

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
URBANO VIRAY, ET AL., DEFENDANTS.***G. R. No. L-3773. January 02, 1953*

Ponente: MONTEMAYOR, J.

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In the Court of First Instance of Laguna Felipe Bautista, Marcia Marikit and Benito Bituin together with others were charged with kidnapping with illegal detention said to have been committed on the person of Leopoldo Salazar on July 5, 1949. The three above-mentioned were found guilty and sentenced to reclusion perpetua with the accessories of the law and to pay the costs. They are appealing from said decision.

We may consider the following facts to be admitted or not disputed, in July, 1949, Leopoldo Salazar, a more or less prosperous farmer was cultivating his lands, some sugar cane lands thru tenants. Marcial Marikit and Urbano Viray were two of his tenants. Leopoldo was living in a small house or hut in the barrio of Calamias, Calamba, Laguna. Sometime in June of that year Marikit and Viray met their landlord on his way to his farm in Calamias and asked him to liquidate their share in the sugar cane crop and when Leopoldo tried to explain that the sugar central had not yet determined the exact amount of the planters' share, these two tenants would appear to have been dissatisfied with the explanation, and they are said to have made remarks to the effect that he was not rendering correct account of their share. According to Leopoldo they made some kind of a threat if their share was not paid. He promised to liquidate their account on the 20th of June, and although he was not able to make the liquidation as promised, on the 25th of the month he gave Viray P300 and Marikit P200. Whether this was on account or the complete payment of their share, is not known.

About that time, the family of Leopoldo including his father and his sister Carmen Salazar on one side and the family of Felipe Bautista including his father Isidoro on the other, were not in good terms. They had filed mutual accusations against each other in court. And according to Felipe Bautista, Carmen Salazar was quite angry at him because on one occasion he had spoken of Carmen unfavorably to her husband which resulted in the separation of the of the couple. This statement of Felipe was not refuted. It is further admitted or at least not denied that on the evening of July 5, 1949, Leopoldo was in his house in Calamias together with his father Juan Salazar, his mother Cristina Kintoroy, his nephew Jose Faustino and the latter's wife Elena Pajarillo.

According to the prosecution about 10:30 that evening several men entered the house and forcibly took Leopoldo outside and marched him towards Cavite, partly on foot and partly on horseback until he and his captors reached a hut in the mountain of Sungay, Cavite, where he was kept for thirteen days until finally released on the 18th of July; that his hands were tied most of the time and he was blindfolded; that on the night of July 7th, that is to say, two days after the alleged kidnapping, a person entered the hut in Mt. Sungay where Leopoldo was lying down blindfolded, without any light and this visitor inquired about Leopoldo's state of health and then talked about the payment of the ransom of P10,000; that Leopoldo said he had no money and that his family was not in a position to raise any, but that if he were released he might be able to raise a little but not even as much as P5,000, the sum to which this visitor reduced the amount of the ransom, and that afterwards the visitor left; that during this

conversation between the two men, the visitor sat or rather squatted on the floor near the feet of Leopoldo and this visitor holding a flashlight near his (visitor's) chin, trained it toward the ceiling, and because the blindfold of Leopoldo was not so tight, and looking toward the visitor he claims to have recognized him to be Felipe Bautista; and that furthermore, as Felipe Bautista left the hut without any agreement or arrangement as to the payment of the ransom, Leopoldo looked at the retreating figure and believed that it fitted that of Felipe. In the evening of July 18th without any explanation whatsoever, the two or three captors or custodians of Leopoldo took him out of the hut and marched him to a place where he was left free. Then alone, he walked rapidly toward Calamba where he boarded a bus for Manila and upon arriving in the city he lodged at the Kong Ling Hotel in Sta. Cruz. He later notified Captain Vibar, Chief of the Detective Division of the Manila Police Department. Through a confidential agent, Lieutenant Mendoza of the Philippine Constabulary stationed in Calamba who since the fifth of July had been trying to ascertain his whereabouts, was informed that Leopoldo was in Manila and so he came to the city, saw and talked to him on the 20th and subsequently took him to Calamba for investigation.

