

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LEONILO CUI Y BALADJAY, BEVERLY CUI Y CANTUBA, EDUARDO BASINGAN Y SABELLO, WILFREDO GARCIA, ALIAS “TOTO”, JOSELITO GARCIA, ALI...

G.R. No. 121982. September 10, 1999

Ponente: PUNO, J.

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PUNO, J.:

In the evening of December 5, 1990, some ten (10) armed robbers raided the compound of Johnny and Rose Lim on Edison Street, Lahug, Cebu City. The Lims, their three (3) children, and the employees of the family-owned business, William’s Educational Supply, were able to see the faces of the leader Wilfredo alias “Toto” Garcia and two of his men, Mawe Garcia and a certain Edgar. The other robbers could not be identified as they had flour sacks over their heads.

The robbers carted away cash and jewelries worth twenty thousand pesos (P20,000.00). They also blindfolded and forcibly abducted seventeen (17) year old Stephanie, the youngest daughter of the Lims. They demanded a ransom of one million pesos (P1,000,000.00) for her release.

Johnny Lim turned over to Toto Garcia the ransom amount in the afternoon of the next day at an arranged meeting place. Stephanie, in turn, was released to her father.

Initially, the Lims kept the crime a secret. But on the third day, they reported the kidnapping to the Philippine National Police Cebu Metropolitan District Command (Cebu Metrodiscom) at Camp Sotero, Cabahug, Cebu City. The Metrodiscom Intelligence Security Team (MIST)[1] conducted an investigation and Johnny Lim was shown photographs of criminal elements to identify the suspects. From around ninety (90) photographs, Lim picked that of Toto Garcia.

The identification of Toto Garcia gave the MIST a valuable lead. Toto Garcia was known as the leader of a group of armed robbers called the Baong Gang. The gang’s base of operation was pinpointed at Quiot, Pardo, Cebu. When the police learned from Lim that his house guard, Eduardo Basingan, hailed from Quiot, Pardo, Cebu City, they decided to interrogate him.

Basingan’s interrogation broke the case wide open. He identified Toto Garcia, Mawe Garcia and Edgar as the three (3) who did not wear masks, Sadam and Rey as the two (2) who held him and the Lims at gunpoint, and Tata Garcia, Yul Alvarez, a certain Benjie, a certain Leos and a certain Laring as the look-outs who stayed outside the Lim compound. He named Toto Garcia as the chief plotter of the crime at bar, and revealed that his neighbors and close family friends, the spouses Leonilo and Beverly Cui, participated in the plan. Basingan said he was asked to join the plot and was assured that he would not be under suspicion because he would be placed at gun point together with the other members of the Lim household when the crime is committed. However, he refused to join the plot during the December 2, 1990 meeting of the group at the residence of the Cuis in Quiot, Pardo, Cebu

City. Leonilo Cui even invoked their close ties as godfathers of each other's children but he was unmoved. At the meeting were Toto Garcia, Mawi Garcia, Edgar, Rey, Sadam and the Cuis.

On December 18, 1990, Basingan executed a sworn statement[2] reiterating these revelations in writing. Johnny and Rose Lim then formalized their complaint by executing a Joint Affidavit.[3] The members of the Metrodiscom Intelligence Security Team also executed a Joint Affidavit[4] relating their investigation. With these as bases, Assistant Prosecutor Bienvenido N. Mabanto, Jr. filed an Information[5] for Kidnapping with Ransom against Basingan, the Cuis, and the members of the group of Toto Garcia as identified by Basingan in his sworn statement.

On the same day, December 18, 1990, Basingan and Leonilo Cui were arrested.[6] Beverly Cui was also taken into custody on January 17, 1991.[7] The Cuis, however, were later granted bail and their plea for preliminary investigation was given due course.[8]

On March 14, 1991, Joselito "Tata" Garcia, Hilaria Sarte and her live-in partner, Luis Obeso, referred to by Basingan as "Laring" and "Leos", respectively, were arrested in the neighboring Negros Island. The next day, however, Tata Garcia died due to "hemorrhage, severe, secondary to gunshot wounds".[9] Upon presentation of his death certificate, the trial court ordered his name deleted from the information.

On March 22, 1991, Obeso and Sarte filed their own motions for preliminary investigation.[10] Their motions were granted in an Order dated April 2, 1991.[11]

On April 1, 1991, Basingan executed a second sworn statement[12] reiterating his first. In addition, he detailed the role of the Cuis in the planning of the crime at bar.

