

SECOND DIVISION

[G.R. No. 200512, June 07, 2017]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ELMER AVANCENA Y CABANELA, JAIME POPIOCO Y CAMBAYA^[1] AND NOLASCO TAYTAY Y CRUZ, ACCUSED-APPELLANTS.

DECISION

LEONEN, J.:

This is an appeal from the Decision dated September 17, 2010^[2] of the Court of Appeals in CA-G.R. CR-HC No. 03928 affirming the Joint Decision dated December 22, 2008^[3] and Order dated March 5, 2009^[4] of Branch 62, Regional Trial Court of Makati City. The assailed judgments found Elmer Avancena y Cabanela (Avancena), Jaime Popioco y Cambaya (Popioco), and Nolasco Taytay y Cruz (Taytay) guilty of kidnapping with serious illegal detention and robbery.

On August 10, 2004, two (2) Informations were filed charging Avancena, Popioco, Taytay, Generoso Jaymalin y Conde (Jaymalin), Eric Nazareno y Bonita (Nazareno), and Gil Grefaldeo y Lasin (Grefaldeo) with the crimes of Kidnapping for Ransom and Robbery/Extortion.^[5] The Informations were subsequently amended on February 28, 2005 to exclude Jaymalin and Grefaldeo.^[6] The Amended Informations read:

Crim. Case No. 04-2817

That on or about August 1, 2004 in Barangay Bangkal, Makati City and within the jurisdiction of this Honorable Court, the above-named accused, being then private individuals and armed with handguns, conspiring, confederating and mutually helping one another, did then and there, with the use of force, threat, violence and intimidation, willfully, unlawfully and feloniously take, kidnap and deprive Rizaldo Policarpio y Legaspi of his liberty against his will for purposes of extorting money in the amount of One Hundred Fifty Thousand (P150,000.00) as a condition for his release; That said Rizaldo Policarpia y Legaspi was in fact only released after he was illegally detained for almost seven hours and after his father had paid the amount of Four Thousand Pesos (P4,000.00) to the accused to the damage and prejudice of Rizaldo Policarpio y Legaspi in whatever amounts that may be awarded him under the provisions of the New Civil Code.

CONTRARY TO LAW.^[7]

Crim. Case No. 04-2818

That on or about August 9, 2004 along Evangelista St., Barangay

Bangkal, Makati City and within the jurisdiction of this Honorable Court, the above-named accused, then armed with handguns, conspiring, confederating and mutually helping one another, with intent of gain, did then and there, by means of threat, and intimidation, willfully, unlawfully and feloniously take from Alfonso Policarpio the amount of SIX THOUSAND PESOS (P6,000.00) against his will and to the damage and prejudice of said Alfonso Policarpio in whatever amounts that may be awarded him under the provisions of the New Civil Code.

CONTRARY TO LAW.^[8]

On April 26, 2005, Avancena, Popioco, Nazareno, and Taytay were arraigned where they entered the plea of not guilty. Trial on the merits ensued.^[9]

Rizaldo Policarpio (Rizaldo) testified that at around 12:30 a.m. of August 1, 2004, "he went to [a] 7/11 convenience store located at the corner of Evangelista St., Pasay City to buy [a] sandwich." He boarded his Tamaraw FX and as he drove, he noticed a vehicle tailing him; it was a gray Isuzu Crosswind with no headlights and plate number.^[10]

Rizaldo decided to head to the nearest police precinct on Evangelista Street. Upon alighting from his vehicle, he heard someone call his name. A man, whom he later identified as Avancena, alighted from the gray Isuzu Crosswind across the street. Rizaldo recognized him because they lived in the same barangay. Avancena told Rizaldo that one (1) of his companions in the Isuzu Crosswind noticed that Rizaldo received illegal drugs. Rizaldo denied Avancena's accusations. Avancena instructed Rizaldo that they should board Rizaldo's vehicle because Avancena was going to introduce him to the group's team leader, Tony Abalo (Abalo).^[11]

While they were boarding Rizaldo's vehicle, he noticed Avancena calling over his companions in the Isuzu Crosswind. Avancena's companions alighted from their vehicle and approached them. One (1) of them, who introduced himself as Abalo, boarded the backseat of Rizaldo's vehicle. Upon Avancena's request, they distanced themselves about 50 meters away from the police precinct and went to the corner of Kaiga Street where Avancena asked him again about a certain person that Rizaldo did not know. Avancena suggested again that "they should talk five [5] blocks away from the precinct."^[12]

At the corner of Lacuna Street and Evangelista Street, Avancena alighted from Rizaldo's Tamaraw FX and talked to his companions in the Isuzu Crosswind. Avancena returned to Rizaldo's vehicle, opened the driver's side door, and told Rizaldo to move over to the passenger's side. Rizaldo could not complain because Avancena had a gun. He moved to the passenger's side but was surprised when another person, later identified as Taytay, opened the passenger's side door, boarded the vehicle, and handcuffed him. He demanded Avancena to explain what was happening but Avancena did not respond.^[13]

