

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
PEDRO MASILUNGAN, ACCUSED AND APPELLANT.***G. R. No. L-9733. September 30, 1958*

Ponente: ENDENCIA, J.

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This is an appeal from a judgment of the Court of First Instance of Laguna sentencing appellant to life imprisonment and payment of indemnity in the amount of P1,017.00, plus costs, for the crime of kidnapping. Originally, in the justice of the peace court of Victoria, Laguna, appellant Pedro Masilungan, Arcadio Mercado, Pedro Cuenca and two others whose identities were unknown, were charged with the crime, but inasmuch as the latter four were still at large, only the appellant was accused before the Court of First Instance of Laguna, and tried and convicted under the following information:

"That on or about March 7, 1953, in the Municipality of Victoria, Province of Laguna, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the accused above-named, jointly and in conspiracy with Arcadio Mercado and Pedro Cuenca who are still at large and have not as yet been apprehended and one John Doe whose identity is still unknown, at night time, did then and there wilfully, unlawfully, and feloniously kidnap Jose" Mendoza, a Barrio Lieutenant of Masapang, Victoria, Laguna, and forced him to ride in a Pick Up Chevrolet, Plate No. S-505-1953 San Pablo City for the purpose of securing money from said Jose Mendoza, detaining said Barrio Lieutenant for a period of fifteen (15) days."

The evidence for the prosecution clearly shows that on March 7, 1953, between eight and nine o'clock in the evening while Jose Mendoza, then a barrio lieutenant, was on the stairs of his house adjoining his store at the barrio of Masapang, municipality of Victoria, Province of Laguna, someone called out saying that he wanted to buy some cigarettes. Mendoza told the prospective customer to get them himself because he was then resting, but the latter insisted that Mendoza himself hand the cigarettes to him outside. Mendoza entered his store and got the cigarettes, but upon coining out to hand them over to his customer, he was grabbed by four armed men who poked their guns at him, warning him not to make any outcry if he wanted to live. He was blindfolded and taken to a waiting pick-up truck nearby. Once in the truck, Mendoza's pockets were searched and the amount of P817.00 was taken from him. His blindfold was taken off, and it was then when he saw and recognized appellant Pedro Masilungan and Arcadio Mercado, whom he had known for a long time, they being residents of the neighboring barrio of Dayap and who used to ask from him petty loans of money. The pick-up truck then made a quite long trip, and along the way appellant and Arcadio Mercado told Mendoza that he should not resent the taking of his money and that which may thereafter be taken from him because they would use it in buying firearms. The ride ended in a house situated between a rice field and a coconut grove, in the barrio of Puri, municipality of Tiaong, Quezon, where Mendoza was taken upstairs. There he saw an elderly man, said to be chief of the kidnappers. They told Mendoza and made him swear that he should not make any move without their consent, else he would be shot. They also demanded that he give them P5,000, but he pleaded that he could not raise such a big amount, but that, if released, he was willing to give P700.00. Appellant said that this could not be; likewise the elderly man told Mendoza that he would be killed if he did not come across with the amount. The bargaining by Mendoza was

kept up for some days, and in the meantime he was being continuously guarded in shifts by armed men.

On the tenth day of his detention, Mendoza was made to sign, at gunpoint poked at the opening of his ear by the elderly man, a prepared note reading more or less as follows "My dear wife, send me P5,000; if you fail, it means my life." This note eventually got into the hands of Mrs. Mendoza on March 20th, who found it at her doorstep at Masapang, Victoria, Laguna.

Between seven and eight o'clock on the night of March 22nd, that is to say, on the 16th day of Mendoza's detention, there was a commotion in the house due to the barkings and howlings of dogs, by reason of which Mendoza was taken downstairs by his guards who deployed behind him. Soon Mendoza observed that his guards were getting farther from him. Seizing the opportunity, he sprinted and was able to escape. He wandered in the vicinity, running and walking, without knowing his bearings, until he reached a house in the barrio of Palisan, Tiaong, Quezon, at around midnight, where the Pasion (Life of Christ) was being chanted. He asked to be taken to the Army Headquarters, but he was taken to the barrio lieutenant who, in turn, took him to the municipal building of Tiaong; once there, he was sent by the chief of police to the house of the town mayor who told Mendoza to stay in the house. The mayor left, and two hours later, a jeep with Army soldiers led by a sergeant Sante came to the mayor's house. Mendoza was taken back to the municipal building, and after the mayor and the sergeant had talked, he was taken back to Masapang, Victoria, Laguna, and then to Camp Nazareth.

