

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ELMER DE LA CRUZ AND TRANQUILINO MARTINEZ, APPELLANTS.*G.R. No. 173308. June 25, 2008*

Ponente: CORONA, J.

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For review is the November 2, 2005 decision[1] of the Court of Appeals (CA) in CA-G.R. HC-CR No. 00947 affirming with modification the November 18, 2002 decision[2] of the Regional Trial Court (RTC) of Quezon City, Branch 89 in Criminal Case No. Q-99-80669 finding the accused-appellants Elmer de la Cruz (De la Cruz) and Tranquilino Martinez (Martinez) guilty of the crime of kidnapping for ransom and sentencing them to suffer the penalty of death.

Charged with the crime of kidnapping for ransom were accused-appellants De la Cruz and Martinez, along with three others, namely, Aldrin Tano (Tano), Romeo Dano (Dano) and Rex Tarnate (Tarnate). The information read:

That on or about November 9, 1998 in Quezon City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and feloniously take, carry away and deprive AARON DENNIS ONG Y RODRIGUEZ, a minor of eight (8) years old, of his liberty against his will for purposes of extorting money as in fact a demand for money was made as a condition for his release.

CONTRARY TO LAW.[3]

On arraignment, only accused-appellant De la Cruz, Tarnate and Tano, assisted by their counsel, appeared. They all entered a plea of not guilty. Accused-appellant Martinez was arrested subsequently and he likewise pleaded not guilty upon his arraignment. Dano, on the other hand, remains at large to the present.

During trial, the RTC received a letter from the Quezon City Jail Warden that accused Tarnate died of cardiac arrest during incarceration.

Thereafter, while in the process of presenting its witnesses, the prosecution filed a motion to discharge accused Tano as a state witness. Accused-appellants De la Cruz and Martinez filed their separate oppositions thereto. The RTC granted the motion and denied the motion for reconsideration.

The prosecution presented six witnesses, namely: the victim Aaron Dennis Ong (Aaron), his father Erwin Ong (Erwin), Delfin Quinano (Quinano), Fortunato Sauquillo (Sauquillo), state witness Tano and Chief Inspector Rolando Anduyan (Anduyan) of the Presidential Anti-Organized Crime Task Force (PAOCTF).

As established during the trial, accused-appellant De la Cruz was employed by Erwin as a family driver. He brought Aaron, then an eight-year-old third-grade student, to and from Claret School.

State witness Tano relayed that on November 4, 1998, he, accused-appellants De la Cruz and Martinez, along with Dano, had a meeting wherein De la Cruz broached the idea of kidnapping Aaron. According to De la Cruz,

the child was a "good catch" as his boss' family had "plenty of money." He knew this because he had accompanied Erwin to the bank thrice. Martinez agreed that it was a good idea to abduct Aaron.

The group discussed the plan to kidnap Aaron on two other occasions. On November 5, 1998, they agreed that Martinez should act as their leader, while De la Cruz would provide the tips. On November 8, 1998, De la Cruz informed them that he would raise the hood of the car he was driving upon his arrival at the Claret School as a signal to put the plan into action.

On November 9, 1998, De la Cruz fetched Aaron from school. As the boy took the car's front passenger seat, De la Cruz placed Aaron's bag at the back seat of the car. De la Cruz told the child that the car was overheating and proceeded to open the hood of the car and the rear compartment. He took a container of water and poured it on the car's engine. Martinez got inside the car and handcuffed Aaron's left wrist. De la Cruz then closed the rear compartment, boarded the car and seated himself behind the driver. He was also handcuffed by Martinez to Aaron.

Tano then went in and seated himself at the right side of the back seat beside De la Cruz and behind Aaron. Martinez then drove the car all the way to Batasan Hills where Dano resided. They fetched Dano who took over control of the car from Martinez. They proceeded to Minuyan, San Jose del Monte, Bulacan, reaching the place at around 8:00-9:00 p.m.

Upon arrival, they removed Aaron's handcuff and entered a vacant house. Martinez and Tano left Aaron with De la Cruz and proceeded to Tarnate's house. Martinez instructed Tarnate to feed the boy. He told the child not to make any noise as somebody was guarding them outside. He left Aaron and De la Cruz who later told the child that he was able to untie himself. Despite the chance to escape, however, he took a nap.