Avancena drove to the Philippine Drug Enforcement Agency parking lot on Adriatico Street, Malate, Manila. Upon arriving, Rizaldo's handcuffs were removed and he was boarded on the Isuzu Crosswind. He was handcuffed again by Taytay whom he asked for an explanation but the latter did not answer.^[14]

Avancena, Taytay, and Abalo, together with the rest of their group, boarded the Isuzu Crosswind and drove through Taft, Libertad and went around going to Makati. Abalo alighted when they reached Roxas Boulevard and Tambo Road. Then, they drove through Epifanio Delos Santos Avenue on the way to Makati. Once parked along Makati Avenue in front of Landmark Department Store, "Avancena and one [1] of his companions alighted from the vehicle." After 30 minutes, they came back to the vehicle and the group drove through Pasay Road again to return to the Philippine Drug Enforcement Agency parking lot. While onboard, Rizaldo was asked again about other people he might knew. The group started hurting him; Taytay was strangling him on his left side, Nazareno was holding him on his right side, and Popioco was punching him. Rizaldo pleaded with them to no avail.^[15]

Upon arriving at the Philippine Drug Enforcement Agency parking lot, Avancena told Rizaldo that they would release him if his father would pay them P150,000.00. Rizaldo replied that his father did not have that amount of money and asked what it was for, since "he did not do anything illegal." Avancena removed his handcuffs and they alighted from the vehicle to have coffee on the sidewalk. After having coffee, Avancena commanded Rizaldo to call his father through a mobile phone. Rizaldo spoke to his father and told him to come over to the Philippine Drug Enforcement Agency since there were people demanding P150,000.00 for his release even though "he did not do anything wrong." Avancena grabbed the phone to talk to Rizaldo's father. Rizaldo, however, did not hear their conversation. They boarded the Isuzu Crosswind again and waited for an hour and a half for Rizaldo's father to arrive.^[16]

At around 5:00 a.m. to 5:30 a.m., Rizaldo's father, Alfonso Policarpio (Alfonso), arrived. Alfonso alighted from his vehicle and boarded the Isuzu Crosswind on the passenger's side. Rizaldo recalled that his father was angry and told Avancena that he did not have the money requested. Alfonso invited Avancena for breakfast at Jollibee at the corner of Vito Cruz and Taft Avenue so they could talk. At Jollibee, everyone except Rizaldo alighted. The group invited Rizaldo for breakfast but he begged off since his body was aching. "[Rizaldo] waited for them for about 30 [to] 45 minutes."^[17]

After breakfast, the group came back and one (1) of them took off Rizaldo's handcuffs. Alfonso followed the group and approached Avancena to hand him money, saying, "*Pare*, this is the only money I have, just call me by cellphone and I will give the remaining balance later." They returned to the Philippine Drug Enforcement Agency parking lot to get Rizaldo's vehicle. Then, Rizaldo drove home with his father following him.^[18]

At around 1:00 p.m., Avancena called Rizaldo on his mobile phone to ask for the balance but Rizaldo told him to just ask his father. He then turned off his phone. "He claimed that he was traumatized by the incident."^[19]

Alfonso, on the other hand, testified that on August 1, 2004, at around 4:00 a.m. to 5:00 a.m., his son Rizaldo called him on his mobile phone. He could not understand what Rizaldo was saying at first but noticed that his son was afraid and seemed to be already crying. Rizaldo informed him that he was abducted (*dinukot*) by Philippine Drug Enforcement Agency, through Avancena's group. Alfonso wondered why the Philippine Drug Enforcement Agency would arrest his son when its Task

Force Hunter under Director Reynaldo Jaylo (Director Jaylo) had already been dissolved since July 2004. Their conversation was disrupted but his mobile phone rang again showing his son's number. The man on the other line introduced himself as Avancena who told him to proceed to the Philippine Drug Enforcement Agency parking lot to talk about his son and to bring him any amount of money.^[20]

Alfonso brought a borrowed amount of P5,000.00 to the Philippine Drug Enforcement Agency. At the parking lot, he saw Avancena in the driver's seat waving to him. Avancena instructed him to sit at the passenger's side and to talk to Rizaldo first. His group then alighted from the vehicle.^[21]

Rizaldo informed him that "[Avancena's group] was linking him to drug-related cases." Alfonso told his son that "[Avancena's group] was no longer connected with [the Philippine Drug Enforcement Agency]" and that they were asking for P150,000.00 for his release.^[22]

After talking, Alfonso alighted from the vehicle and invited Avancena to breakfast at Jollibee. When they entered Jollibee, Avancena asked him, "*Pare*, did you bring with you the P150,000.00?" Alfonso answered, "*Pare*, I did not bring with me that amount, it is too big." Avancena inquired how much money he was able to bring. He replied that he only brought P4,000.00 as he was paying for breakfast. Avancena said, "*Okay pare*, you could bring your son home but don't forget that you still have a balance." He was also told that if he did not pay, his son would be abducted again.^[23]

