

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JAIME GUEVARRA Y ARCEGA, PONCING ABERGAS, DAN TOLENTINO, BALDO DE JESUS, ROMING LONGHAIR, BOY TAE, BOY POGI, VERGEL BUSTAMANTE...

G.R. No. 66437. December 04, 1989

Ponente: PADILLA, J.

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PADILLA, J.:

In an Amended Information, docketed as Criminal Case No. 1425 of the Regional Trial Court of Nueva Ecija, Jaime Guevarra y Arcega, Poncing Abergas, Dan Tolentino, Baldo de Jesus, Roming Longhair, Boy Tae, Boy Pogi, Vergel Bustamante alias "Dan Saksak", and Chotse Doe alias Bernabe Sulaybar y Hernandez were accused of the crime of Kidnapping committed as follows:

"That on or about the 8th day of April, 1980, in the Municipality of Gapan, Province of Nueva Ecija, Philippines, and within the juris-diction of this Honorable Court, the above-named accused, with intent of gain, conspiring and confederating together and mutually aiding, helping and abetting one another, with aggravating circumstances of nocturnity, with the use of assorted firearms and hand grenade, did then and there, wilfully, unlawfully and feloniously enter the house of one PRISCILLA P. CRUZ and once inside, kidnapped, abducted and seriously detained and deceived (sic) her of her liberty for a period of not more than five (5) days, to her damage and prejudice."

After a separate trial for Poncing Abergas and Vergel Bustamante alias "Dan Saksak," inasmuch as Dan Tolentino, who had previously entered a plea of "not guilty" could not be served with subpoenas, and the other accused were reported to have died, judgment was rendered** finding the accused Vergel Bustamante alias "Dan Saksak" guilty of the crime of Kidnapping and Serious Illegal Detention and sentenced to suffer the death penalty, and to indemnify the offended party, Mrs. Priscilla Cruz, in the amount of P5,000.00. The accused Poncing Abergas, upon the other hand, was acquitted of the charge.

In view of the death penalty imposed, the record of the case was elevated to the Court for review. However, with the adoption of the 1987 Constitution which does not allow the imposition of the death penalty and reduces death penalties already imposed to reclusion perpetua, the case, upon election of the accused Vergel Bustamante,*** was continued as an appealed case.

The prosecution's version of the facts of the case, as related by the People's counsel, are as follows:

"It appears from the evidence of the prosecution that in the evening of April 8, 1980, armed men entered the house of the spouses Luisito Cruz and Priscilla Cruz located at San Lorenzo, Gapan, Nueva Ecija, and robbed said spouses of P3,000.00 and jewelry (tsn, May 4, 1983, p. 42; tsn, June 8, 1983, p. 7). There-after, these men threatened Luisito Cruz to give the key to his car (tsn, June 8, 1983, p. 6). Luisito was forced to give the key to one of the men, Vergel Bustamante (id., p. 5). Luisito and his companions in the house were then ordered to enter a room and were tied there (id., p. 12).

After the crime of robbery was committed by the armed men, Priscilla Cruz was forcibly boarded inside her own car by her kidnappers (tsn, June 8, 1983, p. 4; tsn, May 4, 1983, p. 43). Vergel Bustamante drove the car (tsn, May 4, 1983, p. 48) towards the direction of Manila (id., p. 43). There were five men in the car. She was the only female. She was made to sit at the back seat of the car between two men. One of them poked his gun at her, while the other pointed a knife at her side. Three of the men sat on the front seat (id., pp. 44-45).

The men then told Priscilla Cruz that they were holding her for ransom of P50,000.00 (id., p. 46). They first stopped somewhere in Capihan, San Rafael, Bulacan because the engine of the car broke down (tsn, May 17, 1983, p. 9). The men hired a truck in order for them to continue their travel. Upon reaching Paxton Hotel at Valenzuela, Bulacan, the men left her and the truck driver there. Priscilla Cruz heard one of the men say that she should be left there because they believed that the kidnapping 'did not materialize'. (tsn, May 4, 1983, p. 48). The five men then boarded a taxi (id., p. 49).

After regaining her composure, Priscilla Cruz requested the truck driver to bring her home. The truck driver agreed and brought her to Gapan, Nueva Ecija (id., pp. 50-51).

