

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. RICARDO SOLANGON @ KA RAMIL, APPELLANT.

G.R. No. 172693. November 21, 2007

Ponente: YNARES-SATIAGO, J.

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YNARES-SATIAGO, J.:

On February 7, 2000, an Information was filed against appellant Ricardo Solangon, Apolonio Haniel and other John Does, the accusatory portion of which reads as follows:

That on or about March 26, 1992 at around 4:30 o'clock in the afternoon, more or less, in Sitio Calamintao, Barangay Alacaak, Sta. Cruz, Occidental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, in band, conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and feloniously kidnapped for ransom one Libertador F. Vidal @ Ador, while the latter was in the aforesaid place and was forcibly taken away to Sitio Tuoyan, Barangay Balao, Abra de Ilog, Occidental Mindoro where the said accused with intent to kill, with treachery and evident premeditation and abuse of superior strength, killed the said victim Libertador F. Vidal resulting to his untimely death.

CONTRARY TO LAW.[2]

Only appellant Solangon was arrested while the rest of the accused remain at large. During arraignment, Solangon pleaded not guilty.[3]

The facts of the case as summarized by the Court of Appeals are as follows:

During the 1992 local elections, Libertador F. Vidal alias Ador was a mayoralty candidate for the municipality of Sta. Cruz, Occ. Mindoro. On March 26, 1992, he was in the company of his sister Eden Vidal and other candidates for board members in the Sangguniang Panlalawigan. They were on their way home aboard four (4) vehicles from a campaign trail at Sitio Calamintao, Alacaac, Sta. Cruz, Occ. Mindoro. When they reached Balao river, they were blocked by seven (7) armed men, including appellant alias Ka Ramil, who introduced themselves allegedly as members of New People's Army (NPA). The latter ordered the campaigners to alight from their vehicles down to the river and commanded them to fall in line. While the alleged rebels aimed their guns at Ador's group, one Ka Emil asked "who is Ador Vidal?" When Ador identified himself, appellant immediately tied his hands behind his back with a nylon rope. The appellant's group then demanded campaign permit fee of P50,000.00 and for the release of Ador. Apparently failing in the negotiation, appellant's group forcibly abducted Ador and took him to a mountain.

After a week, or on April 4, 1992, heeding the earlier instruction of the bandits, Marilou Vidal, Ador's wife, with Rodrigo Alcantara and Lando Mendoza, delivered the ransom money to appellant's group at a far place in Brgy. Kurtinganan, Sta. Cruz, Occ. Mindoro. When they asked the whereabouts of Ador, the appellant said that Ador would be home the following night. However, appellant's group did not honor their promise. Since then, Ador's relatives had never seen him alive.

On July 9, 1999, at about 3:00 p.m., appellant was arrested by the PNP Mobile Group, Mamburao, Occ.

Mindoro while inside a bus going to San Jose, Occ. Mindoro. According to prosecution witness SPO2 Nelson Soquilon, he first met appellant on July 26, 1999 at the police barracks in Mamburao, Occ. Mindoro. There, appellant was investigated by P/Insp. Edilberto Ama. P/Insp. Ama instructed Soquilon and 13 other policemen to accompany appellant to a remote place where Ador's skeleton could be found, as earlier pointed by appellant. At the mountainous area of Brgy. Balao, Abra de Ilog, Occ. Mindoro, at which the policemen were unaware of the exact whereabouts of Ador, appellant dug about two (2) feet. A cadaver, including maong jacket and shorts believed to be that of Ador were found and retrieved.

Thereafter, Ador's relatives requested Dr. Edison Tan, Municipal Health Officer of Mamburao, Occ. Mindoro to arrange the skeleton. Ador's relatives were certain that the remains belonged to Ador, after recognizing his forehead, chin and lower dentures. The exact cause of death could not be determined. On July 28, 1999, the relatives of the victim brought the latter's skeleton to the house of Eden Vidal. On July 30, 1999, Ador's body was finally laid to rest.

