

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO PADICA Y LORICA, LESLIE GANS Y MELENDRES, FLORENTINO FABRIGAS, ROMEO PRADEZ, LEONARDO MARAJAS, LEOPOLDO MARAJAS AND LEON...

G.R. No. 102645. April 07, 1993

Ponente: REGALADO, J.

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REGALADO, J.:

Accused-appellant Leon Marajas, Jr. y Ramos appeals from the judgment of the Regional Trial Court of Pasay City, Branch CXVI, dated January 8, 1990, finding him guilty beyond reasonable doubt of the crime of Kidnapping for ransom with murder upon an amended information dated November 16, 1984 and reading as follows:

"That on or about the 8th day of February, 1978, in the Municipality of Parañaque, Metro Manila, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together with John Doe @ Boy Taga, Peter Doe @ Eddie Boy Marajas, Richard Doe @ Tito and Edward Doe @ Elmer whose true names, identities and whereabouts are still unknown and mutually helping and aiding one another, with the use of three (3) firearms with the different caliber (sic) by means of craft, violence against and intimidation of person, did then and there kidnap Francis Banaga, detain and deprive him of his liberty for a period of three (3) days and demanded (sic) five hundred thousand pesos (P500,000.00) for his release and while thus illegally detaining the latter, said accused, pursuant to said conspiracy did then and there wilfully, unlawfully and feloniously, with intent to kill and with treachery shoot Francis Banaga, thereby inflicting on him gunshot wounds on the head and other parts of his body which caused his instantaneous death as a consequences." [1]

The records show that Leon Marajas, Jr., Romeo Padica, Leslie Gans, Florentino Fabrigas, Romeo Pradez, Leonardo Marajas and Leopoldo Marajas were originally charged in the latter part of 1978 with kidnapping for ransom with murder and illegal possession of firearms before Military Commission No. 27 in Criminal Case No. 27-163 thereof. However, on January 11, 1979, counsel for accused Leon Marajas, Jr. prayed for the transfer of the case to the civil courts. [2]

On August 17, 1981, the Office of the Provincial Fiscal of Rizal filed an information for kidnapping for ransom with murder, docketed as Criminal Case No. Pq-81-1596-P, before Branch III of the then Court of First Instance of Pasay City against the aforementioned accused, but with the exception of herein appellant whose name was inadvertently not included therein. [3] A separate charge for illegal possession of firearms was lodged before Branch 146 of the Makati Regional Trial Court but the case was later placed in the archives some time in 1985. [4]

Accused Romeo Padica and herein appellant were both arraigned on January 15, 1982 and, with the assistance of their respective counsel, both pleaded not guilty. [5] It appears, however, that appellant entered his plea during the arraignment under the name of "Leonardo Marajas." [6] Trial thereafter ensued but, subsequently, the case was reraffled to Branch CXVI, Pasay City, of the Regional Trial Court where it remained until the conclusion of the

trial in 1990.

Earlier thereto, however, upon discovery of the omission of herein appellant's name in the original information, the prosecution filed a motion on November 16, 1984 for the admission of an amended information including appellant's name as one of the accused.[7] On May 30, 1985, the trial court issued an order admitting the amended information.[8] Thereafter, or on July 17, 1985, appellant, duly assisted by counsel, entered a plea of guilty upon being arraigned on the amended information.[9] On the other hand, in an order dated August 27, 1985,[10] accused Padica was discharged from the information to be utilized as a state witness.

The People's brief, drawing principally from the factual findings of the court a quo based on the evidence adduced in this case, with supplemental data and documentation of the testimonial evidence as borne out by the transcripts, which we find to be correct, presented the prosecution's case in this wise:

"On or about 9:00 o'clock in the morning of February 8, 1978, appellant and his brother, Leopoldo Marajas, using a car driven by Leopoldo, visited Romeo Padica in his house in Muntiniupa, Metro Manila. Leopoldo requested Padica, his compadre, to drive for Eddie Boy Marajas, a brother of Leopoldo and appellant, and his classmates, giving Padica P100.00 for the purpose. Upon receiving the amount, Padica, pursuant to the instructions of Leopoldo, drove the car, with Leopoldo and appellant on board, and proceeded to Samson Tech in Pasay City, arriving there at about 10:00 A.M. Leopoldo left the vehicle and, upon coming back after a while, he told Padica that they were going to Sukat, Parañaque. In Sukat, the three stopped at a restaurant when (sic) they ordered something to eat (TSN, November 17, 1988, pp. 6-10).