At around 10:00 p.m. that same evening, Martinez, Tano, Dano and Tarnate drove the Ongs' car and went back to Batasan Hills in Quezon City. When the vehicle overheated, they abandoned it and boarded a tricycle to get to their destination.

Erwin, who was by then frantically searching for his son in several hospitals and police stations, received a phone call at around 10:45 p.m. from a man who told him not to look for his son anymore as Aaron was with him. When Erwin asked to speak to his son, the man ignored him and told him to wait for another call.

The following morning, November 10, 1998, Martinez gave Tano a piece of paper with a telephone number. Written there were the words "Maghanda ng tatlong milyon para sa kaligtasan ng anak mo." (Prepare P3 million for your son's safety.) He ordered Tano to call Erwin and relay the written message to him.

Back at the vacant house where Aaron and De la Cruz were being kept, Quinano peeped inside, saw the two and asked them why they were there. De la Cruz responded by asking him to open the door. Quinano, who was with two women (one of them Editha Arizobal, Tarnate's common-law wife), opened the door. When they asked De la Cruz what they were doing inside the vacant house, the latter replied that their car was borrowed for a medical emergency. Aaron, on the other hand, told Quinano that some men took their car and left them there. One of the women suggested that they report the incident to the police. De la Cruz said no and replied that he just wanted to go home.

Quinano then brought the two to the barangay hall and presented them to barangay kagawad Sauquillo who took their statements and entered them in the barangay logbook. This was signed and verified by both Aaron and De la Cruz. Erwin was then informed by phone that his son was already in the custody of the barangay officials in Barangay Minuyan, San Jose del Monte, Bulacan.

When Erwin arrived, the barangay chairman recommended that the incident be reported to the San Jose del Monte, Bulacan Police. They went to the police station to file a complaint and give their statements. They were fetched by PAOCTF personnel and met up with Col. Cesar Mancao at McDonald's Commonwealth Avenue. The latter assigned Chief Inspector Anduyan to investigate the case.

After discussing the events surrounding the incident, Aaron, Erwin, De la Cruz, Anduyan and his team proceeded to San Jose del Monte, Bulacan and interviewed Sauquillo. After learning that Tarnate and Editha Arizobal were in charge of the vacant house where the two had been kept, Anduyan went to Tarnate's house to investigate. Tarnate immediately admitted his participation and revealed information on the identities and whereabouts of the other accused. He named Dano, Tano, and Martinez and led Anduyan's group to Martinez's house in Batasan Hills.

Anduyan and his men proceeded to Batasan Hills and there waited for the other accused. An hour later, a taxicab arrived and the three other accused alighted. As the police team moved to arrest them, Dano and Martinez were able to escape in the confusion and only Tano was arrested. The house was searched and the authorities found Aaron's bag inside. Anduyan spoke with the cab driver who identified the escapees as Dano and Martinez. The police recovered Dano's and Martinez's identification (ID) cards and two guns which were brought to Camp Crame.

When the identification cards were shown to Aaron, he was able to identify Dano and Martinez. Anduyan and his men were able to arrest Martinez later on in connection with another kidnapping case.

The defense presented the testimonies of both accused-appellants. Martinez's defense hinged on denial and alibi. De la Cruz, on the other hand, invoked his innocence.

After trial on the merits, the RTC convicted both accused-appellants of the crime charged. The dispositive portion of the decision[4] read:

WHEREFORE, premises considered, judgment is rendered finding accused Elmer dela Cruz and Tranquilino Martinez guilty of the crime of Kidnapping with Ransom as defined and penalized under paragraph of Art. 267 of the Revised Penal Code. Accordingly, accused Elmer dela Cruz and Tranquilino Martinez are hereby each sentenced to death.

With respect to Rex Tarnate, his conviction cannot be pronounced as the same has been extinguished by his death.

With cost against convicted accused.

