

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARCELINO CEDON, DEFENDANT-APPELLANT.

G.R. No. 101117. June 15, 1994

Ponente: QUIASON, J.

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QUIASON, J.:

This is an appeal from the decision of the Regional Trial Court, Branch 29, Catbalogan, Samar, in Criminal Case No. 3247, disposing as follows:

"WHEREFORE, the court finds the accused Marcelino Cedor (alias Seling Cedor) guilty beyond reasonable doubt of kidnapping for ransom under Art. 267 of the Revised Penal Code and hereby sentences him to reclusion perpetua, to indemnify the complainant Felimon Gerona, Sr. the amount of Five Thousand Pesos (P5,000.00), without subsidiary imprisonment in case of insolvency, and to pay the costs.

It appearing that the accused Marcelino Cedor has been detained since March 21, 1990, this preventive imprisonment should be taken into account in the service of his sentence" (Rollo, p. 23).

We reverse the decision.

I

The Information filed against appellant, reads as follows:

"That on or about the 17th day of December, 1986, at Sitio Bito-on, Barangay Bulo-an, Sierra Island, Municipality of Catbalogan, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, who being members (sic) of a terrorist group and armed with assorted firearms, conspiring, confederating together and mutually helping and aiding one another with Teodoro Zaldo alias 'Pilo Bulan', Eli Lomuardo, Simo Cedor, Ruben Molito, Mepen Doe, Lando Doe, Davis Doe and Jaime Doe, who are still at large and whose identities are still unknown, and one Danilo Alvarez, whose case had been provisionally dismissed on May 19, 1989 before the Regional Trial Court, 8th Judicial Region, Branch 29, Catbalogan, Samar, by force and without authority, did then and there willfully, unlawfully, feloniously and illegally kidnap and carry away the person of Felimon Gerona from his house to an unknown island with the use of a motorboat, and kept said Felimon Gerona under heavy guards to better secure the consent of the victim through fear to pay the ransom in the amount of Five Thousand Pesos (P5,000.00), Philippine Currency for his release and the victim was released only after having paid the ransom in the amount of Five Thousand Pesos (P5,000.00), Philippine Currency" (Rollo, p. 4).

II

On the basis of the evidence adduced at the trial, the court a quo found that on December 17, 1986, while Felimon Gerona, Sr. (Gerona), was having lunch at his house in Sitio Bito-on, Barangay Bulo-an, Sierra Island, Catbalogan, Samar, several armed men arrived. Two of them ordered him to go down the house. Once on the ground, his hands were bound. He recognized, as among the group, Teofilo Bulan and Ruben Bolito, who

belonged to a gang of robbers called "Sabarra." He also noticed appellant, standing on the concrete pavement near the beach (TSN, November 15, 1990, pp. 4-7).

Bulan accused Gerona of being an intelligence agent, which he denied. He was then taken on board a motorboat to Aripuyok Island, known as "the killing fields," which is half a kilometer away from Barangay Bulo-an.

In the island, Gerona's captors tried to force him to admit that he was an intelligence agent but he stuck to his denial of the charge. Bulan finally told him that he needed funds to buy certain equipment for the use of his band. After Gerona agreed to give P5,000.00, he was taken back to Barangay Bulo-an, with his left hand tied to the mast of the motorboat.

The band, with Gerona in tow, arrived in Barangay Bulo-an at around 4:00 P.M. Gerona again saw appellant, who was sitting on the concrete fence near the beach. Thereafter, Bulan asked Gerona for money to buy gasoline. The latter obliged by getting P100.00 from a portion of the roof of his house.

When Gerona's wife returned home, Bulan said, "Auntie, we took uncle." Scared, Gerona's wife remained silent. After 4:00 P.M., the culprits, including appellant, left.

The next day, Gerona withdrew P5,000.00 from a bank in Catbalogan. His wife delivered the money to Bulan.

Gerona did not immediately report the incident to the police authorities. It was only on May 4, 1987, after the townspeople organized the "alsa masa" as a counter-insurgency movement, did he inform the authorities of the extortion. He also enlisted with the CAFGU as a means to retaliate against the extortionists. In 1990, Gerona together with some members of the CAFGU, arrested appellant and another suspect, Danny Alvarez.