"Thereafter, with Padica still driving the car, they proceeded to the Superville Subdivision, also in Sukat, where they arrived at about 11:30 A.M. of the same date. Eddie Boy Marajas and Francis Banaga, both fourteen (14) years of age, more or less, were in said subdivision. Leopoldo alighted from the car and talked to them. Subsequently, Leopoldo together with Francis and Eddie Boy, boarded the car. All of them proceeded to Calamba, Laguna, with Padica still driving the vehicle. Seated beside Padica was Leopoldo Marajas, while appellant and Eddie Boy occupied the back seat, with Francis Banaga between them (Ibid, pp. 10-13).

"Upon reaching Calamba at about 12:00 noon of the same date, Leopoldo Marajas told Padica to drive the car into the sugarcane plantation at the side of the road. Once inside the plantation, Padica stopped the car when told to do so by Leopoldo, who then alighted from the vehicle and told Francis Banaga to alight. However, Francis refused to get down from the car. Notwithstanding his resistance, he was forced out of the car by Leopoldo Marajas, Eddie Boy and appellant, who pulled him out of the vehicle. Thereafter, the three brought Francis Banaga to a place inside the sugarcane plantation, more or less ten (10) meters away from the car, while Padica remained in the vehicle. Leopoldo Marajas then delivered several stabbing blows at Banaga after which appellant shot Banaga with a handgun. Banaga fell on the ground. Leopoldo, Eddie Boy and appellant returned to the car. Leopoldo took the wheel from Padica and drove the car to Muntinlupa, where Padica alighted and was left behind with Leopoldo warning Padica, 'Pare, steady ka lang, isang bala ka lang.' (Ibid., pp. 10-19).

"On or about 5:00 P.M. of the same day, while in his house at Gatchalian Subdivision in Parañaque, Tomas Banaga, father of Francis, became alarmed when his son failed to come home. A few minutes after 6:00 P.M. of (the) same date, someone called up by phone, telling Tomas not to look for his son as he was in good condition, and demanding P500,000.00 for his (Francis') release. Tomas reported the incident to the Philippine Constabulary authorities in Camp Crame, Quezon City. Sgt. Rodolfo Bucac, Sgt. Villanueva and Sgt. Cierlito were dispatched to the Banaga residence (TSN, January 15, 1982, pp. 4-6).

"On February 9, 1978, Tomas received a second phone call in the course of which the caller reduced the amount demanded to P200,000.00. On February 10, 1978, there was another phone call with (the) caller lowering the amount to P23,000.00 and giving instructions that the money be wrapped in a newspaper, placed in a paper bag, and delivered by a girl wearing a T-shirt to Luneta, in front of the National Library, under a tree

with red flowers, at 8:30 P.M. of February 10, 1978 (Ibid., pp. 6-10).

"Norma Camello, sister-in-law of Tomas Banaga, volunteered to deliver the money as the maid of (the) Banaga family who was supposed to do it was scared. Between 7:00 and 7:30 P.M. of February 10, 1978, Camello was brought by Sgt. Bucao and CIC Ocampo in front of Bayview Hotel at Roxas Blvd., Manila. At about 8:00 P.M. of the same date, she went to the National Library at Luneta and positioned herself under a tree with red flowers, pursuant to the instructions of the caller. A few minutes later, a taxicab arrived. Appellant alighted from the vehicle, approached Camello and got the money from her which was in a paper bag, saying: 'Hihintayin na lang ninyo ang bata mamaya sa bahay' (TSN, Sept. 19, 1985, pp. 6-12). When appellant returned to the waiting taxicab and was about to board it, Sgt. Simplicio Dulay, one of those sent to Luneta to entrap the person who would receive the ransom money, apprehended and arrested appellant (TSN, March 11, 1986, pp. 2-5).

"(At) or about 2:00 P.M. of February 11, 1978, pursuant to the information given by appellant during the investigation, a Philippine Constabulary team led by Lt. Napoleon Cachuela, accompanied by appellant, went to Calamba, Laguna to search for the body of Francis Banaga. Appellant led the team to the place where the cadaver was dumped, which was inside a sugarcane plantation about 75 meters away from the road. The team recovered the body of Francis Banaga and brought it to the Municipal Health Officer of Calamba for autopsy (TSN, October 2, 1986, pp. 10-17).

