

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF, VS. MOISES MARCOS Y DE LA ROSA, ACCUSED.

G.R. No. 65048. January 09, 1987

Ponente: ALAMPAY, J.

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ALAMPAY, J.:

In Criminal Case No. CCC-2873 of the defunct Circuit Criminal Court at Pasig, Metro Manila, appellant MOISES MARCOS, together with Danilo Castro, Jun alias "John Doe" and "Peter Doe," were charged with the crime of kidnapping, said to have been committed as follows:

That on or about the 20th day of February, 1979 in Caloocan City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being the private individuals, conspiring and confederating together and mutually helping and aiding one another, for the purpose of extorting ransom from Benito Gonzales, father of Benedict Gonzales @ "Cocoy" did then and there wilfully, unlawfully and feloniously kidnap and carry away in a motor vehicle and detain the latter in an isolated hut for two (2) nights and one (1) day.

"That accused Moises Marcos y de la Rosa, cooperated in the execution of the offense by previous simultaneous acts, that is, by pointing to Benedict Gonzales @ "Cocoy" to his co-accused and writing a ransom note demanding the amount of P200,000.00 from the father of the victim, Benito Gonzales but were able to get only the amount of P20,000.00 as ransom.

CONTRARY TO LAW."

Appellant's co-accused, Danilo Castro, Jun alias "John Doe" and "Peter Doe" escaped arrest and for this reason only appellant Moises Marcos was arraigned and tried.

Thereafter, the court rendered its decision, dated July 24, 1979, with the dispositive portion thereof reading as follows:

"WHEREFORE, in view of the foregoing, the Court finds the accused MOISES MARCOS, GUILTY, beyond reasonable doubt of the crime of kidnapping, as charged in the Information, and hereby sentences him with the penalty of Death: to indemnify the offended party in the amount of P25,000 and another P25,000.00 as moral damages and exemplary damages."

The evidence for the prosecution as summarized in the appellee's brief tend to establish that;

"At about 5:00 o'clock in the afternoon of February 20, 1979, Benedict Gonzales, a 9-year old pupil of the St. Martin de Porres Catholic School in Paombong, Bulacan, while on his way home from school, was approached by three (3) men on board an owner-type jeep. On the pretext that the boy's father, Benito Gonzales met an accident, the men asked Benedict to go with them to the hospital (TSN., July 24, 1979, pp. 5-11)."The unsuspecting Benedict went with the three (3) men who brought him to an isolated hut situated at Baesa, Caloocan City, about one (1) kilometer from the North Diversion Road. At said hut, Benedict was detained for two nights and one day, guarded during the day by two of the men (TSN., July 24, 1979, pp. 13-18; p. 19).""At

about 8:00 o'clock p.m. of the same day, Benedict's brother found a note (Exhibit A) at the gate of their residence. The note in full, reads as follows:

Feb. 20, '79

MR. BEN:

'Our mission in Paombong, is to get you Mang Ben. But don't worry about your son, just give us P200,000.00 cash tomorrow night, if you dislike, you will not see him anymore.

INSTRUCTION

Let your driver alone to bring the money. Tell him to travel the Highway going to N. Ecija see our car with red flag, stop on the rear, go down (sic), on the car with hands up and with lights on inside the car. Mr. Ben don't tell this to the authority or to anybody, if you want to see your son alive. P200,000.00 or your own son?

"That same night, Benito Gonzales, Benedict's father, sought the help of appellant. Appellant is Benito's first cousin and resides just across the street from the Gonzales' residence (TSN., July 23, 1979, p. 4).

"The next morning, February 21, 1979, appellant and Benito went to the house of Engr. Cesar Gonzales (Benito's brother) who referred them to Atty. Santiago Toledo, a former NBI agent, who, in turn advised them to report the kidnapping to the National Bureau of Investigation (TSN., July 23, 1979, p. 5).

