

100 Phil. 713

[G.R. No. L-8346. January 22, 1957]

THE PEOPLE OF THE PHILIPPINES, PLAINTIFFS, VS. PROCESO BINSOL, ET AL., DEFENDANTS, PROCESO BINSOL, TOMAS PELLERVA AND ROMAN PEROLINO, DEFENDANTS AND APPELLANTS.

D E C I S I O N

BAUTISTA ANGELO, J.:

Proceso Binsol, Tomas Pellerva, Roman Perolino, Marciano Fenol, Nazario Hernandez, Jorge Ligsa, Pampilo Leoncio, Victor Nolasco, Zosimo de Castro, Eusebio Doe,, Crispin Doe and Ismen Orioso were charged with kidnapping before the Court of First Instance of Cavite. Upon motion of the provincial fiscal, Marciano Fenol was discharged from the complaint. Of the twelve accused, eight were never apprehended although three of them were reported killed or dead. The trial proceeded with respect to Proceso Binsol, Tomas Pellerva and Roman Perolino after which the court found them guilty of the crime charged and sentenced each of them to suffer life imprisonment, to indemnify, Dr. Severo Siasoco, jointly and severally, in the sum of P10,000, and to pay a proportionate share of the costs. From this decision, the three convicts, took the present appeal.

The evidence shows that Dr. Severo Siasoco was kidnapped by a group of men from a place in his Buck Estate situated in Cavite. His apprehension and detention were effected for the purpose of ransom as in fact his family parted with the sum of P10,000 to secure his release. These facts are undisputed. The only question to be determined is whether or not appellants participated in the commission of the crime. This requires a discussion on the evidence presented by the prosecution, the most important of which is the testimony of Isabelo Jeciel.

This witness testified in substance as follows: In the morning of February 20, 1953, while he was in his house, a jeepney arrived occupied by Proceso Binsol, Nazario Hernandez and Felipe de la Cruz who asked Turn to go with them to Naic. Upon arriving at the municipal building, the four alighted and proceeded to the office of the justice of the peace

where Binsol told the three of his plan to kidnap Dr. Severo Siasoco and obtain from him a ransom of P150,000. Asked by Binsol why they thought of the plan, the three agreed that it was a good proposition. Jeciel and Hernandez told Binsol that they did not have any firearm, but Binsol promised that they would be provided. Accordingly, Jeciel was given a ga-rand rifle and Hernandez a carbine. Felipe de la Cruz already had a firearm of his own.

In that same conference, Binsol told Jeciel that he would write a letter addressed to the family of Dr. Siasoco demanding a ransom of P150,000 and warning them not to ask for help from any peace officer to effect his rescue as otherwise he would be killed. The letter was dictated by Binsol himself. It was agreed that they would meet again on Saturday, which they did at Palangue, Naic, from where they proceeded to Alfonso, Cavite, on foot. There they met six persons who guided them to a certain place one kilometer farther where they met Tomas Pellerva and Roman Perolino. Then they proceeded to the house of Pellerva in barrio Matakabak arriving there at 8:00 o'clock in the evening. Pellerva and Perolino left the group for a short time to go to a nearby forest in a barrio and afterwards returned, but left, again saying that they were getting some more men. It was 2:00 o'clock in the morning of the next day that Pellerva and Perolino returned with two companions and thereafter they instructed the group to go ahead to accomplish their mission. Jeciel was told to head the group. Those who were in the group, among others, were Felipe de la Cruz, Nazario Hernandez, Eusebio alias Eboy, Zosimo and Esmeraldo. Pellerva and Perolino instructed them that upon arriving at the Buck Estate, they should stay in a place where they could be seen as there would be a man who would serve them as a guide.

