

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GLICERIO MASILANG AND TEODORO A. ZAMORA, ACCUSED-APPELLANTS.

G.R. No. 64699. July 11, 1986

Ponente: PARAS, J.

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PARAS, J.:

This involves the automatic review of the decision dated February 22, 1983 of the Regional Trial Court, Branch LIX, Lucena City in criminal case CCC-IX-87-Quezon '77 finding herein accused-appellants Glicerio Masilang and Tedoro Zamora guilty beyond reasonable doubt of the crime of murder defined and punished under Article 248 of the Revised Penal Code with the qualifying circumstance of treachery and the generic aggravating circumstances of evident premeditation, craft, and the use of motor vehicle without any mitigating circumstance to offset the same and sentencing both of them to suffer the penalty of death. (p. 54, rec.)

The Solicitor General, counsel for appellee, has aptly presented the facts thus:

"As early as February, 1975, appellants Glicerio Masilang and Teodoro Zamora had planned to kidnap Vivencio Cadiz, kill him, bury his body at Dalahican Beach in Lucena City, and demand money from his parents, (Exhibit "BBB", Sworn Statement of accused Glicerio Masilang).

"On April 22, 1975, while Vivencio Cadiz was driving his Mitsubishi jeep inside the city limits of Lucena City on his way home to Sariaya, Quezon Province, he was stopped by Masilang and Zamora in front of a gasoline station at General Lucban Street, Lucena City. The two men requested Cadiz for a ride. The latter consented and, there-after, Zamora requested him (Cadiz) to bring them to Bo. Calumpang, Tayabas, where he (Zamora) was going to visit a girlfriend. (id.).

"Upon reaching an uninhabited place in Bo. Calumpang, Zamora asked Cadiz to stop the jeep allegedly to urinate. When Zamora boarded the jeep again, Magsilang, who was seated at the back of Cadiz, took a wire with loops on both ends and strangled Cadiz with it from behind until the latter was rendered unconscious. Thereafter, appellants took control of the jeep and drove to Bo. Malupac, Lucban, Quezon, where they dumped the body of Vivencio in a ravine beside the highway and covered it with debris and other materials after divesting their victim of his wrist watch and wallet. (id.)

"Masilang and Zamora then returned to Lucena City. After leaving the victim's jeep in Brgy. Gulang-Gulang, the two men boarded a passenger jeep to Lucena City. They went to the house of one Divina Eleazar, girlfriend of Zamora, and stayed there for a few minutes. Later, the pair proceeded to the house of Masi-lang at Sariaya, Quezon, where the latter prepared a ransom note in the vernacular consisting of two pages. The first part of the note was typewritten while the latter portion was handwritten (Exh. "A").

"On April 23, 1975, at about 4:00 o'clock in the morning, the pair proceeded to the residence of Dr. Leoncio Cadiz, father of Vivencio, and left inside the front lawn of the house the wallet of the victim with the ransom note inside demanding P12,000.00 from him, in exchange for his son, to be delivered at the Sampaloc Lake in San Pablo City the following day, April 24, sometime after seven in the evening. (id.)

"Dr. Cadiz also found inside the wallet the key of the jeep which his son was driving the day before he was

missed at their home in Sariaya, Quezon (Exh. "A-2"). The note informed Dr. Cadiz that his son's jeep could be recovered in Brgy. Gulang-Gulang, Lucena City. The jeep was found at the site indicated in the note. Found inside the jeep was the partial denture of Vivencio (Exh. "Q") (tsn pp. 10-17, 30-31, 43-45, Jan. 9, 1978).

"Dr. Cadiz discreetly consulted with the constabulary and NBI agents in Lucena City about the ransom note. He also withdrew the amount of P12,000.00 from his account with the Domestic Savings Bank in Lucena City. The serial numbers of the bills were recorded and certified by the bank manager (Exhibits "B" and "C"). As instructed, Dr. Cadiz, on the evening of April 24, brought the money to San Pablo City but it was not delivered for want of a pre-arranged signal. (tsn., pp. 45-48, 55-70, 76-80, Jan. 9, 1978).

