knowledge and consent of the owner thereof, take, steal and carry away a Daewoo Racer GTE Taxi with Plate No. PWH-266 worth ₱303,000.00, Philippine Currency, belonging to Elias S. Cipriano, to the damage and prejudice of the said offended party in the amount of ₱303,000.00.
>
> CONTRARY TO LAW.

Upon arraignment[4] on March 27, 2000, appellant, assisted by counsel de oficio, entered a plea of not guilty. Thereafter, trial on the merits ensued.

From the evidence for the prosecution, the following version is established.

Sometime in 1996, Edwin Cipriano (Cipriano), who manages ESC Transport, the taxicab business of his father, hired appellant as a taxi driver and assigned him to drive a Daewoo Racer with plate number PWH-266. It was agreed that appellant would drive the taxi from 6:00 a.m. to 11:00 p.m, after which he would return it to ESC Transport's garage and remit the boundary fee in the amount of ₱780.00 per day.[5]

On December 25, 1996, appellant admittedly reported for work and drove the taxi, but he did not return it on the same day as he was supposed to.

> Q: Now, Mr. Witness, on December 25, 1996, did you report for work?
>
> A: Yes, sir.
>
> Q: Now, since you reported for work, what are your duties and responsibilities as taxi driver of the taxi company?
>
> A: That we have to bring back the taxi at night with the boundary.
>
> Q: How much is your boundary?
>
> A: ₱780.00, sir.
>
> Q: **On December 25, 1996, did you bring out any taxi?**
>
> A: **Yes, sir.**

Q: Now, when ever (*sic*) you bring out a taxi, what procedure [do] you follow with that company?

A: That we have to bring back the taxi to the company and before we leave we also sign something, sir.

Q: What is that something you mentioned?

A: On the record book and on the daily trip ticket, sir.

Q: You said that you have to return your taxi at the end of the day, what is then the procedure reflect (*sic*) by your company when you return a taxi?

A: To remit the boundary and to sign the record book and daily trip ticket.

Q: So, when you return the taxi, you sign the record book?

A: Yes, sir.

Q: You mentioned that on December 25, 1996, you brought out a taxi?

A: Yes, sir.

Q: What kind of taxi?

A: Daewoo taxi, sir.

Q: Now did you return the taxi on December 25, 1996?

A: I was not able to bring back the taxi because I was short of my boundary, sir.[6]

The following day, December 26, 1996, Cipriano went to appellant's house to ascertain why the taxi was not returned.[7] Arriving at appellant's house, he did not find the taxi there, appellant's wife telling him that her husband had not yet arrived.[8] Leaving nothing to chance, Cipriano went to the Commonwealth Avenue police station and reported that his taxi was missing.[9]

On January 9, 1997, appellant's wife went to the garage of ESC Transport and revealed that the taxi had been abandoned in Regalado Street, Lagro, Quezon City.[10] Cipriano lost no time in repairing to Regalado Street where he recovered the taxi.[11]

Upon the other hand, while appellant does not deny that he did not return the taxi on December 25, 1996 as he was short of the boundary fee, he claims that he did not abandon the taxi but actually returned it on January 5, 1997;[12] and that on December 27, 1996, he gave the amount of ₱2,000.00[13] to his wife whom he instructed to remit the same to Cipriano as payment of the boundary fee[14] and to tell the latter that he could not return the taxi as he still had a balance thereof.[15]

Appellant, however, admits that his wife informed him that when she went to the garage to remit the boundary fee on the very same day (December 27, 1996),[16] Cipriano was already demanding the return of the taxi.[17]

Appellant maintains though that he returned the taxi on January 5, 1997 and signed the record book,[18] which was company procedure, to show that he indeed returned it and gave his employer ₱2,500.00[19] as partial payment for the boundary fee covering the period from December 25, 1996 to January 5, 1997.