"At the NBI, Benito was briefed by NBI Supervising Agents Nestor Gonzales and Emeterio Manalo as to what course of action to take with the advice that Benito should in the meantime vie for time by negotiating with the kidnappers to reduce the ransom money (TSN., July 23, 1979, p. 5).

"From the NBI, appellant Benito proceeded to the office of Engr. Cesar Gonzales at Ayala Avenue, Makati, where appellant advised Benito to disregard the NBI original plan. He volunteered to talk with the kidnappers to reduce the ransom money to P20,000.00 and proposed the raise the amount through a loan from a friend. Benito fearful for the life of his son and having no ready cash at the time, readily agreed to appellant's proposal (TSN., July 23, 1979, pp. 5-6).

"From there, appellant and Benito proceeded to the store of Romeo Castro (appellant's friend) in Caloocan City, purportedly to secure a loan of P20,000.00. Appellant alone talked to Castro inside the latter's store and, about three (3) minutes later, invited Benito. After the usual introductions, Benito believing that appellant was able to secure a loan from Castro, promised to pay the same within the week (TSN., July 23, 1979, p. 6).

"Thereafter, at about 7:00 o'clock p.m. of the same day, February 21, 1979, appellant and Benito went home to Paombong, Bulacan. As planned, appellant left purportedly to meet with the kidnappers at the highway going to Nueva Ecija (TSN., July 23, 1979, pp. 6-7).

"At about 2:45 o'clock in the early morning of February 22, 1979, appellant together with Benedict, arrived at the Gonzales' residence.

"Amidst the tearful reunion, appellant, when questioned how he was able to get back Benedict, related that on his way to Nueva Ecija, he was signalled to stop with a red flag by persons on board a red car; with guns aimed at appellant, the persons asked him for the money; appellant allegedly handed them the P20,000.00 with an apology that said amount was the only money that the family of Benedict could afford, afterwards, they proceeded to Novalichas, Quezon City where Benedict was detained (TSN., July 23, 1979, pp. 7-8).

"On March 5, 1979, Benito Gonzales reported the above developments to the NBI. Noting some suspicious circumstances in appellant's story, the NBI conducted further investigation. The NBI agents questioned not only Benito and Benedict Gonzales but also appellant and Romeo Castro, appellant's friend, who allegedly loaned the amount of P20,000.00 ransom money. Appellant also pointed to the NBI Agents the isolated hut in

Baesa, Caloocan City where Benedict was detained, and reenacted the incident.

"In his sworn statement (Exhibit E) dated July 10, 1979 voluntarily given before NBI Agent Esteban Libit, appellant admitted that he, together with Danilo Castro, "Jun" and alias "Peter Doe," planned and executed the kidnapping of Benedict.

"After the investigation, the NBI indorsed the case to the Office of the Provincial Fiscal of Pasig, Metro Manila for the filing of the appropriate information against appellant Danilo Castro, "Jun" and "Peter Doe" (Exhibit G). (Appellee's Brief, Rollo, pp. 76-81).

On the other hand, appellant offers as his version of the same incident the following:

"Appellant Marcos, 49 years old, married, government pensionado and residing at Sto. Nino, Paombong, Bulacan, testified as follows:

"That the father of the victim is his first cousin. (TSN., Hearing of July 24, 1979, p. 54).

"That he wrote the ransom letter (Exhibit A) because he was instructed at the town plaza of Paombong, Bulacan by Danilo Castro to write said letter and after Danilo Castro and his companions have taken the boy (Benito Gonzales) he was instructed to write the ransom letter, (TSN., Hearing of July 24, 1979, pp. 56-57).

"That Danilo Castro is his friend while the "John Doe" and "Peter Doe" were the companions of Danilo Castro whom he does not know. (TSN., Hearing of July 24, 1979, pp. 57-58).

"That he was forced or intimidated to write the ransom note because if he will not do so, they (Danilo Castro and companions) will get his children who are studying in Manila (TSN., Hearing of July 24, 1979, pp. 58-59).

