

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. WILFREDO LLAGUNO, JUDY REYES @ FLORANTE REYES @ LORENZO PEDROSA AND A CERTAIN "ATIS"; ACCUSED, JUDY REYES @ FLORANTE REYES @ L...

G.R. No. 91262. January 28, 1998

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

When the information charges a complex crime and the prosecution's evidence is insufficient to support a conviction for such complex crime or for one of its component offenses, the accused may still be convicted of the other component offense which may have been sufficiently proven. Conformably, when an accused who is charged with the complex crime of kidnapping with murder is erroneously convicted of murder by the trial court, he may on appeal be relieved from his erroneous conviction but still be found liable for slight illegal detention, because the elements of the latter crime are necessarily included in the information for the complex one.

Statement of the Case

On appeal before this Court is the Decision[1] of the Regional Trial Court[2] of Cebu City, Branch XVII, in Criminal Case No. CBU 50414, dated July 25, 1989, convicting Judy Reyes of murder.

Appellant Judy Reyes, together with two others, was charged in an Information dated February 16, 1987, which reads as follows:[3]

"The undersigned 3rd Asst. Fiscal of the City of Cebu[4] accuses BOY LLAGUNO, JUDY REYES @ FLORANTE REYES and a certain "ATIS" of the crime of KIDNAPPING WITH MURDER, committed as follows:

"That on or about the 4th day of February, 1987, at about 8:00 o'clock in the evening, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, armed with firearm, conniving and confederating together and mutually helping with (sic) one another, with deliberate intent, did then and there kidnap and detain one Bienvenido Mercado, and while under detention, with intent to kill, with treachery and evident premeditation, did then and there suddenly and unexpectedly shot said Bienvenido Mercado with said firearm, hitting him on the vital part of his body, thereby inflicting upon him the following physical injuries (sic):

'GUNSHOT WOUND THROUGH AND THROUGH FROM FRONTAL AREA OF THE HEAD TO OCCIPITAL AREA.'

as a consequence of which, Bienvenido Mercado died a few days later."[5]

Arraigned on June 11, 1987, Accused Wilfredo (Boy) Llaguno and Judy Reyes, assisted by Counsel Ernesto Amores, pleaded not guilty to the charge.[6] Accused "Atis" was at large; hence, he was not arraigned.

A consolidated Motion to Remand Case for Reinvestigation and Motion to Quash Warrant of Arrest alleging lack

of preliminary investigation was filed by Llaguno and Reyes through Counsel Rolando M. Lim on February 23, 1987.[7] The motion was granted and the records were returned to the City Fiscal's Office. Subsequently, in an Order dated September 23, 1987, the trial court, then presided by Judge Mario M. Dizon, dismissed the case against Wilfredo "Boy" Llaguno:[8]

"It appearing from the Reinvestigation Report & Recommendation dated September 14, 1987, filed by 3rd Asst. Fiscal Rodolfo V. Perez and duly approved by the City Fiscal, that the State has no evidence to present against, and secure the conviction of accused WILFREDO 'BOY' LLAGUNO, as prayed for, the instant case against said accused is ordered DISMISSED, and, accordingly, he is ordered immediately released, unless he is also detained for another cause. xxx"

On October 26, 1987, Fiscal Generosa Labra requested a resetting of the case because no witness for the prosecution was available. Atty. Vicente Cabahug, the appellant's counsel, objected on the ground that the remaining accused, Judy Reyes, was detained, adding that a previous warning had already been given to the prosecution in the last hearing during which it also failed to present any witness. Thus, the trial court provisionally dismissed the case:[9]

"In view of this, the instant case as against JUDY REYES is hereby ordered provisionally dismissed. The accused Judy Reyes, @ Florante Reyes is hereby ordered released from the BBRC[10] unless he is also detained for another case."