After preliminary investigation, Prosecutor Manuel J. Adlawan found that the participation of the Cuis was only that of accomplices. Thus, on May 13, 1991, an Amended Information was filed downgrading the charge against the Cuis as mere accomplices in the kidnapping with ransom of Stephanie Lim. It reads:

"That on or about the 5th day of December, 1990, at about 9:00 P.M. more or less and for sometime subsequent thereto, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, all private individuals, conniving and confederating together, and mutually helping with one another, armed with unlicensed firearms, with deliberate intent, with intent of gain, enter the dwelling house of spouses Johnny and Rose Lim and while inside therein with violence and intimidation, take and carry away cash and jewelries in the amount of P20,000.00 from the possession of and belonging to spouses Johnny and Rose Lim and that on the occasion thereof, and in connection therewith and for the purpose of extorting ransom from said spouses Johnny and Rose Lim, herein accused, in pursuance of their superior strength did then and there kidnap and detain Stephanie Lim 17 years old [sic] daughter of spouses Johnny and Rose Lim and while Stephanie Lim was under detention in the place other than the latter's dwelling place, the said accused demanded the amount of P1,000,000.00 for the release of Stephanie Lim to which demands and for fear of the latter's life spouses Johnny and Rose Lim delivered and caused to be delivered the amount of P1,000,000.00 to said accused; and accused-

"(1) Leonilo Cui y Baladjay and

"(2) Beverly Cui y Cantuba

who are hereby charged for the same offense as accomplices cooperate in its execution by previous acts and subsequently profiting in the effects of the crime by receiving the amount of P10,000.00 from the principal accused as their share of the loot, to the damage and prejudice of Johnny, Rose and Stephanie Lim in the total amount of P1,020,000.00.

“CONTRARY TO LAW.”[13]

On May 15, 1991, Basingan, the Cuis, Obeso and Sarte were arraigned and they all pleaded not guilty.[14] On June 27, 1991, Basingan escaped from prison.[15]

Trial on the merit ensued against the Cuis, Obeso and Sarte. Basingan was tried in absentia.

On February 13, 1992, Bienvenido Nacario, alias “Rey Nacario”, was arrested. On arraignment on April 13, 1992, he pleaded not guilty. However, on May 5, 1992, he, too, escaped from detention and remains at large to this date.

On August 18, 1992, the prosecuting fiscal manifested before the trial court that, per newspaper report, Toto Garcia had been killed in Davao.

On December 6, 1993, the trial court convicted the Cuis, Obeso, Sarte, Basingan and Nacario.[16] It held:

“In the light of the totality of the evidence adduced in the case at bar and the law and aforementioned jurisprudence, the Court is convinced that a conspiracy was hatched by all the accused in perpetrating the crime charged. For instance, as borne out by the testimony of Sgt. Narciso Ouano, Jr., police investigator of the Cebu Metrodiscim [sic], accused Eduardo Basingan declared during his investigation that the plan was indeed carried out and he knew all the persons who participated in that robbery, naming Toto Garcia, Tata Garcia, Mawi Garcia, Rey, Edgar, Sadam, Yul Alvarez, Benjie, Leo and Laring. When the named robbers entered the residence of his master Johnny Lim, the robbers were wearing masks except Toto Garcia, Mawi Garcia and Edgar. The others, Rey, Sadam, Laring, Leo, Benjie and Yul Alvarez were wearing masks but Basingan was still able to identify them in spite of the fact that they were wearing masks because these persons were familiar to him already as they used to frequent the house of Leonilo and Beverly Cui. At the time of the robbery, only Toto Garcia, Mawi Garcia, Edgar, Rey and Sadam went inside the house of his master while Yul Alvarez, Benjie, Leos and Laring were guarding outside the building. On December 7, 1990, two days after the robbery, he was called by his Comadre Beverly Cui and the latter handed to him the amount of P40,000.00 in her house, saying that Toto Garcia left the said amount to be given to him. During their talk, Basingan verbally told them about the incident relative to the kidnapping and his having received P40,000.00 from Toto Garcia as his share of the ransom. A formal investigation was conducted by Sgt. Armando Ballon in the presence of Atty. Elias Espinosa who assisted Eduardo Basingan.

“x x x The denial of accused Luis Obeso and Hilaria Sarte as to their participation in the commission of the crime does not hold water for they were duly identified even during the initial phase of the commission of the crime. They were the renters of the house where Stephanie, the kidnapped victim, was placed. Stephanie had identified the house. The flight of these two accused to Bacong, Dumaguete City is indicative of their guilt. x x x

“The prosecution has indeed established the guilt of the accused beyond reasonable doubt as against accused Eduardo Basingan, Bienvenido Nacario y Pardillo @ “Rey Nacario,” Luis Obeso, @ “Leos”, Hilaria Sarte, @ “Laring”, Leonilo Cui y Baladjay and Beverly Cui y Cantuba, the latter two are only as accomplices, to the crime of kidnapping with ransom. x x x”.[17]

They were sentenced to suffer the following penalties:

“WHEREFORE, in view of all the foregoing considerations, JUDGMENT is hereby rendered convicting the accused Eduardo Basingan, Bienvenido Nacario y Pardillo @ “Rey Nacario,” Luis Obeso, @ “Leos”, Hilaria Sarte, @ “Laring”, as principals for the crime of KIDNAPPING WITH RANSOM and shall suffer the penalty of reclusion perpetua and the accused Leonilo Cui and Beverly Cui being accomplices, to suffer an imprisonment of eight (8) years and one (1) day of prision mayor, as minimum, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal, as maximum. They are further ordered to jointly restitute to the

victim the ransom money less the amount recovered. Accused Hilaria Sarte and Luis Obeso, being detention prisoners are credited in full during the whole period of their detention provided that they signify in writing that they will abide with the rules and regulations of the penitentiary.

