

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ABDUL HADI ALSHAIKA Y SAHTA, ACCUSED-APPELLANT.

G.R. No. 113224. September 11, 1996

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

Accused Abdul Hadi Alshaika y Sahta appeals from the decision of Branch 35 of the Regional Trial Court (RTC) of Manila in Criminal Case No. 93-129342[1] convicting him of the crime of kidnapping under an information whose accusatory portion reads:

That on or about October 29, 1993, in the City of Manila, Philippines, the said accused being then a private individual and without authority of law, conspiring and confederating together with others whose true names, real identities and present whereabouts are still unknown and helping one another, did then and there wilfully, unlawfully and feloniously kidnap, take, carry away and detain GHAMED HAMAD AL-SAHEIL, by then and there poking a gun at him and forcing him to board a car and bringing him to a house in Quezon City, against his will and consent asking the amount of P1,000,000.00 for ransom.[2]

The trial court's narration of the facts, hereunder quoted verbatim, summarizes the People's version of the case:

On October 29, 1993, at about 4:30 o'clock in the afternoon, Ghanem Hamad [Al-Saheil] went to the nearly [sic] VIP Pizza Hut in Harrison Plaza, Harrison Street, Malate, Manila. As he stepped of [sic] the Harrison Plaza at around 5:00 o'clock, the same afternoon, a blue two-door car stopped in front of him and two Filipinos, one of whom with [a] drawn gun, alighted and approached him. At gun point they forced him to ride in their vehicle. Inside the car was the accused. Afterwards, they sped off towards Quezon City. After travelling for sometime, the accused and his three Filipino companions inside the car blind folded Ghanem Hamad with a handkerchief. They told him to keep quiet or else they would kill him. An hour later, they arrived in a deserted concrete house in Quezon City where they removed his blind fold but tied his hands. They placed him inside a bath room and [was] made to sit. Later on, he was transferred to a room without any window[s]. The accused asked Ghanem Hamad if he had any money. When he answered he had none, the accused said he (the victim) would be killed. Afterwards, the accused and his Filipino companions divested Ghanem Hamad of his personal items consisting of his American Express Checks amounting to \$10,000.00; Visa Card with a value of \$1,500.00; wedding gold ring worth P4,500.00; his pen valued P500.00. They also took his key to his safety box in the Sheraton Hotel where he kept his passport and P30,000.00 cash. Afterwards, they made him sign four times on a piece of paper. Then they tied his hands, and stuffed his mouth with pieces of cloth.

Between 8:00 and 8:30 o'clock in the evening of the same date, the accused and some of his Filipino companions left the house, but leaving behind three Filipinos to guard their victim.

At around 5:00 o'clock of the following morning, October 30, 1993, the accused and his companions returned. They demanded that Ghanem Hamad produce through his friends P1,000,000.00, otherwise they would kill him. The accused showed the offended party the latter's passport, which made him realized [sic] that they had opened his safety deposit box in Sheraton Hotel.

On November 1, 1993, at about 1:30 o'clock in the morning, after staying in captivity for about four days, the accused and his companions arrived and told Ghanem Hamad that he could already return to his hotel and immediately leave the Philippines, or else they would kill him. Afterwards, they blind folded him, boarded him in a car, drove him around for two hours, and then dropped him at a place where a taxi was already waiting. He reached his hotel at around 2:30 o'clock in the morning on the same date. He immediately reported his ordeal to the hotel manager and asked the latter to check his safety deposit box. But the manager told him that some persons came earlier, opened his safety deposit box, and took away its contents.[3]

The accused, corroborated by his neighbor, raised the alibi that he was at home at No. 2578 Vito Cruz Street, Manila, while the kidnapping took place.

The alibi did not persuade the trial court. In its decision of 24 November 1993, it ruled against the accused and disposed as follows:

WHEREFORE, judgment is rendered pronouncing the accused ABDUL HADI AL-SHAikh y SAHTA guilty beyond reasonable doubt of kidnapping for the purpose of extorting ransom from the victim defined and penalized under Article 267 of the Revised Penal Code, and sentencing said accused to suffer the penalty of reclusion perpetua.

The accused is ordered to return to the offended party his gold wedding ring, his pen, and the sum of P30,000.00 which the former took from the safety deposit box of the latter at the Sheraton Hotel, or if that is no longer possible to pay the offended party the total amount of P35,000.00 as reparation of the damages said accused caused to the victim.[4]

The accused filed his notice of appeal on 29 November 1993.[5]

The resolution of the instant appeal was delayed by the failure of Court Stenographer III Stella Marie Sangil-Makasiar of the trial court to submit the transcripts of stenographic notes for the hearing held on 15 November 1993. The Court required her to submit the said transcripts as well as to explain her failure to do so in the first instance. Sangil-Makasiar tendered her explanation but asked for an extension of time for the submission of the transcripts, which the Court granted. Her second motion for extension of time was likewise granted with a warning that no further extension of time would be given. Since she still failed to submit the transcripts, the Court was compelled to withhold her salary until she submitted the transcripts. She finally submitted the required transcripts on 28 June 1995.

