

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALFREDO ENANORIA, (DETAINED), ONE ALIAS TOTONG AND ONE ALIAS BOY, AND ALIAS EBOY WHOSE TRUE NAME IS RODRIGO FEROLINO, ACCUSED,...

G.R. No. 92957. June 08, 1992

Ponente: PARAS, J.

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PARAS, J.:

This is an appeal interposed by Alfredo Enanoria, from the October 31, 1989 decision[1] of the Regional Trial Court of Davao City, 11th Judicial Region, Branch II, in Criminal Case No. 16302-88, which found him guilty beyond reasonable doubt of the crime of Kidnapping with Murder and sentenced him to suffer the penalty of reclusion perpetua, to indemnify the heirs of the victim in the sum of P110,000.00 for death and burial expenses, and P100,000.00 as moral damages, and to pay the costs (Rollo, p. 22).

At around 9:00 o'clock in the morning of May 7, 1988, while he was at the Davao Medical Center where he was brought after his arrest. Enanoria executed an "ante-mortem" statement before P/Cpl. Cerilo S. Solana, Jr. in the presence of Mayor Duterte and Lt. Col. Calida. Although he claimed that he would still survive inspite of his wound, he admitted having been shot because he was involved in the kidnapping of Mrs. Dakudao. He informed the police that one alias Amil shot Mrs. Dakudao and that they were not able to get the P50,000.00 ransom they had demanded (Original Record, p. 6).

Four days later or on May 11, 1988, Enanoria executed a sworn statement before P/Cpl. Solana at the Talomo Patrol Station of the Davao City Metrodiscom. After he had been apprised of his constitutional rights to remain silent and to counsel of his own choice, he admitted involvement in the kidnapping of Mrs. Dakudao. He claimed, however, that he did not know that he was participating in a kidnapping as he was merely picked up in Tunggol, Pagalungan, Maguindanao by Amil and one alias Totong. According to Enanoria, Amil and Totong each carried a .38 caliber revolver and it was Amil who shot Mrs. Dakudao only once at around 1:30 a.m. of May 7, 1988 (Exh. "1"; Original Record, p. 7).

Hence, Enanoria, one alias Totong, one alias Boy and Rodrigo Ferolino alias Eboy were charged in an Information filed on May 12, 1988 by 4th Assistant City Fiscal Barbara C. Pioquinto, which reads as follows:

"The undersigned accuses the above-named accused of the crime of KIDNAPPING WITH MURDER under Article 267 and 248 in relation to Article 48 of the Revised Penal Code, committed as follows:

"That on or about May 7, 1988 and sometime prior thereto, in the city of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, being then private individuals, conspiring, confederating together and helping one another, willfully, unlawfully and feloniously, for the purpose of extorting money from one Lea Dakudao and her family in the amount of Fifty Thousand Pesos (P50,000.00) or of killing the said Lea Dakudao if the amount demanded could not be given, kidnapped, carried away, brought to Maguindanao and deprived said Lea Dakudao of her liberty without authority of law, against her will and

consent; that on the occasion of said kidnapping and to enable them to carry out their purpose, the said accused in pursuance of their conspiracy brought back aforesaid Lea Dakudao to Davao City and willfully, unlawfully and feloniously with intent to kill, with treachery and evident premeditation shot her (Lea Dakudao) with the use of firearm thereby inflicting upon her (Lea Dakudao) a mortal wound which caused her death." (Original Record, p. 1)

On June 27, 1988, Enanoria executed a supplementary sworn statement before T/Sgt. Florante M. Rotor of the PC-CIS. Assisted by Atty. Jonathan M. Jocom of the CLAO XI, Enanoria was once again apprised of his constitutional rights before he executed the statement which was sworn before 4th Assistant City Fiscal Antonina B. Escovilla.

In said statement, Enanoria related that he joined the group of Rodrigo Ferolino alias Eboy, his first degree cousin, in November 1987. The other leaders of the group were Sgt. Bibit of the Philippine Army assigned with the 27th IB stationed at Bansalan, Davao del Sur and one alias Lugum. The group lured Enanoria with "instant money" as they had kidnapped a certain Leong and one Angel who respectively paid P50,000.00 and P200,000.00 ransom money.

According to Enanoria, Sgt. Bibit hatched the kidnapping plan as he had financial problems. It was also Sgt. Bibit who gave Eboy a hand grenade but Sgt. Bibit did not participate in the kidnapping of Mrs. Dakudao. In the afternoon of May 6, 1988, when they posted themselves at the Park and Shop in Bajada, Davao City, they were armed not only with a hand grenade because Amil and Totong were each armed with a .38 caliber revolver.

