

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
FERMIN SUAREZ (ALIAS CULUPING) ET AL., DEFENDANTS. ATILANO
MALLARI (ALIAS SALICSIC), OSCAR SANTOS AND ALFREDO TAYAG
(A...**

G.R. No. L-1652. December 29, 1948

Ponente: PERFECTO, J.

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PERFECTO, J.:

Before November 22, 1946, Esteban Mungcal and his wife Ambrosia Valencia had returned to their house in barrio Talaga, municipality of Capas, Tarlac, where they used to live and from which they had previously evacuated together with all the other residents of the place who until that date had not yet returned. At about 8:00 o'clock in the night of November 22, 1946, when Ambrosia was in her house already lying down in bed, she was awakened by several armed men who were looking for her husband. Among those persons were appellants Oscar Santos, Alfredo Tayag, and Atilano Mallari, with whom she was well acquainted because they also used to be residents of that barrio. After she had told them that Esteban Mungcal was out, they left and went westward towards the direction of a dike. Apprehensive of what those armed men were going to do to her husband, she followed them. On the way the men met her husband, and two of them immediately held Esteban Mungcal by his hands and they told him to go along with them. At first Esteban refused to follow, but Oscar Santos told him that they would kill him if he would not go with them. So, Esteban had to keep quiet and follow. Ambrosia and her husband were afraid because the kidnappers were carrying firearms with them. Although Ambrosia cried, she could not do anything as her only companions then were her children. They took Esteban Mungcal in the direction of Karamatan, a hilly place in Capas. The next morning Ambrosia reported the matter to her brother-in-law, Pablo Mungcal.

Several months later, and upon indication of Fermin Suarez and Atilano Mallari (two of the accused) the remains of Esteban were recovered. Ambrosia recognized the remains to be that of her husband because of the positions of the missing upper and lower teeth and of the gray hair on the skull which was shown to her. Cenon Mungcal, son of Esteban, was likewise able to recognize the remains to be that of his father because of the positions of the missing teeth and the gray hair on the skull, and because of the initials CBM on the clothes he was wearing and which was given by him to his father.

The record of this case also shows that Oscar Santos had thumbmarked a written statement on April 30, 1947, before the Mayor of Capas, Victor Tison, (Exhibit E) and another one on May 5, 1947, before the Justice of the Peace of Capas, Francisco D. Sanchez (Exhibit A-1); that Alfredo Tayag had thumbmarked a written statement on May 4, 1947, before Mayor Tison (Exhibit D), and the next day another one before Justice of the Peace Sanchez (Exhibit A-2); and that Atilano Mallari had thumbmarked a written statement on April 30, 1947, before Mayor Tison (Exhibit B), and another on May 5, 1947, before Justice of the Peace Sanchez (Exhibit A). All these documents were introduced as part of the evidence for the prosecution, and admitted by the trial court. In all of their statements, the appellants invariably admitted having participated in the taking away of Esteban Mungcal,

although they denied having participated in the killing, which, according to these statements, was perpetrated without their presence by Fermin Suarez alias Culuping, one of the accused who pleaded guilty during the trial and who was sentenced to an indeterminate penalty of from eight (3) years and one (1) day of prision mayor to fourteen (14) years, eight (8) months and one (1) day of reclusio'n temporal.

During the trial, Atilano Mallari declared that he belonged to the Hukbalahap organization, where he was known by the name of Salicsic. Similarly, Oscar Santos declared that he was a member of the Hukbalahap before he had surrendered; while Alfredo Tayag also declared that he belonged to the same organization.

There is no doubt in our minds that all the appellants participated in the kidnapping of Esteban Mungcal. This fact is sufficiently established by the clear and convincing testimony of Ambrosia Valencia an eye witness to the commission of the crime. Ambrosia could not have been mistaken as to the identity of the three appellants because she was already well acquainted with them, even before Nov. 22, 1946, they had been residing with her in the same barrio of Talaga, -and, at the time the kidnapping took place, she had the opportunity to see and talk to them, for they even asked her for her husband. Moreover, there is nothing in the record to show why Ambrosia should make any false imputation against the appellants. Our conviction as to the guilt of the appellants is further clinched by the written statements, thumbmarked by them (Exhibits A, A-1, A-2, C, D and E), which contain admissions of their guilt.

