

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
CARLOS MIRANDA TAN, UY CHEN TEK Y PI AND MACARIO TIU,
DEFENDANTS. CARLOS MIRANDA TAN AND UY CHEN TECK Y PI,
APPELLANTS.**

G. R. No. L-2096. February 06, 1951

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PER CURIAM:

Per Curiam :

Vicente Po, a young man living at 515 Reina Regente Street, Manila, was kidnapped for ransom on December 12, 1946 from the vicinity of his home, and killed on December 17 on the ground floor of a small almost dilapidated house at 13 Bonifacio Street, San Juan, Rizal. For this crime, the appellants—Carlos Miranda Tan and Uy Chen Tek y Pi—were prosecuted with Macario Tiu, who, before arraignment, was discharged on motion of the city fiscal to be used as a state witness; and found guilty of kidnapping and serious illegal detention, they were sentenced to reclusion perpetua and costs.

According to Benjamin Calderon, a Manila City plainclothesman, he and other detectives began working on the case as early as December 12, after the kidnapping was reported to the police by Jesus Chua. However, there was no development until one or two days later, when Chua came to inform that on the preceding night he had received a ransom note. Thereupon, on the 14th, Calderon and other police agents repaired to Chua's house at 515 Reina Regente and were shown the letter. (Sketched in this letter and in another received later, both of which were written in Chinese, were signs the like of which, according to directions in the letters, were to be posted outside Jesus Chua's house to indicate whether ransom was to be paid and if so how much.) Thenceforth the detectives redoubled their vigilance and watched that house twenty-four hours a day on a stretch.

At about 7 p. m. on the 16th, when the detectives were posted across the street hidden behind a deserted steamroller, a taxicab pulled up to the curb in front of the aforesaid house, and Carlos Miranda alighted from the car, dropped or delivered a letter in the house, and rushed back to the taxi. The vehicle started up immediately but the detectives gave chase and before it got far they caught up with and halted it. Inside the car were Carlos Miranda Tan and Uy Chen Tek, both seated in the back seat, and the driver, Nerio Moses.

Carlos Miranda Tan, Uy Chen Tek and Moses were forthwith taken in the police jeep to the police station at the old Bilibid Prison with the taxi, presumably driven by a detective, following; and starting at 8 p. m., the three prisoners were questioned until 3 a. m. In that investigation, Carlos Miranda Tan and Uy Chen Tek made written statements, the former in Tagalog and the latter in Chinese, in his own handwriting, and revealed Vicente Po's whereabouts.

With this information a posse of four detectives headed by Calderon immediately set out for San Juan with Uy Chen Tek and were shown the house where Po was being detained. After seeing the place, the four detectives with Uy Chen Tek returned to the headquarters to get reinforcement and, with additional men, drove back to San Juan, this time with Carlos Miranda Tan instead of Uy Chen Tek who had been left at the police station. It was still

before dawn.

No one seemed to stir in the house. Carlos Miranda Tan was ordered to shout to the people inside that he, Carlos Miranda Tan, was already under arrest and that they had better give themselves up. Tan yelled accordingly, in Chinese, but nobody answered. The detectives then fired into the air to show that the house was encircled. Shortly afterward, Macario Tiu came out with raised hands and presented himself. Tiu told the detectives that Vicente Po and O Pe were inside, dead. The officers opened the door of the ground floor and came upon Vicente Po's and O Pe's lifeless bodies with gunshot wounds stretched on a cot and the floor respectively.

Macario Tiu y Chua, a young chap of seventeen, testified that having requested O Pe to find a job for him and O Pe having promised to do so, they met on a Sunday in a restaurant on T. Alonso Street. There O Pe told him that he got a job for him as watchman. Seated beside O Pe were the two accused to whom O Pe now and then whispered. At the conclusion of the conversation O Pe told the defendants that they were going to hire the witness as a watchman but the accused did not say anything. All came out of the restaurant together but they separated outside, the witness going in one direction and the accused together in another direction.