In this appeal, the accused urges us to acquit him, raising the following arguments:

A. [T]he "positive identification" made by the complainant was tainted considering that by presenting only one person before the complainant for his identification, it was the police who actually suggested the identity of the kidnapper to the victim.

B. The defense of alibi should have been appreciated in the appellant's favor, especially since the appellant's identification was tainted.

To bolster his first argument, the accused asserts that the private complainant merely described one of his abductors as "Arabian-looking" without anything further; thus, "any man who looked 'Arabian' was fair game." Moreover, he was apprehended on 9 November 1993 and the lone suspect presented to the private complainant for identification on 13 November 1993. These circumstances made the private complainant's identification of his alleged abductor "fatally defective"[6] as he was subject to the law enforcers' suggestion "that the man they had apprehended was indeed one of the men who had abducted the Private Complainant." [7]

As to the second assigned error, the accused admits that alibi is a weak defense, but claims it gained strength in

this case with the private complainant's dubious identification of the accused.

In its Brief filed by the Office of the Solicitor General, the People are in full agreement with the trial court and pray for the affirmance of the challenged decision. In refuting the accused's arguments in support of the first assigned error, the People assert that after his ordeal, the private complainant, with the help of a friend, immediately reported the matter to the police, and described one of his abductors as an Arabian-looking person, after which, he was shown several pictures of Arab nationals. Of the four pictures presented to him, he picked out the picture of the accused. When the private complainant saw the accused at the police station after he was picked up, the former positively identified him as one of his abductors. Citing *People vs. Villagracia*,^[8] the People contend that there is no rule which requires, for identification purposes, that a suspect should first be placed in a police lineup before presentation to the identifying witness. In any event, the private complaint could not have been mistaken in identifying the accused as one of his abductors because the latter and his companions detained him for almost three days, giving the private complainant the opportunity to observe and remember their faces. Moreover, the private complainant positively, categorically, and unhesitatingly identified the accused in open court when he again came face to face with him. The record, the People assert, does not disclose that the private complainant was impelled by ill-motive to impute the commission of a grave crime to the accused.

The People also maintain that in view of the accused's positive identification, the defense of alibi is unavailing.

The accused filed a Reply Brief to contest the People's arguments.

We find no merit in the appeal.

The accused deliberately failed to mention in his Brief the prosecution's evidence that even before he was brought into custody, the private complainant already recognized him from at least four pictures of Arab-looking persons^[9] shown by the police.^[10] This identification of the accused from the photographs is clear from the following testimony of the private complainant:

ATTY. DINGLASAN:

Q You were made to see the pictures of the Arabian?

A Yes, sir.

Q When did you see the pictures of the Arabian?

A On November 2, sir.

Q Who showed you the pictures?

A The police and the Security of Sheraton Hotel, sir.

Q Were you able to recognize the persons reflected on the pictures?

A There were many pictures, sir.

Q Were you able to recognize, if any, one picture?

A Yes, sir.

Q Who from among the pictures did you recognize?

A This man, sir. (The witness is pointing to the accused in this case.)^[11]

The accused's photograph was the first lead in the police investigation which eventually resulted in his capture.^[12] Thus, his claim that every Arabian-looking person became a suspect -- implying that any Arab-looking person was as good as suspect as any -- is groundless, considering that the police had the accused's picture with which to identify him apart from other persons with similar physical features. Parenthetically, how this photograph of the accused was obtained is a story in itself. A prosecution witness, retired Lt. Col. Eliseo C. Buluran, Personnel and Security Manager of the Century Park Sheraton in Manila, declared that at one time a guest at the Sheraton complained about "being bothered by an Arab-looking national" who turned out to be the

accused. The latter was eventually accosted by the hotel's security personnel and brought to the security office where, as part of the standard operating procedure, his photograph was taken.[13] The accused admitted that he was confronted by the security personnel, although he denied that his picture was taken and claimed that he was the one harassed by the hotel's security force.[14]

We cannot ascribe to the accused's theory that the police influenced the private complainant to incriminate him. His only basis therefor is the following testimony of the private complainant which he quotes in his Reply Brief, thus:

Q After you were released from captivity by these people when did you see the accused again?

A I saw him in the police station, sir.

Q You mean to say he was presented to you by the police?

A Yes, sir.

Q Was he alone?

A Yes, sir.

Q So, there was no other Arabian at the time?

A Yes, sir.

Q So if you will make a choice there will be no choice because he was the only Arabian at the time when he was presented?

A Yes, sir.[15]

The accused concluded therefrom that: (a) there was only one Arabian presented by the police; and (b) the private complainant had no other choice but the accused. But the accused failed to consider the following statements which clarified the above-quoted testimony:

Q Because you have no choice, you told the police officers that he was the accused?

A The police asked me if this is the man and I said yes.

Q Are you sure of your answer?

A Yes, sir.[16]

What can be gathered from the private complainant's testimony is that he did not incriminate the accused merely because the latter was the lone suspect presented by the police, rather, because he was certain that he recognized the accused as one of his abductors. Thus, while this Court will not hesitate to invalidate inherently suggestive lineups on grounds of due process, especially when conducted in the absence of counsel,[17] we find there is no objectionable suggestion from the police in this case.

