

## EN BANC

[ G.R. No. 137519, March 16, 2004 ]

### PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ANGELITO MARTINEZ AND DEXTER TAGLE, APPELLANTS.

#### DECISION

##### PER CURIAM:

For automatic review is the decision<sup>[1]</sup> of Branch 259 of the Regional Trial Court in Parañaque City finding appellants guilty beyond reasonable doubt of the crime of kidnapping for ransom and serious illegal detention as defined and penalized under Article 267 of the Revised Penal Code (RPC), as amended by RA 7659, and imposing upon them the death penalty and moral damages of P1,000,000. This case is now before us on automatic review.

In an amended information filed with the Regional Trial Court of Parañaque City, appellants Angelito Martinez and Dexter Tagle, together with accused Rosita Yu, Genaro de Jesus, Rigor Aguilar, Rico Basa and Dennis Rivera, were charged with kidnapping for ransom:

That at about 10:30 o'clock in the evening of 4 August 1996 along Quirino Avenue, Parañaque City and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another together with some other persons whose liabilities are still being determined in a preliminary investigation, did then and there, by force and intimidation, willfully, unlawfully and feloniously take, carry away and kidnap ATTY. AQUILES LOPEZ against his will, and thereafter detain him, thereby depriving ATTY. AQUILES LOPEZ of his liberty for the purpose of extorting ransom for his release.

Records show that on August 2, 1996, appellants Martinez and Tagle met with accused Aguilar, Rivera and Basa at the Emilio Aguinaldo College along Taft Avenue, Manila. The group conjured up a plan to kidnap any person for ransom on August 5, 1996.

On August 4, 1996 at around 6:00 p.m., on board a red Toyota Corolla with tinted windows and bearing a California plate, appellant Tagle and accused Aguilar and Rivera first proceeded to appellant Martinez' house in Valenzuela City. Wearing military and police uniforms, they then went to SM Mega Mall in Ortigas where they planned to intercept classy cars violating traffic rules as a prelude to spotting a suitable kidnap victim. Unable to find one, the group drove to Parañaque City. At around 10:30 p.m., the group spotted a black Honda Accord with plate no. TPA-762 along Quirino Avenue, Parañaque City. The driver of said car was later identified as the kidnap victim, Atty. Aquiles Lopez. Overtaking Lopez on the left (driver's side), appellant Martinez who was occupying the front seat, brandished a long firearm at him. Lopez tried to speed away but the red car succeeded in blocking his path. As

Lopez brought his car to a stop, the group alighted from the red car and introduced themselves as members of the police Narcotics Command. He was able to see their faces clearly because the headlights of his car were on. Accused Aguilar approached him and demanded to see his car registration papers while appellant Tagle searched the trunk of his car. Realizing that Lopez was the president of a company, appellant Martinez ordered appellant Tagle and accused Aguilar to transfer him to the backseat of the black Honda Accord where he was handcuffed and blindfolded. The group drove to the North Expressway with appellant Tagle at the wheel of the black Honda. Accused Basa was seated at the front seat while appellant Martinez, victim Lopez and accused Aguilar were at the back. Accused Rivera drove the kidnappers' red Toyota Corolla. Upon reaching the Sta. Rita exit, Lopez was transferred to the red car. They proceeded to appellant Martinez' house where the victim was held captive for four nights and three days.

During his detention, Lopez conveyed to his daughter Rosalinda Lopez Medina his abductors' demand for ransom of P10,000,000 which was later reduced to P2,000,000.

In the meantime, on August 5, 1996, the family of Lopez reported his disappearance to the Presidential Anti-Crime Commission (PACC) after his daughter received several phone calls early in the morning informing her of her father's kidnapping. After receiving the report, Senior Supt. Roberto Calinisan, head of the Task Force Habagat, immediately dispatched his men to ascertain the whereabouts of Lopez. On August 6, 1996, the monitoring team assigned to the northern sector of the metropolis spotted the black Honda Accord with plate no. TPA-762 parked inside a residence in Yakal Street, Fortune Village, Valenzuela, Metro Manila. At around 11:00 p.m. the next day, August 7, 1996, after surveillance operations confirmed that the victim was indeed being detained inside one of the rooms of the house, operatives of the PACC Task Force Habagat raided the said residence and successfully rescued Lopez. While the PACC agents were still inside the house, about three persons outside and on board a red Toyota Corolla traded shots with perimeter security personnel of the PACC Task Force. The occupants of the red car were able to elude arrest but appellant Martinez and accused Yu and de Jesus were arrested during the raid. Several items were recovered from the scene.<sup>[2]</sup>

In a subsequent report by the members of the Valenzuela Police, the same red Toyota Corolla with California plates was found abandoned inside Fortune Village Subdivision. Several items were likewise recovered inside the abandoned vehicle.<sup>[3]</sup>

On August 9, 1996, accused Aguilar and, on August 10, 1996, appellant Tagle surrendered to the authorities after learning that they were being implicated in the kidnapping of Lopez. Appellant Tagle even accompanied the operatives of the PNP-CIU in a follow-up operation at Fortune 7, Parada St., Valenzuela. The operation resulted as well in the recovery of some items.<sup>[4]</sup>

On arraignment and with the assistance of their respective counsels, appellants Martinez and Tagle, accused Yu, de Jesus and Aguilar all pleaded not guilty to the charge against them while accused Rivera and Basa remained at large. Pre-trial was terminated and trial proceeded accordingly.