Appellant's defense is alibi. He also denied being a member of the NPA. He claims that on March 26, 1992, he was in Sitio Langka, Abra de Ilog, Occ. Mindoro planting coconut trees; that in the years 1992 and 1993, he was just farming in their place and sometimes went to his sister who previously stayed in San Jose then transferred to Sablayan; that he is "tagalog" but his wife belongs to the minority; that on July 9, 1999 at about 3:00 p.m., as he was on board a bus from Abra de Ilog, at Stop Over restaurant in Brgy. 9, Mamburao, Occ. Mindoro, some soldiers boarded the bus with their long firearms pointed to him; that he was surprised as he just wanted to go to Sablayan to borrow palay seedlings; and that he was suddenly arrested and brought to the barracks.[4]

On August 31, 2004, the Regional Trial Court of Mamburao, Occidental Mindoro, Branch 44, rendered a Decision finding appellant guilty of the complex crime of kidnapping with murder. The dispositive portion of the Decision reads:

WHEREFORE, the Court finds that the guilt of the accused, Ricardo Solangon, in the commission of offense in the information, has been established with proof beyond reasonable doubt, it is hereby imposes upon him the mandatory penalty of death, and ordered him to pay the heirs of Libertador Vidal the amount of P50,000.00 as civil indemnity, P50,000.00 as moral damages and P25,000.00 as exemplary damages and costs of the suit.

With the findings of guilt on Ricardo Solangon and the imposition of sentence upon him, the "Motion for Reconsideration" filed by him, thru Public Attorney's Office which seeks to reconsider the Order of this Court dated June 17, 2004 denying his release on recognizance is hereby DENIED for being moot and academic.

Since Ricardo Solangon has been classified or recognized as political offender under the Oslo Agreement entered into between the Negotiating Panel of the Government of the Republic of the Philippines (GNP) and the Negotiating Panel of the National Democratic Front of the Philippines (NDFP), the Court opines that the executive branch of the government that should now grant him a pardon or executive clemency in compliance with its commitment toward Peace Progress.

In view of the imposition of the death penalty upon Ricardo Solangon @ Ka Ramil, let the original folio of this case, together with the evidence, oral and documentary, be forthwith elevated to the Honorable Supreme Court for automatic review.

SO ORDERED.[5]

Appellant appealed to the Court of Appeals contending that, granting arguendo that he participated in the abduction of Libertador, such act will not constitute the crime of kidnapping because it is absorbed in the crime of rebellion penalized under Article 134 of the Revised Penal Code. He alleged that the skeletal remains were not properly identified as Libertador's for failure of the prosecution to subject the skeletal remains to DNA or dental analysis. He also alleged that his confession could not be used against him as it was made during custodial

investigation and under duress.

The Court of Appeals affirmed the Decision of the trial court that appellant committed the complex crime of kidnapping for ransom with murder with the modification that appellant could not be considered a political offender.[6] The appellate court held that the kidnapping of Libertador, a mere mayoralty candidate, without evidence to indicate public uprising or taking arms against the government, and without any evidence of removing allegiance therefrom, does not constitute rebellion. It found that the kidnapping was done for the purpose of coercing the victim and his relatives to pay campaign money. It also noted that the acts of killing and burying the victim were incidental and could have been used only as means to compel the payment of the ransom money and to avoid the discovery of the crime. The appellate court likewise held that DNA examination was no longer necessary as the relatives of the victim had identified the same as Libertador's; and that appellant's act of voluntarily leading the police in retrieving the victim's body was not a confession but a strong indicium of guilt.

Hence, this petition.

The abduction and killing of Libertador happened on March 26, 1992 or prior to the date of effectivity of Republic Act (R.A.) No. 7659 or The Death Penalty Law on December 31, 1993. As held in *People v. Ramos*:[7]

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. (Emphasis supplied)

Thus, the applicable rule when the abduction and killing happened before December 31, 1993, as in the present case, is:

a)

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 kidnapping of the victim was a necessary means of committing the murder.

b)

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.

The trial court found that "the kidnapping was committed for the purpose of extorting ransom from the victim." [8] Similarly, the Court of Appeals noted that the obvious purpose of Libertador's abduction "was to coerce him to pay campaign money" [9] and that "the acts of killing and burying him were incidental and could have been used only as a means absolutely to compel the payment of the ransom money, and to avoid the discovery of the crime." [10] However, both courts found that the crime committed was the complex crime of kidnapping with murder.