The prosecution further claims that when the intruders entered the house of Leopoldo on the evening of July 5th, Jose Faustino was awakened by the noise made by the intruders and when he heard them saying that nobody should move he jumped out of the house and ran toward a cornfield and while there he saw his uncle Leopoldo being marched away by the alleged kidnappers; that one of men saw and chased him and Faustino ran back to the house and when he arrived at the yard he saw his wife Elena Pajarillo being dragged out of the house by two men who ordered her to produce the money and clothes of Leopoldo and told her that unless P10,000 was paid by Leopoldo's family, he would never return; that Faustino recognized the man actually holding Elena as Benito Bituin, a farmer of the barrio of Banlic because of his black hat (Exhibit A), this, despite the fact that according to Faustino, the man had his face covered with a handkerchief; that Faustino immediately went to the barrio of Banlic, Cabuyao not so far away to tell his mother Carmen Salazar about the kidnapping and he and his mother then went to the Philippine Constabulary headquarters in Calamba and informed Captain Galvez of the kidnapping. Captain Galvez dispatched fifteen soldiers accompanied by Faustino to try to overtake and round up the kidnappers, but all in vain.

Bituin, Marikit, Viray, Antonio Roxas and Gabriel Roxas were arrested by the Constabulary about the 9th of July and Felipe Bautista and his father Isidoro were also arrested shortly thereafter. Bituin, Marikit, Viray, Gabriel and Antonio made statements which were reduced to writing and later ratified by them either before the Justice of the Peace Perfecto Añonuevo of Calamba or later about July 22nd or the 23rd made supplementary Said statement was intended to be ratified and sworn to before Justice of the Peace Anonuevo but the latter refused to have the ratification done before him because Felipe told him that the contents of Exhibit E were not true. So it was ratified before Assistant City Attorney Ariston Fule of San Pablo City.

We have carefully and patiently gone over the rather extensive record of this case, at least twice and some parts thereof three or four times, and after doing so, we confess that we are not certain that the guilt of the appellants has been established beyond reasonable doubt. We shall proceed to state some of our reasons. As regards appellant Benito Bituin we are not convinced that Jose Faustino could have really identified him on the night of July 5th, 1949 at the yard of the house of Leopoldo Salazar as Bituin was said to be holding and dragging Elena Pajarillo, Faustina claims that it was half-moon then and he was at a distance of between four or five meters from Bituin. Even at this distance we seriously doubt that one under the circumstances could recognize a man whose face was covered with a handkerchief. The house according to the picture (Exhibit 1) was surrounded almost on all sides by banana, papaya and Sta. Elena trees and Faustino assuming that he was in the yard must have been hiding behind one of these trees in order to avoid being seen by the two marauders. There is reason to believe that the distance between him and Bituin must have been more than five meters. Besides, his identification is based mainly on the black hat said to have been worn by Bituin at the time. This is not in our opinion sufficient means

of identification especially in the faint light of a half-moon which at about 10:30 or 11:00 at night, must have been about to set. The best witness to identify Bituin would have been Elena because she was supposed to have been dragged and held and even slapped by him. In her affidavit which we find in the record she claims that she recognized the man who held her who was short and stout as well as his companion who was tall and thin, but for some reasons not explained she was not presented as a witness during the trial. Neither was the father nor mother of Leopoldo who were in the house during the time of the kidnapping presented as witnesses.

Then, Faustino at first said that he notified the Constabulary that same evening about recognizing Bituin in the yard of the house. Later he said that it was the next morning on July 6th. And yet, not until the 9th or four days after the alleged kidnapping was Bituin arrested despite the fact that he was in his house or farm everyday, and what is more, the morning following the supposed kidnapping, Faustino saw him (Bituin) pasturing his carabao near the very house where the kidnapping took place, Bituin said to be still wearing the black hat, the short pants and the shirt which Faustino claims were worn by Bituin on the evening of July 5th. A kidnapper usually does not sport the very articles which he wore during the commission of a serious crime for fear of being recognized.