Exactly one week later, O Pe with the two defendants came to the witness' house and told him to come along. It was about 10 o'clock a. m. At about 2 or 3 o'clock in the afternoon he and O Pe arrived in a car in the house shown in the picture Exhibit A. Entering the ground floor through a small door, he saw inside Carlos Miranda Tan and Uy Chen Tek who rushed or started to rush outside when he appeared. Someone (Vicente Po) was also inside, sitting on one of three beds. O Pe revealed to him for the first time that he had kidnapped somebody and promised to pay him about P400. He did not ask O Pe whom he had kidnapped because O Pe had a gun in his hand and he was afraid.

Nothing happened until the next morning when he heard successive shots outside. He was aroused and scared. O Pe with gun approached the man in the photograph Exhibit B (Vicente Po) and fired several times at the latter. After shooting the kidnapped young man O Pe turned around and, pointing his gun at the witness, asked, "Would you prefer to have me shoot you or you will surrender to the policeman? The people in the house then knew there were policemen outside because they had heard Carlos Miranda Tan say that he had been caught and advised them to come out. Carlos talked in Chinese and identified himself by his name. At this juncture he jumped out through the window and O Pe killed himself.

Evidence on the commencement of the kidnapping was furnished by Cresencio Enriquez. On December 12, Enriquez declared, he was taking a stroll with a four-month old child on an alley (Callejon Reina) which opens at Reina Regente Street, when he saw Carlos Miranda Tan and Uy Chen Tek, the former poking a pistol on the ribs of Vicente Po and the second doing likewise to another man, while the two victims had their hands raised above their heads. A watchman and private detective by occupation, he hurriedly took his child home and summoned other men to foil the holdup. But when he returned with companions to the scene of the kidnapping no one was there any longer. He said the time was dusk.

Nerio Moses, the taxi driver, gave evidence as to when and where he was hired, what they did, and how they were arrested. Substantially, he said that between 10 and 11 o'clock in the evening he was hailed by the two defendants in front of Theater Dalisay on Rizal Avenue. These two men boarded his car and the fat man (Carlos Miranda Tan) directed him to Reina Regente. After entering Reina Regente, from Azcarraga, and a little beyond the Meisic police station, he was told to slow down. With slackened speed, he cruised as far as Plaza Binondo, turned around the rotunda, and back to Reina Regente. In front of a house after crossing the bridge going in the direction of Azcarraga he was told to stop, also by the fat man. Then Miranda hopped down and handed something to a man at the window of the house, after which Tan came back and climbed aboard the taxi. When he (driver) was starting

the car he heard a shout to halt but he did not heed the warning because he was afraid and was not aware of what the trouble was. Then he heard gunfire and now he stepped on the brake, raised his hands, and he and his passengers were taken to the police station at the old Bilibid Prison compound.

The defendant's statements to the police already referred to substantially tally with the foregoing summary of the testimony and supply, besides, missing particulars, such as that the other man who was held up with Vicente Po in Reina Alley was Tomas Po; that Vicente Po was whisked away to San Juan by O Pe and Uy Chen Tek in a jeep driven by Pe; that Carlos Miranda Tan was left behind guarding Tomas Po; that soon after O Pe and Uy Chen Tek drove off, Carlos Miranda Tan let Tomas Po go and took a jeepney" to Quiapo and a bus from Quiapo to San Juan to join his companions at the house above mentioned.

At the trial only the two defendants gave evidence in their behalf on the kidnapping.