Continuing, appellant claims that as he still had a balance in the boundary fee, he left his driver's license with Cipriano;[20] that as he could not drive, which was the only work he had ever known, without his driver's license, and with the obligation to pay the balance of the boundary fee still lingering, his wife started working on February 18, 1997 as a stay-in maid for Cipriano, with a monthly salary of ₱1,300.00,[21] until March 26, 1997 when Cipriano told her that she had worked off the balance of his obligation;[22] and that with his obligation extinguished, his driver's license was returned to him.[23]

Brushing aside appellant's claim that he returned the taxi on January 5, 1997 and that he had in fact paid the total amount of ₱4,500.00, the trial court found him guilty beyond reasonable doubt of qualified theft by Decision of May 17, 2001, the dispositive portion of which is quoted verbatim:

> WHEREFORE, judgment is hereby rendered finding accused guilty beyond reasonable doubt as charged, and he is accordingly sentenced to suffer the penalty of ***Reclusion Perpetua*** and to pay the costs.
>
> In the service of his sentence, accused is ordered credited with four-fifths ($^4/_5$) of the preventive imprisonment undergone by him there being no showing that he agreed in writing to abide by the same disciplinary rules imposed upon convicted prisoners.

SO ORDERED.[24] (Emphasis and italics in the original)

Hence, the present appeal anchored on the following assigned errors:

I.

THE COURT *A QUO* GRAVELY ERRED IN CONCLUDING WITHOUT CONCRETE BASIS THAT THE ACCUSED-APPELLANT HAS INTENT TO GAIN WHEN HE FAILED TO RETURN THE TAXI TO ITS GARAGE.

II.

THE COURT *A QUO* GRAVELY ERRED IN FINDING ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF QUALIFIED THEFT.[25]

It is settled that an appeal in a criminal proceeding throws the whole case open for review, and it becomes the duty of the appellate court to correct such errors as may be found in the judgment even if they have not been specifically assigned.[26]

Appellant was convicted of qualified theft under Article 310 of the Revised Penal Code, as amended for the unlawful taking of a motor vehicle. However, Article 310 has been modified, with respect to certain vehicles,[27] by Republic Act No. 6539, as amended, otherwise known as "AN ACT PREVENTING AND PENALIZING CARNAPPING."

When statutes are in *pari materia*[28] or when they relate to the same person or thing, or to the same class of persons or things, or cover the same specific or particular subject matter,[29] or have the same purpose or object,[30] the rule dictates that they should be construed together – *interpretare et concordare leges legibus, est optimus interpretandi modus*.[31] Every statute must be so construed and harmonized with other statutes as to form a uniform system of jurisprudence,[32] as this Court explained in *City of Naga v. Agna*,[33] *viz*:

> . . . When statutes are in *pari materia*, the rule of statutory construction dictates that they should be construed together. This is because enactments of the same legislature on the same subject matter are supposed to form part of one uniform system; that later statutes are supplementary or complimentary to the earlier enactments and in the passage of its acts the legislature is supposed to have in mind the existing legislation on the same subject and to have enacted its new act with reference thereto. Having thus in mind the previous statutes relating to the same subject matter, whenever the legislature enacts a new law, it is deemed to have enacted the new provision in accordance with the legislative policy embodied in those prior statutes unless there is an express repeal of the old and they all should be construed together. **In construing them the old statutes relating to the same subject matter should be compared with the new provisions and if possible by reasonable construction, both should be so construed that effect may be given to every provision of each. However, when the new provision and the old relating to the same subject cannot be reconciled the former shall prevail as it is the latter expression of the legislative will** . . .[34] (Emphasis and underscoring supplied; citations omitted)

The elements of the crime of theft as provided for in Article 308 of the Revised Penal Code are: (1) that there be taking of personal property; (2) that said property belongs to another; (3) that the taking be done with intent to gain; (4) that the taking be done without the consent of the owner; and (5) that the taking be accomplished without the use of violence against or intimidation of persons or force upon things.[35]

Theft is qualified when any of the following circumstances is present: (1) the theft is committed by a domestic servant; (2) the theft is committed with grave abuse of confidence; (3) the property stolen is either a motor vehicle, mail matter or large cattle; (4) the property stolen consists of coconuts taken from the premises of a plantation; (5) the property stolen is fish taken from a fishpond or fishery; and (6) the property was taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance.[36]

On the other hand, Section 2 of Republic Act No. 6539, as amended 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 elements of carnapping are thus: (1) the taking of a motor vehicle which belongs to another; (2) the taking is without the consent of the owner or by means of violence against or intimidation of persons or by using force upon things; and (3) the taking is done with intent to gain.[37]

Carnapping is essentially the robbery or theft of a motorized vehicle,[38] the concept of unlawful taking in theft, robbery and carnapping being the same.[39]

In the 2000 case of *People v. Tan*[40] where the accused took a Mitsubishi Gallant and in the later case of *People v. Lobitania*[41] which involved the taking of a Yamaha motorized tricycle, this Court held that the unlawful taking of motor vehicles is now covered by the anti-carnapping law and not by the provisions on qualified theft or robbery.