We do not agree. We find that two separate crimes of kidnapping for ransom and murder were committed.

The present case falls under paragraph (b) of the foregoing rule that 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.

In the instant case, the records clearly show the elements of kidnapping, to wit: On March 26, 1992, appellant together with six (6) other armed men abducted Libertador for the purpose of extorting ransom money. They blocked Libertador's convoy and demanded payment of campaign fee. However, when the payment was not forthcoming right away, they hogtied Libertador and brought him to the mountains. On April 4, 1992, Libertador's relatives paid the ransom money of P50,000.00 to appellant's group at Brgy. Kurtingan, Sta. Cruz, Occidental Mindoro, but the latter reneged on its promise to release Libertador and killed him instead.

As regards the crime of murder, it is true that there is no direct evidence of the actual killing of the victim. Nevertheless, direct evidence of the commission of the crime is not the only matrix whereby the trial court may draw its conclusions and findings of guilt. It is settled that conviction may be based on circumstantial evidence provided that the following requisites must concur: (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. Circumstantial evidence is of a nature identically the same with direct evidence. It is equally direct evidence of minor facts of such a nature that the mind is led intuitively or by a conscious process of reasoning to the conviction that from them some other fact may be inferred. No greater degree of certainty is required when the evidence is circumstantial than when it is direct. In either case, what is required is that there be proof beyond reasonable doubt that the crime was committed and that the accused committed the crime.[11]

The evidence is replete with details to prove that appellant and his at-large co-accused were responsible for the abduction and death of the victim. These are:

a)

On March 26, 1992, appellant together with six (6) other armed men, introducing themselves to be members of the New People's Army (NPA), blocked the convoy of the victim and demanded payment of a campaign fee of P50,000.00;

b)

When the amount was not produced right away, they hogtied the victim with a nylon rope and brought him to the mountains;

c)

Despite payment of the ransom money, the victim was not released and was never seen alive again;

d)

After his arrest, appellant disclosed to the authorities the place where they buried the victim at Brgy. Balao, Abra de Ilog, Occidental Mindoro, and thereat they recovered the skeleton of Libertador from a shallow grave; and

e)

The victim's relatives were certain that the remains belonged to Libertador.

While the combination of said circumstances is insufficient to establish the qualifying circumstance of treachery, considering the absence of eyewitness to the actual killing of the victim; however, it is enough to sustain the guilt of appellant for the crime of murder qualified by abuse of superior strength, which was alleged in the information and proved during trial. This qualifying circumstance is present where there is proof of gross physical disparity

between the protagonists or when the force used by the assailant is out of proportion to the means available to the victim.[12]

In the case at bar, there was superiority not only in strength but in number as well. The lone victim was unarmed and was hogtied by seven (7) armed men who demonstrably abused their excessive force which was out of proportion to the defenses available to the deceased.

Evident premeditation cannot be considered in the instant case. The careful selection of an ideal site wherein to block the convoy of vehicles may have been premeditated so that the kidnapping of the victim would be carried out successfully; but the same cannot be said as regards the killing. It is not enough that evident premeditation is suspected or surmised, but criminal intent must be evidenced by notorious outward acts evincing determination to commit the crime. In order to be considered an aggravation of the offense, the circumstance must not merely be “premeditation”; it must be “evident premeditation.”

The penalty for kidnapping for the purpose of extorting ransom from the victim or any other person under Article 267 of the Revised Penal Code is death. However, the imposition of the death penalty has been prohibited in view of the passage of R.A. No. 9346, An Act Prohibiting the Imposition of the Death Penalty in the Philippines. Thus, in lieu thereof, the penalty of reclusion perpetua should be imposed on appellant, without eligibility for parole.[13]

On the other hand, as the crime was committed prior to the amendment of Article 248 of the Revised Penal Code by R.A. No. 7659, the appropriate penalty for Murder is reclusion temporal in its maximum period, to death. Under Article 64 (1) of the Revised Penal Code, in cases in which the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, and there are neither aggravating nor mitigating circumstances that attended the commission of the crime, the penalty prescribed by law in its medium period shall be imposed, which in this case is reclusion perpetua. The Indeterminate Sentence Law is not applicable when the penalty actually imposed is reclusion perpetua.

