

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CERILO DE LEON, ACCUSED-APPELLANT.

G.R. No. L-36443. March 08, 1984

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

This case is similar to the Lindberg case where the incident took place in Hopewell, New Jersey, the Garden State, many, many years ago. It is about a boy of tender years who was kidnapped for ransom and then killed. In the cold and legalese words of the information which was filed in Criminal Case No. 198 of the defunct Court of First Instance of Camarines Sur, the crime was said to have been committed as follows:

"That on or about and within the period embraced from September 2, 1970 up to and including September 10, 1970, in the City of Naga, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent and/or for the purpose of extorting ran-som, conspiring, confederating together and mutually helping one another, being all private individuals, did, then and there willfully, unlawfully and illegally take and kidnap one RAUL ODIAMAR Y VENERACION, a 7-year old son of the herein complaining witness, SAMUEL ODIAMAR Y FLORECE, and the above accused, once in custody of said minor child, did, then and there ask and demand from the father ransom in the amount of P20,000.00, Philippine Currency, and for which only the sum of P1,000.00 was given by the complainant to the herein accused and then the latter, accused, with intent to kill, by means of treachery, taking advantage of superior strength and by employing means to insure or afford impunity, did, then and there willfully, unlawfully, feloniously and unmercifully hack the right knee and bash the head of the child RAUL ODIAMAR Y VENERACION, thereby said accused causing the inflicting fatal and mortal wounds on the vital parts of the body of the said victim causing the instantaneous death of the latter. " (Expediente, p. 132.)

The "above-named accused" were: CERILO DE LEON, ARMANDO REMO, ANGEL VALENCIA, DOMINGO VALENCIA, FRANCISCO JESALVA, JOSE ARANDIA and BERNARDO FIEJOO who all pleaded not guilty.

In the course of the trial, the prosecution moved for the discharge of JOSE ARANDIA so that he could be utilized as a state witness. The motion was granted.

The prosecution presented twenty-one (21) witnesses; the defense had a total of twenty-five (25) witnesses. The transcript is so bulky that it is more convenient to reckon it by weight rather than by the number of pages.

The decision of the trial court is equally weighty for it consists of 222 pages and the reason is not difficult to perceive - it contains unnecessary details which did not improve its quality, thus:

"At about 4:00 o'clock of the same day, September 2, 1970, Cerilo de Leon borrowed from Graciano Badilla the Cony (Exhibit H-2) telling the latter that he had a date. Graciano Badilla gave him the Cony and the accused Cerilo de Leon drove the Cony himself and proceeded along Peñafrancia Avenue and on passing in front of the Alatco station Cerilo de Leon saw Jose Arandia. The former called the latter and asked him to accompany him, Cerilo de Leon, being the "bilas" of Graciano Badilla, owner of the Cony he permanently drives everyday, and having been once his chief in the Saldaña Lines when Cerilo de Leon acted as its

Manager while its owner, Mr. Saldaña was on a honeymoon, readily acceded and went, sitting himself beside De Leon in the front seat of the Cony. De Leon continued driving the Cony himself and they proceeded along Peñafrancia Avenue towards the North. On reaching Santonja Street they turned left and upon reaching Elias Angeles Street they turned right towards the junction of Bagumbayan and Elias Angeles Streets and turned left again to Ateneo Avenue. On reaching the gate of the Naga Parochial School along Ateneo Avenue, Cerilo stopped and parked the Cony in front of the gate, and alighted therefrom, telling Arandia to wait for him as he will just fetch somebody. " (Idem, pp. 1037-1038.)

The decision could have simply stated that Cerilo borrowed a Cony automobile from Graciano and while driving it he met Jose, a former driver of Saldaña Lines which he managed for a short time and together they went to the Naga Parochial School. The excruciating details especially the left and right turns clutter the decision and distract one's attention. At any rate, REMO, the VALENCIA'S, JESALVA and FIEJOO were acquitted "for failure of the prosecution to prove their guilt." CERILO DE LEON was found guilty and sentenced to death and ordered "to indemnify the heirs of Raul Veneracion Odiamar the sum of Twelve Thousand (P12,000.00) Pesos; to pay Samuel Odiamar the sum of P920.00 part of the ransom money received by the accused, Cerilo de Leon; and to pay the proportionate part of the costs in this case." (Idem, pp. 1250-1251.)

