

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FLORENTINO ABADILLA, ELADIO SATIRA, LEOCADIO ENTIENZA,
TEODORO BANAL ALIAS MESTISONG AETA, JOHN DOE, RICHARD
DOE AND PETER...**

G.R. No. L-34764. March 28, 1983

Ponente: RELOVA, J.

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RELOVA, J.:

On March 19, 1944, at eight o'clock in the morning, Leandro Cataumber, a former vice-mayor of Pitogo, Quezon, was taken against his will and under compulsion from his house in the poblacion of Pitogo, by armed men led by Florentino Abadilla, accompanied by Teodoro Banal, Eladio Satira, Leocadio Entienza and other unidentified persons. Abadilla was armed with paltik and the others with bolos, when they brought Cataumber from his house to the mountains.

The following day, March 20, 1944, one Sergio Dionela, a friend of Cataumber, was likewise taken by armed men. While in captivity, Dionela was told by Leocadio Entienza that he had already killed Cataumber. In fact, Entienza compelled Dionela to swallow a pair of human ears which the former said belonged to Cataumber.

Dionela was later able to escape.

On April 9, 1944, dismembered remains of a human body were found by members of the Cataumber family in barrio Payte, Pitogo, Quezon. It was their belief that the said remains were those of the ex-vice mayor.

Information was filed by the Provincial Fiscal of Quezon Province in 1957 against (1) Florentino Abadilla, (2) Eladio Satira, (3) Leocadio Entienza, (4) Teodoro Banal alias Mestisong Aeta and others, charging them for kidnapping with murder. The case was docketed as Criminal Case No. 440-G of the Court of First Instance of Quezon Province.

On March 23, 1971, a decision was rendered in said case, the dispositive portion of which reads:

"WHEREFORE, the Court finds the accused FLORENTINO ABADILLA, TEODORO BANAL and LEOCADIO ENTIENZA guilty beyond reasonable doubt of the crime of kidnapping with murder and hereby sentences each of them to suffer imprisonment for LIFE and they are ordered jointly and severally to indemnify the heirs of Leandro Cataumber the sum of P12,000.00, with costs against them."

Teodoro Banal alias Aeta appealed from the foregoing judgment, assigning as errors, the following:

- The lower court erred in holding that the accused-appellant Teodoro Banal was positively identified by Noe Cataumber, son of the victim and Rafael Perez, a disinterested witness when as a matter of factual truth not only said Rafael Perez but another witness for the prosecution, Antonio Parcarey an eye witness to the incident, categorically told the truth that Teodoro Banal was not with the group of about ten (10) persons who went to the house of Leandro Cataumber on said date, March 19, 1944.

- The lower court erred in holding that the skeletal remains found by Artemio Batralo and his party at barrio Payte, Pitogo, Quezon, on April 9, 1944 were those of Leandro Cataumber when even the Municipal Health Officer refused to issue a death certificate and a certification that those skeletal remains were the mortal remains of said Leandro Cataumber.
- The lower court erred in giving undue weight and credit to the highly improbable testimonies of the witnesses for the prosecution which are mostly hearsay, bias, reeking of inherent self-inconsistencies and pregnant with glaring contradictions on vital points which render them all totally incredible.
- The lower court erred in giving every ounce of benefit to the prosecution and in not resolving even a gram of doubt in favor of the appellant Teodoro Banal and in totally disregarding the evidence for the defense; and
- The lower court erred in finding appellant Teodoro Banal guilty of the offense charged in the information and in not acquitting said appellant.

Appellant Teodoro Banal assails the lower court's conclusion that he was positively identified in the scene of the crime by a competent witness. In this connection there is the testimony of Noe Cataumber, the victim's own son and a townmate of Banal who positively identified the latter as one of those who, in broad daylight, kidnapped Leandro Cataumber, as he and his family were peacefully performing household chores on March 19, 1944.

Reproduced hereunder is the testimony of Noe Cataumber:

"DIRECT EXAMINATION

BY ATTY. PARENTELA:

Q

While you were in the store of your house, were there any other persons there, aside from you?

A Yes, sir.

Q

Who were those persons with you in the store then on that occasion?

A My father Leandro Cataumber and mother Salud Saavedra.

Q

While you and your father and mother were in the store on that occasion, what happened next if anything happened at all?

A There was an extraordinary happening.

Q

Yes, what was that unusual event you mentioned which happened on that occasion then?

A A group of persons took my father.

Q

Who were those persons who arrived on that occasion and took your father, if you know them?

A I know some and the others I do not know.

Q

Who were those persons whom you recognized then on that occasion?