The snatching of Mendoza was not without previous planning by appellant and his companions, for on March 6th, which is a day prior to the actual kidnapping, appellant and one Arcadio Mercado approached Mrs. Amparo Dimayuga, a merchant residing in the barrio of Buliran, municipality of Tiaong, Quezon, for the purpose of borrowing her Chevrolet pick-up, with plate No. S-505, on the pretext that they would like to fetch a woman in Calauan, Laguna, who had just given birth. Not knowing them at all, Mrs. Dimayuga asked them to bring somebody known to her who could vouch for them. Half an hour later, the pair returned with Pedro Cuenca, the latter a resident of Tiaong whom Mrs. Dimayuga knew for some two years. Upon similar representations by Cuenca, Mrs. Dimayuga was prevailed upon to lend her pick-up upon payment of a certain amount for gasoline, and it was agreed that they would call for the pick-up on the following day, March 7th. Between four and five o'clock in the afternoon of that appointed day, appellant and Mercado came for the pick-up, and Mrs. Dimayuga called Catalino Mitra, one of her drivers, to drive for them. The pick-up driven by Mitra left the barrio of Buliran at about six o'clock in the evening with appellant and Mercado as the only passengers. When they reached Calauan, Laguna, at around nine o'clock that same evening, Mitra was told to drive farther and to stop at the roadside. The two passengers alighted and told the driver to wait as they would fetch the woman. About half an hour later, they came back with three other men, one of whom was blind-folded. Appellant then pointed a gun at Mitra and told him that if he wanted to live longer he must drive fast. All the five boarded the pick-up and Mitra was ordered to drive to the barrio of Puri, Tiaong, Quezon, where they got off. Before sending the pick-up back to Mrs. Dimayuga, Mitra was threatened with bodily harm should he ever reveal the incident to anybody, by reason of which Mitra kept silent until Mrs. Dimayuga asked him about his trip after the Army authorities had interviewed her a week or so after Mendoza's disappearance.

The foregoing facts are borne out by the testimonies of the offended party Jose Mendoza and his witnesses Mrs. Dimayuga and Mitra who positively identified the appellant as one of the two who had borrowed and used the pick-up truck.

Mrs. Mercedes Mendoza testified that shortly after her husband Jose Mendoza had mysteriously disappeared on the night of March 7th, she looked for him in the neighborhood, and on the premonition that something untoward had happened to him, she reported the matter that same evening to the Army authorities near her barrio and then to Camp Nazareth the following morning, asking for help. On the early morning of March 20th, she found a note

at her doorstep sighed by her husband asking for P5,000. She became apprehensive and burned it. On that same morning, however, she went to Santa Cruz, Laguna, and obtained a loan of P200 from her Chinese customer in the egg business. At around half past six in the evening of that day, a stranger called at her house and asked her about the note. Upon her denying having seen it, the stranger remarked that such a denial would mean that her husband would be killed. She therefore told him that she did not have the full amount, but that she only had P300 (P200 which she borrowed that morning, and P100 representing her savings). She asked him if this amount would do and he answered that he believed so. After giving the P300, she was warned not to tell the Army people, else her husband would be killed. When he left, she followed him with her eyes and saw that he was joined by appellant whom she heard asking whether the stranger got the money, the latter saying yes. Both were seen by her board a truck that passed by. Mrs. Mendoza knew appellant quite well, he being a resident of a neighboring barrio. She saw him on March 8th alight from a truck which came from the direction of San Pablo bound for Santa Cruz, and saw him going to his place. Then she saw him again on the 10th, and lastly on the evening of the 20th when he joined the man whom she had given the money.