The People's counterstatement of facts is an edited version of the lengthy statement of the trial court as follows:

"Samuel Odiamar and Luz Veneracion are husband and wife with several children, the eldest among them being Raul who at the time of the in-cident on September 2, 1970 was almost eight years old (Exh. A). Samuel Odiamar, the father of Raul was formerly employed as Cashier at the Bicol Savings and Loan Association, BISALA for short, in Naga City. Among his friends and co-emplo-yees were the accused Cerilo de Leon, Armando Remo, Loan Officer of BISALA, Angel Valencia and Bernardo Fiejoo who were all holding respon-sible positions in said banking institution, except Bernardo Fiejoo who was a security guard. The accused, together with Samuel Odiamar, as a form of relaxation, used to indulge in gambling among themselves. The accused Francisco Jesalva is an employee of the Provincial Treasurer's Office of the province of Camarines Sur. Domingo Valencia is a younger brother of Angel Valencia.

"On January 5, 1970, Samuel Odiamar resigned as cashier. He intended to transfer to the Bureau of Internal Revenue. While thus employed, he continued to join the gambling sessions. As luck had it, Samuel Odiamar seemed to have always won in these gambling sessions and the accused Cerilo de Leon and Francisco Jesalva were often the heavy losers. Consequently, Cerilo de Leon in-curred indebtedness to Samuel Odiamar. Checks issued in payment of his gambling losses to Samuel Odiamar bounced or were dishonored by the bank upon which they were drawn. (Vol. I, pp. 119-121, t.s.n.)

"With this factual setting, Samuel Odiamar's eldest son, Raul, who was then studying at the Naga Parochial School in Naga City did not return from school in the afternoon of September 2, 1970. Why Raul did not return from school is supplied by the testimony of former accused Jose Arandia, now state witness.

"Jose Arandia was a driver of a vehicle, com-monly called "Cony" (Exh. H-2), owned and ope-rated by Graciano Badilla, the brother-in-law (bilas) of appellant Cerilo de Leon. On September 2, 1970 Jose Arandia, after driving the Cony since early in the evening of the preceding night, returned the Cony to its garage at noon of September 2, 1970 (Vol. III, p. 5, t.s.n.). At about 4:00 o'clock of the same day, September 2, 1970, appellant Cerilo de Leon borrowed the Cony from Graciano Badilla as he had a date. Graciano Badilla lent him the Cony and the appellant drove it away. While passing in front of the Alatco Station, the ap-pellant saw Jose Arandia. Appellant Cerilo de Leon called Arandia and asked the latter to accompany him. Jose Arandia readily acceded as appellant Cerilo de Leon was the brother-in-law (bilas) of Badilla, owner and operator of the Cony.

"The two proceeded to Ateneo Avenue. On reaching the gate of the Naga Parochial School appellant Cerilo de Leon stopped and parked the Cony in front of the gate. He alighted telling Arandia to wait for him as he will just fetch somebody. Five minutes later, the appellant returned, this time with a child about four (4) feet tall,

wearing white T-shirt, with letters NPS on the breast of the T-shirt which stand for Naga Parochial School, Khaki short pants, white socks and black shoes with a school bag slung on his shoulders. Arandia was instructed to drive the Cony and told that they will conduct the boy to his house at San Agustin, Canaman, Camarines Sur, as it was then raining at the time. On passing the Philippine Constabulary check-point along the road in Paras, Canaman, the boy remarked that they had already passed their house in San Agustin, but appellant Cerilo de Leon told the boy not to mind it because they will just go to Calabanga to get something and he would be taken home on their return. Upon reaching Calabanga, they turned right to the road going to Tinambac. On reaching Ratay Bridge, the appellant alighted and went to the back of the Cony. He covered the vehicle's plate number with a cardboard similar in size to the plate of the Cony, but bearing a different number. He then went to the front and did the same, after which, Jose Arandia was told to proceed, which the latter did. Fifty meters away from the National Road on the road to Camuning, Jose Arandia was told to stop and to alight from the Cony. He was instructed to wait until the appellant and the child returned, because they would get something from Camuning. Arandia did as he was told. He alighted from the Cony and appellant drove it himself. (Vol. II, pp. 23-24, t.s.n.)

"What transpired in Camuning after Arandia was left behind is supplied by the testimony of pro-secution witness Edmundo Dualan, a worker in the coconut plantation of Felix Gutierrez, uncle of the appellant.

