

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLE VS. ISSAC FAROL, ET AL., DEFENDANTS

G.R. No. L-9423-24. May 30, 1958

Ponente: REYES, A., J.

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REYES, A., J.:

The appellant Isaac Farol was, together with several other persons, charged with kidnapping for ransom in three criminal cases (Nos. 584, 585 and 587) of the Court of First Instance of Batangas, which were instituted following, an investigation made by the Philippine Constabulary and other police authorities in connection with the kidnapping of (1) Dr. Norberto Quisumbing on July 27, 1952, (2) a boy name Andres Lara in March, 1953, and (3) Dr. Timoteo Alday on June 30 of that same year, the investigation having revealed that the kidnappings were perpetrated by an organized gang headed by this appellant.

With some of the defendants still unapprehended, the three cases came up for hearing and with the conformity of the defense were tried jointly. The trial resulted in the conviction of Farol and Apolinar Plandez in Caso No. 584 (for the kidnapping of Dr. Norberto Quisumbing), the acquittal of Farol and the conviction of Manuel Silva and Apolinar Plandez in Case No. 585 (for the kidnapping of Andres Lara) and the conviction of Farol, Manuel Silva, Exequiel Silva and Bias Bejasa in Case No. 587 for the kidnapping of Dr. Timoteo Alday), the sentence imposed in each case being life imprisonment plus indemnity and costs. But though several defendants were convicted, the record now before us discloses that only Farol has appealed, the appeal being from the sentence imposed upon him for the kidnapping of Drs. Quisumbing and Alday in Cases Nos. 584 and 587, respectively.

With reference to the kidnapping of Dr. Norberto Quisumbing (Case No. 584), the evidence shows and it is not disputed that in the morning of July 27, 1952 this doctor, then a resident of Pasay City, went with some companions to the barrio of Castillo in the municipality of Rosario, Batangas, to inspect his race horses. While he was there writing down the names of the horses to be examined, a group of armed men, about seven or eight, came and, after identifying him, seized and dragged him away from his companions. First they took him to San Juan in the same province, where they passed the night, and thereafter they moved him from barrio to barrio, keeping him all the time in custody until he was ransomed by his family some days later. The negotiations for ransom were effected through the Mediation of the appellant Farol, whom the family and friends of Dr. Quisumbing had contacted for the purpose, the said appellant having been mayor of the town (Rosario) where the kidnapping took place.

Appellant admitted having initiated and conducted the negotiations for ransom, but claimed that he only did it out of pity to Dr. Quisumbing's wife. According to his version, while he was looking for someone to contact the gang of kidnappers, a man - whose name he did not mention - came to tell him that the gang wanted to speak to him. Through this man he learned that the gang was demanding a ransom of P100,000. But again through this man he succeeded in having the demand reduced to P20,000 on the plea that this was all the family of Dr. Quisumbing could afford to pay. Following the instructions given by that same man, he went by car to the appointed place near the Bantillan bridge in San Juan, Batangas, on the night designated for the payment of the ransom. With him,

besides the driver, were Francisco Medrano, then technical adviser in the Import Control Commission, Esteban Mayo of the Games and Amusement Board and Quisumbing's son-in-law Anselmo Villar. As they neared the appointed place, he got off the car and walked alone till he entered a concrete gate with iron grills. There he was met by a man who introduced himself as the one to receive the ransom money and who also told him where Dr. Quisumbing would be found. He did not believe the kidnappers would "double-cross" him and so he handed the money to the man without even seeing the doctor. The man then told him to go back to the car and drive in the direction of Candelaria, Quezon province, and he would meet Dr. Quisumbing on the road. The man proved to be as good as his word, for appellant and his companions soon found the doctor on the road indicated, already free from his captors.

As to the kidnapping of Dr. Timoteo Alday (Case No. the evidence shows and it is also not disputed that this doctor was, in the afternoon of June 30, 1953, fetched from his house in San Jose, Batangas, by Blas Bejasa, one of the accused in that case, supposedly to attend to the delivery of the latter's wife in barrio Galamayamo of that same municipality. But when the two were already out of the poblacion, the jeep on which they were riding was stopped by a group of armed men. who, after identifying the doctor, asked him if he could go with them and attend to a man who had been shot. The doctor begged to be excused, telling them that he was on his way to a delivery case. But saying that theirs was an urgent case, they forced him at gun point to go with them. First, he was taken by them to a wooded place, where he was blindfolded and relieved of his watch and money. Then when darkness came, they took him to a hut in Cuenca, Batangas. From there he was moved from place to place - sometimes blindfolded - until he was ransomed eight days later. During his captivity, he was made to write to his wife that his kidnappers were demanding a ransom of P70,000 with the threat that something serious would happen if the money was not sent and that his life would be in danger if the Army should intervene. Through the mediation of Mayor Pasia of Cuenca and Mayor Masiluñgan of San Jose, the ransom demanded was reduced to P15,000, and this amount was paid by the doctor's family to the kidnappers-through Councilor Remo, now deceased.

