

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JETHRO NIERRAS Y ROSILLO, BENJAMIN NOLASCO Y TORRES AND ERNESTO VALLEJO Y CALAVOSO, ACCUSED, JETHRO NIERRAS Y ROSILLO, ACCUSED...

G.R. No. 130528. July 11, 2002

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PER CURIAM:

Before the Court on automatic review is the conviction of appellant Jethro Nierras for the crime of Kidnapping for Ransom, penalized under Section 8 of Republic Act No. 7659 with Death. His co-accused, Benjamin Nolasco and Ernesto Vallejo, were acquitted on grounds of reasonable doubt and lack of evidence, respectively.

The Information filed against these three (3) accused, docketed as Criminal Case No. C-49442, charged them with the commission of the crime, as follows:

“That on or about the 21st day of September, 1995 at Kalookan City, Metro Manila, Philippines and within the jurisdiction of the this Honorable Court, the above-named accused, being a private person, did then and there willfullu (sic), unlawfully and feloniously kidnap and detain one JOSE LI Y TAN, for the purpose of extorting P1.5 Million from the family of Mr. Li, thereby depriving said JOSE LI Y TAN of his liberty against his will.

CONTRARY TO LAW.”[1]

During arraignment, all three (3) accused pleaded not guilty to the charge, after which, the prosecution and the defense presented their respective evidence.

The victim in this case is 60-year old Filipino-Chinese businessman Jose Li y Tan. Unlike other unfortunate kidnap victims, Li managed to escape his abductors, and lived to tell the tale. He narrated that at around 7:15 a.m. of September 21, 1995, he was walking along A. Mabini St. in Caloocan City when three (3) armed men waylaid him and forcibly pulled him inside a gray-colored car. He described his abductors as dark-skinned and wearing baseball caps and dark glasses. Inside the car, the accused demanded Three Million Pesos (P3,000,000.00); otherwise, he will be killed. The vehicle then proceeded to travel along the highway and after five (5) hours, stopped for refueling. Although his face was covered with a hat, he was able to see as the hat sometimes fell off. After a lengthy travel, he was brought into a shanty where he was kept for fourteen (14) days. During his captivity, he was being fed, and was not blindfolded. He was also asked to sign and fill up three (3) blank cheques that appellant Nierras took from his pocket, in the amount of One Hundred Thousand Pesos (P100,000.00), One Hundred Fifty Thousand Pesos (P150,000.00) and Two Hundred Thousand Pesos (P200,000.00). One day, at around 5:00 a.m., he saw his chance to escape when he noticed that the door was unlocked and his abductors were not around. He opened the door and ran until he saw a passenger jeepney that brought him to Tarlac. The day was October 5, 1995. He then went to the house of his brother-in-law Uy Eng Chong where he called up his wife, Felicing. Accompanied by Capt. Ricardo Martin of the Task Force Dragon, his wife went to Tarlac to fetch him but he opted to stay behind because he was weak and wanted to rest. Then, on October 9, 1995, his wife and Capt. Martin again fetched and brought him to Camp Crame where he gave his sworn statement. Finally, on October 11,

1995, he went back to Camp Crame together with his wife, and son Richard Li. There, he identified the three (3) accused, Jethro Nierras, Benjamin Nolasco and Ernesto Vallejo, as the malefactors.[2]

Carlos Aquino, a watchman posted at the Caloocan City Hospital located in A. Mabini St., corroborated the fact of Li's abduction, as well as the identity of appellant Nierras. Aquino recounted that at around 7:15 a.m. of September 21, 1995, he was doing a roving inspection when he noticed a "suspicious-looking" man in front of the Iglesia ni Kristo church, about fifteen (15) meters away from where he was. Thereafter, the man, who was holding a gun, blocked another person who was walking in front of the church, and forced said person to get inside a gray Toyota Corolla. After several seconds, the car, which had two (2) more people inside, left. He then called the police who arrived with the wife and son of the person abducted whom he later learned to be Jose Li. He told them what he saw and they eventually went to the Northern Police District Command to have the incident entered on the police blotter. He also executed a sworn statement in Camp Crame on October 11, 1995, and identified appellant Nierras as the person who forced Jose Li to get inside the car.[3]