Appellant's defense is purely alibi. He tried to show that from March 1st up to December, 1953, he was in the province of Mindoro. He testified that at the end of February, he together with his wife and children, left their home at Pulong Dayap, Victoria, Laguna, which is about a kilometer from the provincial road, and slept with his family in the house of his friend Felino Calaguan in the same barrio of Dayap, which is near the road, so as to take the bus going to Calamba early the following morning; that on March 1st, he and his family took a bus to Calamba, together with Felino Calaguan who was also going to that place; that he and his family transferred to another bus bound for Batangas, Batangas, and once there, took a boat to Calapan, Mindoro, and thence rode on a truck to the town of Pinamalayan, arriving at the barrio of Pinagulayan at five o'clock in the afternoon of the same day; that he stayed in the house of Daniel Larosa instead of staying in that of his cousin Lorenzo Masiling, because both houses are contiguous; that on that same afternoon he was recommended by his cousin Lorenzo Masiling to the wife of Daniel Larosa who accepted him as a farmer; that Daniel Larosa was not at home at that time, but arrived late at night; that from the time of his arrival in Mindoro up to the time he was taken back to Laguna in December on account of the present case, he did not leave the barrio of Pinagulayan except when he was first arrested in April, that is to say, about a month after he had arrived in Mindoro, by the soldiers of Capt. Villena of the Philippine Constabulary, but was later released upon representations of his employer Daniel Larosa; that he had with him some P60 when he left his place at Pulong Dayap, P40 of which were the proceeds of the sale of his house to his brother-in-law Angel Aude, and P20 was borrowed by him from Jos6 Mendoza three days prior to his departure; that formerly he was a tenant of Pedro Mangubat in Dayap, but that after his carabao had died three years before, he became a laborer, working for his godfather Cornelio Aquino and other persons; that his going to Mindoro was to look for a better living and at the same time to take advantage of the standing invitation extended him three years before by his cousin Lorenzo Masiling who owned a land in Pinamalayan. Appellant further stated that, with the exception of Jose Mendoza and the latter's wife, he knew the witnesses for the prosecution only when they took the witness stand; that the facts testified to by the prosecution witnesses are not true; that it is neither true that he had been a tenant of Cornelio Aquino but that he was merely his laborer; and lastly, appellant attributes as a motive of Mendoza's prosecuting him for kidnapping, the incident he had with him one day prior to his departure, which occurred in the house of Cornelio Aquino. Appellant said that when he went to the house of Cornelio Aquino, he saw Mendoza there, and told him that he (appellant) was leaving for Mindoro; that Mendoza did not like the idea unless he (Mendoza) first be paid the P40 which appellant owed him; and that upon appellant's saying that he could not yet pay, Mendoza became angry; that Mendoza is a rice dealer and owner of a rice mill operated by Cornelio Aquino, and that he used to borrow money from Mendoza since before, which he used to pay in palay.

On cross-examination, he admitted that three days prior to his departure for Mindoro and despite the fact that he still owed Mendoza the sum of P20 which he borrowed earlier that month, he again borrowed another P20, without telling Mendoza that he would use it in going to Mindoro; that when he borrowed this amount, Mendoza did not ask him to pay the first P20 he owed; that in the previous years he used to borrow money from Mendoza but paid it in palay; that his going to Mindoro was in acceptance of the standing invitation of his cousin Lorenzo Masiling who lives in Pinamalayan, made three years before.

To corroborate him, appellant presented the testimony of his friend Felino Calaguan, who testified that on the night of the last day of February, 1953, appellant and his family slept in his house at Dayap, which is near the provincial road, on their way to Mindoro; that in the morning of March 1st, he rode with appellant and the latter's family in the same bus bound for Calamba, as he was going to buy a razor, being a barber, and that they separated in Calamba; that he believed appellant really proceeded to Mindoro because since they parted in Calamba he had not seen him until after his arrest. On the other hand, and for the same reason, he did not know whether appellant came back to Pulong Dayap since his departure; that appellant told him that he was going to Mindoro to look for a better living and that he would sell his house afterwards. Witness further stated that he tried to settle the present case by asking Mendoza to accept the sum of 250, but that appellant has no money and is unable and unwilling to pay.