"According to the necropsy report of Dr. Eusebio Panganiban of the Calamba Municipal Health Office, Francis Banaga sustained two (2) entry gunshot wounds, one on the head and the other on the chest, with two (2) exit gunshot wounds and several lacerated wounds. The death of Francis was caused by 'intra-thoracic brain hemorrhage due to gunshot wounds.' (TSN, July 25, 1986, pp. 17- 69).

"After three (3) years in hiding out of fear for his life, Romeo Padica finally revealed to Lt. Cruz (sic) of Regional Security Unit Intelligence Division, Lucena City that he (Padica) witnessed the killing of Francis Banaga. Padica had met Lt. Cruz (sic) near the Lucena City Market and after making the disclosure, surrendered to the authorities (TSN, December 12, 1988, p. 6)."[11]

Appellant predictably presented a different narration of the events that led to his arrest. He insists that he was the victim of an elaborate frame-up by the Military authorities assigned to investigate the case. Appellant claims that on February 8, 1978, the day that the victim disappeared, he was in Batangas province, where he was a resident. In the early morning of February 10, 1978, he decided to go to Manila, with Sto. Tomas, Batangas as his point of departure, in order to thresh out some financial matters in connection with his business of buy and sell.[12]

He arrived in Manila at around 9:00 A.M. and proceeded to the office of Mrs. Aquilina Marquez-Marajas, his sister--in-law, at Mabini Street in Malate to talk to his brother, Leonardo. Not finding Leonardo there, he then went to the house of his sister, Nelly Marajas, a neighbor of the Banaga family, at Gatchalian Subdivision in Parañaque. He was about to board a tricycle at the main gate of the subdivision at around 930 A.M. when he was suddenly accosted by two Metrocom officers in civilian clothes who forcibly took him to a car. Appellant was later brought at about 12:00 noon to the Siesta Court Hotel, also in Malate, where he was repeatedly beaten and subjected to torture by his abductors who tried in vain to extract information about the disappearance of Francis Banaga.[13]

In the evening of the same day, he was taken out of the hotel and was taken by the men to an unspecified safehouse where, once again, his ordeal at their hands was resumed. Unable to bear the maltreatment any further, appellant then tried to fool them by admitting that the missing Francis Banaga could be found in Paete, Laguna. He then led a group of his captors to the said place but they found no trace of the missing boy. Incensed at the deception, the men took him back to the safehouse.[14]

Later, appellant was again taken out of the safehouse and, together with another captive whom he identified only as "Florentino," he was brought to an isolated sugarcane plantation. There Florentino led the military team to the cadaver of Francis Banaga.[15] Appellant and Florentino were later brought back to the safehouse. The former claims that he was kept there for about two months, during which time he helped in the maintenance and care of the safehouse and its surroundings. He also met at the safehouse Leslie Gans, one of the accused, but he had no occasion to discuss their predicament with him. After appellant's confinement, he was turned over to the prison authorities of Bicutan Rehabilitation Center where he remained until the start of the trial.[16]

After more than eight years of trial, which for one reason or another was punctuated by numerous and needless postponements, the trial court rendered its assailed decision pronouncing the guilt of appellant for the crime of kidnapping for ransom with murder and sentencing him to suffer the penalty of reclusion perpetua and to pay Tomas Banaga, father of Francis Banaga, the sum of P30,000.00 as indemnity for the death of the child, without pronouncement as to costs.[17]

Appellant is now before us insisting on the reversal of the judgment of conviction by theorizing that the court below erred: (a) in ruling that the guilt of appellant was proven beyond reasonable doubt; (b) in giving full credence to the testimony of state witness Romeo Padica; (c) in laying emphasis on the weakness of the defense interposed by appellant; and (d) in disregarding the inconsistencies raised by the defense as minor and insubstantial.[18]

After a careful and exhaustive review of the records, the testimonial and documentary evidence, and the arguments of the prosecution and the defense, we are satisfactorily persuaded that the prosecution has duly discharged its onus probandi insofar as the culpability of appellant is concerned, but we do not adopt as correct the nature or categorization of the offense for which he must do penance.

1. At the outset, from the evidence on record, we are not convinced that the crime of kidnapping for ransom was committed as charged in both the original and amended informations. Rather the crime committed was murder, attended by the qualifying circumstances of treachery and/or abuse of superior strength, and not the complex crime of kidnapping for ransom with murder as found by the trial court without objection by either the prosecution or defense. The essential element in the crime of kidnapping that the victim must have been restrained or deprived of his liberty,[19] or that he was transported away against his will with the primary or original intent to effect that restraint, is absent in this case. The malefactors evidently had only murder in their hearts when they invited the trusting Francis Banaga to go with them to Laguna, and not to confine or detain him for any length of time or for any other purpose.