"Two days later, on April 25, a second ransom note was received by Dr. Cadiz instructing him to place the money at the foot of the Sadyaya Bridge in Sariaya, Quezon, between 8:00 to 8:30 o'clock on the evening of said date. This time, appellants succeeded in getting the money without being recognized, despite the presence of lawmen in the place. The two men divided the money equally between them (tsn., pp. 90-92, Jan. 9, 1978; pp. 46-59, 63-64, Mar. 1, 1983; Exhibit "BBB", supra).

"From the time the first ransom note was received up to the time the dead body of Vivencio Cadiz was recovered, the agents of the National Bureau of Investigation, as well as the members of the operation and investigation section of the Philippine Constabulary, have been working around the clock searching for leads. (tsn., pp. 52-53, Nov. 6, 1978).

"Meanwhile, Sgt. Alfredo Rodil of the Lucena Police Force was able to trace the wrist watch of the deceased Vivencio Cadiz (Exhibit "M") to a certain Rogelio Aniceto who said he bought it from the "Ang Hiyas" store in Lucena City, owned by one Angelino Angeles. When questioned, Angeles pointed to appellant Zamora as the person who sold it to him. Zamora admitted having sold the watch to Angeles but claimed it was given to him by a certain "Obet" from Red-V, Lucena City. Zamora, however, could not point to the person of "Obet". On May 14, 1975, Zamora executed a statement, Exhibit "H" (tsn., pp. 80-86, 93-95, 124-128, March 1, 1978).

"Assigned to the case was Mr. Segundo Tabayoyong, an NBI expert on questioned documents. He arrived in Lucena City on May 28, 1979. It was on that day that a third note from the kidnappers addressed to Lt. Joseph Malilay, an intelligence and operations officer of the Philippine Constabulary, with station at Camp Guillermo Nakar in Lucena City (Exhibit "S") was received by the latter (tsn., pp 65-74, Nov. 6, 1978). It was this Malilay letter which provided Tabayoyong with his "one-in-a-million" lead which led to the identification of the author of the ransom notes, the discovery of the body of the victim, and, finally the confession of the culprits." (p.167, rec.)

Thus, on September 23, 1977, the Actg. City Fiscal of Lucena City, filed information charging accused?appellants with kidnapping for ransom with murder. The information reads as follows:

"That on or about the 23rd day of April, 1975, in the City of Lucena Capital of the Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, said accused, being then private individuals, conspiring and confederating together, with malice aforethought and the deliberate intent to kidnap or in any other manner deprive Vivencio Cadiz of his liberty, did then and there willfully, unlawfully and feloniously kidnap or deprive said Vivencio Cadiz of his liberty for the purpose of demanding or extorting ransom from his parents by then and there forcibly taking the victim by means of a motor vehicle to a far away and secluded place in order to better secure the consent of the victim through fear to pay the ransom, and with certain sense or (sic) impunity and certainty that Vivencio Cadiz, who was then their friend and acquaintance, may not later testify against them and that no other person may witness the commission of the offense, the said accused, conspiring and confederating together, with malice aforethought and with the deliberate intent to take the life of Vivencio Cadiz, willfully, unlawfully, feloniously and treacherously attack the latter with deadly weapon when enfeebled and unable to defend himself thereby causing the direct and immediate death of said Vivencio Cadiz, and in furtherance of the plan to demand and extort money, the accused under false and fraudulent

representations which they made to the parents of Vivencio Cadiz, to wit: Leone Cadiz and Guadalupe A. Cadiz to the effect that they would release their son if they would deliver to them the amount of P12,000.00 in exchange of the liberty of their son, and by means of which representations the aforementioned victims gave and delivered the said amount of P12,000.00 at a place indicated by the accused, which accused willfully, unlawfully and feloniously used to their own personal benefit.

"All contrary to law, with the generic circumstances of abuse of confidence, known premeditation, nighttime and use of a motor vehicle." (p. 17, rec.)

Accused Masilang pleaded not guilty to the charge on November 10, 1977. Accused Zamora also pleaded not guilty to the charge on December 1, 1977. (p. 139, rec.)