“x x x

“SO ORDERED.”[18]

Obeso and Sarte filed their Notice of Appeal[19] on May 19, 1994. The Cuis filed theirs[20] on May 31, 1994.

In their Brief dated April 21, 1997, Obeso and Sarte prayed for their acquittal on the following grounds:

"I

“THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANTS ON THE BASIS OF THE EXTRA-JUDICIAL STATEMENT MADE BY EDUARDO BASINGAN AND THE TESTIMONY OF SGT. NARCISO OUANO JR. THEREON, WHICH ARE HEARSAY EVIDENCE.

"II

“THE TRIAL COURT ERRED IN FINDING THE TWO ACCUSED-APPELLANTS AS PRINCIPALS BY CONSPIRACY DESPITE THE ABSENCE OF ANY COMPETENT AND CONVINCING PROOF OF THEIR CULPABILITY.”[21]

On June 25, 1997, the Cuis also filed their Brief. They contended:

“I. THE TRIAL COURT ERRED IN NOT FINDING THAT THE CONSTITUTIONAL RIGHTS OF APPELLANTS-SPOUSES LEONILLO CUI AND BEVERLY CUI TO REMAIN SILENT, TO COUNSEL AND AGAINST SELF-INCRIMINATION HAD BEEN GROSSLY VIOLATED DURING THEIR CUSTODIAL INVESTIGATION.

“II. THE TRIAL COURT ERRED IN NOT EXCLUDING HEARSAY EVIDENCE OFFERED TO PROVE ALLEGED CONSPIRACY AND PARTICIPATION OF APPELLANTS-SPOUSES LEONILLO CUI AND BEVERLY CUI, AS ACCOMPLICES IN THE CRIME CHARGED.”[22]

On August 13, 1998, the Office of the Solicitor General filed, in lieu of an Appellee’s Brief, a Manifestation[23] recommending the acquittal of the Cuis, Obeso and Sarte on the ground that the prosecution failed to present adequate proof of their guilt beyond reasonable doubt. It was postulated:

“It is clear that the only piece of evidence that would link appellants directly to the kidnapping of Stephanie Lim is the Sworn Statement executed by Eduardo Basingan (Exhibit “C”) implicating appellants and describing their participation in detail. Basingan’s extra-judicial confession, however, is inadmissible for being hearsay as he was not presented by the prosecution as its witness, he having escaped after arraignment. Hence, appellants were not afforded the opportunity to cross-examine him. Cross-examination is an indispensable instrument of criminal justice to give substance and meaning to the constitutional right of the accused to confront the witnesses against him and to show that the presumption of innocence has remained steadfast and firm x x x. It was intended to prevent the conviction of the accused upon depositions or ex-parte affidavits, and particularly to preserve the right of the accused to test the recollection of the witness in the exercise of his right of cross-examination x x x.

“Perhaps realizing the futility of relying solely on Basingan’s extra-judicial (sic) confession in order to secure appellants’ conviction, the prosecution presented Sgt. [O]uano who testified on the informal investigation he conducted on Basingan. Part of his testimony was the same extra-judicial confession made by Basingan which was strongly objected to by appellants. It cannot be overemphasized that Sgt. [O]uano’s testimony is not based on his own personal knowledge but on other evidence. He has no personal knowledge of the participation of the appellants in the kidnapping of the victim. Hence, his testimony is purely hearsay evidence and has no

probative value, whether objected to or not x x x.”[24]

There is no question that Basingan escaped and never testified in court to affirm his accusation against the Cuis, Obeso and Sarte. Thus, the trial court committed reversible error in admitting and giving weight to the sworn statements of Basingan. In the same vein, the testimony of Sgt. Ouano confirming the content of Basingan’s sworn statements is not proof of its truth and by itself cannot justify the conviction of appellants. Both the extrajudicial sworn statements of Basingan and the testimony of Sgt. Ouano are clear hearsay. Indeed, the records show that the trial court itself admitted Basingan’s statements merely as part of the investigation of Sgt. Ouano, thus:

“Q What else did Mr. Basingan tell you?

“A That it was the group of Toto Garcia who barged into the residence of Mr. Lim and that it was that group of Toto Garcia who kidnapped the daughter of Mr. Lim and also it was that group that gave him P40,000.00 out of the ransom money.

“COURT:

“x x x

“Q Were you able to determine who composed that group?