Meanwhile, Richard Li, son of Jose Li, testified that in the morning of September 21, 1995, his brother informed him that their father was kidnapped. At around 3:00 p.m. of the same day, he received a call from his father's kidnappers who demanded a ransom of four (4) million pesos, and warned him not to tell the authorities or they will harm his father. Richard Li told the caller that they do not have such amount on hand but given several days, they can raise the amount. A few hours after, or at 5:00 p.m., the caller phoned again and asked for an advance of Five Hundred Thousand Pesos (P500,000.00), to be placed inside a garbage can at the Caloocan City Hall, which they did. After waiting for several hours, no one came to pick up the money so they went home and retrieved the money. The caller contacted him again the next day and told him that he was not able to get the money because there were policemen in the area, and that the ransom money was again raised to Four Million Pesos (P4,000,000.00). The day after, or on September 23, 1995, he was instructed by the kidnapper to drive his owner-type jeep and bring Two Million Pesos (P2,000,000.00) to Moncada, Tarlac. When he replied that he couldn't raise such amount at such short notice, the caller got angry and cursed him, but later, it was agreed that he would bring the money to Moncada the following Monday or Tuesday thereafter. After several calls and negotiations with the kidnapper, the ransom money was reduced to One Million Five Hundred Thousand Pesos (P1,500,000.00), to be placed inside a garbage can at the Malabon Zoo on October 10, 1995. At that time, his father had already escaped, and his talks with the kidnappers were being made in coordination with the Task Force Dragon. On October 10, 1995, he did as he was instructed, and the next day, he was informed that his father's abductors have already been apprehended. Together with his father, mother and other brother, they went to Camp Crame where his father identified the three (3) accused in a police line-up.[4]

Several police officers, on the other hand, testified on the entrapment operation sprung on appellant Nierras and his co-accused Benjamin Nolasco. Posing as a houseboy in the Li household, Sr. Inspector Ricardo Martin, then Assistant Operations Officer of the Task Force Dragon, testified that he assisted and acted as the close-in security of the Li family during the negotiations with the kidnappers, instructing the Li family to keep Jose Li's escape under wraps. He also prepared the fake or boodle money which he placed inside a Zesto box, to be delivered to the designated place on October 10, 1995. He monitored the entire sting operation at the Li residence through his radio, and he stated that they went through the entrapment operation despite Jose Li's escape because they believed that the kidnappers had a "problem" and were not aware of the escape.[5]

P/Supt. Charles Calima was the supervisor of the entrapment and arresting team;[6] Sr. Insp. Jerito Avela Adique was the team leader;[7] and SPO2 Ernesto Arcilla was a member of the Task Force Dragon who was given instructions by P/Supt. Calima to arrest the suspects.[8] The three (3) officers, together with other police personnel, were strategically positioned within the pick-up point. P/Supt. Calima was inside a vehicle parked 200

meters away from the garbage pile where the money was left. Sr. Insp. Adique who was posted 25 meters away from the site, saw a Toyota Corona with license plate no. UCM-717 parked on the opposite side of the road at around 11:00 p.m. After a few minutes, two (2) men approached the site and picked up the boodle money. Immediately, they arrested the two (2) men, who later turned out to be appellant Nierras and Benjamin Nolasco, and confiscated from appellant Nierras, Jose Li's calling card. The two (2) were then subjected to a tactical interrogation for 30 minutes inside a L-300 van, and according to SPO2 Arcilla, appellant Nierras admitted his complicity in the crime, and pinpointed to his co-accused Ernesto Vallejo and a certain "Lirio" as his cronies, and "Mike" as the brains. Ernesto Vallejo was subsequently arrested in his residence in Valenzuela on a follow-up operation.

Criminal Investigator Carmelo Catbagan was tasked with the investigation of the case. On October 11, 1995, at around 10 p.m., he took the sworn statement of appellant Nierras wherein the latter admitted his participation in the crime, and implicated the other two (2) co-accused. He also testified that he informed appellant Nierras of his constitutional rights, but despite this, the latter waived his right to counsel. Nevertheless, upon the request of Chief Legal Officer, Aurelio Trampe, Jr. of Task Force Dragon, Atty. Geminiano Yabut, Jr. assisted appellant Nierras.[9]

Interestingly, the defense of the three (3) accused were mere bare denials of their involvement in the crime. They did not present any evidence as to their whereabouts on September 21, 1995, the day the kidnapping was committed. Instead, appellant Nierras and Benjamin Nolasco, as well as their corroborative witness Remedios Cueva,[10] concentrated on the day of October 10, 1995, the day the two (2) were arrested and questioned by police operatives, while Ernesto Vallejo's testimony revolved on the day he was arrested, October 11, 1995.

Both appellant Nierras[11] and accused Benjamin Nolasco[12] substantially testified that on October 10, 1995, at around 10 p.m., while they were chatting at the latter's place of work at a fish compound in Malabon, armed men in civilian clothes arrived and asked them to get inside their vehicle. They were eventually brought to Victoria Court in Valenzuela where they were kept apart and tortured into confession. The next day, they were brought to Camp Crame and appellant Nierras was made to execute a sworn statement.