"When the appellant arrived at Camuning in the coconut plantation of his uncle, Felix Gutierrez, he parked the Cony near the latter's house and approached Edmundo Dualan and Luisa Saminiano who were in the copra shed. Cerilo told them that he wanted to have some young coconuts. The house of Felix Gutierrez where the Cony was parked is about 100 meters from the copra shed. The child seated himself on a piece of wood and the appellant did the same. It was at this time that Felix Gutierrez arrived from Naga City. Edmundo Dualan told him that the appellant was asking for young coconuts. (Vol. II, p. 150, t.s.n.) After being permitted by Felix Gutierrez to get some young coconuts for the appellant, Edmundo Dualan went to his house to get a "kawit" or scythe with which to get the young coconuts. When he went back to the copra shed, he told his companion and helper, Luis Saminiano, to gather young coconuts, and while Saminiano was gathering young coconuts, he stayed at the copra shed because it was raining. After the young coconuts were gathered by Saminiano, they tied them together in pairs. The appellant then instructed the two to load the young coconuts in the Cony. After loading them at the rear compartment of the vehicle, Saminiano and Dualan went back to the copra shed. When they returned, they found the appellant alone in the copra shed. (Vol. II, p. 154, t.s.n.) At first Dualan was unmindful of the child whom he thought had been sent on an errand. The appellant asked Dualan to get a spoon which he would use in eating young coconuts. Dualan went to the house nearest the copra shed and borrowed a spoon. When he returned to the copra shed and as he handed the spoon to the appellant, Dualan saw the child in the pit (Vol. II, p. 155, t.s.n.) which was about 3 meters deep, more or less. This pit is the place where a fire is kindled in order to dry copra. (Vol. II, p. 156, t.s.n.). When Dualan saw the boy, he (boy) had his hands raised, waving, and uttering words which Dualan could not understand. Upon seeing the boy in that condition, Dualan told the appellant that the child fell into the pit, so Luis Saminiano also ran and he and Dualan together pulled the boy out of the pit. Appellant was just about 'isang dipa' from the pit and he merely said 'siyanga pala nahulog ang kasama ko'. (Vol. p. 158, t.s.n.) Immediately after Dualan and Saminiano had pulled the boy out of the pit, the boy told the appellant 'I will report you to my father for having pushed me into the pit.' (Vol. II, p. 160, t.s.n.); the boy had a bleeding wound on his forehead. According to Dualan, the child companion of the appellant was 8 years old, wearing white T-shirt, khaki short pants, white pair of socks and black pair of shoes (Vol. II, p. 144, t.s.n.) Appellant did not answer the boy's statement that he would report to his father. The appellant kept silent so, Dualan suggested to the appellant that he should bring the boy to a doctor, and appellant promised to do so. Appellant warned Dualan not to tell Felix Gutierrez what had happened. The appellant decided to leave and Dualan assisted the child in going back to the Cony. With appellant at the wheels of the Cony, they started on their way back.

"As the appellant and the child were approaching the place where Jose Arandia had been left behind, the latter observed that the plate number at the front of the Cony was also changed. The plate number was already 20-9.

(Vol. II, pp. 20-21, t.s.n.). Appellant stopped the Cony and asked Arandia to drive the Cony again so that from then on, the latter drove the Cony with the child seated in between him and the appellant in the front seat. (Vol. III, p. 25, t.s.n.). Jose Arandia noticed that the T-shirt of the child had blood stains and there was a wound on his fore-head. Arandia inquired as to what happened to the child, but both the appellant and the child remained silent. On reaching Ratay Bridge, Jose Arandia was told to stop the Cony. Appellant alighted, went to the back of the Cony and removed the cardboard which he had placed to cover the true plate number of the Cony. He then went to the front and did the same, after which he threw the two pieces of card-board down the bridge into the river. (Vol. III, p. 26, t.s.n.). Appellant returned to the Cony and urged Arandia to move on towards Naga. On passing the Municipality of Bombon, but before reaching Magaras on the way to Naga, the appellant put a handkerchief into the boy's mouth to gag him. Arandia stopped the Cony in order to help the appellant gag the boy (Vol. III, p. 27, t.s.n.), and tied the handkerchief at the back of the head of the child. (Vol. III, p. 28, t.s.n.). While the appellant was holding the boy with his right hand he, at the same time, pressed the child with his left shoulder to Jose Arandia. (Vol. III, p. 29, t.s.n.). After this, the appellant told Arandia to move on, so he started the Cony and proceeded towards the direction of Naga City. On the way, appellant pushed the child in front to the floor of the Cony, obviously to hide the child from being seen from the outside. While the boy was thus in a crawling position in front of the floor of the Cony, the appellant had his two legs above the child while his feet were resting on the front compartment of the Cony. At the same time, the appellant was holding the back portion of the T-shirt of the child with his right hand. (Vol. III, p. 31, t.s.n.). On reaching the corner of Libaton and Bagumbayan streets, the appellant ordered Arandia to turn left and go to Pacol. On reaching the place past the house of Judge Palacio, Arandia was ordered to turn around back to the direction a Naga City, which he did. At this instance, appellant took the school bag of the child (Exh. I) from behind the front seat (Vol. III, p. 32, t.s.n.) and threw it on the right side of the road going to Naga. Then they proceeded on their way. On reaching Libaton street again, they turned right and then turned left at Bagumbayan. On reaching P. Burgos street near the Holiday Hotel, they turned right towards Igualdad street, and then turned left. On reaching Abella street, the ap-pellant told Aranda 'we are going to Camaligon, Joe', so the latter turned right on Abella street. While they were in front of the Alatco compound at Abella street, a jeep overtook them, and as the light of the Cony hit the rear portion of the jeep, the appellant waved his hand signalling to Domingo and Angel Valencia who were seated at the rear portion of the jeep.

