

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDGARDO LIM Y DE GUZMAN AND RODOLFO RAMIREZ Y VALENTINO, DEFENDANTS-APPELLANTS.

G.R. No. 90021. May 08, 1991

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

This is an appeal from a decision of the Regional Trial Court, National Capital Judicial Region, at Quezon City, dated May 10, 1988 convicting the defendants Edgardo Lim and Rodolfo Ramirez of the crime of kidnapping for ransom sentencing them to suffer reclusion perpetua and to indemnify the victims Robina Gokongwei and Celina Ngochua in the amount of P50,000.00 each.

The findings of the court a quo are as follows:

At about 7:00 o'clock in the morning of August 20, 1981 Roberto Rosaldo, a driver of the Gokongwei family, was driving around Metropolitan Manila in the family Toyota Hi-Ace van bringing certain members of the family to their respective schools. When only Robina Gokongwei and her first cousin Celina Ngochua, both in their early twenties, remained to be conducted to the Diliman, Quezon City campus of the University of the Philippines, the vehicle proceeded towards Epifanio de los Santos Avenue and through P. Tuazon Street. When they reached the corner of Conrado Benitez street, two men stopped the vehicle and informed Rosaldo that he was involved in a hit and run case. The two men boarded the Hi-Ace. A third man followed suit. One of them took the wheel. He was later identified as Bayani Lasian. The second man was described as big and stocky. He was later identified as Florito Darusin. The third man was identified as Arturo Sarabia.

The youngsters and their driver were brought to a sugarcane field in Calamba, Laguna where another two men joined the three. The victims were first detained in a small hollow block bungalow. There, the kidnappers made Robina write a note to her father, businessman John Gokongwei. The driver was instructed to deliver the note to Gokongwei. He was allowed to bring the vehicle for the said purpose.

Upon receipt of this note, Gokongwei immediately sought assistance from then National Defense Minister Juan Ponce Enrile who ordered the mobilization of the military authorities that very afternoon. In due time, the kidnappers called up Gokongwei on the telephone to demand a P7 Million ransom for the release of the victims. The amount was later reduced to P1.5 millions.

The victims stayed overnight in the small hollow block bungalow under guard. The following morning, they walked through the sugarcane field and after doing so, they were made to rest on a bench. In the evening, they walked to a two-storey house where they were locked overnight. On August 22, 1981, Lasian came with a tape recorder and told Robina that her dad wanted to talk to her so she was made to talk through the tape recorder. When the kidnapper relayed the taped voice of Robina to Gokongwei through the telephone, Gokongwei said that he will not negotiate unless he first hears the very voice of his daughter. Thus, Lasian went back to Calamba and in the evening of August 23, 1981, brought Robina to Manila where she was able to talk to her father by way of a

public telephone somewhere at the Philcite. Thus, the final negotiation was made for the release of the victims for P1.5 M.

In the evening of August 24, 1981, the victims were fetched from Calamba, Laguna in a brown Holden car driven by a "new guy" whom both Robina and Celina identified as Edgardo Lim. Together with Bayani Lasian and Arturo Sarabia, this "new guy" drove them to Manila. They were brought to the Holiday Motor Lodge at Ermita, Manila, where military operatives eventually rescued them in the evening of August 26, 1981. The operatives managed to capture Bayani Lasian and Arturo Sarabia.

Edgardo Lim and Rodolfo Ramirez voluntarily surrendered to the military authorities. They remained in detention up to this time.

In due course, an information was filed by the Assistant City Fiscal of Quezon City in the Regional Trial Court, Quezon City, charging Edgardo Lim and Rodolfo Ramirez of the crime of kidnapping as follows -

"INFORMATION

The undersigned Assistant City Fiscal accuses EDGARDO LIM Y DE GUZMAN and RODOLFO RAMIREZ Y VALENTINO of the crime of Kidnapping for Ransom, committed as follows:

That on or about the 20th day of August, 1981 in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring together, confederating with and mutually helping each other, using illegally possessed firearms, by means of force, threats and intimidation and/or by means of a motor vehicle, did, then and there, wilfully, unlawfully and feloniously kidnap, carry away and detain ROBINA GOKONGWEI and CELINA NGOCHUA for the purpose of extorting ransom from the victim's parents MR. and MRS. JOHN GOKONGWEI, thereby detaining them, said accused asked ransom from the victim's parents in the sum of SEVEN MILLION PESOS (P7,000,000.00) Philippine Currency, to their damage and prejudice in such amount as may be awarded under the provisions of the Civil Code.[1]

After arraignment wherein both accused entered pleas of not guilty and the trial on the merits, the trial court rendered the aforecited judgment convicting the accused of the offense charged.

