

RICARDO PARULAN, PETITIONER, VS. SOTERO RODAS, JUDGE OF FIRST INSTANCE OF MANILA, AND LUIS B. REYES, ASSISTANT CITY FISCAL OF MANILA, AND LUIS B. REYES, ASSISTANT CITY FISCAL OF...

G.R. No. L-1536. July 31, 1947

Ponente: FERIA, J.

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FERIA, J.:

This is a motion for reconsideration of our resolution dated July 11, 1947, which reads as follows:

"Passing upon the petition for certiorari in G.R. No. L-1536, Ricardo Parulan vs. Sotero Rodas, etc. et al., praying for relief from the order of the respondent Judge of the Court of First Instance of Manila, dated July 8, 1947, denying petitioner's motion to quash the information filed in criminal case No. 3649 of said respondent Court as well as petitioner's motion for reconsideration and praying, further, for the issuance of a writ of preliminary injunction restraining the respondent Judge from arraigning the petitioner on July 12, 1947: the Court resolved to dismiss said petition on the ground that the Court of First Instance of Manila has jurisdiction over the complex offense of kidnapping with murder, the one charged in the information. * * *"

Section 48 of the Penal Code, providing for penalties for complex crime, says that "when an offense is a necessary means to commit the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period." Therefore, the question for determination in the present case is whether the offense charged in the information is a complex crime of kidnapping and murder, the former as a necessary means for committing the latter.

In order to determine whether two offenses constitute a complex crime, we should not find out whether, in accordance with their definition by law, one of them is an essential element of the other, such as physical injuries which cause "the death of the victim, or stealing of personal property without the consent of the owner through force or violence, for in such cases there would be only one single offense of homicide in the first and robbery in the second case. But we should take into consideration the facts alleged in a complaint or information and determine whether one of the two separate and different offenses charged therein was committed as a necessary means to commit the other offense; if it were the two offenses constitute one complex crime; otherwise the complaint or information charges two crimes or offenses independent from one another.

For example, the crime of falsification of a private document is not in general, an essential element of the crime of estafa, because this offense may be committed through many and varied means; but if a defendant is charged in a complaint or information with having committed falsification of a private document as a means for committing estafa, the offense charged would be a complex offense of estafa through falsification. Also, abduction is, in general, not an essential element of rape because rape may be committed anywhere without necessity of forcibly abducting or taking the victim to another place for that purpose; but if the offense charged is that the defendant abducted or carried by force the victim from one place to another wherein the latter was raped by the former, the

crime charged would be a complex crime of rape through abduction, the abduction being in such a case a necessary means to commit the rape. And although homicide or murder may be committed wherever the victim may be found, yet if the charge in a complaint or information is that the victim was kidnapped and taken to another distant place in order to demand ransom for his release and kill him if ransom is not paid, the offense charged would evidently be a complex crime of murder through kidnapping, the latter being a necessary means to commit the former.

The pertinent part of the information reads as follows:

"That on or about the 10th day of June, 1947, in the City of Manila, Philippines, the said accused, being then private individuals, conspiring and confederating together and all helping one another, did then and there wilfully, unlawfully, feloniously, and for the purpose of extorting ransom from one Arthur Lee or of killing him if the desired amount of money could not be given, kidnap, carry away in an automobile, detain, and later, after having taken him to an uninhabited place by means of a motor boat, with treachery, to wit: while the said Arthur Lee was deprived of his liberty and was very weak as a result of the physical injuries which had been previously inflicted upon him by the said accused, fire upon him with a .45 caliber pistol several shots thru the chest and head, fracturing the right 5th and 6th ribs and the skull and lacerating the brain, thereby inflicting upon him physical injuries which directly caused the death of the said Arthur Lee almost instantaneously."

From a cursory examination of the foregoing it clearly appears that the crime charged is kidnapping and murder and the former was committed by the defendants as a necessary means "for the purpose of extorting ransom from the victim or killing him if the desired amount of money could not be given," that is, that the defendants had to kidnap or carry the victim to a faraway and secluded place in order to better secure the consent of the victim through fear to pay the ransom, and kill him with certain sense of impunity and certainty that no other person may witness the commission of the offense by the defendants if the victim refuses to accede to their demand, and that in fact he was killed by the defendants because of his refusal to pay the ransom.

The crime charged being a complex crime of kidnapping and murder, the court of first instance of any province in which any one of the essential elements of said complex offense has been committed, has jurisdiction to take cognizance of the offense; and, therefore, the Court of First Instance of Manila from where the victim was kidnapped has jurisdiction over the offense, for the crime of kidnapping is a continuous offense committed in Manila and continued all the way to the place where the victim was taken and murdered.

The motion for reconsideration is therefore denied.

Moran, C.J., Paras, Pablo, Hilado, Bengzon, Hontiveros, and Padilla, JJ., concur.

