

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
AKMAD MARONG AND ABDURAJIK NADUWA, DEFENDANTS WHOSE
DEATH SENTENCES ARE UNDER REVIEW.**

G.R. No. 56858. December 27, 1982

Ponente: AQUINO, J.

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AQUINO, J.:

This is a case of kidnapping for ransom. At about nine o'clock in the evening of July 7, 1979, seven rebels or terrorists, members of the Moro National Liberation Front, armed with high-powered firearms and using two pumpboats, stealthily boarded the MV Minerva I, a fishing boat anchored at the shore-line between Sitios Kalang Salamat and Sitio Bojelebong, municipality of Tipo-Tipo, Basilan.

The rebels at gunpoint took into custody Benjamin de la Rosa, the captain of the fishing boat or launch, and two security guards, Abdurasul Mannan, 20, and Teddy P. Tarabasal (Amaikaidal Pawaki), 21, who were asleep, and took them to the two pumpboats. The captives were brought by the rebels to Sitio Bucalao, Tipo-Tipo and delivered to Palsarip (Far Sharif), the rebel zone commander in that place.

They were detained in a hut or camarin for thirteen days or until the evening of July 20, 1979, when a ransom of twenty thousand pesos paid by Hadji Wahab Jalani was delivered to Palsarip who thereupon released the three kidnapped victims to Hadji Salam Balamo, one of the negotiators. Balamo took the captives to Sitio Banah, Tipo-Tipo where they were set free.

The fishing boat was operated by Hadji Jalani, an affluent businessman from Sitio Banah who functioned as the overall commander of the special para-military force and the Integrated Civil Home Defense Force in that locality. He had hired Mannan and Tarabasal, members of the special para-military force, to guard the fishing boat. On July 6, 1979 or one day before the kidnapping, the two guards were ferried from Sitio Banah to the fishing boat by Abdurajik Naduwa, 26, a resident of Sitio Kalang Salamat and an operator of a pumpboat who was employed by Hadji Jalani.

Naduwa is the nephew of Akmad Marong, 32, a fisherman residing at Sitio Kalang Salamat, a former MNLF member, who was the commander of the Integrated Civil Home Defense Force in that island.

In the morning of July 8, 1979 (about twelve hours after the kidnapping) both ICHDF commanders Hadji Jalani and Marong conferred with Lieutenant Conrado V. Bermudez, the commander of C company of the 41st Infantry Battalion stationed at Sitio Bojelebong presumably about the kidnapping (Exh. F).

The seven terrorists were identified as Utoh Yakan, Talakawa Yakan, Gamal Abirin, Saad Abirin, Muctar Eladji, Aladdin Moro and Condah alias Commander Fernandez. They guarded the kidnapped victims during the thirteen-day period of their captivity in Sitio Bucalao.

On October 2, 1979, the provincial fiscal filed against Marong and Naduwa and the eight rebels (including Palsarip) an information for kidnapping for ransom. Only Marong and Naduwa were arrested and tried.

Question: Did Marong, with his nephew Naduwa's assistance, mastermind the kidnapping for ransom?

The prosecution contends that Marong and Naduwa conspired with Palsarip and the seven terrorists to perpetrate the kidnapping for ransom. Conrado D. Francisco, 34, a sergeant in the police force of Isabela, Basilan (not Tipo-Tipo where the crime was committed) was the architect of the case for the prosecution. He was deputized by the fiscal to investigate the case. On September 1 and 3, 1979 or more than fifty days after the incident, he secured the affidavits of Barahim Halim and the two guards, Mannan and Tarabasal, linking Marong and Naduwa to the kidnapping (Exh. A to D).

Note that Lieutenant Bermudez who also investigated the case and got the verbal statements of the kidnapped victims soon after they were released, did not implicate Marong and Naduwa.

Mannan and Tarabasal declared in their affidavits and testimonies that in the afternoon of July 6, 1979 while they were riding in Naduwa's pumpboat from Sitio Banah, the boat anchored at Kalang Salamat. Naduwa landed and went to his house near the beach.

On that occasion, Marong and three rebels named Gamal Abirin, Muctar (a close relative of Naduwa) and Hadjan Yakan emerged from Naduwa's house. When the two guards pointed their rifles at the three rebels, Marong allegedly told them not to harm the three terrorists because they were under "surrender negotiation".

To show that Marong and Naduwa conspired with the seven rebels, the prosecution presented as witness Halim, 36, a resident of Banah and a conductor in the jeepney owned by Hadji Jalani's grandson.

Halim declared in his affidavit (Exh. A) and testimony that in the evening of July 7, 1979 he decided to fish for squid in the waters near Kalang Salamat which is about a kilometer away from Banah. He rode in his vinta and reached Kalang Salamat at about seven-thirty. He walked to Marong's house which was made of bamboo and nipa. He intended to secure Marong's permission to fish in the waters of Kalang Salamat.

On nearing the house, he noticed that there were many persons inside it. Instead of entering the door, he allegedly peeped through the wall and, by some unusual coincidence, it was at that very moment when he heard Marong directing the seven rebels already named to board two pumpboats, kidnap the captain on the fishing boat and kill the two security guards and then proceed to Sitio Bucalao where Palsarip was waiting (16 tsn). Naduwa was present at that conference.

After hearing that directive, Halim left the place, boarded his vinta, proceeded to Sitio Magbe and slept in his cousin's house in that place. He could not return to Banah because it was curfew time already.

The two security guards also testified that on July 8, 1979 or at noontime of the day following the kidnapping, Marong and Naduwa appeared at Sitio Bucalao. Marong gave money to Palsarip who complimented him on the success of the kidnapping. Marong promised to return to bring the ransom money. That meeting between Marong and Palsarip took place within the sight and hearing of the two security guards and De la Rosa.