Enanoria claimed that Eboy instructed Amil and Totong to look for a new car which Enanoria would drive. Hence, when they saw Mrs. Dakudao boarding the Ford Laser car, Amil and Totong also boarded it and Enanoria drove the car up to the corner of J.P. Laurel and Cabaguio Avenue where Eboy was waiting. Eboy then drove the car to Tunggol, Maguindanao.

Enanoria narrated that on the way, Eboy introduced himself as Commander Bobby to Mrs. Dakudao and they discussed the ransom to be paid. Upon reaching Tunggol, Mrs. Dakudao told Eboy that she had P50,000.00 in cash at home. Having agreed on the ransom, the group headed back to Davao City after staying in Tunggol for around twenty minutes only.

Upon reaching Davao City, they stopped at the gasoline station in front of the Tourist Lodge along MacArthur Avenue. Totong called up the Dakudao residence and when they learned that Mr. Dakudao was not around, Mrs. Dakudao volunteered to get the money herself. The group then proceeded to Bajada but Eboy just parked the car along the highway because Mrs. Dakudao told them that there was a checkpoint manned by a security guard before reaching their residence. Eboy then decided to return to Tunggol but upon reaching Matina, they saw a roadblock which had been put up by the police. Eboy did not heed the warning of the police. Instead, he stepped on the accelerator of the car thereby prompting the police to open fire at them. The car stopped upon reaching a bridge because its tires were flat. As they were going out of the car, Amil gave Enanoria a .38 caliber revolver and they all escaped in different directions. Enanoria, however, was arrested the police a few hours thereafter (Exh. "A"; Record of Exhibits, pp. 1-4).

When arraigned, Enanoria, who was the only one apprehended by the authorities, entered a plea of not guilty to the crime charged (Original Record. p. 21).

At the trial on the merits, the prosecution presented the following witnesses:

Sgt. Florante M. Rotor, then assigned as the Chief Investigator at the 11th CIS District. He testified that he personally investigated Enanoria on June 27, 1988 and that before proceeding with the said investigation, he first

apprised Enanoria of his constitutional rights particularly his right to counsel of his own choice. When Enanoria said that he could not afford to hire one, Sgt. Rotor offered to contact the Citizen's Legal Assistance Office (CLAO), which, in turn, designated Atty. Jocom to assist Enanoria. Upon Atty. Jocom's arrival at the CIS Office, Sgt. Rotor introduced him to Enanoria and allowed them to confer with each other for about five minutes. After Enanoria had agreed to have Atty. Jocom as his counsel, the investigation commenced. Sgt. Rotor asked questions and Enanoria answered in the Cebuano--Visayan dialect. The sworn statement, however, which was typed by Sgt. Rotor simultaneously, was in the English language, having been translated by Sgt. Rotor during the investigation. Enanoria and Atty. Jocom thereafter signed the statement in one another's presence. Sgt. Rotor then brought Enanoria to the Office of the City Fiscal for the administering of the oath.

On cross-examination, Sgt. Rotor said that Enanoria was brought to the CIS Office after he was discharged from the hospital where he was treated for his gunshot wounds. As Enanoria appeared to be strong enough by then, Sgt. Rotor did not ask about the former's injuries. Sgt. Rotor also disclosed that Enanoria had previously executed a sworn statement before the Talomo Police Station and that he was able to read a copy of the same which was furnished to their office. Although he could not recall its contents, he remembered that since the sworn statement appeared to be inadequate, he took Enanoria's supplemental statement during his reinvestigation.

Sgt. Rotor affirmed that he informed Enanoria of his constitutional rights, namely, the right to remain silent, the right to counsel of his own choice, that if he could not afford to have one, the government could provide him a lawyer to assist him in the investigation, and that whatever he would say could be used as evidence against him. Sgt. Rotor likewise confirmed that Enanoria voluntarily gave his statement and that he (Sgt. Rotor) did not require Enanoria to sign a waiver considering that he was already assisted by counsel. The investigation lasted for approximately two hours. Four days later, Sgt. Rotor took Enanoria, then detained at their office, to the Fiscal's Office. Then he waited outside and after the oath had been administered, he brought Enanoria back to the CIS Office for detention. (Hearing of August 15, 1988; TSN, pp. 4-33)

Pfc. Aquino Serenio, assigned at the Talomo Police Station. He testified that he was on duty at around 1:30 o'clock in the morning of May 7, 1988 when he received a flash alarm relayed by the Metrodiscom Operation Center (MOC) stating that four unidentified armed men were spotted on board a red car with plate number LAG-312. Acting on the said alarm, Station Commander P/Lt. Reynaldo Obrero immediately dispatched him together with several other police officers to put up a road block to intercept the vehicle.