That same evening of April 8, 1980, Luisito Cruz reported to the police authorities about the robbery and the kidnapping that occurred in his house. The action on the part of the police authorities led to the detention and investigation of Vergel Bustamante at the Western Police Headquarters in Manila. Vergel Bustamante was later identified there by Priscilla Cruz as one of her kidnappers. (tsn, May 4, 1983, p. 7; pp. 9-10; and pp. 54-55)."[1]

The defendant-appellant, Vergel Bustamante, upon the other hand, denied having participated in the commission of the crime charged and interposed the defense of alibi. According to him, he was in Caloocan City in the evening of 8 April 1980, at the time the crime complained of was being committed in Gapan, Nueva Ecija.[2]

The trial court, however, rejected the appellant's defense, as the said appellant had been positively identified by witnesses, and that it was not impossible for him to be at the scene of the crime at the time it was committed in view of the proximity of Gapan, Nueva Ecija to Caloocan City and the distance could be traversed by a motor vehicle in less than ninety (90) minutes.

1. Counsel for the defendant-appellant, in this appeal, contends that the trial court erred in ordering the amendment of the information to include, as party defendant, Vergel Bustamante alias "Dan Saksak" despite lack of proof that Vergel Bustamante and "Dan Saksak" are one and the same person.

We find the contention devoid of merit. The questioned order of the trial court to amend the information to include the correct name of one of the accused, "Dan Saksak", which is Vergel Bustamante,[3] is not without basis. The following circumstances, evident in the record of the criminal case forwarded by the Municipal Trial Court of Gapan, Nueva Ecija to the Regional Trial Court of Nueva Ecija, obviously led the judge of the latter court to believe that Vergel Bustamante and "Dan Saksak" are one and the same person:

(1) A subpoena issued by the Municipal Court of Gapan, Nueva Ecija in Criminal Case Nos. 186-80 and 192-80 was directed to one "Vergel Bustamante alias 'Dan Saksak'." [4]

(2) In a Return of Service of one subpoena, the Warden of the City Jail of Manila informed the Clerk of Court of the Municipal Court of Gapan, Nueva Ecija that "VERGEL BUSTA-MANTE @ 'Dan Saksak' said to be one of the accused in the above-mentioned Criminal Cases is not included in the list of present Inmates of this Jail as of 7:30 a.m. this date." [5]

(3) The order issued by the Municipal Court of Gapan, Nueva Ecija on 25 September 1980, finding a prima facie case against the accused therein also stated that one of the accused is Vergel Bustamante alias Dan Saksak. The order reads, in part, as follows:

"When these cases are (sic) called for hearing today, 2nd stage preliminary investigation, the accused namely, JAIME GUEVARRA Y ARCEGA, BERNABE ZULAYBAR @ CHOTSE and VERGEL BUSTAMANTE @ DAN SAKSAK filed a written waiver of their rights to present evidence during the 2nd stage preliminary investigation. With respect with (sic) the two other accused namely, DAN TOLENTINO and PONCING ABERGAS, they both failed to appear, hence this Court considered the same as a waiver of the 2nd stage preliminary investigation." [6]

(4) The letter of transmittal of the records of the cases to the Regional Trial Court of Nueva Ecija stated that one of the accused therein, Vergel Bustamante @ Dan Saksak is detained at the Manila City Jail. [7]

In any event, the issue cannot be raised for the first time on appeal. The issue is one affecting jurisdiction over the person and should have been raised before the trial court in a motion to quash the information. Since the defendant-appellant failed to do so, he is deemed to have waived his objection to the information. [8]

It is well to note that before the case was tried in the court a quo, Atty. Romano, counsel for the defendant-appellant, told the court that he was filing a motion to quash the information for kidnapping. [9] But, he failed to file such motion. Obviously, he was satisfied with the legality of the information filed.

2. Counsel for the defendant-appellant also contends that there was no reinvestigation conducted after 14 March 1983 to justify the filing of the amended information on 15 March 1983. As ground therefor, counsel claims that Atty. Romano, counsel for the defendant-appellant in the court below, did not know of any such investigation.