"On reaching the crossing leading to the River Control Office in Camaligan, Arandia stopped the cony, but appellant told him 'it is not there Joe, it is further ahead'. He backed the car and drove fur-ther ahead, and on reaching the crossing leading to the De Guzman compound, Jose Arandia saw Domingo and Angel Valencia 30 meters from the crossing. He stopped the Cony near the two and switched off the light upon instruction of the appellant. Before the appellant alighted from the Cony, he told Arandia to return the vehicle. Appel-lant then opened the door and alighted from the Cony and as he was getting his artificial arm from the vehicle's compartment, the child tried to escape and run towards the front of the Cony. (Vol. III, p. 36, t.s.n.) But Domingo Valencia caught the left arm of the child while Angel Valencia caught his right arm. Appellant ran towards them and hit the child with his artificial arm, hitting him on the head at a point 2 inches above his neck and the child quivered. The appellant exclaimed, 'it is bet-ter to finish off the child because if we let him loose alive, he knows all of us'. (Vol. III, p. 37, t.s.n.) On hearing this, Arandia drove away the Cony and saw Angel Valencia and Domingo Va-lencia carrying the child, with Domingo Valen-cia holding the child by his armpits and Angel Va-lencia holding the two legs of the child, towards the inside of the De Guzman Compound. (Vol. II, pp. 36-38, t.s.n.)

"In the meanwhile, when Raul Odiamar failed to return from school, his mother became worried. She went to the town of Lagonoy that same evening to notify her husband, Samuel Odiamar, who was then in that town, that their child, Raul was missing. Arriving that same evening in Naga City, they searched for Raul, going to the police precinct and then to the hospital. Mrs. Odiamar made a public appeal on the radio about her missing son. All these brought negative results. The search for Raul continued the following morning, September 3, 1970. About 9:00 o'clock that morning the spouses Samuel and Luz Odiamar met and stopped the accused Angel Valencia and Armando Remo. It was then that the Odiamars were informed by Angel Valencia of a

ransom note contained in an envelope which Angel Valencia earlier delivered to the house of the Odiamars in San Agustin, Canaman. It appears that earlier that morning, the letter which subsequently was found to contain a ransom note, and addressed to 'Mr. Samuel Odiamar, Cashier, Bicol Savings and Loan Association, Naga City' was found by the accused Bernardo Fiejoo inside the Office of the Bicol Savings and Loan Association (BISALA). Likewise, it appears that when Angel Valencia brought the letter to the house of Samuel Odiamar, the latter and his wife were not there and that the letter was opened, upon the insistence of accused Armando Remo in the presence of Mrs. Rosario Llaguno Veneracion, mother of Mrs. Odiamar. Samuel Odiamar read the letter. A copy of the letter was subsequently made, which copy was brought to the Headquarters of the Philippine Constabulary. A photostat copy is attached to the records of this case as Exhibit C and reads as follows:

'YOUR GOOD BOY IS IN GOOD HANDS... DON'T WORRY.

'You are our number 5 client here in Camarines Sur, we expect the same full cooperation from you man.

'INSTRUCTIONS:

'(a) We demand P20,000.00 Pesos all in P20.00 denominations in exchange for the life of your boy

'(b) Wrap the money properly in a newspaper, place inside a 5¢ plastic bag, then wrap in a newspaper again

'(c) At about 10:00 to 10:15 P.M. a CONY will park in front of HOLIDAY HOTEL. Instruct the driver to bring you to NORDIA, our car will follow you at a distance. Place the money under the seat of the cony rear portion so we can see you from behind DON'T give any further instruction to the driver it might prejudiced you

'(d) WEAR white long sleeves shirt during that day SEPTEMBER 4, 1970. It's the date 10:00 to 10:15 P.M. in front of the HOLIDAY HOTEL. After we inspect the money which we shall get from under the CONY back seat someone will approach you in-side the NORDIA club and will give you instructions where you will get your boy

'SHOULD YOU FAIL:

'(a) We will send you back your boy in two equal installments

'(b) Our food supply for your boy is good only until September 4 we cannot afford to be staying long

'SHOULD YOU HIRE PERSONAL SPIES OR 'SHOULD YOU REPORT TO ANY AUTHORITY:

'(a) We will surely know it, by then we lost nothing

While you might lost the following:

'(1) The money intended for us (If in case the spies or authorities are tempted. We have had that experiences so many times before, we would like to inform you in advance so you won't commit the same error.)