Two days after, on October 29, 1987, Atty. Ramon B. Ceniza[11] representing the Citizens Legal Assistance Society of the Philippines (CLASP) as private prosecutor, and with the "conforme" of Asst. Fiscal Labra, filed a Motion for Reconsideration praying for the reinstatement of the case against the appellant.[12] In an Order dated November 2, 1987, the trial court granted the motion and trial thereafter ensued. After the evidence from both parties had been presented, the assailed Decision penned by Judge Jose P. Burgos was promulgated, the dispositive portion of which reads as follows:[13]

"WHEREFORE, in view of the foregoing considerations, this Court finds the accused Judy Reyes alias Florante Reyes guilty beyond reasonable doubt, not of the complex crime as charged in the information but of the offense of MURDER defined and penalized under Article 248 of the Revised Penal Code with the aggravating circumstances of employing means to weaken the defense or means to insure or afford impunity, the use of a motor vehicle, commission of the offense at nighttime and in an uninhabited place and sentence is hereby rendered ordering the accused to serve the penalty of reclusion perpetua together with the accessory penalties under the law, to indemnify the heirs of Bienvenido Mercado the sum of Thirty [Thousand] (P30,000.00) Pesos and [to] pay the costs."

On September 26, 1989, the accused through Counsel Cabahug filed a Notice erroneously appealing the judgment to the Court of Appeals[14] Correcting the lapse,[15] the Court of Appeals in a letter dated December 6, 1989[16] forwarded the records of the case to this Court. After this Court's receipt of all pleadings and documents, the case is now ripe for resolution.[17]

The Facts

According to the Prosecution

The solicitor general's summary of the facts is as follows:

"On February 5, 1987 at 8:30 o'clock in the morning, the appellant Judy Reyes, chief security and rattan controller at GF International Export Inc., Cebu City, informed Tomas Banzon, the company duty guard, that he caught a thief on February 4, 1987 (TSN, November 24, 1987, p. 26). Appellant then took Banzon to his room where a person named Bienvenido Mercado was found tied to a wooden post in the room. Appellant told Banzon that Mercado was the thief he caught (TSN, November 24, 1987, p. 28).

At 4:00 o'clock in the afternoon of February 6, 1987, Dr. Jovita Ceniza, manager of the company, called up Banzon by phone inquiring if there was any unusual incident. Banzon replied that he would give a report after two (2) hours, and when appellant learned of this, he warned Banzon to keep quiet about Mercado's detention or be killed (TSN, November 24, 1987, p. 31). Appellant at the time was armed with a .45 caliber pistol (TSN, November 24, 1987, p. 31). When Dr. Ceniza went to the company's office later in the afternoon, she met the appellant who told her it was all finished and that he was going to Santo Niño to confess as he had killed someone (TSN, December 7, 1987, p. 28).

At 9:00 o'clock in the morning of February 7, 1987 Banzon inquired from appellant as to the whereabouts of Mercado and appellant replied that he already disposed of him (TSN, November 24, 1987, p. 33). Banzon, at that time, noticed that appellant's arm had teeth marks, and when Banzon inquired as to the cause thereof, appellant replied that he was hit by a piece of wood (TSN, November 24, 1987, p. 33).

Also on February 7, 1987, the body of Bienvenido Mercado was found by the police in Sogod, Cebu, which showed a gunshot wound on the forehead and multiple abrasions in the arms and body (TSN, November 24, 1987, p. 11)."[18]

In the place where they found the body, the police also found an empty shell of a .45 caliber bullet.[19]

According to Banzon, on February 5, 1987, he noted that the company-owned Datsun pickup was still sporting its gray corduroy seat covers, but on February 7, the seat covers were gone. Banzon asked Cirilo Eric Medico, the guard who relieved him, what happened to the seat covers and Medico replied that they had been taken by one Boy Saragoza to have them washed as they had been bloodstained. Feeling anxious and suspicious, he called up the Security Agency and asked for permission to take a leave of absence on February 8.[20]

Version of the Defense

On the other hand, appellant narrates the facts as follows:

"1. Appellant is of legal age, single and a resident of GF International Export, Inc. compound located at H. Abellana Street, Basak, Mandaue City.

1.1. At the time of his arrest, appellant was employed as a Rattan Controller of GF International Export, Inc.

2. Sometime evening of 4 February 1987, one Bienvenido Mercado, while in the presence of his mother and common-law wife, was invited by Atis and a certain Alex to join a drinking spree with the latter.

2.1. At the time of the aforesaid invitation, the aforementioned Bienvenido Mercado was wearing a blue t-shirt and an orange short pants.

3. Unfortunately, however, Bienvenido Mercado was last seen alive during the aforementioned invitation.

4. In the meantime, on the same evening of 4 February 1987, appellant was, all the while, within the premises of GF International Export, Inc.

