

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. AURELIO SORIANO, ALIAS BERIONG, AND RAFAEL GARCIA, ALIAS FELING, DEFENDANTS AND APPELLANTS.

G.R. Nos. L-6244-45. August 30, 1955

Ponente: PADILLA, J.

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PADILLA, J.:

Charged with kidnapping, found guilty and sentenced to suffer reclusion perpetua, the accessories of the law, to indemnify jointly and severally the heirs of the victims Juan Saraos and Leocadio de la Cruz in the amount of P6,000 each and to pay the costs proportionately, Aurelio Soriano and Rafael Garcia have appealed.

The evidence for the prosecution shows that on 8 May 1950, at about 8:00 o'clock in the evening, Aurelio Soriano and Rafael Garcia carrying a carbine and pistol, respectively, went to the house of, Juan alias Tomas Saraos in the barrio of Raniag, municipality of Santiago, province of Isabela. Aurelio Soriano called and told him to come down and afterwards did the same thing to Leocadio de la Cruz. Aurelio Soriano and Rafael Garcia brought Juan Saraos and Leocadio de la Cruz to the school building at Bugallon, another barrio of Santiago, and sent, for Atanacio Caliboso, the assistant barrio lieutenant, the lieutenant being absent then, to guard Saraos and De la Cruz. Caliboso asked for help and went to call rural policeman Lope Cadavis. Soriano and Garcia told Caliboso that they were G-2 agents or investigators or operatives of the Constabulary. After entrusting the custody of Juan Saraos and Leocadio de la Cruz to Caliboso and Cadavis and telling them that they would return the following morning to pick them up, Aurelio Soriano and Rafael Garcia departed. Early in the following morning the two returned and took Juan Saraos and Leocadio de la Cruz from the school building and led them toward the provincial road where they boarded a weapons carrier that happened to pass by. Since then they have not returned to their respective houses and their whereabouts is unknown.

The appellant's defense is alibi. Their evidence' shtfws that on 23 March 1950 they were committed to the municipal jail of Echague upon a charge of robbery filed by one Fermin Goyeche and that they were brought to the PGF camp at Echague on 12 May of the same year.

The witnesses who swore to having seen the appellants take Juan Saraos and Leocadio de la Cruz from their respective houses in the evening of 8 May 1950, bring them to the school house at Bugallon, and early the following morning take them from the school building and lead them to the provincial road where they boarded a weapons carrier that happened to pass by are Antonio Saraos, a son of Juan; Atanacio Caliboso, assistant barrio lieutenant of Bugallon; Lope Cadavis, a rural policeman; Gregoria de la Torre, wife of Leocadio; and Pacita de la Cruz, daughter of the latter. If we were to rely on their testimony, there seems to be no alternative but to affirm the judgment appealed from, notwithstanding the fact that the documentary evidence presented by the defense shows that on 23 March 1950 the appellants, together with Hilarion Acosta and Alfonso Galang, were committed to the municipal jail of Echague upon a charge of robbery and that only on 12 May they were turned over or remitted to the PGF camp at Echague, because there is evidence that the appellants despite their confinement in

the municipal jail of Echague were seen several times, especially on 29 March, in the streets and market of Santiago and on 7 May they appeared at the office of the Chief of Police of Santiago inquiring about Huk-suspects and for the house of David Gabuyo whom they arrested. Their going out of jail was due to the fact that they were engaged by the army to detect and report on crimes then rampant in Santiago and adjoining municipalities, if not in the whole province of Isabela, several persons having disappeared with their whereabouts unknown and the kidnappers of Geronimo Enriquez alias Sunny Farmer having been duly punished by the courts (People vs. Dionisio Francisco, et al., G.R. No. L-5568, 31 May 1954). There is also an alleged admission made by Aurelio Soriano to Estefanio Novisteros in the house of Agaton Tacatacu that he was responsible for the disappearance of Juan Saraos and Leocadio de la Cruz.