"That he was told by Danilo Castro that if he will not make the ransom note, his two children will be "madsigracia." (TSN., Hearing of July 24, 1979, p. 64).

"That Danilo Castro gave him the pen to write the ransom note and although instructed to give the ransom note to his cousin, he placed the ransom note in the gate of his cousin's house. (TSN., Hearing of July 24, 1979, pp. 67-68).

"That he did not report the matter to the authorities because he thinks that he can get his grandson. (TSN., July 24, 1979, p. 70). (Appellant's Brief, pp. 10-11).

In seeking the reversal of the decision rendered against him, appellant herein attributes to the trial court its commission of the following assigned errors:

"I

"THE CIRCUIT CRIMINAL COURT OF PASIG METRO MANILA ERRED IN FINDING APPELLANT MARCOS GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF KIDNAPPING WITH RANSOM, CONSIDERING THAT:

"a) SAID COURT ERRED IN ADMITTING THE EXTRA-JUDICIAL CONFESSION OF APPELLANT MARCOS (EXHIBIT E) WHICH WAS OBTAINED IN VIOLATION OF HIS CONSTITUTIONAL RIGHTS AND THE STATEMENT OF ROMEO CASTRO (EXHIBIT C) WHO WAS NOT PRESENTED AS A WITNESS;

"b) THERE WAS NO EVIDENCE TO PROVE BEYOND REASONABLE DOUBT CONSPIRACY OR THAT APPELLANT MARCOS WAS GUILTY AS CO-PRINCIPAL AND/OR MASTERMIND; and

c) SAID COURT BASED ITS DECISION ON FACTS AND MATTERS NOT SUPPORTED BY THE RECORDS.

II

"ASSUMING ARGUENDO THAT APPELLANT MARCOS PARTICIPATED IN THE CRIME OF KIDNAPPING WITH RANSOM, THE CIRCUIT CRIMINAL COURT ERRED IN IMPOSING THE PENALTY OF DEATH, CONSIDERING THAT:

"a) THE PARTICIPATION OF APPELLANT MARCOS WAS MERELY THAT OF AN ACCOMPLICE;

"b) UNDER THE THIRD PARAGRAPH OF ARTICLE 268 OF THE REVISED PENAL CODE, THE PENALTY IMPOSABLE SHOULD ONLY BE PRISION MAYOR IN ITS MINIMUM AND MEDIUM PERIODS AND A FINE NOT EXCEEDING SEVEN HUNDRED PESOS;

"c) UNDER THE DOCTRINE OF THE CASE OF PEOPLE VS. ACOSTA AND BRAVO, 107 PHIL. 361, APPELLANT MARCOS DOES NOT BELONG TO THAT TYPE OF KIDNAPPERS WHO DESERVE THE SUPREME PENALTY OF DEATH CONSIDERING THE SMALL AMOUNT INVOLVED AND THE CIRCUMSTANCES UNDER WHICH IT (KIDNAPPING) WAS COMMITTED;" and

"d) THE DEATH PENALTY CONSTITUTES A CRUEL OR UNUSUAL PUNISHMENT PROSCRIBED BY SECTION 21, ARTICLE IV OF THE 1973 CONSTITUTION."

Appellant maintains that his extrajudicial confession is inadmissible as evidence against him because the same was obtained from him without the assistance of a counsel. He avers that although he waived his right to counsel, this waiver is without legal effect as such was made without the assistance of a lawyer, a requisite which should have been complied with as was stressed in the case of *Morales vs. Enrile*, 121 SCRA 538 and reiterated in *People vs. Galit*, 135 SCRA 465.

The Court in this regard, finds that appellant's protestations do not warrant reversal of the appealed judgment. When appellant gave his sworn statement before the NBI agent Esteban Libit on July 10, 1979 he was not then under police custody. He was merely invited for questioning so he can shed light on the kidnapping of Benedict. He was even allowed to go home after the investigation. Appellant who is a retired First Lieutenant in the Philippine Constabulary and who had studied up to third year in mechanical engineering, admitted having voluntarily given his sworn statement, Exh. E, to the NBI.

