

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VICTOR TAPIC Y NATIVIDAD, MODESTO LOVITOS Y LUNA, EMILIO ARBAN Y DOLIENTES, DOMINGO IBALE, JIMBOY CAHILOG, LODILON RESURRECCIO...

G.R. No. 99041. March 19, 1993

Ponente: CAMPOS, JR., J.

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CAMPOS, JR., J.:

The Regional Trial Court, Eleventh Judicial Region, Branch 8, Davao City rendered judgment convicting the accused-appellants as follows:

"WHEREFORE, finding their guilt of the crime charged proven beyond reasonable doubt as principals, the accused Victor Tapic, Modesto Lovitos, Emilio Arban and Randy Alcano are each hereby sentenced to RECLUSION PERPETUA, with all the accessory penalties inherent thereto.

Accused Lodilon Resurreccion, Elso Alvarado and Bonifacio Ibale having been found guilty beyond reasonable doubt as accomplices for the crime charged, they are each hereby sentenced to an imprisonment for an indeterminate term of 8 YEARS and 1 DAY of PRISION MAYOR as Minimum to 14 YEARS, 8 MONTHS and 1 DAY of RECLUSION TEMPORAL as Maximum.

As to the civil aspect, it is clear that the amount of P177,000.00 was withdrawn from the savings account of Joseph Go at the Republic Planters Bank. It is also without doubt that his detention caused him sufferings (sic) and mental anguish which cannot be approximated in terms of money, but for which this Court awards P200,000.00 as moral damages and in engaging the services of counsels Abarquez and Lledo to assist him in the prosecution of this case, we grant him reasonable attorney's fees in the amount of P50,000.00 or a total of P427,000.00. The principals are jointly and severally liable to pay to the complaint Joseph Go 2/3 of the aforementioned total amount and the accomplices are also jointly and severally liable to 1/3 of said amount.

Costs are to be paid proportionately by all the accused.

SO ORDERED."^[1]

On September 6, 1990, the same day the decision was promulgated, accused-appellant Victor Tapic filed his notice of appeal elevating his case to this Court. Victor Albano, Emilio Arban and Modesto Lovitos filed their notice of appeal on September 14, 1990, likewise elevating their case to this Court. Accused Lodilon Resurreccion, Elso Alvarado and Bonifacio Ibale, on the other hand, who filed their notice of appeal on same date, elevated their case to the Court of Appeals instead of the Supreme Court pursuant to Section 17(4) of R.A. 296 (Judiciary Act of 1948) and Section 3(c) of Rule 122, Rules of Court. As of date, however, there is no record of a pending appeal nor a decided case with the Court of Appeals taken by said accused. Thus, We presume that these appellants abandoned their right to appeal and their criminal liability will not be reviewed in the instant case, as it has already become final.

The accused-appellants assail the trial court's decision contending that: the evidence adduced by the prosecution failed to prove their guilt beyond reasonable doubt; there is no evidence that Victor Tapic was the mastermind in the kidnapping; and there is no evidence of conspiracy among the accused-appellants.

The facts of the case may be summarized as follows:

Joseph Go, a manager of William Integrated Construction, and his foreman, Oscar Pelayo, testified that in the morning of February 29, 1988, Victor Tapic, Modesto Lovitos and Randy Alcano came to Joseph Go's residence. Tapic was borrowing P1,000.00 from him. Suddenly, two men carrying hand guns, one with a .45 caliber pistol, the other with a .38 caliber pistol, arrived and took everyone except Victor Tapic. In the meantime, Jimboy Cahilog, a bodyguard of Tapic, also arrived and he was able to get blank checks and a passbook from Joseph Go's office located at the ground floor of his residence. After which, he made a signal to Tapic who in turn acknowledged the signal with a nod. All those inside the house except Tapic were made to board the Pajero which Tapic used in going there.

Pelayo was brought to a ravine where an attempt was made to kill him but he was able to escape by falling into a ravine. In falling into the ravine, he sustained injuries and was treated at the Digos Hospital where he was confined for six days. In the meantime, he got in contact with Raymond Go, the twin brother of Joseph, and reported the kidnapping.

Joseph Go, on the other hand, was brought to a house at a ricefield where he was detained for several days. While under detention, his abductors made him sign two checks and a blank withdrawal slip of Republic Planter's Bank. He was likewise made to sign two blank sheets of bond papers.

On March 3, 1988, he overheard the conversation of those guarding outside the room where he was detained about a P2.5 million peso ransom money. He also heard that he would be killed the next day at 8:00 o'clock in the evening. This made him very nervous that he thought of keeping some means of identification inside his socks, his shoes and brief with the hope that if somebody would discover his dead body later on, they will have some means of identifying him. He wrote the name of Tapic in tinfoils of cigarettes. He also wrote the words: "Tapic done it" (sic) on his pants, cuffs and shirt. The plan to kill him, however, did not materialize. He was finally rescued through the help of Capt. Serrano.

Capt. Serrano's assistance was sought by Raymond Go. Capt. Serrano first talked with Gerry Cruz, the driver of Joseph. Then he picked up Emilio Arban, the driver of Tapic, who according to Capt. Serrano admitted having withdrawn money from Joseph Go's account at the Republic Planter's Bank. Next to be picked up was Victor Tapic, then Modesto Lovitos who told them where Joseph Go was being detained.