Nevertheless, the prosecution failed to prove the motive that impelled the appellants to commit the crime charged against them. For that reason we went over carefully and weighed the testimony of the witnesses for the prosecution. Antonio Saraos testified that he saw his father for the last time at 8:00 o'clock in the evening of 8 May 1950 in the barrio of Raniag, but in the same breath he said that he saw his father in the school building in the morning of 9 May 1950. He swore that Soriano alone took his father on 8 May 1950 but later he said that Soriano and Garcia took his father after having been prompted by the prodecutor by leading questions objected to by counsel for the defense. He also said that he met Aurelio Soriano in September 1950 and asked him whether he knew where his father was and Soriano answered that his father was taken by the Philippine Ground Force, but answering questions of the Court he said that he did not ask Soriano but the latter voluntarily informed him that his father was taken by the Philippine Ground Force. He further said that he saw in the school building at Bugallon in the morning of 9 May 1950 his father, Leocadio de la Cruz, Soriano and Garcia; yet in his statement sworn to before the Justice of the Peace of Santiago (Exhibit 1), he stated that he saw the four persons and a PGF soldier in a fatigue uniform with a Thompson submachine gun, statement which he later retracted in open court. In his affidavit Exhibit 1, Antonio Saraos said that he actually saw Pedro de la Cruz and Atanacio Caliboso at the gate of the school building. In his testimony, however, he said that he did not see Pedro de la Cruz, councilor, and Atanacio Caliboso, assistant barrio lieutenant. Testifying in the case for the kidnapping of Leocadio de la Cruz (case No. 1030), he contradicted both statements by saying that he also saw Atanacio Caliboso, Lope Cadavis and Pedro de la Cruz in the said school building. He testified that he reported to the chief of police of Santiago in the morning of 9 May 1950 about the incident. He later admitted that that was not true because he made the report sometime in April 1951. He also testified that his father was taken from a place near the stairs of their house and that he followed them up to the provincial road 40 meters away and that Rafael Garcia was with Aurelio Soriano. The first part of his testimony must refer to the evening of 8 May when he claimed his father was taken away and the last two parts to the morning of 9 May when the appellants and their alleged victims left the school building at Bugallon and boarded a weapons carrier.

Atanacio Caliboso testified that he and rural policeman Lope Cadavis guarded Juan Saraos and Leocadio de la Cruz. Later on, he stated that not only he and Lope Cadavis but also Ambrosio Valdes, another rural policeman, guarded them.

Lope Cadavis testified that he did not sleep during the whole night of 8 May 1950 for fear that the persons entrusted to their custody might escape; but answering a question put by the prosecutor as to whether he saw the two accused the following morning of 9 May 1950 in the school building, he said that they were already there when he woke up. In criminal case No. 1029 he testified that Atanacio Caliboso, assistant barrio lieutenant, slept in the same place where Juan Saraos and Leocadio de la Cruz did; but in the other criminal case No. 1030 he testified that Caliboso did not sleep because he was keeping watch on the policemen lest they would go to sleep. In criminal case No. 1029 Lope Cadavis testified that he had never been investigated by the police authorities regarding the alleged kidnapping; but in criminal case No. 1030 he testified that he had been investigated by the

chief of police of Santiago in the same month that the alleged kidnapping took place.

Gregoria de la Torre, the wife of Leocadio de la Cruz, testified that on 8 May 1950 when Aurelio Soriano came to take her husband from their house she was able to recognize him because of the light of a lamp. In her affidavit before the Justice of the Peace of Santiago (Exhibit 1), she said she told Colonel Ylagan that she had recognized Aurelio Soriano by his voice only.

Upon being asked whether there were persons around their house on the night her father was taken away, Pacita de la Cruz, the daughter of Leocadio de la Cruz, answered that she did not know. Later on, however, she said that aside from Aurelio Soriano she also saw Rafael Garcia in the yard of the house when her mother brought the lamp to the window as her father was going down the stairs, and later she said that she saw her father and Aurelio Soriano and no one else. In her affidavit before the Justice of the Peace of Santiago (Exhibit 2), she said that she did not know the name of Soriano's companion, but during the trial she said that she knew the name of Rafael Garcia even before 8 May 1950 because her father used to mention that name to her. In another part of her testimony, she said that when the chief of police of Santiago asked her who took her father away on 8 May she answered that it was Aurelio Soriano.

Eugenio Batalla, a neighbor of Juan Saraos, testified that in the evening of 8 May she and Juan Saraos were returning from a visit to the house of a dying person about ten meters away from that of Juan Saraos when they met Aurelio Soriano. This is contrary to what Antonio Saraos testified that his father was taken from their house. Eugenia Batalla never mentioned the presence of Rafael Garcia. Contrary to both testimonies regarding the place where Juan Saraos was taken by Soriano, Atanacio Caliboso testified that in a conversation with Juan Saraos at the school building in Bugallon, the latter told him that he was not in his house when he was taken by Soriano but in a neighboring house.

As to the taking of Leocadio de la Cruz, Gregoria de la Torre, his wife, testified that Aurelio Soriano alone took her husband, but Pacita de la Cruz testified that she saw Rafael Garcia in the yard of the house when she and her mother were at the window.

Gregoria de la Torre also testified that Aurelio Soriano did not carry anything with him, but Antonio Saraos testified that Soriano carried a carbine.