Again, the evidence shows that Faustino that same evening did not tell his mother Carmen Salazar when he apprised her of the kidnapping that he had recognized Bituin. The only pertinent evidence against Bituin is the testimony of Gabriel Roxas and his brother Antonio Roxas who testified that on July 5th, 1949, about noon, they were invited by Bituin to go to the house of Felipe Bautista on some important matter, and that they actually went to the house of Felipe but did not speak to him. Even accepting this testimony as true, we don not believe it sufficient to link Bituin with the kidnapping for purposes of conviction.

As already stated, Bituin and Marikit made affidavits that they both participated in the kidnapping but claim that they were maltreated by the Constabulary including torture by water cure and that to end their suffering they agreed to make the affidavits although the contents of the same were not true and ratified them before the corresponding public officers because of threats that if they did not do so they would be tortured further.

Now, going to the identification of Felipe Bautista claimed by Leopoldo, we are not satisfied that assuming that a visitor actually went into the hut in Mt. Sungay where Leopoldo claimed to have been confined and lying down on the evening of July 7th, that he could recognize said visitor. The hut was dark and Leopoldo himself said that he was blindfolded although the blindfold was not so tight so that he could see a little in the direction of his feet as he was lying down on the floor. It would be the height of folly for a visitor who did not want to reveal his identity to sit down at the very feet of Leopoldo so that the latter could take a look in his direction, and it would still be more incredible for this visitor to hold his flashlight near his face and then train it on the ceiling so that the reflected light would reveal his (visitor's) face. It would have been more natural for the visitor to focus the flashlight on Leopoldo to see how glare. We cannot believe that was what happened. And, Felipe Bautista stoutly denied not only his participation in the kidnapping but also having visited the hut in Mt. Sungay. Incidentally, Leopoldo Salazar said that he was taken away from the hut and marched to a distant place across cornfields and even across a creek and that in crossing the stream one of his captors perched himself on his shoulder to be carried across, and yet Leopoldo could not recognize any of his captors despite the fact that he was not blindfolded then, because the blindfold was placed on his eyes only after he had been made to mount a horse together with one of the men on the ride to Mt. Sungay.

Considering the affidavit (Exhibit E) of Felipe Bautista, as already stated, from the evidence we gather that when Felipe Bautista was taken before Justice of the Peace Anonuevo the latter was informed by Felipe that the contents of the affidavit (Exhibit E) were not true. So, Anonuevo refused to have the ratification made before him. Felipe was taken back to the barracks and then returned again to Justice of the Peace Anonuevo. According to Anonuevo this was done three times and still Felipe refused to admit the contents of Exhibit E as correct and as

from him. Captain Galvez of the Constabulary later on went to the office of Justice of the Peace Anonuevo and engaged in heated conversation and argument with him but the Justice of the Peace still refused to have any intervention in the ratification. According to Felipe Bautista, because of all this, Captain Galvez was angry and once in the barracks punched him in the abdomen and made arrangement to have the ratification made in San Pablo City either before the Judge of the Court of First Instance or the City Attorney. And as he was being taken there Galvez on the way told him that he, Galvez, would see how tough he really was if still refused to ratify Exhibit E in San Pablo. Because of the punching he received from Galvez and because of this threat made by the officer Felipe said he ratified Exhibit E. Captain Galvez was never presented during the trial to refute this claim and testimony of Felipe. Under these circumstances we cannot accept Exhibit E as a voluntary statement or affidavit. Incidentally, and for analogous reasons, we also entertain doubt as to the voluntariness of the affidavits of Benito Bituin and Marcial Marikit. The record shows that Viray also made an affidavit, Exhibit F, admitting his complicity in the alleged kidnapping, and yet he was acquitted by the trial court. Now, what made Viray admit his participation in the kidnapping in his affidavit, when he was really innocent, and did not take part in it?