While Pellerva and Perolino told Jeciel that Dr. Siasoco used to go to his estate at about 9:00 o'clock in the morning, on that occasion the doctor failed to show up so that they moved to a place where there were houses, and while they were eating, three persons arrived, one of them wearing a sun helmet who turned out to be Dr. Siasoco. They greeted him and the doctor answered the greeting, and then he invited them to his house where they had lunch together. After the luncheon, Jeciel told Dr. Siasoco to assemble all his men so that they could be introduced to one another, and the doctor acceded. After the men were assembled, Jeciel and his companions immediately surrounded them and confiscated the grease gun and rifle with which some were provided, after which they took with them Dr. Siasoco and one of his companions.

They brought the two first to Bailen, then to Alfonso, and later to Palangue, Naic. It was here where Jeciel wrote a note addressed to the family of Dr. Siasoco demanding the sum of P150,000. This letter was given to the wife of Dr. Siasoco's *encargado* by the name of Abdon

Concepcion. Dr. Siasoco and his companion were held captive for ten days during which they were guarded. Jeciel at first fed the doctor and his companion with money he took from the doctor himself and when this was spent, he bought the food out of the money he got from Binsol. The money that was given as ransom for the release of Dr. Siasoco was received by Felipe de la Cruz and Nazario Hernandez from one Mariano Criste, which was later turned over to Binsol in the presence of Jeciel. Prior to the release of Dr. Siasoco, it was made to appear in accordance with a previous understanding that it was Binsol who rescued the doctor, and to do this they had to simulate an actual fighting which consisted in firing shots in the air. At the time of the rescue, Binsol was accompanied by some special agents of the provincial governor. When Dr. Siasoco was release. Jeciel told him upon instruction of Binsol that he was being released without mediating any ransom money.

Abdon Concepcion, encargado of Dr. Siasoco, corroborated the testimony of Isabelo Jeciel about the incident from the time the kidnapers went to the house of Dr. Siasoco in Alfonso until he (witness)was ordered to return and get a certain note left by Jeciel with his wife. According to this witness, the letter was delivered to the family of Dr. Siasoco by the latter's driver, Dominador Caimul.

Doctor Severo Siasoco corroborated the story told by Isabelo Jeciel regarding his kidnapping on February 22, 1953 until he was released. He testified that he was moved from one place to another until March 3, 1953 when he first met his nephew, Mariano Criste, accompanied by Commander Ronquillo. It was Felipe de la Cruz who accompanied him for the meeting with Criste and on said occasion Criste informed him that they were bargaining the amount of ransom to P8,000, which he said wa^ too much and nothing was agreed upon that night. Before they separated, Dr. Siasoco whispered to his nephew that the amount should not go beyond P10,000 because it would be hard for him to pay it back. On March 3, 1953, Dr. Siasoco was brought back to -the same shack where he was first taken and on the following day, March 5, he was told that the final arrangement for his release was to be consummated but nothing happened on that day. On March 5, 1953, Felipe de la Cruz returned to the place where the doctor was brought with a note written by Criste informing the doctor that he was unable to come Wednesday because he was being followed by the PCS. After supper, Felipe de la Cruz came and told the doctor that everything was settled. At about 10:00 o'clock that evening, the doctor was asked to cross a creek and Commander Ronquijlo advised him that some policeWnf are coming together with the chief of police, referring to Binsol, to whom he was to be delievered. They rode on a jeepney and he was taken to the house of Governor Camerino at Iraus and from there he was finally released. During all this time, Binsol was with the group.

Dominador Caimul, driver of Dr. Siasoco, declared that he drove the doctor from his home in San Juan, Rizal in the morning of February 22, 1953 to his land in Alfonso, Cavite, arriving there between 9:00 and 10:00 o'clock that same morning. He identified the ransom note Exhibit A, He corroborated the testimony of Dr. Siasoco and of other prosecution witnesses as regards the kidnapping from the time of the doctor's arrival at his land in Alfonso, Cavite, to his capture by the kidnapers.