Both Dr. Quisumbing and Dr. Alday, it would appear, were kidnapped by a gang organized by appellant and operating under his direction. This is shown by the testimony of the Government witnesses with corroboration from some of the defendants.

Sixto Fajardo, testifying for the prosecution, declared that he was a former companion and errand boy of appellant's and as such had on two occasions delivered letters to Juaning Perez, appellant's right-hand man in a gang headed and armed by him; that the firearms furnished by appellant to the members of the gang were those formerly used by his civilian guards (appellant having been a 'mayor of the municipality of Rosario); that following his defeat as a candidate for member of the provincial board of Batangas in the election of 1951, appellant called the members of the gang to a meeting in his coconut grove in the barrio of Macalamcam, Rosario, and his father even had a cow slaughtered for the occasion; that the meeting was held at night and attended by about 62 men, and appellant, taking his position in the middle of the group, Addressed them as follows: "All political enemies in Rosario should be robbed and killed and those who have money should be kidnapped and detained for ransom, so that we may have money"; that of that gang which appellant had organized for the purpose of robbing and killing his political enemies and kidnapping the rich for ransom, he, witness, came to be a member and he was furnished with a carbine; that realizing later that nothing good could come out of it, he signified his desire to quit but Juaning Perez told him not to do so because appellant had given orders that he be liquidated should he separate from the group for the reason that he already knew too much of the organization's doings and in the event of capture might divulge their activities; and that of the members of the gang there were seven who always went together, and those included himself, Juaning Perez and Juan Carandang (one of the accused still at large).

Gregorio Albes, an accused who had been discharged so that he could be utilized as a witness for the Government, confirmed the existence of the kidnapping gang with appellant as its over-all commander. He declared that he had been induced to join it by Juaning Perez in April, 1953, and that among its members (those he could remember) were Bias Bejasa., Exequiel Silva, Tomas Lajara, Manuel Silva, Abdon Bautista, Juaning Perez, Isaia Comia, Timoteo Limbo, Victorio Umali, Julian Fortus and Ambrosio Umali; that Juaning Perez, who was their immediate chief, often conferred with appellant in the latter's house in Macalamcam, and that he heard the two talking about a plan to kidnap Dr. Alday, appellant saying that he would furnish the vehicle for the purpose and that Dr. Alday should be the one they should kidnap because he was well-to-do; that the group that were to apprehend this doctor set out from Macalamcam in a car furnished by appellant; that after the kidnapping he heard appellant instruct Juaning Perez to demand a large ransom because Alday was rich but that he later learned that the ransom paid was only P15,000 that Perez gave him P75 as his share; that not long thereafter the gang disbanded because of continuous raids by the Army and the Constabulary; that he left his firearm in Mabato because word had come from appellant that their firearms should be left there and that they should hide because the Army and the Constabulary were after them; and that on October, 1953, he surrendered to the Chief of Police of Rosario because Juaning Perez had already died and also because he realized that their organization was against the law.

Appellant's co-defendants Blas Bejasa and Exequiel Silva also made incriminatory statements against him. Their extra-judicial confessions revealed the existence of a snatch gang headed by appellant, and at the trial they testified that they were with the group that kidnapped Dr. Alday; that the group started from a place near appellant's house in barrio Macalamcam; that just before they left, appellant was near the car talking to Juaning Perez; and that appellant was the one who ordered them to get on the car and proceed. Blas Bejasa further testified that he saw appellant come on that same car the same day and that it was also appellant who furnished the firearms carried by the group.

Disclaiming any part in the kidnapping of Drs. Alday and Quisumbing, appellant denied having organized any kidnapping gang, and explained that in January, 1952, he was, under detention for 22 days in the Constabulary stockade at Canlubang while a criminal case was being prepared against him for the murder of three persons; that during the trial of the said case between January and July, 1952, he spent most of his time in Manila preparing his defense; that he was acquitted in the case on July 12, 1952; that he only came to know about the kidnapping of Dr. Quisumbing when he was approached by the latter's relatives and friends and asked to help in the search; that reluctant though he was at first to intervene for fear of getting involved again in a criminal case, he finally acceded to their request after being assured by Francisco Medrano and Esteban Mayo that no harm would come to him. He further testified that the early part of 1953, shortly after his father's death, he was busy in his farms at barrios Rosario and Macalamcam, and that the latter part of that year he used to make trips to Quezon and the Bicol provinces looking for some lucrative business to engage in.