The bookkeeper of the Republic Planter's Bank where Joseph Go had his savings account testified that there was indeed a withdrawal from Joseph Go's savings account on March 2, 1988, that time when he was actually detained, in the amount of P177,000.00. He presented the withdrawal slip, machine validated in that same amount and duly signed by Joseph Go and the supposed authorized representative Rogelio Salazar, whose real identity he later learned to be Emilio Arban, the driver of Victor Tapic. The witness pointed to him in open court as the person who withdrew for Joseph Go's account.

The trial court convicted the accused-appellants on the strength of the testimonies of the victim Joseph Go; his foreman, Oscar Pelayo; Capt. Serrano and the bank bookkeeper, Rolando Padasay.

Victor Tapic was positively identified by Joseph Go and Oscar Pelayo. For his defense, Tapic contends that the accusation that he masterminded the kidnapping is nothing more than a clear concoction and contrivance brought about by panic and prejudice on the part of Joseph Go. He claims that even without any logical basis, Joseph Go

kept on telling himself that it was Victor Tapic who ordered that he be kidnapped. The testimony of Joseph Go, according to him, was characterized by unfounded suspicion which evidence is not worthy of credence and should not have been considered sufficient to overcome the presumption of innocence.

We are not persuaded. There are several indications which the trial court correctly appreciated, pointing to Victor Tapic as the mastermind of the kidnapping. The men involved in the crime were his close associates who look up to him as their superior. The vehicle used is the one he uses in the ordinary course of his business although it may actually belong to the government (the DILG). When taken together with the fact that he was the only one left when the two gunmen took everybody else along with them in his car, plus the fact that he had not reported anything to the proper authorities regarding the incident or at least the fact that kidnappers had used the vehicle he was using in order to eliminate any possibility of he being linked thereto, it makes Us wonder how he can convince Us that he has nothing to do with the kidnapping. Furthermore, the checks which Joseph Go signed while he was in detention were actually negotiated by Victor Tapic. In the light of the above circumstances, it would be too much strain to the imagination to think that it was merely an unfortunate incident that Victor Tapic was at the wrong place at the wrong time.

Victor Tapic further claims that he has no motive at all to mastermind the kidnapping of Joseph Go for in fact it was Joseph Go who had overdue accounts to settle with him. It would be absurd and contrary to common sense that he would resort to kidnapping in order to collect his claims.

We find this defense to be without legal foundation. Motive for the commission of the crime does not constitute an element thereof, and lack of motive is not a valid defense. Absence of motive does not preclude conviction when the crime and the participation of the accused therein are definitely established,[2] such that when the culprit is positively identified and there is no room to doubt his identity, motive becomes immaterial.[3]

The evidence in the records is sufficient to sustain the conviction not only of Victor Tapic but of all the other accused-appellants as principals and co-conspirators in the crime of kidnapping with ransom. The concert of action is evident for the way that the crime was carried out clearly indicates a predetermined scheme as they knew where and what time they shall meet, what vehicle they would use, who would be participating, where they would bring Joseph Go and what they would do with Oscar Pelayo. There is a perfect concert of action and a manifest unity of purpose among all the co-conspirators.

Even the defense of Victor Alcano, who is Tapic's driver, that he was himself a victim of kidnapping is hard to believe because if he were a victim and not actually one of those guarding the real victim, what were to set him apart from Oscar Pelayo, another victim such that the abductors would treat them differently. We note that Oscar Pelayo was ordered to be eliminated for being a key witness to the crime, even if he was not an intended victim. It is even harder to accept why they would choose to detain Victor Alcano over Oscar Pelayo. For sure, they cannot extort any ransom money from Joseph Go for the release of Victor Alcano. It would be more logical to detain Oscar Pelayo than Victor Alcano for purposes of extorting ransom money from Joseph Go. Thus, more than anything else, Victor Alcano's presence at the place where they detained Joseph Go is more of an evidence of the conspiracy among the accused-appellants. It was actually his role in the perpetration of the felony to watch the victims.

The evidence showing the fact that Emilio Arban actually withdrew money from Joseph Go's account with the Republic Planter's Bank using the passbook taken from Joseph Go's office when he was abducted and the withdrawal slip he was made to sign while at detention are evidence par excellence that confirm the fact that there was conspiracy among all the accused-appellants in perpetrating the crime of kidnapping for ransom.

There exists no cogent reason, as We find none, to overturn the trial court's findings that conspiracy exists in the

commission of the kidnapping. Time and again, We have ruled that conspiracy need not be proved by direct evidence but may be inferred from the acts of the accused-appellants during and after the commission of the crime which point to a joint purpose, concert of action and community of interest.[4]

Upon review of the facts and the findings of the trial court, We do not see any reason to depart from the doctrine which We have faithfully followed:

"It is well settled that appellate courts will generally not disturb the conclusions and findings of fact of the trial court considering that it is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial, unless the court has plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case."[5]

There is nothing which shows that the trial court committed any error.

WHEREFORE, the appealed decision is hereby AFFIRMED in toto with costs against the accused-appellants. SO ORDERED.

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

[1] Decision, pp. 44-45; Records, pp. 415-416.

[2] *People vs. Ballinas*, 202 SCRA 516 (1991).

[3] *People vs. Gabatin*, 203 SCRA 225 (1991).

[4] *People vs. Bausing*, 199 SCRA 355 (1991).

[5] *People vs. Pacalso Mat-an*, G.R. No. 91115, December 29, 1992, citing *People vs. Natan*, 193 SCRA 355 (1991).

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