Mariano Criste, nephew of Dr. Siasoco, testified that in the afternoon of February 22, 1953, he was at the latter's residence in San Juan, Rizal. Dominador Caimul, driver of the doctor, arrived and delivered, to him the ransom note Exhibit A. He read it and went to talk with the wife of the doctor to inform her that the doctor was kidnapped and was held for ransom in the amount of P50,000. On the same evening, he went to Dasmariñas to ask for the help of Mayor De la Cruz, but as it was already late he was told to return the following morning. When he returned, he was accompanied by Mayor De la Cruz to the Office of the Mayor of Alfonso to request the latter to help in locating the victim.

On March 3, 1953, Manuel Arguelles and Melanio Baul came to the house of Dr. Siasoco bringing a note of the doctor wherein he was asking for the help of Mrs. Avendano. At 10:00 o'clock in the morning, Criste and Arguelles went to Naic and stayed in the house of Baul and at about 11:00 o'clock in the evening, Arguelles came to tell him that the kidnapers were ready to talk terms with him, Criste and Arguelles were then brought to a field in barrio Halang and there they talked to Felipe de la Cruz and Isabelo Jeciel. When the latter informed Criste that they wanted the amount of 1150,000, he answered that he had only P8,000 which he got from the family of Dr. Siasoco. He then requested to be brought to Dr. Siasoco so that he could talk to him about the ransom money. After two hours, Dr. Siasoco was brought to him and, on that occasion, the kidnapers reduced the amount to P35,000 and he was told to come back the next morning. Criste returned home at about 4:00 o'clock in the morning of March 4, but returned to Naic in the afternoon of that same day with P10,000 which he left with Mrs. Avendano. He met again the representatives of the kidnapers, Felipe de la Cruz and Isabelo Jeciel, and told them that he could not get the amount of P35,000 but only P8,000 telling them further that he would try to borrow P2,000 in order to complete the amount of P10,000. He was then informed that there were four groups working for the release of Dr. Siasoco, namely, the group of Mayor De la Cruz of Dasmariñas, the group of Governor Camerino, the group of Mrs. Avendano, and the group of Chief of Police Proceso Binsol of Naic. He was warned by Jeciel and De la Cruz not to tell the people that they were demanding ransom money for the release of Dr. Siasoco and was informed that they would make it appear that he was rescued and saved. Criste said that the

plan was alright provided that Dr. Siasoco was released. Jeciel and De la Cruz told him however that as Chief of Police Binsol was then in Manila, nothing definite could be done and so they postponed the decision to March 5, 1953.

In the evening, Criste went to Naic via Tagaytay-Mendez to the house of Mrs. Avendano where he took the money and with Arguelles went to Halang where they met Felipe de la Cruz, who was then accompanied by two persons. Criste asked De la Cruz how the money would be given and he was told that they would go to the place where they were hiding Dr. Siasoco and would hide among the bushes, and when they see Dr. Siasoco being delivered to Chief of Police Binsol, Criste would turn over to them the ransom money. Felipe de la Cruz then left and after a while returned and told them that the plan was changed saying that they had just to give him the money and then wait for the passing of the jeepney that would carry Dr. Siasoco. They gave the money and proceeded to the highway where they met Jeciel who accompanied them to the camp where Dr. Siasoco was. There the release of Dr. Siasoco was effected. From the highway, Dr. Siasoco, accompanied by Chief of Police Binsol, went to the house of Governor Camerino in Imus and from there Dr. Siasoco, accompanied by the governor, was taken to his home in the early morning of March 6, 1953.

Proceso Binsol, one of the accused, testified that he was the chief of police of Naic since June 1, 1952 to April 15, 1953 when he was arrested in connection with the case. On March 2, 1953, Governor Camerino asked him to contact Isabelo Jeciel who was reportedly holding Dr. Siasoco in captivity to obtain his release without paying any ransom. While he realized that he and Jeciel were not exactly friends, Binsol promised the governor that he would do his best, and since the task is rather tough and he could not do it alone, on March 3, 1953, he organized a posse of trusted and courageous policemen in the persons of Leonardo Apay, Prudencio Ledesma and Antonio Pino. They first rode in a jeep to barrio Central where he asked his godson, one Domingo Consumo, to contact Isabelo Jeciel. Consumo left and returned to inform Binsol that Isabelo Jeciel and Felipe de la Cruz were willing to have a "pow-wow" with him, and so on March 4, 1953, Binsol and his policemen, accompanied by barrio lieutenant Dalmacio Consumo, set out to contact Isabelo Jeciel in his hideout. Binsol asked Consumo to tell Jeciel that Governor Camerino wanted the release of the doctor without ransom, and if Jeciel is agreeable the whole matter would be forgotten. Consumo returned and told Binsol that Jeciel wanted to confer with him in person,