The case was forwarded to this Court on automatic review but we referred it to the CA in accordance with *People v. Mateo*. [5] The CA affirmed the RTC decision:

WHEREFORE, premises considered, the Decision of the Regional Trial Court of Quezon City, Branch 89 in Criminal Case No. Q-99-80669 sentencing accused-appellants Elmer dela Cruz and Tranquilino Martinez to DEATH for kidnapping for ransom is AFFIRMED with the MODIFICATION that they shall pay in solidum the amount of twenty five thousand pesos (P25,000.00) as exemplary damages to the victim, Aaron Dennis Ong.

Finding that the penalty of death should be imposed, We thereby CERTIFY the case and elevate the entire record to the Supreme Court for review [6] and final disposition, pursuant to Section 13 (a & b), Rule 124 of the Revised Rules of Court.

SO ORDERED.

We affirm accused-appellants' guilt.

In his brief, Martinez averred that there was no valid warrant for his arrest when he was shot in the back by police officers at the time of his arrest. He recounted that he was merely walking along Roxas Boulevard and was not committing any illegal act at the time, nor did the arresting officers have any knowledge of facts indicating that he had just committed a crime. As such, his arrest without a warrant could not be justified.

We agree with the CA that, even if his arrest was unlawful because of the absence of a valid warrant of arrest, he was deemed to have waived his right to assail the same, as he never bothered to question the legality thereof and, in fact, even voluntarily entered his plea. In *People v. Asis*,^[7] we held that the accused-appellants therein were deemed to have waived their right to assail the legality of their arrest when they voluntarily submitted themselves to the court by entering a plea, instead of filing a motion to quash the information for lack of jurisdiction over their person.

Martinez further argued that the court a quo erred in ruling that he was a co-conspirator in the crime charged as the identification by the minor victim that he was one of the perpetrators of the crime was unreliable and that the testimony of the state witness regarding his complicity in the crime was doubtful. He harped on the fact that Aaron could not have possibly taken a good look at the person he later on identified in open court as Martinez because, by the child's own testimony, the man who handcuffed him was wearing a hat or a sunvisor which he did not remove during the entire duration of the kidnapping incident.

It must be pointed out that this averment goes into the issue of the witness' credibility. Time and again, we have held that the trial court's evaluation of the credibility of a witness is entitled to the highest respect as it had the opportunity to observe the witness' demeanor on the stand and his manner of testifying. Trial court judges are in a unique position to ascertain whether or not a witness is telling the truth. Consequently, unless it is shown that a trial judge overlooked certain facts of substance and value which, if considered, might affect the result of the case, his assessment of credibility must be upheld.^[8]

In this case, we find no reason to overturn the conclusion arrived at by the trial court. It held that Aaron's testimony was credible as he delivered his testimony in a clear, direct and positive manner. He positively identified accused-appellant Martinez twice, from the ID of the accused-appellant shown to him by the police and in open court, as the man who handcuffed him and drove the family car from his school. He also categorically stated that he saw him again in the vacant house where he and De la Cruz were brought.

Moreover, it cannot be said that Aaron could not have possibly taken a good look at the man he identified as Martinez by mere reason of the hat or sunvisor which supposedly effectively concealed the latter's face throughout the whole ordeal. It is natural for persons who find themselves thrust into extraordinary circumstances to remember many of the important details then taking place. The most natural reaction of victims of crimes is to strive to see the features and faces of the perpetrators and observe the manner they commit the crime.^[9] In this case, it must be noted that Aaron had several face-to-face encounters with Martinez: he was the one who first boarded the car; he was the one who handcuffed the child; and he was the one who drove the car and was thus seated beside him until they fetched Dano in Batasan Hills.