It is significant to consider that appellant Moises Marcos was duly informed of his right to remain silent. He was warned that any statement he make may be used against him and that he is entitled to be assisted by a lawyer of his choice. From the case records, are reflected the following:

"1.QUESTION:

This investigation concerns the alleged kidnapping of a certain BENEDICT GONZALES y SANTOS, an 8-year-old son of MR. BENITO GONZALES of Paombong, Bulacan. Before we proceed, however, we are now making it clear to you that it is your right to give or not to give any statement or to answer or not to answer the questions to be propounded to you in this investigation. In other words, you have a perfect right to remain silent. You are also entitled to be informed here, as we are informing you, now, that whatever you nay say here may be used as evidence against you in any criminal or civil proceedings. You are also entitled to be assisted by a lawyer of your own choice and should you not be able to engage the services of a lawyer, the government will appoint one for you. Is this clear to you?

ANSWER:

Yes, sir.

"2. Q

-

Would you like to be assisted by a lawyer now?

A

-

No more, sir.

"3. Q

-

In that case, are you willing to give a statement without a lawyer helping you?

A

-

Yes, sir.

"4. Q

-

Would you, therefore, sign a waiver of signifying that you have been informed of your constitutional rights and that you are waiving your rights under the same?

A

-

Yes, sir.

In the sworn statement of appellant Moises Marcos, dated July 10, 1979, marked as Exhibit E, his waiver of his right to counsel is clearly expressed:

'WAIVER

"This is to certify that I have been informed of my constitutional rights to remain silent and to be assisted by a lawyer in this investigation. I am, however, waiving my rights to remain silent and I am also waiving my rights to be assisted by a lawyer in narrating to the NBI investigators What I know about the kidnapping of BENEDICT GONZALES.

Manila, July 10, 1979.

"SGD. MOISES R. MARCOS."

Testifying before the trial court, appellant expressly acknowledged that he voluntarily signed his sworn statement, which was marked as Exhibit "E." In this regard, his testimony is as follows:

"xxx

xxx

xxx

"Q By the way, there are some signatures in this document (referring to Exhibit E), is this your signature?

"A Yes, your Honor.

"Q You were not coerced by the NBI agents to sign your signature here?

"A No, your Honor.

"Q You gave this voluntarily?"

A Yes, your Honor"

xxx (TSN., July 24, 1979, pp. 65-66).

Considering all the foregoing circumstances, the Court is of the view that appellant's admissions, voluntarily made and confirmed by him in open court during his trial, render worthless the challenge now interposed by him to the admissibility of appellant's sworn statement, Exhibit E. The facts and 'circumstances attendant in this instance, excludes the case at bar from the scope and application of the pronouncements made in the case of *People vs. Galit*, 135 SCRA 465 and *Morales, Jr. vs. Enrile*, 121 SCRA 538, which appellant invoked.

The findings and conclusions of the trial court receive fullest support from the evidence adduced by the prosecution aside from appellant's admissions made before the trial court. We find no reason to set aside and reject the evidence which the court below had properly appreciated.

Consequently, this Court should extend faith and credit to the factual findings of the court below that appellant Moises Marcos was an active participant and was even the one who had inspired the commission of the kidnapping of the son of his first cousin. Apart from the extrajudicial statements of the accused, the other evidence submitted by the prosecution include the testimony of Benedict Gonzales, a nine-year old kidnap victim who attested to and confirmed the fact that it was the accused Moises Marcos, as his "Lolo Nito" who had taken him from the place of detention in Barrio Baesa and brought him back home to his parents. The declarations of Benito Gonzales, father of the kidnapped child indicate the role played by appellant Moises Marcos in obtaining the amount of P20,000.00 supposedly to repay the purported loan secured from one Romy Castro and which was to be utilized to pay for the ransom of the kidnapped boy. All the above mentioned evidence, separate and independent from the extrajudicial statement Exhibit E, executed by the appellant, are likewise proof establishing beyond reasonable doubt the appellant's guilt.