At about 5 p.m. of that day, Binsol and his companions took the road leading to Indang and when they were between barrios Halang and Central, they proceeded west-ward where Binsol told two of his policemen to stay behind. Upon reaching a path they stopped and

then crossed a creek where they met another path and it was then that one Asiong pointed to them the place where Jeciel and his men were hiding. There they saw a man waving his hat signalling them to approach but Binsol told Asiong that it would be better if that man should approach them instead unarmed. After some time and as neither Asiong nor Jeciel advanced, policeman Ledesma left and came back with Jeciel unarmed. Binsol told Jeciel that he better release Dr. Siasoco without ransom for he might be hunted by the government hand he would be surely caught, to which Jeciel answered that he was really embarrassed about the whole thing but that he had companions from Alfonso who had to be deceived if the doctor should be freed without paying any ransom money. At this juncture Binsol advised Jeciel to talk the matter over with his men and that he would return the next day. After contacting Jeciel, Binsol went to see Governor Camerino to report all what was going on telling him that he was meeting Jeciel again in the afternoon. The governor told Binsol that he was sending his men to conduct Dr. Siasoco after his release. And between 4:00 and 5:00 o'clock that afternoon (March 5), some agents of the governor arrived in a jeep and proceeded to Halang with the policemen where they asked Consumo to contact Jeciel again. Jeciel then proposed that they should engage in a sham battle so that Dr. Siasoco may have the impression that he was being rescued, to which Binsol agreed, it being understood however that no ransom money would be paid. Jeciel left at once and told them to wait, for his return. At about 10:00 or 11:00 o'clock that night, they proceeded with the governor's men to Halang. Upon their arrival, Jeciel walked ahead and when they were about 100 meters from the road, they saw some men and when they came near each other, they started firing in the air after which they proceeded to rescue Dr. Siasoco. After the rescue, they proceeded to the governor's house in Imus arriving there in the early morning of March 6, 1953. They awoke the governor and when he asked Dr. Siasoco whether ransom is paid, the doctor said that all that was taken from him was P20. From the house of the governor they proceeded to the house of Atty. Sarayba and from there they conducted Dr. Siasoco to his house. Binsol denied the imputation of Jeciel that he was the mastermind of Dr. Siasoco's kidnapping intimating that this is a mere concoction of Jeciel who wanted to get even with him for having effected his arrest after promising him that nothing would happen to him in connection with the kidnapping. Binsol also claimed that Jeciel wanted to eliminate him to remove from the scene a potential avenger of the author of the death of Binsol's father whom he is suspecting to be Jeciel.

Tomas Pellerva, on his part; testified that he was a member of the police force of Alfonso, Cavite, when he was arrested on April 15, 1955 for complicity in this case. In the afternoon of February; 20, 1953 he was in the *poblacion* of said town when he was ordered by the

