

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO REDULOSA ALIAS ROMEO SOLON AND MICMIC REDULOSA ALIAS MICMIC SOLON AND ROSELO CARTON, ACCUSED-APPELLANTS.

G.R. No. 94594. March 29, 1996

Ponente: MENDOZA, J.

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MENDOZA, J.:

This case is here on appeal from the judgment of the Regional Trial Court of Cebu City, finding appellant Romeo Redulosa and his co-accused Roselo Carton guilty of kidnapping for ransom with murder and sentencing each of them to death. The decision of the trial court was rendered before the present Constitution (which prohibits the imposition of the death penalty) took effect on February 2, 1987. The question is whether the appellant can withdraw the appeal. For reasons to be hereafter explained, we hold that the appeal can be withdrawn.

The facts are as follows:

Appellant Romeo Redulosa (alias "Micmic Redulosa," "Romeo Solon" and "Micmic Solon") and Roselo Carton were accused of kidnapping for ransom with murder. The information alleged:

That on or about the 3rd day of December, 1981, at about 8:00 o'clock A.M., and for sometime subsequent thereto, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, armed with a deadly weapon, with the use of a motor vehicle, conniving and confederating together and mutually helping with each other, with deliberate intent, did then and there kidnap or detain one Christopher Jason Tan, aged 9 years, or deprive him of his liberty by bringing him to Tan-awan, Carcar, Cebu, and at the same time demanding money in the amount of P100,000.00 from the parents of said Christopher Jason Tan as ransom for the liberty of said Christopher Jason Tan, and upon failure of said parents to come up with the full amount of P 100,000.00, with deliberate intent and intent to kill, with treachery, abuse of superior strength, evident premeditation, and in disregard the respect due the offended party on account of his age, did then and there stab with the use of a bladed weapon aforesaid Christopher Jason Tan several times on different parts of his body, thereby inflicting upon him the following injuries:

"STAB WOUNDS ON DIFFERENT PARTS OF THE BODY:

as a consequence of which said Christopher Jason Tan died.

CONTRARY TO LAW."

During the trial, a witness for the prosecution, Noel Tano, testified that Redulosa proposed that they kidnap Christopher Jason Tan, the son of Luisita and Tomas Tan. Tano, a former army man, was a security guard at Southwestern University. Luisita Tan is a first cousin of Romeo Redulosa. The boy, Christopher Jason Tan, then nine years of age, was a student of the Sacred Heart School for Boys. Appellant also included Roselo Carton in the plan.

The first two attempts to lure the boy out of the campus (on the pretext that his parents wanted to see him) failed.

Noel Tano, who was assigned to get the boy, was stricken by conscience, but was prevailed upon to stay with the two in the third attempt to kidnap the boy in the following manner:

Redulosa would drive a taxicab which he would bump against Tomas Tan's car. The group would then alight from the car and, by pretending to be military men, scare the father. In the ensuing panic and confusion, Tano and Carton would snatch the child. This third attempt also failed. After that, Noel Tano said, he dropped out of appellant's plan.

Tomas Tan testified that in the morning of December 3, 1981, a man phoned him demanding P 100,000.00 ransom for the safe return of his son Jason who had been kidnapped earlier that morning. Because Tomas Tan said he could not raise the amount on such short notice, the amount was reduced to P15,000.00. The money was to be left inside Tomas Tan's car which should be parked near the Taoist Temple, at around noon.

At around 2 P.M. the caller phoned again and said he was not able to get the money. He asked Tomas Tan to be ready with P50,000.00 for Jason's release, saying that he would call again after five days but he never did.

The matter was reported to the police and was eventually referred to the investigation team headed by PC Technical Sgt. Godofredo Lucasan. Lucasan testified that they were able to pick up Noel Tano who pointed to appellant as the possible kidnapper. After his apprehension, appellant executed an extra-judicial confession and implicated Roselo Carton who was soon arrested. Appellant led the police to a place where Jason's body was found in an advanced stage of decomposition. The remains were identified by means of the dental records of the boy.

In his defense, Redulosa alleged that the mastermind was really a certain Sonny who belonged to the military and who had been introduced to him by Noel Tano. Redulosa testified that Sonny thought the boy's father was a millionaire as a result of insurance fraud and arson wherein Sonny's relative, a certain Alfredo Suico, was used as a "firebug" and then killed to make sure he did not talk. Sonny proposed the kidnapping of Tomas Tan's only son Jason as a revenge and as a way to make easy money.

Redulosa claimed that he agreed because Sonny had threatened to kill his wife and family. On December 3, 1981, after coming from the hospital where he had taken his wife, who is a physician, Redulosa was stopped by Sonny and Noel Tano. They got into his car and at gunpoint ordered him to proceed to the Sacred Heart School. Noel Tano went inside the school compound and after five minutes came back with Jason in tow. The group then proceeded to Redulosa's residence at San Isidro, Talisay, Cebu. From there Noel Tano called the boy's father. When Noel Tano noticed that Redulosa was taping the telephone conversation, he ordered Redulosa to get out of the room. (Accused presented the tape during trial but what was heard was only the voice of Jason pleading with his father to pay ransom.) Redulosa claimed that he tried to leave to report the matter to the police, but Sonny overtook him and ordered him to turn back.