As the car was allegedly coming from the poblacion and heading south, Pfc. Serenio's team set up a road block in front of Matina Mini Market in Davao City. Not long thereafter, they saw a red car fast approaching so they signalled the driver to stop the vehicle. The driver, however, ignored the signal and the car went through the road block almost hitting one of the police officers. Several gunshots were fired at them from the red car when they pursued it with their mobile unit. Their team successfully fired at the tires of the car thus forcing it to stop near the Balusong Bridge. A lone gunshot was then heard from inside the car and then the passengers scampered in different directions. The team quickly approached the car and there they saw a seriously wounded lady on the front seat. The driver of the mobile unit, Pat. Jickain, rushed the lady to the Davao Doctors Hospital for treatment while he (Pfc. Serenio) and the others stayed behind to search for the remaining passengers.

Eventually, they found Enanoria in the house of a certain Dado at Muslim Village, Central Park Subdivision in Bangkal, Davao City. They recovered a .38 caliber snubnose revolver, i.e., a small-barreled gun, from Enanoria who was subsequently brought to the Davao Medical Center due to a gunshot wound at the back. Pfc. Serenio later learned that the lady, then identified as Mrs. Lea Dakudao, expired at the hospital while Enanoria was investigated by P/Cpl. Cerilo Solana at the Talomo Police Station. In court, Pfc. Serenio positively identified Enanoria as one of the alleged kidnappers.

When cross-examined, Pfc. Serenio said that he did not know whether there were other persons on board the red car aside from the reported four armed men. He also admitted that he and the rest of his team were all armed with M16 armalite rifles and that they all fired their weapons when the passengers of the car first opened fire at them. Pfc. Serenio stressed that their team directed their gunfire at the tires of the car to forcibly stop it but the car did stop when it reached the Balusong Bridge, about 200 meters from the roadblock. When they inspected the car, Pfc. Serenio saw that both rear tires of the car were flat. Thereafter, the car was brought to the police station for safekeeping and investigation.

Pfc. Serenio added that he saw the lady whose back was bleeding, apparently alive but unconscious. One male passenger jumped to the river at the right side while the two others, one of whom was Enanoria, proceeded to the left side of the bridge leading to a grassy area. Nobody fired their guns while Pfc. Serenio's team chased the said passengers. Finally, Pfc. Serenio admitted that their team was not subjected to paraffin tests nor their rifles to ballistic examination (Hearing of August 15, 1989; TSN, pp. 34-58).

Atty. Jonathan Jocom, a lawyer assigned at the CLAO, declared that on June 27, 1988 at around 8:30 o'clock in the morning, their office received a call from the Criminal Investigation Unit of the CIS, requesting for a lawyer to assist a person who was about to give a statement during custodial investigation. In response thereto, Atty. Jocom proceeded to the CIS Camp Leonor in Davao City. After he was introduced by Sgt. Rotor, Atty. Jocom conferred with Enanoria. The latter told him that he had already made a previous statement and that he was willing to give a supplemental one to the police authorities. Atty. Jocom, in turn apprised Enanoria of his constitutional rights and advised him not to make any statement or to sign the same if he was unsure of what he wanted to say. Despite such advice, Enanoria willingly underwent investigation, in the presence of Atty. Jocom, for about two hours. The investigation sheet was in English so Sgt. Rotor translated the same into the Cebuano-Visayan dialect which not only Enanoria but also Atty. Jocom knew since he grew up in Davao City. After the investigation, he and Enanoria signed the sworn statement.

On cross-examination, Atty. Jocom stated that he did not know Enanoria prior to the investigation yet the latter welcomed his assistance. He informed Enanoria of the seriousness of the charge but he observed that Enanoria was 'overwhelming (sic) to tell the truth' and that he (Enanoria) was 'really positive' about his statements. In fact, Enanoria did not consult him at all about his answers to the investigator's questions as he made them all voluntarily. Lastly, Atty. Jocom stated that the translation which Sgt. Rotor made relating to the investigation was substantially correct (Hearing of August 16, 1989; TSN, pp. 5-18).