> **There is no arguing that the anti-carnapping law is a special law, different from the crime of robbery**

> **and theft included in the Revised Penal Code.** It particularly addresses 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. But a careful comparison of this special law with the crimes of robbery and theft readily reveals their common features and characteristics, to wit: unlawful taking, intent to gain, and that personal property belonging to another is taken without the latter's consent. **However, the anti-carnapping law particularly deals with the theft and robbery of motor vehicles.** Hence a motor vehicle is said to have been carnapped when it has been taken, with intent to gain, without the owner's consent, whether the taking was done with or without the use of force upon things. **Without the anti-carnapping law, such unlawful taking of a motor vehicle would fall within the purview of either theft or robbery which was certainly the case before the enactment of said statute.**[42] (Emphasis and underscoring supplied; citations omitted.)

It is to be noted, however, that while the anti-carnapping law penalizes the unlawful taking of motor vehicles, it excepts from its coverage certain vehicles such as roadrollers, trolleys, street-sweepers, sprinklers, lawn mowers, amphibian trucks and cranes if not used on public highways, vehicles which run only on rails and tracks, and tractors, trailers and tractor engines of all kinds and used exclusively for agricultural purposes. By implication, the theft or robbery of the foregoing vehicles would be covered by Article 310 of the Revised Penal Code, as amended and the provisions on robbery, respectively.[43]

From the foregoing, since appellant is being accused of the unlawful taking of a Daewoo sedan, it is the anti-carnapping law and not the provisions of qualified theft which would apply as the said motor vehicle does not fall within the exceptions mentioned in the anti-carnapping law.

The designation in the information of the offense committed by appellant as one for qualified theft notwithstanding, appellant may still be convicted of the crime of carnapping. For while it is necessary that the statutory designation be stated in the information, a mistake in the caption of an indictment in designating the correct name of the offense is not a fatal defect as it is not the designation that is controlling but the facts alleged in the information which determines the real nature of the crime.[44]

In the case at bar, the information alleges that appellant, with intent to gain, took the taxi owned by Cipriano without the latter's consent.[45] Thus, the indictment alleges every element of the crime of carnapping,[46] and the prosecution proved the same.

Appellant's appeal is thus bereft of merit.

That appellant brought out the taxi on December 25, 1996 and did not return it on the same day as he was supposed to is admitted.[47]

Unlawful taking, or *apoderamiento*, is the taking of the motor vehicle without the consent of the owner, or by means of violence against or intimidation of persons, or by using force upon things; it is deemed complete from the moment the offender gains possession of the thing, even if he has no opportunity to dispose of the same.[48]

While the nature of appellant's possession of the taxi was initially lawful as he was hired as a taxi driver and was entrusted possession thereof, his act of not returning it to its owner, which is contrary to company practice and against the owner's consent transformed the character of the possession into an unlawful one.[49] Appellant himself admits that he was aware that his possession of the taxi was no longer with Cipriano's consent as the latter was already demanding its return.

> Q: Also you said that during your direct testimony that when you gave your wife the ₱2,500.00, you also told her to go to the company to ask the company for permission for you to use the taxi since you were then still short of the boundary. Alright, after telling that to your wife and after seeing your wife between December 27, 1996 and January 5, 1997, did you ask your wife what was the answer of the company to that request of yours?
>
> A: He did not allow me, sir, and he even [got] angry with me.
>
> Q: So, when did you learn that the company was not agreeable to your making use of the taxicab without first returning it to the company?
>
> A: Before the new year, sir.
>
> Q: When you said new year, you were referring to January 1, 1997?
>
> A: Either December 29 or December 30, 1996, sir.
>
> Q: So, are you telling us that even if you knew already that the company was not agreeable to your making use of the taxicab continually (*sic*) without returning the same to the company, you still went ahead and make (*sic*) use of it and returned it only on January 5, 1997.
>
> A: Yes, sir.[50] (Emphasis and underscoring supplied)

Appellant assails the trial court's conclusion that there was intent to gain with the mere taking of the taxi without the owner's consent. He maintains that his reason for failing to return the taxi was his inability to remit the boundary fee, his earnings that day not having permitted it; and that there was no intent to gain since the taking of the taxi was not permanent in character, he having returned it.