Not giving credence to appellant's exculpatory statements, and believing instead the testimony of Sixto Fajardo and Gregorio Albes, which finds corroboration in that of the defendants Bias Bejasa and Exequiel Silva, the trial court found appellant guilty as principal in both cases.

After going over the record, we find no reason for disturbing this verdict. The evidence is clear that following his defeat as a candidate for member of the provincial board of Batangas in the election of 1951, appellant called his band of followers to a night meeting and told them that they were to rob and kill their political enemies and to kidnap the rich for ransom. He made Juaning Perez, his right-hand man, their ostensible commander and furnished them firearms to be used for the purpose. He did not take part in the actual apprehension of the victims, preferring to remain, as it were, behind the scenes. But it is obvious that he was keeping in touch with the snatch

gang and that it was his wishes or orders that were being followed. He appears in truth to be the supreme leader as well as the mastermind of the group.

Thus, in the kidnapping of Dr. Quisumbing, appellant was not with the group that snatched and hid this doctor. But it is established that he was sending messages to Juaning Perez, his right-hand man, who was in direct command of the gang. And the fact that he was in reality their over-all commander, that he kept in touch with them and that it was his orders or wishes that were carried out may be gleaned from the way he effected the release of this doctor. For he had no difficulty in contacting the kidnappers and he was practically the one who fixed the amount of the ransom by having it reduced from P100,000 to P20,000. The ransom was handed by him to one who did not even have to give his name to be recognized as the one authorized to receive it. And he also parted with the money without even seeing the man to be ransomed. His very explanation that he did not expect to be double-crossed bespeaks close connection between him and the gang and jibes with the idea of his being its chief.

So also in the kidnapping of Dr. Alday, the appellant did not appear to be with the group when this doctor was seized and taken to different places; but he it was who named the doctor as the one to be kidnapped and he was heard discussing the plan with his right-hand man, Juaning Perez. The kidnappers gathered at his place and it was he himself who started them off after furnishing them a car. He it was also who gave them firearms. Then, after the gang had seized Dr. Alday and already had him in custody, appellant instructed Juaning Perez to demand a large sum because the doctor was rich. And then after the ransom had been paid, appellant sent word to the members of the gang to leave their firearms in a designated place and go in hiding because the Army and the Constabulary were after them. These facts leave no room for doubt that the appellant planned, masterminded and even ordered the kidnapping of Dr. Alday.

Counsel for appellant questions the trustworthiness of the testimony of the prosecution witnesses Sixto Fajardo and Gregorio Albes, and of his own co-accused Blas Bejasa and Exequiel Silva inasmuch as the said testimony links him with the kidnapping of the two doctors. This, however, is a matter of credibility of which the trial court should be the best judge, having itself heard the testimony and observed the demeanor of the witness on the stand. And the record, in our opinion, discloses no compelling reason for holding that their testimony was not entitled to the weight given to it by the learned trial judge.

After going over the record, we have come to the conclusion that appellant's conviction in the two cases (Criminal Cases Nos. 584 and 587) now before us is justified by the evidence.

In Criminal Case No. 587, which refers to the kidnapping of Dr. Alday, the Solicitor-General recommends the imposition of the death penalty on the theory that the crime was committed with the aggravating circumstance of craft because Blas Bejasa, one of the kidnappers, succeeded in taking the doctor from his house on the pretext that he was to attend to a delivery case. There is, however, no sufficient vote for meting out that penalty so that the penalty of reclusion perpetua imposed below must be allowed to stand.

As to Criminal Case No. 584, which refers to the kidnapping of Dr. Quisumbing, there appears to be no question that the penalty of reclusion perpetua imposed by the lower court is in accordance with law.

Prior to the submission of his brief, the appellant filed a motion for new trial on the grounds of newly discovered evidence and nullity of judgment.

The alleged newly discovered evidence consists of sworn statements of Blas Bejasa and Exequiel Silva, two of appellant's co-accused now serving life sentence in Bilibid, to the effect, that what they testified in court about appellant being present when the kidnappers left his place in Macalamcam bound for San Jose to kidnap Dr.

