

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BERNIE CORTEZ Y NATANIO, RICARDO CALLOS Y PULGO AND ROGELIO BETONIO Y LUPO, ACCUSED-APPELLANTS.

G.R. Nos. 131619-20. February 01, 2000

Ponente: PUNO, J.

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PUNO, J.:

Accused BERNIE CORTEZ was charged with the crimes of kidnapping and illegal possession of explosive, while co-accused RICARDO CALLOS and ROGELIO BETONIO were charged solely with kidnapping. The Information against Cortez in Criminal Case No. 2681 reads:

"That on or about the 18th day of December 1994 in the Municipality of Rodriguez, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously carry and have in his possession, custody and control a handgrenade without first securing license or permit from the proper authorities."

The Information against Cortez, Callos and Betonio in Criminal Case No. 2682 reads:

"That on or about the 18th day of December 1994 in the Municipality of Rodriguez, Province of Rizal, Philippine(s) and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and they (sic) mutually helping and assisting one another, did then and there willfully, unlawfully and feloniously take away and kidnap and detain one Lolita Mendoza."

Trial ensued after the accused pled "not guilty" at the arraignment.

LOLITA MENDOZA, the kidnap victim, recounted her ordeal, thus: On December 18, 1994, at about 6:00 a.m., she was in her house, in Sitio Catmon, San Rafael, Rodriguez, Rizal, when accused BERNIE CORTEZ, RICARDO CALLOS and ROGELIO BETONIO, all armed with bolos, arrived. They were looking for Lolita's cousin, SANTOS ESMINDA, and were threatening to kill him on sight. Unable to find Santos, they decided to abduct Lolita to prevent her from reporting the incident to the police. Accompanied by the other two, accused Callos pointed his bolo at Lolita's back and dragged her to the mountain. They brought her to the house of PABLO TORRAL, an uncle of accused Cortez, and thereafter continued their search for Santos.[1] Hours later, the policemen and the barangay captain rescued Lolita in the house of the Torral.[2]

Lolita's testimony was corroborated by her cousin, CAROLINA ESMINDA, the wife of Santos Esminda. On said date and time, Carolina was in her house when she heard a woman shout: "Lina, tulungan mo ako." She looked around and saw Lolita surrounded by the three accused, all armed with bolos. Accused Cortez was clasping Lolita's hand, accused Callos was gripping Lolita's other arm, while accused Betonio was pushing her. She heard accused Cortez bellowed at Lolita, demanding to know the whereabouts of Santos. Frightened, Carolina scampered to the house of her neighbor, JAIME FRANCILLO. After a few minutes, the three accused proceeded to Francillo's house looking for Santos. When Francillo informed them that he has not seen Santos, the accused angrily hacked the door of Francillo's house before they left.[3]

Carolina rushed to the Montalban municipal hall and reported Lolita's abduction. PO2 ROLANDO SANTOS and SPO2 JAIME SEXON accompanied Carolina back to the crime scene to gather more information. Further investigation disclosed that accused Cortez resided in the mountainous area of Sitio Lagundi.[4] They proceeded to the residence of accused Cortez. PO2 Santos saw accused Callos and Betonio in front of Cortez' house. The two were unarmed and appeared uneasy upon seeing them. As his suspicions were aroused, PO2 Santos decided to approach them. However, accused Cortez suddenly emerged from his house with a bolo tucked to his waist. PO2 Santos arrested and handcuffed accused Cortez and confiscated his bolo. He also searched the vicinity of Cortez' house for other weapons. In the house, he saw a live grenade on the bamboo bed near the door and a bolo on top of a house post. He confiscated these weapons. On further search outside the house, he saw and got another bolo on top of a chicken coop. He turned them over to SPO2 Sexon for safekeeping.[5]

Accused Cortez divulged to PO2 Santos that they brought Lolita to the house of his uncle, Pablo Torral. PO2 Santos then handcuffed the three accused and with barangay captain ROGELIO COLARINA, rushed to the house of the Torrals. Carolina Esminda and SPO2 Sexon stayed in the house of accused Cortez, together with the three accused.[6]

PO2 Santos and barangay captain Colarina found Lolita outside the nipa hut of the Torrals, conversing with Pablo Torral. Lolita told them that the Torrals did not prevent her from leaving their house. However, she did not attempt to escape for fear that the accused would make good their threat to kill her. PO2 Santos brought her back to the house of accused Cortez[7] where she identified the three accused as her abductors. The police then took the accused into custody.[8]

The three (3) accused foisted the defense of denial and alibi. Accused BERNIE CORTEZ recounted that on December 17, 1994, he worked in Dulongbayan. His friend Raffy informed him that the father and son of Santos Esminda were looking for him in his house in Sitio Lagundi. He decided to go home the next day.[9]