Appellant's position does not persuade.

Intent to gain or *animus lucrandi* is an internal act, presumed from the unlawful taking of the motor vehicle.[51] Actual gain is irrelevant as the important consideration is the intent to gain.[52] The term "gain" is not merely limited to pecuniary benefit but also includes the benefit which in any other sense may be derived or expected from the act which is performed.[53] Thus, the mere use of the thing which was taken without the owner's consent constitutes gain.[54]

In *Villacorta v. Insurance Commission*[55] which was reiterated in *Association of Baptists for World Evangelism, Inc. v. Fieldmen's Insurance Co, Inc*.,[56] Justice Claudio Teehankee (later Chief Justice), interpreting the theft clause of an insurance policy, explained that, when one takes the motor vehicle of another without the latter's consent **even if the motor vehicle is later returned**, there is theft, there being intent to gain as the use of the thing unlawfully taken constitutes gain:

> Assuming, despite the totally inadequate evidence, **that the taking was "temporary"** and for a "joy ride", the Court sustains as the better view[57] that which holds that when a person, either with the object of going to a certain place, or learning how to drive, or enjoying a free ride, takes possession of a vehicle belonging to another, without the consent of its owner, **he is guilty of theft** because by taking possession of the personal property belonging to another and using it, **his intent to gain is evident since he derives therefrom utility, satisfaction, enjoyment and pleasure. Justice Ramon C. Aquino cites in his work Groizard who holds that the use of a thing constitutes gain and Cuello Calon who calls it "hurt de uso.**"[58] (Emphasis and underscoring supplied; citation omitted)

Besides, the trial court did not believe appellant's claim that he in fact returned the taxi on January 5, 1997.

The Court can not (*sic*) believe accused's assertion that he returned the subject vehicle on January 5, 1997 to the garage and that he had in fact paid the amount of ₱4,500.00 in partial payment of his unremitted "boundary" for ten (10) days. He could not even be certain of the exact amount he allegedly paid the taxicab owner. On direct-examination, he claimed that he paid Edwin Cipriano on December 27, 1996 the amount of ₱2,000.00 and it was his wife who handed said amount to Cipriano, yet on cross-examination, he claimed that he gave ₱2,500.00 to his wife on that date for payment to the taxicab owner.[59]

The rule is well-entrenched that findings of fact of the trial court are accorded the highest degree of respect and will not be disturbed on appeal absent any clear showing that the trial court had overlooked, misunderstood or misapplied some facts or circumstances of weight and significance which, if considered, would alter the result of the case.[60] The reason for the rule being that trial courts have the distinct advantage of having heard the witnesses themselves and observed their deportment and manner of testifying or their conduct and behavior during the trial.[61]

Other than his bare and self-serving allegations, appellant has not shown any scintilla of evidence that he indeed returned the taxi on January 5, 1997.

> Q: You said that you returned the taxi on January 5, 1997, correct?
>
> A: Yes, sir.
>
> Q: Now, Mr. Witness, did you sign any record when you returned the taxi?
>
> A: Yes, sir.
>
> Q: Do you have any copy of that record?
>
> A: They were the one (*sic*) in-charge of the record book and I even voluntarily left my driver's license with them, sir.
>
> Q: You said that you did not return the taxi because you were short of (*sic*) boundary, did you turn over any money to your employer when you returned the taxi?
>
> A: I gave them [an] additional ₱2,500.00, sir.
>
> Q: At the time when you returned the taxi, how much was your short indebtedness (*sic*) or short boundary (*sic*)?
>
> A: I was short for ten (10) days, and I was able to pay ₱4,500.00.
>
> Q: **Do you have any receipt to show receipt of payment for this ₱4,500.00?**