Daniel Larosa, another defense witness, stated that on March 1st, 1953, appellant arrived and stayed in his house at the barrio of Bacungan, Pinamalayan, Mindoro, and since then has been working his land as a farmer; that the following month, April, appellant was arrested and taken to Calapan; that upon his representations and those of Santos Prane, municipal councilor of Pinamalayan, appellant was released and again worked on his land; that in December of that year, appellant was again arrested, but this time witness failed to procure his release.

On cross-examination he stated that he is from San Jose, Batangas, and has been residing in Pinamalayan for ten years; that he knew appellant since they were young boys because they were neighbors and used to go to harvest palay in Tiaong; that some three years before appellant arrived at the barrio of Bacungan, he had met him at a town fiesta in San Jose, Batangas, where he told appellant that he was living in Mindoro; that appellant and his family arrived at Bacungan in the afternoon, about supper time, on March 1st, although he was not at home at the time because when he came appellant was already in his house; that he remembers very well that appellant arrived on March 1st because on that day he was a sponsor in a wedding celebrated in Boac, Marinduque, and when he arrived at Bacungan appellant and his family were already in his house; that a few days after appellant's arrival, the latter constructed his house some 100 meters from his own in the same barrio of Bacungan, and he could see that said appellant was constructing his house; that he does not remember the date when appellant was first arrested in April; that he does not know the surname of the groom whose marriage he stood as sponsor; neither he knows the name of the bride; that he forgot the surname of the groom because he is forgetful. On second thought, he said that the marriage was celebrated in Boac before March 1st; that 24 hours after the celebration of said marriage he took a boat for Mindoro, arriving at Bacungan on March 1st in the evening; that he does not remember what week in February was that wedding held; that he went to Boac with the mother of the groom, but he does not remember her name because they just called themselves "compadre" and "comadre" after the wedding; that he attended other wedding parties after that, but he cannot remember when; that the last wedding party he attended was held only a month before he took the stand, but cannot remember the date; that he was a "padrino" in a baptism a week before he testified on the stand, but he does not remember the date; neither he remembers what day was March 1st because he forgets "all those things" on account of his work; that when he went to see Capt. Villena in Calapan in April for the release of appellant, he was made to sign something the content of which he does not remember; that he did not inquire why appellant was arrested; and that he does not know appellant's cousin Lorenzo Masiling, but that he knows a Lorenzo Masilungan who lives in the barrio of

Balete.

Appellant likewise presented Capt. Julian E. Villena of the Philippine Constabulary in Calapan, who stated that he knew appellant when he was arrested under a warrant of arrest Exhibit "A" and was under his custody for five days before he turned him over to the PC headquarters; that after appellant's arrest, Daniel Larosa and Santos Prane came to see him and made representations for his release, but he flatly refused them by reason of the warrant of arrest. He further stated that his command never arrests anybody without a warrant and that precisely on the strength of that particular warrant of arrest appellant was turned over to the PC headquarters on December 30, 1953, as shown by Exhibit "B"; that prior to December, 1953, he did not have occasion to arrest appellant, and that it was only in the month of December when Larosa and Prane made representations for appellant's release which he denied, and not before.

We have time and again held that alibi is the weakest defense that an accused can avail of, and oral proof thereof must be clearly and satisfactorily established because it is so easily manufactured and usually so unreliable that it cannot be given credit.^[1] In the present case, the defense tried to establish by the testimony of appellant himself and his witness Daniel Larosa that from March 1st to December, 1953, appellant was in the barrio of Pangulayan according to appellant, or barrio Bacungan as Larosa asserted, of the municipality of Pinamalayan, Mindoro, which involves an 11-hour trip from the province of Laguna by land and sea, and that said appellant did not leave the place except when he was arrested by Constabulary soldiers and taken to Calapan, Mindoro, in April of that year, but was later released. This would tend to show that between March 6th and 22nd, 1953, appellant could not have been in either Tiaong, Quezon, or Victoria, Laguna. But analyzing their testimony, we are with the lower court in not giving it any credence because of its uncertainty and contradictory character.