For his part, Ernesto Vallejo related that on October 11, 1995, he was in his house in Valenzuela resting, when members of the Task Force Dragon entered and searched the premises for shabu. Finding none, he was taken to Camp Crame. There he saw Benjamin Nolasco for the first time and appellant Nierras whom he knew as they usually see each other at a taxi wash, both being cab drivers, and it was only from appellant Nierras that he learned that he was being charged with kidnapping. They were made to stay in Camp Crame until the next day and it was then that Jose Li identified them as his abductors.[13]

Weighing the evidence before it, the Regional Trial Court of Caloocan City (Branch 129) rendered its Decision dated September 4, 1997, convicting appellant Jethro Nierras of the crime charged, and acquitting Benjamin Nolasco and Ernesto Vallejo. The decretal portion of the Decision reads:

"WHEREFORE, premises considered, accused Jethro Nierras y Rosillo is hereby found guilty beyond reasonable doubt of the crime charged. Consequently, and pursuant to Section 8 of Rep. Act No. 7659, he is meted the penalty of Death.

The City Jail Warden of Caloocan City shall now turn over the custody of Jethro Nierras y Rosillo to the Director, Bureau of Corrections, Muntinlupa City where he shall wait the final verdict of the Honorable Supreme Court after automatic review of this judgment.

Pursuant to Section 22 of Rep. Act No. 7659, the Branch Clerk of this Court shall elevate the complete records of the case to the Honorable Supreme Court within 20 days but not earlier than 15 days after this promulgation.

Co-accused Benjamin Nolasco y Torres and Ernesto Vallejo y Calavoso are found not guilty and shall now be released from detention, unless they are detained for another legal cause.

SO ORDERED.”[14]

Now before the Court for review, appellant Nierras submits that the trial court committed the following errors:

“I

“THE TRIAL COURT ERRED IN GIVING WEIGHT AND CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESSES AND IN DISREGARDING THE DEFENSE EVIDENCE

II

“THE TRIAL COURT ERRED IN FINDING ACCUSED-APPELLANT JETHRO NIERRAS GUILTY BEYOND REASONABLE DOUBT IN CRIMINAL CASE NO. C-49442 FOR KIDNAPPING FOR RANSOM”[15]

Appellant Nierras assails the trial court for giving weight and credence to the testimonies of Jose Li and Carlos Aquino, contending that they were inconsistent, vague and inconclusive. He maintains these witnesses were not able to positively identify the abductors, more particularly Jose Li, who admitted in court that he was not able to recognize them because they were wearing sunglasses and caps.[16]

A review of the testimonies of these two (2) witnesses, however, does not show any inconsistency, vagueness or inconclusiveness. In fact, the testimonies of Jose Li and Carlos Aquino identifying appellant and relating the kidnapping incident were positive, consistent and categorical. Despite the fact that the abductor was wearing a baseball cap and sunglasses, still, witness Carlos Aquino testified with certainty that he was able to identify the person as appellant Nierras, viz.:

“Atty. Estrella

Let us go back to the time when you first saw that person who forcibly took Mr. Lee inside a car which you now identified as Jethro Nierras. At that time, what was the position of Mr. Nierras in relation to you on September 21, 1995 at about 7:15 o'clock in the morning?

Witness

He was standing there beside the car and was waiting, sir.

Atty. Estrella

Was his back towards you or his face towards you?

Witness

His face was towards me, sir.

Atty. Estrella

At the time that this Jethro Nierras was forcibly taking Mr. Lee inside the car, what was his position in relation to you?

Witness

He was still facing me because I was in front, sir.

x x x

Atty. Bustamante

So, inspite of that, you were able to recognize him?

Witness

Yes, sir

Atty. Bustamante

In that distance of 15 meters?

Witness

Because I have clear vision, sir.”[17]

The Court finds no reason to disbelieve or doubt the identification made by Aquino absent any ill-motive on the latter’s part to falsely testify and implicate a stranger in such a grave offense, if it were not true. Where there is no evidence to show that a witness was actuated by improper motive, his identification of appellant as the perpetrator should be given full faith and credit.[18]

In addition, just because the perpetrator was wearing shades and a baseball cap on the day Jose Li was abducted does not foreclose any other opportunity for Li to see his face and recognize him. In his testimony, Li related that he was not blindfolded during his captivity, as his kidnappers fed him.[19] Also, appellant Nierras took the three (3) blank cheques in his pocket and asked him to fill it up and sign it. This situation provided him with enough opportunity to enable him to take a look and identify his abductors. Thus:

“Atty. Estrella

After filling it up and signing it, what did you do?

A They got it, sir.

Atty. Estrella

Now, in that situation will you be able to recognize the person who received those checks, if you still recognize?

A Yes, sir, that man.