Appellant submits that he was an unwilling participant in the crime and that he was forced to write the ransom note because of his fear that his children in Manila will be hurt by his co-accused. Appellant claims that his cooperation was not given voluntarily and therefore he should not be regarded as a principal for even assuming that he participated in the commission of the crime, his participation was merely that of an accomplice.

We cannot give credence to the claim of the appellant that he was coerced into writing the ransom note. There is no averment nor is there even mention of any such alleged coercion exerted on him when appellant executed his sworn statement, Exhibit E, wherein it described the role he played in the kidnapping of Benedict Gonzales. What

appears is that appellant wrote the ransom note while in his residence and without any of his co-accused being present. In his extrajudicial statement, Exhibit E, appellant stated:

"19. Q

-

What did you do then in your house?

A

-

I wrote a letter, a ransom letter, addressed to Mr. Ben and telling him to prepare P200,000.00 in cash which must be delivered the following night to us as a ransom for his son. I remember that I instructed him in that ransom note to ask his driver to drive his car towards the highway going to Nueva Ecija at about midnight. The driver must bring with him the ransom money and we will intercept him, I mean the money. I also mentioned in that ransom note that along the highway, at about midnight he will see a car with a red flag and upon seeing that car he must stop and go down hands up and he must light the inside of the car."

To mitigate somehow his criminal liability, appellant submits that he merely acted as a "go-between" between kidnappers and the victim's father and where there is doubt as to whether one participated as a principal or as an accomplice, the milder form of criminal liability should be favored. Appellant asks that he be given the benefit of doubt and that he be regarded, at most only as an accomplice {Appellant's Brief, pp. 19-20}.

The Court agrees with the conclusion arrived at by the trial court that appellant's participation in the said felony was as a principal. It was appellant who informed his co-accused Danilo Castro and the other persons named only as "John Doe" and "Peter Doe," that Benito Gonzales, father of the kidnapped victim, is among the richest residents of Paombong, Bulacan. It was no less appellant Moises Marcos who pointed out Benedict Gonzales to his other co-accused who later duped said boy into going along with them on the pretext that the boy's father was then in a hospital. It was appellant who wrote the ransom note and he himself placed said note at the gate of the house of the father of the kidnapped child. Appellant made it appear that he borrowed money in the amount of P20,000.00 from one Romeo Castro which was to be used in paying the ransom and although appellant did not actually obtain that loan, he nevertheless caused the boy's father to agree to repay that alleged loan and this the latter did afterwards. Appellant, by himself, went to Baesa, Caloocan City, where the kidnapped boy was detained. He then brought back the latter to his parents in Paombong, Bulacan. It is undisputed that appellant received from Benito Gonzales the amount of P20,000.00 which was intended to serve as reimbursement for the money allegedly borrowed and which Benito Gonzales was made to believe was paid for the release of his kidnapped son.

The narration of the kidnapping incident by the herein appellant is replete with details which could not possibly be known by anyone else other than those actually and principally involved in the kidnapping and in the execution thereof.

Finally, appellant contends that the death penalty should not have been imposed on him because the amount of the ransom money involved is small. He maintains that the death penalty constitutes a cruel and unusual punishment, disallowed by Section 21, Article IV of the 1973 Constitution.

The crime committed by appellant and his co-accused is defined and penalized in Article 267 of the Revised Penal Code, as amended by Republic Act Nos. 18 and 1084, which provides:

"Art. 267 - Kidnapping and serious illegal detention. - Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of reclusion perpetua to death.

xxx

xxx

xxx

"4. If the person kidnapped or detained shall be a minor, female, or a public officer."The penalty shall be death where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other persons, even if none of the circumstances above mentioned were present in the commission of the offense."

There is no question at all that Benedict, the victim, was then a minor and that he was kidnapped for the purpose of extorting ransom.