DISSENTING

PERFECTO, J.:

We vote to grant the motion for reconsideration and to give due course to the petition.

Upon further analysis of the allegations of the information, Annex A of the petition, we arrived at the conclusion that, as a matter of fact, two independent crimes are imputed to the accused, i. e.: kidnapping for the purpose of extorting ransom, which is the fifth case of article 267 of the Revised Penal Code, as amended by Republic Act No. 18, and murder as punished by article 248 of the Revised Penal Code.

There is no such a complex crime as kidnapping with murder, if the allegations of the information is to be considered.

There are two classes of complex crimes, those which are specifically described and punished as such, and those committed as is provided in the following provision of the Revised Penal Code:

"Penalty for complex crimes.—When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period. * * *"

There is no specific provision of law describing the alleged complex crime of kidnapping with murder, so we have to analyze the facts alleged in the information in the light of the provision of article 48 of the Revised Penal Code, which specify two cases: First, when a single acts constitutes two or more grave or less grave felonies, and second, when an offense "is a necessary means for committing the other."

The facts alleged in the information do not belong to neither of the two cases. The information alleges several acts, so the first case does not exist. There is nothing in the information to show that kidnapping was "a necessary means for committing" murder, or vice versa. In the first place, it is absurd to suppose that murder was committed as a necessary means to commit kidnapping, as a dead body cannot be the victim of kidnapping. And kidnapping was not "a necessary means for committing" murder, because, as alleged in the information, it was committed "for the purpose of extorting ransom." That purpose is incompatible with murder.

Kidnapping for extorting ransom is in itself already a complex crime, where the kidnapping is the necessary means for extorting ransom. It cannot be, as the information stands, the necessary means for committing murder, just to create a super-complex crime. Failure to get ransom might be a motive for committing murder, but no one in his right senses will identify motive with means. Each one belongs to a different category of ideas than to what the other pertains.

In all other respects, we are in agreement with the reasonings in the dissenting opinion of Mr. Justice Tuason.

DISSENTING

TUASON, J.:

We are for denying the petition on the ground that appeal or certiorari does not lie against an interlocutory order such an one disallowing a motion to dismiss or to quash; there is no appeal before final judgment is rendered. We beg to differ with the majority of the court on the merits of the petition. In our humble opinion distinct offenses are charged in the information with the aggravating circumstance that one of the crimes was committed entirely outside the territorial jurisdiction of the Manila courts.

The right to join offenses in the same information is determined by law. Under our criminal law and practice, two or more allied offenses for which a single penalty is provided may be joined. Such allied offenses are called complex crimes. Complex crime is a denomination peculiar to the Spanish Penal Code. The complex crimes are thus described in article 48 of the Revised Penal Code:

"When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period (as amended by Act No. 4000)."

Besides this general description there are specific combinations of offenses which are specifically punished as one. Robbery with homicide is an example.

But there is no such creature in Philippine penal legislation as kidnapping with murder, unless one is necessary to

commit the other. Kidnapping and murder are separate and distinct crimes, different from each other in their nature and in the elements that make up the crimes. If kidnapping is a continuing offense, as the prosecution rightly contends, murder does not acquire this characteristic by the mere fact of its association with the killing. As we have said, kidnapping is not a part of murder material and essential to the latter or requisite to its consummation. Physical injuries inflicted in connection with or on the occasion of kidnapping are an integral part of the latter offense, yes, and, for this reason, may be alleged with it. This is so because the definition of kidnapping in one of its forms makes physical injuries inflicted under such circumstances a material ingredient of it for the purpose of punishment. But it does not follow that murder even if committed on the occasion of kidnapping becomes identified, for purposes of prosecution, with the last-named offense. The fact that physical injuries form part of kidnapping does not by extension make murder also a part of kidnapping. True, some, not all, decisions refuse to make any distinction between homicide and murder in cases of robbery but there is cogent reason for it; the reason is that homicide and murder are in a generic sense the same differing only in the circumstances in which the slaying is committed. Murder and homicide are grouped in the same Chapter of the Revised Penal Code, Chapter I, Title Eight. Physical injuries belong to another genus or specie of crimes and are dealt with under Chapter II.

On the plain of legislative intent we find further and stronger support for the observation that murder may not be confused with physical injuries when committed in association with kidnapping, Bent on curbing rampant lawlessness and especially kidnapping which was prevalent, the Legislature purposely, not through inadvertence, omitted mention of destruction of human life as a factor in the imposition of punishment for kidnapping. May we not logically draw from this omission the inference that the law-makers intended to let murder, when murder results from kidnapping, remain as a separate crime to be prosecuted where the killing took place? There is reason behind this theory; it is that murder was already punishable with death.