Mr. Dela Cruz

What is your name? Witness pointing to a man, who when asked of his name, answered to the name of Jethro Nierras.”[20]

Clearly, appellant Nierras’s denials cannot overcome the firm and clear declarations of Jose Li and Carlos Aquino, identifying him as the abductor.

Appellant Nierras also argues that it was “illogical” for the kidnappers to demand the ransom money after Jose Li had already escaped; that the kidnappers would have used a vehicle instead of just walking to the drop-off point; and that appellant Nierras and Benjamin Nolasco are innocent passers-by who curiously picked up the Zesto box. These arguments, however, are mere empty conjectures that do not detract from the fact of the commission of the crime. As stated by the trial court, viz.:

“Admittedly, the victim had already escaped from his kidnappers 5 days before the ransom demand culminated

at the Malabon Zoo on October 10, 1995. Nonetheless, and even though the demanded ransom turned out to be a dreaded phantom, the fact remains that the complaining witness was kidnapped not for a joy ride to the far North but for the purpose of obtaining a huge amount of ransom. Simply stated, the kidnappers' naivette (sic) and greed are no reason to downgrade the seriousness of the indictment."^[21]

Besides, it bears no relevance or weight since the prosecution has adequately established appellant Nierras's identity and participation in the crime.

Even appellant's initial defense of alibi cannot prosper. As earlier noted, his alibi pertains to October 10, 1995, the day he was allegedly picked up by agents of the Task Force Dragon, and not September 21, 1995, when Jose Li was abducted. The trial court rejected his claim as he failed to demonstrate the physical impossibility of him being at the scene of the crime.^[22] Indeed, as against the positive identification made by the prosecution witnesses, and the fact that it was not physically impossible for appellant Nierras to be at Malabon Zoo during the entrapment operation, his alibi cannot be given credence.^[23]

The elements of the crime of Kidnapping for Ransom under Article 267 of the Revised Penal Code, as amended by R.A. No. 7659 having been sufficiently proven, and appellant Nierras having been clearly identified, not only by the kidnap victim but also by other prosecution witnesses, the Court affirms the trial court's finding of appellant's guilt.

WHEREFORE, the Decision of the Regional Trial Court of Caloocan City, Branch 129, dated September 4, 1997 in Criminal Case No. C-49442, convicting appellant Jethro Nierras of the crime of Kidnapping for Ransom, and sentencing him to suffer the maximum penalty of DEATH^[24] is hereby AFFIRMED.

Conformably with Art. 83 of The Revised Penal Code, as amended by Sec. 25 of R.A. No. 7659, upon the finality of this Decision, let the records of this case be forwarded forthwith to the President of the Philippines for the exercise at her discretion of her power to pardon appellant Jethro Nierras.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, and Corona, JJ., concur.

[1] Original Records, Information dated October 13, 1995, p.1.

[2] Testimony of Jose Li, TSN of August 19, 1996.

[3] Testimony of Carlos Aquino, TSN of November 28, 1996.

[4] Testimony of Richard Li, TSN of September 25, 1996.

[5] Testimony of Capt. Ricardo Martin, TSN of November 21, 1996.

[6] Testimony of P/Supt. Charles Calima, TSN of January 30, 1997.

[7] Testimony of Sr. Insp. Jerito Avela Adique, TSN of October 8, 1996.

[8] Testimony of SPO2 Ernesto Arcilla, TSN of August 20, 1996.

[9] Testimony of Carmelo Catbagan, TSN of October 14, 1996.

[10] See testimony of Remedios Cueva, TSN of March 4, 1997.

- [11] Testimony of appellant Jethro Nierras, TSN of March 3, 1996.
- [12] Testimony of Benjamin Nolasco, TSN of April 14, 1997.
- [13] Testimony of Ernesto Vallejo, TSN of July 11, 1997.
- [14] Original Records, pp. 214-215.
- [15] Rollo, p. 49; Appellant's Brief, p. 1.
- [16] Ibid., p. 63; *ibid.*, p. 15.
- [17] TSN of November 28, 1996, pp. 15-16, 21.
- [18] *People v. Yambot*, 343 SCRA 20, 37 [2000].
- [19] TSN of August 19, 1996, p. 27.
- [20] Ibid., p. 9.
- [21] Original Records, p. 213; Decision, p. 15.
- [22] Ibid., p. 212; *ibid.*, p. 14.
- [23] *People v. Pavillare*, 329 SCRA 684 [2000], at page 703.
- [24] Three members of the Court maintain their position that RA 7659, insofar as it prescribes the death penalty, is unconstitutional; however, they submit to the ruling of the Court, by majority vote, that the law is constitutional and that the death penalty should be imposed accordingly.

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