

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
LOPE CUNANAN, ALIAS PERLA, ET AL., DEFENDANTS. RAYMUNDO
ABESAMIS, ALIAS RADING, ALIAS TEDDY, ALIAS MIKE, ALIAS
MUNDING...**

G.R. No. L-13007. December 23, 1960

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Appeal by defendant Raymundo Abesamis, alias Hading, from a decision of the Court of First Instance of Laguna, convicting him, as well as Lope Cunanan, alias Commander Perla, and Ruperto Esquillo, alias Sergio, alias Alex, who have not appealed, of the crime of kidnapping with ransom and sentencing each of them to life imprisonment, with the accessory penalties prescribed by law, to indemnify, jointly and severally, Dr. and Mrs. Zosimo Fernandez in the sum of P40,000.00, and to pay the proportionate part of the costs.

The lower court found, and it is not disputed, that, on April 23, 1953, at about 7:30 p.m., Dorotea Fernandez, wife of Dr. Zosimo Fernandez, their daughter Fe and the family driver, Buenaventura Fernandez, were forcibly taken from their house in Pagsanjan, Laguna, and brought to the mountains by a band of about seventeen (17) armed men headed by Lope Cunanan, who was addressed by his men as "Capt. Mendoza". While in the hideout of the malefactors, Mrs. Fernandez copied, by order of Cunanan, a letter prepared by him and addressed to Dr. Fernandez, demanding P80,000.00 for the release of Dorotea, Fe and Buenaventura Fernandez. Three (3) days later, the captives were taken further into the mountain fastness, where they stayed for thirteen (13) days. On different occasions, during this period, Cunanan bade Mrs. Fernandez to write the letters Exhibits C, D and E, urging her husband to expedite the raising of the ransom money. Moreover, Cunanan, as "Capt. Mendoza", exchanged correspondence with Dr. Fernandez with respect to the amount of the ransom money, which was eventually reduced to P40,000.00. Upon payment thereof early on May 8, 1953, the captives were released.

Although positively identified by Mrs. Fernandez and her driver Buenaventura Fernandez (Fe Fernandez did not take the witness stand, for she was abroad at the time of the hearing), as one of the armed men who guarded the complainants during the entire period of their captivity, Abesamis maintains that the lower court erred in convicting him of the crime charged. More specifically, appellant contests the sufficiency of the evidence of conspiracy between him and Cunanan to commit said offense, upon the following grounds: (1) the only direct evidence thereon is an extrajudicial confession of Cunanan, which is inadmissible in evidence against appellant; (2) there is no direct evidence that appellant was one of those who forcibly took the Fernandezes from their house in Pagsanjan in the evening of April 23, 1953; and (3) it has not been proven that appellant knew that the captives had been kidnapped for purposes of ransom. In connection with the last argument, it is urged that, as a member of the corps of security guards of the Hukbalahap, to which appellant, like Cunanan, as "Capt. Mendoza", admittedly belonged, it was the duty of the former to guard the bases of operation of said organization, where, presumably, the captives were kept before their release, and that, accordingly, the fact he guarded them does not necessarily show that he was a privy to the commission of the crime charged.

The record shows, however, that upon being dragged from their house in Pagsanjan, on April 23, 1953, at about 7:30 p.m., the Fernandezes and their captors, after crossing a river, went afoot to the mountains; that after passing by steep trails, at about midnight, they reached a place in the mountains where there was an improvised hut among coconut trees; that, placed in said hut, the Fernandezes were heavily guarded, not only during that evening, but, also, during the entire period of their captivity; and that among those who so guarded them was appellant Raymundo Abesamis and his co-defendant Ruperto Esquillo, who did not appeal. Although, there is no direct evidence as to the identity of each and everyone of the members of the band who went to the house of Dr. and Mrs. Fernandez, in the evening of April 23, 1953, except as regards Lope Cunanan, there is nothing to indicate that there had been a change, either of the band, or in the composition- thereof, at any time during the period above mentioned. Indeed, the record suggests that there had been no change in the composition of the group, from the midnight of April 23 to the early morning of April 24, when Mrs. Fernandez and Buenaventura Fernandez first recognized Abesamis among their captors. Moreover, there is evidence to the effect that the same group of men guarded the captives from April 24 to May 8, 1953. Again, it has been clearly established that the kidnapping was made by Huks under the command of "Capt. Mendoza", or Lope Cunanan, and Abesamis admittedly belonged to the Huk detachment under such command. In fact, there is no question that the Fernandezes were kidnapped for purposes of ransom, in which, accordingly, each one of the conspirators had a special interest. Hence, none of them would have normally allowed the intervention of a stranger, not only because he could jeopardize the success of their plan, as well as their own security, but, also, because he would thereby be placed in a position to expect and demand a share in the ransom money, and, consequently, reduce the share therein of the original conspirators.

The incriminatory statements—to the effect that Abesamis was a member of the band that took the Fernandezes from their house in the evening of April 23, 1953, and that he was a party to the conspiracy to commit the crime charged—found in Cunanan's extrajudicial statement, merely corroborate the testimony of the witnesses for the prosecution and is indicative of their veracity.

Anent appellant's last argument, it appears that upon receipt of information to the effect that an understanding had been reached with Dr. Fernandez, on May 7, 1953, there was a general rejoicing in the second hideout of the malefactors; that at about 4:00 p.m., the latter proceeded with their captives from said hideout to their first hideout, which they reached at about 8:00 p.m.; that, the next day, a man came and said: "they are ready, they are there", referring evidently to the bearers of the ransom money; that at about 2:00 p.m., the malefactors brought the captives down the mountain to a brook, in a slope where several friends of the Fernandezes were waiting with a bundle wrapped in a plastic cloth; that this bundle was delivered to Mrs. Fernandez, who, following instructions said to have been given by Dr. Fernandez, opened the bundle and counted the money contained therein; that after verifying that it amounted to P40,000.00 Mrs. Fernandez delivered the money to Cunanan who took P10,000.00 for himself, gave P6,000.00 to his "lieutenant", and divided the balance among the other members of his detachment—including Abesamis; and that after a brief wait, the captives were released.

These events, which took place in the presence of Abesamis—particularly, the general rejoicing and rather vociferous expressions of happiness made upon receipt of notice of the agreement reached with Dr. Fernandez, in the course of which the captives were assured that they would soon be released and that they would only have to wait for the ransom money, and the share thereof actually taken by Abesamis—considered in relation to the other facts adverted to above, leave no room for doubt that Abesamis was in conspiracy with Cunanan and the other members of his detachment in the commission of the crime charged.

Although the same was perpetrated at night time, with the assistance of armed men, constituting a band, the maximum of the penalty prescribed by the law (Article 267 of the Revised Penal Code as amended by Republic

Act No. 18 [the crime charged was committed before the approval of Republic Act No. 1084, on June 15, 1954]) for said offense—namely death—cannot be imposed upon appellant herein, for lack of the number of votes necessary therefor, owing to the fact that the head of the band, Lope Cunanan, had been sentenced to life imprisonment.

Wherefore, the decision appealed from is hereby affirmed, with costs against appellant Raymundo Abesamis. It is so ordered.

Paras, C.J., Bengzon, Padilla, Bautista Angelo, Labrador, Reyes, J.B.L., Barrera, Gutterrez David, Paredes, and Dizon, JJ., concur.

Judgment affirmed.

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