We have consistently held that where the taking of the victim was incidental to the basic purpose to kill, the crime is only murder,[20] and this is true even if, before the killing but for purposes thereof, the victim was taken from one place to another.[21] Thus, where the evident purpose of taking the victims was to kill them, and from the acts of the accused it cannot be inferred that the latter's purpose was actually to detain or deprive the victims of their liberty, the subsequent killing of the victims constitute the crime of murder,[22] hence the crime of kidnapping does not exist and cannot be considered as a component felony to produce a complex crime of kidnapping with murder. In fact, as we held in the aforecited case of Masilang, et al., although the accused had planned to kidnap the victim for ransom but they first killed him and it was only later that they demanded and obtained the money, such demand for ransom did not convert the crime into kidnapping since no detention or deprivation of liberty was involved, hence the crime committed was only murder.[23]

That from the beginning of their criminal venture appellant and his brothers intended to kill the victim can readily be deduced from the manner by which they swiftly and cold-bloodedly snuffed out his life once they reached the

isolated sugarcane plantation in Calamba, Laguna. Furthermore, there was no evidence whatsoever to show or from which it can be inferred that from the outset the killers of the victim intended to exchange his freedom for ransom money. On the contrary, the demand for ransom appears to have arisen and was consequently made as an afterthought, as it was relayed to the victim's family very much later that afternoon after a sufficient interval for consultation and deliberation among the felons who had killed the victim around five hours earlier.

It will be observed that under Article 267 of the Revised Penal Code, the circumstance that the kidnapping is perpetrated for the purpose of ransom raises the imposable penalty to death.[24] It is essential, however, that the element of deprivation or restraint of liberty of the victim be present. The fact alone that ransom money is demanded would not per se qualify the act of preventing the liberty of movement of the victim into the crime of kidnapping, unless the victim is actually restrained or deprived of his liberty for some appreciable period of time or that such restraint was the basic intent of the accused. Absent such determinant intent and duration of restraint, the mere curtailment of freedom of movement would at most constitute coercion.

In addition, Francis Banaga, then already fourteen years of age and a fourth year high school student, was neither forced nor coerced unlawfully into going along with his killers. He voluntarily boarded the car and went with the Marajas brothers to Laguna. The victim had every reason to trust them as they were his neighbors in Gatchalian Subdivision. In fact, one of the brothers, accused Leonardo Marajas alias "Eddie Boy," was his schoolmate and a playmate.[25]

There was treachery since, under the aforesaid circumstances, the victim was lured by his killers into going with them to Laguna without the slightest inkling of their nefarious design, coupled with the sudden and unexpected assault by the malefactors on the hapless victim in the isolated sugarcane plantation in Calamba, which thereby divested him of an opportunity either to effectively resist or to escape.[26] Abuse of superior strength was likewise present, for the accused deliberately resorted to their collective strength for the purpose of overpowering whatever feeble defense the poor Francis Banaga could offer.[27] They thus insured the commission of the crime with practically no risk at all to themselves.

Under the factual features present in the commission of the crime, however, we are inclined to grant that the circumstance of superior strength should not be appreciated distinctly but should be considered as being absorbed in and by treachery,[28] and the same is true with regard to the allegation of craft. Hence, abuse of superior strength may not be taken into account separately in this case, either as a qualifying or as an aggravating circumstance. On the other hand, although the trial court and both parties herein have again passed sub silentio thereon, it is evident that the aggravating circumstance of uninhabited place was present since appellant and his co-accused obviously and deliberately chose the desolation and isolation of the sugarcane plantation to perpetrate the crime far from the gaze of potential eyewitnesses.[29] This circumstance is underscored by the fact that they committed the crime at about 12:00 noon, a time of day when any passersby or assistance could hardly be expected in the vicinity of the locus criminis.[30] This aggravating circumstance of despoblado should, therefore, be considered against appellant even if it was not alleged in the informations since it was duly proved.[31]

Appellant's defense that he was in another place at the time of Francis Banaga's disappearance and killing must necessarily fail. Indeed, trite as our innumerable reiterations have already made this statement of rejection, we must perforce again reprobate appellant's alibi as an inherently weak defense decidedly easy of concoction. Apart from that, it is considered as clearly negative in nature. Hence, when arrayed against the positive declarations of the witnesses for the prosecution, the same would all the more be given little consideration.[32]