A: **They were the ones having the record of my payment, and our agreement was that I have to pay the balance in installment.**[62] (Emphasis supplied)

While appellant maintains that he signed on January 5, 1997 the record book indicating that he returned the taxi on the said date and paid Cipriano the amount of ₱4,500.00 as partial payment for the boundary fee, appellant did not produce the documentary evidence alluded to, to substantiate his claim. That such alleged record book is in the possession of Cipriano did not prevent him from producing it as appellant has the right to have compulsory process issued to secure the production of evidence on his behalf.[63]

The trial court having convicted appellant of qualified theft instead of carnapping, it erred in the imposition of the penalty. While the information alleges that the crime was attended with grave abuse of confidence, the same cannot be appreciated as the suppletory effect of the Revised Penal Code to special laws, as provided in Article 10 of said Code, cannot be invoked when there is a legal impossibility of application, either by express provision or by necessary implication.[64]

Moreover, when the penalties under the special law are different from and are without reference or relation to those under the Revised Penal Code, there can be no suppletory effect of the rules, for the application of penalties under the said Code or by other relevant statutory provisions are based on or applicable only to said rules for felonies under the Code.[65]

Thus, in *People v. Panida*[66] which involved the crime of carnapping and the penalty imposed was the indeterminate sentence of 14 years and 8 months, as minimum, to 17 years and 4 months, as maximum, this Court did not apply the provisions of the Revised Penal Code suppletorily as the anti-carnapping law provides for its own penalties which are distinct and without reference to the said Code.

> The charge being simple carnapping, the imposable penalty is imprisonment for not less than 14 years and 8 months and not more than 17 years and 4 months. **There can be no suppletory effect of the rules for the application of penalties under the Revised Penal Code or by other relevant statutory provisions based on, or applicable only to, the rules for felonies under the Code. While it is true that the penalty of 14 years and 8 months to 17 years and 4 months is virtually equivalent to the duration of the medium period of *reclusion temporal*, such technical term under the Revised Penal Code is not given to that penalty for carnapping. Besides, the other penalties for carnapping attended by the qualifying circumstances stated in the law do not correspond to those in the Code.** The rules on penalties in the Code, therefore, cannot suppletorily apply to Republic Act No. 6539 and special laws of the same formulation. For this reason, we hold that the proper penalty to be imposed on each of accused-appellants is an indeterminate sentence of 14 years and 8 months, as minimum, to 17 years and 4 months, as maximum.[67] (Emphasis and underscoring supplied; citations omitted)

Appellant being then culpable for carnapping under the first clause of Section 14 of Republic Act No. 6539, as amended, the imposable penalty is imprisonment for not less than 14 years and 8 months, not more than 17 years and 4 months,[68] for, as discussed above, the provisions of the Revised Penal Code cannot be applied suppletorily and, therefore, the alleged aggravating circumstance of grave abuse of confidence cannot be appreciated.

Applying Section 1 of Act No. 4103,[69] as amended, otherwise known as the Indeterminate Sentence Law, if the offense is punishable by a special law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum term shall not be less than the minimum prescribed by the same – the penalty imposed being a range.[70]

WHEREFORE, the judgment of the Regional Trial Court of Quezon City, Branch 217, in Crim Case No. Q-97-71956, finding appellant **Luisito D.** Bustinera guilty beyond reasonable doubt of qualified theft, is **REVERSED** and **SET ASIDE**, and another judgment entered in its place, finding him guilty beyond reasonable doubt of the crime of carnapping under Republic Act No. 6539, as amended and sentencing him to an indeterminate penalty of Fourteen (14) Years and Eight (8) Months, as minimum, to Seventeen (17) Years and Four (4) Months, as maximum.

SO ORDERED.

Vitug, Sandoval-Gutierrez, and *Corona, JJ.,* concur.

Footnotes

> [1] Records at 90-94.
>
> [2] ART. 310. *Qualified theft*. – The crime of theft shall be punished by the penalties next higher by two degrees than those respectively specified in the next preceding article, if committed by a domestic servant, or with grave abuse of confidence, or if the property stolen is **motor vehicle**, mail matter or large cattle or consists of coconuts taken from the premises of a plantation, fish taken from a fishpond or fishery or if property is taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or

civil disturbance. (Emphasis and underscoring supplied)

[3] Records at 1-2.

