

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VIRGILIO RIMORIN,EDRITO CASTILLO AND GLENN GARCIA, ACCUSED,

G.R. No. 124309. May 16, 2000

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

Before us is the appeal from the decision of the Regional Trial Court, San Fernando, La Union, Branch 30, in Criminal Case No. 2994, finding accused-appellant Virgilio Rimorin, along with his co-accused, Edrito Castillo and Glenn Garcia, guilty of the crimes of kidnapping with murder and imposing on him two sentences of reclusion perpetua, as well as ordering him to indemnify the respective mothers of the two murder victims in the amount of P50,000.00 each.

Appellant Rimorin, Castillo, and Garcia were initially charged in an information dated June 22, 1992, worded as follows:

"That on or about the 16th day of April, 1981, in the Municipality of San Fernando, Province of La Union, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another with evident premeditation and treachery and armed with deadly weapons, did then and there willfully, unlawfully and feloniously forcibly take and carry away PETER LIM against his will in the presence of his sister Amelia Lim and later attack, assault and strike the victim with the use of the deadly weapons causing his death thereafter to the damage and prejudice of his lawful heirs.

That the crime was committed with aggravating circumstance of use of motor vehicle.

CONTRARY TO LAW."[1]

An amended information dated August 31, 1992, was later filed to include the name of another victim, Louie Gonzales.[2]

The pertinent facts, culled from the records, are as follows:

On April 16, 1981, Peter Lim and Louie Gonzales were taken at gunpoint from their homes by Ely Rillon and appellant Rimorin.[3] Later that same day, Napoleon Osoteo was likewise picked up from his house by Rimorin.[4] Osoteo was brought to the house of Rillon, where he saw Lim and Gonzales seated at the back of a jeep, with their hands tied behind their backs.[5] Rillon was at the wheel. Osoteo was also forced to board the jeep.[6] From San Fernando, La Union, Rillon drove the jeep to Barangay Wenceslao, Caba, La Union.[7] There, they were met by Castillo, Garcia, and Danilo Ananias, cousins of appellant.[8] Osoteo was told to alight while Lim and Gonzales were brought down from the jeep. The group then proceeded on foot towards a forested mountain, stopping at a spot where two mango trees stood. [9]A pit had been dug in the area. Lim and Gonzales were made to sit under a tree. Appellant then struck them both in the head with a piece of wood.[10] Rillon also struck the victims with the blunt edge of a bolo.[11] Rillon then ordered appellant, Castillo, Garcia, and Ananias to dump the bodies into the pit. Afterwards, appellant went down the pit and stabbed the two bodies. After he

climbed out, firewood was placed over the bodies and gasoline was poured over the pile. Appellant also wanted to stab Osoteo but Rillon prevailed upon him not to. The latter warned Osoteo not to report the matter to the police lest he meet the same fate as Lim and Gonzales.[12] Rillon set the pile on fire, which burned until around early afternoon. The pit was covered with earth and banana trees were planted in the area. Rillon and Rimorin warned the others in the group to keep their mouths shut, on pain of death.

The families of Lim and Gonzales did not report the abduction of their kin to the authorities out of fear. The crime went undiscovered until October 1991 when Osoteo, having earlier learned that Rillon had died the previous September, informed Lim's sister Amelia and barangay captain Johnny Go of the incident at Caba.[13] Amelia and Go accompanied Osoteo to the police station at San Fernando, La Union, where the latter executed a sworn statement on October 5, 1991. Castillo and Ananias were apprehended thereafter.[14]

Osoteo and Ananias went back to the scene of the killing, together with policemen of San Fernando, relatives of the victims, and the municipal trial judge of Caba. After days of searching, the exact site was found and the burned skeletal remains of two individuals[15] were exhumed. After examination, one set of remains was found to belong to a male above 18 years old.[16] No significant finding was made of the other set, except that the bones were human.[17] No other findings were made due to the fragmentation and erosion of the bones and their limited number.[18] The exact cause of death of the two individuals could also not be determined.[19]

Appellant was convicted after trial. His co-accused Edrito Castillo was acquitted since, from the records, the trial court believed that he was not a participant either in the kidnapping or the killing, and that he was threatened with death to keep silent. The other co-accused, Glenn Garcia, has remained at large.

In this appeal, appellant Rimorin alleges that the trial court gravely erred in:

I

â€œCONVICTING APPELLANT VIRGILIO RIMORIN FOR TWO COUNTS OF KIDNAPPING WITH MURDER DESPITE THE LACK OF EVIDENCE SUFFICIENT TO ESTABLISH HIS GUILT BEYOND REASONABLE DOUBT.

II

... IN NOT RULING THAT THE PROSECUTION FAILED TO DISCHARGE ITS BURDEN OF PROVING BEYOND REASONABLE DOUBT, ON THE STRENGTH OF ITS OWN EVIDENCE, THE GUILT OF ACCUSED-APPELLANT RIMORIN.[20]

Appellant denies the charges against him, which he labels as a police concoction. He contends that they were merely concocted to prevent him from testifying in a case for murder and frustrated murder filed against several policemen of San Fernando, La Union, including the chief of police. He claims that he and Rillon, were treacherously shot at by said policemen on September 2, 1991, where Rillon died. He avers that the sworn statement of Osoteo, the prosecution's principal witness, was made before an investigator from the San Fernando police station, where the policemen implicated in his and Rillon's shooting were also assigned.