For it to prosper, it must be shown that not only was the accused at some other place at the time of the commission of the offense, but that it was also physically impossible for him to have been there when it

happened.[33] Indeed, as correctly pointed out by the trial court in its decision, appellant was not even sure as to his whereabouts on February 8, 1978. He simply offered as an explanation therefor that he was "more or less" in Batangas, which allegation was completely uncorroborated.[34]

In light of the foregoing, appellant's further denial that he was entrapped on the night of February 10, 1978 by the authorities after receiving ransom money from Norma Camello must likewise be rejected. Both Norma Camello and Sgt. Simplicio Dulay, one of the police operatives, positively and without hesitation identified appellant as the person who was collared at Luneta Park.[35] Moreover, the police report clearly and definitely bears out the fact that appellant was arrested by the investigating police officers on that night pursuant to the dragnet plan that was prepared for the purpose,[36] the veracity of which record further enjoys the presumption of regularity in the performance of official duties which appellant failed to rebut.

2. Appellant asserts that the trial court should not have given credence to the testimony of Romeo Padica as it is incredible and inconsistent with the other evidence on record. He affects surprise as to why the Marajas brothers would go to the extent of hiring Padica to drive for them when, in fact, Padica himself knew that Leopoldo Marajas was a skilled driver. Moreover, he expresses disbelief that Romeo Padica never conversed with the group while they were on the road and that, although the latter claims to be a close friend of Leopoldo, he never even knew what was Leopoldo's profession and what was the surname of their common "compadre." He likewise characterizes as incredible the circumstance that he and his cohorts supposedly carried out the crime in broad daylight and that thereafter they simply dismissed Padica with a casual threat of "Pare, steady ka lang isang bala ka lang."

There is no merit in all the foregoing submissions and pretensions of appellant. It is true that the testimony of a particeps criminis is to be invariably viewed with much caution, coming as it does from a polluted source.[37] However, in the case at bar and after a careful evaluation, we find no plausible reason to depart from the favorable appreciation by the trial court of Padica's testimony which the said court characterized as reasonable and probable, given in a clear, straightforward and convincing manner thereby leaving no doubt in the mind of said court that he was telling the truth.[38]

Jurisprudentially embedded is the rule that the stamp of approval given by the trial court on the testimony of a particular witness as a consequence of its factual findings is normally accorded finality by appellate courts, the court below having had the opportunity to observe closely the manner by which such witness testified.[39] Furthermore, not a single shred of evidence was introduced by the defense to show any ill motive on the part of Padica to impute such a serious crime on appellant and his brothers, thus entitling to considerable credit his testimony regarding the circumstances surrounding Francis Banaga's death. These conclusions we confirm, not by mere reliance on dicta, but from our own review and calibration of the evidence.

There is certainly nothing strange in the matter of the Marajas brothers requesting Padica to drive for them. As testified to by the latter, he was then a close friend of one of the brothers, Leopoldo, who was the one who requested him to drive, and the latter presumably had full confidence in him as he was at the time a professional driver of taxicabs. Romeo Padica, likewise, can not be discredited just because of his silence on the road and for not knowing Leopoldo's profession and the surname of a common "compadre." It is of common knowledge that there are persons who are taciturn and not as inquisitive as others, or who disdain prying into the affairs even of their close friends.

Be that as it may, this witness did testify to and narrate in his sworn statement some personal matters regarding the Marajas siblings, such as the fact that Leopoldo was staying at a house adjacent to that of the Banagas in Tionguiao Street at Gatchalian Subdivision together with his wife, children and Eddie Boy Marajas; that said

house was owned by a sister of the brothers; and that Francis Banaga, whose picture he positively identified in court, was a playmate and schoolmate of Eddie Boy Marajas, thus lending credence to his claim of close and fraternal ties with Leopoldo Marajas.[40]

The fact that appellant and his co-accused carried out the murder of Francis Banaga in broad daylight is hardly surprising. As pointedly noted by the Solicitor General, "it is not difficult to believe that appellant and his co-accused committed the crime in broad daylight because there were no other persons at the scene of the incident," as the same was inside a desolate sugarcane plantation in the outskirts of Calamba, Laguna and the crime was perpetrated at noon of that day, as we have earlier explained.