Atanacio Caliboso testified that all of them slept through the night of 8 May 1950 up to the morning of 9 May, but Lope Cadavis testified that neither he nor Caliboso slept during the whole night. He further testified that he did not go with Aurelio Soriano, Rafael Garcia, Juan Saraos and Leocadio de la Cruz to the national highway, but Lope Cadavis testified that Caliboso followed the four and went as far as the national highway. Subsequently, he testified that he also saw the four although he stayed ten meters away from them when they were boarding an army truck.

Antonio Saraos testified that he did not see Pedro de la Cruz and Atanacio Caliboso that morning referring to 9 May, contrary to the testimony of Pedro de la Cruz and Atanacio Caliboso who said that they were present that morning of 9 May 1950.

As to when the report on the incident was made to the chief of police of Santiago, Antonio Saraos testified that he reported it to the chief of police the following day or on 9 May. Yet in his affidavit before the Justice of the Peace of Santiago (Exhibit 1), he said that he did not report the kidnapping of his father to the chief of police, to the PC authorities or to the PGF until sometime in April 1951 when he reported it to the chief of police of Santiago. On this point Gregoria de la Torre said that she reported to the chief of police, of Santiago on the disappearance of her husband after more than one year or on 28 April 1951. Atanacio Caliboso, the assistant barrio lieutenant of

Bugallon, and Pedro de la Cruz, councilor of the municipality, did not report the incident to the corresponding authorities until sometime in April 1951 in spite of the fact that they claimed they had seen the taking of Juan Saraos and Leocadio de la Cruz by the appellants. Lope Cadavis never reported it.

The testimony of Estefanio Novisteros as to the alleged admission by Aurelio Soriano that he was responsible for the disappearance of Juan Saraos and Leocadio de la Cruz is not corroborated by Mariano Palad who was present on that occasion when the admission was allegedly made. What Mariano Palad testified he heard Soriano say on that occasion was "If Mariano Palad will not give his palay to me to be threshed, then he would count 1, 2, 3, 4, then lagud" He did not mention the disappearance of Juan Saraos and Leocadio de la Cruz.

There is uncontradicted evidence showing that the appellants were agents of the Constabulary employed to help ferret out rampant criminality and subversive activities in Isabela which had caused the disappearance and deaths of several persons, among them of Geronimo Enriquez, alias Sunny Farmer, Ricardo Corpus, Juanito Magat, Marcelino Corpus and another whose name could not be ascertained. It also appears that Aurelio Soriano, a native of Raniag, is a godson of Juan Saraos. There is also unrebutted evidence showing that Juan Saraos, his son Antonio, Leocadio de la Cruz, Pedro de la Cruz, municipal councilor and later on candidate for mayor, Atanacio Caliboso and Lope Cadavis, were suspected of the murder of the persons already mentioned. What possible incentive could have led, impelled and prompted Aurelio Soriano to take his godfather Juan Saraos from his house in the evening of 8 May 1950? To make him answer for the murder of those persons who had disappeared, the legal process as provided for by law was sufficient. There was no need for him to resort to kidnapping. If to the lack of motive to commit the crime charged we add the fact that before the charge for robbery filed by Fermin Goyeche for which the appellants and two others were arrested and committed to jail on 23 March 1950, which was later dismissed, a charge for frustrated murder had been filed against Rafael Garcia by Dionisio Francisco, who as already stated was held by this Court together with others guilty of kidnapping Geronimo Enriquez alias Sunny Farmer, of which charge Rafael Garcia was acquitted; the attempt by Fermin Goyeche, who together with Dionisio Francisco headed the organization known as "Santiago Defenders" suspected of being responsible for the disappearance of persons in Santiago, to make Aurelio Soriano retract what he had stated in his affidavit when he and Rafael Garcia were in the municipal jail of Echague; and the fact that failing to have Aurelio Soriano retract the latter was given by Goyeche a bottle of beer to drink which turned out to contain iodine but which Aurelio Soriano did not drink because it was taken away from him by "Talion" Acosta, we are led to the conclusion that because of contradictions pointed out committed by the witnesses for the prosecution who claimed they had seen the taking of Juan Saraos and Leocadio de la Cruz on the evening of 8 May 1950, said witnesses must not have told the truth.; The appellants had no motive for kidnapping Juan Saraos and Leocadio de la Cruz. The witnesses for the prosecution, on the other hand, were interested in removing from their midst the appellants who because of their activities in behalf of the Army were causing the "Santiago Defenders" worry lest their nefarious deeds be discovered and the responsible persons brought to the bar of justice.

The judgment appealed from finding the appellants guilty of kidnapping and sentencing them to reclusion perpetua is reversed and the appellants are acquitted, with costs de oficio.

Bengzon, Acting C. J., Montemayor, Reyes, A., Jugo, Bautista Angelo, Labrador, Concepcion, and Reyes, J.B.L., JJ., concur.

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