Cpl. Cerilo Solana, Jr., assigned at the Talomo Police Station. He testified that he was also on duty on May 7, 1988 when he was instructed by their Station Commander, Police Lt. Reynaldo Obrero, to investigate the shooting incident which occurred in the early dawn of that day. He was informed that a certain Alfredo Enanoria, one of the suspects in the kidnapping of one Lea Dakudao, was apprehended and then confined at the Davao Regional Hospital due to gunshot wounds. He immediately proceeded to the said hospital and he saw Enanoria being treated at the emergency ward.

Cpl. Solana, believing then that Enanoria was in a serious condition and could die anytime, asked questions and prepared what he considered as Enanoria's ante-mortem statement. Enanoria, however, survived and was subsequently discharged from the hospital after which he (Enanoria) was brought to the Talomo Police Station. Again, the Station Commander directed Cpl. Solana to take down Enanoria's statement. When interviewed, Enanoria disclosed to Cpl. Solana the names of his companions as one alias Totong and the other as Amil, who died after having been apprehended in Digos, Davao City.

Upon cross-examination, Cpl. Solana said that based on his investigation, he learned that Lea Dakudao died while

on board the car which sustained several bullet holes mostly at its rear portion. He said, however, that he did not know the cause of the victim's death nor did he try to find out the same inasmuch as his purpose then was only to investigate the suspect in the said incident. He did interview Enanoria twice - first at the hospital after Solano's arrest, and second, when Enanoria had been brought to the police station. On the second occasion, Enanoria readily admitted that he was with a group on that fateful day. Enanoria specified Alias Totong and Alias Amil, who allegedly shot the victim once. Enanoria claimed, however, that he was not involved in the kidnapping of the victim. Since the referral of the case to the Criminal Investigation Service, Cpl. Solana no longer coordinated with the said office (Hearing of August 16, 1989; TSN, pp. 24-37).

Dr. Jose T. Pagsaligan, a medico-legal officer assigned at the Regional Health Office in Davao City. He testified that on May 7, 1988, he examined the body of Lea Dakudao, then already lifeless, at the Cosmopolitan Funeral Homes. According to his findings, the victim died of shock secondary to severe hemorrhage due to gunshot wounds. More particularly, Dr. Pagsaligan stated in his Autopsy Report No. 004-88 (Exhibit "B", Record of Exhibits, p. 5) that Lea Dakudao sustained two gunshot wounds, both of which were caused by bullets presumably fired from a .38 caliber revolver. The bullet which caused the first wound entered through the right side of the back just above the waistline and its slug was recovered in the omentum, a part of the abdominal cavity. That which caused the second wound, which was more fatal, entered through the right side of the buttock and was retrieved from the ascending colon of the large intestines. Dr. Pagsaligan opined that the assailant could have been in a higher position than the victim when he fired the first shot because of the bullet's downward trajectory. Aside from the gunshot wounds, Dr. Pagsaligan noted the presence of multiple pelvic bone fragments and 1000 cc. of blood in the abdominal cavity, indicating internal hemorrhage caused by the severance of the iliac artery. There was also a laceration at the left eyebrow as well as gunpowder burns at the right scapular area extending to the right side of the neck. Dr. Pagsaligan issued the corresponding death certificate.

When cross-examined, Dr. Pagsaligan said that the two slugs he recovered from the body of the victim and which were endorsed to Sgt. Saradon for safekeeping were of two kinds, one was of bronze or lead material while the other was more of copper. Thus, it was possible that two different firearms of the same caliber were used (Hearing of August 21, 1989; TSN, pp. 4-57).

Ma. Elenita Jimenez, a supervising clerk working at the local civil registrar's office in Davao City, merely confirmed as authentic the signatures of Remedios Salingay and Teresita Fuentes who both had certified to the correctness of the death certificate presented as evidence before the court (Hearing of August 21, 1989; TSN, pp. 58-60).

Mr. Roberto Dakudao, Jr., a businessman and the surviving spouse of the victim narrated that on May 6, 1988, at around 5:00 o'clock in the afternoon, he arrived home from the golf course. He saw his 32-year old wife, Lea, preparing to attend the 5:30 o'clock mass at the Davao Redemptorist Church. Lea then left for the said church aboard one of their family cars, a red Ford Laser with plate no. LBT312 which she herself drove. Mr. Dakudao thereafter took a nap and woke up at almost 9:00 o'clock in the evening.

As he normally expected his wife to come home within an hour after the mass, he was surprised to know that she was not yet around by then. This prompted him to call up their relatives and friends hoping that he would be informed of Lea's whereabouts. Nobody knew where she was. So, he decided to take the other family car with their driver in order to trace back the possible route that Lea could have taken and to see if she had met an accident or had had a car breakdown. He still failed to locate her.

