

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ABUNDIO ROLUNA, ACCUSED-APPELLANT, CARLOS DAGUING, PATERNO DAGUING, MAMERTO ASMOLO, TEODULFO DAGUING, FEDERICO SIMPRON, BIENVE...

G.R. No. 101797. March 24, 1994

Ponente: PUNO, J.

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PUNO, J.:

In an Information dated June 26, 1990, eight (8) persons were charged with the crime of Kidnapping with Murder before the Regional Trial Court, Branch 14, Baybay, Leyte.[1] They were Abundio Roluna, Carlos Daguing, Paterno Daguing, Mamerto Asmolo, Teodulfo Daguing, Federico Simpron, Bienvenido Simpron and Didoc Bongcalos. The Information against them reads:

"That on or about the 27th day of May, 1984, in the municipality of Baybay, Province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping with (sic) one another, with the use of firearms and taking advantage of superior strength, did then and there wilfully, unlawfully and feloniously hogtie and kidnap one Anatalio Moronia and take him away to a place unknown up (to) this time whereat said victim was killed.

"CONTRARY TO LAW."

Only accused Abundio Roluna was arrested, tried and convicted. The other seven (7) accused remain at large.

The prosecution presented two (2) witnesses, namely, Conrado Sombilon and Buenaventura Nogalada, both of whom were residents of barangay Amguhan, Baybay, Leyte.

CONRADO SOMBILON testified that on May 27, 1984, at around seven o'clock in the morning, he was on his way to sitio Bungabungan in barangay Amguhan to attend to the pasture of his carabao. At a distance of thirty (30) meters, he saw his neighbor, Anatalio Moronia, stopped in his tracks and taken captive by accused Abundio Roluna. Roluna was then accompanied by seven (7) other persons, viz: Didoc Bongcalos, Federico Simpron, Bienvenido Simpron, Teodulfo Daguing, Carlos Daguing, Mamerto Asmolo and Paterno Daguing. Accused Roluna was armed with an armalite while his companions were carrying short firearms. Using an abaca strip, he saw Carlos Daguing tie up the hands of Moronia at the back. Frightened, he did not shout for help and proceeded on his way. With the exception of his wife, he did not inform anyone about what he saw that fateful day.[2]

BUENAVENTURA NOGALADA corroborated in substance the testimony of Sombilon. He testified that on said day, at around nine o'clock in the morning, he came from his farm in barangay Monterico, Baybay and was on his way home to barangay Amguhan. At a distance of about twenty-five (25) meters, he saw Moronia walking along a human trail in barangay Amguhan, with his hands tied by a rope behind his back. Moronia was followed by accused Roluna, Carlos Daguing and five (5) other persons whom he did not recognize. Accused Roluna was carrying an armalite while Carlos Daguing was armed with a pistol. Frightened, Nogalada immediately left the

place.[3]

From that time on, both witnesses testified that Moronia was never seen or heard from.

At the trial, accused Roluna hoisted the defense of denial and alibi. Roluna claimed that on May 24, 1984, Danilo Noroño, a cousin of his wife, went to their house in barangay Amguhan. They were informed by Danilo that Iluminada Cortines y Noroño, his wife's grandmother, was bedridden and seriously ill. He and his wife immediately proceeded to Iluminada's house in barangay Banahaw, Baybay, Leyte. As soon as they arrived, he gathered some herbal plants for Iluminada. He boiled these plants and regularly applied them on Iluminada's body. He and his wife attended to Iluminada for three (3) weeks. After Iluminada recuperated from her illness, they returned to their home in barangay Amguhan.[4] His testimony was corroborated in substance by his wife, Teresita Roluna and his grandmother-in-law, Iluminada Cortines de Noroño.