Appellant's argument that death is a cruel and unusual punishment does not deserve consideration. In *People vs. Camano*, 115 SCRA 688, We already held that the death penalty, as such is not excessive, unjust or cruel, within the meaning of that word in the Constitution. In said case, this Court stated, citing *Harden vs. Director of Prisons*, 81 Phil. 741 —

"The penalty complained of neither cruel, unjust or excessive. In *Ex Parte Kemmler*, 136 U.S. 436, the United States Supreme Court said that punishments are cruel when they involved torture or lingering death but the punishment of death is not cruel within the meaning of that word as used in the Constitution. It implies there something inhuman and barbarous, something more than the mere extinguishment of life."

What can be gleaned from a review of the evidence on record is that apparently there was an abrupt and increasing remorse or contrition on the part of the herein appellant after the kidnapping was an accomplished fact but there no longer was any way of turning back from his assigned role. Appellant's change of heart could have been brought about by appellant's realization of the anxiety and suffering inflicted on the parents of the child whose father is the first cousin of the appellant. The vacillation of appellant is understandable because, as submitted by appellant's counsel in this case, "... appellant is not a professional wrong doer (he has not been guilty of any other previous offense)." (Appellant's Brief, p. 23).

In our assessment of the facts of this case and upon considering the conduct and actuations of the herein appellant, We are inclined to agree with the observations of the appellant's counsel de oficio, who went to the National Penitentiary to interview the accused. The Court's impression is that when appellant Moises Marcos began to realize the extent of the grief and torment being undergone by the family of Benedict Gonzales (the kidnapped child), he must have even at that times, already regretted his felonious act and thus he voluntarily returned the kidnapped boy to his parents although full payment of the P200,000.00 being demanded in the ransom note was not given by the boy's family. It is indicated, that when his other co-accused were later grumbling about the small sum of P20,000.00 received by them (herein appellant had no share in the ransom paid), appellant then sold his car for P5,000.00 and gave this money to his co-conspirators to appease them (Q. 65-67, Sworn Statement of Appellant, Exh. E).

Considering the foregoing circumstances, the Court is disposed to accept the urging of appellant's counsel de oficio, that if appellant's conviction is sustained, the appropriate penalty that he should suffer must not be the extreme penalty of death.

Appellant has already been detained for almost eight years now and is presently confined at the National

Penitentiary awaiting the outcome of our review of the judgment rendered by the trial court. The facts of this case tend to show that the crime in this case was not the result of any deliberate and well formed nefarious conspiracy of a criminal group. It was rather a crime clumsily conceived on the spur of the moment. Appellant obviously did not fully realize the gravity of the crime he and his companions were embarking upon. Thus, We find the extreme penalty of death imposed on appellant, Moises Marcos, to be inappropriate. In the view of the Court, under the given circumstances in this case, the penalty that should be imposed should be reduced to life imprisonment. Furthermore, if the record of appellant's behavior while under detention in the National Penitentiary during the years he has been imprisoned is satisfactory and indicative of his worthiness to rejoin the society of law-abiding citizens, then the proper recommendation in his behalf should be made by the prison officials concerned for the further commutation of his prison term.

The Court also notes that only P20,000.00 was paid by the father of the kidnapped child for ransom but the amount of P25,000.00 was decreed in the decision of the court below. It should be therefore reduced to P20,000.00.

WHEREFORE, the appealed decision, being in accordance with the evidence is AFFIRMED but with modification, as to the penalty of death imposed on the accused-appellant Moises Marcos which is hereby reduced to Reclusion Perpetua. The indemnity to be paid to the offended party is also reduced to P20,000.00. In all other respects, the said judgment of the trial court is affirmed.

SO ORDERED.

Teehankee, C.J., Feria, Fernan, Narvasa, Melencio-Herrera, Gutierrez, Jr., Paras and Feliciano, concur.

Cruz, J., in the result.

Yap, J., is on leave.

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