“A According to Basingan the group was composed of Wilfredo Garcia as the leader, Joselito Tata Garcia, Mawi Garcia, Edgar, a certain Rey, a certain Leon and a certain Laring.

“ATTY. GONZALEZ:

“We move to strike out the answer of this witness. It is hearsay [sic]. The answer[’s] premise [is] according to.

“FISCAL ADLAWAN:

“That independence are relevant question which took action [sic].

“COURT:

“Overruled.

“x x x

“FISCAL ADLAWAN:

“Q Was there any inquiries [sic] made by you on Eduardo Basingan how did he happen to know this group of Toto Garcia?

“ATTY. GONZALEZ:

“We object. I understand there are two investigations. He conducted his own investigation.

“ATTY. GONZALEZ: (Con’t)

“Which investigation is he referring to.

“COURT:

“As preliminary investigation.

“ATTY. GONZALEZ:

“Before the formal investigation he conducted his own investigation?

“COURT:

“Answer.

“A Yes, I did inquire from him and that he told me Toto Garcia is frequently in the house of Leonilo and Beverly Cui and that he was introduced by the couple to Toto Garcia in one of those visits of Toto Garcia in the house and that subsequently thereafter he knew of the persons of [sic] Toto Garcia is associating [sic] with because Toto Garcia went to the house of Leonilo Cui.

“ATTY. GONZALEZ:

“May we move to strike out from the records for being that he has no personal knowledge as to that information.

“COURT:

“Objection overruled.

“ATTY. GONZALEZ:

“In that case, your Honor may we make it of record that I am interposing a continuing objection as to the series of questioning considering that we strongly believe [sic] that what was given by this witness is hearsay.

“COURT:

“The objection is noted. The witness is only testifying regarding his investigation.”[25]

Despite its ruling, the trial court used the statements of Basingan, as testified to by Sgt. Ouano, as proofs of the guilt of the Cuis, Obeso and Sarte. Undeniably, they are hearsay for any oral or documentary evidence is hearsay by nature if its probative value is not based on the personal knowledge of the witnesses but on the knowledge of some other person who was never presented on the witness stand.[26]

Conviction cannot be based on hearsay evidence. In the 1996 case of *People v. Raquel*,[27] we squarely addressed the issue of whether or not the extra-judicial statements of an escaped accused implicating his co-accused may be utilized against the latter. There we ordered an acquittal and held:

“A thorough review of the records of this case readily revealed that the identification of herein appellants as the culprits was based chiefly on the extrajudicial statement of accused Amado Ponce pointing to them as his co-perpetrators of the crime. As earlier stated, the said accused escaped from jail before he could testify in court and he has been at large since then.

“The extra-judicial statements of an accused implicating a co-accused may not be utilized against the latter, unless these are repeated in open court. If the accused never had the opportunity to cross-examine his co-accused on the latter’s extra-judicial statements, it is elementary that the same are hearsay as against said accused. That is exactly the situation, and the disadvantaged plight of appellants, in the case at bar.

“Extreme caution should be exercised by the courts in dealing with the confession of an accused which implicates his co-accused. A distinction, obviously, should be made between extra-judicial and judicial confessions. The former deprives the other accused of the opportunity to cross-examine the confessor, while in the latter his confession is thrown wide open for cross-examination and rebuttal.

“The *res inter alios* rule ordains that the rights of a party cannot be prejudiced by an act, declaration, or omission of another. An extra-judicial confession is binding only upon the confessor and is not admissible against his co-accused. The reason for the rule is that, on a principle of good faith and mutual convenience, a man’s own acts are binding upon himself, and are evidence against him. So are his conduct and declarations. Yet it would not only be rightly inconvenient, but also manifestly unjust, that a man should be bound by the

acts of mere unauthorized strangers; and if a party ought not to be bound by the acts of strangers, neither ought their acts or conduct be used as evidence against him.”[28]

The res inter alios has exceptions. Thus, Section 30 of Rule 130 provides:

“The act or declaration of a conspirator relating to the conspiracy and during its existence, may be given in evidence against the co-conspirator after the conspiracy is shown by evidence other than such act or declaration.”

For this provision to apply, the following requisites must be satisfied:

“a. That the conspiracy be first proved by evidence other than the admission itself;

“b. that the admission relates to the common objects; and

“c. that it has been made while the declarant was engaged in carrying out the conspiracy.”[29]

The general rule is that extra-judicial declarations of a co-conspirator made before the formation of the conspiracy or after the accomplishment of its object are inadmissible in evidence as against the other co-conspirators, on the ground that the accused in a criminal case has the constitutional right to be confronted with the witnesses against him and to cross-examine them.[30]

In the case at bar, the alleged conspiracy among the accused was not priorly established by independent evidence. Nor was it shown that the extra-judicial statements of Basingan were made while they were engaged in carrying out the conspiracy. In truth, the statements were made after the conspiracy has ended and after the consummation of the crime. They were not acts or declarations made during the conspiracy’s existence. Since the extra-judicial admissions were made after the supposed conspiracy, they are binding only upon the confessant and are not admissible against his co-accused; as against the latter, the confession is hearsay.[31] In fine, the extra-judicial statements of Basingan cannot be used against the Cuis, Obeso and Sarte without doing violence against their constitutional right to confront Basingan and to cross-examine him.[32]

Be that as it may, we hold that on the basis of other evidence on record, the Cuis are guilty beyond reasonable doubt of being accessories, not accomplices as held by the trial court, in the kidnapping of Stephanie Lim.