Consequently, Martinez's defense of denial and alibi (that he was supposedly with his brother in Barangay Paltik, Dingalan, Aurora Province on November 4, 5, 8 and 9, 1998, managing his fishing boat) must crumble in the face of Aaron's positive and clear identification of him as one of the perpetrators of the crime. Denial and alibi cannot be given greater evidentiary value than the testimonies of credible witnesses who testify on affirmative matters. Positive identification destroys the defense of alibi and renders it impotent, especially where such identification is credible and categorical.^[10]

Besides, for alibi to prevail, the defense must establish by positive, clear and satisfactory proof that it was physically impossible for the accused to have been at the scene of the crime at the time of its commission, and not merely that the accused was then somewhere else.[11] In the instant case, Martinez failed to show that it was physically impossible for him to have been at the scene of the crime. He could have easily traveled from Aurora Province (located in Central Luzon) to Manila by land. It would have taken him only a few hours to reach Manila. Thus, there was no physical impossibility for him to have been present at the scene of the crime when it was committed.

Furthermore, Martinez's contention (that his right to produce evidence and witnesses on his behalf was violated when the trial court refused to grant his request to present corroborative witnesses to support his alibi) is untenable. The denial of said request did not result in manifest injustice to Martinez for no amount of corroborative evidence could alter and reverse the categorical and positive testimony of the minor pointing to him as one of his kidnappers. Due process of law is not denied by the exclusion of irrelevant, immaterial or incompetent evidence, or the testimony of an incompetent witness. Due process is satisfied when the parties are afforded a fair and reasonable opportunity to explain their respective sides of the controversy.[12] In this case, there is no showing of violation of due process which justifies the reversal of the trial court's findings.

For his part, De la Cruz questioned the trial court's act of discharging accused Tano as a state witness on two points: Tano did not appear to be the least guilty among the accused and his testimony was not necessary.

For an accused to be discharged as a state witness, the following conditions must be present:

When two or more persons are jointly charged with the commission of any offense, upon motion of the prosecution before resting its case, the court may direct one or more of the accused to be discharged with their consent so that they may be witnesses for the state when, after requiring the prosecution to present evidence and the sworn statement of each proposed state witness at a hearing in support of the discharge, the court is satisfied that:

a.

There is absolute necessity for the testimony of the accused whose discharge is requested;

b.

There is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of said accused;

c.

The testimony of said accused can be substantially corroborated in its material points;

d.

Said accused does not appear to be the most guilty; and,

e.

Said accused has not at any time been convicted of any offense involving moral turpitude.[13]

x x x

The provision does not require that a state witness should appear to be the "least guilty" among the accused. Rather, it provides that he "does not appear to be the most guilty." The findings of the lower court revealed that Tano merely facilitated the commission of the crime. He merely boarded the car and sat beside accused-appellant

De la Cruz throughout the whole ride and accompanied accused-appellant Martinez in going back to Batasan Hills after leaving Aaron and accused-appellant De la Cruz in Bulacan. True, he was the one who placed the call to Erwin to demand ransom. However, he was neither the mastermind nor the one who hatched the plan to kidnap Aaron in exchange for money. Clearly, he did not appear to be the most guilty among the accused. Thus, we uphold the propriety of the trial court's designation of Tano as state witness.

Moreover, his testimony was absolutely necessary as it was the only direct evidence establishing the presence of conspiracy,[14] from the planning stage up to the commission of the crime.

On the issue of conspiracy, we hold that the prosecution sufficiently established it. There is conspiracy when two or more persons agree to commit a felony and decide to commit it. It need not be proven by direct evidence, for it may be inferred from the conduct of the accused before, during and after the commission of the crime, showing that they acted with common purpose and design.[15]

The prosecution was able to present direct evidence of the conspiracy (by state witness Tano) and to show that the conduct of all the accused overwhelmingly pointed to the unanimity in design, intent and execution of the crime against the victim. Each of them performed specific acts according to place and in close coordination with one another, unmistakably indicating a common purpose to bring about Aaron's abduction in exchange for money.

As to whether or not De la Cruz was a co-conspirator of the other accused, the records show that he was undoubtedly part of the planned abduction. When the abduction commenced, De la Cruz even had the presence of mind to close the rear compartment of the car even after seeing his ward being handcuffed. There was an opportunity for him to escape since it was not shown that he was forced to board the car against his will. It was therefore beyond comprehension, to say the least, why he did not even try to run away from the scene. He clearly boarded the car on his own free will and allowed his co-accused Martinez to handcuff him.