5. Moreover, at around 6:00 o'clock in the morning of the following day, or more appropriately, on 5 February 1987, appellant, from his sleeping quarter, proceeded to take a bath at a place near the guardhouse of GF International Export, Inc. and, thereafter, proceeded to dress up and prepare for work on the said day.

6. On 7 February 1987, at around 5:43 o'clock in the afternoon, the body of a dead person and an empty caliber .45 shell were recovered.

7. After the aforestated recovery, a Post-Mortem Examination was immediately conducted.

8. While in his hut, appellant was arrested for Illegal Possession Of Firearm on 12 February 1987.

9. On 15 February 1987, the previously-mentioned recovered body was identified to be that of forenamed

Bienvenido Mercado.”[21]

Ruling of the Trial Court

The trial court held the appellant liable for murder, stating:

“It is clear from the established evidence on record that after the victim was detained by the accused for a day in his rest house at the compound of GF International, he brought the victim with the use of Datsun pick-up to Sogod, Cebu for salvaging in the evening of February 5, 1987, the day when accused ordered for no overtime work in the GF premises to better perpetuate the offense of killing the victim in Sogod, Cebu with hands tied using a .45 caliber pistol.”[22]

Although herein appellant was charged with “kidnapping with murder,” the trial court convicted him only of “murder defined and penalized under Article 248 of the Revised Penal Code with the aggravating circumstances of employing means to weaken the defense or means to insure or afford impunity, the use of a motor vehicle, commission of the offense at nighttime and in an uninhabited place.”[23] The trial court, however, did not find him liable for serious illegal detention under Article 267 of the Revised Penal Code because the victim was detained only for one day.

The Issues

In his brief, appellant imputes the following “errors” to the trial court, viz:

I.

The trial court erred in lending credence to the testimonial evidence of the prosecution.

II.

The trial court erred in holding that the testimonies of appellant and his witnesses were mere denials

III.

Therefore, the trial court erred in finding the existence in this case of circumstances sufficient to sustain a conviction.”

The foregoing boil down to the following issues: (1) the credibility of witnesses and (2) the sufficiency of the prosecution’s evidence.

The Court’s Ruling

The appeal is partly meritorious. The Court finds appellant liable only for slight illegal detention, not for murder or kidnapping with murder.

First Issue: Credibility of Witnesses

Long settled in criminal jurisprudence is the rule that when the issue is one of credibility of witnesses, appellate courts will not disturb the findings of the trial court. This rule is justified by the fact that the trial court is in a better position to decide the question.[24] Having the advantage of directly observing witnesses, “the trial judge is able to detect that sometimes thin line between fact and prevarication that will determine the guilt or innocence of the accused. That line may not be discernible from a mere reading of the impersonal record by the reviewing court. The record will not reveal those tell-tale signs that will affirm the truth or expose the contrivance, like the angry flush of an insisted assertion or the sudden pallor of a discovered lie or the tremulous mutter of a reluctant answer or the forthright tone of a ready reply. The record will not show if the eyes have darted in evasion or looked down in confession or gazed steadily with a serenity that has nothing to distort or conceal. The record will not show if tears were shed in anger, or in shame, or in remembered pain, or in feigned innocence. Only the judge trying the case can see all these and on the basis of his observations arrive at an informed and reasoned

verdict.”[25]

The records reveal, however, that this doctrinal guide should not apply in this instance, for the judge who penned the Decision did not personally hear the evidence for the prosecution. Judge Jose P. Burgos, the ponente, started presiding at the trial only on January 9, 1989[26] after the first witness for the defense had been presented.[27] Hence, he did not personally observe or assess any of the prosecution witnesses. Thus, as an exception to the rule, we meticulously reviewed the evidence to determine for ourselves the credibility of the witnesses and the sufficiency of the evidence to sustain the judgment of conviction.

Buttressing his defense of denial, appellant propounds several challenges to the credibility of the prosecution account. He maintains that Banzon was in no position to witness the alleged detention. He also denies that he had confided to Banzon and to Dr. Ceniza that the victim was in his custody and that he intended to “salvage” or kill him. He posits further that there were several inconsistencies in the testimonies of prosecution witnesses. We will deal with each of these contentions.