Article 18 of the Revised Penal Code, as amended, penalizes as accomplices those persons who cooperate in the execution of the offense by previous or simultaneous acts not indispensable to the consummation of the offense. Accomplices cooperate in the execution of the crime by previous or simultaneous acts, by means of which they aid, facilitate or protect the execution of the crime, without, however, taking any direct part in such execution, or forcing or inducing others to execute it, or contributing to its accomplishment by any indispensable act.[33] Had Basingan been able to testify on his affidavit detailing the role of the Cuis in the planning of the robbery of the Lim household, the trial court would have had sufficient basis to convict them as accomplices therein. As discussed above, however, Basingan escaped before taking the witness stand.

This Court, however, holds that the Cuis profited from the kidnapping of Stephanie Lim and are liable as accessories.

Article 19 of the Revised Penal Code, as amended, penalizes as accessories to the crime those who, subsequent to its commission, take part therein by profiting themselves or assisting the offenders to profit by the effects of the crime, without having participated therein, either as principals or accomplices. Conviction of an accused as an accessory requires the following elements: (1) that he has knowledge of the commission of the crime; and (2) that he took part in it subsequent to its commission by any of the three modes enumerated in Article 19 of the Revised Penal Code, as amended.[34] These twin elements are present in the case of the Cuis, and indubitable proof

thereof is extant in the records of the case.

The members of the Metrodiscom Intelligence Security Team (MIST), namely, Lt. John P. Campos, Lt. Michael Ray B. Aquino, Sgt. Narciso L. Ouano, Jr., Sgt. Felipe Honoridez, Sgt. Armando Ballon, Sgt. Oscar Dadula, Cpl. Jeremias Canares, and Sgt. Catalino Ybanez, executed a Joint Affidavit dated December 18, 1990 stating, among other things, that “the couple Leonilo and Beverly Cui, although denying knowledge of the kidnapping revealed that Toto Garcia is their Compadre” and that “they also turned over to us the amount of P10,000.00 representing that given to them by Toto Garcia out of the ransom money”.[35]

This statement charging the Cuis with having partaken of the ransom money was not denied either in the Counter-Affidavit of Leonilo Cui dated February 15, 1991 or in the Counter-Affidavit of Beverly Cui of the same date. In his Counter-Affidavit, Leonilo Cui even admitted that he knew that Toto Garcia and Basingan had held secret meetings in his house and that he had already become suspicious of their acts, but he did not confront them because they treated each other as special friends, they being godfather of each other’s children.

In their defense, the Cuis submitted an Affidavit dated February 15, 1991 executed by Myrna M. Limbagan, a niece of Beverly Cui who lived with them in their house in Pardo, Cebu City. But instead of exonerating the Cuis, this Affidavit inculpatates them as it states in paragraph 10 that “on December 7, 1990, Toto Garcia, Eduardo Basingan and other persons visited the residence of the Spouse[s] Cui[s] and handed some amounts of money to the couple”.[36] Significantly, it is Limbagan, a witness for the defense, who corroborates the incriminating statements made by the members of the Metrodiscom Intelligence Security Team in their Joint Affidavit.

Realizing the aggravation caused them by the affidavits of Limbagan and the members of the Metrodiscom Intelligence Security Team, the Cuis jointly executed a Supplement Counter-Affidavit[37] dated April 24, 1991 this time denying that they profited in any way from the kidnapping of Stephanie Lim. They explained that they turned over the sum of P10,000.00 to Lt. Michael Ray Aquino not as their share in the ransom money but as a “bribe” to prevent the members of the Metrodiscom Intelligence Security Team from further inflicting physical harm on the person of Leonilo Cui. In her testimony in open court, Beverly Cui claimed that she and her husband were arrested on December 14, 1990 at their residence in Pardo, Cebu City but that she was later released by the members of the Metrodiscom Intelligence Security Team so that she could withdraw money from the bank to pay to them in exchange for her husband’s freedom.

Two of the members of the Metrodiscom Intelligence Security Team, Sgt. Narciso Ouano and Sgt. Catalino Ybanez, testified rebutting the claim of Beverly Cui. Sgt. Ouano testified as follows:

“FISCAL ADLAWAN:

“X X X

“Q How about this P10,000.00 which according to you was recovered from the accused Cui couple?

“X X X

“Q How did you come into possession which according to you came from the Cui couple?