This contention is also devoid of merit. That a reinvestigation had been conducted in this case is shown by the certification of the Fiscal to the following affect:

"I hereby certify that I have conducted a reinvestigation in this case pursuant to Republic Act No. 5180, as amended by Presidential Decree No. 77, and as further amended by Presidential Decree No. 911, and that on the basis of the sworn statements and other evidence submitted before me, there is a reasonable ground to believe that a crime has been committed and that the accused are probably guilty thereof, that the accused were informed of the complaint against them and that they were given an opportunity to submit controverting evidence." [10]

The lack of knowledge on the part of Atty. Romano that a re-investigation had been conducted by the Fiscal, is a poor excuse for claiming that no re-investigation whatsoever had been conducted. Atty. Romano may not have learned of the re-investigation conducted by the Fiscal inasmuch as his appointment as counsel de oficio for the defendant-appellant was made only after the arraignment of the accused-appellant, where appellant was assisted by Atty. Joventino Cornista. [11] According to Atty. Romano, he entered his appearance in the case only on 3 May 1983. At the hearing of the case on 4 May 1983, the following incident transpired:

"Atty. Romano:

May we be given three (3) days within which to file our motion for reconsideration in denying our motion, your honor.

COURT:

That is delaying the administration of justice. This court is going to cite counsel from the CLAO to explain why he should not be cited for contempt.

Atty. Romano:

Yes, your honor, but I entered only my appearance yesterday and I was not able to study the case." [12]

3. Counsel for the defendant-appellant further contends that the trial court erred in convicting said appellant upon the testimonies of the prosecution witnesses, which he claims to be improbable, contradictory and full of inconsistencies, and the appellant's extra-judicial confession,[13] supposedly given during custodial investigation.

The contention is without merit. The flaws or discrepancies in the testimonies of the witnesses for the prosecution, pointed out by counsel for the defendant- appellant, refer to minor details which cannot destroy the substance of such testimonies. On the contrary, these discrepancies and contradictions show that the said witnesses were not rehearsed.

Besides, the issue raised involves the credibility of witnesses and we have repeatedly upheld the well-established rule that the highest degree of respect is accorded to the findings of the trial court, the latter being in the best position to observe the demeanor and manner of testifying of the witnesses.

With respect to the extra-judicial confession which the defendant-appellant denied having executed, suffice it to state that the evidence presented by the prosecution is sufficient to support a finding of guilt even without the said extra-judicial confession. Priscilla Cruz, the kidnap victim, positively identified the defendant-appellant as the person who drove the car from Gapan, Nueva Ecija to San Rafael, Bulacan, where the said car broke down. Her testimony reads as follows:

"Q You said that your car was taken from your garage and then it reach (sic) San Rafael, Bulacan. Who were with you in your car when you left your residence?

Atty. Romano:

No basis, your honor.

COURT:

Witness may answer.

A They are (sic) five males and I am (sic) only the female, sir.

Q And where were you seated inside the car?

A They placed me at the back seat of the car. I was placed between the two of them, one poked his gun at me and the other, with a knife pointed at my side, sir.

Q How many men were with you at the back seat?

A There were two, sir.

Q And so they were three (3) in front of the car?

A Yes, sir.

Q Before this robbery you have not seen any of them by face?

A Yes, sir.

Q Considering that you rode in your car with five men from your residence and then to Valenzuela, will you be able to tell the court if you will recognize, if any, of this five men who brought you?

A Yes, sir.

Q There are so many persons inside the court room, will you please look around carefully and if any of those five men were present will you point him out?

A I can see one of the accused, sir.

Q Can you step down and point him if you can see that accused?

A At this juncture said witness step (sic) down and went to the accused where he was seated. The witness went straight to the place of the accused Vergel Bustamante and the witness stated that 'this is the one I recognize, sir' who was seated at the farthest bench inside the court room.

Fiscal Garcia:

Q As of this moment, do you know the name of the person you pointed out?

A Now, sir, I know him.

Q Will you tell the court by what name he is known to you?

A He is Vergel Bustamante, sir.[14]

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Q While you were still in the car before you reached San Rafael Bulacan, where was this Vergel Bustamante placed inside the car?

A He was the driver, sir."[15]

Luisito Cruz, husband of Priscilla, also recognized the defendant-appellant as the person who took the car key from him. He said:

"Q Do you know who took that key from you?

A I do not know him at that time but I was only able to recognize him during the time I confronted him, sir.

Q Do you know the name of that person?

A I came to know his name only during the investigation of this case that he was Vergel Bustamante, sir.

COURT:

Q Where was the key of your car at that time?

A There is a place where we kept our keys in the house and it is where I took the key from, sir.

Q Who took the key from you?