chief of police to reinforce the policemen assigned at Si-naliw in connection with the local fiesta there. He arrived there at 8:00 o'clock in the evening with Sgt. Olarve and Pat. Avinante. He left them there at 6:00 o'clock the following morning when he returned to the poblacion. Upon arriving there he proceeded to the mayor's residence as he was assigned to accompany him wherever he went, and the mayor and he went to Velasco Clinic in Silang to visit the former's sick child. They stayed there until 4:00 o'clock when they returned to Alfonso arriving there at 6:30 p.m. He was scheduled to proceed again to Sina-liw on orders of his chief but the mayor detained him for sometime so he did not actually reach Sinaliw until about 9:00 o'clock that evening where he again joined Sgt. Olarve and Pat. Aviftante whom he met near the barrio chapel where they attended a stage show of some kind in between their patrolling stints. He took his supper that night in the house of Simeon Dimacuba. He also met his chief there twice. At about 6:00 o'clock in the morning of the next day, February 22, 1953, he left for the *pobtacion* to accompany the mayor to Silang, and this time they brought rice and firewood for the mayor's family who were then staying in Dr. Velasco's Clinic. In the afternoon he accompanied the mayor to the local cockpit where they spent some time and at about 4:30 p.m., they left arriving at Alfonso at 6:30 p.m. He denied all the imputations made against him by Jeciel which he branded as fabrication. He recalled that Jeciel had a verbal tiff with him during the Tayawanak barrio fiesta in January, 1953. It seems that Jeciel was being pointed to as the one responsible for the loss of local earabaos some of which belonged to the father and brother-in-law of Pellerva's fellow-policeman, Roman Perolino, so he decided to corner Jeciel telling him to make himself scarce in the place as otherwise there will be scarcity of animals thereabouts. Jeciel was visibly irked by this apparent hostility which, according to Pellerva, caused Jeciel to nourish a resentment against him and his co-accused Perolino. In fact, according to Pellerva, he was about to come to grips with Jeciel were it not for the intervention of Pat. Avinante.

Roman Perolino also testified in his defense. He was also a policeman of Alfonso when he was implicated in this case. He said that on February 21, 1953, at 8:00 o'clock a.m., he began his assignment as guard in the municipal building of Alfonso, his tour of duty being twenty-four full hours, that is, up to 8:00 a.m. of the next day. He and Pat. Angeles Mojica took turns while on duty that night, that is, while one slept the other was on guard. A third policeman, Nilo Herrera, acted as the desk sergeant on that date. In the afternoon of February 21, 1953, Perolino saw police chief Bernardo Capupus waiting for some transportation to Sinaliw and it was he who finally found some vehicle for him. He was out of the municipal building that evening for only 30 minutes, which time he consumed in going home for supper and returning to his post. When the chief of police returned from

Sinaliw at about midnight, he and Mojica were awake and chatting. When he was relieved the next day, February 22, he went home for breakfast and returned right away to the municipal building for the customary Sunday drill. Perolino denied having met Jeciel personally before except during the first days of the trial of this case, but that he has heard about Jewel's unsavory reputation as a cattle rustler. He stated that he had been persuading his relatives to prosecute and testify against Jeciel for his cattle-rustling activities even way back in 1951 but somehow they were afraid to do so.

Governor Camerino took the witness stand twice, first as a direct witness for the defense and second as a sur-rebuttal witness of the accused Binsol. He said that he utilized Binsol to effect the rescue of Dr. Siasoco from the kidnappers because Binsol knew Jeciel whom he considered was the mastermind of the kidnapping. So when the case was filed against Binsol without including Jeciel he was surprised. He also said that from the very start of his intervention he suspected that ransom money was involved and this was strengthened when he learned that Jeciel was constructing a new house. On cross-examination Governor Camerino informed the court that he has given Fiscal Tengco the go-signal to prosecute anyone whom he believed to be responsible and when Fiscal Tengco informed him that Binsol was involved, he told the fiscal to go ahead and prosecute him.

The first thing that strikes the attention of the court in connection with this appeal is the fact that the main witness of the prosecution, Isabelo Jeciel, appears to have taken an important part in the commission of the kidnapping and yet he has not been included by the government prosecutor in the information filed against the accused for which reason, when apprised of this situation, the trial court ordered his prosecution although it allowed his testimony to stand in the present case. And because that attitude of the government prosecutor runs counter to his duty to include in the complaint-or information when an offense is committed by more than one person all those who according to the evidence appear to be responsible therefor (Rule 106, sections 1 and 5, Rules of Court), the defense now contends that it is an error for the lower court to have allowed said witness to testify as witness for the prosecution, for the proper procedure would have been to include him in the information as one of the accused and if he appears to be the least guilty, for the fiscal to file later a motion for his discharge to be utilized as a witness for the prosecution, for only in that way can the defense be given an opportunity to help the court in determining that all the elements required by the rule to warrant such discharge are present (Rule 115, section 9).