In desperation, he called up his sister-in-law, Catalina 'Teling' Santos-Dakudao who, being the daughter of Luis Santos, had 'good connections' with the military. Teling then requested for police assistance and a few minutes

after, Lt. Pintak met with Mr. Dakudao. Finally, at around 1:00 o'clock in the morning of the next day, May 7, 1988, Mr. Dakudao left for home with his driver. When they were near the DASI Motors, they realized that the missing Ford Laser car had just passed by on the other lane. Thus, they immediately turned around and trailed the said car which subsequently parked at about 150 meters away from the Shell Gasoline Station. Mr. Dakudao instructed his driver to likewise park their car at the Tourist Lodge which was also near the said station and there he called Teling to inform her what had happened.

As he was getting out of the lodge, he saw his wife with one or two male companions about to board the Ford Laser car again. Mr. Dakudao presumed that they, too, made a phone call at the station. The car then sped off again heading for the south. Mr. Dakudao and his driver would have followed suit once more but at that moment, a Ford Fiera with military men on board passed by. Thus, Mr. Dakudao signalled to them to pursue the Ford Laser car.

The Ford Fiera did trail the said car for some time with Mr. Dakudao and his driver close behind. Somewhere along the way, the Fiera overtook the Laser which quickly made a U-turn at the Harana area in Matina, Davao City. Mr. Dakudao cautioned his driver not to appear obvious in following the Laser so it took them a while before they also made a U-turn. By then, they already lost track of the Laser. Mr. Dakudao asked to be brought to the Tourist Lodge to make another phone call to Teling but Lt. Pintak, who also went there, instructed him to call up a certain number instead and request the police to look out for the Laser car with four armed men and a hostage. Thereafter, Mr. Dakudao and his driver tried to locate the Laser once again. When they failed to see it, they returned to the Tourist Lodge at almost 3:30 o'clock in the morning.

As soon as Mr. Dakudao arrived there, he was informed that his wife had been shot and was rushed to the Davao Doctors Hospital for treatment. He proceeded to the said hospital and there he learned that his wife had passed away leaving him and their three children. On further questions, Mr. Dakudao said that he transported her wife's remains and had her interred in Bacolod, her place of birth. He spent around P80,000.00 for the purpose. In court, he pointed to Enanoria whom he said was apprehended and then detained by the CIS agents as one of those responsible for the kidnapping of his wife.

When cross-examined, Mr. Dakudao revealed that before 12:30 o'clock in the morning, while he was still at Teling's house, he called home. He was told by their helper that there were two strange callers who asked if it was his (Mr. Dakudao's) house and when it was so confirmed, the callers abruptly hanged the phone. Mr. Dakudao supposed that the callers could have been the kidnappers trying to contact him so he decided to go home. He and his driver were on their way home when they saw the Ford Laser and subsequently tailed it. As the rear windshield was slightly tinted, Mr. Dakudao admitted that all he could see then was a woman whom he presumed to be his wife sitting at the front seat and at least two male passengers sitting at the back seat of the Laser. When it stopped at the Shell station, he did not approach the said car for fear that the male passengers could be armed. Mr. Dakudao said that the police authorities informed him of Enanoria's arrest (Hearing of August 21, 1989; TSN, pp. 61-78).

Romeo Borja, the family driver of the Dakudaos, simply corroborated the testimony of Mr. Dakudao in its material points adding that the Ford Laser which had several bullet holes was subsequently brought to the DAMOSA for repair (Hearing of August 21, 1989; TSN, pp. 81-88).

4th Assistant City Fiscal Antonina Escovilla of Davao City, declared that Enanoria was brought to her office on June 1, 1988. When Enanoria was left alone with her in the room, she asked him under oath to tell the truth. Utilizing the Cebuano-Visayan dialect which Enanoria speaks, Fiscal Escovilla apprised him of his rights to remain silent and to engage the services of counsel of his own choice. She also informed him that anything he

would give or say in the investigation could be used in evidence against him. After such precautions, Fiscal Escovilla proceeded to translate the sworn statement to Enanoria who confirmed the truth of its contents. When she asked if he was intimidated or forced into executing the statement, Enanoria said he did it voluntarily and with the active assistance of a CLAO lawyer of his choice. There was not even a hint from Enanoria that he had been maltreated before or during the investigation.