According to appellant the testimony of Osoteo is full of inconsistencies. During the preliminary investigation of this case, he claims Osoteo narrated that it was Rillon who hit the victims first, but during trial, Osoteo said it was Rimorin who first did it. Further, he adds that during the preliminary investigation, Osoteo said what were recovered at Caba were bones and ashes, while during trial, Osoteo said that only ashes were recovered. He also states that Osoteo testified inconsistently on the number of persons he had told about the incident at Caba.

Appellant contends that the remains recovered at Caba were not positively identified. They could have been those of persons summarily executed by certain San Fernando policemen, or perhaps even the policemen accused of shooting him and Rillon, for summary executions were common in San Fernando during the early 1990s.

Lastly, appellant asks why Osoteo only came out with his assertions in 1991, when the alleged crimes happened in 1981 or ten years earlier. He faults Osoteo for not reporting the alleged killings to the police sooner, particularly since Rillon had gone to the United States in 1982 and Osoteo himself had left San Fernando to live with his wife in Luna, La Union, in 1984.

For the appellee, the Solicitor General contends that the alleged inconsistencies in Osoteo's testimony are minor ones that tend to strengthen rather than weaken Osoteo's credibility. He points out that the delay in reporting the incident was satisfactorily explained by Osoteo's fear of Rillon. When the latter died in September 1991, the threat ceased and Osoteo was finally able to talk about the crime to the barangay captain and to the sister of one of the victims. The Solicitor General asserts that Osoteo could not have led the authorities to the victims' burial site, had he not been actually present at the scene of the crime.

While the Solicitor General urges the Court to affirm the conviction of appellant, he stresses that appellant should be convicted only of two counts of murder, and not kidnapping with murder. The taking of the victims from their homes was only incidental to the main objective of killing them, according to the Solicitor General.

We now resolve the issue raised by appellant's assignment of errors, namely, whether the prosecution has established the guilt of the appellant beyond reasonable doubt.

It is apparent that the present appeal is anchored mainly on the credibility, or the lack thereof, of prosecution witness Osoteo. Appellant itemizes the alleged inconsistencies in Osoteo's testimony that to appellant evidence a fabricated tale. But, in our view, these details do not destroy the case for the prosecution.

Firstly, the trial court's assessment of a witness' credibility is accorded great weight, even finality, by appellate courts, absent any showing that the trial court overlooked certain matters that, if taken into consideration, would have materially affected the outcome of the case.[21] The trial courts are in the best position to view witness' demeanor and deportment during trial.[22] These are well-founded and well-settled rules.

Secondly, minor inconsistencies in the testimony of a witness do not necessarily impair his credibility. As held in *People v. Sesbreno*, G.R. No. 121764, September 9, 1999, at times, inconsistencies indicate truth rather than falsehood, and strengthen rather than weaken the witness' credibility. We have long observed that they safeguard against memorized perjury.[23] The alleged inconsistencies in Osoteo's statements during the preliminary investigation vis-a-vis his testimony during the trial, do not detract from the crucial fact that appellant participated in the plot to kill Lim and Gonzales. Whether it was Rillon or appellant who first hit the victims could not erase the fact that the killings took place. Whether Osoteo told one, two, or several persons about the crime is of little consequence. The fact remains that he did report the incident finally to the authorities. Above all what matters is that Osoteo did identify the perpetrators of the crime, including appellant.

That Osoteo's fear of Rillon constrained him for ten years from revealing the crime and identifying the perpetrators to the authorities is understandable. The delay should not in any way taint his credibility.[24] It should in fact foster credence in his revelation, considering that after ten years he did not have to come out to testify if there was no grain of truth in it.

We agree with the Solicitor General's observation that Osoteo could not have led the authorities to the scene of the crime were he not actually present as eyewitness when the crime was committed. Appellant's bare denials obviously cannot prevail over the positive identification made by said eyewitness.

Appellant claims he was charged with the murder of Lim and Gonzales to prevent him from testifying in criminal cases filed against certain policemen of San Fernando. But nothing appears on record to corroborate this claim. Appellant's assertion that there is a connection between the two sets of cases is at best conjectural. It cannot

suffice to support his plea for reversal of the judgment below.

Finally, for each victim killed, we find that the trial court correctly convicted appellant of the crime of kidnapping with murder. The offenses were committed on April 16, 1981, prior to the effectivity of R.A. No. 7659 on December 31, 1993.[25] In this instance, it is evident that the purpose of appellant and his companions when they kidnapped the victims was to kill them. Hence, there were two counts of the complex crime of kidnapping with murder.