“A The P10,000.00 was turned over to us by Beverly Cui.

“Q Did Beverly Cui say anything when this P10,000.00 was handed to you?

“A She told us that the P10,000.00 represents the money given to her and her husband by Toto Garcia.

“Q And did you inquire from Beverly Cui why did Toto Garcia gave [sic] them P10,000.00?

“A They told us that Toto Garcia gave it to them sometime on December 7 and that was the share from the loot in the kidnapping.

“COURT:

“Q Was it given to them?

“A The couple told us it was given by Toto Garcia as their share of the ransom money as a result of the kidnapping of Stephanie Lim.

“x x x

“FISCAL ADLAWAN:

“Q Was Beverly Cui already under arrest when she gave you this information?

“A No, Sir. It was her husband who was held then. She was free.”[38]

For his part, Sgt. Catalino B. Ybanez testified in the following manner:

“COURT: Are you familiar with the P10,000.00?

“A - Yes, sir.

“COURT: You mean the money given?

“A - The money was turned over by Beverly Cui to Lt. Aquino, sir.

“COURT: In your presence?

“A - Yes, sir.

“COURT: What did she tell Lt. Aquino?

“A - She told Lt. Aquino that the money was for the ransom money which was given to him by Toto Garcia.

“COURT: Now, what was the remark of Lt. Aquino?

“A - He accepted the money, sir. He accepted the money and he told the couple if he could execute an affidavit regarding their participation in the involvement of the kidnapping.

“COURT: What was the answer?

“A - Actually, the couple denied the involvement, sir, but he was given the money.

“COURT: What was the answer of Beverly Cui to Lt. Aquino when it was mentioned that the P10,000.00 was a part of the stolen money? The answer of Beverly Cui to Lt. Aquino, what else did Beverly Cui say, did he tell Lt. Aquino?

“A - The money was given to her.

“Q - Was he made to execute an affidavit?

“A - Actually he denied the involvement.

“COURT: But as you said, now, why did Lt. Aquino ask Beverly Cui to execute an affidavit that the P10,000.00 was a part of the ransom money?

“A - Lt. Aquino told the couple go execute an affidavit.

“COURT: What was the answer of Beverly Cui?

“A - They denied the[ir] involvement.

“x x x

“COURT: What is the remark of Beverly Cui?

“A - According to Beverly Cui and Leonilo B. Cui, that they were not involved in the kidnapping, sir.

“x x x

“FISCAL ADLAWAN:

“x x x

“Q - Now, Beverly Cui and Leonilo Cui testified in court that Beverly Cui was released on the same evening that she was arrested by your team, what do you say to this?

“COURT: Was she released?

“A - She was released, your Honor.

“COURT: Beverly Cui?

“A - On assurance that she will help in looking [for] the group of Toto Garcia, your Honor.

“Q - What was the result, or was she able to locate the group?

“A - She pointed to us to the house of the wife of Toto Garcia, but during the raid, unfortunately, Toto Garcia was not in their house.

“Q - Who guided you to the house of Toto Garcia?

“A - Beverly Cui, sir.

“Q - Where is this house located?

“A - Basak, sir.

“Q - Was this the same house where those articles were raided and confiscated or recovered including the firearm owned by the complaining witness Johnny Lim already marked as Exhibit “A”, a .22 caliber for the prosecution, is this the house?

“A - Yes, sir.

“Q - Had it not been for Beverly Cui, you would not be able to locate the house of Toto Garcia?

“A - No, sir.

“Q - Now, did Beverly Cui show to you any bank book?

“A - Yes, sir.

“Q - How many bank books were shown?

“A - At first about 5 bank books, sir.

“x x x

“COURT: You stated that this P10,000.00 received by Cui was a part of the ransom money lifted only from

the admission of the Cuis or the Cuis plus other parties?

“A - By the Cuis, sir.

“COURT: No proof that the Cuis are beneficiaries of Lt. Aquino?

“A - Only the couple, your Honor.

“COURT: In other words, you learned the P10,000.00 only when the money was returned by Beverly Cui?

“A - During the confrontation the couple admitted that they have that other passbook, the P10,000.00, sir.

“COURT: I’m referring of (sic) the admission that the P10,000.00 was a part of the ransom money?

“A - Yes, sir.

“COURT: When did you learn that it was a ransom-money? At the time the money was returned or before the return?

“A - At the time when there was a confrontation, sir.

“COURT: What do you mean by confrontation?

“A - When we confronted the accused, sir.

“COURT: The Cuis?

“A - Yes, and she admitted she has with her in the bank, the P10,000.00.

“x x x

“COURT: You mean an interrogation not a confrontation by you?

“A - Not by me, but by the investigator, sir.

“COURT: Who was doing the interrogation?

“A - Ouano, sir.

“COURT: You mean Ouano interrogating the Cuis? Then you were listening?

“A - Yes, sir.

“COURT: You heard the Cuis that they were given money by Toto Garcia and the money is in the bank.