[4] Id. at 36.

[5] Transcript of Stenographic Notes (TSN), July 10, 2000 at 8.

[6] TSN, October 9, 2000 at 5-8.

[7] TSN, July 10, 2000 at 14.

[8] *Id*. at 9.

[9] *Ibid.*

[10] *Id*. at 9-10.

[11] *Id.* at 10.

[12] TSN, October 9, 2000 at 8.

[13] *Ibid*. On cross-examination however, appellant later claimed that the amount he gave was ₱2,500.00.

[14] TSN, October 9, 2000 at 18.

[15] *Id*. at 8.

[16] *Id*. at 21.

[17] *Id*. at 20.

[18] *Id*. at 9.

[19] *Ibid.*

[20] *Id*. at 26.

[21] *Id*. at 29.

[22] *Id*. at 30.

[23] *Ibid.*

[24] Records at 93.

[25] *Rollo* at 40.

[26] *People v. Salvador*, 398 SCRA 394, 412 (2003); *People v. Napalit*, 396 SCRA 687, 699 (2003); *People v. Galigao*, 395 SCRA 195, 204 (2003).

[27] Section 2 of Republic Act No. 6539 as amended defines motor vehicle as follows:

"Motor vehicle" is any vehicle propelled by any power other than muscular power using the public highways, **but excepting road rollers, trolley cars, street-sweepers, sprinklers, lawn mowers, bulldozers, graders, fork-lifts, amphibian trucks, and cranes if not used on public highways, vehicles, which run only on rails or tracts, and tractors, trailers and reaction engines of all kinds used exclusively for agricultural purposes.** Trailers having any number of wheels, when propelled or intended to be propelled by attachment to a motor vehicle, shall be classified as separate motor vehicle with no power rating. (Emphasis and underscoring supplied)

[28] Statutes which are in *pari materia* may be independent or amendatory in form; they may be complete enactments dealing with a single, limited subject matter or sections of a code or revision; or they may be a combination of these. [2B N. Singer, Sutherland Statutory Construction 140 (5th ed., 1992)]

[29] *Natividad v. Felix*, 229 SCRA 680, 687 (1994).

[30] *Philippine Global Communications, Inc. v. Relova*, 145 SCRA 385, 394 (1986); *City of Naga v. Agna*, 71 SCRA 176, 184 (1976).

[31] Black's Law Dictionary (6th ed., 1990) translates the maxim as "to interpret, and [in such a way as] to harmonize laws with laws, is the best mode of interpretation."

[32] *Loyola Grand Villas Homeowners (South) Association, Inc. v. Court of Appeals*, 276 SCRA 681, 696 (1997); *Natividad v. Felix*, *supra*; *Corona v. Court of Appeals*, 214 SCRA 378, 392 (1992).

[33] 71 SCRA 176 (1976).

[34] *Id*. at 184.

[35] *People v. Sison*, 322 SCRA 345, 363-364 (2000).

[36] *Id.* at 364.

[37] *People v. Napalit*, *supra* at 700; *People v. Calabroso*, 340 SCRA 332, 342 (2000).

[38] *People v. Lobitania*, 388 SCRA 417, 432 (2002).

[39] *People v. Fernandez*, G.R. No. 132788, October 23, 2003; *People v. Sia*, 370 SCRA 123, 134 (2001); *People v. Santos*, 333 SCRA 319, 334 (2000).

[40] 323 SCRA 30 (2000).

[41] 388 SCRA 417 (2002).

[42] *People v. Lobitania,* 388 SCRA 417, 432 (2002); *People v. Tan*, 323 SCRA 30, 39 (2000).