Having demonstrated to Padica the brutal and merciless manner in which they disposed of Francis Banaga, appellant and his brothers were undoubtedly secure in the thought that Padica would have been sufficiently terrorized thereby and would thereafter keep his silence, and so, just for good measure, they uttered the threat on the latter's life simply as a reminder of what they had in store for him should he waver and ignore that injunctive warning.

It is further contended by appellant that the trial court should not have granted the motion to discharge Romeo Padica from the information, as one of the conditions for its grant has not been met, namely, that the prosecution has not shown that Padica did not appear to be the most guilty. Incidentally, appellant slurs over the fact that this order of the trial court was sustained by the Court of Appeals in CA-G.R. No. 16302 which denied appellant's petition for certiorari and prohibition assailing said order, the judgment therein having become final and executory on January 20, 1989.[41]

Appellant has also clearly lost sight of the rule that the discharge of an accused to be a state witness, lies within the sound discretion of the court before whom it is sought and in the exercise of that discretion, it is not required that the court be absolutely certain that all the requirements for the proper discharge of a co-accused be present.[42] In the case under consideration, the prosecution presented enough evidence to support its motion for the discharge of Padica. The trial court's reliance thereon and its consequent finding on the basis thereof that Padica did not appear to be the most guilty must be respected as it was in better position to evaluate such evidence.

Appellant likewise points to portions in the testimony of Padica which are allegedly not substantiated by the evidence on record. Thus, appellant argues that while Padica claimed that the victim was stabbed by Leopoldo Marajas and then shot at four times by appellant, yet the necropsy report of the medico-legal officer, Dr. Eusebio P. Panganiban, showed no stab wounds but only lacerated wounds and two gunshot wounds. Further, Padica's testimony that the victim was dragged inside the plantation and instantly stabbed and shot to death is supposedly belied by the findings in the necropsy report that Francis Banaga's body had several hematomas and contusions.[43]

We nonetheless agree with and give due credit to the following explanation of the court below regarding these seeming conflicting aspects:

"The defense counsel also capitalized on the supposed inconsistency between the allegation of Padica that Leon Marajas, Jr. shot Banaga four (4) times and the autopsy report stating that the victim sustained two (2) entry gunshot wounds. Padica testified that Leon Marajas, Jr. shot Francis Banaga four (4) times without stating that the victim was hit also four (4) times. The fact that he suffered two (2) entry gunshot wounds clearly indicates that Francis was shot, supporting the version of Padica that the child was fired upon by Leon Marajas, Jr.

"Also pointed out as a basis for not believing the testimony of Padica is the supposed conflict between his

assertion that Leopoldo Marajas stabbed Banaga with a knife and the finding of Dr. Panganiban that the victim, aside from the gunshot wounds, sustained only lacerated wounds and contusions. The defense implied that Banaga was not stabbed by Leopoldo Marajas as there is no finding that he sustained stab wounds. A logical analysis of this point shows that there is no inconsistency. Padica stated that he saw the accused Leopoldo Marajas stab the victim but he did not say that Banaga was hit by the stabbing blows delivered by the said accused. It could also be that one of the blows hit the boy but without piercing his body, causing only lacerations thereon."^[44]

As for the several hematomas and contusions that were discovered on the body of Francis Banaga, it is entirely possible that the same were inflicted when the victim put up a furious struggle for his life against his assailants. According to Padica, the Marajas brothers forcefully pulled out Banaga from the car when they stopped by the roadside. They continued to inflict physical harm on the boy while prodding him to proceed inside the sugarcane plantation until they reached a clearing where, after Leopoldo Marajas delivered stabbing blows on the victim which may not have inflicted knife wounds but contusions from the assailant's clenched fists, Leon Marajas, Jr. then fired away with the fatal shots. All the while and just before he was shot to death, Padica narrated that the victim desperately exerted all efforts to ward off the assault on his person.^[45]

Appellant also raises as an issue the questionable manner in which Padica surrendered, after nearly three years of hiding, to Lt. Cesar Perez of the Lucena PC Regional Security Unit whom he met only for the first time at the Lucena City marketplace.

But, as Padica candidly revealed, and we find his explanation satisfactory and credible, he had desired all along to surrender as he had grown tired of constantly fearing for his life and of his difficult plight as a fugitive froth justice. He was obviously always on the lookout for persons in authority whom he could trust during his stay of two to three months in Lucena City where he had in the meantime found work as a porter in the public market. In the course of his stay there, he had heard about the "kind-hearted" Lt. Perez, a ranking officer of the local constabulary.^[46] His subsequent meeting and surrender to Lt. Perez at the marketplace was no strange coincidence as it is obviously a place where all kinds of people go to and cross paths.