In his Brief, appellant assails the testimony of Banzon that he saw the victim hanging by his hands at eight o’ clock in the evening of February 5, 1987 and for thirty minutes thereafter. He contends that Banzon was “in no position to have witnessed the purported detention” of Victim Mercado, because Banzon’s work shift ended at eight o’clock in the evening and the endorsement of his duties to the relief guard took only a few minutes.[28]

We are not convinced. It was not proven that Witness Banzon left at exactly eight o’clock that evening, or right after he had turned over his responsibilities to the relieving guard. In fact, a reasonable allowance of time may be considered in the turnover of responsibility by one guard to another; Banzon could still have been inside the GF premises at 8:30 in the evening of February 5, 1987. Banzon himself testified that he was invited to appellant’s room at 8:10 that evening.[29] Thus, we find appellant’s attack on Witness Banzon’s allegation that he was at the GF premises on February 5, 1987 to be insignificant.

Appellant further contends that it is unbelievable that he would confide to Banzon the following: that he had detained Victim Mercado, that he had intended to “salvage” the latter, or that he had already done so. He maintains that it has not been shown that Banzon enjoyed his confidence.[30] He raises the same arguments in respect to the revelations he allegedly made to Dr. Ceniza. He states that he and Dr. Ceniza were already at odds with each other prior to February 1987.[31]

It must be stressed, however, that during the trial appellant never denied the statements of Banzon. In spite of the damaging accusations of Banzon, appellant, on the stand, did not dispute the former’s presence at the GF premises. Only in his appeal brief did he do so. We find appellant’s denial a mere afterthought, and thus undeserving of credence. The testimony of Banzon clearly shows appellant’s penchant for boasting:[32]

“Atty. Ceniza:

Q -

What transpired on the occasion of your meeting of [sic] the accused?

A -

He said they were able to catch a robber in the evening of February 4 but I did not believe him because I have not seen (the robber).

Q - What else transpired in your conversation:

A - No more.

Q - In the evening of February 5, 1987 what did you do?

A - About 8:10 in the evening of February 5 he brought me to his room.

Atty. Ceniza:

Q - Who is that he?

Witness:

A - Lorenzo Pedrosa.

Q - That means Judy Reyes?

A - Yes, sir.

Q - What was the purpose of Judy Reyes in bringing you to his room?

A - He showed me the person that he hanged. He was tied in both hands and raised upwards to a wooden brace of the house.

Q - What was the tenor of your conversation if any to Lorenzo or between Lorenzo and you?

A - I asked him why he brought this [sic] here. He told me that is [sic] a prison cell for those who have committed a crime.

Q - Where was the room of Judy Reyes?

A - Inside the premises of the company GF International Inc.

Q - Was that all that transpired in your conversation on that occasion?

A - I asked why he brought this person here and he answered me that Boy Saragoza will come back for him and I asked him what has he done and he said, he is a robber. He has stolen something.

Atty. Ceniza:

Q - Was that all that transpired in your conversation?

A - Yes, sir.

Q - What else?

A - I asked that person who was hanged. I asked him what was his name and he said his nickname was Ben and his full name is Bienvenido Mercado and he is a resident of Tabo-an and a 'cargador.'"

The testimony of Dr. Ceniza confirmed Banzon's account that appellant detained and planned to kill the victim. As in the case of Banzon, Ceniza's testimony was not objected to by appellant. Thus:[33]

"Atty. Ceniza:

Q -

And what was the answer of Lorenzo(Pedrosa or Judy Reyes)?

A -

And then he said, you know that if I had to narrate (it) all it will take more than one hour.

Q -

Please limit your answer. Particularly, what Lorenzo told you about?

A -

He asked permission[;] he wanted to use the Datsun because he was going to salvage a man. He wanted to finish him before the next day. At this point I plead [sic] with him, "Please don't do it." And I said, I told him that Dong if that is your problem, I will help you. Just don't 'salvage.'

Q - And what did Lorenzo told [sic] you?

A - He said that he was going to use the Datsun to salvage a man because he said he wanted to finish him before the next day. At this point I said, 'Dong don't do that. If you have a problem I will go there and I will talk to you.' To the extent I also told him, 'We will give money. I will not do anything to you.' But he said (that) he has to finish this man because if the man will not be eliminated he will be in hot water. It was a very long conversation.

