

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RODOLFO BERNARDO Y SUMBILLO, P/CPL. MELQUIADES IGNACIO,
PAT. FRANCISCO VICTORIA, P/SGT. DANILO BORJA Y RONQUILLO,
REYNALDO...**

G.R. No. 97393. March 17, 1993

Ponente: MELO, J.

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MELO, J.:

Accused-appellants seek the reversal of the decision rendered on January 18, 1991 by the Honorable Maximiano C. Asuncion, Presiding Judge of Branch 104 of the Regional Trial Court of the National Capital Judicial Region stationed in Quezon City convicting them of Kidnapping for Ransom and imposing on each of them the penalty of reclusion perpetua with all the accessory penalties provided by law and to indemnify the victim, Paul Cruz, in the amount of P3,465,000.00, P1,000,000.00, P100,000.00, P100,000.00, which are, respectively, for actual, moral, and exemplary damages, and attorney's fees. Needless to say, no subsidiary imprisonment in case of insolvency was imposed.

On September 27, 1988, while private complainant Paul V. Cruz was driving his car inside Better Living Subdivision in Parañaque, his path was blocked by two cars, one in front and the other at the rear, and he was forcibly taken at gun-point and shoved into the car at the front. While inside the car, his eyes were taped then covered with eyeglasses to conceal the tape and he was then taken to an undetermined place after a twenty-minute drive.

Taken inside a room, his thumbs were cuffed and he was informed that his abductors know him and his capability to meet their monetary demand of P30,000,000.00. When he said that he did not have that much money, he was slapped, punched, and his feet were tied. He was instructed to cooperate so that his life would be spared and to seek monetary assistance from friends and a sister. Again, he was slapped, mauled, his trousers taken off and his sex organ toyed with. The ransom demand was then reduced to P15,000,000.00. After making five phone calls, the victim was able to raise P3,365,000.00 which his captors considered acceptable and, later, obtained.

Before being released late in the afternoon, Paul was threatened not to report the incident to the authorities or he will be slain. It took sometime before he mustered enough courage to report the incident to the Quezon City police on November 10, 1988.

The police and the military authorities rounded-up the suspects and on June 22, 1989, a corresponding information was filed by the Quezon City fiscal. After trial, the lower court adjudged the accused, now herein appellants, guilty beyond reasonable doubt.

From the findings of said court, it appears that private complainant Paul V. Cruz and accused-appellant Rodolfo S. Bernardo are townmates in San Ildefonso, Bulacan and have known each other since they were kids. When Paul was campaigning for mayor of San Ildefonso, his friend, Steve Paulino recommended Bernardo for possible

employment and Bernardo was told to see Paul after the campaign.

In February 1988, Bernardo went to see Paul at the latter's office at Christina Condominium, Legaspi Village, Makati. Coming to know that Bernardo was formerly in charge of the beef section of Jopson Supermarket, Paul instructed Bernardo to conduct a feasibility study on a burger machine business. Paul would finance the business, while Bernardo would manage the same.

During the period March to June 1988, Bernardo submitted to Cruz his handwritten feasibility study on a two-page prescription pad bearing the drug name "Intropin." During the same period, Paul gave Bernardo, in addition to his monthly allowance, financial assistance amounting to P25,000.00 aside from P141,000.00 supposedly used for the purchase of burger equipment. However, Bernardo admitted having diverted P41,251.45 for his own personal use and because of this, Paul decided to abort the burger machine business. Nevertheless, Bernardo, said that should Paul later decide to resume the business, he was willing to pay his shortage through deductions from his salaries. He further promised to sell pieces of jewelry to pay for his obligation but this was not kept and his indebtedness was never paid.

During this period, Bernardo became familiar with the service-contracting business of Paul and came to know that Paul's office handled an average daily transaction of about P2.5 million which was usually kept inside a vault at the third floor of Christina Condominium.

In August 1988, Bernardo contacted Jaime Gallarza whom he had met through his compadre, Ogie Toledo. They met at the Plaza Congressional Village, Quezon City where Bernardo intimated that because he admired the way Gallarza moved, he would need the latter's services for a good one-time job to kidnap his employer, Paul, for a ransom of P5 million. Gallarza agreed and promised to look for men to help him do the job.

