

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BELINDA LORA Y VEQUIZO ALIAS LORENA SUMILEW, ACCUSED-APPELLANT.

G.R. No. L-49430. March 30, 1982

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PER CURIAM:

The defendant Belinda Lora y Vequizo alias Lorena Sumilew was accused in the Court of First Instance of Davao of serious illegal detention with murder in an amended information which reads as follows:

The undersigned accuses the above-named accused of the crime of Serious Illegal Detention with Murder under Art. 267 in relation to Articles 248 and 48 of the Revised Penal Code, committed as follows:

That on or about May 28, 1975, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, being then a private person, wilfully, unlawfully and feloniously and for the purpose of extorting ransom from spouses Ricardo Yap and Myrna Yap, illegally detained their three (3) year old child Oliver Yap, a minor, from May 28 to 29, 1975 and with treachery, evident premeditation and with intent to kill, wilfully, unlawfully and feloniously attacked, assaulted Oliver Yap by tying his mouth with stocking, placing him inside a Pallmall cigarette box, covering the said box with a mat and piece of sack and filing the same with other boxes in the third floor (bodega) of the house owned by said spouses Ricardo Yap and Myrna Yap, thereby inflicting upon said Oliver Yap the following to wit: "Asphyxia due to suffocation" which caused the death of said Oliver Yap.

That the commission of the foregoing offense was attended by the following aggravating circumstances: (1) taking advantage of superior strength; (2) dis-regard of the respect due the offended party on account of his age; (3) that the crime was committed in the dwelling of the offended party; (4) that the crime was committed with abuse of confidence, she being a domestic helper (maid) or obvious ungratefulness; (5) that craft, fraud and disguise was employed; and (6) that the crime was committed with cruelty, by deliberately and inhumanly augmenting the suffering of the victim.

Contrary to law.

According to the trial judge, "he has appointed as counsel de oficio Atty. Hildegardo Iñigo a bar topnothcer with considerable practice," in view of the gravity of the offense.

Upon motion of the counsel for the accused, the arraignment was postponed to enable him to study the charge against the accused. Thereafter, after being arraigned, the accused Belinda Lora, in the presence and with the assistance of her counsel, entered a plea of guilty in Visayan dialect, which is her native dialect.

The Court thereafter directed the prosecution to present its evidence and the counsel for the accused manifested that the evidence of the defense would be presented only for proving mitigating circumstances.

Eight witnesses for the prosecution, namely: Myrna Yap, David Cortez, Fidencio Bisnar, Ricardo Yap, Agaton Bonahos, Emmanuel Mesias, Rolando Estillori and Juan Abear, Jr. were presented.

The facts are undisputed.

On May 26, 1975, accused Belinda Lora, using the name "Lorena Sumilew", applied as a housemaid in the household of the spouses Ricardo Yap and Myrna Yap at 373 Ramon Magsaysay Avenue, Davao City. The spouses had a store on the ground floor; a mezzanine floor was used as their residence; while the third floor was used as a bodega for their stocks. They had two children, Emily and Oliver Yap. Oliver was 3 years and five months old.[1]

Belinda Lora was accepted as a housemaid in the re-sidence of the Yaps and reported for work the following day, May 27, 1975. Her duties were to wash clothes and to look after Oliver Yap.[2]

On May 28, 1975, Mrs. Myrna Yap returned home from the market to find her mother-in-law and her husband panicky because their son, Oliver, and the maid, accused Belinda Lora, were missing. The mother-in-law had found a ransom note at the stairway to the mezzanine floor. The note said that Oliver was to be sold to a couple and that the writer (defendant herein) needed money for her mother's hospitalization.[3] Four pieces of residence certificates were also found inside the paper bag of the maid. One residence certificate bore the No. 1941785 with the name "Sumiliw, Lorena Pamintil." [4]

The incident was reported immediately to the police. Mrs. Yap, accompanied by one Mrs. Erlinda Velez, went to look for Oliver and the housemaid. Not finding them in Davao City, they went to Digos and Bansalan (Davao) and looked in the hospitals there. The residence certificate in the name of Lorena Sumiliw was issued in Digos and the ransom letter stated that the mother of the defendant was very sick.[5]

In the evening of May 28, 1975, the Yaps received two telephone calls at their residence. The first call was received by Mrs. Yaps's mother-in-law while the second call was received by Ricardo Yap. Lorena Sumiliw (defendant), the caller, instructed Ricardo Yap to bring the amount of P3,000.00 to the island in front of the (Davao) Regional Hospital and to go there alone without any policeman or companion, after which his son (Oliver) would be left to the security guard of the hospital at the emergency exit.[6]

The Yaps borrowed the amount of P3,000.00. Upon instructions of the NBI, the money was marked with Mrs. Yap's initials "MY".[7]