Uy Chen Tek, 26 years old, employee by occupation in a sari-sari store, residing at 528 Asuncion Street, testified that he had known O Pe since 1943. After liberation he did not see O Pe again but sometime in 1946 he and O Pe had a talk; that was on December 13, 1946. O Pe asked him what he was doing and he told O Pe that he had no work. O Pe told him that if he was interested O Pe would recommend him for a job in a sari-sari store. Then O Pe took him to the place where he supposed he was going to work. Instead it was a house in San Juan where he saw a man that looked like the man in the photograph Exhibit B (Vicente Po) sitting on a bed. O Pe told him immediately after they arrived in that house that he wanted him (Uy Chen Tek) to write a letter for him. He wrote the letters marked Exhibits H and M. He knew that these letters were against the law but he was forced to write them or he would be killed. He did not know that O Pe had kidnapped a man. It was only in the house and when he was told to write that he became aware of the kidnapping. He did not know before he reached the house that somebody was detained there, and even after he saw the man he did not know his name. He was afraid of O Pe because O Pe had a gun pointed at his (Uy's) breast and forced him to write.

Carlos Miranda Tan, 27 years old, residing at 2038 Rizal Avenue, Manila, testified substantially: He was a baker prior to December 16, 1946, working on Rizal Avenue and earning P350 a month. At about 6 o'clock on December 16, 1946, he went to Santa Cruz to buy something near the Ideal theater. On Rizal Avenue, near the Dalisay theater, he met Uy Chen Tek. They exchanged greetings because they had not seen each other for a long time. Afterward they hailed a taxi and in the taxi Uy Chen Tek told him that he wanted to visit a friend at Reina Regente and so he came along. In Reina Regente Chen Tek stepped out of the taxi and he remained and waited in the car. Three or five minutes after getting out of the car, Chen Tek entered a house and then returned to the car. As they were starting for home they saw a group of persons with firearms who stopped the taxi and arrested him and his companions. After having been maltreated, he was taken to San Juan although he did not know that place. He was taken to a place where, after passing through a small street, the car stopped and a policeman told him to get out. The policeman had a revolver pointed at the back of his (Tan's) hand and told him to walk ahead of the officer. When they were near the house, the policeman ordered him to duck and to shout at the people inside the house to come out. At first he shouted in Tagalog and then he was told to shout in Chinese.

FINDINGS

There is ample evidence to show that the appellants' extrajudicial statements were wrung by torture and intimidation. The charge that the accused went through severe beatings is corroborated by marks on their bodies attested by a medical police officer. Their statements should have been rejected

Even disregarding the so-called confessions, however, the appellants' guilt as principals is plain.

Counsel point out incongruities and contradictions in Macario Tiu's testimony. There are indeed clear signs of

perjury in this witness' rambling and, in many parts, incoherent narrative. For one, we do not believe that he was a hired man to guard Vicente Po but a regular member of O Pe's gang; and it was in his endeavor to lighten his part in the conspiracy that he involved himself in contradictions. But we do not believe that all his tale was the product of invention.

Amid his inconsistencies and contradictions these facts stand out: the appellants were present, though they took no part in the conversation between O Pe and this witness, at the restaurant on Teodora Alonso Street on or about December 8, and were alone with Vicente Po when O Pe and Tiu arrived at the hideout in the afternoon of December 16. Then it is admitted by the defendants themselves that Uy Chen Tek wrote the ransom letters and took one of them to Vicente Po's residence.

Bearing in mind this clearly proven or admitted connection of the defendants with the crime, the falsity of Tiu's testimony in many of its collateral details becomes inconsequential. It is rather what the defendants say about their actions that is important. From their actions the natural inference is that they were co-authors in the kidnapping by direct participation, and a large degree of burden is shifted to them to show the contrary—that they acted in ignorance of O Pe's intention or by compulsion. Which is the central theme of Uy Chen Tek defense.

Uy Chen Tek puts all the blame and responsibility for the crime on O Pe who, though the leading spirit in the kidnapping, was dead and could neither refute the defendants' testimony nor be harmed thereby. It is claimed that Uy Chen Tek was tricked by O Pe and was virtually O Pe's prisoner; that O Pe, a determined killer, warned this accused that he would be watched and himself killed if he disobeyed the order to deliver the letters at Vicente Po's house.

