

FIRST DIVISION

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

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

D E C I S I O N

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,**