Accused Rodolfo Ramirez appealed therefrom to this Court alleging that the trial court committed the following errors:

I -

THE COURT BELOW ERRED IN GIVING FULL WEIGHT TO THE "SINUMPAANG SALAYSAY" (EXHIBIT "H") WHICH WAS OBTAINED IN VIOLATION OF HIS CONSTITUTIONAL RIGHT TO COUNSEL; and

II -

THE LOWER COURT ERRED IN GIVING FULL WEIGHT TO THE TESTIMONIES OF THE WITNESSES FOR THE PROSECUTION, NONE OF WHOM POSITIVELY IDENTIFIED THE ACCUSED-APPELLANT HEREIN AS ONE OF THE PERPETRATORS OF THE OFFENSE CHARGED, IN FINDING HIM GUILTY OF SAID OFFENSE.[2]

Accused Edgardo Lim likewise interposed this appeal stating that the court a quo committed the following errors:

I

THE LOWER COURT ERRED IN GIVING CREDENCE TO THE TESTIMONY OF ROBINA

GOKONGWEI AND CELINA NGOCHUA IDENTIFYING THE ACCUSED EDGARDO LIM, AS THE PERSON WHO DROVE THE VEHICLE FROM CALAMBA, LAGUNA TO MANILA ON AUGUST 24, 1981;

II

THE LOWER COURT ERRED IN ADMITTING IN EVIDENCE THE STATEMENT OF THE ACCUSED RODOLFO RAMIREZ, LINKING THE ACCUSED EDGARDO LIM TO THE ALLEGED CRIME;

III

THE LOWER COURT ERRED IN ADMITTING IN EVIDENCE THE AFFIDAVIT OF ARREST EXECUTED BY ALFREDO M. MIRANDA, STATING THAT THE ACCUSED EDGARDO LIM VERBALLY ADMITTED HIS PARTICIPATION IN THE ALLEGED CRIME;

IV

THE LOWER COURT ERRED IN CONVICTING THE ACCUSED AS PRINCIPAL WHEN THERE IS NO EVIDENCE OF CONSPIRACY BETWEEN HIM AND THE ACCUSED RODOLFO RAMIREZ;[3]

The Court has carefully reviewed the records of this case and finds both appeals to be impressed with merit.

As to appellant Rodolfo Ramirez, no prosecution witness identified him to be among the kidnappers. The only evidence presented against him is his alleged extrajudicial confession dated September 1, 1981 which was taken by Sgt. Alfredo Miranda.[4] While said appellant admits his signature thereon, he denies the truth therewith alleging he was only forced into signing the same without knowing its contents and that he was then blindfolded, manhandled and threatened.

On the other hand Sgt. Miranda denies this imputation of appellant and stated that the confession was voluntary and was executed by appellant after he was informed of his constitutional rights, including his right to counsel, but that appellant agreed to give his statement even without the assistance of counsel.

To the mind of the Court what is decisive is the fact that the extrajudicial confession of appellant Ramirez was taken without the assistance of counsel and his alleged waiver of the assistance of counsel was not also made in the presence of counsel. This fatal omission renders the said extrajudicial confession inadmissible as evidence against appellant Ramirez.

While it is true, as alleged by the Solicitor General, that said extrajudicial confession was executed on September 1, 1981, while the ruling of this court in *Morales, Jr. vs. Enrile* was promulgated only on April 26, 1983,[5] there is no reason why the same right may not be invoked by and afforded to appellant when this right already existed when the said extrajudicial confession was executed;[6] more so considering that the only evidence against appellant Ramirez is the said extrajudicial confession.

Moreover, even assuming that the said extrajudicial confession is admissible against appellant Ramirez, such extrajudicial confession shall not be sufficient ground for conviction unless corroborated by evidence of *corpus delicti*. [7]

While the prosecution appear to have established in this case the kidnapping of Robina and Celina by Bayani Lasian, Arturo Sarabia and Florito Darusin as above related, there is no evidence at all linking appellant Ramirez in the conspiracy of the three. As a matter of fact, the information filed against appellant for this offense alleges only a conspiracy with appellant Edgardo Lim. No other persons were mentioned to be involved in the conspiracy to commit the said offense. Was the offense against Robina and Celina allegedly committed by Lasian, Sarabia and Darusin, the same offense charged against appellant Ramirez in conspiracy with appellant Lim only and no

other? This flaw on the proof of corpus delicti must be resolved in favor of the the appellant Ramirez.

As to the appellant Edgardo Lim, the alleged extrajudicial confession of appellant Rodolfo Ramirez cannot be admissible against him. This is a basic principle in evidence. In so far as appellant Lim is concerned it is hearsay evidence. Also, as above discussed said confession should be struck down as it was taken from appellant Ramirez in violation of his constitutional rights.