The prosecution presented eight witnesses: kidnap victim Atty. Aquiles Lopez, the kidnap victim's daughter Rosalinda Lopez Medina, Sr. Insp. Narciso Ouano, Jr., SPO Jesus C. Sagisi, PNP member Romeo Biete, Chief Insp. Gilbert Cruz, Sr. Insp.

Ronaldo Mendoza, and accused turned state witness Rigor Aguilar. For the defense, appellant Martinez testified in his behalf and presented as witnesses Felicidad Condino, Perla Condino and co-accused Rosita Yu. Appellant Tagle, on the other hand, testified in his own behalf and presented his mother, Manuela Tagle, as his other witness. Accused Yu and de Jesus did not present any witnesses but relied solely on their own respective testimonies.

On April 29, 1997, the prosecution filed a motion to discharge accused Aguilar from the information for utilization as state witness. The trial court granted the motion despite opposition from the accused and also denied their joint motion for reconsideration.

On July 1, 1997, appellant Martinez and accused de Jesus filed in the Court of Appeals a petition for *certiorari* and prohibition with prayers for the issuance of a writ of preliminary injunction and temporary restraining order, to nullify the trial court's order discharging accused Aguilar as state witness and denying their joint motion for reconsideration. After their petition was denied, a petition for review under Rule 45 was filed with this Court. We denied said petition.

On December 7, 1998, the trial court rendered its decision:

WHEREFORE, PREMISES CONSIDERED, finding accused Angelito Martinez and Dexter Tagle GUILTY beyond reasonable doubt [of] the crime of Kidnapping for Ransom and Serious Illegal Detention as defined and penalized under Article 267 of the Revised Penal Code as amended by RA 7659, both accused Martinez and Tagle are hereby sentenced to the supreme penalty of death by lethal injection and to suffer the accessory penalties provided by law specifically Article 40 of the Revised Penal Code. They are also ordered to pay moral damages in the amount of P1,000,000.00 each.

As earlier pronounced, accused Rosita Yu and Genaro de Jesus are declared NOT GUILTY for insufficiency of evidence while the case against Dennis Rivera and Rico Basa is ordered archived pending their apprehension.

Rigor Aguilar, having been discharged to testify as a witness for the prosecution, is hereby set free pursuant to Section[s] 9 and 11 of Rule 119 of the Rules of Court and towards this end, the PACC is directed to immediately release him from custody unless there by (*sic*) some other reasons for his further detention.

The Jail Warden of Parañaque is also ordered to release Rosita Yu and Genaro de Jesus unless there be some reasons also for their further detention.

The Clerk of Court of this Court is directed to prepare the MITTIMUS for the immediate transfer of Angelito Martinez and Dexter Tagle to the Bureau of Corrections in Muntinlupa City and finally forward all the records of the case to the Supreme Court for automatic review in accordance with Section 8 Rule 122 of the Rules of Court and Article 47 of the Revised Penal Code as amended by Section 22 of RA 7659.<sup>[5]</sup>

In his brief,<sup>[6]</sup> appellant Tagle raises the following errors:

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT OF KIDNAPPING FOR RANSOM NOTWITHSTANDING THE INADMISSIBILITY OF THE EVIDENCE ADDUCED BY THE PROSECUTION.

THE TRIAL COURT ERRED IN UPHOLDING THE DISCHARGE OF STATE WITNESS RIGOR AGUILAR FROM THE INFORMATION IN ACCORDANCE WITH SECTION 9 [now Section 17], RULE 119 OF THE RULES OF COURT DESPITE HIS INADMISSIBLE AND INCONSISTENT STATEMENTS.

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT DEXTER TAGLE DESPITE THE FAILURE OF THE PROSECUTION TO PROVE THE EXISTENCE OF CONSPIRACY AMONG THE PERPETRATORS WITH CLEAR AND CONVINCING PROOF.

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT DEXTER TAGLE ON THE BASIS OF THE POSITIVE IDENTIFICATION BY THE VICTIM DESPITE THE FACT THAT HE WAS NOT ASSISTED BY COUNSEL DURING THE POLICE LINE-UP WHEN IDENTIFIED.