A few days after, Gallarza called up Bernardo and said that he had Rico Ramirez and Boyet Morales, both "Batang Munti." These two were introduced by Gallarza to Bernardo at the Tropical Hut Hamburger, Caloocan City. The following day, they met again at Jollibee, North EDSA, Quezon City, and from there, they proceeded to the SM Carpark. Inside his car, Bernardo told them that his employer kept more than P2 million inside the office vault every Friday. He further instructed Gallarza to look for a person who is an expert with locks. The next day Bernardo fetched Gallarza's group at the Makati Cinema Square and drove to Christina Condominium. They planned to rob Paul by stealing his money in the office vault; Bernardo and Ramirez would wait in the car, while Gallarza and Morales would enter the condominium; that should the guards ask whom they wanted to see, Gallarza and Morales would simply invent a name; and that before unlocking the vault, Gallarza and Morales would first tie Galo Violago (Paul's Secretary) and a female accountant who might be inside the room. Bernardo wrote down on a four-page "Intropin" prescription pad the details regarding the amount to be taken from the vault and the possible persons whom the group might encounter, namely, "Amang-Tatang," "Galo-Clerk/Accountant," "Junior-driver," "Kiko-Janitor-Messenger," "Len-cashier," and "Liza-assistant cashier."

As instructed by Bernardo, Gallarza and Morales entered the condominium but they were stopped by a guard who asked where they were going. They gave a name but the guards said that no such person worked there. The two backed out and returned to the car.

Informed of what happened, Bernardo said that they should just kidnap Paul, but that they first had to make a surveillance of the places he usually goes to. From Christina Condominium, they drove to San Lorenzo Village and then to Better Living Subdivision, Parañaque, where Bernardo pointed to the houses of Paul. From Better Living Subdivision, they proceeded to other places frequented by Paul.

Later, the group returned to Better Living Subdivision twice and each time, Bernardo would point to a white

Mercedes Benz owned by Paul. On one occasion, Bernardo said that they would need a .45 caliber gun to ensure the kidnapping. Later, Bernardo advised Gallarza that they had to cool off in the meantime because Paul went to Saudi Arabia.

On the third week of September 1988, Bernardo called up Gallarza and fetched him. They went to Parañaque where Bernardo introduced to him 8 men including 4 policemen, namely, Reynaldo Pulongbarit, Danilo Borja, Francisco Victoria, and Melquiades Ignacio. Bernardo told Gallarza that he had to hire this new group to kidnap Paul because he noticed that Rico Ramirez, one of the "Batang Munti" previously recruited by Gallarza, was the nervous type. According to Bernardo, the new group is, "matibay-tibay, maganda ang laban natin dito."

On September 27, 1988 at about 6 to 7 A.M., they executed the kidnapping. Ignacio, Victoria, Pulongbarit, Borja and driver Daniel Iral, almost simultaneously alighted from the 2 cars that blocked Paul's car earlier. Victoria pointed a gun at Paul and ordered him to come with them because their boss would like to speak to him. Paul could not but comply.

In rejecting the defense of alibi, the trial court, in its rather lengthy decision, made the following observations, to wit:

However, after a conscientious examination and a minute balancing of the evidence, the Court is still convinced that those who have been charged of the offense of kidnapping for ransom participated therein. This, inspite of the alleged retraction of Gallarza because the very witness for the defense, Brenda Lumabao, testified that Gallarza repudiated Exhs. 8, 8-A to 8-E, stating that he was forced to sign it.

"Retraction cannot be given probative value." (People v. Samson, G.R. 55520, Oct. 25, 1989; Reano v. CA, G.R. 80992, Sept. 21, 1988).

The very fact that, at the outset of this case, the accused Rodolfo Bernardo and Melquiades Ignacio employed only one counsel in the person of Atty. Rolando S. Javier, as may be seen from the Petition to Post Bail dated November 24, 1988; that only one counsel represents Melquiades Ignacio and Reynaldo Pulongbarit are all indicative of the conspiracy among the accused.

The defense of alibi and the negative defense put up by Bernardo are too puny to be used as a battering ram against the stronghold of evidence of the prosecution.

"Mere denial not sufficient." (People v. Hernandez, No. 1989).