The two guards also testified that it was Marong who in the evening of July 20, 1979 gave the ransom money to Palsarip. As a result, the captives were released and delivered to Hadji Balamo.

Marong, 34, testified that in the evening of July 7, 1979, he was fishing. At that time, no pumpboat docked at Kalang Salamat. He said that the testimonies of Mannan, Tarabasal and Halim were not true. He admitted that on July 8, 1979 he and Naduwa went to Sitio Banah but he did so in the company of some teachers and children. Then, he went to see Captain Bermudez at Bojelebong where he learned that De la Rosa and the two guards were kidnapped. He admitted that he is acquainted with Palsarip.

He did not know why Mannan and Tarabasal testified against him. He had a misunderstanding with Hadji Jalani

regarding a fish corral but the trouble was patched up. He said that Halim was a minion (bataan) of Hadji Jalani.

Abdurahman Balintin, a fisherman, rebutted the testimony that Marong had intervened in collecting the ransom money by declaring that the twenty thousand pesos were given to him (Balintin) and that he, together with Hadjis Salami, Gapur, and Balamo and two persons named Atti and Pawaki delivered that amount to Palsarip, and then Balintin delivered to Hadji Jalani the kidnapped victims.

Accused Naduwa, 27, admitted that he was hired by Hadji Jalani on July 5, 1979 to take the two security guards to the fishing boat. The next morning he brought the two guards to Banah and in the afternoon he took them to the boat.

He testified that on July 7, 1979 he did not go to the fishing boat because he was on guard duty in the tower near Marong's house. He denied having gone to Bucalao with Marong to talk with Palsarip. He explained that he was implicated in the case because he was Marong's nephew.

Judge Jainal D. Rasul rejected the alibis and denials of Marong and Naduwa and gave credence to the testimonies of Halim, Mannan, Tarabasal and Sergeant Francisco. He convicted Marong and Naduwa of kidnapping for ransom and sentenced them to death. No civil liability was imposed. The case was elevated to this Court for review of the death penalty.

Counsel de oficio contends that the trial court erred in relying on Halim's testimony, in disregarding the alibis of Marong and Naduwa, in not taking into account the alleged suspicious circumstances surrounding the investigation and prosecution of the case and in not acquitting the two accused on the ground of reasonable doubt.

Our study of the record* convinces us that the judgment of conviction cannot be sustained. The following gaps, deficiencies and improbabilities in the evidence of the prosecution engender reasonable doubt as to the guilt of Marong and Naduwa:

1. Halim's version is that at the moment when he allegedly peeped inside Marong's humble abode (made of nipa and woven bamboo as walls, as described by Halim in his affidavit) he heard Marong saying: "We are going to board on two pumpboats and proceed to the Minerva I (Jalani's fishing boat) and get the captain of the boat and kill his security guards, Abdurasul Mannan and Teddy Tarabasal and then proceed to Bucalao because Palsarip is waiting there." (This version is different from what Halim stated in his affidavit, Exhibit A).

That incriminatory directive was the only matter covered by Halim's testimony on direct examination. He left immediately after hearing those words. To a seasoned trial lawyer, that testimony instantly evokes incredulity because of its improbability. It appears to be a concocted story.

It is just too much of a coincidence that at the precise moment when Halim went near Marong's house Halim chanced to eavesdrop on Marong's alleged utterance regarding the kidnapping. Halim's story is not credible because it does not accord with the common experience of mankind. Marong's small house (Exh. 2) could not have accommodated seven rebels in addition to Marong and Naduwa, not to mention Marong's wife and children. Halim's approach to Marong's house and his alleged act of peeping through the wall could not have passed unnoticed by the persons inside the house. They would have sensed his presence immediately considering his close propinquity to them.

Another circumstance rendering Halim's version improbable is that the kidnapping, as actually executed, was not in conformity with Marong's alleged instruction to the seven terrorists. Marong and Naduwa did not go with the rebels, although it was assumed in his directive that he and Naduwa would accompany the terrorists. Moreover, contrary to Marong's alleged instruction, the two security guards were not killed.

2. The prosecution's version that Marong recklessly threw all caution to the winds when he talked twice with Palsarip in the presence of the three kidnapped victims is likewise not quite believable. No sensible man perpetrating a grave offense would overexpose himself as Marong did in this case, if the prosecution's version is to be believed. Marong would have known that after the three kidnapped victims had been set free they would surely testify against him and, therefore, it would be suicidal for him to deliver the ransom money in the presence of the three victims.

3. Hadji Jalani, the owner of the fishing boat and the payor of the ransom money, and De la Rosa, the captain of the boat, should have testified on the alleged participation of Marong in the kidnapping. They did not testify. Their nonavailability as witnesses was not explained by the prosecution.

The possibility that Marong, who as ICHDF commander was on the government's side, confabulated with the rebels, cannot be ruled out but the evidence that he actually did so in this case is not convincing and trustworthy.

WHEREFORE, the trial court's judgment of conviction is set aside. The two accused are acquitted on the ground that the prosecution's evidence is insufficient to prove their guilt. Costs de officio.

SO ORDERED.

Fernando, C.J., Makasiar, Guerrero, Abad Santos, De Castro, Melencio-Herrera, Plana, Escolin, Vasquez, Relova, and Gutierrez, Jr., JJ., concur.

Teehankee and Concepcion, Jr., JJ., no part.

* The Assistant Solicitor General's brief contains a counter-statement of facts which makes no references to the pages of the record, as required in section 17(a), Rule 46, in relation to section 7, Rule 124 of the Rules of Court. That is a deviation from the practice of the Solicitor General's Office. That deviation cannot be tolerated.

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