It is true that our Rules of Court require that all persons who have participated in the

commission of a crime should be included in the complaint or information, and that a person included in the complaint or information can only be discharged to be used as a witness by the government when in the judgment of the court the conditions prescribed in Section 9, Rule 116, are present; but the fact that a person has not been previously charged or included in the information even if he appears to have taken part in the commission of the crime does not, and cannot, prevent the government prosecutor from utilizing him as a witness if he believes that he is the best witness that can testify as to the commission of the crime. In the discharge of his duties, a government prosecutor is free to choose the witness or witnesses he deems more qualified or competent to testify for the prosecution and there is nothing either in the law or in the rules that would require him to first include him in the information and then later secure his discharge before he could present him as a government witness. This is what he said in a number of cases wherein we made it emphatic that such a step is not indispensable nor can effect the validity of the proceedings provided that the testimony of the witness is competent and there is enough circumstantial evidence to corroborate it. Thus, in *U. S. vs. Enriquez*, 40 Phil., 603, this Court, after discussing the provisions of the law which authorize the court to discharge an accused so that he may be used as a government witness, reached the conclusion that before such discharge may be authorized "it is neither requisite nor necessary that said persons be previously charged in the information even if it appears that they had taken part in the commission of the crime", stating the following as the reasons for such conclusions:

"The fiscal is free to produce as witnesses for the prosecution all the persons who had been present at, and cognizant of, the perpetration of the crime and vrko he believes can testify to the truth hereof. To do this, neither is it requisite that there be circumstantial evidence or presumptions showing that they or some of them were accomplices or might have taken part in the crime, nor is it necessary and indispensable that they be previously charged or included in the information so that, upon being afterwards excluded, they might testify as witnesses for the prosecution against the accused.

"The fiscal may not have sufficient evidence to prosecute a definite person who, according to informations received by him, had a participation or took part in the commission of a crime; and under such circumstances he does not violate any procedural, law. by producing said person as witness for the prosecution without previously charging him in the information and afterwards excluding them therefrom, provided he is qualified to testify in the proceeding.

“Any witness who has testified for the prosecution or for the accused may afterwards be charged in an amended complaint and be brought to trial after the cause is decided. To do this, it is no obstacle that said witness has testified in the same cause for the prosecution or for the accused taking always into consideration the fact that the testimony of a co-author of a crime, who in turn admits and confesses his own guilt, is perfectly valid and binding against his co-accused so long as said testimony appears substantially corroborated at the hearing by circumstantial evidence.

“The sole and principal object of the law is, not to restrain and limit the action of the prosecuting officer, but especially to impose conditions whereby an accused, already charged in the information, may not be arbitrarily and capriciously excluded therefrom, as must have happened more than once,, and to remedy the evil consequence of an unreasonable and groundless exclusion which produces the real impunity perhaps of the most guilty criminal and subjects to prosecution the less wicked, who have not found protection in whims and arbitrariness unlike others who have secured unfounded and unjust exclusion when they really deserved severe punishment.”

We may therefore restate the rule relative to the right of the government prosecutor to utilize a person who has participated in the commission of a crime as a witness for the prosecution, as follows: (1) when an offense is committed by more than one person, it is the duty of the fiscal to include all of them in the complaint or information (section 5, Rule 106; Rules of Court); (2) if the fiscal desires to utilize one of those charged with the offense as a government witness, the fiscal may ask the court to discharge one of them after complying with the conditions prescribed by law (section 9, Rule 115); (3) there is nothing in the rule from which it can be inferred that before a person can be presented as a government witness that he be first included as a co-accused in the information, for the fiscal is free to produce as a witness anyone whom he believes can testify to the truth of the crime charged (U.S. vs. Enriquez, *supra*); and (4) the failure to follow the requirements of the rule relative to the use of a person, himself *particeps criminis*, as a government witness does not violate the due process clause of the constitution, nor render his testimony ineffectual if otherwise competent and admissible (People vs. Castaneda and Fernandez, 63 Phil., 480).