Actual damages may be awarded representing the amount of ransom paid. In *People v. Morales*[14] and *People v. Ejandra*,[15] the Court awarded actual damages representing the amounts of the ransom paid. In the instant case, the heirs of the victim are entitled to the award of P50,000.00 as actual damages, which is equivalent to the amount of the ransom paid. The heirs of the victim are also entitled to civil indemnity in the amount of P50,000.00. In *People v. Yambot*,[16] the Court awarded civil indemnity of P50,000.00 after finding the accused guilty of the crime of kidnapping for ransom aside from ordering the return of the amount of the ransom. In addition, the heirs of the victim are also entitled to an award of moral damages in the amount of P50,000.00. In *People v. Baldogo*[17] and *People v. Garcia*,[18] the Court affirmed the awards of moral damages in the amounts of P100,000.00 and P200,000.00, respectively, predicated on the fact that the victims suffered serious anxiety and fright when they were kidnapped.

Thus, for the crime of kidnapping for ransom, appellant is sentenced to suffer the penalty of reclusion perpetua without eligibility for parole pursuant to R.A. No. 9346 and to pay the heirs of Libertador Vidal the amounts of P50,000.00 as actual damages, P50,000.00 as civil indemnity, and P50,000.00 as moral damages; and for the crime of murder, appellant is sentenced to suffer the penalty of reclusion perpetua and to pay the heirs of the victim the amounts of P50,000.00 as civil indemnity and P50,000.00 as moral damages in line with prevailing jurisprudence.[19]

WHEREFORE, in view of the foregoing, the Decision of the Court of Appeals which affirmed with modification the Decision of the Regional Trial Court of Mamburao, Occidental Mindoro, Branch 44, finding appellant guilty of the complex crime of kidnapping with murder is MODIFIED. Appellant Ricardo Solangon is hereby found

GUILTY beyond reasonable doubt of two separate crimes of kidnapping for ransom and murder.

For the crime of kidnapping for ransom, appellant is sentenced to suffer the penalty of reclusion perpetua without eligibility for parole pursuant to R.A. No. 9346 and to pay the heirs of Libertador Vidal the amounts of P50,000.00 as actual damages, P50,000.00 as civil indemnity, and P50,000.00 as moral damages.

For the crime of murder, appellant is sentenced to suffer the indeterminate penalty of reclusion perpetua and to pay the heirs of the victim the amounts of P50,000.00 as civil indemnity and P50,000.00 as moral damages.

SO ORDERED.

Puno, C.J., Quisumbing, Carpio, Austria-Martinez, Corona, Carpio-Morales, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Nachura, and Reyes, JJ., concur.

Sandoval-Gutierrez, J., on official leave.

[1] Also referred to as Rolando Solangon in other parts of the records.

[2] Records, p. 12.

[3] Id. at 26.

[4] Rollo, pp. 3-5.

[5] Records, pp. 237-238; penned by Judge Inocencio M. Jaurigue.

[6] Penned by Associate Justice Magdangal M. de Leon and concurred in by Associate Justices Conrado M. Vasquez, Jr. and Mariano C. del Castillo; rollo, pp. 2-17.

[7] G.R. No. 118570, October 12, 1998, 297 SCRA 618, 640-641.

[8] CA rollo, p. 20.

[9] Rollo, p. 8.

[10] Id. at 8-9.

[11] *People v. Oliva*, 402 Phil. 482, 493-494 (2001).

[12] *People v. Ponce*, 395 Phil. 563, 575 (2000).

[13] See *People v. Tubongbanua*, G.R. No. 171271, August 31, 2006.

[14] G.R. No. 148518, April 15, 2004, 427 SCRA 765, 789.

[15] G.R. No. 134203, May 27, 2004, 429 SCRA 364, 383.

[16] 397 Phil. 23, 28 & 47 (2000).

[17] 444 Phil. 35, 66 (2003).

[18] 424 Phil. 158, 194 (2002).

[19] *Marzonía v. People*, G.R. No. 153794, June 26, 2006, 492 SCRA 629, 637.

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