When cross-examined, Fiscal Escovilla said that Enanoria, who was physically well at that time, stayed in her office for about 15 to 20 minutes, during which time she substantially translated his sworn statement. Enanoria's answers then were coherent and when Fiscal Escovilla asked if the signatures in the statement were his, Enanoria answered affirmatively. After Fiscal Escovilla was through with him, the escorts were called in to take Enanoria again into their custody (Hearing of August 31, 1989; TSN, pp. 22-25).

Mrs. Fortune Castillo, a resident of Davao City, claimed that she was acquainted with the late Mrs. Lea Dakudao, whom she last saw alive on May 6, 1988 at the Davao Redemptorist Church located at Bajada, Davao City. Mrs. Castillo said that like her, Mrs. Dakudao regularly attended the daily mass scheduled at 5:30 o'clock in the afternoon held at the said church. On that fateful day, as Mrs. Castillo usually sat at the last pew, she saw Mrs. Dakudao enter the church alone at about 5:30 o'clock in the afternoon. They heard the First Friday mass together with the other mass-goers until it was over at 6:20 o'clock in the evening. Apparently, that was the last time she would see Mrs. Dakudao, for the following day, Mrs. Castillo attended her wake at the Dakudao residence (Hearing of August 31, 1989; TSN, pp. 27-33).

The defense, on the other hand, interposed denial and presented only two witnesses - the accused himself and his common-law wife.

Alfredo Enanoria, accused herein, jobless and a resident of Tungol, Pagalungan, Maguindanao, testified that at about 9:00 o'clock in the evening of May 6, 1988, he was at the purok near their house in Tunggol when a car stopped in front of him. Logum who was on board the said car, invited Enanoria to go with him to Davao for a 'happening'. Enanoria thereafter changed his clothes and boarded the car with five other passengers already inside, four of whom were male and one was a female seated in front. Enanoria claimed that except from Logum, the driver and the other passengers were not known to him. They then proceeded to Davao City and arrived there at around 12:45 o'clock in the morning of May 7, 1988. They stopped momentarily at a gasoline station near the Tourist Lodge to buy motor oil, after which Logum remarked "Pa-Bajada tayo, Mrs." referring to the lady who said yes.

They did reach Bajada and then the car stopped again for about fifteen minutes at a crossing. At that point, Logum instructed the driver to turn back towards Cotabato. When they were near the Talomo Market, Enanoria saw several police officers some twenty meters away but he did not notice if there was a road block. Logum ordered the driver to proceed past the lawmen who eventually strafed the car. Enanoria immediately ducked on the car floor to take cover. He said he did not know whether Logum had a gun then and he himself did not have one at any time. The car was hit at its front and rear mirrors and then he heard the lady cry out in Tagalog, "Natamaan ako!". Enanoria said he was also hit at his right knee and at the right side of his back. Logum and another companion were also hit.

The car was pursued by and fired upon by the lawmen on board a mobile unit. When the car finally stopped at the Balusong Bridge due to its flat tires, Enanoria and his companions scampered to different directions. Enanoria said he went to the left side and found a well. He was taking a bath at the well when the muzzle of an armalite rifle hit his wound at the back. Upon turning around, he saw several police officers who later mauled him. They were about to 'finish' him but he pleaded for his life and assured them that he would tell the truth.

Enanoria was then brought to the police station and subsequently to the regional hospital for treatment. He stayed there until the next day, May 8, 1988. After his discharge in the afternoon, he was brought again to the police station. A police officer who investigated him asked him to admit that he was one of the kidnappers. Enanoria said he was not apprised at all of his constitutional rights and that he did not understand the contents of the written statement which was presented to him as it was in English and was not translated into a dialect which he knew.

Enanoria also said that he collapsed before the statement was completed. When he regained consciousness, Cpl. Solana asked him to sign the statement. Afterwards, Enanoria was transferred to the CIS office. He could not recall if he was also investigated by Sgt. Rotor at the said office but when the supplementary statement prepared by the latter was shown to him. Enanoria affirmed that the signatures thereon were his. He said, however, that he was forced to sign the statement by Sgt. Rotor upon the order of Lt. Macao. He could not remember if that was the same document which he signed before Atty. Jocom at the CLAO. Enanoria added that he met Atty. Jocom for the first time at the CIS office and the latter simply left as soon as he told him (Enanoria) that it was up to him to give a statement to the police authorities. The second time was at the CLAO where he was asked to sign a document.

When cross-examined, Enanoria said that he used to work for the MINTRANCO Bus Line as a conductor. One of their practices then was to accommodate persons asking for free rides for fear that they could be NPA or MNLF members. Logum was one such person whom Enanoria obliged and then came to know later. During Logum's subsequent rides, Enanoria admittedly conversed with him, briefly though, as he was always busy with his job. Enanoria thereafter resigned from the said company.