III

Appellant emphatically asserted his innocence and claimed that he was cleaning the boat owned by Corazon Escareal at the seashore in Barangay Rama, when Bulan and his companions arrived. Bulan told him to go with them to gather bamboo in Barangay Bulo-an. When he declined, Bulan pulled a gun tucked in his waist and forced him to go with them. For fear of his life, knowing that Bulan was a member of the NPA, appellant went with him to Barangay Bulo-an. After gathering the bamboo, they loaded it on the motor boat. He was then ordered to go home, while Bulan and his group stayed behind.

Appellant claimed that he was apprehended in 1990 by Gerona because the latter wanted him to testify against Pilo Bulan. When appellant refused to do so, Gerona demanded P2,500.00 from him. Since appellant failed to give the said amount, Gerona arrested him. His hands were then tied up and he was ordered to board a motorboat. Gerona and his son, Gerona, Jr., pounded appellant's hands with the muzzle of a gun, while demanding money from him. After an hour, appellant was brought to the PC Camp in Barangay Maulong. He was not able to report the mauling incident to the authorities because he was afraid of the Geronas. He eventually told the PC soldier that he had been manhandled, but the latter did nothing about it.

IV

Before us, appellant assigns the following as errors of the trial court, to wit:

1. When it gave weight and credence to the improbable and contradictory testimonies of the prosecution witnesses; and
2. When it failed to acquit the accused-appellant on the ground of insufficient evidence and reasonable doubt to warrant his conviction (Appellant's Brief, pp. 5-9).

In the case of *People v. Dramayo*, 42 SCRA 59 (1971), we held:

"xxx Accusation is not, according to the fundamental law, synonymous with guilt. It is incumbent on the prosecution to demonstrate that culpability lies. xxx Their freedom is forfeit only if the requisite quantum of proof necessary for conviction be in existence. Their guilt must be shown beyond reasonable doubt. To such a standard, this Court has always been committed. xxx Only if the judge below and the appellate tribunal could arrive at a conclusion that the crime had been committed precisely by the person on trial under such an exacting test should the sentence be one of conviction. It is thus required that every circumstance favoring his innocence be duly taken into account. The proof against him must survive the test of reason; the strongest suspicion must not be permitted to sway judgment. The conscience must be satisfied that on the defendant could be laid the responsibility for the offense charged; that not only did he perpetrate the act but that it amounted to a crime. What is required then is moral certainty."

The records showed that appellant was not a *socius criminis* of Bulan but was merely forced to join his group at gun point.

A careful perusal of the testimonies of the prosecution witnesses against appellant, casts doubt as to whether he was really an active participant in the criminal enterprise. Gerona testified:

"Q. You said that you know Marcelino Cedon for about five (5) years ago, (sic) on June 1986, do you know his whereabouts?

A. Yes, he was in Rama.

Q. What about on (sic) December 1986?

A. He was in Brgy. Bulo-an and he was with the group.

Q. When the gun was pointed at you by Davis, where was Marcelino Cedon?

A. He was standing in the concrete flooring near the beach.

Q. How far was he from your house?

A. About seven (7) meters.

Q. What did you observe from him?

A. He was armed, but I could not see what kind of arm (sic) he had tack(ed) in his waist but it was bulging.

Q. When you were in that island of Aripuyok, where was Marcelino Cedon?

A. He was assigned to guard the house, and he was ordered not to leave.

Q. Did you in fact arrive at Sitio Bito-on?

A. Yes, sir.

Q. Did you in fact arrive, rather, ... when you arrived at Sitio Bito-on, where was Marcelino Cedon?

A. He was still standing at the concrete fence" (TSN, November 15, 1990, p. 10; Underlining supplied).

Felimon Gerona, Jr. testified:

"Q. Do you know a certain Marcelino Cedon?

A. Yes, I know him and he is here. That man, Sir. (Witness point to the accused).

Q. Why do you know him?

A. Because sometimes they go to our place.

xxx xxx xxx

Q. What about Marcelino Cedon, was he wearing a mask or not?

ATTY. MORALES: Leading, Your Honor.

FISCAL: Alternative question, Your Honor.

COURT: Witness may answer.

A. No, he was not wearing a mask. He was standing just a few feet away from our house" (TSN, October 16, 1990, p. 4; Underlining supplied).