'SHOULD SOMETHING UNEXPECTED HAPPEN:

'OUR GROUP IS A SYNDICATE, WE WERE IN THIS BUSINESS FOR ALMOST 12 YEARS NOW YOU HAD BEEN OUR TARGET SINCE 1968. BETTER BE COOPERATIVE.

NOTE:

'Return this letter together with the money. It's part of the bargain Good Luck ...'

"While Samuel Odiamar was reading the ransom note, Angel Valencia was present and a little while later Remo arrived and took Samuel Odiamar to the kitchen. Samuel told Remo to go to his sister Linda Odiamar and to

inform Judge Llaguno. The government authorities were likewise in-formed about the ransom note. Col. Igual, the PC Provincial Commander in Camarines Sur called for a secret conference at Lindez Hotel and among those who attended were Remo, Angel Valencia and Mr. and Mrs. Samuel Odiamar. In the conference, it was reported by Col. Igual that he had talked with a manager of a bank who would lend the amount of P20,000.00 in mutilated bills which will be used in paying the ransom money.

"The following day, September 4, 1970, Samuel Odiamar was informed that there was a change of plan as the P20,000.00 mutilated bills would not be available. Another Conference was held at the Complex Services in the office of Alfonso Ocampo. In this conference, it was agreed that only P1,000.00 would be paid initially but the same would be accompanied with a letter of appeal.

"In the meanwhile, still on September 3, 1970, at about 6:00 o'clock p.m., Jose Arandia plied his route, driving again the same Cony (Exh. H). About 9:00 o'clock p.m. that same day, the appellant rode in his Cony and told him 'you beware of imparting to the authority because the eyes of my companions are focused on you. Lest the members of your family may be in danger'. Arandia just answered 'no'. After going around the poblacion of Naga City and on reaching the Holidal Hotel, the appellant disembarked while Arandia continued to ply his trade. (Vol. III, pp. 43-44, t. s. n.)

"The following day September 4, 1970, Jose Arandia drove the Cony and again plied his trade starting at 6:00 o'clock p.m. (Vol. III, p. 44, t.s.n.) At about 7:00 o'clock p.m. that night while driving near the Holiday Hotel, he was called by the appellant. (Vol. III, p. 44, t.s.n.) Appellant was then near the monument of the 15 martyrs in front of the Holiday Hotel. After having parked the Cony in front of the Holiday Hotel, the appellant approached Arandia and told him, he (appellant) would like to hire the car 'x x x, I will just be the one to drive it'. Arandia told the appellant that he could not give the Cony to him because it was given to him by Baby (Graciano Badilla); however, he told the appellant that if the latter needed the car to just let him know and he would drive it. It was then that the appellant told Arandia to park his Cony at 9:00 o'clock p.m. near the plaza of the 15 martyrs because he would need it (Vol. III, p. 45, t.s.n.) So, Arandia continued plying his route and about 9:00 o'clock p.m., more or less, he parked the Cony near the 15 martyrs monument in front of the Holiday Hotel as per instructions by the appellant. There, a male passenger boarded the Cony. (Vol. III, p. 46, t.s.n.) He was wearing a white shirt with long sleeves, and colored pants. (Vol. III, p. 47, t.s.n.) On instruction of the passenger, Arandia took him to Nordia near the cocktail lounge where his passenger disembarked and paid him P1.00. This passenger was Samuel Odiamar. (Vol III, p. 47, t.s.n.) Arandia re-turned to the Centre and parked near the Holiday Hotel near the 15 martyrs when another passenger boarded his Cony going to Nordia. He brought him there and returned immediately to the centre (Vol. III, p. 48, t.s.n.), where he parked his Cony in front of the Holiday Hotel. He alighted and talked with other drivers who were then around and while thus engaged in conversation with the other drivers, he saw something wrapped on the floor of his Cony on the right side near the rear seat. (Vol. III, p. 49, t.s.n.) He took the wrapped item, put it behind the driver's seat in front, and told the drivers with whom he was talking that he would first take coffee. Arandia went to Concepcion Pequiña, to the Flying A Gasoline station and had his Cony placed on the wash rack. (Vol. III, p. 50, t.s.n.) He took the wrapped bundle, opened it and found money in P20.00 bills and two envelopes inside a plastic bag. He placed the two envelopes back inside the plastic bag together with the paper wrapping and threw it on the other side of the concrete wall. The money, he placed under the upholstery of the front seat. (Vol. III, p. 51, t.s.n.) He continued plying his route. (Vol. III, p. 52, t.s.n.)