At 10:30 in the morning, the group returned to Cebu City and were proceeding to Tabunoc when Jason complained that he was hungry. Appellant suggested that they take lunch in his residence. The group afterward proceeded to Tabunoc where Sonny stopped Redulosa's car and had Jason transferred to his (Sonny's) Toyota.

Somewhere in Carcar, Sonny told Redulosa to leave everything to him and to go back to Cebu City. He did not hear from Sonny again until seven days later. He was told that Tomas Tan had failed to pay the full amount of ransom. Appellant Redulosa was assured that his nephew was safe. Redulosa was arrested by the police on December 25, 1981 for the kidnapping of his nephew.

On October 3, 1983 the RTC, then presided over by Judge Regino Hermosisima, Jr., now a member of this Court, rendered judgment finding appellant Redulosa and Carton guilty of the charge, with the aggravating circumstance

of treachery, evident premeditation and use of a motor vehicle. The trial court found:

Witnesses Panfila Obado and Jerry Belonta, domestic servants in the household of Romeo Redulosa, wittingly or unwittingly, but truthfully testified against their master to the effect that their said master, Romeo Redulosa, and Roselo Carton had brought Christopher Jason Tan to the Redulosa residence at around 9:00 o'clock in the morning of December 3, 1981.

Redulosa and Carton locked themselves inside Redulosa's room with the child. Redulosa had first transferred the telephone from the sala to his bedroom.

Romeo Redulosa timed the bringing of the child to the house in such a way that neither his wife nor his parents-in-law would be present in the house.

The servants must have found it unusual for Romeo Redulosa to be bringing to the house Christopher Jason Tan, along with a stranger, without the child's parents so early in the morning of a school day.

Both accused had kept the child locked up in Redulosa's room from the moment they arrived up to 2:30 o'clock in the afternoon. The child realized that he was being kidnapped because he was deathly pale, frantic and was ready to cry, but he must have been given the impression that Romeo Redulosa was there to protect him, for every time Redulosa leaves him, the poor boy calls after him, "Don't leave me, Tio."

On the other hand, neither Romeo Redulosa nor Roselo Carton appeared harassed or frightened. No guns were poked at them to compel them to do what they were doing. They had the situation well in hand. Redulosa was the one who ordered the servants to cook lunch not only for him but also for Roselo Carton and the boy.

While Roselo Carton from all appearances was the subservient menial of Romeo Redulosa, his role while in the house having been to guard the boy and prevent him from escaping, Romeo Redulosa showed every sign of being the boss directing the operation. He caused the transfer of the telephone from a corner of the living room to his bedroom, the better to make call without being heard by the servants.

Since Carton and he and the child were holed up in the room for one hour and Redulosa hurriedly left the room and went out of the house in a frenzy after that, - and it was in between this period of time that the boy's father, Tomas Tan, received the phone call asking for ransom for his kidnapped son, - there can be no other conclusion from these facts than that Romeo Redulosa was the one who made the call to Tomas Tan then.

Romeo Redulosa, far from being a captive or a person restrained, appeared to be the leader. He was the one who gave orders and he went in and out of the house at his pleasure.

That Romeo Redulosa and Roselo Carton did bring Christopher Jason Tan out of Redulosa's house at 2:30 o'clock that same afternoon on the way south where the child was brutally and senselessly killed, makes it a foregone conclusion that Romeo Redulosa and Roselo Carton killed, or cooperated with each other in killing, the boy, whoever did the actual stabbing.

Romeo Redulosa and Roselo Carton were sentenced to death and ordered to indemnify the victim's heirs in the amount of P50,000.00, and to pay P 100,000.00 by way of moral and exemplary damages, without subsidiary imprisonment in case of insolvency and the costs. Thereafter the case was brought to this Court on automatic review.

On December 16, 1983, Carton escaped from the Bagong Buhay Rehabilitation Center, Lahug, Cebu City. For this reason the Court, in its resolution of September 22, 1993, dismissed Carton's appeal pursuant to Rule 124, § 8 of the Revised Rules on Criminal Procedure.

On the other hand, On March 22, 1995, appellant sent from his prison cell at the Bureau of Corrections an "Urgent Motion to Withdraw Appeal." As no reason was given for the motion and it was made without the assistance of

counsel, the Court required Atty. Froilan Valdez of the Public Attorney's Office, to comment on the motion.

In his comment filed on August 17, 1995, Atty. Valdez stated that appellant's decision to withdraw was voluntarily made, with full understanding of the consequences of his action. Atty. Valdez stated that appellant "deserves sympathy as well as release from confinement sooner or later" considering that he has already suffered 14 years of imprisonment and that he has been trying his best to reform.