"Alibi cannot prevail over positive identification of the accused by prosecution witnesses." (People v. Repe, G.R. 64935, July 19, 1989; People v. Bravo, Dec. 29, 1989; People v. Macalinao, Aug. 31, 1989; People v. Serenio, Nov. 14, 1989).

"Identification is given full credit where there is no motive of witnesses to implicate falsely the accused." (People v. Samson, G.R. 55520, Oct. 25, 1989; People v. Tan, Dec. 1989).

For alibi to prosper, the accused must prove that they were somewhere else and that it would be physically impossible for them to be at the scene of the crime (People v. Alvarez, Jan. 31, 1989; People v. Pigon, May 29, 1989; People v. Abaya, Feb. 27, 1989; People v. Almario, Mar. 16, 1989). The defense failed in this aspect because their INP Morning Report and Attendance did not positively show they could not have been at the scene of the crime.

The defense only succeeded in furnishing evidence against itself.

Between positive declarations of the prosecution witnesses and negative statements of accused, the former deserve more credence (People v. Macabenta, Feb. 14, 1989; People v. Teves, Apr. 29, 1989; People v. Paco, Feb.

27, 1989 and *People v. Muhamading*, June 22, 1989). (pp. 108-109, Rollo.)

Accused-appellants Rodolfo S. Bernardo, Reynaldo Pulongbarit, and Melquiades Ignacio appealed, arguing that the trial court erred in appreciating the alleged weak evidence adduced by the prosecution and in not giving significance to their defenses of alibi and lack of knowledge and involvement in the crime committed.

Bernardo faults the lower court for concluding that he masterminded the kidnapping plot simply because he had inside information regarding the business operations of Paul. Bernardo presents the theory that since another group or even a stranger could have easily obtained the same information, then, it is possible that the kidnapping plot was conceived and committed by such group or strangers.

Bernardo's contention is totally irrelevant because of the solid and positive evidence undoubtedly identifying him as the one who masterminded Paul's kidnapping for ransom.

On Gallarza's testimony regarding his knowledge as part of the original group to rob and kidnap Paul, his conversation with Bernardo was as follows:

Q.

What happened during the course of your conversation?

A.

He said, he has some job for me x x x, sir.

Q.

What did you discuss while you were there at the plaza?

A.

He told me, here, I have a job for you and if you could secure some men for the purpose of kidnapping for ransom which involves P5 million, which is a small amount.

Q.

Did he tell you or identify to you the name of the person who would be the subject of the kidnapping for ransom?

A.

He did not tell me his name, but he told me he was an employee of the said person. I asked him if he's sure about it, sir.

Q.

What was the answer on the part of Bernardo?

A.

Yes, and if you could secure some men, this is good one-time job.

Q.

What was your reply, if any?

A.

I told him, yes. I could do that. I could secure three persons and I am the fourth man.

x x x x x x x x

Q.

At the SM North EDSA car park, what was taken up during that time inside his car?

A.

He told us about an amount which will not be more than P2 million inside the vault in the building every Friday.

Q.

Now, you are referring to what vault and in what building?

A.

Belonging to the businessman, who is his employer in Makati, sir.

Q.

At that stage, did he actually tell you who the name or identity of the businessman?

A.

He did not mention it, but we just know he is his manager.

x x x x x x x x

Q.

You said you and Boyet Morales were not able to get inside the building, what did you do?

A.

When we cannot enter the condominium, we went in his car and inasmuch as we cannot get the P2 million, we will just kidnap Paul, a bearded man, Bernardo, he is my employer.

x x x x x x x x

Q.

Rodolfo Boy Bernardo mentioned that you just kidnap. Did he tell you how this will be accomplished?

A.

Yes, sir, because we were not able to enter the building, we will just pass to the route where he usually takes his breakfast and meals.

x x x x x x x x

Q.

In that San Lorenzo Village, did you go to a house?

A.

In the street, sir. 'Yan, yan, yan ang bahay.' That is the house.

Q.

Who said that x x x?

A.

Rodolfo Boy Bernardo, sir.

Q.

And whose house was he referring to?

A.

Paul Cruz, sir, the one who will be kidnapped.

x x x x x x x x

Q.

After that, what else happened?