“A - Yes, sir.”[39]

Significantly, it is again the Cuis themselves, in their Motion for Reconsideration dated December 2, 1993, who corroborated Sgt. Ybanez’s claim that Beverly Cui was temporarily released for the particular purpose of accompanying the police to the hideout of Toto Garcia and his men. Thus, in par. 5 of their Motion for Reconsideration, they allege that “x x x Beverly Cui was temporarily released from custody in order for her to lead the police to the hideouts of the other suspects of the crime”.[40]

As accessories to the consummated crime of kidnapping for ransom, the penalty imposable upon Leonilo and Beverly Cui is two degrees lower than that prescribed by law.[41] Under Article 267 of the Revised Penal Code, as amended, the penalty shall be death where the kidnapping was committed for the purpose of extorting ransom. However, when the crime was perpetrated in December 1990, the death penalty has been suspended by the 1987 Constitution and commuted to reclusion perpetua. Since no modifying circumstance is appreciated for or against

the Cuis, the imposable penalty should be in the medium period of the indeterminate sentence applicable under Republic Act no. 4103, as amended.[42]

Finally, while we affirm the conviction of the Cui spouses, we acquit Obeso and Sarte.

The only evidence linking Obeso and Sarte to the kidnapping of Stephanie Lim is Basingan's sworn statements that a certain Leos and a certain Laring were among the lookouts who stood as guards outside the house of the Lims while Toto Garcia and his group were inside. Basingan's sworn statements are hearsay, hence, inadmissible in evidence against his co-accused because he escaped before he could take the witness stand.

Except for Basingan who could not even give the real names of Obeso and Sarte and just referred to them as Leos and Laring, respectively, no one really knew them. And significantly, no prosecution witness identified them, not even Stephanie Lim. She never saw any of them during the robbery or in the house where she was detained. Her testimony runs, viz.:

"DIRECT EX. BY FISCAL ADLAWAN

"xxx

"Q - What else took place?

"A - They blindfolded me and handcuffed me and brought me out, sir.

"Q - What do you mean when you said you were brought out, out of your residence?

"A - That is correct, sir. They brought me to another place.

"Q - By what means?

"A - Our Fiera, sir.

"Q - You owned the vehicle?

"A - Yes, sir.

"Q - While you were brought to (sic) outside, were you able to recognize one of them?

"A - No, sir, because I was blindfolded.

"Q - Was there an instance when your blindfold was taken off?

"A - When I was placed in a room.

"x x x

"Q - And how long did you stay in that house where you were brought by those persons known as Toto Garcia and others?

"A - From dawn until afternoon.

"x x x

"COURT: What happened when you were brought back to your house?

"A - Few days after I was asked to identify the house and the room where I stayed.

"Q - You were brought to that place [a] few days after?

"A - Yes, sir.

“Q - Who were with you when you were brought to that place?

“A - Members of the Metro Discom, sir.

“Q - When you were brought to the place again [a] few days after you were released, did you come to know who occupied that room?

“ATTY. GONZALES: Hearsay, your Honor, she has no personal knowledge, whatever information given to her that’s not of her own, your Honor.

“COURT: Let us find out, if she knows.

“A - Laring, sir.

“x x x

“COURT: Cross?

“CROSS BY ATTY. GONZALES

“x x x

“Q - And you mentioned of a certain Laring, you agree with me that this Laring was identified to you by people of the Metro Discom?

“A - Yes, sir.

“Q - And the people at the Metro Discom meaning the police officers, told you that it was Laring who occupied the place where you were allegedly brought, right?

“A - Yes, sir.

“COURT: I can not hear.

“WITNESS: Yes, sir, occupied by Laring.

“Q - You have not seen Laring?

“A - Yes, sir.

“Q - You have not seen Laring, you mean no?

“A - Yes, sir.

“x x x

“Q - Now, you mention, no. Now, in your house where this incident allegedly took place, you only saw Toto Garcia?

“A - Yes, sir.

“Q - You could not identify anybody there?

“A - No, sir.

x x x”.[43]

Obeso and Sarte interposed the defense of alibi. They asseverated that in late November, 1990, they left the house they were renting in Linao, Minglanilla, Cebu and went to Banilad, Bacong, Dumaguete City where the parents of Sarte reside. It was there, in March 1991, that they were arrested.

The prosecution never rebutted the claim of live-in partners Obeso and Sarte that they were in Bacong, Dumaguete City as early as November, 1990. No direct evidence has been proffered by the prosecution to place Obeso and Sarte at the scene of the crime. Their alibi has to be given credence.