Quite apart from all this, the well-known rule that penal laws should receive strict construction should not be lost sight of. At this juncture I quote Justice Albert's comment in his book on another and analogous topic which we think is in point:

"And as homicide is a crime different from murder and no mention is made of the latter in the Chapter devoted to the former and since, furthermore, the penal laws do not admit of a liberal construction and what is said of one crime cannot be applied by inference to another, and the more so if from a liberal construction a greater evil would fall upon the convict, they logically deduce that it would be an error to apply to murder the provision of subsection 1 of article 294 which refers only to homicide." (Revised Penal Code, New Edition, p. 647.)

Let it be not said that we are indulging in technicalities. Our objection goes to the jurisdiction of the court, to its very authority to try an accused for a capital offense which was begun and completed in another province. It is the express mandate of section 14, Rule 106, that

"In all criminal prosecutions the action shall be instituted and tried in the court of the municipality or province wherein the offense was committed or any one of the essential ingredients thereof took place."

The laying of venue in the municipality and province where the crime was committed has not been conceived as a fanciful decoration in the penal system. It is grounded on the necessity and justice of placing the accused on trial in the municipality or province where witnesses and other facilities for his defense are more readily available. The fact that the jury system does not exist here affects the degree but does not do away with the rationale of having criminal cases prosecuted at their situs.

We now come to this court's resolution. The majority pin their opinion on the assumption that kidnapping of the murdered man in this case was a necessary means to kill him. And, they say, in the determination of the relation

between the two offenses, we have to look to the allegations in the information for our guidance.

The information does not say that kidnapping was used as a means to kill Lee. Even if it did, the allegations would not bear it out; and it is the facts stated in the information and not the prosecutor's conclusion by which we have to judge the correctness or defects of a pleading.

Now then, what is stated in the information is that Lee was killed for ransom or to be killed. Under this allegation, and in the very nature of things, kidnapping was necessary to extort money. No one denies that. But we can not agree that kidnapping was necessary to kill the victim, which is a different thing. There was no need of carrying him to Bocaue, several dozen kilometers away from where he had been seized, in order to slay him. The defendants could have taken his life without resorting to kidnapping. This we know from common experience which no studied wording of the information can efface or inutilize. But, even as the information is framed, the allegations enable us to visualize clearly that Lee could have been slain in Manila before the start of the drive to Bulacan. We cannot overemphasize the fact that the law uses the word "necessary" to describe "means." It is not enough that a crime was used as a means; it must have been essential to perpetrate another crime.

The following case reported in I Codigo, Penal, Viada, 482, may be of interest:

"CUESTION X. ¿El que ALLANA la morada ajena, haciendo ceder a fuerza de golpes la puerta y cerradura de la misma, y, ya en ella, MATA a la mujer que alli reside, y con la que habia tenido antes relaciones ilicitas, debiera ser castigado por cada uno de estos DOS delitos de ALLANAMIENTO DE MORADA y HOMICIDIO a las penas correspondientes a los mismos, con arreglo al articulo 88 del Codigo, o debiera serlo tan solo por el DELITO MAS GRAVE en el grado maximo, con sujecion al 90?—Esto ultimo entendio la Audiencia de Granada, la que condeno al procesado a la pena de veinte años de reclusion, como grado maximo del delito mas grave de homicidio. Mas interpuesto recurso de casacion por la defensa del reo contra dicha sentencia por infraccion, entre otros, del articulo 88 del Codigo penal, que debio aplicarse, y del 90 por no ser de aplicacion al caso, declaro el Tribunal Supremo haber lugar a el: Considerando que tambien es procedente el segundo motivo alegado, porque los delitos de allanamiento y homicidio no fueron el resultado de un solo hecho ni medio necesario el uno para cometer el otro, y por consecuencia, no ha debido aplicarse el articulo 90 del Codigo penal y si el 88, imponiendo por cada uno de los delitos la pena correspondiente, en cuyo concepto ha incurrido en error dicha Sala aplicando el primero y dejando de hacerlo del segundo, etc. (Sentencia de 24 enero de 1881, publicada en la Gaceta de 22 de marzo.)"

The only ground we can think of for this ruling of the Spanish Supreme Court was that allanamiento was not a necessary means to commit the homicide.

It seems clear from a consideration of the facts alleged that the kidnapping was resorted to as a means to conceal the killing or for other reasons best known to the accused but not as a means of killing the kidnapped man. Unwittingly, perhaps, the city fiscal confirms us in this statement. In his "opposition to motion to quash," by the language of which the fiscal is bound, he says:

"In the case at bar we respectfully submit that the taking and carrying away of the victim from Manila at the point of a gun and for the purpose of killing him at Bocaue, Bulacan, is an essential ingredient of the offense charged in the information and as the same took place within the territorial jurisdiction of this Court, the crime becomes a continuing or transitory offense. We submit that the kidnapping as alleged in the information is a necessary means for the commission of the crime of murder as described in the same information. The accused conceived and contrived to commit the crime of murder at the time they began to take and carry away the victim from Calle Antipolo of this City. When the accused kidnapped the victim from Manila and killed him in Bocaue, Bulacan, all their acts were the result of a single criminal impulse—to kill the victim. In this connection we respectfully inform this Court that on page 6 of the transcript of the stenographic notes of the statement of Mr. Ricardo Parulan, one of the accused in this case, made before this representation on June 28, 1947 at about

9 o'clock in the morning, the following question and answer appear:

'Q. When did it come to your mind to kill Lee?