[43] *Vide Izon v. People*, 107 SCRA 118, 123 (1981) where this Court said the following:

> From the definition cited by the Government which petitioners admit as authoritative, highways are always public, free for the use of every person. There is nothing in the law that requires a license to use a public highway to make the vehicle a "motor vehicle" within the definition given the anti-carnapping law. If a vehicle uses the streets with or without the required license, same comes within the protection of the law, for the severity of the offense is not to be measured by what kind of streets or highway the same is used; but by the very nature of the vehicle itself and the use to which it is devoted. **Otherwise, cars using the streets but still unlicensed or unregistered as when they have just been bought from the company, or only on test runs, may be stolen without the penal sanction of the anti-carnapping statute, but only as simple robbery punishable under the provision of the Revised Penal Code. This obviously, could not have been the intention of the anti-carnapping law.**
>
> Going over the enumerations of excepted vehicle, it would readily be noted that any vehicle which is motorized using the streets which are public, not exclusively for private use, comes within the concept of motor vehicle. **A tricycle which is not included in the exception, is thus deemed to be that kind of motor vehicle as defined in the law the stealing of which comes within its penal sanction.** (Emphasis and underscoring supplied)

[44] *People v. Bali-balita*, 340 SCRA 450, 469 (2000); *People v. Banihit*, 339 SCRA 86, 94 (2000); *People v. Elamparo*, 329 SCRA 404, 416 (2000); *People v. Diaz*, 320 SCRA 168, 175 (1999).

[45] Records at 1-2.

[46] It should be noted that appellant cannot be charged with estafa as it was not alleged in the information that he had juridical possession of the motor vehicle. In *Santos v. People*, 181 SCRA 487, 492 (1990), this Court distinguished between theft and estafa to wit:

> > Theft should not be confused with estafa. According to Chief Justice Ramon C. Aquino in his book on the Revised Penal Code, "The principal distinction between the two crimes is that in theft the thing is taken while in estafa the accused receives the property and converts it to his own use or benefit. **However, there may be theft even if the accused has possession of the property. If he was entrusted only with the material or physical (natural) or *de facto* possession of the thing, his misappropriation of the same constitutes theft, but if he has the juridical possession of the thing, his conversion of the same constitutes embezzlement or estafa**. (Emphasis and underscoring supplied; citation omitted)
>
> Moreover, in *People v. Isaac*, 96 Phil. 931 (1955), this Court convicted a jeepney driver of theft and not estafa when he did not return the jeepney to its owner since the motor vehicle was in the juridical possession of its owner, although physically held by the driver. The Court reasoned that the accused was not a lessee or hirer of the jeepney because the Public Service Law and its regulations prohibit a

> motor vehicle operator from entering into any kind of contract with any person if by the terms thereof it allows the use and operation of all or any of his equipment under a fixed rental basis. The contract with the accused being under the "boundary system," legally, the accused was not a lessee but only an employee of the owner. Thus, the accused's possession of the vehicle was only an extension of the owner's.

[47] TSN, October 9, 2000 at 5-8.

[48] *People v. Ellasos*, 358 SCRA 516, 527 (2001).

[49] *Vide People v. Isaac*, *supra*, where this Court convicted Isaac, who was hired as a temporary driver of a public service vehicle – a jeepney –of the crime of theft when he did not return the same.

[50] TSN, October 9, 2000 at 22-23.

[51] *People v. Ellasos*, *supra*; *People v. Gulinao*, 179 SCRA 774, 780 (1989).

[52] *Venturina v. Sandiganbayan*, 193 SCRA 40, 46 (1991); *People v. Seranilla*, 161 SCRA 193, 207 (1988).

[53] 3 R. Aquino & C. Grino-Aquino, The Revised Penal Code 206 (1997).

[54] *Association of Baptists for World Evangelism, Inc. v. Fieldmen's Insurance Co, Inc*., 124 SCRA 618, 620-621 (1983); *Villacarta v. Insurance Commission,* 100 SCRA 467, 474-475 (1980).

[55] 100 SCRA 467 (1980).

[56] 124 SCRA 618, 620-621 (1983).

[57] According to Justice Florenz Regalado [F. Regalado, Criminal Law Conspectus 543-544 (2003)], historically, opinion as to whether or not the unlawful taking of the personal property belonging to another must be coupled with the intent of the offender to permanently deprive the owner of the said property has been divided:

