

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LT. ALCANTARA @ COMDR. PEPE, ET AL., DEFENDANTS, MAXIMO ESPEDIDO, DEFENDANT-APPELLANT.

G.R. No. L-17212. May 23, 1964

Ponente: LABRADOR, J.

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LABRADOR, J.:

This is an appeal from a decision of the Court of First Instance of Quezon, Hon. Vicente del Rosario, presiding, finding Maximo Espedido guilty of the crime of kidnapping for ransom, perpetrated on Gregorio Yumul, Sr. and his son Gregorio Yumul, Jr., on May 24, 1955, in conspiracy with Commander Velarde and Lt. Alcantara and their companions, all of them Huks, sentencing the said appellant Maximo Espedido to die by electrocution, to pay Gregorio Yumul and his son the sum of P30,000 and to pay one-half of the costs. In said judgment Ceferino Osuna, son-in-law of Espedido, was also found guilty as an accessory after the fact and sentenced to suffer the penalty of from ten years of prision mayor as minimum to seventeen years and four months of reclusion temporal as maximum, to indemnify Gregorio Yumul and his son in the amount of P3,000 and to pay one-half of the costs.

The original information in this case charges twenty-four persons, namely: Lt. Alcantara alias Commander Pepe, Gonzalo Mallare alias Romy, Simplicio Miras alias Never, Commander Velarde, Ceferino Osuna, Maximo Espedido, and 18 others, five of whom were not known. Of the said accused only six were arraigned for trial and each and everyone of them pleaded not guilty. Those arraigned were Ceferino Osuna, Maximo Espedido, Gonzalo Mallare, Francisco Organo, Hilario Organo and Simplicio Miras. Gonzalo Mallare, Francisco Organo, Hilario Organo, Simplicio Miras and others were discharged from the information so that the trial proceeded only against Ceferino Osuna and the appellant Maximo Espedido.

The present decision concerns the defendant Maximo Espedido as his co-defendant Ceferino Osuna, who had been found guilty as an accomplice after the fact, withdrew his appeal.

There is no question that on May 24, 1955 at 6:30 in the evening while Gregorio Yumul was taking his dinner with his family in Barrio Calantipayan, Lopez, Quezon, a Huk known as Lt. Alcantara suddenly approached Yumul at the table asking if he was Mr. Yumul. To this Yumul answered in the affirmative and asked to be allowed to continue eating but Alcantara said that he was in a hurry. Yumul wanted to go up the house first for his pajamas "but Alcantara said that they were all in a hurry and pushed Yumul. Yumul resisted Alcantara by struggling and boxing him. Then he heard Alcantara say that what he wanted was his money and not his life. Alcantara and his companions left a note under a plate asking for P60,000, then took Yumul along. Yumul again fought back but was felled down by a blow with the butt of Alcantara's gun. Alcantara's companions helped him tie the hands of Yumul behind his back. Yumul's son who tried to help his father was also taken by the soldiers.

Yumul and son were brought to the mountains, passing brooks, bushes and ridges of mountains, and brought to the barrio of Oboob, guarded by Francisco Organo, Alcantara and Simplicio Miras. Yumul was given plenty of food and was "treated like a baron". Then he was asked to write his family to prepare P60,000 for his ransom but

Yumul objected saying that the amount demanded was too much. Finally Alcantara told him to write the note for P40,000, which was reduced, upon Yumul's petition, to P30,000. So Yumul wrote his wife a note to send him P30,000 for his release.

The note was taken to Yumul's wife and after a few days money was taken to the mountains where Yumul was being detained, by two friends of his. They brought only the sum of P27,000 on June 15. As Alcantara was not satisfied with the amount, Yumul sent another note to his wife asking that the additional sum of P3,000 be sent him which amount was sent on June 18. After the receipt by Alcantara and his companions of the second sum of P3,000 Yumul was released.

As this decision concerns the appeal of Maximo Espedido alone we shall consider only the evidence that has been adduced against him regarding his participation in the commission of the crime.

One principal witness against Maximo Espedido was Bernardo Rodriguez who testified that he was a former caretaker of the coconut plantation of Maximo Espedido in the barrio of Oboob, Lopez; that on May 22, 1955 four persons came to his house, among whom was Commander Velarde alias Ruben; that Espedido was in his house when they arrived; that Espedido greeted them telling them that he was the one sent by his son-in-law to see them. The supposed conversation between Espedido and Commander Velarde is that Velarde asked Espedido if he could help them in the coming elections. In answer Espedido suggested that Yumul be kidnapped so that he may not be a candidate as his property would then have to be sold for his ransom. Rodriguez also testified that Velarde and Espedido talked outside the house and he saw Velarde give a letter to Espedido for delivery to his son-in-law which the latter put in his pocket.