As regards the second assigned error, while alibi is a weak defense, we bear in mind that the constitutional presumption of innocence is of paramount importance and courts should not precipitately conclude that a person is guilty when his alibi appears weak, for as this Court has frequently held, the conviction of an accused must rest not on the weakness of the defense but on the strength of the evidence for the prosecution.[18] But with the private complainant's positive identification of the accused, the latter's alibi only maintains its weak and impotent state.[19]

In any event, a probe into the accused's alibi readily yields the latter's inherent weakness. It is settled that for the defense of alibi to prosper, the accused must establish the physical impossibility for him to have been present at the scene of the crime at the time of its commission.[20] In the instant appeal, the accused failed to demonstrate such impossibility.[21] In fact, he even stated that he always went to Harrison Plaza between 4:00 p.m. to 6:00 p.m.,[22] thus his presence there while the subject crime was being committed, at around 5:00 p.m., was far from

impossible.

Affirmance then of the challenged decision is inevitable.

The crime was committed on 29 October 1993, or barely two months and two days before the effectivity of R.A. No. 7659,[23] which amended, inter alia, Article 267 of the Revised Penal Code. The penalty then to be imposed is that provided for in Article 267 of the Revised Penal Code before such amendment, which reads as follows:

Art. 267. Kidnapping and serious illegal detention. -- Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of reclusion perpetua to death:

1. If the kidnapping or detention shall have lasted more than five days;
2. If it shall have been committed simulating public authority;
3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained, or if threats to kill him shall have been made;
4. If the person kidnapped or detained shall be a minor, female, or a public officer.

The penalty shall be death where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances above mentioned were present in the commission of the offense.

The detention in this case lasted only four days,[24] no public authority was simulated, no injury was proven to have been inflicted on the private complainant, and the private complainant is not a minor, a female, nor a public officer. The prosecution, however, was able to establish through the private complainant's testimony that a ransom of P1,000,000.00 was demanded by the kidnappers. The imposable penalty would have been death were it not for the constitutional prohibition against its imposition.[25] The penalty next lower in degree, which is reclusion perpetua, may thus be imposed, as was correctly done by the trial court.

WHEREFORE, the instant appeal is DISMISSED and the challenged decision of the Regional Trial Court of Manila, Branch 35, in Criminal Case No. 93-129342 is AFFIRMED in toto.

Costs against the accused-appellant.

SO ORDERED.

Narvasa, C.J. (Chairman), Melo, Francisco, and Panganiban, JJ., concur.

[1] Original Records (OR), 33-36. Per Judge Ramon P. Makasiar.

[2] Id., p. 2.

[3] OR, 33-34.

[4] OR, 36.

[5] Id., 38.

[6] Brief for the Accused-Appellant, 18; Rollo, 85.

[7] Brief for the Accused-Appellant, 18; Rollo, 85.

[8] 226 SCRA 374 [1993].

[9] TSN, 15 November 1993, 64.

[10] Id., 36-37, 41-42, 47, 65.

[11] TSN, 15 November 1993, 41-42.

[12] Id., 48-50.

[13] Id., 58-60.

[14] TSN, 16 November 1993, 31-33.

[15] TSN, 15 November 1993, 39-40.

[16] Id., 40.

[17] See *People vs. Macam*, 238 SCRA 306, 314-315 [1994], citing *U.S. vs. Wade*, 388 US 218, 18 L.Ed.2d 1149, 87 S. Ct. 1926 [1967]. See also R.A. No. 7438, entitled "An Act Defining Certain Rights of Persons Arrested, Detained or Under Custodial Investigation as well as the Duties of the Arresting, Detaining and Investigating Officers and Providing Penalties for Violations Thereof." §2(A) enjoins the assistance of counsel at all times for any person arrested, detained or under custodial investigation, while §2(f) requires the assistance of counsel even for persons "invited" for questioning as regards an offense they are suspected to have committed.

[18] *People v. Pidia*, G.R. 112264, 10 November 1995, 16.

[19] *People vs. Dural*, 223 SCRA 201, 215 [1993]; *People vs. Enciso*, 223 SCRA 675, 687 [1993].

[20] *People vs. Cristobal*, G.R. No. 116279, 29 January 1996, 10.

[21] The trial court estimated the distance between the accused's residence and Harrison Plaza to be about seven kilometers which distance, it added, could be covered in a matter of minutes in a motorized vehicle (Decision, 3; Rollo, 10.). These estimates however, are not supported by the evidence. Nevertheless, the accused failed to establish the impossibility of his being at the crime scene at the time of its commission.

[22] TSN, 16 November 1993, 25.

[23] Entitled "An Act To Impose The Death Penalty On Certain Heinous Crimes Amending For That Purpose The Revised Penal Code As Amended, Other Special Penal Laws, and For Other Purposes." This act took effect on 31 December 1993 (*People vs. Simon*, 234 SCRA 555 [1994]).

[24] TSN, 15 November 1993, 35.

[25] Section 19(1), Article III, 1987 Constitution.

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