WHEREFORE, the Decision of the Regional Trial Court of Cebu City, Branch 18, dated December 6, 1993, in Criminal Case No. CBU-20464, is MODIFIED. Appellants Leonilo and Beverly Cui are CONVICTED as ACCESSORIES and are ORDERED to serve the indeterminate sentence of two (2) years, four (4) months and one day of prision correccional, as minimum, to eight (8) years and one day of prision mayor, as maximum. Appellants LUIS OBESO, alias "LEOS", and HILARIA SARTE, alias "LARING" are ACQUITTED and if presently detained, they are ordered immediately released from detention unless other legal reasons exists to detain them. The Director of Prisons is ordered to inform this Court within ten (10) days from receipt of this Decision his compliance. No costs.

SO ORDERED.

Kapunan, Pardo, and Ynares-Santiago, JJ., concur. Davide, Jr., C.J., (Chairman), on official leave.

[1] Composed of 1Lt. John P. Campos, 2Lt. Michael Ray B. Aquino, Sgt. Narciso L. Ouano, Jr., Tsgt. Felipe Honoridez, Sgt. Armando Ballon, Sgt. Firmo Condia, Msgt. Oscar Dadula, Cpl. Jeremias Canares and Sgt. Catalino Ybanez.

[2] Exhibit "C", Folder of Exhibits, pp. 4-10.

[3] Original Records, p. 3.

[4] Id., pp. 17-18.

[5] Id., pp. 1-2.

[6] Order for Detention during Pendency of the Case dated December 18, 1990 signed by Vice-Executive Judge Bernardo Ll. Salas, Original Records, p. 21.

[7] Return dated January 17, 1991 signed by Lt. Colonel Panfilo M. Lacson, Original Records, p. 29.

[8] Original Records, pp. 22-28.

[9] Certification of Death issued by Dr. Tomas P. Refe, Medico-Legal Officer III, NBI-Cebu City, Original Records, p. 91.

[10] Original Records, pp. 44-45.

[11] Id., p. 46.

[12] Exhibit "C", Folder of Exhibits, pp. 4-10.

[13] Original Records, pp. 52-54.

[14] Order dated May 15, 1991, Original Records, p. 55.

[15] Incident Report Re Escape of Detained Prisoner, Eduardo Basingan, marked as Exhibit "J", Original Records, p. 97.

[16] In a Decision penned by Judge Galicano O. Arriesgodo, Rollo, pp. 23-50.

- [17] Decision of the Regional Trial Court dated December 6, 1993, pp. 24-25, Rollo, pp. 46-47.
- [18] Decision, *supra*, pp. 27-28, rollo, pp. 49-50.
- [19] Rollo, p. 51.
- [20] *Id.*, p. 53.
- [21] Brief for Accused-Appellants Luis Obeso and Hilaria Sarte dated April 21, 1997, p.6, Rollo, p. 96.
- [22] Brief for Appellants dated May 28, 1997, p. 1, Rollo, p. 138.
- [23] Dated August 3, 1998, Rollo, pp. 223-243.
- [24] Manifestation and Motion in Lieu of Consolidated Appellees' Brief dated August 3, 1998, p. 11, Rollo, p. 233.
- [25] TSN dated September 11, 1991, pp. 16-18.
- [26] *People v. Melosantos*, 245 SCRA 569, 575-577 (1995).

[27] 265 SCRA 248 (1996).

- [28] *Id.*, pp. 255-259.
- [29] *People v. Surigawan*, 228 SCRA 458, 465 (1993) citing *Apostol, Essentials of Evidence*, 1986 ed., p. 163; *Francisco, The Revised Rules of Court in the Philippines*, Vol. VII, Part I, 1990 ed., pp. 349-356.
- [30] *People v. Badilla*, 48 Phil. 718, 725 (1926).
- [31] *People v. Bernardo Quidato, Jr.*, G.R. No. 117401, October 1, 1998; *People v. Surigawan*, *supra*; *People v. Ferry*, 66 Phil. 310, 321 (1938).
- [32] *People v. Surigawan*, *supra*; *People v. Badilla*, *supra*; *People v. Ferry*, *supra*.
- [33] *Aquino, Ramon C., The Revised Penal Code, Volume One*, 1987 Edition, p. 531.
- [34] *People v. Maluenda*, 288 SCRA 225, 253 (1998) citing *People v. Cordova*, 224 SCRA 319, 338 (1993); *People v. Verzola*, 80 SCRA 600, 608 (1977); and *People v. Amajul*, 1 SCRA 682, 689-690 (1961).
- [35] Par. 7 of the Joint Affidavit dated December 18, 1990, Original Records, p. 17.
- [36] Affidavit dated February 15, 1991 marked as Exh. "E", p. 2, Original Records, p. 81.
- [37] Original Records, p. 156.
- [38] TSN dated November 7, 1991, pp. 13-17.
- [39] TSN dated August 11, 1992, pp. 2-5.
- [40] Motion for Reconsideration dated December 2, 1993, p. 3, Original Records, p. 247.
- [41] Art. 53, Revised Penal Code, as amended.
- [42] *People v. Maluenda*, 288 SCRA 225, 253 (1998).
- [43] TSN dated May 18, 1992, pp. 3-6.

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