The information alleged that each killing was qualified by evident premeditation and treachery. In treachery, the mode of attack must be consciously adopted. This means that the accused must make some preparation to kill the deceased in such a manner as to insure the execution of the crime or to make it impossible or difficult for the person attacked to defend himself or retaliate.[26] Eyewitness Osoteo said the victims' hands were tied behind their backs when appellant killed them, disabling the victims from defending themselves. Hence, treachery was sufficiently established.

Concerning evident premeditation, however, the prosecution evidence is bare. There was no showing of (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the offender had clung to his determination; and (3) a sufficient lapse of time between the determination to commit the crime and the execution thereof, to allow the offender to reflect on the consequence of his act.[27] Thus, the qualifying circumstance of evident premeditation was not established.

Lastly, as to civil indemnity, payment should be made not only to the mother of each victim but to all his heirs.[28]

WHEREFORE, the appealed decision of the Regional Trial Court of San Fernando, La Union, Branch 30, in Criminal Case No. 2994, finding appellant Virgilio Rimorin guilty of two complex crimes of kidnapping with murder and imposing on him two sentences of reclusion perpetua is hereby **AFFIRMED** with the **MODIFICATION** that he is further sentenced to pay the heirs of each of the victims the amount of **FIFTY THOUSAND (P50,000.00) PESOS** as **INDEMNITY**. Costs against appellant.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, and Buena, JJ., concur.

De leon, Jr., J., on leave.

[1] Rollo, p. 6.

[2] Id. at 7.

[3] TSN, October 7, 1992, pp. 5-8A; TSN, May 3, 1994, p. 8. Appellant and Rillon are cousins. Appellant worked for the Rillon family as houseboy.

[4] TSN, October 23, 1992, pp. 6-7.

[5] Id. at 17-18; TSN, April 13, 1993, p. 8.

[6] TSN, April 13, 1993, p. 8.

[7] TSN, October 23, 1992, p. 11.

[8] TSN, December 20, 1994, pp. 12-13.

[9] TSN, October 23, 1992, pp. 13-15.

[10] Id. at 15-16.

[11] Id. at 17-18.

[12] Id. at 22.

[13] TSN, October 7, 1992, p. 9; TSN, April 13, 1993, pp. 22-23.

[14] Ananias apparently died before the information was filed, and, thus, he was no longer charged along with appellant, Castillo, and Garcia. See Records, p. 172.

[15] TSN, August 16, 1994, p. 20.

[16] Records, p. 293; TSN, August 16, 1994, p. 11.

[17] Records, p. 292; TSN, August 16, 1994, pp. 15-16.

[18] See Records, pp. 292-293.

[19] TSN, August 16, 1994, p. 18.

[20] Rollo, p. 59.

[21] People v. Batidor, 303 SCRA 335, 345 (1999); People v. Sabalones, 294 SCRA 751, 781 (1998)

[22] People v. Villanueva, 302 SCRA 380, 398 (1999); People v. Andres, et al., 296 SCRA 318, 332 (1998)

[23] People v. Sanchez, et al., 302 SCRA 21, 52 (1999)

[24] People v. Guillermo, 302 SCRA 257, 266 (1999)

[25] In People vs. Ramos, 297 SCRA 618,640-641 (1998), citing Parulan v. Rodas, 78 Phil 855 (1947), the Court en banc, summarized the rules on the correct designation of the crime committed when the kidnapped victim is killed by his abductor. We held that-

"Prior to 31 December 1993, the date of effectivity of RA No. 7659, the rule was that where the kidnapped victim was subsequently killed by his abductor, the crime committed would either be a complex crime of kidnapping with murder under Art. 48 of The Revised Penal Code, or two (2) separate crimes of kidnapping and murder. Thus, where the accused kidnapped the victim for the purpose of killing him, and he was in fact killed by his abductor, the crime committed was the complex crime of kidnapping with murder under Art. 48 of The Revised Penal Code, as the kidnapping of the victim was a necessary means of committing the murder. On the other hand, where the victim was kidnapped not for the purpose of killing him but was subsequently slain as an afterthought, two (2) separate crimes of kidnapping and murder were committed.

However, RA No. 7659 amended Art. 267 of The Revised Penal Code by adding thereto a last paragraph which provides-

When the victim is killed or dies as a consequence of the detention, or is raped, or is subjected to torture or dehumanizing acts, the maximum penalty shall be imposed.

This amendment introduced in our criminal statutes the concept of 'special complex crime' of kidnapping with murder or homicide. It effectively eliminated the distinction drawn by the courts between those cases where the killing of the kidnapped victim was purposely sought by the accused, and those where the killing of the victim was not deliberately resorted to but was merely an afterthought. Consequently, the rule now is: Where the person kidnapped is killed in the course of the detention, regardless of whether the killing was purposely sought or was merely an afterthought, the kidnapping and murder or homicide can no longer be complexed under Art. 48, nor be treated as separate crimes, but shall be punished as a special complex crime under the last paragraph of Art. 267, as amended by RA No.7659."

[26] People v. Santillana, G.R. No. 127815, June 9, 1999, p. 15.

[27] People v. De la Cruz, 242 SCRA 129, 142 (1995)

[28] People v. Bahenting, 303 SCRA 558, 569-570 (1999)

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