The conduct of Leopoldo Salazar after his alleged release is not, easy to understand. He had his house in Calamba. His family was there and he must have known or suspected that because of his disappearance and supposed kidnapping, said family and relatives were greatly worried and that peace officers including the Constabulary were busy looking for him trying to rescue him from his alleged kidnappers, and yet after his release from Mt. Sungay, and on reaching Calamba after a long hike, instead of going to his family and relatives there to relieve them of their anxiety and instead of notifying the Constabulary and police of Calamba, and instead of resting, he boarded a bus for Manila because according to him he had a place in Manila and had more clothes in the City; and yet, instead of going to his place or house in the city, he went and lodged in the Kong Ling Hotel. Instead of notifying the Constabulary in Calamba, he went and notified Captain Vibar of the Detective Section of the Manila Police Department who could not and would not have much and direct interest in the alleged kidnapping committed in Calamba. Why all this was done contrary to ordinary conduct and course, is not known. In fact, the manner the alleged kidnapping was conducted appears to be rather strange. Leopoldo according to him was kept in confinement for thirteen days and yet not a single note or paper demanding ransom was written and sent to the family and relatives of Leopoldo in an effort to obtain money, much less was any arrangement made as to how said money was to be given to the kidnappers. According to Leopoldo, on the occasion of the visit of that man to him in Mt. Sungay on the evening of July 7th, no arrangement or agreement was made as to the amount of the ransom and the manner of its payment. Leopoldo claims to have told his visitor that neither he nor his family could raise and pay any ransom, unless he was released in which case he could himself raise a little amount to give his kidnappers, and yet he was kept in that hut in Mt. Sungay eleven days longer after July 7th, with no further effort made or steps taken by his alleged kidnappers to get or collect ransom money of P10,000 or any smaller amount.

The only reason Felipe Bautista and his father Isidoro were arrested about the 11th or 12th of July was because according to Carmen Salazar and her son Jose Faustino, the day after the alleged kidnapping Felipe and Isidoro went to them about three times and suggested that they try to contact the kidnappers or wait for information about the kidnapping and prepare and pay any amount demanded to save her brother's life. From this it must have been inferred by Leopoldo's family and the Constabulary that Felipe and his father were interested and involved in the kidnapping, and possibly the bad blood between the family of Leopoldo and the Bautistas may have also contributed to the decision to have them arrested and charged with kidnapping. As to Marikit and Viray, presumably they were arrested and charged with the kidnapping because of their having demanded from Leopoldo as already stated the liquidation and accounting of their share in the sugar cane crop which they had helped produce, and their threatening attitude.

The record of this case shows that the prosecution was not entirely clear as to the people whom it thought were responsible for the kidnapping. The first complaint filed included Urbano Viray, Marcial Marikit, Benito Bituin, Felipe Bautista, Gabriel Roxas, Antonio Roxas, Lauro Malaborbor, Delfin, Goding, John Doe and John Doe. A second complaint was filed so as to include Isidoro Bautista. A third complaint was later filed excluding Gabriel Antonio and Lauro. Then a fourth complaint was subsequently filed so as to include two new names--Casimiro Manalayan and Epifanio Lumbres. Later on, Gondino Roxas alias Goding was excluded. Then, when the case was sent up from the justice of the peace court to the Court of First Instance the Provincial Fiscal filed an information only against Felipe Bautista, Benito Bituin, Marcial Marikit and Urbano Viray. All the others were dropped from the information. And then, during the trial and after the prosecution had rested its case, without any formal order or reason given and without any petition for dismissal, the trial court just verbally acquitted Isidoro Bautista and Urbano Viray in these words: "let Isidoro Bautista and Urbano Viray be acquitted for lack of proof." This, in spite of the fact that Carmen Salazar and Jose Faustino had assured the court that Isidoro was more insistent than his son Felipe in advising the family of Leopoldo to contact the kidnappers and to pay the money demanded for ransom, and in spite of the fact that Viray had an affidavit (Exhibit F) admitting that he took part in the kidnapping, and that he carried a bolo at the time. The acquittal must mean that the trial court did not place much reliance on the testimony of Carmen Salazar and Jose Faustino on the point they testified, and that the contents of Exhibit F subscribed by Viray admitting his complicity in the kidnapping were not true. If Viray was really innocent and did not take part in the kidnapping, no satisfactory explanation was given as to why he subscribed his affidavit (Exhibit F) prepared by the Constabulary. An innocent person does not usually voluntarily admit complicity in the commission of a crime.

In view of the foregoing reasons, and on grounds of reasonable doubt, the decision appealed from is reversed and the appellants are hereby acquitted, with costs de officio,

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

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