After breakfast, Avancena told Alfonso to follow him outside. Avancena's group boarded the Isuzu Crosswind. Alfonso went to Avancena's window and handed him P4,000.00. They then drove back to the Philippine Drug Enforcement Agency with Alfonso following in his car. At the Philippine Drug Enforcement Agency, Avancena gave Alfonso his son's car keys. He also noticed that Avancena gave one (1) of his companions a small key to unlock his son's handcuffs. When they went home to rest, Rizaldo told him that during this time, "Avancena called him twice."^[24]

On August 2, 2004, at around 10:00 a.m., Rizaldo and Alfonso went to the Anti-Illegal Drugs Special Operations Task Force (AIDSOTF) at Camp Crame to report the incident. While Alfonso was talking to a certain Colonel Aguilar, Avancena called on his cellphone. He answered and pointed to it to inform Colonel Aguilar that Avancena was on the other line. Avancena asked him for the balance of P150,000.00. Alfonso told him that he could not afford that amount and asked if he could just pay P40,000.00. Avancena countered with P50,000.00 but eventually agreed to P40,000.00.^[25]

Colonel Aguilar went with them to the National Anti-Kidnapping Task Force (NAKTAF) where investigations were conducted. Colonel Aguilar instructed Alfonso to produce the money but Alfonso told him he did not have that amount. Colonel Aguilar told him to just bring any amount of money he could so the money could be brought to the laboratory to be marked. Alfonso was able to give P6,000.00 in P20.00 bills.^[26]

The pay-off was scheduled on August 6, 2004, but it did not push through. On August 7, 2004, Alfonso received a call from Abalo who claimed to be Avancena's team leader. They decided that Alfonso would deliver the money on August 9, 2004

in the afternoon. After the phone call, Alfonso called NAKTAF to disclose his agreement with Abalo.^[27]

At around 11:00 a.m. on August 9, 2004, NAKTAF deployed 20 operatives to Alfonso's place on Evangelista Street, Barangay Bangkal. A briefing was conducted and Alfonso was given a plastic bag containing the marked money and was instructed to hand it to Avancena's group.^[28]

At around 12:00 noon, NAKTAF directed Alfonso to go to Evangelista Street and advised him of the operatives present in the vicinity. He went in front of the Iglesia ni Cristo Church, the pre-arranged pay-off place. At around past noon, Avancena's group, along with two (2) other companions, arrived in a white Revo. Avancena approached him and retrieved the plastic bag with the marked money. The group boarded their vehicle and entered Gen. Mojica Street. Suddenly, Alfonso heard a gunshot and sirens and a commotion followed.^[29]

After the commotion, Alfonso entered Gen. Mojica Street and asked around what happened. He was told that people were injured during the commotion. A NAKTAF operative approached and asked him to fetch his son and to follow them to the NAKTAF office where they were asked who was responsible for the abduction. Alfonso executed a sworn statement to detail his account of events.^[30]

Several police officers from the NAKTAF and AIDSOTF were also called to testify on the circumstances surrounding the planning and coordination for the entrapment operation.^[31] Captain Jeffrey Villarosa, commander of the Anti-Kidnapping Special Operations Group, testified that he personally witnessed Alfonso give the marked money to Avancena.^[32] Police Senior Inspector Juanita Darlucio Sioson, a forensic officer, testified that Avancena's group tested positive for the presence of yellow ultraviolet powder on their faces.^[33] Police Inspector Zosima Nabor (Police Inspector Nabor) of the Human Resource Service of Philippine Drug Enforcement Agency likewise attested that members of Avancena's group were not employees of Philippine Drug Enforcement Agency. She further affirmed that Task Force Hunter led by Director Jaylo was deactivated on July 30, 2004 and that she was unaware of the documentation of any of its volunteer agents.^[34]

In the defense's version of the facts, Nazareno testified that he was with Avancena's group on the night of August 1, 2004 conducting surveillance operations on Rizaldo as volunteer agents for the Philippine Drug Enforcement Agency. He alleged that they followed Rizaldo's vehicle along Evangelista Street and that when Rizaldo noticed he was being tailed, he parked in front of the police precinct, alighted from his vehicle, and approached them to ask why he was being followed. Avancena told him that he noticed Rizaldo hand something to someone on Villaruel Street. Rizaldo volunteered to return to Villaruel Street so Avancena boarded Rizaldo's vehicle.^[35]

Nazareno claimed that the group followed Rizaldo's vehicle supposedly to Villaruel Street but the vehicle proceeded to the Philippine Drug Enforcement Agency Office in Vito Cruz, Manila. Rizaldo allegedly offered them "work regarding drugs" but that he had to ask his father's permission first. Alfonso, Rizaldo's father, arrived and talked to Avancena. He then invited them to eat at Jollibee. After eating, Alfonso gave them P4,000.00 which they refused to accept. Alfonso insisted and even