That Uy Chen Tek was an ignorant or unwilling tool is on its face untenable. O Pe should be credited with enough intelligence to realize the absolute necessity of having for confederates only men who were with him body and soul in a dangerous enterprise, the success of which depended absolutely on complete secrecy. It would have been the height of folly, not to say suicidal, on O Pe's part to acquaint any one outside of his confidence with the hideout and the kidnappers' identity.

And why, it may be asked, should O Pe use, in the first place, a hostile man to do O Pe's errands? To carry letters did not call for any special skill which Tan and/or Uy Chen Tek alone possessed. The man or men who watched or were to watch Uy Chen Tek could perform the task just as well if not better with the all important advantage of security against betrayal.

In the second place, the defendants had all the opportunity they needed to get out of their alleged predicament. Patrolmen must have abounded on Rizal Avenue when and before they called and boarded a taxi, and on Reina Regente there was a police station close to Vicente Po's home. The truth of the matter is that the defendants must have refused to squeal even after they were arrested. How else could their severe maltreatments by the police be accounted for if not by their insistence to keep silent?

With reference to Carlos Miranda Tan, it will be noted that this accused devoted his time on the stand almost wholly to a narration of how he happened to be with Uy Chen Tek on the night of the 16th and of his dreadful experience at the police headquarters at the hands of the detectives. He did not deny Macario Tiu's testimony that he and Uy Chen Tek were with O Pe at the restaurant on Teodora Alonso, neither did he deny Tiu's testimony that when Tiu and O Pe reached the hideout on the afternoon of the 16th he (Tan) and Uy Chen Tek were there alone with Vicente Po. He admitted that he accompanied the detectives the second time these went to San Juan on the early morning of the 17th and called out for O Pe to give himself up.

Enriquez's evidence is direct and its damaging effect can only be avoided by direct attack. This, the appellants

undertook to do. Enriquez is branded a perjurer, and his veracity has received lengthy treatment in their briefs.

The trial judge who saw Enriquez testify and observed his demeanor and conduct found him a truthful witness. No weighty reasons are disclosed by the record which would warrant setting aside of the court's appraisal of this witness' testimony.

There was no necessity for the prosecuting attorney or Vicente Po's relatives to call Enriquez if he had known or seen nothing of the crime. Macario Tiu's, Calderon's, and Moses' testimony and the defendants' written statements to the police afforded the prosecution sufficient evidence to convict. The absence of this witness' name from the original list of witnesses, absence which counsel think was a suspicious circumstance, can be attributed to many justifiable reasons. It is material to note in this connection that a private prosecutor handled the prosecution and that the information must have been drawn and filed before the private prosecutor intervened in the case.

As to Enriquez's failure to report what he had witnessed to the police or notify Vicente Po's relatives thereof on the night in question, his silence was not by normal standards extraordinary. His explanation for his inaction, we think, is quite satisfactory.

Had the relatives of Vicente Po wanted to introduce a false testimony, they did not have to get a stranger to fabricate a story out of whole cloth. Tomas Po was available, included in the list of witnesses, to say what Enriquez said. Apparently, Po was not called because, very likely, he did not know the men who held him up and his brother, and he would not lie saying he did. Enriquez, we believe, was in a position to recognize the faces of the accused. He swore that he had seen them in other places before and he said the time of the holdup was between light and darkness. He had no watch, and when he said it was about 6:30 he was only trying to adjust the hour to the time when on the average dusk falls.

The trial court correctly found that the crime committed was kidnapping and serious illegal detention as defined in article 269 of the Revised Penal Code as amended by section 2 of Republic Act No. 18, but it erred on the side of leniency in the imposition of the penalty. This form of kidnapping is punished with reclusian perpetua to death. The crime was attended by two aggravating circumstances which elevate the prescribed punishment to its maximum degree. These aggravating circumstances not compensated by any extenuating ones were nighttime and use of motor vehicle.

The appellants are sentenced to death and to pay one-third of the costs each.

Moran, C. J., Paras, Feria, Pablo, Bengzon, Padilla, Tuason, Montemayor and Reyes, JJ., concur.

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