A. At the time that I saw Lee and Gloria arrived with a car at Antipolo.'

It is clear then that from the admission of one of the accused himself the intention to kill was already in his mind when they began to kidnap the victim in this case."

No statement can bring home more clearly the fact that the purpose of the kidnapping was murder. Not even ransom had anything to do with it. Without this admission by the prosecution we should reach the conclusion that ransom did not enter into the heinous crime from the fact, revealed by the complaint, that the killing was perpetrated on the same date, indeed on the same night, the victim was whisked away, and also from the manner in which he was slain.

This dissent does not conflict with the illustrations given in the resolution of the court, except in some respects regarding which, in all modesty, we do not think the illustrations can pass unchallenged.

On the whole, the illustrations are correct instances of complex crimes contemplated in article 48 of the Revised Penal Code. Estafa may be and frequently is committed through falsification of a public document. When this happens, (when the falsification is a necessary means, as is often in the case, to commit estafa and not to conceal the latter crime), then both offenses may and should be embodied in one complaint or information. But our contention is that kidnapping in the instant case was not a material ingredient nor a necessary means to carry out the killing but was used as a vehicle to hide the murder.

The example of abduction with rape is far from clinching the argument for the prosecution. Abduction with rape is a complex crime, not because one is a necessary means to commit the other but because, in our opinion, rape is a part of abduction. One of the essential elements of abduction is lewd designs, and rape is nothing but lewd designs in its extreme manifestation. Rape is lewd designs successfully consummated. Rape is embraced in lewd designs. There is no juristic relation between kidnapping and murder such as exists between abduction and rape. Physical injuries and murder are not synonymous.

When the resolution compares abduction with kidnapping as a means to commit rape and murder respectively, it goes further off the mark. There are few points of similarity between them. Rape cannot be successfully accomplished in the presence of other people or with people nearby unless they are accomplices to the crime. To take the woman to a secluded place is in many cases imperative to effect the criminal's objective. We do not have to elucidate on this truth. But as to murder, some of the most celebrated assassinations have been committed in a crowd, yes, in the mid of body guards and police cordons.

There might be cases (we can not think of any at this moment) where it might be necessary to kidnap a victim before taking his life in order the better to attain the murderer's purpose. In that event, we don't deny the two crimes might be combined in one complaint. But we are not speaking of abstract propositions; we are dealing not with hypothetical cases but with a concrete case governed by its own particular, concrete facts.

In conclusion, and at the risk of repetition, we maintain that murder as distinguished from physical injuries is not an essential part of any of the various forms of kidnapping or illegal detention. If no more than physical injuries were alleged, there would be only one crime, kidnapping. In that case, the deed would be a continuous offense triable either in Manila or Bulacan. We doubt if physical injuries, in that case would, constitute a separate crime. Physical injuries are absorbed in kidnapping and are alleged merely by way of describing the principal offense. However that may be, when murder is charged a new independent crime is brought in, and only the court of the province where the killing was committed has jurisdiction.

The distinction we make is not an academic one. It has important implications and lead to serious consequences unauthorized by law. A prosecution for a single offense of kidnapping, even if accompanied with physical injuries, leaves the gate open to the imposition of a penalty less than death, depending upon the presence or absence of modifying circumstances. The joining of kidnapping and murder as a complex crime would, in case of conviction, allow the court no choice in the meting out of punishment. Death would have to be imposed necessarily.

For another thing, we want to point up a matter which though not appearing in the information will inevitably come out. It is the fact that three or four of the defendants participated only in the killing of Lee in Bocaue. They were not with their co-defendants in the alleged kidnapping in Manila. We confess to a sense of guilt for touching on a question that is off the record. Our excuse is that it is a truth which if now hidden is bound to face the court when the evidence shall have been introduced. When that time comes, the rule will be reversed; the proofs and not the allegations will shape the decision. This is a situation which all concerned, defense and prosecution, cannot afford to cover up for the sake of temporary triumph. In the not improbable event that the thin thread of conspiracy with which some of the accused are connected with the others in the kidnapping should snap off, it might result in dismissals for lack of jurisdiction and other complications, entailing delays and other inconveniences which could be avoided by confronting the realities from the inception of the prosecution.

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