

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EFREN BESMONTE, ACCUSED-APPELLANT.

G.R. No. 103306. April 05, 1993

Ponente: PADILLA, J.

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PADILLA, J.:

Appellant Efren Besmonte and several other persons were charged in Criminal Case No. T-1924 with the crime of Kidnapping in an Information dated 17 January 1990 which reads as follows:

"That on or about the 28th day of May 1987 at Barangay Estancia, Municipality of Malinao, Province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating, and helping one another, did then and there, wil-fully, unlawfully, feloniously and by means of force and intimidation, kidnap, detain, carry away and deprive of liberty one AZUCENA ALMONTE, then a Municipal Kagawad of Malinao, Albay, by bringing and carrying her away on board a motor-cycle to Uson, Tabaco, Albay, where she was believed to have been killed to the damage and prejudice of her heirs.

ACTS CONTRARY TO LAW."[1]

Only Efren Besmonte was arrested and upon arraignment, he entered a plea of not guilty.

After trial the Regional Trial Court, Branch 17 of Tabaco, Albay rendered a decision dated 4 October 1991, the dispositive portion of which reads:

"WHEREFORE, In View of the Foregoing, finding accused EFREN BESMONTE, alias Ka Bobby or Ka Renan, GUILTY of the crime of Kidnapping punishable under Article 267 of the Revised Penal Code, as his guilt had been proved beyond reasonable doubt, and considering the aggravating circumstances attendant to the case, the Court sentences him, as he is hereby sentenced, to suffer an imprisonment of RECLUSION PERPETUA.

Likewise, accused Efren Besmonte, alias Ka Bobby or Ka Renan, is hereby ordered to pay, by way of civil indemnity, the heirs of Azucena Almonte in the amount of Fifty Thousand (P50,000.00) Pesos, Philippine Currency, and to pay the costs of this [sic] proceedings.

SO ORDERED."[2]

The evidence for the prosecution upon which the judgment of conviction was based, was summarized by the trial court as follows:

"Victim Azucena Almonte, then an incumbent woman municipal councilor/kagawad of Malinao, Albay, on May 28, 1987 at her residence/house at Estancia, Malinao, Albay at 8:00 o'clock in the evening, had her house door opened forcibly was picked up by armed men numbering fifteen (15) of them [sic]. Two (2) came up her house with pretense to borrow but commandeered her motor-cycle; three (3) forcibly conducted her out; ten (10) stood guard at the premises/yard of her house. She was forcibly taken out thru the dark night and seen alive never more thereafter [sic] by those fifteen (15) men fully armed believed to be elements of the underground movement.

Stood witness to such occurrence/happening was terrified Placido Almonte, the son of victim Azucena Almonte, and two (2) young companions. Placido Almonte peeped thru [sic] at the side of the wall [sic], and at (sic) the window of their house, he was with his mother tending and caring for his child in a room during that painful, unforgettable moment. Of the three (3) persons that forcibly entered their house, Placido Almonte identified and recognized one man named Ka Jinky. The two (2) others he recognized their looks/faces. He fully identified in open Court and recognized accused Efren Besmonte alias Ka Bobby or Ka Renan as one of those three (3) men who forcibly led out from their house his mother Azucena Almonte, having described such person to be the one and the same [sic] person of the three (3) armed men [sic] who forcibly took and led away his mother on May 28, 1987 from their house at Estancia, Malinao, Albay during the night time (sic)."[3]

In this appeal, appellant assigns the following errors allegedly committed by the trial court:

"X X X IN NOT DISREGARDING THE IDENTIFICATION MADE BY THE PROSECUTION WITNESS OF THE ACCUSED-APPELLANT AS ONE OF THE PERPETRATORS OF THE CRIME CHARGED.

X X X IN NOT GIVING EVIDENTIARY WEIGHT TO THE DEFENSE OF ALIBI CONSIDERING THAT THE SAME ASSUMES IMPORTANCE WHERE THE IDENTIFICATION OF THE ACCUSED, AS IN THIS CASE, WAS HIGHLY DUBITABLE.

X X X IN NOT ACQUITTING ACCUSED-APPELLANT OF THE CRIME OF KIDNAPPING ON THE GROUND THAT HIS GUILT WAS NOT PROVED BEYOND REASONABLE DOUBT."[4]

It is the appellant's contention that the identification made by Placido Almonte more than three (3) years after the alleged kidnapping was not clear, positive and convincing enough as to overcome the constitutional presumption of innocence of the appellant. He contends that since Placido Almonte admitted that he only saw the side of the face of the alleged kidnapper whom he later identified as the accused-appellant Efren Besmonte, while peeping through the side of a wall and that he neither knew nor had seen the kidnapper prior to the night of the incident, then his pointing to the accused-appellant as the person he allegedly saw more than three (3) years later, were "mere hazy recollections which cannot be denominated as clear, positive, and convincing." In addition, appellant contends that it is contrary to human experience for Placido Almonte to have failed to extend a helping hand to his own mother and to have merely stayed and peeped through the side of a wall and let the kidnappers take the victim, Azucena Almonte.[5]

The Solicitor General in a "Manifestation in Lieu of Appellee's Brief" prays for the acquittal of the accused based mainly on the contention that the appellant had not been positively, clearly and convincingly identified since the witness Placido Almonte admitted that he had merely peeped through the side of a wall and saw the side of the face of the kidnapper and that the room was lighted only by two (2) lamps held by two (2) children.[6]