Appellant Martinez, on the other hand, assigns the following errors:<sup>[7]</sup>

THE TRIAL COURT ERRED IN FINDING MARTINEZ GUILTY OF THE CRIME OF KIDNAPPING.

THE TRIAL COURT ERRED IN RULING THAT ACCUSED-APPELLANT MARTINEZ WAS POSITIVELY IDENTIFIED BY THE (SIC) LOPEZ, THE KIDNAP VICTIM.

(THE) TRIAL COURT ERRED IN GIVING FULL CREDENCE TO THE TESTIMONY OF THE STATE WITNESS, RIGOR AGUILAR.

THE TRIAL COURT ERRED IN DISREGARDING ACCUSED APPELLANT'S DEFENSE OF ALIBI.

The issue in this case boils down to ascertaining whether or not the guilt of both appellants Martinez and Tagle was proven beyond reasonable doubt.

The defense stresses that, due to the doubtful identification and description by Lopez, there was a lack of ample evidence positively pinpointing appellants as the abductors. Appellant Martinez alleges that it was impossible for Lopez to clearly see his abductors and therefore his description of his kidnappers was too general and vague. On the other hand, appellant Tagle claims that the identification made by the victim during the police line-up was inadmissible because he stood there without the assistance of counsel.

We disagree. Lopez described the man who brandished a rifle at his left as "tall, well-built, slightly dark and wearing a police uniform," while the man who opened the trunk of his car "was wearing a white t-shirt, not very tall, fair complexioned but pretty well-built," and the man who ordered the others to put him at the back seat of the car "was tall, well-built, husky and wearing a camouflage uniform." The description given by the victim was acceptable as it sufficiently identified his abductors. In addition, Lopez stated in open court that he could recognize his kidnappers if he saw them again. Thus, even if the description he gave was allegedly general in character, recognition and description are two different processes that do not necessarily jibe. Description presupposes a facility of communication that many persons do not possess.<sup>[8]</sup>

The most important evidence was the positive testimony of Lopez recognizing appellants as his abductors. Common human experience tells us that when extraordinary circumstances take place, it is natural for persons to remember many of the important details. This Court has held that the most natural reaction of victims of criminal violence is to strive to see the features and faces of their assailants and observe the manner in which the crime is committed. Lopez positively identified appellant Martinez as one of his captors. He testified that he saw the faces of his abductors because the headlights of his car were focused on them when they alighted from their car. This enabled him to clearly see their faces. All too often, the face of the assailant and his body movements create a lasting impression on the victim's mind and cannot thus be easily erased from his memory.

On the allegation of appellant Tagle that his identification by the victim during the line-up without his counsel violated his constitutional right (to counsel), suffice it to say that such right attaches only upon the start of an investigation, i.e., when the investigating officer starts to ask questions to elicit information, confession or admission from the accused. In this case, when appellant Tagle was identified by Lopez in the police line-up, he had not yet been held to answer for the criminal offense for which he has since been charged and convicted. Thus, appellant Tagle's right to counsel could not have been violated as the confrontation between the State and the accused had not yet begun. This Court has consistently held that the prohibition against custodial investigation conducted without the assistance of counsel does not extend to a person in a police line-up. This particular stage of an investigation where a person is asked to stand in a police line-up has been held to be outside the mantle of protection of the right to counsel because it as yet involves a general inquiry into an unsolved crime and is purely investigatory in nature. It has also been held that an identification without the presence of counsel at a police line-up does not preclude the admissibility of an in-court identification.<sup>[9]</sup>

Appellant Tagle claims that, when the police line-up was conducted, he was already indicted for the offense charged and thus had the right to counsel. This is not correct for it has been ruled that a person's right to counsel while under custodial investigation cannot be invoked until such time as the police investigators start questioning, interrogating or exacting a confession from the person under investigation.<sup>[10]</sup> During the police line-up, appellant Tagle was not interrogated at all and no statement or confession was extracted from him. Therefore, there was no deprivation of his right to counsel because the accusatory process had not yet begun nor had the police, at that stage, exacted a confession from him.

Moreover, the appellants have not shown any ill-motive on the part of the victim to fabricate charges against them. It is well-settled that when there is no evidence to show that the prosecution witness is actuated by an improper motive, identification of the appellants as the offenders should be given full faith and credit.<sup>[11]</sup>

Furthermore, appellant Tagle avers that the prosecution failed to prove the existence of conspiracy. On this point, we have time and again held that conspiracy need not be established by direct proof of prior agreement by the parties to commit a crime but that it may be inferred from the acts of the accused before, during and after the commission of the crime which indubitably point to a joint purpose, concerted action and community of interest.<sup>[12]</sup> The conspiracy in this case was clear from the overt acts of the accused which facilitated the kidnapping of Lopez.