Atty. Ceniza:

Q - By the way, what did Lorenzo tell you about this man hanging in one of the buildings of the company?

A - He said he is [sic] a thief. So I said, 'But why did you have to bring him there?' and he said, 'He has stolen something.' I said, 'Why did you not ask the assistance of the security guard instead of you yourself handling that fellow?' Then he did not say anything. So I shifted [the topic], I told him 'I will be the one to take care if he will just release him.' He said, 'No, I will have to salvage him.'"

Furthermore, appellant's self-serving negative defense of denial cannot be given greater weight than the declaration of credible witnesses who testified on affirmative matters.[34] Jurisprudence teaches us that "affirmative testimony has greater value than a negative one, for the reason that he who denies a certain fact may not remember exactly the circumstances on which he bases his denial."[35]

Appellant also cites inconsistencies in the version of the prosecution. Banzon insisted that Victim Mercado was in yellow short pants when he last saw the latter alive; when recovered, Mercado was in orange short pants.[36] Appellant further points out the following inconsistencies: there was a discrepancy in the names of those who invited Mercado to a drinking session; the duty shift of Banzon was actually 8:00 p.m. to midnight; appellant was arrested on February 11, 1987, not February 12, 1987; and Banzon called up the security agency regarding the matter of bloodstains on February 7, 1987, not February 14, 1987 as testified to by him.[37]

Again, we hold that these insignificant lapses do not taint the credibility of the witnesses. Inconsistencies in the testimonies of prosecution witnesses with respect to minor details and collateral matters do not affect the substance, veracity or weight of their declarations. In fact, these inconsistencies reinforce rather than weaken their credibility, for they lessen the prospect of a rehearsed testimony. Au contraire, such discrepancies serve to add credence and veracity to their categorical, straightforward and spontaneous testimonies.[38]

Appellant next assails the credibility of Dr. Ceniza. He alleges that Dr. Ceniza's behavior towards the incident was surprising, for upon learning of the presence of the victim inside the company premises, she did her usual rounds at the hospital instead of checking on the unusual occurrence.[39]

Admittedly, Company President Ceniza's reaction at a time of crisis is open to criticism. However, this does not lessen the weight of her testimony. Different people react differently to startling occurrences. In any event, she did testify that she kept in touch with the personnel at GF at that time.

Second Issue: Sufficiency of the Prosecution's Evidence

In deciding this appeal, we emphasize that the burden of proof in criminal cases is on the prosecution. Thus, a finding of guilt must rest on the strength of the prosecution's own evidence, not on the weakness or even absence of evidence for the defense.[40]

Circumstantial Evidence Sufficient to Convict Appellant of Murder?

Because there were no eyewitnesses to the killing, the trial court's resort to circumstantial evidence was inevitable. A conviction may rest purely on circumstantial evidence, provided the following requisites concur:[41]

"(a)

There is more than one circumstance;

(b)

The facts from which the inferences are derived are proven; and

(c)

The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.”[42]

Hence, the Supreme Court has held:

“ x x x a judgment of conviction based on circumstantial evidence can be upheld only if the circumstances proven constitute an unbroken chain which leads to one fair and reasonable conclusion which points to the accused, to the exclusion of all others, as the guilty person, that is, the circumstances proved must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with any other hypothesis except that of guilty.”[43]

Let us consider the “chain” of circumstances proven by the prosecution. Banzon testified that appellant detained Mercado in his (appellant’s) room by tying his hands to a brace in the ceiling with the apparent intention of “salvaging” or killing the victim, a suspected robber. Appellant threatened Banzon and warned him not to report the incident to Dr. Ceniza. Appellant took the Datsun pickup on February 6, 1987 and claimed the next day that he had already “disposed” of the man. Banzon saw the Datsun pickup stained with blood. He also noticed traces of blood on the canal near the parked Datsun. Appellant himself asked permission from Dr. Ceniza to use the pickup in order to “salvage” a man. He later told Dr. Ceniza that he was going to confess because he was feeling bad after he had killed a man.[44]

These circumstances, at first glance, may create a strong suspicion that appellant did commit the alleged killing. Nevertheless, a closer examination reveals that the facts from which this inference was derived do not prove beyond reasonable doubt that appellant was the author of the killing.