A.

He brought us to our house and he told us he will just call us. I called him up the following day and he told me that the man had left for Saudi and he told us first to cool off x x x that Mr. Cruz is in Saudi and for us to call him up.

Q.

By Mr. Cruz, you are referring to Paul Cruz mentioned earlier?

A.

Yes, sir.

x x x x x x x x

Q.

Where did you go together with Boy Bernardo?

A.

We went to Parañaque because he said he will introduce a person to me somewhere in Parañaque.

x x x x x x x x

While on the way, he told me he would introduce me to a new group because he noticed that Rico Ramirez is nervous.

x x x x x x x x

Q.

Who said that, 'na may makakasama kang mga pulis, maganda ganda ang laban?'

A.

Boy Bernardo, sir.

x x x x x x x x

Q.

How were you able to meet these persons?

A.

They were introduced to me by Boy Bernardo and he told me that those are the policemen. (t.s.n., January 12, 1989, pp. 14-55.)

Bernardo, through counsel, admitted that the instructions given to Gallarza regarding the robbery-kidnap plan, contained in a four-page "Intropin" pad (Exh. "A"), were his own hand-writing. While Bernardo's counsel claimed that such hand-written instructions were forcibly extracted by the police, Bernardo did not testify on this matter, not even alluding to this evidence in his testimony. Exhibit "A" was presented not by the police authorities but by Gallarza who received it from Bernardo himself. The trial court correctly concluded that Bernardo was the author of Exhibit "A".

Bernardo insists on the alleged affidavit of recantation (Exh. 8) executed by Gallarza before State Prosecutor Brenda Lumabao. But this affidavit was a repudiated weeks later by Gallarza who said that he was only forced to sign it. In reality, therefore, there is no affidavit of recantation upon which Gallarza's testimony may be discarded. Besides, affidavits of recantation can easily be secured from poor and ignorant witnesses, usually for monetary consideration, and the Court has invariably regarded such affidavits as exceedingly unreliable (*People v. Mangulabnan*, 200 SCRA 611 [1991]).

Bernardo further contends that Gallarza is an unreliable witness not only because of his dubious character, but more so because of the various inconsistencies in the robbery-kidnap plan which he narrated in court.

The argument falls on its fate. It was precisely because of Gallarza's unsavory character that Bernardo initially engaged his services to help in the robbery-kidnap plan. If Gallarza turned out to be a poor choice for the plan, that is Bernardo's concern, but such circumstance does not affect or negate Bernardo's criminal liability. Gallarza stood firm on his testimony even during the rigid cross-examination conducted by the defense. This shows that he is a credible witness as appreciated by the lower court.

Bernardo's culpability is shown by his spontaneous statement given to GMA 7 reporter Jessica Sojo, to wit: "Siguro, naisip ko nga ring sabihin 'to sa kanya (Paul Cruz) na may konti ka ring kasalanan, Paul, siguro kasalanan 'in quotation' dahil parang inispoil mo ako, inispoil ako."

This was made not as part of the custodial interrogation but as Bernardo's voluntary accommodation to media questioning and is thus admissible in evidence especially so because the statement tries to justify his ungratefulness to his employer. The fact that the GMA 7 tape was edited with commentaries does not erase the reality that such declaration came out freely from Bernardo's own lips.

Invoking alibi, Pulongbarit insists that he was in San Rafael, Bulacan serving as close-in security for Mayor Jessie Vico on September 27, 1988 and that he could not have participated in the abduction of Paul at Better Living Subdivision, Parañaque, Metro Manila on that date.

Alibi, as a defense, is weak as it can be easily concocted. In order that it may prosper, it is not enough to prove that the appellant was somewhere else when the crime was committed but it must likewise be demonstrated that he was so far away that he could not have been physically present at the place of the crime or its immediate vicinity at the time of its commission (*People vs. Cadag*, 208 SCRA 781 [1992]). Pulongbarit's alleged presence in San Rafael, Bulacan on the date of the incident could not have made it impossible for him to be at Better Living

Subdivision, Parañaque at the time of the snatching because the distance between the two places can be easily traveled in 2 hours. More importantly, Pulongbarit was positively identified by Paul himself as one of his abductors who blocked his car and, at gun-point, forced him out of his car and shoved him into the Colt Galant car (p. 22 appellee's brief; after p. 236, Rollo).