"At around 5:30 A. M. of September 5, 1970, Arandia returned the Cony to the garage and went to Tinambacan, returning to Naga about 6:30 p.m. of the same day. (Vol. III, p. 72, t.s.n.) Arriving in his house that evening, he was told by his wife that the appellant went to their house demanding the P5.00 Arandia allegedly owed appellant. Short-ly after Arandia finished eating his meal that eve-ning, Graciano Badilla arrived and informed him that the

Cony was out of order and was at the Flying A Gasoline station, Arandia repaired the Cony and he and Graciano Badilla went together in the vehicle to the centre. (Vol. p. 75, t.s.n.) On reaching near the Alex Theatre, Arandia alighted and went to the police precinct because Badilla told him that the police were looking for him. He was investigated by Pat. Oliva regarding the alleged missing money. There was no mention as to who owned the money. After the investigation, Arandia went home. (Vol. III, p. 74, t.s.n.)

"About noon of September 6, 1970, Arandia brought the Cony to the garage after plying his trade (Vol. III, p. 75, t.s.n.) from 6:00 o'clock A.M. that day. While he was in the garage, the appellant arrived perspiring and Arandia asked him immediately what was that P5.00 he was de-manding from his wife. Appellant told him that was only an alibi because he had important matters to talk with Arandia. The appellant then invited Arandia to the Cony (Vol. III, p. 76, t.s.n.) where they seated themselves facing each other. The appellant told Arandia, 'Joe, I have here a letter, please read it carefully'. Arandia took the letter from appellant (Vol. III, p. 77, t.s.n.) read it; after which, appellant took it back. (Vol. III, p. 78, t.s.n.) The letter was inside an envelope, already opened and addressed to Jose Tukang, care of Cerilo de Leon (appellant). Jose Tukang is Jose Arandia himself; that is his alias, his "bansag". (Vol. III, p. 79, t.s.n.) The letter as recollected by Arandia on the witness stand was as follows:

'Dear Tukang, there was money purposely left in your car which you accidentally found. That money belongs to the syndicate. So that within twenty-four hours you deliver the money. Tonight you should enter the Bichara Theater in the Balcony. And sit yourself on the seat where there are nobody sitting beside you. After leaving the money you leave the place after five minutes because there will be two persons to take it. If the money is no longer in your possession or that you had given it to somebody it is your worry you will be dead at 12:00 Mafia' (Vol. III, p. 80, t.s.n. Brasal).'

Arandia told the appellant that he had not found the money. But the appellant answered 'that is your problem already'. Then the appellant told Arandia to take him home which Arandia did. Arandia took him to the Bello Building and brought the Cony back to the garage. This conversation inside the Cony lasted for sometime. According to Zenaida Badilla, sister-in-law of the appellant and wife of Graciano Badilla, they talked that time inside the Cony for more or less two hours. (Vol. III, pp. 409-410, t.s.n.) After having conducted the appellant to the Bello Building, Arandia brought the Cony back to the garage. (Vol. II, p. 81, t.s.n.) He was bothered about what the appellant had told him and because of the letter shown to him. He was wondering what to do. He decided to get the money from under the driver's seat of the Cony, took three P20.00 bills therefrom, and walked towards the centre (Vol. III, p. 82, t.s.n.) to look for the appellant near the place where the latter had alighted. He saw Remo near the corner of the BISALA. (Vol. III, p. 83, t.s.n.) When the appellant was leaving the Bello Building, Arandia approached him and stated 'Ciloy, there is the money'. Arandia also told him, the money was only P950.00 because he (Arandia) spent part of it. (Vol. III, p. 84, t.s.n.). Appellant promised to take care of the matter and told Arandia that it was necessary for the latter to leave. Arandia told the appellant that he could not leave because he had no money. (Vol. III, p. 85, t.s.n.) Thereupon, appellant gave P250.00 for expenses, taken from the money Arandia had just given him. Arandia was about to leave when the appellant inquired where the wrappers of the money were, and Arandia stated he threw them over the bridge. Appellant approved the action by saying 'good' (Vol. III, p. 86, t.s.n.) and left. Arandia proceeded to the supermarket (Vol. III, p. 87, t.s.n.) to the meeting of the drivers. At the meeting, he was confused and restless, troubled whether to leave or not to leave. (Vol. III, p. 88, t.s.n.) Arandia went to the Magdalena Apartment at Panganiban Street where his wife was then working and told her that he was leaving. He went to Tinambac (Vol. III, p. 29, t.s.n.) and told his brother that the latter should take care of his family because he would be leaving, and he left for Manila.