That it may have taken Padica over two years to finally give himself up to the authorities is understandable. He had witnessed a heinous crime perpetrated on a defenseless fourteen-year old boy by his killers, and the latter had threatened him with bodily harm should he reveal what they had done. In view thereof, it was but natural that Padica would hide, away from the possible clutches of the Marajas brothers, and keep unto himself the dark secret lest he suffer the same grim fate that befell Francis Banaga.

3. Appellant finally contends that the failure of the prosecution to charge him as an accused in the original information is a fatal defect. Again, we find no merit in this fatuous assertion.

The rule is that the complaint or information should sufficiently allege the name of the accused, failing which the complaint or information would be rendered invalid. The test of sufficiency is laid down in Section 7, Rule 110 of the Rules of Court, which states:

"Sec. 7. Name of the accused. - A complaint or information must state the name and surname of the accused or any appellation or nickname by which he has been or is known, or if his name cannot be discovered he must be described under a fictitious name with a statement that his true name is unknown.

If in the course of the proceeding the true name of the accused is disclosed by him, or appears in some other manner to the court, the true name of the accused shall be inserted in the complaint or information and record."

In the case at bar, there is no dispute that appellant was arraigned under the original information and that he entered thereto a plea of not guilty under the name of "Leonardo Marajas." At that juncture, appellant should have

raised the error as to his identity by filing a motion to quash on the ground of lack of jurisdiction over his person, in line with the doctrine explained in *People vs. Narvaes*[47] laid down as early as 1934.

But, as aforesaid, appellant did not do so but instead voluntarily appeared at the arraignment and pleaded not guilty thereat, albeit under a different name. Consequently, the trial court acquired jurisdiction over his person and it could have rendered a valid judgment of conviction based on the original information even without need of an amendatory information to correct appellant's name. What we stated in *Narvaes* is worth repeating:

"x x x (w)hen the appellant was arraigned under the name of Pedro Narvaes, which is the name appearing in the information, he merely entered his plea of 'not guilty' under the said name. It was on that occasion that he should have for the first time raised the question of his identity, by filing a demurrer based on the court's lack of jurisdiction over his person, inasmuch as he was then considered as Pedro Narvaes, not Primo Narvaes. Not having filed the said demurrer, it must necessarily be understood that he renounced it and therefore he is now estopped from raising, or insisting to raise, the same question, not only in this appeal but even at the trial. x x x."

The subsequent amendment to insert in the information Leon Marajas, Jr.'s real name involved merely a matter of form as it did not, in any way, deprive appellant of a fair opportunity to present his defense.[48] Moreover, the amendment neither affected nor altered the nature of the offense charged since the basic theory of the prosecution was not changed nor did it introduce new and material facts.[49] Such an amendment is explicitly allowed under the second paragraph of Section 7, in relation to Section 14, Rule 110 of the Rules of Court, the pertinent portion of which provides that "(t)he information or complaint may be amended, in substance or form, without leave of court, at any time before the accused pleads; and thereafter and during the trial as to all matters of form, by leave and at the discretion of the court, when the same can be done without prejudice to the rights of the accused." At any rate, whatever irregularity may have attended the inclusion of appellant's name as an accused in the amended information has been waived by his subsequent appearance and entry of plea at his arraignment under said amendatory information.

WHEREFORE, the assailed judgment of the trial court is hereby SET ASIDE and another one is rendered CONVICTING accused-appellant Leon Marajas, Jr. y Ramos of the crime of murder and IMPOSING upon him the penalty of reclusion perpetua. Accused-appellant is further ORDERED to pay the heirs of the late Francis Banaga the sum of P50,000.00 as death indemnity, in line with current jurisprudential policy, and likewise to pay the costs.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Nocon, and Campos, Jr., JJ., concur.

* Accused Romeo Padica y Lorica (who was later discharged to be a state witness) and Romeo Pradez are one and the same person (Original Record, 546). The other accused have remained at large, hence the lone appellant in this case is Leon Marajas, Jr. y Ramos.

[1] Original Record, 148-149.

[2] *Ibid.*, 332.

[3] *Ibid.*, 1-2.

[4] TSN, July 21, 1988, 13-14.

[5] Original Record, 15-16.