The witness Francisco Organo, one of the accused in the case, declared that he joined the Huks under Commander Magsuri; that he joined the group of Commander Velarde in Quezon on May 24, 1955; that he was in the sitio of Oboob with Lt. Alcantara; that he was assigned to Alcantara to kidnap persons and among his companions were some other Huks; that on May 24, 1955, he accompanied Lt. Alcantara to the house of Yumul at about six or seven o'clock in the evening; that once in the house of Yumul, Alcantara called for Yumul; that they tied Yumul when he refused to go with them, but later untied him when he consented to do so; that Yumul was taken to the mountains and kept there until two persons brought the ransom money of P27,000; that when the additional sum of P3,000 arrived, Lt. Alcantara shook hands with Osuna, counted the said P3,000 and later gave the money to Osuna.

A third witness who testified against the accused was Simplicio Miras, one of the accused. The case against him was dismissed so that he might be utilized as a state witness. He testified that he used to work as security guard to Mateo del Castillo alias Pando, but that on February 19, 1955 he was Bent to Lopez to Join Commander Romy and then they established their camp in barrio Oboob in the middle of April, 1955; that soon thereafter "Velarde joined them; that in the first week of May, 1958 defendant-appellant Maximo Espedido had a conference with Lt. Alcantara, Commander Velarde and Clarin; that they held the conference for three hours and after the conference Espedido left. After Espedido had gone Alcantara and Velarde told them that Osuna wanted Yumul to be kidnapped; that according to Maximo Espedido a flores de mayo would be held in the barrio of del Pilar and Osuna would identify Yumul by raising the latter's hands during the flores de mayo. He further declared that before Maximo Espedido left he said Osuna would do all he could to have Yumul present at the flores de mayo in barrio del Pilar; that the flores de mayo was held in May 25, 1955 and that he and his other companions went to see the flores de mayo; that during the celebration there were some speeches delivered and in the course of the speeches they saw Osuna raising the hands of Yumul; he further declared that after the ceremonies Osuna left for Calantipayan, and was followed by Velarde, Alcantara and others, and on that occasion Osuna pointed to Velarde the house of Yumul.

Osuna testifying in court; denied all the imputations made against him. The question to be decided in the appeal of Espedido in his participation in the kidnapping of Gregorio Yumul.

The testimony of Bernardo Rodriguez, the owner of the house where a conference was held between Espedido and the Huks under Velarde early in the month of May 1955, was to the effect that Commander Velarde asked Espedido in what manner they could help in the elections and that Maximo Espedido suggested in reply that, Yumul be kidnapped in order that he may not be able to participate in the elections. This testimony of Rodriguez about the existence of the conference and the supposed words of Espedido on that occasion was not in any way corroborated by other witnesses. If the conference was being held at noon time when food was being served to Espedido and Velarde and his Huk companions, with Rodriguez busy attending to the serving of the meal, it is very doubtful whether Rodriguez could have learned or heard the exact words that passed between Espedido and Velarde while they were eating. The veracity of this witness on the supposed conversation was put in doubt in the cross examination when, upon being asked if any conversation had taken place in his house after lunch, he said no, and thereafter corrected himself and said that he had made a mistake.

Another incident by which the witness for the prosecution would link Espedido with the conspiracy to kidnap Yumul is a supposed conference held in the barrio of Oboob between Lt. Alcantara and other Huks with appellant Espedido. Miras testified that after the conference Alcantara informed him and the others that Espedido had agreed with them about the kidnapping of Yumul. This supposed conference and the nature thereof was not actually heard by Miras himself because Miras was not present in the conference. Consequently his testimony on the supposed agreement made at the conference is mere hearsay and should not be taken into consideration by the court.

But while We entertain grave doubts that the defendant-appellant Maximo Espedido had himself induced Commander Velarde and Lt. Alcantara to kidnap Gregorio Yumul and conspired with them to effect the kidnapping of Yumul, We are satisfied that he participated in some other manner in the kidnapping. Thus We find from the evidence that he was sent by his son-in-law Mayor Osuna to confer with Commander Velarde and the Huks to find out what the latter would say. Again, he was the bearer of a note sent by Velarde to Osuna presumably about the plan to kidnap Yumul. He was present when the negotiations, altho he did not take part therein, were being made between Osuna and the Huks in the mountains of Oboob, so that he had knowledge of the kidnapping. He performed certain acts related to the kidnapping, altho these acts cannot be considered as direct inducement or direct participation in the conspiracy to commit the crime of kidnapping. Under these circumstances We are constrained to set aside the finding of the court below that Maximo Espedido is guilty as principal in the crime of kidnapping. Both counsel for the appellant Espedido and the Solicitor General agree that at most Espedido's acts are mere acts of an accomplice, there being no evidence proving beyond reasonable doubt that he was an actual co-conspirator in the crime, but that he merely acted as a go-between of the parties conspiring to commit the crime.

Wherefore, finding the recommendation of the Solicitor General to be well founded, his recommendation being agreed to by counsel for the appellant, We hereby set aside the judgment finding Espedido guilty as principal in the crime of kidnapping, and find him guilty as accomplice in the commission of said crime, and in view of the fact that he is above 70 years of age, We sentence him to suffer the penalty of not less than six (6) years and one (1) day of prision mayor and not more than twelve (12) years and one (1) day of reclusion temporal and to pay one-half of the costs.

Bengzon, C.J., Padilla, Bautista Angelo, Paredes, Dizon, and Makalintal, JJ., concur.

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