The defense tried to show that the appellants were not with the band who kidnapped Esteban Mungcal, that the appellants did not make the declarations contained in the written statements they had thumbmarked, and that they were merely compelled to thumbmark them because of threats and torture inflicted upon them by Cenon Mungcal and others, even showing to the trial Court some scars of the wounds supposedly inflicted upon them to compel them to admit participation in the kidnapping.

To support the appellants contention that they did not take part in the kidnapping, they offered their own testimony and that of Fermin Suarez, who declared that the kidnapping was done by one De Hora together with a companion, and Suarez himself. Their testimony are, however, contradicted by the very admissions of the appellants contained in their written statements, Exhibits A, A-1, A-2, C, D & E. Of course, by the testimony of Mariano Santos and Ellas Mallari, the defense attempted to prove maltreatment as the principal cause of their giving these statements; but their assertions are belied by the testimony of the witnesses for the prosecution, Chief of Police Salvador Baun, policeman Cenon Mungcal, Mayor Victor L. Tison and Justice of the Peace Francisco D. Sanchez, whose veracity has not been impeached.

But even without totally precluding the possibility that the appellants may have been actually maltreated to a certain extent, still there are convincing evidence in the record which shows that the testimony of Ambrosia revealed the truth. The facts contained in those written statements could not have been given by any one else but by the appellants themselves. The remains of the victim were, according to the witnesses for the prosecution, found upon indication of the accused Atilano Mallari himself. This fact is substantially corroborated by the testimony of Fermin Suarez himself when he stated that Atilano Mallari was present when the remains of Esteban Mungcal were being exhumed, although he claimed that he (Suarez), not Atilano, was the one who pointed to the police authorities the place where the deceased was buried by his killers.

From the facts proven, it appears evident that the three appellants are guilty of the crime of kidnapping, penalized under paragraph 1, Article 267 of the Revised Penal Code, as amended by Republic Act No. 1654, the pertinent portion of which reads as follows:

"ART. 267. Kidnapping and serious illegal detention.— Any-private individual who shall kidnap.or detain another. or in any other manner deprive him of his liberty, shall suffer the penalty of reclusion temporal in its

maximum period to death:

"1. If the kidnapping or detention shall have lasted more than five days.

"* * * * *

Counsel for the appellants contends that these should be convicted only as accomplices. He claims that, there being no evidence to show that they had taken part in a conspiracy to kill Esteban Mungcal, -because, according to the evidence for the defense, after De Hora, his companion and Fermin Suarez had hogtied Esteban Mungcal, the appellants were left in a house and had nothing to do with the killing of Esteban, -they cannot be held guilty as co-principals of the crime of kidnapping. This contention is, however, based on the erroneous assumption that the fact of the killing of Esteban Mungcal constituted the principal element of the offense for which the appellants were prosecuted before, and found guilty by, the trial Court, But the appellants were not accused of the murder or the killing of Esteban; they were accused of kidnapping, as defined and punished under Article 267, paragraph 1, of the Revised Penal Code. The essential element or act which makes the offense of kidnapping is the deprivation of an offended party's liberty under any of the four instances enumerated in said Article, the illegal detention of the victim for more than five days being one of such instances. The fact that an accused person has directly participated in the kidnapping or illegal detention of another is sufficient to make him guilty as co-principal in the crime of kidnapping; it is immaterial whether or not the victim was subsequently killed by any or all of them. In the present case there is no doubt that the appellants had taken active part in the kidnapping of Esteban Mungcal and that the acts committed by them has made them guilty as co-principals. The fact that they may have not taken part in the subsequent killing of Esteban Mungcal has only the effect of making them less guilty than those who actually took part in the killing, but they are guilty just the same. As above stated, the appellants should therefore be held liable as co-principals in the crime of kidnapping penalized under Article 267, paragraph 1, as amended, of the Revised Penal Code.

The offense is attended by the aggravating circumstance of having been committed with the aid of armed men, which is offset by the mitigating circumstance of lack of instruction. The trial Court sentenced each of the appellants to the penalty of reclusion perpetua with the accessory penalties prescribed by law and to pay proportionately the costs of the proceedings. This penalty is in accordance with law, and we find no reason for modifying the same. The trial Court, however, failed to provide for an indemnity to be paid to the heirs of the victim, Esteban Mungcal, which it should have done. Consequently, as recommended by the prosecution, the appellants are ordered to pay jointly and severally to the heirs of the deceased the sum of six thousand pesos P6,000.00. (People vs. Amansec, G. R. No. L-927).[1] With this modification, the appealed decision is affirmed, with costs.

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

Judgment modified.

[1] 80 Phil., 424.

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