We cannot therefore discard the testimony of Isabelo Jeciel simply because he appears to be equally guilty of the crime charged and has not been included in the information as required

by section 5, Rule 106 of the Rules of Court, it appearing that said testimony is admissible and competent and has been corroborated in some material respects by other evidence of the prosecution. Moreover, the rule has been substantially complied with when upon order of the court Isabelo Jeciel was charged by the fiscal with the same crime in a separate proceeding even if it was later dismissed when the very complaining witness, Dr. Siasoco, lost interest in prosecuting him after a judgment of conviction had been rendered against his companions, now defendants-appellants in the present case. Nor can we dispute the motives that had led the fiscal in choosing Jeciel as a witness in lieu of any of the herein appellants for in our opinion the same appear warranted by the Circumstances of this case. Said motives are reflected in the following paragraph of the petition for dismissal filed by the fiscal in the case against Jeciel:

“3. That it is really very difficult in this province to eliminate the mastermind and principal kidnapper because of their influence in the community, and in this case. Motivated by his desire to get the principals of the crime and the man who mastermind the business, he has resolved to look for one like Isabelo Jeciel who would willingly help the government in its crusade to discourage this kind of crime. As to the responsibility and danger to society between Proceso Binsol, chief of police of Naic, Tomas Pellerva and Roman Perolino both policemen of Alfonso, on one side, and Isabelo Jeciel, a private citizen on the other, this representation believes that the latter is of lesser harm than the former. For this reason, in the interest of Justice, and for the purpose of promoting peace and order on this province, this representation deemed it wise to utilize Isabelo Jeciel as witness against all other accused.”

We will now come to the merits of the case. We will begin by stating that, while the conviction of appellants as regards the plan to kidnap Dr. Siasoco and the manner it was carried out is merely predicated on the testimony of Isabelo Jeciel, however, in some material respects, the same appears corroborated by the testimony of other witnesses, to wit, Abdon Concepcion, the *encargado* of the victim, Dr. Siasoco, Dominador Caimul, his driver, and Mariano Criste, his nephew, who testified as to the circumstances surrounding the payment of the ransom money to appellants. The issue therefore is one of credibility. This is the main concern of the trial judge. Well known is the rule that appellate courts do not generally disturb the findings of the court *a quo* considering that it is in a better position to decide the question having seen and heard the witnesses themselves and observed their

deportment an^ manner of testifying during the hearing, unless it is shown that it has overlook certain facts of substance and value that, if considered, might affect the result of the case. Here no such showing has been made^ On the contrary, a perusal of the decision of the trial court would at once reveal the painstaking care taken by it in analyzing the testimony of Jeciel precisely because he is one whose conscience is not free from blame and it wanted to be sure that he told the truth even if by doing so he was exposing himself to a sure prosecution. Remember that when he took the witness stand there was still no promise of immunity given him, nor was he discharged to be utilized as a witness as required by the rule.