En route to his house, he met two policemen who asked him if he knew a man by the name of Bernie Cortez. He identified himself to the police officers as the man they were looking for. The policemen handcuffed him and asked where he resided. Accused Cortez brought the police officers to his house. One of them entered his house and told him to wait outside. After a few minutes, the policeman emerged carrying three bolos and a live grenade. Accused Cortez denied ownership of these weapons[10] and disclaimed knowledge of Lolita's whereabouts. It was Carolina Esminda who informed the police that Lolita was taken to the house of the Torrals. Forthwith, one of the policemen and the barangay captain rushed to the house of the Torrals. Accused Cortez was left in his house, with the other policeman guarding him. After about an hour and a half, the policeman and the barangay captain returned with an old lady whose identity was allegedly unknown to accused Cortez. The police officers then brought accused Cortez to the municipal hall[11] and incarcerated him. He met his two co-accused for the first time in the jail. He also learned that his uncle, Pablo Torral, had earlier filed a robbery case against Santos Esminda who was arrested four (4) days prior to the alleged abduction.[12]

For his part, accused ROGELIO BETONIO recounted that in the morning of December 18, 1994, he was en route to Sitio Catmon, Rizal, when he saw his former co-employee accused RICARDO CALLOS in a jeepney. Callos was also on his way to Montalban, Rizal.[13] They alighted in Montalban and were walking towards the direction of Sitio Catmon when they met two policemen who were carrying some bolos. Accused Cortez, then already in handcuffs, was with them. For no apparent reason, the policemen placed them under arrest. The identity of accused Cortez was unknown to him at that time.[14]

JAIME FRANCILLO, a neighbor of the Esmindas, testified for the defense. He claimed that on December 18, 1994, at about 7:15 a.m., the three accused went to his house unarmed and looking for Santos Esminda. Unable to

locate Santos, the three left, together with Lolita, who appeared to have voluntarily accompanied the accused in their search for her cousin Santos.[15]

After trial, Judge Andres B. Reyes, Jr.[16] found all the accused guilty as charged. The dispositive portion of the decision reads:

"WHEREFORE, judgment is hereby rendered as follows:

"a) In Crim. Case No. 2681, finding accused Bernie Cortez y Natanio guilty beyond reasonable doubt of the crime of violation of P.D. 1866 and is hereby sentenced, applying the Indeterminate Sentence Law, to twelve (12) years, five (5) months and eleven (11) days to fourteen (14) years, ten (10) months and twenty (20) days of prision mayor in its maximum period to reclusion temporal in its medium period.

"b) In Crim. Case No. 2682, accused Bernie Cortez y Natanio, Ricardo Callos y Pugo and Rogelio Betonio y Lupo are hereby found guilty of the crime of kidnapping, defined and penalized by RA 7695 and there being no aggravating or mitigating circumstance are sentenced to suffer the penalty of reclusion perpetua.

"SO ORDERED." (Emphasis supplied)

Hence this appeal where appellants impugn their conviction on the ground of insufficiency of evidence.

On the charge of kidnapping, appellants maintain that the prosecution failed to establish one of the essential elements of the crime, i.e., deprivation of the victim's liberty. They point out that PO2 Santos testified that, at the time of the rescue, Lolita was not physically confined inside the house as they found her standing outside, conversing with Pablo Torral. They stress that Lolita herself declared that she was not prevented by the Torrals from leaving the house. They also cite the testimony of defense witness Jaime Francillo that when he saw Lolita with the appellants on that fateful day, she did not seem to be under duress. Moreover, they contend that the charges against them were contrived by Lolita as a leverage for the dismissal of the robbery case earlier filed by Pablo Torral against Santos Esminda. Court

In a prosecution for kidnapping, the State has the burden of proving all the essential elements of an offense. For the crime of kidnapping to prosper, the intent of the accused to deprive the victim of his liberty, in any manner, has to be established by indubitable proof.[17] However, it is not necessary that the offended party be kept within an enclosure to restrict her freedom of locomotion.[18] In the case at bar, the deprivation of Lolita's liberty was amply established by evidence. When the appellants failed to find Lolita's cousin, they forcibly dragged her to the mountains and kept her in the house of the Torrals.[19] Appellant Cortez even bound her hands with a belt.[20] Although at the time of the rescue, she was found outside the house talking to Pablo Torral, she explained that she did not attempt to leave the premises for fear that the appellants would make good their threats to kill her should she do so. Her fear is not baseless as the appellants knew where she resided and they had earlier announced that their intention in looking for Lolita's cousin was to kill him on sight. Certainly, fear has been known to render people immobile. Indeed, appeals to the fears of an individual, such as by threats to kill or similar threats, are equivalent to the use of actual force or violence[21] which is one of the elements of the crime of kidnapping under Article 267 (3) of the Revised Penal Code.