Appellant draws attention to the conflict between the testimonies of Dr. Ceniza and Banzon[45] regarding the time when the victim was taken out of the GF premises, and the time when he was killed. According to Dr. Ceniza, appellant told her on February 6, 1987 that he was going to confession in the afternoon because he was feeling bad. Dr. Ceniza took appellant’s statement to mean that the victim had already been taken out of the GF premises and killed. Banzon, on the other hand, testified that appellant told him in the morning of that same day that the victim was still in the company premises. Furthermore, he testified that it was only around four o’clock in the afternoon of February 6, 1987 when appellant brought the pickup out of the premises of GF. In other words, Banzon’s testimony sought to establish that the victim was taken out of the GF premises after office hours on February 6, 1987.[46] The inconsistencies in their testimonies are evident from the following:[47]

“Atty. Ceniza:

Q -

How about on the following day, February 6, 1987, do you recall anything unusual that happened relative to that man hanging behind the GF International Building?

[Dr. Ceniza]

A - The first thing that I know that one of the supervisors told me that the man was no longer there. On the 6th I went to the office and proceeded upstairs. Then when I was upstairs we met, Lorenzo and I, upstairs and he followed up (sic) and then he told me it is all finished. So, I said then I asked him, ‘What about the rattan?’

because we have to look for rattan. Then he followed me to my office and then I sat down my office and he sat in one of the chairs and he said, 'I will go to Sto. Nono (sic) because I am going to confess. Because I feel bad. That is the way when you have killed. This afternoon I will go to Sto. Nino tp (sic) confess.'"

Based on the above, appellant was assumed to have killed Mercado in the morning of February 6, 1987. However, this was contradicted by Banzon:[48]

"Atty. Ceniza:

Q -

That was February 5 in the evening. On February 6, 1987 in the morning do you recall any unusual incident that happened?

A - Yes, sir. On the following day that was February 6, I was already on duty at 8:00 o' clock and after a while he (appellant) about 9:00 o' clock Lorenzo Pedorsa (sic) passed and I asked him, 'Boss, is the man still there?' and he said, 'Yes.'(sic) because Boy Saragoza did not come back for him.'

Atty. Ceniza:

Q - What else transpired in your conversation?

A - I asked if it is not dangerous for him and he said it is not.

Q - What else transpired?

xxx xxx

Q - Was there any other unusual incident that happened in the evening of February 6?

A - I don't know anything.

Q - How about the following day, February 7, 1987, do you recall anything unusual that happened?

A - On February 7 when I was on duty again Lorenzo passed by about 9:00 o' clock in the guardhouse. And then I asked Lorenzo what happened to him, and he said, 'I had already disposed of him.' And I said, What 'happened to your arm? There is showing that it was bitten by human teeth.'"

This Court cannot rest easy with this discrepancy. Such glaring and material inconsistency creates a reasonable doubt whether it was appellant himself who took, Mercado, the victim, out of the GF premises and consummated the killing.

The two testimonies are clearly inconsistent. It is possible to conjecture that the victim was killed between the time when Banzon spoke with Appellant Reyes that morning of February 6, 1987 about 9:00 a.m. and the time when appellant told Dr. Ceniza that he would go to confession in the afternoon of that day because he felt guilty about having killed the victim. However, we find this thought difficult to accept because the prosecution failed to establish the time when Dr. Ceniza talked to appellant. Furthermore, from the supposition of the prosecution, it would follow that the victim was killed inside the GF premises and that, after office hours, the body was transported from the premises with the use of the Datsun. It is undisputed, however, that a spent .45 caliber shell was found beside the body, indicating that the victim was shot in the place where his body was found, i.e., outside the GF premises. Clearly, there are unexplained missing links in the prosecution account. Where was the victim killed? Inside or outside the GF premises? Was he dead or alive when his body was taken out of the premises? Who took the victim out of the GF premises? Was the Datsun pickup used in transporting the victim from the premises? Where was appellant between the time he talked to Banzon and the time he talked to Dr. Ceniza on February 6, 1987? Who actually killed Mercado?