Whereas Larosa pinpointed March 1st as appellant's date of arrival in Mindoro because it coincided with the day when he became sponsor in a wedding held at Boac, Marinduque, his testimony cannot be relied on because on cross-examination he had to admit that his memory is faulty and that he forgets "all these things." As a matter of fact, he does not remember anymore the surname of the groom for whom he stood as sponsor, nor the name of the bride; neither does he remember the name of the groom's mother with whom he precisely went to Boac for the occasion. Furthermore, this witness has shown that his memory is not only faulty and unreliable, but so poor that he could not even recall the date of the last wedding which he attended just a month prior to his taking the stand, nor the date when he stood as godfather in a baptismal ceremony held barely a week before he testified. On the other hand, the testimony of appellant to the effect that he left the barrio of Dayap, Victoria, Laguna, on March 1st, arriving at Pangulayan in the afternoon of the same day, is more unreliable, because he himself admitted that the date March 1st was fixed by him only after he had a talk with his wife about the matter, he being unschooled and does not know the dates and months, nor to count the years. Neither can we presume from the testimony of Felino Calaguan that appellant really proceeded to Mindoro when they separated in Calamba on March 1st, because this witness merely concluded that appellant went to Mindoro for the reason that he did not see him again until he was arrested, in the same manner and for the same reason that said appellant might have returned to Pulong Dayap during that interregnum.

Oral proof to establish and support an alibi must not be loose, vague and doubtful as in this case, but firm, consistent and trustworthy that when hurled against the evidence for the prosecution the impact must perforce overwhelm the latter. In other words, such proof must not leave any room for doubting its accuracy, plausibility and verity. Certainly we cannot give any credit to the testimony of appellant and his witness Daniel Larosa as to the date of appellant's arrival in Mindoro, for the fixing thereof is merely the result of guesswork. Furthermore, the alibi offered by appellant is so fragile and fluid that even if we were to assume for a moment that he arrived and settled in Mindoro on March 1st, there is absolutely no showing that on March 6th he could not have gone to

see Mrs. Dimayuga in the barrio of Buliran, Tiaong, to talk to her about borrowing her Chevrolet pick-up truck, nor that he could not have been in the same barrio on the 7th to get the pick-up, and in Masapang on that same night to kidnap Mendoza; nor that on the 8th and 10th of March he could not have been in Masapang where he was seen by Mrs. Mendoza alight from a passenger truck; nor that on the 20th he could not have been in the said barrio of Masapang when he was again seen by Mrs. Mendoza join the man whom she had given the P300. Neither is there any showing that it was physically impossible for him to shuttle between Mindoro and Laguna or Quezon within the period March 6-22, taking as it does only ten or eleven hours to make the trip, and considering that he had some money, according to him, to finance the trip. On the other hand, it is more logical to believe that after Mendoza was able to escape from his kidnappers on March 22nd, appellant herein fled to Mindoro until the arm of the law caught up with him in December, 1953.

Aside from the inverisimilitude of appellant's version, he was contradicted by his own witnesses in many respects. While appellant and his witness Daniel Larosa asseverate that said appellant was arrested in April and later released upon Larosa's representations, and then rearrested in December, 1953, Capt. Villena, as defense witness, assured the court that the only time appellant was ever arrested and for which Larosa tried to intervene was in December, 1953 under a warrant of arrest, and not before. Appellant and Larosa, therefore, did not tell the truth on this score, as the testimony of Capt. Villena is backed up by no less than the copy of the warrant of arrest Exhibit "A" and by his official compliance therewith, Exhibit "B". Again, while appellant says that the house of Larosa is in the barrio of Pangulayan and contiguous to that of his cousin Lorenzo Masiling, Larosa stated that his house is situated in the barrio of Bacungan, and that he does not even know Lorenzo Masiling, although he knows a Lorenzo Masilungan who lives in the barrio of Balete. While appellant again positively stated that he had sold his house prior to his departure, receiving therefor P40 from his brother-in-law, his good friend Felino Calaguan contradicts him by saying that appellant had told him that said house would be sold after he (appellant) had settled in Mindoro.

