

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
NESTORIO REMALANTE, DEFENDANT AND APPELLANT.***G.R. No. L-3512. September 26, 1952*

Ponente: PADILLA, J.

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At about 4:00 o'clock in the afternoon of 18 March 1948, while Mercedes Tobias accompanied by Eusebio Gerilla and Lucia Pelo was en the way to her home in the barrio of Guinarona, municipality of Dagami, province of Leyte, coming from her farm in Maanghon, she met a group of more than ten men all armed with rifles, some of them with beard reaching the breast. Nestorio Remalante, one of the bearded men, approached, took hold of and dragged Mercedes Tobias. She remonstrated and entreated him not to take her because she had done him no wrong. Remalante continued to drag and struck her with the butt of his rifle on different parts of her body. The companions of Mercedes were told to continue their way. They saw Mercedes being dragged toward the sitio of Sawahon. Hardly had they walked one kilometer when they heard gun reports. The following day Mercedes Tobias was found dead in Sawahon with two gunshot wounds, the points of entry being at the back and of exit at the left breast and shoulder (Exhibit A).

Nestorio Remalante was charged with the complex crime of kidnapping with murder. His companions have not been apprehended. After trial the Court of First Instance of Leyte found him guilty of the crime charged and sentenced him to reclusion perpetua, the accessories of the law, to indemnify the heirs of the deceased in the sum of P2,000 and to pay the costs. He has appealed.

The appellant claims that at about 1:00 o'clock in the afternoon of that day while he together with Emeterio Arellano was working on his farm at Binog the dissidents apprehended and detained him because they were not satisfied with his answers as to whether he had been furnishing the constabulary soldiers information about them; that as he begged to be excused from going with them they beat him up with their rifles hitting him on the head and causing him to lose consciousness; that when he came to the dissidents took him together with another male prisoner along with them and on their way they met Mercedes Tobias and her companions; that upon orders of the leader of the band he (the appellant) took hold of Mercedes Tobias and when he informed the leader that she refused to go with them the leader again beat him up (the appellant); that the dissidents together with the three captives continued their way; that after walking 100 meters they stopped; that the leader commanded five soldiers and the two male prisoners to prepare the meal and the other soldiers to take Mercedes Tobias away; that not long thereafter the appellant heard gun reports from a place about a kilometer away; and that after taking their meal he (the appellant) was further questioned and the dissidents satisfied that he was not an informer released him.

The appellant admits he took hold and dragged Mercedes Tobias on that occasion, although he pretends it was upon orders of the leader of the band. If it is true that he was illtreated by the captors and fell unconscious as a result thereof, it is strange that he did not exhibit or show any bruise or wound which would have left a scar. The corroborative evidence of his claim is given by Emeterio Arellano who is the husband of his mother's sister. The fact that the appellant grew beard reaching his breast as some of his companions did is a positive and clear proof

that he was a member of the group of marauders, dissidents, bandits who were harassing the peaceful inhabitants of the town of Dagami and its environs. It is true that no one witnessed the killing of Mercedes Tobias, but the acts of the malefactors show and constitute conspiracy which renders the appellant liable for the crime committed by his companions.

There is no sufficient evidence of intention to kidnap because from the moment Mercedes Tobias was held and dragged to the time when the gun reports were heard nothing was done or said by the appellant or his confederates to show or indicate that the captors intended to deprive her of her liberty for sometime and for some purpose and thereafter set her free or kill her. The interval was so short as to negative the idea implied in kidnapping. Her short detention and illtreatment are included or form part of the perpetration of the crime of murder. It is murder because of the concurrence of at least one qualifying circumstance, either of treachery, or of abuse of superior strength, or with the aid of armed men, the first shown by the entry of the shots at the back and the second and the third by the number of the armed captors, the appellant and his companions, some or one of whom killed Mercedes Tobias. For lack of sufficient number of votes as required by law, the death penalty recommended by the Solicitor General cannot be imposed.

The judgment appealed from is affirmed, with costs against the appellant.

Paras, C. J., Pablo, Bengzon, Tuason, Montemayor, Jugo, Bautista Angelo, and Labrador, JJ., concur.

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