Testified thus Paul on this point (with Pulongbarit's name at times misspelled):

Q.

What about you, what did you do when you saw the Colt Galant stopped ahead of you?

A.

Because they were blocking my way, I also stopped.

Q.

What did you see?

A.

The two persons have already alighted, sir.

Q.

By two persons, you are referring to the two from the Colt Galant?

A.

Yes, sir, coming from the Colt Galant with Plate No. NTC 413 and they were approaching me, the gun was already pointed at me, like this.

Q.

You said that these two persons approached you, did you recognize the persons or rather the person who approached you?

A.

Yes, sir.

Q.

Who are these persons?

A.

One of them is here, sir.

Q.

What about the other one?

A.

As far as I know, he is in Taguig.

Q.

You mentioned that one of the two men with drawn guns is now in Taguig, do you know now the name of that

person?

A.

The two persons who approached me Palumbarit and Victoria, told me that their boss would like to talk to me, sir.

Q.

What did you do after you were asked to go with them?

A.

I refused to go with them, sir, but when I saw the four persons alighted from the blue car and were behind my car, I was constrained to go with them, because two of them were pulling me.

Q.

You said you saw these four men alighted from the blue car and two persons where pulling you, who were those two persons pulling you?

A.

Reynaldo Palumbarit and Francisco Victoria, sir.

Q.

You said you obeyed, how?

A.

When they pulled me out of the car because the guns of Palumbarit and Victoria were pointed at me, so I followed them to the Colt Galant.

Q.

Now, how many persons were inside the Colt Galant at the time Borja uttered the statement that you should not do anything that would provoke them?

A.

There were four of them, on my left was Victoria, on my right side Palumbarit. They were the ones who put the blindfold on my eyes.

Q.

Last time you testified on May 18, 1989 on direct examination that you saw alight from a blue car two persons, Reynaldo Pulongbarit and Francisco Victoria, and that they have (sic) drawn guns, if this Pulongbarit is inside the court room, will you be able to point to him?

A.

Yes, sir.

Q.

Please point to him.

A.

He is the one, sir.

Interpreter:

Witness pointed to a male person inside the courtroom when asked gave his name as Reynaldo Pulongbarit. (t.s.n., May 18, 1989, pp. 36, 39, 40, 42, 44, 46, 51 and 52; Sept. 20, 1989, pp. 5 and 9).

Pulongbarit was also positively identified by Gallarza as one of the four policemen who was introduced to him by Bernardo in Parañaque sometime in September, 1988. On that occasion, Bernardo referred to them as the new group tasked to kidnap Paul.

Gallarza declared:

Q.

You said there were four policemen whom you remember, x x x you identified two what about the other two, will you see if they are around?

A.

None, sir.

Q.

Do you know the names or nickname of these two other policemen?

A.

Reynaldo Palumbarit and Daniel Borja. (t.s.n., January 12, 1989, pp. 50-52, 55-56.)

Neither Paul nor Gallarza had any ulterior motive to falsely testify against Pulongbarit, a policeman who can make things difficult for Paul and Gallarza.

Then, too, Pulongbarit's flight after the incident is a strong indication of guilt because if he were really innocent he would have stood ground. The fact that no part of the ransom money was recovered from or traced to him does not rule out his culpability. Positive evidence was adduced upon which his guilt was established to a moral certainty.

Also invoking alibi, Ignacio insists that at the time of the kidnapping he was at Station 8, WPD, Sta. Mesa, Manila and could not have participated in the abduction of Paul at Better Living Subdivision, Parañaque, Metro Manila.

It is almost trite to refer to the rule that for alibi to prosper, it is not enough to prove that the accused was somewhere else when the crime was committed but it must likewise be demonstrated that he was so far away that he could not have been physically present at the place of the crime or its immediate vicinity at the time of its commission (People vs. Cadag, 208 SCRA 781 [1992]). Ignacio's alleged presence at Sta. Mesa, Manila could not have prevented him from being at Better Living Subdivision, Parañaque which could be traversed in thirty minutes. He was positively identified by Paul himself as one of his abductors who blocked his car and, at gun-point, forced him out of his car and pushed him inside a Colt Galant car, to wit:

Q.