> (1) In one robbery case, it was held that there must be permanency in the taking, or in the intent for the asportation, of the stolen property (*People v. Kho Choc,* CA, 50 O.G. 1667).
>
> (2) In several theft cases, there were divided opinions, one line of cases holding that the intent of the taking was to permanently deprive the owner thereof (*People v. Galang,* CA, 43 O.G. 577; *People v. Rico*, CA, 50 O.G. 3103, cf. *People v. Roxas*, CA-G.R. No. 14953, Oct. 31, 1956). **The contrary group of cases argued that there was no need for permanency in the taking or in its intent, as the mere disturbance of the proprietary rights of the owner was already *apoderamiento*** (*People v. Fernandez*, CA, 38 O.G. 985; *People v. Martisano*, CA, 48 O.G. 4417).
>
> (3) **The second line of cases holding that there need be no intent to permanently deprive the owner of his property was later adopted by the Supreme Court**, in construing the theft clause in an insurance policy, and ruling that there was criminal liability for theft even if the car was taken out only for a joyride but without the owner's knowledge or consent. (*Villacorta v. Insurance Comm., et al.*, G.R. No. 54171, Oct. 28, 1980; *Ass'n of Baptists for World Evangelism v. Fieldmen's Ins. Co, Inc.*, G.R. No. L-28772, Sept. 21, 1983). (Emphasis supplied)

[58] *Villacorta v. Insurance Commission*, *supra*.

[59] Records at 93.

[60] *People v. Muros*, G.R. No. 142511, February 16, 2004.

[61] *Ibid.*

[62] TSN, October 9, 2000 at 9-10.

[63] Rules of Court, Rule 115, sec. 1, par. (g); *Vide People v. Woolcock*, 244 SCRA 235, 255-256 (1995), where this Court said the following:

> Just like appellant Williams, she sought to buttress her aforesaid contention by lamenting the alleged failure of the State to present in the trial court her baggage declaration and the confiscation receipt involving these pieces of her baggage. In the first place, it was not the duty of the prosecution to present these alleged documents on which she relies for her defense. **And, just as in the case of appellant Williams, it is a source of puzzlement why she never sought to compel either the prosecutors to produce the aforesaid documents which were allegedly in the possession of the**

> **latter or the customs office where such declarations are on file. Contrary to her argument hereon, since such pieces of evidence were equally available to both parties if sought by subpoena *duces tecum*, no presumption of suppression of evidence can be drawn, and these considerations likewise apply to the thesis of appellant Williams.** (Emphasis and underscoring supplied; citation omitted)

[64] *People v. Simon*, 234 SCRA 555, 574 (1994).

[65] *Id*. at 576.

[66] 310 SCRA 66 (1999).

[67] *Id.* at 99-100. It should be noted, however, that the passage of Republic Act No. 7659, otherwise known as "AN ACT TO IMPOSE THE DEATH PENALTY ON CERTAIN HEINOUS CRIMES, AMENDING FOR THAT PURPOSE THE REVISED PENAL CODE, AS AMENDED, OTHER SPECIAL PENAL LAWS, AND FOR OTHER PURPOSES," introduced three amendments to the anti-carnapping law: (1) the change of the penalty of 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." [*People v. Latayada,* G.R. No. 146865, February 18, 2004; *People v. Santos*, *supra* at 333; *People v. Paramil*, 329 SCRA 456, 464 (2000); *People v. Mejia*, 275 SCRA 127, 153 (1997)] With the amendment of the penalty to life imprisonment to *reclusion perpetua*, the provisions of the Revised Penal Code can be suppletorily applied in qualified carnapping or carnapping in an aggravated form as defined in Section 14 of Republic Act No. 6539, as amended by Section 20 of Republic Act No. 7659 – whenever the owner, driver or occupant of the carnapped vehicle is killed in the course of the commission of the carnapping or on the occasion thereof. In *People v. Simon* [234 SCRA 555, 574 (1994)], this Court said that when an offense is defined and punished under a special law but its penalty is taken from the Revised Penal Code, then the provisions of the said Code would apply suppletorily. In the case at bar however, appellant is not being charged with qualified or aggravated carnapping, but only carnapping under the first clause of the anti-carnapping law. Since the imposable penalty is imprisonment for not less than 14 years and 8 months and not more than 17 years and 4 months, the provisions of the Revised Penal Code cannot be applied suppletorily.

[68] 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 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. (Emphasis and underscoring supplied)

[69] SECTION 1. Hereinafter, in imposing a prison sentence for an offense punishable by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; **and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same**. (Emphasis and underscoring supplied).

[70] *People v. Panida*, 310 SCRA 66, 99 (1999).

BACK TOP