For his part the Solicitor General said he found no valid reason to interpose objection to the appellant's motion.

After due deliberation the Court resolved to grant appellant's motion to withdraw his appeal. To begin with the death penalty imposed on appellant was automatically reduced to reclusion perpetua in view of Art. III, § 19(1). of the Constitution which took effect on February 2, 1987. While this case was brought to this Court for automatic review as required by Rule 122, § 9 of the Rules of Court, the case has ceased to be in this Court by virtue of such Rule. As a matter of fact appellant had to file a notice of appeal on August 20, 1990, otherwise he would be taken as having given his assent to his conviction on the basis of the reduced sentence and his case would be remanded to the trial court for execution of its decision as modified with respect to the penalty which is reduced to reclusion perpetua.

Thus, in its resolution dated April 30, 1987, in Administrative Matter No. 87-5-3173-0, this Court ruled:

(1) that notices be given to all the accused in the pending cases before the Court wherein the death penalty has been imposed, advising said accused that the death penalty imposed upon them has been officially commuted to reclusion perpetua (life imprisonment) by virtue of the abolition of the death penalty under the 1987 Constitution and that with such abolition of the death penalty their cases are no longer subject to automatic review by this Court, and

(2) to GRANT said accused a period of thirty (30) days from notice within which to file a written statement, personally signed by them with the assistance of their counsel, stating whether or not they wish to continue with their said cases as an appealed case.

(a) If they file such statement that they wish to continue with this Court's reviewing their conviction as an appealed case, the Court will do so, rendering a judgment of affirmance, modification of the penalty or reversal as may be warranted by the evidence and applicable law; and

(b) If they file a statement that they are satisfied with the judgment of the trial court whose death penalty has now been commuted to reclusion perpetua, or if they fail to file any statement within the 30-day period herein given, the Court will dismiss the case and remand the same to the trial court for execution of judgment.

This ruling is now embodied in Circular No. 9 dated May 20, 1987 of this Court. Consequently this case has remained in this Court only because of appellant's decision to continue his case as an appealed case. However, as appellant had the right to continue with his case as an appealed one, so does he have a right - subject to the approval of this Court - to terminate the appeal by withdrawing it.[1] Both the appellant's counsel and the Solicitor General urge approval of appellant's motion.

Nor is this right of appellant to withdraw his appeal affected by the enactment of R.A. No. 7659 which took effect on December 31, 1993,[2] providing for the reimposition of the death penalty in cases of heinous crimes including the one for which appellant was sentenced to death (kidnapping for ransom with murder). The new law does not apply to crimes committed prior to its effectivity.[3] Indeed, this situation was precisely anticipated by the Constitutional Commission as shown by the following:[4]

MR. BENGZON. I also have a question, Madam President.

THE PRESIDENT. Commissioner Bengzon is recognized.

MR. BENGZON. If the amendment of Commissioner Monsod is passed, the death penalties already imposed will be committed [sic] to reclusion perpetua, will it not?

MR. MONSOD. Yes.

MR. BENGZON. And then, supposing Congress passes a law imposing the death penalty on those very same crimes committed by those that were convicted of the death penalty which penalty has been commuted to reclusion perpetua, will they go back?

MR. MONSOD. No.

MR. BENGZON. Not anymore?

MR. MONSOD. Any new law [reimposing the death penalty] passed by the National Assembly would be prospective in character.

MR. BENGZON. Thank you.

FOR THE FOREGOING REASONS, the Court RESOLVED to GRANT appellant Romeo Redulosa's motion and to DISMISS his appeal. The case is REMANDED to the trial court for execution of its decision with the modification that the penalty of death therein imposed is reduced to reclusion perpetua.

SO ORDERED.

Regalado (Chairman), Romero and Puno, JJ., concur.

Torres, Jr., J., on leave.

[1] Compare the withdrawal of appeal in lower courts as provided in Rule 122, § 12 of the Revised Rules on Criminal Procedure:

Notwithstanding the perfection of the appeal, the Municipal Trial Court, Municipal Circuit Trial Court, Metropolitan Trial Court, Municipal Circuit Trial Court, Metropolitan Trial Court or Regional Trial Court may allow the appellant to withdraw his appeal before the record has been forwarded by the clerk of court to the proper appellate court as provided in Section 8, in which case the judgment shall become final. The Regional Trial Court may also, in its discretion, allow the appellant from the judgment of a Municipal Trial Court, Municipal Circuit Trial Court, or Metropolitan Trial Court to withdraw his appeal, provided a motion to that effect is filed before judgment of the case on appeal, in which case the judgment of the court a quo shall become final and the case shall be remanded to the court a quo for execution of the judgment.

[2] *People v. Simon*, 234 SCRA 555 (1994).

[3] *People v. Cayan*, 245 SCRA 66(1995); *People v. Pandiano*, 232 SCRA 619(1994).

[4] 1 RECORD OF THE CONSTITUTION COMMISSION 748.

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