A

Florentino Abadilla, Teodoro Banal, Eladio Satira, Leocadio Entienza.

Q

Please look around the courtroom and tell us if those persons whom you said you recognized on that occasion are present in the courtroom now?

A

Three of them are present here (witness pointing to the three accused on trial).

Q

You have pointed to the three defendants, will you please name each of them?

A

That man is Eladio Satira, the one in the middle is Teodoro Banal and that one is Arcadio Entienza (witness pointing to each of the three accused).

Q

You said that these three defendants now in the courtroom, together with Florentino Abadilla, took your father from your store. Before your father left the store, what happened if anything happened at all, after the arrival of these four persons?

A

While we were preparing 'alamang' (balaw) for 'bagoong', Florentino Abadilla came and approached my father.

Q

What did the accused Florentino Abadilla say, if he said anything at all, at the time he approached your father?

A

He said, 'Tatang Ando, pumarine ka at gusto kitang makausap sa labas.'

Q

What did your father do if he did anything at all after hearing those words?

A My father voluntarily went with Florentino Abadilla.

Q

When your father was about to leave the store, what did Florentino Abadilla do if he did anything at all on that occasion?

A

Florentino Abadilla pulled the left hand of my father, pointing a gun (paltik) at him.

Q

While Florentino Abadilla was pointing his gun towards your father and ordering him to leave the place, what else did he say, if he said anything at all, to his companions?

COURT: To the companions of Abadilla?

ATTY. PARENTELA: Yes, Your Honor.

WITNESS:

A

While the firearm was aimed at the back of my father, Florentino Abadilla called his companions, Satira and companions.

ATTY. PARENTELA:

Q

What did Florentino Abadilla say to Eladio Satira if he said anything at all on that occasion?

ATTY. PACLIBON: Objection, Your Honor, for lack of basis.

COURT: Sustained.

ATTY. PARENTELA:

Q

After Florentino Abadilla called Eladio Satira while he had his gun pointed at the back of your father, what happened next, if anything happened at all?

A

Eladio Satira and his two companions, Teodoro Banal and Arcadio Entienza tied my father (Ginapos po ang aking ama ni Satira, Banal at Entienza).

.....

Q

You said that Florentino Abadilla was carrying a gun, a 'paltik', how about the others?

ATTY. PARENTELA: We adopt the question of the Court, Your Honor.

COURT:

Q How about the other three?

ATTY. PARENTELA:

Q How about the other three?

A The three were holding long boloes with scabbards.

Q

After the three defendants Eladio Satira, Teodoro Banal and Entienza bound the hands of your father, what happened next, if anything happened at all?

A They carried my father outside the poblacion.

Q

From the time the four defendants Florentino Abadilla, Eladio Satira, Arcadio Entienza and Teodoro Banal took your father from your house and tied his hands, did you ever see your father again?

A I did not see him anymore."

Against the testimony of Noe Cataumber, appellant admitted in court the following:

"ATTY. PARENTELA:

Q

Noe Cataumber testified in Court that you were in the poblacion of Pitogo, on March 1944. You do not know of any particular reason why Noe Cataumber shall testify falsely against you, is it not?

A That is what I do not know.

Q

You were present in Court when Noe Cataumber testified to that effect, is it not?

A Yes, sir.

Q

But the fact is you never had committed anything against Noe Cataumber that he would falsify the truth in Court, is it not?

A

I do not remember having committed anything against them." (tsn., pp. 14-15, March 11, 1966 hearing)

Further, prosecution witness Francisco Glinoga testified that about ten o'clock of the same day, March 19, 1944, he saw appellant in the company of Florentino Abadilla and Leocadio Entienza in barrio Payte, Pitogo, Quezon. On this point, Francisco Glinoga testified as follows:

"Q

In the morning of March 19, 1944 do you remember where you were?

A I was in our barrio.

Q In what barrio is that?

A Saginsinan.

Q Municipality of what?

A Pitogo, Quezon.

Q

In that morning, at around 8:00 o'clock, do you remember having gone to any place or barrio.

.....

Q Where did you go?

A I went to the poblacion.

Q

On your way to the poblacion, was there any unusual incident which happened, if any?

ATTY. CABANGON:

Leading, Your Honor, objection.

COURT:

Overruled, witness may answer.

WITNESS:

A

While I was on my way from my barrio Saguinsinan towards the poblacion, in barrio Paete I saw Lauro (Leandro) Cataumber tied.

ATTY. PARENTELA:

Q

In what particular place in the barrio of Paete did you see Lauro (Leandro) Cataumber whose hands were tied then on that occasion?

A In the house of Juan Nobleza.

Q

In what particular place in the house, in the yard or house itself?