Accused Roluna charged that prosecution witnesses Sombilon and Nogalada, harboring ill-feelings against him, testified falsely and implicated him in the disappearance of Anatalio Moronia. He claimed that in 1983, he and Sombilon had a dispute over a cara y cruz game held in their barangay. Sombilon was then drunk and he, as chairman of the Kabataang Barangay, tried to pacify Sombilon but the latter got mad at him. Since then, they have not talked with each other. Nogalada, on the other hand, also had a grudge against him. In 1982, they had an altercation during a volleyball game held during the barangay fiesta.[5]

After the trial, the court a quo promulgated its decision,[6] the dispositive portion of which reads:

"WHEREFORE, this Court finds accused Abundio Roluna y Elhig guilty beyond reasonable doubt of the complex crime of Kidnapping With Murder. As kidnapping (and serious illegal detention) is penalized with reclusion perpetua to death and murder with reclusion temporal in its maximum period to death, under Article 48 of the Code, the herein accused should be punished with the maximum of the more serious crime, hereat the supreme penalty of death. Considering that the Constitution of 1987 does not allow the imposition of the death penalty, however, herein accused is hereby sentenced to life imprisonment or reclusion perpetua, with the accessory penalties of the law, and to indemnify the heirs of Anatalio Moronia the sum of P30,000.00. He is credited with the full period of his detention in accordance with Article 29 of the Revised Penal Code, as amended, except if he did not sign an agreement to obey the prison laws, rules and regulations at the inception.

"SO ORDERED."

Hence this appeal.

In his brief, accused-appellant charges that the trial court erred in finding him guilty beyond reasonable doubt of the crime of Kidnapping with Murder. Accused-appellant points and stresses that the corpus delicti was not duly proved by the prosecution. He submits, inter alia, that considering that the body of Anatalio Moronia was never found, Moronia's questionable and unexplained absence and disappearance should not be blamed on him for the alleged victim, in all probability, may still be alive.

In its brief, the People contends that the fact of Moronia's death and the culpability of accused-appellant were sufficiently established by the evidence. The People relies on the disputable presumption provided under Section 5 (x) (3), Rule 131 of the Rules of Court, viz:

"The following shall be presumed dead for all purposes, including the division of the estate among the heirs:

x x x

(3) A person who has been in danger of death under other circumstances and his existence has not been known for four (4) years."

Undoubtedly, the victim, Moronia, was last seen on that fateful day of May 27, 1984. During this time, Moronia, with his hands tied at the back, was accompanied by eight (8) armed men. Clearly, he was then in danger of death. Since that day until the date of the trial (or for a span of six years), Moronia has not been seen or heard from. The People urges that these circumstances raised a presumption that Moronia has been killed by accused-appellant and his companions.

The pivotal issues are: (a) whether or not the circumstances proved by the prosecution are sufficient to establish the death of Anatalio Moronia, and; (b) if in the affirmative, whether or not accused-appellants and his companions could be held liable therefor.

Corpus delicti has been defined as the body or substance of the crime and, in its primary sense, refers to the fact that a crime has been actually committed. As applied to a particular offense, it means the actual commission by someone of the particular crime charged.[7] The corpus delicti is a compound fact made up of two (2) things, viz: the existence of a certain act or result forming the basis of the criminal charge, and the existence of a criminal agency as the cause of this act or result.[8]

Were the two (2) aspects of the corpus delicti proved in this case?

Insofar as the death of Moronia is concerned, the fact that he was last seen on May 27, 1984 with his hands tied at the back and accompanied by eight (8) armed men undoubtedly shows that his life was then in danger or peril. Coupled with the fact that Moronia has been absent and unheard from since that time until the trial of this case (or a total of six years), a presumption of death was sufficiently raised. This is in consonance with Section 5 (x)(3), Rule 131 of the Rules of Court, viz:

"The following shall be presumed dead for all purposes, including the division of the estate among the heirs:

x x x

(3) A person who has been in danger of death under other circumstances and his existence has not been known for four (4) years."

However, the circumstances presented by the prosecution would not be enough to hold accused-appellant responsible for the death of Moronia.