Ricardo Yap wrapped the P3,000.00 in a piece of paper and went to the Regional Hospital at 9:30 in the evening of May 28, 1975. He placed the money near the Imelda Playground. He proceeded to the hospital and looked for his child from the security guard. However, the security guard said nobody left a boy with him.[8] Ricardo Yap stayed at a corner looking and calling for his child but could not locate him. After ten minutes, he went back to where he had placed the money but the money was not there anymore. He waited until 11:00 o'clock, after which he went home.[9]

The following morning, May 29, 1975, Mrs. Yap received a phone call from the accused informing her that her son was at the Minrapco Terminal and that she was asking for another P3,000.00. Mrs. Yap proceeded to the terminal whereupon she learned that the terminal had moved to a place near a theatre. When Myrna Yap arrived at the place, she saw the accused board a Minica bus. She followed and grabbed the accused.[10] As the accused said that Mrs. Yap's son was brought to the Regional Hospital, they proceeded there. Upon arriving there, a couple, Mr. and Mrs. Bonahos, said that the Yap son was in Panacan. Mrs. Yap and the accused went to Panacan. After arriving at Panacan, the accused told Mrs. Yap that her son was in the custody of a woman whom she paid P100.00 and that the woman would return her son at 6:00 o'clock P.M. that day. Mrs. Yap therefore, made the accused sign a promissory note that she would return Oliver on the same day.[11] After the accused boarded a bus for Surigao, Mrs. Yap listed down the bus number and the seat number and reported to Lt. Mesias of the Davao

City Police Force that the "kidnapper" was on board the Surigao bus.[12]

Lt. Mesias stopped the bus and placed the accused under arrest. From the body of the accused was taken an improvised pouch containing 36 pieces of P50.00 bills and 24 pieces of P20.00 bills. The money had initials reading "MY" below the serial numbers.[13]

The following morning, May 30, 1975, upon waking up at around 6 o'clock in his house, Ricardo Yap noticed that blood was dripping from the ceiling. He went upstairs, which was being utilized as a bodega, to verify, and found his son placed inside the carton of Marlboro cigarettes. The head of the child was inside the carton while his feet protruded outside.[14] His mouth was tied with stockings.[15] The child was already dead.[16] He had died of "asphyxia due to suffocation." [17]

The defendant presented evidence only for the purpose of proving alleged mitigating circumstances. She claims that she did not intend to kill the child.[18]

To support her plea for mercy, she stated that she had three children aged from one to five years whom she left in Pagadian.[19] On objection to the materiality of the evidence, the appellant's counsel pleaded that she be allowed to prove those facts for "humanitarian consideration" which might enable the Supreme Court to review the penalty with compassion.[20]

The defendant capped her testimony with the following plea:

"A I would request the Honorable Court that LIFE IMPRISONMENT will be the penalty imposed upon me because I really committed the crime. I did not really intend to kill the child.

Q Would you like to make any further appeal?

A I really repent to what I have done, sir." [21]

On cross-examination, the defendant admitted that she gagged the child's mouth with stockings; placed the child inside the box with head down and legs up; that she covered the box with some sacks and boxes and left the child in that condition inside the store room of the house of Ricardo Yap.[22]

When the defendant left the store room, the voice of the child, who was previously shouting, "was already slow and to make sure that his voice would not be heard I closed the door." [23]

On the basis of the plea of guilt of the defendant and the evidence of the prosecution, the court convicted the defendant with complex crime of serious illegal detention with murder and imposed, among others, the extreme penalty of death.

Hence, this automatic review.

The guilt of the defendant is so patent that there is no further need to discuss the evidence. The only task remaining after the plea of guilty and the presentation of the undisputed evidence for the prosecution is to determine the crime committed, the penalty to be imposed and the aggravating and mitigating circumstances to be appreciated.

The crime actually committed is not the complex crime of kidnapping with murder, as found by the trial court, but the simple crime of murder qualified by treachery.

Kidnapping is a crime against liberty defined in Article 267, Title IX, Book II of the Revised Penal Code. The essence of kidnapping or serious illegal detention is the actual confinement or restraint of the victim or the deprivation of his liberty.[24]

"Where there is no showing that the accused intended to deprive their victims of their liberty for some time and for some purpose, and there being no appreciable interval between their being taken and their being shot from which kidnapping may be inferred, the crimes committed were murder and frustrated murder and not the complex crimes of kidnapping with murder and kidnapping with frustrated murder." [25]

In the instant case, the gagging of the child with stockings, placing him in a box with head down and legs upward and covering the box with some sacks and other boxes were only the methods of the defendant to commit murder. The child instantly died of suffocation. This is evident from the testimony of Dr. Juan Abear, Jr. who performed the autopsy on May 30, 1975 at 8 o'clock in the morning. When Dr. Abear conducted the autopsy, the body of the child was already in a state of decomposition. Dr. Abear opined that the child must have died three days before the autopsy. [26] In other words, the child died practically on the very day that the child was stuffed into the box on May 28, 1975.

The demand for ransom did not convert the offense into kidnapping with murder. The defendant was well aware that the child would be suffocated to death in a few moments after she left. The demand for ransom is only a part of the diabolic scheme of the defendant to murder the child, to conceal his body and then demand money before the dis-covery of the cadaver.