- [6] Ibid., 16.
- [7] Ibid., 146.
- [8] Ibid., 181.
- [9] Ibid., 204.
- [10] Ibid., 493.
- [11] Brief for the Appellee, 4-10; Rollo, 116.
- [12] TSN, January 25, 1989, 9-11.
- [13] Ibid., id., 10-17.
- [14] Ibid., February 15, 1989, 5-13.
- [15] Appellant's Brief, 23; Rollo, 77.
- [16] TSN, February 15, 1989, 13-15; March 8, 1989, 5-17.
- [17] Penned by Judge Alfredo J. Gustilo; Original Record, 737.
- [18] Appellant's Brief; Rollo, 53.
- [19] *People vs. Ablaza*, 30 SCRA 173 (1969); *People vs. Lora, et al.*, 113 SCRA 366 (1982); *People vs. Masilang, et al.*, 142 SCRA 673 (1986).
- [20] *People vs. Guerrero, et al.*, 103 Phil. 1136 (1958).
- [21] *People vs. Ty Sui Wong, et al.*, 83 SCRA 125 (1978).
- [22] *People vs. Camo, et al.*, 91 Phil. 240 (1952); *People vs. Ong, et al.*, 62 SCRA 174 (1975); *People vs. Jimenez, et al.*, 105 SCRA 721 (1981).
- [23] *Supra*, Fn. 19.
- [24] As amended by Republic Acts Nos. 18 (1946) and 1984 (1954).
- [25] TSN, November 17, 1988, 12; January 25, 1989, 7-8.
- [26] *People vs. Badilla*, 185 SCRA 554 (1990); *People vs. Mabuhay*, 185 SCRA 675 (1990); *People vs. Gabatin*, 203 SCRA 225 (1991).
- [27] *People vs. Villanueva, et al.*, 128 SCRA 488 (1984); *People vs. Moka, et al.*, 196 SCRA 378 (1991).
- [28] *People vs. Damiar, et al.*, 127 SCRA 499 (1984); *People vs. Tajon*, 128 SCRA 656 (1984); *People vs. Buensuceso, al.*, 132 SCRA 143 (1985).
- [29] *People vs. Egot*, 130 SCRA 134 (1984); *People vs. Budol*, 143 SCRA 241 (1986).
- [30] See *People vs. Rubia*, 52 Phil. 172 (1928); *People vs. Aguinaldo*, 55 Phil. 610 (1931).
- [31] *People vs. Collado*, 60 Phil. 610 (1934); *People vs. Domondon*, 60 Phil. 729 (1934); *People vs. Jovellano, et al.*, 56 SCRA 156 (1974); *People vs. De Guzman, et al.*, 164 SCRA 215 (1988).
- [32] *People vs. Bugho*, 202 SCRA 164 (1991); *People vs. Urquia, Jr., et al.*, 203 SCRA 735 (1991); *People vs. Lee, et al.*, 204 SCRA 900 (1991).

- [33] *People vs. Santito, Jr., et al.*, 201 SCRA 87 (1990); *People vs. Arroyo, et al.*, 201 SCRA 616 (1990).
- [34] Original Record, 734.
- [35] TSN, September 19, 1985, 20; May 22, 1986, 17-18.
- [36] Original Record, 535; Exhibit E.
- [37] *People vs. Tabayoyong, et al.*, 104 SCRA 724 (1981).
- [38] Original Record, 735.
- [39] *People vs. Umali, et al.*, 193 SCRA 493 (1991); *People vs. Ruedas*, 194 SCRA 553 (1991); *People vs. Ponce, et al.*, 197 SCRA 746 (1991).
- [40] TSN, November 17, 1988, 18-19; November 24, 1988, 7-8; Exhibit Q, Original Record, 547-549.
- [41] Original Record, 601-607.
- [42] *People vs. Ibañez*, 92 Phil. 933 (1957); *People vs. Bautista, et al.*, 106 Phil. 39 (1959); *People vs. Court of Appeals, et al.*, 124 SCRA 338 (1983).
- [43] Exhibit G; Original Record, 538.
- [44] Original Record, 736.
- [45] TSN, November 17, 1988, 14-15; November 24, 1988, 13-15.
- [46] *Ibid.*, December 12, 1988, 6.
- [47] 59 Phil. 738 (1934).
- [48] *U.S. vs. De la Cruz, et. al.*, 3 Phil. 331 (1904).
- [49] *Arevalo, et al., vs. Nepomuceno, etc., et al.*, 63 Phil. 627 (1936); *People vs. Labatete*, 107 Phil. 697 (1960).

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