In the early case of *People v. Sasota*,^[9] the Court affirmed the conviction of the accused for murder although the body of the victim was not found or recovered. In said case, we ruled that in case of murder or homicide, it is not necessary to recover the body of the victim or show where it can be found. It is enough that the death and the criminal agency causing death is proven. The Court recognized that there are cases where the death and intervention of the criminal agency that caused it may be presumed or established by circumstantial evidence.

However, the ruling in the *Sasota* case cannot be applied to the case at bench. In the *Sasota* case, the prosecution witnesses saw the four (4) armed accused forcibly take the victim from his house to a lake, beating him up all the way to the boat. While sailing, the accused continued ill-treating the victim until the latter died. The body of the victim was never found.

In this case, however, the prosecution witnesses testified that they merely saw one of the accused, Carlos Daguing, tie up the hands of Moronia. He was then taken in the direction of barangay Monterico and was never seen or heard from since. At no point during the trial was it ever established that any of the eight (8) accused beat up Moronia or in any way laid a violent hand on him. Nogalada even testified that he did not hear any shot fired by any of the eight (8) armed accused^[10] so as to warrant a reasonable conclusion that Moronia was killed by accused-appellant or any of his co-conspirators. Indeed, even the possible motive of accused-appellant and his

group for abducting Moronia was not definitively established. To be sure, the circumstances proved are insufficient to produce a conviction beyond reasonable doubt for the serious crime of kidnapping with murder.

There being no evidence to the contrary, the disputable presumption under Section 5 (x)(3), Rule 131 of the Rules of Court would apply, but only insofar as to establish the presumptive death of Moronia. Whether accused-appellant is responsible for the death of Moronia is a different matter. The Rules did not authorize that from this disputable presumption of death, it should be further presumed that the person with whom the absentee was last seen shall be responsible for the subsequent unexplained absence/disappearance of the latter. The conviction of accused-appellant for the serious crime of kidnapping with murder cannot be allowed to rest on the vague and nebulous facts established by the prosecution. As discussed earlier, the evidence presented by the prosecution surrounding the events of that fateful day are grossly insufficient to establish the alleged liability of accused-appellant for the death of Moronia.

It is a well-entrenched principle in criminal law that an accused is presumed innocent until proven otherwise. No less than proof beyond reasonable doubt is required to convict him. On the whole, the evidence adduced by the prosecution would not prove beyond a shadow of a doubt that accused-appellant should be convicted for the serious crime of kidnapping with murder.

Since none of the circumstances mentioned in Article 267 of the Revised Penal Code (kidnapping with serious illegal detention) was proved and only the fact of kidnapping of Anatalio Moronia was established, we find that the crime committed is slight illegal detention under Article 268 of the Revised Penal Code. In the execution of the crime, more than three (3) armed malefactors acted together in its commission. Thus, since the generic aggravating circumstance of band[11] attended the commission of the crime and there being no mitigating circumstance present, the penalty of reclusion temporal in its maximum period as maximum and prision mayor as minimum should be imposed on accused-appellant.[12]

IN VIEW WHEREOF, the appealed decision is hereby MODIFIED. Accused-appellant Abundio Roluna is found guilty of slight illegal detention and is meted an indeterminate sentence from twelve (12) years of prision mayor as minimum to twenty (20) years of reclusion temporal as maximum.[13] Costs against accused-appellant.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, and Regalado, JJ., concur.

[1] Docketed as Criminal Case No. B-1610; Original Records, p. 114.

[2] TSN, December 20, 1990, pp. 5-20.

[3] TSN, January 3, 1991, pp. 26-38.

[4] *id.*, pp. 59-62.

[5] *id.*, pp. 62-65, 68-70.

[6] Penned by Judge Teofilo R. Redubla, Rollo, pp. 11-17.

[7] 23 C.J.S. 623-624.

[8] *id.*, p. 264.

[9] No. L-3544, April 18, 1952, 91 Phil. 111.

[10] TSN, January 3, 1991, p. 39.

[11] Article 14 (6), Revised Penal Code.

[12] Article 268 in relation to Article 64 (3) of the Revised Penal Code.

[13] Section 1 of Act No. 4103 (Indeterminate Sentence Law), as amended.

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