There is treachery because the victim is only a 3-year old child. [27] The commission of the offense was attended with the aggravating circumstances of lack of respect due to the age of the victim, cruelty and abuse of confidence.

The circumstance of lack of respect due to age applies in cases where the victim is of tender age as well as of old age. This circumstance was applied in a case where one of the victims in a murder case was a 12-year-old boy. [28] In the instant case, the victim was only 3 years old.

The gagging of the mouth of a three-year-old child with stockings, dumping him with head downwards into a box, and covering the box with sacks and other boxes, thereby causing slow suffocation, is cruelty.

There was also abuse of confidence because the victim was entrusted to the care of the appellant. The appellant's main duty in the household is to take care of the minor child. There existed a relation of trust and confidence between the appellant and the one against whom the crime was committed and the appellant made use of such relation to commit the crime.

When the killer of the child is the domestic servant of the family and was sometimes the deceased child's amah, the aggravating circumstance of grave abuse of confidence is present. [29]

On the other hand, the defendant invokes the following as mitigating circumstances, namely; (1) she pleaded guilty; (2) she did not intend to commit so grave a wrong; (3) she was overcome by fear that her mother will die unless she is able to raise money for her mother's hospitalization, thus, she committed kidnapping for ransom; (4) the appellant should live so that her children who are of tender years would not be deprived of a mother; and (5) we have a compassionate society. [30]

The only mitigating circumstance that may be appreciated in favor of the defendant is her voluntary plea of guilt. Her contention that she had no intention to kill the child lacks merit. The defendant was well aware that her act of gagging the mouth of the child with stockings, placing him with head down and feet up in a box and covering the box with sacks and other boxes would result to the instant suffocation of the child. There being three aggravating circumstances, namely, lack of respect due to the tender age of the victim, cruelty and abuse of confidence and only one mitigating circumstance in favor of the defendant, she deserves the death penalty imposed upon her by the lower court.

WHEREFORE, the defendant is guilty beyond reasonable doubt of the crime of murder qualified with treachery and appreciating the aggravating circumstances already indicated above, We hereby impose the penalty of death with costs de oficio.

With this modification, the rest of the decision is hereby affirmed.

Barredo, Makasiar, Concepcion, Jr., Fernandez, Guerrero, Abad Santos, De Castro, Melencio-Herrera, Ericta, Plana, and Escolin, JJ., concur. Teehankee, J., in the result. Aquino, J., concurring opinion. Fernando, C.J., took no part.

[1] tsn, pp. 12 - 15, 22, February 9, 1978.

[2] tsn, p. 16, id.

[3] Exhibit A, p. 1, List of Exhibits; tsn, pp. 16-19, Feb. 9, 1978

[4] Exhibit B, p. 2, List of Exhibits; pp. 21-22, tsn, id.

[5] tsn, pp. 22-23, id.

[6] tsn, pp. 22-26, id.

[7] tsn, p. 26, id.

[8] tsn, pp. 109-110, March 22, 1978.

[9] tsn, pp. 110-111, id.

[10] tsn, pp. 28-30, February 9, 1978.

[11] Exh. C, p. 2, List of Exhibits; tsn, pp. 30-33, Feb. 9, 1978.

[12] tsn, p. 35, id.

[13] tsn, pp. 134-138, May 30, 1978; see Exhs. "H", "H-1", "H-2", and "H-3", pp. 9-11, List of Exhibits.

[14] tsn, pp. 114-116, March 22, 1978.

[15] tsn, p. 186, Sept. 25, 1978.

[16] tsn, pp. 116, March 22, 1978.

[17] Exh. "I", p. 12, List of Exhibits; tsn, pp. 157-158, June 22, 1978.

[18] tsn, p. 180, September 25, 1978.

[19] tsn, pp. 180-181, September 25, 1978.

[20] tsn, pp. 182-183, id.

[21] tsn, p. 185, id.

[22] tsn, p. 186, id.

[23] tsn, pp. 186-187, id.

[24] PP vs. Suarez, 82 Phil. 484; PP vs. Ching Suy Siong, 96 Phil. 975; PP vs. Ablaza, 30 SCRA 178.

[25] PP vs. Sacayanan, 110 Phil. 588.

[26] tsn, pp. 154-155, June 22, 1978.

[27] PP vs. Espare, 61 Phil. 140; PP vs. Ludday, 61 Phil. 216.

[28] US vs. Butag, 38 Phil. 746.

[29] PP vs. Caliso, 58 Phil. 283.

[30] p. 14, Appellant's Brief.

CONCURRING OPINION

AQUINO, J.:

I concur in the result. The penalty imposed by the trial court was death with an indemnity of P12,000. The crime committed by the accused is the complex crime of murder and kidnapping of a minor penalized in article 270 of the Revised Penal Code. She also committed the separate crime of robbery penalized under article 294 (5) of the Revised Penal Code (extortion).

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