A I was the one who got the key from the place where I kept it and gave it to them because they demanded it from me so that they could use the car, sir.

Q Do you know who is that person now who demanded to get the key from you, if you know him will you please point him out if he is inside the court room now?

A There, sir, witness pointing to a person in red T-shirt inside the court room.

COURT:

Q What is your name?

A The said person stood up who when asked res-ponded by the name of Vergel Bustamante."[16]

There can be no doubt, therefore, as to the partici-pation of the defendant-appellant in the commission of the crime complained of.

The defendant-appellant, however, cannot be convicted of the graver offense of kidnapping for the purpose of extorting a ransom, as found by the trial court. Mrs. Priscilla Cruz merely testified that while she was inside the car, she heard one of the robbers say that she will be held for ransom. Her testimony reads as follows:

"Q You said that you were taken and that they are (sic) asking for ransom of P50,000.00. How do you know that you were held for ransom of P50,000.00?

A They told me, sir, that they will hold me for ransom of P50,000.00.

Q When did you hear that statement for the first time or when did you first learn about this?

A From one of the robbers who were inside the car, sir."[17]

But, the element of demand for ransom does not exist. No ransom note was presented in court, much less is there a showing that a demand for money was made upon the family of the victim for her safe return. Luisito Cruz, the husband of the kidnap victim, learned of the supposed ransom from Priscilla only upon the latter's return to Gapan, Nueva Ecija in the morning of 19 April 1983.[18] The absence of a demand for ransom negates the allegation of kidnapping for ransom.[19]

Besides, the Amended Information, filed in this case merely alleges that the accused therein had kidnapped Mrs. Priscilla Cruz. But, there is no allegation that said kidnapping was for the purpose of extorting a ransom. The settled rule is "that an accused person cannot be convicted of a higher offense than that with which he is charged in the complaint or information on which he is tried. It matters not how conclusive and convincing the evidence of guilt may be, an accused person cannot be convicted in the Courts of these Islands of any offense, unless it is charged in the complaint or information on which he is tried, or necessarily included therein. He has a right to be informed of the nature of the offense with which he is charged before he is put on trial, and to convict him of a higher offense than that charged in the complaint or information on which he is tried would be an authorized denial of that right."[20]

Hence, the defendant-appellant can only be convicted of the crime of kidnapping of a female, as provided for in Art. 267, No. 4, of the Revised Penal Code. Considering that the commission of the offense was attended by the aggravating circumstances of (1) use of motor vehicle, and (2) with the aid of armed men, with no mitigating circumstance to offset the same, the maximum of the penalty provided for was correctly imposed. But, since Art. III, Sec. 19(1) of the 1987 Constitution mandates that any death penalty already imposed shall be reduced to reclusion perpetua, the death penalty imposed upon the defendant-appellant is commuted to reclusion perpetua.

WHEREFORE, the judgment appealed from is hereby **AFFIRMED** with the modification that the defendant-appellant Vergel Bustamante alias "Dan Saksak" is sentenced to suffer the penalty of reclusion perpetua. Without costs.

SO ORDERED.

Paras, Sarmiento, and Regalado, JJ., concur.
Melencio-Herrera, J., (Chairman), on leave.

** Penned by Judge Cecilio F. Balagot

*** Rollo, p. 111

[1] Appellee's Brief, pp. 3-5, Rollo, p. 108

[2] tsn, November 22, 1983, pp. 2-3

[3] Original Record, pp. 72-73

[4] Id., p. 45

[5] Id., p. 43

[6] Id., p. 47

[7] Id., p. 50

[8] Section 8, Rule 117, Rules of Court, as amended

[9] tsn, May 4, 1983, pp. 2-3

[10] Original Record, p. 69

[11] Id., p. 70

[12] tsn, May 4, 1983, p. 4

[13] Exhibit A

[14] tsn, May 4, 1983, pp. 44-45

[15] Id., p. 48

[16] tsn, June 8, 1983, p. 5

[17] tsn, May 4, 1983, p. 46

[18] tsn, June 8, 1983, p. 7

[19] People vs. Ong, G.R. No. L-34497; January 10, 1975, 62 SCRA 174

[20] Matilde, Jr. vs. Jabson, G.R. No. L-38392, December 29, 1975, 68 SCRA 456, 461, citing U.S. vs. Ocampo, 23 Phil. 396

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