Far from bolstering the defense of the appellants, the testimony of defense witness Jaime Francillo sealed their fate. Francillo placed the appellants right in the vicinity of the crime when he testified that the appellants, accompanied by Lolita, went to his house looking for Santos. While Francillo recounted that the appellants were unarmed and Lolita appeared to have voluntarily gone with them, his testimony that appellants showed up at his house that day contradicts appellants' claim that they were nowhere near the kidnap victim on that fateful day and that they were all peremptorily accosted by the police officers on the street.

We come now to the charge of illegal possession of explosive.

We find that the conviction of appellant Cortez is unwarranted. To convict an accused for illegal possession of firearms and explosive under P.D. 1866, as amended, two (2) essential elements must be indubitably established, viz: (a) the existence of the subject firearm or explosive which may be proved by the presentation of the subject firearm or explosive or by the testimony of witnesses who saw accused in possession of the same,[22] and (b) the negative fact that the accused had no license or permit to own or possess the firearm or explosive which fact may be established by the testimony or certification of a representative of the PNP Firearms and Explosives Unit that the accused has no license or permit to possess the subject firearm or explosive.[23]

In the case at bar, the prosecution failed to prove the second element of the crime, i.e, the lack of license or permit of appellant Cortez to possess the hand grenade. Although the hand grenade seized by PO2 Santos from appellant was presented in court, the records bear that PO2 Santos did not submit the grenade to the PNP Firearms and Explosives Unit for verification.[24] This explains why no certification or testimony was adduced by the prosecution at the trial to prove that appellant Cortez was not licensed to possess the explosive. The failure of the prosecution to adduce this fact is fatal to its cause.[25] We stress that the essence of the crime penalized under P.D. 1866 is primarily the accused's lack of license or permit to carry or possess the firearm, ammunition or explosive as possession by itself is not prohibited by law. In the case of an explosive, a permit or license to possess it is usually granted to mining corporations, military personnel and other legitimate users. As the prosecution failed to discharge its burden of proving that appellant Cortez was not authorized to possess the grenade seized from his house, his acquittal for illegal possession of explosive is inevitable.

IN VIEW WHEREOF, the impugned Decision is MODIFIED. On the charge of illegal possession of explosive, appellant Bernie Cortez y Natanio is ACQUITTED for insufficiency of evidence. However, the conviction of appellants Bernie Cortez y Natanio, Ricardo Callos y Pulgo and Rogelio Betonio y Lupo for the crime of kidnapping is AFFIRMED.

SO ORDERED.

Davide, Jr., C. J. (Chairman), Kapunan, Pardo, and Ynares-Santiago, JJ., concur.

[1] TSN, Lolita Mendoza, December 4, 1995, pp. 2-8, 11-15.

[2] Id., pp. 9-10.

[3] TSN, Carolina Esminda, February 15, 1996, pp. 3-8.

[4] Id., p. 8; TSN, PO2 Rolando Santos, February 12, 1996, pp. 3-6.

[5] TSN, PO2 Rolando Santos, February 12, 1996, pp. 6-9, 11-14, 22-25; TSN, Carolina Esminda, January 31, 1996, p. 9.

[6] TSN, PO2 Rolando Santos, February 12, 1996, pp. 10, 12 and 14.

[7] Id., pp. 15-16.

[8] Id., p. 16.

[9] TSN, Bernie Cortez, May 9, 1996, pp. 4-5, 15.

[10] Id., pp. 6-8.

[11] Id., pp. 9-10, 17-18; May 13, 1996 TSN, pp. 7-8.

[12] TSN, Bernie Cortez, May 9, 1996, pp. 11-14.

[13] TSN, Rogelio Betonio, May 13, 1996, p. 17.

[14] Id., pp. 19-24; After the testimony of the two accused, the defense waived the presentation of accused Callos as witness as his testimony would only corroborate Betonio's.

[15] TSN, Jaime Francillo, April 29, 1996, pp. 5-8, 17.

[16] Then Presiding Judge, Regional Trial Court, Branch LXXV, Fourth Judicial Region, San Mateo, Rizal; now Associate Justice of the Court of Appeals.

[17] People vs. De La Cruz, 277 SCRA 173 (1997)

[18] People vs. Ramos, 297 SCRA 618 (1998)

[19] TSN, Lolita Mendoza, December 4, 1995, pp. 13 and 15.

[20] Id., p. 10.

[21] People vs. Hope, 177 N.E. 402, 257 N.Y. 147.

[22] People vs. Narvasa, 298 SCRA 637, 650 (1998), citing People vs. Orehuela, 232 SCRA 325, 332 (1994)

[23] People vs. Narvasa, supra, citing People vs. Villanueva, 275 SCRA 489, 496 (1997)

[24] February 12, 1996 TSN, p. 26.

[25] Mallari vs. Court of Appeals, 265 SCRA 456 (1996), citing People vs. Solayao, 262 SCRA 255, 261-265 (1996) and People vs. Tiozon, 198 SCRA 368 (1991)

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