On the night of that fateful day, Logum invited him to a 'happening', i.e., to a disco and he acquiesced after changing his clothes. Enanoria claimed that he never knew the names of Logum's companions as during the course of their trip to Davao City, they addressed each other only as "bro". He was not introduced to Logum's companions either and he did not ask Logum to do so for he was shy. Enanoria inquired though why they had a female companion and Logum merely told him that she was also invited to the disco. The lady appeared unafraid and happy although the light inside the car was off. Then they proceeded to Davao City and reached the place at past midnight. They stopped, however, at Kinuskusan and then at Digos, when the driver and another male companion answered the call of nature.

Upon further questions, Enanoria admitted that he knew how to drive a car or any vehicle but he denied that he knew about the kidnapping. He said that he could not remember if a .38 caliber pistol was recovered from him while he was taking a bath at the well and he could not remember, too, if there was a house near the same well. He also denied having been arrested at the house of a Muslim. Likewise, Enanoria could not recall the name of the fiscal before whom he took his oath, what he told the fiscal and whether the said fiscal was a man or a woman.

On redirect examination, Enanoria claimed that the reason why he could not remember having appeared before the administering officers was that he was not yet feeling well at that time (Hearing of August 29, and 30, 1989; TSN, pp. 5-44 and 2-34).

For its second and last witness, the defense presented Madelon Taborada, Enanoria's common-law wife. She testified that on May 5, 1988, she went to Tunggol with Enanoria to get some food provisions. The following day, Taborada left him behind as she headed back for Davao City. On May 7, 1988, a woman informed her that Enanoria was brought to the regional hospital. So, on that very night, she proceeded there but the police guards did not allow her to see him. It was only on the following morning that she saw Enanoria. He spoke inaudibly, obviously in pain because of his wounds. Taborada said that she did not know what caused his wounds and that Enanoria was discharged from the hospital on May 9, 1988 (Hearing of August 30, 1992; TSN, pp. 37-41).

On October 31, 1989, the trial court rendered its decision finding Alfredo Enanoria guilty beyond reasonable doubt of kidnapping with murder under Arts. 267 and 248 in relation to Art. 48 of the Revised Penal Code and imposing on him the aforementioned penalty.

Hence, the present appeal.

The brief for appellant was filed on May 22, 1991 (Rollo, p. 38) while that of appellee was filed on July 23, 1991 (Ibid., p. 104).

In his brief, appellant assigns the following errors:

I

The trial court erred in convicting the accused-appellant as co-principal in a conspiracy to commit kidnapping with murder in the absence of evidence and without proving the existence of a conspiracy.

II

The trial court erred in admitting the extrajudicial confession of the accused-appellant in evidence and which coerced confession was made the sole basis for the conviction of the accused-appellant.

(p. 57, Rollo)

Enanoria's counsel asserts that the extrajudicial statement which was allegedly the only piece of evidence against his client, was obtained under duress and in violation of the latter's right to counsel and therefore, it should have been disregarded. Appellant's counsel insists that had the court properly disregarded his extrajudicial confession, the cause of the prosecution would have been reduced to nothing as the prosecution had miserably failed to prove that Lea Dakudao had indeed been kidnapped and that Enanoria participated therein. As conspiracy was not established, Enanoria could not be held liable for the crime charged.

A careful evaluation of the evidence on record reveals, however, that such contentions are baseless and utterly devoid of merit.

Firstly, the rule is well-settled that a confession is presumed to be voluntary and that the confessant, who bears the burden of proving otherwise (*People v. De la Cruz*, G.R. No. L-32661, July 20, 1982, 115 SCRA 184; *People v. Estevan*, G.R. No. 69676, June 4, 1990, 186 SCRA 34), must duly substantiate his claim that the admissions in his affidavit are untrue and unwillingly executed. Bare assertions will certainly not suffice to overturn the presumption. Considering however, that voluntariness is largely determined by external manifestations, the Court has laid down several factors indicative thereof. Thus, "where the defendants did not present evidence of compulsion, or duress nor violence on their person; where they failed to complain to the officer who administered their oaths; where they did not institute any criminal or administrative action against their alleged intimidators for maltreatment; where there appeared to be no marks of violence on their bodies; and when they did not have themselves examined by a reputable physician to buttress their claim" (*People v. Mada-I Santalani*, G.R. No. L-29979, September 28, 1979, 93 SCRA 3317), the defendants are deemed to have voluntarily confessed. Still another indicium of voluntariness is the disclosure of details in the confession which could have been known only to the declarant (*People v. Bautista*, G.R. No. L-31900, August 6, 1979, 92 SCRA 465; *Estacio v. Sandiganbayan*, G.R. No. 75363, March 6, 1990, 183 SCRA 12). Significantly, all these are present in the case at bar.