The case for the prosecution pivots on the testimony of Pedro Comeque. The testimony of the latter was contradicted on vital points by Gerona himself. While Comeque testified that appellant was with the group of Bulan that returned from Aripuyok Island, Gerona categorically stated that appellant was left in Sitio Bito-on when he (Gerona) was brought to Aripuyok Island and, as a matter of fact, he saw appellant again in the same place upon his return in the afternoon.

While Comeque testified that he saw from his window how Gerona was kidnapped, the latter said that Comeque was with him when he was kidnapped. Gerona testified:

"Q. While you were eating at the door of your house and all of the sudden there were two persons pointed (sic) the gun at you, who were inside your house.

A. My son and my maid.

Q. What about Pedro Comeque, were was he?

A. He was also inside the house.

Q. Are you certain that Pedro Comeque was inside you house when the two persons pointed the gun at you?

A. Yes, he was still inside the house" (TSN, November 15, 1990, p. 15; Underlining supplied).

Comeque admitted that his testimony that appellant was a member of the group of Bulan was based on hearsay. He testified:

Q. To the best of you recollection who were those persons whom you recognize?

A. I did not recognize anyone except the accused.

Q. What made you remember him?

A. Because I know him and besides Naro Bacalan told me that he participated.

Q. In other words, if Genaro Bacalan did not tell you, you did not recognize Marcelino Cedon?

A. I really know him but I am sure about him because somebody told me that he participated" (TSN, October 9, 1990, pp. 8-9; Underlining supplied).

The testimony of prosecution witness, Rudito Basilan, supports appellant's protestation of innocence. According to him, he was also forced to go to Barangay Bulo-an by Bulan to gather bamboo.

His testimony on the participation of appellant is as follows:

"Q. At that time when Felimon Gerona was tied, where was Marcelino Cedon?

A. He was standing.

Q. What did you notice in his person?

A. Nothing, he was just standing.

Q. After Felimon Gerona was tied, what transpired next?

A. He was brought to an island called Camantigi--an.

Q. Was he in fact brought to Camantigi-an?

A. Yes, sir.

Q. Do you know if Marcelino Cedon was with the group when you went to Camantigi-an?

A. He was not with them.

Q. When the motor boat left for Camantigi-an, were you with the group?

A. No, I did not go with them. We remained at Brgy. Bulo-an.

Q. How many were you (who) remain(ed) in Brgy. Bulo-an?

A. The accused Marcelino Cedon, myself and three (3) others whom I did not recognize.

Q. Do you know the reason why you were left behind (in) the barangay? I mean, the five of you?

A. I don't know why they left us. They only said (sic) to us, 'do not come along with us, you just stay here'"
(TSN, November 29, 1990, pp. 3-5).

If appellant's culpability was based on the sole fact that he was seen near the house of Gerona when the latter was kidnapped, then Basilan should likewise have been indicted because he was also in the crime scene.

Time and again, the Court has held that conspiracy must be proven beyond reasonable doubt. The reason is obvious. Under the law, a conspirator, even though how minimal his participation in the crime, is as guilty as the principal perpetrator of the crime. We do not find, however, that appellant is a conspirator. His was a passive presence in the scene of the crime. Mere presence of the accused at the scene of the crime does not imply conspiracy (*People v. Campos*, 202 SCRA 387 [1991]).

Moreover, the prosecution has failed to prove any overt act on the part of appellant, showing that he joined Bulan's gang to perpetrate the criminal act. Mere knowledge, acquiescence to or agreement to cooperate, is not enough to constitute one as a party to a conspiracy, absent an active participation in the commission of the crime, with a view to the furtherance of the common design and purpose (*People v. Bragaes*, 203 SCRA 555 [1991]; *Taer v. Court of Appeals*, 186 SCRA 598 [1990]; *Orodio v. Court of Appeals*, 165 SCRA 316 [1988]).

The quantum of proof required in criminal prosecution to support a conviction has not been satisfied with regard to appellant's participation in the kidnapping for ransom of Gerona, Sr. The oft-repeated truism that the conviction of the accused must rest not on the weakness of the defense but on the strength of the prosecution (*People v. De Guzman*, 194 SCRA 601 [1991]) applies in this appeal.

WHEREFORE, the decision of the court a quo is REVERSED AND SET ASIDE and appellant is ACQUITTED of the crime charged.

SO ORDERED.

Cruz, (Chairman), Davide, Jr., Bellosillo, and Kapunan, JJ., concur.

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