Alday was not true and that they had been induced to so testify (by the Constabulary) through torture, threat of bodily harm and promise of acquittal, Bejasa even going to the extent of stating that the fiscal joined in that promise. But statements of this kind would, presumably, not be hard to get from criminals who, like these affiants, are already in prison for life and have therefore little or nothing at all to lose by making a retraction that would save someone from the same fate. And we have observed, as a matter of fact, that resort to the use of affidavits of recantation for that purpose is becoming rather common. Appellate courts must, therefore, be wary of accepting such affidavits at their face value, always bearing in mind that the testimony which they purport to vary or contradict was taken in an open and free trial in a court of justice and under conditions calculated to discourage and forestall falsehood, those conditions being, as pointed out in the case of *U. S. vs. Dacir* (26 Phil. 507) that such testimony "is given under the sanction of an oath and of the penalties prescribed for perjury; that the witness' story is told in the presence of an impartial judge in the course a solemn trial in an open court; that the witness is subject to cross-examination, with all the facilities afforded thereby to test the truth and accuracy of his statements and to develop his attitude of mind towards the parties, and his disposition to assist the cause of truth rather than to further some personal end; that the proceedings are had under the protection of the court and under such conditions as to remove, so far as is humanly possible, all likelihood that undue or unfair influences will be exercised to induce the witness to testify falsely; and finally that under the watchful eye of a trained judge his manner, his general bearing and demeanor and even the intonation of his voice often unconsciously disclose the degree of credit to which he is entitled as a witness." Unless there be special circumstances which, coupled with the retraction of the witness, really raise a doubt as to the truth of the testimony given by him at the trial and accepted by the trial judge, and only if such testimony is essential to the judgment of conviction so much so that its elimination would lead the trial judge to a different conclusion, a new trial based on such retraction would not be justified. Otherwise, there would never be an end to a criminal litigation and the administration of justice would be at the mercy of criminals and the unscrupulous. In the present case, the affidavits of retraction furnished by the prisoners Bejasa and Silva, considered with the other circumstances of the case, are not enough to raise doubt as to the truth of what they testified in court, which testimony is, moreover, merely corroborative since there is already the testimony of the prosecution witnesses Gregorio Albes and Sixto Fajardo which links appellant to the kidnapping of Dr. Quisumbing and Dr. Alday and when taken with the other facts proved, leave no room for doubt as to his guilt. In our opinion the said affidavits do not warrant a new trial.

As to the alleged nullity of judgment as second ground for new trial, the defense alleges that Judge Juan T. Enriquez, who heard these cases and signed the decision, was no longer judge of the Court of First Instance of Batangas when the decision was promulgated in that court on July 9, 1954, having been already been appointed judge of the Court of First Instance of Rizal and such appointment was effective on July 1, 1954. But the allegation is not under oath, legally insufficient to destroy the presumption that official duty has been duly performed, whereas the following excerpt from the brief for the Government shows the factual basis for the claim of nullity to be inaccurate:

"The argument that the decision appealed from is void because Judge Enriquez was no longer Judge of the Court of First Instance of Batangas on July 9, 1954 when his decision dated June 30, 1954 was promulgated is absolutely without merit as being contrary to fact. It is not true that Judge Enriquez became a judge of the Court of First Instance of Rizal on July 1, 1954, as pretended by the defense for the records in the Department of Justice disclose that Judge Enriquez' appointment for the Court of First Instance of Rizal was submitted for confirmation to the Commission on Appointments only on July 19, 1954, and the same was confirmed on July 30, 1954. It is, therefore, logical to conclude that Judge Enriquez took his oath as Judge of the Court of First Instance of Rizal very much after the promulgation of the decision in this case on July 9, 1954. As a matter of fact, a personal verification from Judge Enriquez confirms our belief that he assumed office as Judge of the Court of First Instance of Rizal after the promulgation of his decision in the Farol case. Furthermore, the

records in the Department of Justice also show that Judge Luis Reyes who succeeded Judge Enriquez in the Court of First Instance of Batangas, only took his oath as Judge of the said court on November 13, 1954. It cannot be questioned, therefore, that Judge Enriquez was still a judge de jure of Batangas not only at the time when the Farol decision was signed and entered with the Clerk of Court of Batangas but also when his decision was promulgated. While it is true that he was not present in Batangas at the time of the promulgation of the decision, that fact, however, will not affect the validity of the judgment because Sec. 6 of Rule 116 of the Rules of Court, specifically states that 'when the judge is absent or outside of the province his presence is not necessary and the judgment may be promulgated or read to the defendant by the Clerk of Court.'

In view of the foregoing, the motion for new trial is denied and the judgments appealed from are affirmed, with costs against the appellant.

Paras, Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Endencia, and Felix, JJ., concur.

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