In spite of all that he was found trustworthy by the trial court, judging from the following observation:

“In other words, all the pertinent facts testified to by Isabelo Jeciel on direct examination were not only reiterated, but even made dearer by Isabelo Jedel upon protracted cross-examinations by the three attorneys for the defendants. Out of these answers above quoted as given by the witness on cross-examination, and who answered all those questions freely, supontaneously, without difficulty and in a neutral manner, the Court was impressed by Isabelo Jeciel that the facts he divulged to the Court, not only during the trial of this case but also in the preliminary investigation conducted before Judge Antonio G. Lucero, are true and correct. The more the Court scrutinized the testimonies of the witnesses including those of the three accused, the more the Court is convinced of the reality of the story revealed by the principal witness, Isabelo Jeciel, who is now also accused in a separate information of this crime of kidnapping. The fact that Isabelo Jeciel has a previous understanding with no less than the Chief of Police of Naic and the policemen of Alfonso, made him bold enough to execute the acts, according to plan. If he had squealed later on, it was probably due to his arrest and he must have thought that if he would be punished for the kidnapping with ransom he should better divulge the real architects who made the plan. After all according to him, he only received a small share out of the P10,000 and probably thought that those, who^znust have gotten the lion’s share, should also be made to pay for it.”

We have not failed to notice the contradictions and inconsistencies which the defense

attributes to the testimony of Isabelo Jeciel in an effort to impeach his credibility, but we find, that, aside from being minor in nature, they are more apparent than real. They can be reconciled and harmonized without destroying the substance of his testimony. Thus, it cannot be disputed that Jeciel knew personally appellant Binsol and that on certain occasion he and his co-accused went to the house of Jeciel to broach to him their scheme and thereafter they proceeded to the office of the justice of the peace of Naic where they discussed more, in detail their plan. The exact date and time of the meetings would therefore appear immaterial. The important thing is that the meetings actually took place. Even the defense itself has intimated that said contradictions are seemingly trivial matters and can only be due to mere "slips of the memory."

As regards the defense of alibi set up by appellants, we notice that it is merely supported by testimonial evidence. Here again comes into play the rule that the personal observation of the trial judge is important. Here the trial court has also made such observation, and with more reason considering that alibi is the weakest defense that can be set up in a criminal case. Generally, such defense cannot prevail when the identity of the accused has been established, and here this appears clearly in the record. The following is what the trial court said on this matter:

"The three accused in accordance with their evidence and their memoranda interposed the defense of alibi. Of course, it is not unusual that comrades in arms should protect each other if any of them is in bad fix, so, that explains the testimonies of the Chief of Police of Alfonso, the sergeant of police of both Alfonso and Naic and several other policemen of the two municipalities. It should also be borne in mind that according to Fellerua himself, he is residing in the barrio of Matakabak during those dates, February 20 to February 22, 1953, and his house is only three (3) kilometers from the barrio of Sinaliw and the same house would be passed by one coming from the poblacion of Alfonso in going to the barrio of Sinaliw. So, it is very probable that before the two accused policemen went to the fiesta of barrio Sinaliw, they first passed thru' Fellerua's house at Matakabak to give the necessary instructions to the assigned kidnapers of Dr. Siasoco. As to the claim of Perolino that he stayed more than 24 hours in the municipal building of Alfonso from morning of February 21 to the following morning of February 22, 1953, the Court cannot easily accept such alibi."

As to the nature of the liability of appellants, we agree with the Solicitor General that said appellants committed the crime with a common design as shown by the following circumstance: (1) that Binsol actually proposed to Jeciel the plan to kidnap Dr. Siasoco in order to extort ransom money from him and his family; (2) that Tomas Pellerva and Eoman Perolino likewise told Jeciel to proceed with that mission to kidnap Dr. Siasoco; (3) that Pellerva and Perolino gave instruction to Jeciel as to the time and place where Dr. Siasoco could be found; (4) that Jeciel in fact contacted the men of Pellerva and Perolino the very day when Dr. Siasoco was kidnapped from his farm on the day in question; and (5) that Binsol took an active part in the release or rescue of Dr. Siasoco although part of his original scheme was to make it appear that he had nothing to do with the kidnapping. These circumstances establish conspiracy and subject appellants to equal degree of responsibility.

Considering that the decision appealed from is in accordance with law and the evidence, we hereby affirm the same in toto, with costs against appellants.

Paras, C. J., Bengzon, Padlla, Labrador, Concepcion, Reyes, J. B. L., Endencia and Felix, JJ., concur.