In the light of these unexplained questions, the trial court erred in nonetheless holding that the circumstantial evidence presented by the prosecution shows, beyond moral certainty, that appellant was guilty of murder. In so doing, the lower court transgressed the basic rule that “when the inculpatory facts and circumstances are capable of two or more interpretations, one of which is consistent with the innocence of the accused and the other or others consistent with his guilt, then the evidence, in view of the constitutional presumption of innocence, has not fulfilled the test of moral certainty and is thus insufficient to support a conviction.”[49] Parenthetically, when the prosecution’s case is anchored only on circumstantial evidence, all the circumstances must be consistent with the hypothesis that the accused is guilty of the crime sought to be proven, and no other. In addition, the circumstances under consideration must not support any rational hypothesis consistent with the innocence of the accused.[50] Consequently, appellant may not be held criminally liable for killing the victim.

Kidnapping Was Sufficiently Proven

The trial court did not find appellant liable for serious illegal detention under Article 267 of the Revised Penal Code on the ground that the period of detention was less than five days. This Court, however, finds that the totality of the evidence presented by the prosecution sufficiently proves beyond reasonable doubt that appellant is guilty of the crime of slight illegal detention under Article 268 of the Revised Penal Code. Article 268 of the Code provides:

“ART. 268. Slight illegal detention. -- The penalty of reclusion temporal shall be imposed upon any private individual who shall commit the crimes described in the next preceding article without the attendance of any of the circumstances enumerated therein. The same penalty shall be incurred by anyone who shall furnish the place for the perpetration of the crime.

If the offender shall voluntarily release the person so kidnapped or detained within three days from the commencement of the detention, without having attained the purpose intended, and before the institution of criminal proceedings against him, the penalty shall be prision mayor in its minimum and medium periods and a fine not exceeding 700 pesos.”

The evidence presented by the prosecution, which was sustained by the trial court, clearly established that appellant had in fact detained the victim without authority to do so. Banzon testified that he witnessed the victim hanging by the arms in appellant’s room. Banzon’s testimony significantly jibes with the physical evidence showing that the victim sustained multiple abrasions in both arms.[51] Furthermore, Dr. Ceniza narrated that several employees called her up in the morning of February 5, 1987 asking for permission to go home because there was a “man hanging at the back in one of the buildings of GF International.”[52] Dr. Ceniza’s testimony

was un rebutted. All these ineludibly prove beyond reasonable doubt that the victim was deprived of his liberty by appellant.

It must be emphasized that appellant was charged with the special complex crime of kidnapping with murder, not of two independent charges of kidnapping and murder. “In a complex crime, although two or more crimes are actually committed, they constitute only one crime in the eyes of the law as well as in the conscience of the offender.”[53] Hence, in deciding this appeal, the Court is not confined to the conviction for murder; rather, the scope of its review encompasses the offense charged in the information, which the prosecution sought to prove. It is a well-settled doctrine that an appeal “throws the whole case wide open for review and empowers (even obligates) the appellate court to correct such errors as may be found in the appealed judgment even if they have not been assigned.”[54] When an accused appeals, he stands for a new trial of the whole case.[55] Since the information charged the complex crime of kidnapping with murder, the acts constituting slight illegal detention were necessarily included in the information, and may thus be validly taken into account in the resolution of the present appeal. Manifestly, appellant was fairly apprised of the nature of the crime of slight illegal detention and granted a fair opportunity to defend himself. At this juncture, we deem it significant to reiterate that the trial court merely made a finding that appellant could not be convicted of serious illegal detention for the sole reason that the victim’s detention did not exceed five days.[56] The court a quo, however, found that appellant illegally detained the victim for at least one day,[57] which act by itself constitutes slight illegal detention. Besides, the trial court appreciated the act constituting slight illegal detention as a qualifying circumstance, i.e., employing means to weaken the defense. While we find no proof beyond reasonable doubt to sustain a conviction for murder, the records indisputably prove culpability for slight illegal detention.

WHEREFORE, the Decision appealed from is MODIFIED. Appellant Judy Reyes is hereby CONVICTED of slight illegal detention and SENTENCED to the indeterminate penalty of ten years of prision mayor medium, as minimum, to seventeen years and four months of reclusion temporal medium, as maximum. He is acquitted of murder. No costs.

SO ORDERED.

Narvasa, C.J., (Chairman), Romero, Melo, and Francisco, JJ., concur.

[1] Penned by Judge Jose P. Burgos.

