

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. TITO CABALLERO, JAIME CABALLERO, ROGELIO CABALLERO, JOSE CABALLERO BENNY GONZALES AND WENCIL ESQUILONA, ACCUSED, ROGELIO CABAL...

G.R. No. 97457. June 04, 1993

Ponente: QUIASON, J.

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QUIASON, J.:

This is an appeal from the decision of the Regional Trial Court, Masbate, Masbate, in Criminal Case No. 5560, finding Rogelio Caballero and Jose Caballero, guilty beyond reasonable doubt of kidnapping and sentencing them "to suffer the penalty of Reclusion Perpetua or life imprisonment, to pay the family of Noe Albao the amount of Thirty Thousand (P30,000.00) Pesos, without subsidiary imprisonment in case of insolvency and to pay the cost" (Decision, p. 6; Rollo, p. 18).

In the information filed in Criminal Case No. 5560, Tito Caballero, Jaime Caballero, Rogelio Caballero and Jose Caballero were charged with kidnapping committed as follows:

"That on or about July 20, 1988, in the evening thereof, at Barangay Lagta, Municipality of Baleno, Province of Masbate, Philippines, within the jurisdiction of this Honorable Court, the said accused armed with guns, confederating, conspiring and helping one another, by means of violence and intimidation, did then and there, wilfully, unlawfully and feloniously kidnap one Noe Albao by forcibly taking him away from his house after mauling the latter and detain (sic) him to an unknown place up to the present, thereby depriving said Noe Albao of his liberty" (Rollo, p. 60).

Only Rogelio Caballero and Jose Caballero were arrested, arraigned and tried. Tito Caballero has not been arrested and remains at-large. Jaime Caballero died on February 9, 1990 and the case against him was dismissed. Accused Benny Gonzales, a policeman, and Wencil Esquilona, a PC soldier, were tried separately by the National Police Commission in Legaspi City.

This Court has reviewed the findings of fact of the trial court and has found them substantiated by the evidence. The trial court found:

"That on July 20, 1988 at about 10:00 at night at Barangay Lagta, Baleno, Masbate, while the family of Noe Albao was sleeping, they heard the pounding and banging of the bamboo door of their house. The door was struck about seven times until it was destroyed and the four (4) Caballero brothers and Benny Gonzales and Wencil Esquilona entered the house. Tito and Jaime Caballero went inside the room where Nida and her husband Noe Albao were sleeping and they forced Noe Albao out while the others were watching. Tito Caballero was dragging Noe Albao by the arm while Jaime was pushing the back of Noe, and when they went out, they mauled and maltreated Noe. His wife Nida pleaded with them not to harm her husband but they did not listen. When they were able to drag and push Noe, they ordered the victim to lay flat on the ground face downward. Then Noe cried and pleaded but he was tied and was brought away. The victim was dragged and loaded in a red Ford Fierra. At first, the Fierra would not start and it was pushed by the four accused in civilian

clothes while the victim who was moaning and asking for help, the driver, and the two in military uniform were inside the Fierra. The following morning Nida, the wife, and her mother Clemencia one after the other went to the police station at poblacion Baleno and reported to Pat. Decina that her husband Noe Albao was kidnapped by the four Caballero brothers, PC soldier Wencil Esquilona and Pat. Benny Gonzales. From the Baleno Police Station, they went to the PC Detachment at Bari-is, Aroroy, Masbate to inquire about her husband, Noe, but they did not find him there " (Rollo, pp. 13-14).

Both appellants put up the defense of alibi. Appellant Jose Caballero claims that on the night of July 20, 1988, he was at Barangay Bari-is, Aroroy, Masbate, attending to his store and waiting for his six boarders to return home. Appellant Rogelio Caballero, on his part, claims that on the night of the incident he was confined at his house at the poblacion of Baleno, Masbate, suffering from a serious attack of asthma.

Appellants must prove that at the time the crime was committed, they were at such a place that it was physically impossible for them to have been at the crime scene (*People v. Aniñon*, 158 SCRA 701 [1988]; *People v. Mendoza*, 163 SCRA 568 [1988]; *People v. Sato*, 163 SCRA 602 [1988]).

The Municipality of Aroroy, where appellant Jose Caballero resided, adjoins the Municipality of Baleno. The distance between the poblacion of Baleno and Barangay Lagta in Aroroy where Noe Aldao was kidnapped, is only four kilometers. The distance between the poblacion of Baleno, where Rogelio Caballero resided and Barangay Lagta of the same town, is only five kilometers. While appellant Rogelio Caballero may have suffered an asthmatic attack on the night of July 20, 1988, his own witness, Dr. Conchita Ulanday, admitted that his attacks did not immobilize him and that he could still move around.

Appellants were positively identified by Nida Salcedo Albao and Clemencia Albao, the wife and the mother respectively of the victim. The two eyewitnesses saw the crime committed at close range. At that time, a gas lamp was lit in the house. Nida Albao was in the bedroom when appellants' co-accused barged inside and forcibly brought Noe Albao outside. Clemencia Albao, who was awakened when the accused destroyed the door of the house, went out of her room and saw her son being dragged away by the accused. She pleaded with them to let go of her son and not to harm him.

Appellants and Nida Salcedo Albao were not only province mates but belonged to feuding families. When the father of appellants was hacked, two brothers of Nida were prosecuted for the offense but were acquitted. Since this incident, the Caballero family had been seeking vengeance on the Salcedo family.

Alibi cannot prevail over the positive identification made by credible witnesses (*People v. Plaza*, 140 SCRA 277 [1985]; *People v. Pigon*, 173 SCRA 607 [1989]; *People v. Serrano*, 170 SCRA 663 [1989]).

The trial court sentenced appellants to suffer the penalty of "Reclusion Perpetua or life imprisonment." For crimes penalized under the Revised Penal Code, the proper penalty to impose is "Reclusion Perpetua" and not life imprisonment (*People v. Ramos*, 203 SCRA 327 [1991]).

Likewise, the trial court ordered appellants to pay the heirs of Noe Albao the amount of P30,000.00. The civil indemnity for the death of the victim has been increased to P50,000.00 (*People v. Sison*, 189 SCRA 643 [1990]).

WHEREFORE, in view of all the foregoing, the decision appealed from is **AFFIRMED** with the modification that the penalty to be imposed on appellants is Reclusion Perpetua and the civil indemnity is increased to P50,000.00.

SO ORDERED.

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

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