A In the premises of the house (harapan).

Q

How many person were with Lauro (Leandro) Cataumber on that occasion with his hands tied?

ATTY. CABANGON:

Objection, lack of basis.

COURT:

Sustained.

ATTY. PARENTELA:

Q

You said you saw Lauro (Leandro) Cataumber on that occasion tied. How was he tied on that occasion?

A Both of his hands were tied behind him.

Q

Was Lauro (Leandro) Cataumber alone then on that occasion when you saw him that morning?

ATTY. CABANGON:

Leading your Honor.

COURT:

No. Overruled.

WITNESS:

A No, sir.

ATTY. PARENTELA:

Q How many persons were with him on that occasion then?

A They were seven (7).

Q

Among the seven (7) persons who were with Lauro Cataumber on that occasion do you know personally any of them?

A Yes, sir, I know.

Q Who are those persons among the seven? Who are they?

A

Messrs. Arcadio Entienza, Teodoro Banal, Florentino Abadilla and others whom I do not know.

Q

Please look around the courtroom and point us if those persons you have mentioned, Teodoro Banal, Arcadio Entienza and Florentino Abadilla are present?

A Two are present.

Q Who are those two who are present in the courtroom now?

A Arcadio Entienza and Teodoro Banal.

Q Will you point to them?

A

(Witness pointed to a person who answered to the name Leocadio Entienza and to another person who answered to the name Teodoro Banal.)

Q

For how long a period of time did you stay in that place where you saw Lauro (Leandro) Cataumber and his 7 companions on that morning of March 19, 1944?

A Probably for more than one-half hour.

Q Why did you stay in that place for that long period of time?

A

They said that I could not leave the place until after they had left.

Q Who was the person who told you that?

A Leocadio Entienza." (tsn. pp. 13-15, July 30, 1958 hearing)

Against the positive identification of appellant Teodoro Banal by Noe Cataumber and Francisco Glinoga, appellant relied on the defense of alibi. He claimed that as the bodyguard of Col. de Luna who was then in command of the Guerilla Detachment stationed at Calasingan, Gumaca, Quezon they never left the camp in the month of March 1944. Further, he alleged that he was included in the complaint due to his refusal to be a witness for the prosecution.

As has been consistently held in several cases, alibi is a weak defense and becomes more so if uncorroborated, and worse, if it could have been corroborated by other persons mentioned by the accused but were not presented. (People vs. Brioso, 37 SCRA 336; People vs. Bagasala, 39 SCRA 236; People vs. Cariño, 55 SCRA 516).

The claim of herein appellant that he was present elsewhere at the time the crime was committed has to be shown by evidence that commands assent. Unfortunately, herein appellant was not able to do so. The positive identification by prosecution witnesses placed a burden on him too difficult to overcome by the allegation that he was in company of another person at another place. The defense of denial and of alibi could not prevail over the positive identification of herein appellant by prosecution witnesses Noe Cataumber and Francisco Glinoga, as one of the authors of the kidnapping. And, neither is motive essential for conviction where there is no doubt as to the identity of the culprit. Otherwise stated, motive is pertinent only when there is doubt as to the identity of the culprit.

However, we agree with the observation of the Solicitor General that the remains found in barrio Payte twenty (20) days after the victim Leandro Cataumber was kidnapped could not be the remains of the said victim. Between March 19, 1944 and April 9, 1944, only twenty (20) days had passed and the advanced stage of decomposition of the remains found could not have been that of Leandro Cataumber. As aptly stated by the Solicitor General in his brief, "considering the proof available in this case, appellant may not be made responsible for murder; his constitutional right to be presumed innocent of this particular crime has not been sufficiently overcome by the evidence introduced in court a quo." Thus, appellant could only be held liable for simple kidnapping, as defined in Article 267 of the Revised Penal Code which, before its amendment by Republic Act 18 (which took effect on September 25, 1946), is penalized by reclusion temporal. The kidnapping of Leandro Cataumber occurred on March 19, 1944.

ACCORDINGLY, the judgment of the trial court is hereby modified in that appellant Teodoro Banal is found guilty only of the crime of kidnapping and is hereby sentenced to suffer the indeterminate penalty of ten (10) years and one (1) day of prision mayor, as minimum, to Seventeen (17) years, four (4) months and one (1) day of reclusion temporal, as maximum; to indemnify the heirs of Leandro Cataumber jointly and severally with his co-accused, in the sum of P12,000.00; and to pay the costs.

SO ORDERED.

Teehankee (Chairman), Melencio-Herrera, Plana, Vasquez, and Gutierrez, Jr., JJ., concur.

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