"In the morning of September 10, 1970, the Naga City Police Department received a report that the dead body of a child was found along the irrigation ditch at Pacol within the vicinity of the residence of Ex-Vice Governor Odiamar. (Vol. VI, p. 98, t.s.n.) Upon receipt of this report, Police Major Rey, together with the City

Health Officer, Dr. Theo Santy, some Fiscals and some members of the Police Department went to Pacol. The dead body was examined by Dr. Santy in the presence of Fiscal Vargas, Fiscal Rodriguez, and members of the police department. The body was brought to the morgue of the Camarines Provincial Hospital for autopsy at about 8:30 to 9:30 A.M. of September 10, 1970. (Vol. VI, p. 99, t.s.n.) When the body of the dead child was already in the morgue, Major Rey of the Detective Bureau directed one of his men to get members of the Odiamar family, particularly Samuel and his wife, for the purpose of letting them view the body of the dead child and determine whether it was the body of their missing son, Raul Odiamar. Upon arriving at the morgue, Samuel Odiamar looked at the body and kept on tapping it while crying aloud, saying 'Raul, Raul, my son'. He identified the shoes, the khaki pants worn by the dead boy and the pieces of rubber bands. (Vol. VI, p. 100, t.s.n.) In the morgue of the Camarines Sur Provincial Hospital, the body of Raul Odiamar was examined and autopsied by Dr. Theo Jame Santy, City Health Officer of Naga and Deputy NBI Medico-Legal Officer, Bicol Re-gion District Office, and Dr. Juan Dialago, Medico-Legal Officer for the province of Camarines Sur. A necropsy report was made by them (Exh. S, p. 21, rec.) and according to the postmortem findings, the body was 48.5 inches high.

'Cadaver in the advanced stage of decomposition.

'Hair all ruptured.

'Hair already peeled off.

'Traces of blood from the left ear.

'Purplish discoloration of the face, body and extremities.

'Abrasions, geographic, in different parts of the body probably resulting from bites of marine scavengers and other insects.

'WOUND; incised, gaping, 5.0 x 6.0 inches, knee, right, cutting the tendon of the flexor muscles of the right leg.

'Sutured fracture, square-temporal bone, left extending to the occipital bone.

'Tearing of the meninges just beneath the left square-temporal bone.

'Cerebral hemorrhages, subdural, traumatic, temporal, left.

'CAUSE OF DEATH:

'Sutural fracture, square-temporal bone, left, with centrecoup.

'Injury of the right square-temporal bone; Cere-bral hemorrhage.

'Subdural, traumatic, temporal, left. '

"Now let us go back to Jose Arandia. When Jose Arandia left Naga on September 6, 1970 (Vol. III, p. 389, t.s.n.) he went to Cavite City via Camarines Norte and Pasay City. (Vol. III, pp. 248-250, t.s.n.) By September 11, 1970, he was already in Cavite. (Vol. III, p. 249, t.s.n.) While in Cavite City, Jose Arandia was fetched by Naga City Police Detectives Blando and Tuazon and brought to Naga City on September 25, 1970 where he was investigated. (Vol. III, pp. 6, 252-253, t.s.n.) He executed an affidavit (Exh. V) implicating the appellant. The contents of said affidavit were reiterate-d by him on the witness stand. (Vol. II, pp. 2--90, Vol. III, pp. 1-16, t.s.n.)

"On October 6, 1970, Amparo Ibasco, wife of Jose Arandia, upon arrival from Cavite, went to the Police Department, Naga City, to visit Arandia, (Vol. III, p. 461) From there, she proceeded to the Office of the Chief of Police of Pama, and turned over to him in the presence of Major Rey, the 'left over money' (meaning what

was left of what Arandia gave her) amounting to P80.00 consisting of four 20 peso bills. (Vol. III, pp. 461-464, t.s.n.) Chief of Police Pama gave her a receipt (Exh. P) to show that they received the sum of P80.00 in four 20 peso bills with their corresponding serial numbers stated on the receipt. (Ibid; Exhs. F, F-1, F-2 and F-3) The serial numbers of these four twenty peso bills turned over to Chief Pama tallied with four of the serial numbers listed by Samuel Odiamar. (Exh. E)" (Brief, pp. 2-25.)