However, the primary evidence of the prosecution against appellant Lim is that he appears to have been identified by victims Robina and Celina as the "new guy" who drove the car that brought them to Manila in the evening of August 24, 1981.

When the victims were fetched by car at about 11:00 p.m. on August 24, 1981 in Calamba, it was dark and there were no electric lights in the place where the victims were brought. Mr. Simeon Inciong, Assistant Weather Chief of PAGASA testified that the moon rose in Calamba at past midnight, 12:24 A.M. and set at 1:34 P.M. of that day. This witness said:

"Q -

There is also a statement in this Certification that for Calamba, Laguna, on August 24, 1981, the moon rose at 12:24 a.m. and set at 1:34 p.m. of the same day, will you tell what does this entry mean?

"A -

It simply means that in Calamba, the moon rose a little bit earlier because it is to the east of Manila.

"Q -

And prior to 12:24 a.m., was there any...

"A -

There was none, sir.

"Q -

There was a complete darkness in other words?

"A -

Yes, sir."[8]

Since it was completely dark then at Calamba when the victims were fetched at 11:00 p.m., as asserted by this witness, it is improbable that the two victims could positively identify the "new guy" who drove them to Manila.

True it is that Robina testified that the moon was bright then when she saw for the first time this "new guy." However, she admitted that they were made to walk for 15 minutes from the sugarcane field to where the car was and they were made to close their eyes. How could this witness then have seen this "new guy" to sufficiently

identify him? The victims were then frightened and were in a state of shock. They were seated at the back of the car on the way to Manila. How can they clearly describe the identity of the driver?

Celina admitted that she had never seen said driver before they were picked up in Calamba; and that when he was driving, what she saw was the back of his head. Before she boarded the car she allegedly looked at the driver.[9] She described the appellant as one with "curly hair," "the most Chinese looking guy" among all the kidnappers, and that she remembers his physical features as his "hawkish" nose, "small eyes" and fair complexion.[10] It is improbable that in such a dark night, and even with the moon shining, and for the brief moment that she saw the "new guy" she could see and remember in all material details the curly hair, the hawkish nose, small eyes, and fair complexion of the driver.

The pretension of Celina is belied by Robina who testified that the car they rode in was a Holden or Cortina but that she cannot even ascertain its color, as it was dark, until they reached the Holiday Motor Lodge.[11] Yet, Celina even remembers the fair complexion of the new driver.

Robina testified that on the way to Manila, despite instructions for her to close her eyes, she opened her eyes from time to time so that she was able to note the features of appellant Lim even from behind.[12]

Celina also testified that when they were walking from the bench, they met two men who brought them to a wooden house. She cannot, however, describe them because she saw them only briefly.[13] When Robina was brought to the Philcite in the evening of August 23, 1984, Sarabia went with her. Another individual whose name she never learned was also guarding her.[14] The following day they were taken again to another place and they were guarded by Sarabia and another one whose name she did not know.[15] When they transferred from the wooden house to another place on the 24th, they saw two persons whom they never met before. These persons stayed with them for about five minutes. They threatened the young girls by displaying their firearms. Nevertheless, she could not describe or identify them.[16]

Thus, while the victims are able to ascertain the physical features to the last detail and even the name of the "new guy" who drove them to Manila to be appellant Lim, they failed to even vaguely describe the other persons involved in the conspiracy whom they also saw and were with for sometime.

Celina also said that when she first saw this "new guy" standing by the car, he was even introduced by the other kidnappers as the boss who will drive them to the city. Yet, on the way to the car these victims said that they were made to close their eyes. It is simply difficult to believe that the "new guy" would be presented to the victims then as the boss when precisely they were asked to close their eyes so that they will not be able to identify him. And if the "new guy" was indeed the boss, why was he made to drive the car to Manila and not Bayani Lasian who was sitting beside him and who also knew how to drive?

It is interesting to note that the information given by the victims as to the names of the perpetrators Arturo Sarabia, Bayani Lasian, and Darusin were according to them provided by the METROCOM.[17] They did not reveal how they knew the name of appellant Lim. Was it from the same source?

On the other hand, the appellant categorically testified that he met the victims for the first time only in the court; that he was standing at the corridor when Celina and her lawyer Atty. Marquinez came; that the latter stopped and talked to him as Celina stared at him; that it was in the office of the clerk of court when he overheard Robina ask her lawyer Atty. Marquinez "where is he" and "who is he?"; and when he turned his back to look at them, Atty. Marquinez and Robina were staring at him.[18]

The credibility of said victims was seriously dented when they gave conflicting versions as to where they were brought by the car on that evening in Manila. Robina stated that they were brought in a Holden or Cortina car to

the Holiday Motor Lodge.[19] Celina testified that they stopped somewhere in Manila, and that they got off the car and that one of the kidnappers called a taxicab which took them to the Holiday Motor Lodge.[20]

Moreover, as above stated, Robina could not even tell the color of the Holden or Cortina car in Calamba at the time as it was dark and that she was able to do so only when they reached the Holiday Motor Lodge. However, it now appears the car never reached the said motor lodge.