On February 9, 1981, appellants filed a motion to dismiss on the ground that the crime imputed to them was committed outside Lucena City and the Acting City Fiscal of said city had, therefore, no authority to file the above information.

On February 17, 1981, the lower court denied the motion to dismiss on the basis that the ground invoked should be considered to have been waived for failure of the accused to move to quash before entering their plea. (p. 139, rec.)

The trial court heard this case from November, 1977 up to November 26, 1982. The said court promulgated the questioned decision on February 23, 1983.

Appellants contend that the trial court committed the following errors which assigned errors would be dealt with as they are presented.

1. The first assigned error is that the lower court erred in not dismissing the case for lack of jurisdiction.

The appellant claims that since the crime took place outside Lucena City, the lower court had no jurisdiction over the case.

It is further contended by the accused that the finding of the lower court that this ground for the motion to dismiss was deemed waived for failure of the accused to assert the same before entering their pleas is incorrect. They contend that this ground could not have been alleged earlier for the same became evident only after the prosecution had presented its evidence. Hence, it is posited that such ground was never waived.

The above contention does not hold water in the light of the law and jurisprudence on the matter.

The pertinent proviso of the Revised Rules of Court explicitly says:

"Sec. 9. Place of the Commission of the offense. - The complaint or information is sufficient if it can be understood therefrom that the offense was committed or some of the essential ingredients thereof occurred at some place within the jurisdiction of the court, unless the particular place wherein it was committed constitutes an essential element of the offense or is necessary for identifying the offense charged." (Rule 110)

It is well-settled that the averments in the complaint or information characterize the crime to be prosecuted and the court before which it must be tried. (Balite vs. People L-21475, September 30, 1966; 18 SCRA 280; People vs. Go Hiok, 62 Phil. 501).

In Villanueva vs. Ortiz, et al. (L-15344, May 30, 1960; 108 Phil. 493), this Court ruled that in order to determine the jurisdiction of the court in criminal cases, the complaint must be examined for the purpose of ascertaining whether or not the facts set out therein and the punishment provided for by law for such acts fall within the jurisdiction of the court in which the complaint is pre-sented. Settled is the rule that the jurisdiction of courts in

criminal cases is determined by the allegations of the complaint or information; and not by the findings the court may make after the trial. (People vs. Mission, L-3488, November 28, 1950; 87 Phil. 641).

It should be noted that in this case, the offense cited in the information is kidnapping for ransom with murder. The victim was kidnapped within Lucena City and at that very moment, the intention became evident that the accused wanted to detain him for ransom. Any change in their plans is beside the point since the initial execution of their original crime took place at Lucena City.

The appellant next claim that the lower court erred in convicting them on the basis of their confessions. This is inaccurate because the records clearly show that the decision of the trial court was anchored on concrete and corroborative evidence other than the extrajudicial confession of the accused. Thus, appellant Masilang himself guided the law officers in the morning of May 30, 1975, to the place where they dumped the victim's body. The next day, the skeletal remains of Vivencio were found at Barangay Malupak, Lucban, Quezon. Leoncio Cadiz positively identified said remains to be that of his murdered son. (TSN, pp. 138-146, Nov. 29, 1978)

Significantly, there surfaced other incriminating evidence in the course of the investigation. The victim's wrist watch was eventually traced to Zamora. The name "Bheybi Eleazar" and "Tel. no. 42-27" impressed on the surface of the typewritten paper were found to be the name of Zamora's girlfriend and the telephone number of Zamora, respectively. The Malilay letter was found to have been typed on the Remington Rand typewriter belonging to the Astra Office where the girlfriend of Zamora (Baby Eleazar) worked. The Malilay letter, another letter addressed to Zamora, and the specimen sheet were found to have been typed in the same typewriter in the Astra Office. Zamora admitted he addressed the envelope of the letter sent to himself, but explained that Masilang instructed him to type and address the Malilay letter and the Zamora letter so that in case of arrest, he could show the letter to prove Masilang's innocence. The handwriting of Masilang found in the notebook which Zamora pointed to and that on the ransom notes revealed they were written by one and the same person - Masilang. (p. 17, rec.) When the typewritings in the ransom notes were identified in the presence of Zamora, he revealed that Masilang was using a typewriter in his house at Sariaya which the lawmen finally found in Masilang's house. Upon comparison, the specimens typed on the above typewriter and the typewriting in the ransom notes confirmed that such notes were typed on the same typewriter found in Masilang's house. With all the aforesaid concrete evidence zeroing in on them, Zamora declared that Masilang was the mastermind who told him what to do (p. 41, rec.)