The appellant attributes only one error to the trial court, to wit: "THE LOWER COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT AS HIS GUILT WAS NOT ESTABLISHED BY PROOF BEYOND A REASONABLE DOUBT, IN DISREGARD OF HIS CONSTITUTIONAL RIGHT TO BE PRESUMED INNOCENT." (Brief, p. 27) and discusses this argument in just four pages.

The burden of the appellant's arguments is to attack the credibility of state witness Jose Arandia and Edmundo Dualan.

The appellant claims that Arandia was an accomplice hence his testimony comes from a polluted source and should not be believed. He also avers that Arandia's testimony is "much too eloquent, so much so that either he was well rehearsed or just exceptionally brilliant."

True it is that Arandia's testimony comes from a polluted source. But it does not follow that it is not admissible and competent. (People vs. Aquino, L-27184, May 21, 1974, 57 SCRA 43.) What has to be done is scrutinize it carefully. This the trial court did for it said:

"We have carefully scrutinized the testimony of Jose Arandia, without forgetting for a moment that Arandia was one of the accused in this case, but was discharged in order to be used as prosecution witness. We have therefore exercised the utmost care and caution in considering his testimony. We have carefully watched his demeanor, his behavior, the manner he testified in Court, we have watched his eyes - the windows of his soul; we have intently listened to any change and variation in his voice, and on the whole, although he committed certain contradictions in his testimony, we found his testimony sufficiently reasonable." (Expediente, p. 1150.)

It should also be stated that Arandia's testimony is partly corroborated by that of Edmundo Dualan who testified on what happened when the appellant brought Raul Odiamar to the coconut plantation of Felix Gutierrez, appellant's uncle, in Camuning.

The appellant's claim that Arandia's testimony is "much too eloquent" is not supported by the record. Arandia was able to answer the questions posed to him because he was telling the truth.

The testimony of Edmundo Dualan is questioned on the sole ground that he did not identify the boy who was with the appellant as Raul Odiamar so that Raul's disappearance and eventual death cannot be laid to the door of the appellant. This posture has no basis.

The appellant claims that the boy he brought to the Gutierrez' coconut plantation was his nephew, Reynaldo de Leon. But on September 1, 1971, when Edmundo Dualan was recalled to the witness stand and Reynaldo de Leon was shown to him, he replied that Reynaldo was not the boy who was with the appellant. This is what the transcript shows:

"FISCAL VARGAS:

During the testimony of Cerilo de Leon, he said and he admitted that he was at Camuning, Calabanga, Camarines Sur on September 2, 1970 with a boy; but, that boy, according to him is Reynaldo de Leon. Reynaldo de Leon is now here in Court, and I would like you to see him. We will request now, at this stage, that Reynaldo de Leon should come forward.

(NOTE: At this stage, Reynaldo de Leon was requested to stand up)

Q - Will you tell us if this boy who stands up in the courtroom by the name of Reynaldo de Leon, will you tell us if that is the same boy whom you retrieved from the pit in the afternoon of September 2, 1970 at Camuning, Calabanga, Camarines Sur?

A - That is not the one because that is very small.

(Vol. XIII - Defense, pp. 2483-2484.)

On the positive side, Dualan identified the boy who was with the appellant as Raul by (a) describing his physical appearance and his attire; and (b) his resemblance to Raul's picture which was published in the Bicol Mail. (TSN, Vol. II-Prosecution, pp. 141-149.)

The bottom line in this appeal is who to believe. Should the inculpatory and incriminatory evidence given by Jose Arandia and Edmundo Dualan prevail over the denial of the appellant that he had nothing to do with the asportation and death of Raul Odiamar? The trial court concluded that Arandia and Dualan were more credible and We have no reason to disturb its conclusion for it was in a position to ascertain which of the witnesses were more credible. This policy of appellate courts is axiomatic and is based on sound considerations.

The trial court correctly sentenced the appellant to suffer death but We cannot affirm the penalty because the necessary votes cannot be obtained.

WHEREFORE, the judgment of the trial court is modified in respect of the penalty and indemnity in that the appellant shall suffer reclusion perpetua and indemnify the heirs of Raul Odiamar in the amount of Thirty Thousand (P30,000.00) Pesos. The rest of the judgment is affirmed. Costs against the appellant.

SO ORDERED.

Makasiar, Acting C.J., Concepcion, Jr., Guerrero, De Castro, Melencio-Herrera, Plana, Escolin and Relova, JJ., concur.

Aquino, J., votes for the imposition of two death penalties. The accused is guilty of two separate and distinct capital offenses: kidnapping and murder.

Gutierrez, Jr., J., no part.

Fernando, C.J. and Teehankee, J., on leave (abroad).

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