It is noteworthy that defense witnesses Daniel Larosa and Felino Calaguan have shown much interest in appellant's case: the former by going to Calapan and working for appellant's release, and the latter by attempting to compromise the case with Jose Mendoza upon payment of P250. Certainly witnesses of this kind are apt to exaggerate their testimonies, as they did, in their eagerness to help the appellant. In contrast, Mrs. Dimayuga and Catalino Mitra who positively placed appellant in the barrio of Buliran, Tiaong, on March 6th and 7th, have no motive in taking the stand. Neither could Mr. and Mrs. Jose Mendoza have any serious motive in testifying, as they did, in this case.

The incident between appellant and Jose Mendoza which allegedly occurred on the day prior to appellant's departure for Mindoro regarding collection of debt and which appellant attributes as the motive for Mendoza's prosecuting him, cannot be believed, as it was shown that Mendoza never bothered collecting the petty debts of appellant during the course of years, and as a matter of fact, payment of such debts was left to appellant's convenience. Appellant himself, on the other hand, admitted that when he last borrowed P20 from Mendoza three days prior to his departure, Mendoza did not try to collect nor even mention the loan of P20 which appellant had obtained earlier that month. Were we to again assume that the collection incident were true, the same is so trifling that certainly would not cause the offended party to charge the appellant with the serious crime of kidnapping.

We have absolutely no doubt that appellant is guilty of the crime charged. Even his counsel de oficio, who was the same attorney who handled the defense in the lower court, has asked this Tribunal to confirm the judgment appealed from in a manifestation which this Court considered as appellant's brief in its Resolution of February 22, 1956, wherein said counsel stated:

"That after a thorough and conscientious study of the case, it is the considered opinion of the undersigned that

the decision rendered by the Court of First Instance of Laguna dated August 15, 1955, is in accordance with the facts, the evidence presented and the law. This is the honest conclusion arrived at by the undersigned attorney taking into consideration the fact that he personally handled the defense of the appellant during all the hearings conducted before the trial court and that the undersigned exerted all his efforts to protect the appellants constitutional rights."

The crime charged falls under Art. 267 of the Revised Penal Code, as amended by Republic Act No. 18, and carries with it the penalty of reclusion perpetua to death. The concurrence of the aggravating circumstances of dwelling and use of motor vehicle having been shown and proved, the Solicitor General recommends the imposition of capital punishment, contending that the penalty of reclusion perpetua, imposed by the lower court is not in accordance with law. We find this recommendations to be well taken, for besides the two aggravating circumstances mentioned above there also concurred those of nocturnity and band, it having been proven that the victim was kidnapped at about nine o'clock in the evening and by four armed men. Certainly, under the facts of the case, appellant deserves the death penalty; but for lack of sufficient votes for the imposition of such penalty, we are constrained to affirm that imposed by the lower court.

Anent the Solicitor General's recommendation that the indemnity of P1,017 be not imposed on the ground that the same was not alleged in the information nor satisfactorily established, we find it to be not well taken, for (1) in the information it is alleged that the kidnapping at bar was committed "for the purpose of securing money from the victim Jose Mendoza;" (2) during the trial it was proven, without any refutation, that while in the truck Mendoza's pockets were searched and from him taken the amount of P817; and (3) Mrs. Mendoza gave P300 to the man who followed up the ransom note and whom appellant joined after taking the money. Thus, we have that although the amounts of P817 and P300 were not specifically alleged in the information, yet, they could be proved—as it was proven—under the specific allegation "for the purpose of securing money from said Jose Mendoza." Accordingly, we hold that the indemnity awarded to the offended party should be maintained, although the amount should be P1,117 instead of P1,017.

Wherefore, with the modification only as to the amount of indemnity, the decision is hereby affirmed.

Paras, CJ., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, and Reyes, J. B. L., JJ., concur.

[1] People vs. Badila, et al., 48 Phil., 710; People vs. Moro Sarabi alias Gabriel Macrohon, et al., No. L-8054, September 21, 1956 People vs. Caminero, et al., L-8705, May 28, 1958.

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