Such glaring inconsistencies on a material matter which was the only incident where appellant Lim allegedly participated shatters the credibility of these two victims. The positive identification of the appellant is vital in the determination of his complicity. The Court is not satisfied that the prosecution had successfully discharged its burden in this case.

The insistence of the prosecution to utilize the affidavit of arrest executed by Sgt. Miranda stating that when he arrested appellant Lim, the latter admitted his guilt, is untenable.

In the first place the appellant was not arrested; he voluntarily surrendered. Secondly, said affidavit of arrest was made without appellant availing of the assistance of counsel. Contrary to the claim of the Solicitor General that assistance of counsel was not yet required at such stage, the moment the appellant was arrested or voluntarily surrendered to the peace officers, the custodial investigation is deemed to have started. So he could not be asked thenceforth about his complicity in the offense, without the assistance of counsel.

Thirdly, said affidavit of arrest is self-serving and hearsay. It can easily be concocted to frame-up a suspect. Lastly, as appellant Lim refused to give or sign any statement, it is just not believable that nonetheless he admitted his guilt to the police even verbally.

The Court realizes the serious offense committed against the victims in this case. The crime of kidnapping with ransom is a heinous offense that should in fact be penalized with the supreme penalty. However, the prosecution must present clear and convincing evidence to generate a conviction.

In the "Epilogue" of the appealed decision of the trial court, a question is asked is to what happened to the identified conspirators Bayani Lasian, Arturo Sarabia, Florito Darusin and Mario Suelto who appear to have been arrested and taken into custody by the military authorities. "Where are they now and why were they not charged?" asked the trial court. The PC Chief was given thirty (30) days to submit a written report. The records do not show that any such report was made at all.

What the evidence show is that said suspects are now dead if not missing.[21] Were they all salvaged or liquidated? Have they been made to answer for the offense without having to go to court? Apparently, these four suspects have been made to pay with their lives for this serious offense against Robina and Celina. Such a practice of law enforcers, if at all true, has no place in our democratic space. Even the worst criminals deserve due process before conviction and imposition of the appropriate penalty.

In the meanwhile the appellants have been languishing in jail since 1981. Their guilt has not been established beyond reasonable doubt. Justice demands that they should now be cleared and released.

WHEREFORE, the judgment appealed from is hereby REVERSED AND SET ASIDE and another judgment is hereby rendered ACQUITTING defendants-appellants Edgardo Lim and Rodolfo Ramirez of the offense charged, with costs de oficio. Their immediate release from detention is hereby directed unless they are being held for any other charges.

This decision is immediately executory.

SO ORDERED.

Narvasa, (Chairman), Cruz, Griño-Aquino, and Medialdea, JJ., concur.

[1] Page 19, rollo.

[2] Page 55, rollo.

[3] Pages 63 to 64, rollo.

[4] Exhibit H.

[5] 121 SCRA 538 (1983); cited in *People vs. Nabaluna*, 142 SCRA 446 (1986) whereby this Court held that the trial court did not err in admitting the extrajudicial confession without assistance of counsel before the promulgation of said Morales case.

[6] Section 20 Article IV of the 1973 Constitution provides: “Sec. 20. No person shall be compelled to be a witness against himself. Any person under investigation for the commission of an offense shall have the right to remain silent and to counsel, and to be informed of such right. No force, violence, threat, intimidation, or any other means which vitiates the free will shall be used against him. Any confession obtained in violation of this section shall be inadmissible in evidence.”

[7] Section 3, Rule 133, Rules of Court (Revised Rules on Evidence).

[8] Exhibit 1; TSN, June 19, 1987, page 4.

[9] TSN, August 14, 1984, pages 46 to 50.

[10] Ibid, pages 54 to 58.

[11] TSN, May 29, 1983, pages 43 to 44.

[12] TSN, July 11, 1984, page 4.

[13] TSN, August 27, 1984, page 26.

[14] Ibid, pages 28 to 29.

[15] Ibid, page 30.

[16] Ibid, pages 31 to 32.

[17] TSN, August 14, 1984, pages 3 to 5; August 27, 1984, pages 4 to 5; and 16 to 18.

[18] TSN, February 27, 1988, pages 13 to 15.

[19] TSN, May 16, 1984, page 39.

[20] TSN, August 27, 1984, pages 51 to 52.

[21] TSN, August 27, 1984, pages 16 to 18; September 5, 1984, pages 9 to 11.

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