It is worthy to note as well that the extrajudicial statement was subscribed and sworn to before Asst. City Fiscal Escovilla, who herself extensively testified that she translated the contents of the statement and inquired into the spontaneity of its execution. There is no showing whatsoever that she was actuated by any reason other than her

desire to perform the solemn task of having affiant voluntarily and intelligently swear to the truth of his statement (People v. Del Pilar, G.R. No. 86360, July 28, 1990, 188 SCRA 37).

Enanoria's claim that his right to counsel was violated does not hold water either. It is already beyond dispute that he was actively assisted by a lawyer in the person of Atty. Jocom. The latter's presence adequately fulfilled the constitutional requirement. It must be reiterated at this point that the right to counsel is intended to preclude the slightest coercion as would lead the accused to admit something false. The lawyer, however, should never prevent an accused from freely and voluntarily telling the truth. Verily, whether it is an extrajudicial statement or testimony in open court, the purpose is always the ascertainment of truth (People v. Layuso, G.R. No. 69210, July 5, 1989, 175 SCRA 52).

Based on the foregoing, there can be no other conclusion than that Enanoria's extrajudicial statement is admissible as evidence. As it sets out in detail his participation in the kidnapping and the eventual murder of Mrs. Dakudao, Enanoria's responsibility has been pinpointed. However, Enanoria's extrajudicial confession is not the sole basis for his conviction. He has been positively identified by Pfc. Aquino Serenio as one of those who scampered out of the Ford Laser car when it stopped due to flat tires. Enanoria could have disproved this testimony but he failed to do so. Neither did he present proof that Pfc. Serenio had a motive or reason for his inculcation. Moreover, as correctly pointed out by the Solicitor General, his flight from the scene of the crime strongly indicated his guilt (People v. Rey, G.R. No. 80089, April 13, 1989, 172 SCRA 149).

Conspiracy has also been proven beyond reasonable doubt by the concerted action of Enanoria and his companions (People v. Cruz, G.R. No. 86217, October 31, 1990, 191 SCRA 127). As Enanoria admitted in his supplemental sworn statement, in kidnapping Mrs. Dakudao, his group adopted the same modus operandi they had used in other kidnappings: they would wait for the owner to board his or her car, get in the car with him or her and bring the owner to either Tunggol or Kabacan, North Cotabato where Eboy had a house (Exh. "A-2").

The crime committed is kidnapping for ransom for which the death penalty is imposable under the last paragraph of Art. 267 of the Revised Penal Code. Since the death penalty has been constitutionally abolished, the penalty imposable on the appellant is reclusion perpetua.

There is no proof that Mrs. Lea Dakudao was kidnapped for the purpose of killing her so as to make the offenses one of kidnapping for ransom and murder a complex crime. What is evident is the fact that the killing was perpetrated, apparently as an afterthought after the Ford Laser car had been rendered immobile, while Mrs. Dakudao was in the custody of armed men which included Enanoria. Hence, the killing is qualified by abuse of superiority and with the aid of armed men. That it was committed while the Ford Laser car was being shot at by then pursuing police does not erase the crime there being proof that the bullets which killed Mrs. Dakudao came from a .38 caliber revolver like the gun retrieved from appellant during his arrest. There being conspiracy, appellant is also liable for murder notwithstanding his claim that it was Amil who shot Mrs. Dakudao. For murder, Enanoria should suffer the separate penalty of reclusion perpetua, the medium period of the penalty of reclusion temporal maximum to death, in the absence of any aggravating or mitigating circumstances (Arts. 248 & 64(1), Revised Penal Code).

PREMISES CONSIDERED, appellant Alfredo Enanoria is hereby convicted of the separate crimes of kidnapping for ransom under Art. 267 and murder under Art. 248 for which crimes he shall suffer two penalties of reclusion perpetua which he shall serve successively in accordance with Art. 70 of the Revised Penal Code. He shall also indemnify the heirs of Leah Nora Rita Puentevella-Dakudao not only the amount of P80,000.00 for burial expenses but also the amount of P50,000.00 in accordance with recent jurisprudence.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, and Regalado, JJ., concur.

Nocon, J., on leave.

[1] Penned by Judge Nicasio O. de Jesus

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