[2] Rollo, pp.15-26.

[3] Rollo, p. 5.

[4] Rodolfo V. Perez

[5] It was not proven that Bienvenido Mercado, after being shot “through and through” his head, was still able to survive a few days after the shooting.

[6] Record, p. 54.

[7] Ibid., pp. 13-19.

[8] Ibid., p. 77.

[9] Record, p. 95.

[10] Bagong Buhay Rehabilitation Center located at Lahug, Cebu City.

- [11] Husband of one of the witnesses for the prosecution, Dr. Jovita Ceniza.
- [12] Record, pp. 96-97.
- [13] Rollo, pp. 25-26.
- [14] Record, p. 269
- [15] Sections 1 and 2 of Rule 122.
- [16] Rollo, p. 2.
- [17] The case was deemed submitted for resolution upon receipt by this Court on February 6, 1996 of the confirmation of appellant's confinement at the NBP.
- [18] Appellee's Brief, pp. 3-4; Rollo, pp. 126-127.
- [19] Decision, p. 5; Rollo, p. 19.
- [20] TSN, November 24, 1987, pp. 33-35.
- [21] Appellant's Brief, filed by Atty. Bert M. Vega, pp. 5-6; Rollo, pp. 58-59.
- [22] Decision, p. 11; Rollo, p. 25.
- [23] Ibid., pp. 11-12; Rollo, pp. 25-26.
- [24] People vs. So, 247 SCRA 708, 716, August 28, 1995, per Kapunan, J.
- [25] People vs. De Guzman, 188 SCRA 405, 410-411, August 7, 1990, per Cruz, J.
- [26] Records, p. 165.
- [27] Ibid., p. 156.
- [28] Rollo, pp. 62-63.
- [29] TSN, November 24, 1987, p. 26.
- [30] Rollo, p. 63.
- [31] Ibid., p. 68.
- [32] TSN, November 24, 1987, pp. 26-28.
- [33] TSN, December 7, 1987, pp. 25-26.
- [34] People vs. Ballagan, 247 SCRA 535, 547, August 23, 1995, per Romero, J..
- [35] People vs. Palomar, G.R. No. 108183-85, p. 18, August 21, 1997, per Panganiban, J.; citing People vs. Acuña, 248 SCRA 668, 667, October 2, 1995, per Romero, J
- [36] People vs. Mendoza, 236 SCRA 666, 673, September 22, 1994, per Regalado, J.
- [37] Rollo, pp. 63-64.
- [38] Ibid., pp. 70-71.
- [39] Rollo, p. 67.

[40] See *People vs. Paguntalan*, 242 SCRA 753, 779, March 27, 1995, per Melo, J.

[41] *People vs. Fulinara*, 247 SCRA 28, 43-44, August 3, 1995, per Romero, J.

[42] Section 5, Rule 133, Rules of Court.

[43] *People vs. Binamira*, G.R. No. 110397, pp. 17-18, August 14, 1997, per Panganiban, J; citing *People vs. Adofina*, 239 SCRA 67, 76-77, December 8, 1994. See also *People vs. Payawal*, 247 SCRA 424, 431, August 16, 1995, per Vitug, J.

[44] TSN, December 7, 1987, p. 28.

[45] See Appellant's Brief, pp. 15-16; Rollo, pp. 68-69.

[46] Rollo, pp. 68-69.

[47] TSN, December 7, 1987, pp. 27-28.

[48] TSN, November 24, 1987, pp. 29-33.

[49] *People vs. Agustin*, 246 SCRA 673, 681, July 18, 1995, per Regalado, J.

[50] See *People vs. Casingal*, 243 SCRA 37, 44, March 29, 1995, per Quiason, J.

[51] See testimony of Dr. Romeo Pregado who conducted the post mortem examination on the deceased, TSN, p. 6, November 24, 1987.

[52] See TSN, pp. 20-21, December 7, 1987.

[53] Reyes, J., *The Revised Penal Code*, p. 653, Book One (1993).

[54] *People vs. Alejandro*, 225 SCRA 347, 350 August 17, 1993, per Cruz, J.

[55] Francisco, *Rules on Criminal Procedure*, p. 496.

[56] Decision, p. 11; Rollo, p. 25

[57] *Ibid.*

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