3. The accused charge that the lower court erred in finding that the killing was qualified by treachery. This is untenable because from the established facts, treachery was definitely present. Note that the appellants made a deliberate, sudden and surprise attack from behind while the victim sat defenseless in the driver's seat. When the victim stopped his jeep, Masilang placed the piece of wire around his neck and strangled him while Zamora held him. At that precise moment of attack, Vivencio was not in a position to defend himself and the accused deliberately and consciously adopted the particular method or form of attack which was strangulation from behind by one and holding him by the other beside him. (p. 39, rec)

4. On the alleged error of the trial court in finding that the crime was aggravated by the use of craft, it has been definitely shown that Vivencio Cadiz, on the pretense that the defendants were hitching a ride to Sariaya, took them aboard the jeep. The trickery continued when appellant Zamora asked Vivencio to bring them to barangay Calumpang, Tayabas, Quezon on the pretext of courting a lady. When they reached an isolated place at Calumpang, they killed him with the piece of wire which they carried for the purpose. Appellants' acts involved intellectual treachery and cunning in order to carry out their criminal design without arousing the victim's suspicion.

5. On the lower court's alleged error in considering the use of motor vehicle as an aggravating circumstance, it has been established that the victim's jeep was necessary and actually used for the original intention of kidnapping him for ransom; that said vehicle was used to trick the victim to bring the accused to the isolated place in Calumpang where he was murdered; that the same was used to enable the appellants to dispose of the victim's body and finally, to facilitate their flight. Without the jeep, they could not have committed the crime with ease and facility.

6. On the alleged error of the lower court in not finding intoxication as a mitigating circumstance, the Solicitor General aptly refutes appellants' claim by saying thus:

"While it appears that appellant had been drinking at the time, there was no showing that the amount of liquor they had taken was of sufficient quantity to affect their mental faculties. On the contrary, by their conduct while riding in the victim's jeep, it would appear that they were in full control of their mental capacity to understand the consequences of their dire deed."

The deception employed, the place and manner of per-petration of the crime and its concealment all point to the fact that appellants had complete control of their minds.

As to what offense had really been committed, the trial judge aptly found:

"But the crime actually committed is not the complex crime of kidnapping with murder, but only the crime of simple murder qualified by treachery.

"Kidnapping is a crime against liberty defined in Article 267, Title IX, Book II, Revised Penal Code. The essence of kidnapping or serious illegal detention is the actual confinement or restraint of the victim or the deprivation of his liberty (People vs. Belinda Loron y Vequiza, G.R. L-no. 49430, prom. March 30, 1982.)

"The demand for ransom did not convert the offense into kidnapping with murder (Ibid.).

"In the instant case, the victim was already dead when brought to barangay Malapak, Lucban, from barangay Calumpang, Tayabas there the strangulation occurred. There was neither restraint, confinement nor deprivation of liberty."

Considering the foregoing, the appealed decision is hereby **AFFIRMED**, with this modification that the appellants are hereby sentenced to pay P30,000 as indemnity to the heirs of the deceased the death. However, in view of the lack of the necessary votes, the death penalty is hereby reduced to reclusion perpetua.

The charge of the appellants that they were subjected to violations of human rights on May 29, 1975 by Philippine Constabulary authorities at Camp General Nakar, Lucena City is hereby referred to the Chairman of the Commission on Human Rights.

SO ORDERED.

Teehankee, C.J., Abad Santos, Feria, Yap, Fernan, Narvasa, Melencio-Herrera, Alampay, Gutierrez, Jr., and Cruz, JJ., concur.

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