Moreover, De la Cruz again showed no intention of escaping despite another chance to do so after untying himself. Considering the critical situation they were in, he even decided to catch some sleep as if it was the most natural thing to do under such circumstances.

Equally confounding was the fact that all the other accused left them in the vacant house and went back to Batasan Hills without leaving anyone to stand guard over them.

Furthermore, De la Cruz even tried to cover up for the abductors by telling the witness Quinano and his companions that their car was used for an "emergency" when the latter asked what they were doing inside the vacant house. And when one of the women suggested that the crime be reported to the police, De la Cruz suspiciously brushed off the suggestion and replied, "Huwag na," because he would rather "go home." All told, these were not actuations of an innocent person victimized by a kidnap-for-ransom gang. The circumstances indubitably pointed to the fact that he was one of the authors of the crime.

While this Court affirms the finding of guilt of accused-appellants, it can no longer impose the penalty of death in view of RA 9346.[16] Section 2 of RA 9346 mandates that, in lieu of the death penalty, reclusion perpetua without eligibility for parole should instead be imposed.

In line with prevailing jurisprudence, the award of P50,000 civil indemnity[17] was proper. Pursuant to *People v. Garalde*,[18] P200,000 for moral damages is awarded to Aaron considering his minority.[19] Moreover, since the crime was attended by a demand for ransom, and by way of example or correction, Aaron is entitled to P100,000 exemplary damages.[20]

WHEREFORE, the decision of the Court of Appeals in CA-G.R. HC-CR No. 00947 is hereby **AFFIRMED WITH**

MODIFICATIONS. Elmer De la Cruz and Tranquilino Martinez are found guilty beyond reasonable doubt of kidnapping for ransom. They are sentenced to reclusion perpetua with no possibility of parole and ordered to pay, jointly and severally, P50,000 civil indemnity, P200,000 moral damages and P100,000 exemplary damages to the minor victim, Aaron Dennis Ong.

Costs against appellants.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Reyes, Leonardo-De Castro, and Brion, JJ., concur.

Austria-Martinez, Carpio-Morales, and Nachura, JJ., on official leave.

[1] Penned by Associate Justice Mariflor P. Punzalan Castillo and concurred in by Associate Justices Elvi John S. Asuncion (dismissed from the service) and Noel G. Tijam of the Fifteenth Division of the Court of Appeals. Rollo, pp. 3-26.

[2] Penned by Judge Elsa I. de Guzman. CA rollo, pp. 95-111.

[3] Id., p. 7.

[4] CA rollo, p. 111.

[5] G.R. Nos. 147678-87, 7 July 2004, 433 SCRA 640.

[6] Section 13 (a), Rule 124 as amended by A.M. No. 00-5-03-SC.

[7] 439 Phil 707, 720 (2002), citing *People v. Bongalon*, 425 Phil 96, 119-120 (2002); *People v. Whisenhunt*, 420 Phil 677, 698 (2001); *People v. Castillon III*, 439 Phil 92, 103 (2001); and *People v. Del Mundo*, 418 Phil 740, 756 (2001).

[8] *People v. Castillon III*, supra.

[9] *People v. Martinez*, 469 Phil 558, 570 (2004).

[10] *People v. Delim, et al.*, G.R. No. 175942, 13 September 2007.

[11] *People v. Tumulak*, G.R. No. 177299, 28 November 2007.

[12] *People v. Larranaga*, 466 Phil 324, 373-374 (2004).

[13] RULES OF COURT, Rule 119, Sec. 17.

[14] *People v. Martinez*, supra note 9, at 574.

[15] *People v. Barcenal*, G.R. No. 175925, 17 August 2007, 530 SCRA 706, 726.

[16] Entitled "An Act Prohibiting the Imposition of the Death Penalty in the Philippines."

[17] See *People v. Solangon*, G.R. No. 172693, 21 November 2007; *People v. Yambot*, 397 Phil. 23, (2000).

[18] G.R. No. 173055, 13 April 2007.

[19] See also *People v. Solangon*, supra; *People v. Baldogo*, 444 Phil. 35, 66 (2003); *People v. Garcia*, 424 Phil. 158, 194 (2002).

[20] Id.

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