A careful review of the records of this case shows that even if it be assumed that the defense of alibi presented by the accused-appellant Efren Besmonte was not adequately established, the evidence for the prosecution has not proven the appellant's guilt beyond reasonable doubt. The Solicitor General correctly points out that "the peculiar circumstances surrounding Placido's identification of the appellant strongly argue against clear and positive identification."[7]

The settled rule is that the prosecution must rely on the strength of its own evidence and not on the weakness of the defense.[8]

In the case at bar, it is true that the appellant's alibi was not adequately shown by the defense since the employment records and the testimony of a co-employee do not in any way show that it was impossible for Efren Besmonte to have been at the scene of the crime at the time it was committed. However, the inability of the appellant Efren Besmonte to present a valid alibi does not relieve the prosecution of the burden of proving his

guilt with the moral certainty required to overcome the constitutional presumption of his innocence.

The records of the case show that the complaint dated 14 October 1988, signed by Harry O. Tantiado, an investi-gator of the PC-CIS, did not name the accused-appellant Efren Besmonte, as one of the alleged kidnappers,[9] but instead named two (2) unknown accused as Peter and John Doe. The Information dated 17 January 1990 named only a certain Sulpicio Cardino alias "Ka Victor", "Ka Lando" or "Ka Jinky" and the two (2) unknown accused, Peter and John Doe. A Motion to Amend the Information was filed on 24 July 1990 praying that the name of accused-appellant Efren Besmonte alias "Ka Bobby" or "Ka Renan" be substituted for one of the unknown accused, by virtue of a supplemental affidavit filed by Placido Almonte. The trial court in an Order dated 25 July 1990 granted the motion and the Information was subsequently amended and the accused-appellant was ordered arrested.

Placido Almonte, the lone eye witness presented by the prosecution, testified that after the incident on 28 May 1987, it was only during the arraignment of the accused on 31 August 1990 that he saw Efren Besmonte.[10] The prosecution failed to explain how Placido Almonte, prior to the date of arraignment, was able to identify the accused Efren Besmonte as one of the alleged kidnappers. Placido Almonte also testified that on 28 May 1987, he only recognized the faces and not the names of the two (2) other kidnappers aside from "Ka Jinky".[11] As correctly observed by the Solicitor General,

"With such a limited vision, and during night-time at that ordinarily one can not easily iden-tify an unfamiliar face. How much more difficult it would be if the range of vision happens to cover only one side of the stranger's face, as what obtained in the case of Placido?"[12]

In addition, Placido Almonte's supplemental affidavit dated 24 July 1990 upon which the Motion to Amend the Information was based, states:

"x x x Sa ngayon po ay kilala ko na iyong isa at siya ay nakilala ko sa pamamagitan ng mga mapagkakatiwalaang tao na napagtanungan ko."[13]

(I now know one of the two men and I learned of his identity by asking people whom I trust.)

It is unfortunate that neither the defense nor the prosecution tried to elicit a clarification regarding the circumstances which led to the identification of the appellant as one of the unknown kidnappers. However, since it was admitted that Placido Almonte did not know the two (2) other kidnappers when he saw them on 28 May 1987,[14] it was necessary for the prosecution to show that these so-called "trusted persons" did indeed exist. It must be pointed out that since it was only during the arraignment that the appellant and the witness met face to face, the case for the prosecution would have to be supported by evidence that the identification made before arraignment was free from any influence, coercion or suggestion. Additional evidence became even more necessary considering that Placido Almonte also testified that he knew "Ka Jinky" to be "one of the NPAs" whom he knew to be "rebels"[15] and it would not be improbable that the accused-appellant became a victim of identification through association with "Ka Jinky".

Another disturbing factor is the failure of the prosecution to present at least one of the two (2) children, aged between twelve (12) to fourteen (14) years, who according to Placido were in the same room as the victim at the time of the incident.[16] While the Court has upheld the right of the prosecution to decide who to present as witnesses, this prerogative is always subject to the peculiar circumstances of each case. The presentation of a witness may become necessary to overcome the presumption of innocence in cases where identification by a single eye witness is open to question. In the case at bar, the Court agrees with the Solicitor General that the prosecution's evidence failed to show that the appellant was the same person as the stranger whom Placido allegedly recognized. Standing alone, Placido's inconclusive identification of the appellant cannot provide

sufficient basis for conviction.[17]

WHEREFORE, the decision appealed from is hereby REVERSED and a new decision is entered ACQUITTING the accused-appellant Efren Besmonte on the ground of reasonable doubt. He is ordered RELEASED unless he is detained for some other legal ground.

SO ORDERED.

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

[1] Original Records, p. 21

[2] Rollo, p. 35

[3] Rollo, pp. 30-31

[4] Ibid., p. 48

[5] Rollo, p. 54

[6] TSN, 17 October 1990, pp. 4-8

[7] Rollo, p. 89

[8] People v. Mirantes, G.R. No. 92706. 21 May 1992. 209 SCRA 179

[9] Original Records, p. 1

[10] TSN, 3 June 1991, p. 3

[11] TSN, 17 October 1990, p. 6

[12] Rollo, p. 88

[13] Original Records, p. 45

[14] TSN, 17 October 1990, p. 6

[15] TSN, 17 October 1990, p. 9

[16] TSN, 17 October 1990, p. 10

[17] Rollo, p. 89

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