You said that you looked back and you saw the blue car, what was your purpose in looking back?

A.

Because I got nervous when I saw the car stopped in front of me, I look back and tried to reverse my gear and I

saw a blue car.

Q.

After you saw the blue car, what else happened?

A.

One person alighted from the blue car right away, sir.

Q.

Did you recognize the person who alighted from the blue car?

A.

Yes, sir.

Q.

If that person is inside the court room would you be able to point to him?

A.

Yes, sir.

Q.

Please point to the person who alighted from the blue car.

A.

He is the one, sir.

Interpreter:

Witness pointed to a male person inside the courtroom when asked his name gave as P/Cpl. Melquiades Ignacio.

x x x x x x x x

Q.

You said four persons alighted from the blue car, by these four persons, to whom are you referring?

A.

x x x one of them is already here, sir.

Q.

Who is that x x x?

A.

Melquiades Ignacio, sir. (t.s.n., May 18, 1989, pp. 37-39).

Ignacio was also positively identified by Gallarza as one of the four policemen who was introduced to him by Bernardo in Parañaque sometime in September, 1988. Bernardo referred to them as the new group engaged to kidnap Cruz.

In his testimony, Gallarza declared:

Q.

And when you enter that particular house, what did Rodolfo Bernardo do?

A.

We joined the drinking because the people we saw inside were drinking.

Q.

Who were those drinking, if some of them are inside the court room, will you be able to point to them?

A.

Yes, sir. Only two of them.

Q.

Will you please touch their shoulders?

A.

Yes, sir.

Interpreter:

x x x witness tapped the shoulder of another male person inside the court room who, when asked his name, gave Cpl. Melquiades Ignacio.

Q.

What are their alias as they were introduced to you by Boy Bernardo?

A.

x x x Meliton x x x.

Q.

x x x to whom are you referring to when you mentioned the name Meliton?

A.

He is the one, sir, beside him.

Interpreter:

Witness again pointed to a male from inside the court room who was identified earlier as Cpl. Melquiades Ignacio. (tsn, January 12, 1989; pp. 50-56.)

Further, Paul testified on the incriminating acts and statements made by Ignacio himself and his wife Beth immediately after Ignacio's arrest, to wit:

Q.

Were you introduced to each other, I mean Beth Ignacio and you?

A.

Yes, because she was crying then, sir.

Q.

What happened after she was introduced to you?

A.

They told me that if we are going to get a state witness to get her husband Mel Ignacio, sir.

Q.

Who offered Mel Ignacio to be a state witness?

A.

His wife, Beth Ignacio, sir.

Q.

What was your answer?

In view of the positive identification of Ignacio as one of the perpetrators of the crime and the damaging effect of the evidence for the prosecution, his invocation of alibi must undoubtedly fall. More so because Paul and Gallarza had no ulterior motive to falsely testify against him.

Paul Cruz remembered and he was later able to identify his abductors. He was able also to recollect details regarding the cars used (tsn, June 5, 1989, pp. 56, 59, 65-67; June 6, 1989, pp. 115-116). The testimony of Paul remains unimpeached and un rebutted and nothing can assail his descriptions of his abductors and the cars' they used.

Gallarza's testimony was likewise firm and no evidence was presented to show that he was tortured, forced, or otherwise intimidated to testify against accused-appellants.

Of the five known persons charged, Danilo Borja was never tried for he has remained at large. He will be entitled to a separate trial as soon as he is apprehended (p. 121, Rollo). Francisco Victoria, on the other hand, escaped after his arraignment and he was allegedly shot to death by elements of the PC Military Police in an encounter on October 28, 1990 in San Rafael, Bulacan. Trial against Victoria thus proceeded even in his absence, during which he, of course, failed to present evidence in his behalf (pp. 151 and 157, Rollo).

Withal, the lower court committed no error in finding accused-appellants guilty beyond reasonable doubt of the crime of kidnapping for ransom.

WHEREFORE, the appeal is hereby dismissed and the decision of the court a quo affirmed in toto.
SO ORDERED.

Feliciano, (Acting Chairman), Bidin, Davide, Jr., and Romero, JJ., concur.

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