

EN BANC

[G.R. Nos. 139474-75, December 11, 2003]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. EDUARDO PABILLARE Y VARONA, ALFREDO CORPUZ Y FLORES, SOTERO SANTOS Y CRUZ AND CONRADO CAÑADA Y VILLONGCO, ACCUSED.

EDUARDO PABILLARE Y VARONA, AND CONRADO CAÑADA Y VILLONGCO, APPELLANTS.

D E C I S I O N

PER CURIAM:

For automatic review is the Decision^[1] dated February 15, 1999 of the Regional Trial Court, Branch 95, Quezon City, in Criminal Case No. 96-65215, entitled "People of the Philippines vs. Eduardo Pabillare y Varona, Alfredo Corpuz y Flores, Sotero Santos y Cruz, and Conrado Cañada y Villongco" for kidnapping for ransom.

The Information against the accused reads as follows:

"That on or about the 10th day of March, 1996 in Quezon City, Philippines, the above-named accused, conspiring together, confederating with and mutually helping one another by means of force, violence and/or intimidation did, then and there willfully, unlawfully and feloniously armed with firearms kidnap one GURMAIL SINGH along NIA Road, corner East Avenue, this city, and thereafter brought him to a warehouse somewhere in Quezon City and finally to JOLLIBEE Food Plaza located along Del Monte cor. Roosevelt Avenue, SFDM, this city, for the purpose of extorting money in the amount of P20,000.00, Philippine Currency, thereby depriving and detaining him of his liberty for more than five (5) hours to the damage and prejudice of the said offended party."^[2]

The appellants here are Eduardo Pabillare and Conrado Cañada who were meted the supreme penalty of death.

Upon arraignment, both appellants and the other two accused, assisted by their respective counsel, pleaded "not guilty." Thereafter, trial ensued.

The prosecution established the following facts through the testimonies of Gurmail Singh, private complainant, SPO4 Epifanio Derequito, SPO4 Eduardo Frias, SPO1 Ruben Reyes and Rajeet Singh.

Gurmail Singh is an Indian national engaged in the buy-and- sell business. On March 10, 1996 at around 3:45 in the afternoon, while riding in his motorcycle along NIA

Road, Quezon City, a brown Ford Telstar car with Plate No. DED 714, driven by appellant Conrado Cañada, suddenly blocked his way causing him to fall. Appellant Eduardo Pabillare and a certain Johnny "Kulot" (who has remained at large) got off the car and told him, "You have raped a woman," referring to Johnny's niece. They then forcibly took and dragged him to the back seat of the car. Gurmail resisted but could do nothing because Pabillare had a gun tucked in his waist. Once inside the car, Johnny and Pabillare beat him and took his P1,500.00 and his driver's license.^[3] Then Pabillare told him to produce P100,000.00 for his release. He answered that he could only give them P5,000.00. Disappointed with such response, they again beat him. He then agreed to pay them P25,000.00. Pabillare coerced him to write a note to his wife to give P25,000.00 for his release. Johnny took the letter and proceeded to Gurmail's house.^[4]

After an hour drive, Cañada parked the car in front of an apartment. Gurmail remained at the back seat guarded by Cañada. Pabillare went out and came back with a woman who was allegedly raped by Gurmail. Meanwhile, Johnny arrived and punched Gurmail because contrary to his assurance that no one was in his house, some Indian nationals were there. Upon Pabillare's order, Gurmail gave the telephone number of his cousin Lakhbir Singh who would deliver the P25,000.00 ransom.^[5]

Gurmail stayed in the car for 1 1/2 hours. Meantime, Cañada and an unidentified man brought him to a "bodega". Pabillare and Johnny were left at the apartment. In the "bodega" were three persons. Two were later identified as accused Alfredo Corpuz and Sotero Santos. They stayed there for an hour. Thereafter, the group boarded the same car driven by Cañada and proceeded to Jollibee, at San Francisco Del Monte Avenue, Quezon City. The unidentified man got off the car while they were on their way to Jollibee.^[6]

At that instance, Lakhbir Singh, Gurmail's cousin, received a call at his house informing him that his cousin Gurmail was kidnapped. The caller demanded P25,000.00 for the release of Gurmail. Immediately, Lakhbir reported the matter to Police Station No. 10 in Quezon City. SPO1 Eduardo Frias instructed him to keep in touch with the abductors and wait for final instructions from the police. Upon reaching home, Lakhbir was informed by his brother Harbir that according to the caller, the pay-off (in the sum of P20,000.00) will be at the Jollibee, corner of Roosevelt and Del Monte Avenue, Quezon City. Lakhbir returned to the police station and narrated what his brother Harbir told him. Police Inspector Edgardo Jovellano organized a team, composed of himself, SPO1 Frias, SPO1 Rebancos, SPO1 Lozada, and SPO1 Ruben Reyes in order to entrap the abductors.^[7] Harbir was assigned to deliver the ransom money.^[8]

The team, wearing civilian clothes, went to Jollibee and spread out in different areas. SPO1 Frias and SPO1 Lozada entered the restaurant and the rest of the team members waited outside. Thirty minutes thereafter, Harbir arrived with Rajeet Singh, also a cousin of Gurmail. While seated inside the restaurant, Pabillare approached them, introduced himself as a policeman and asked for the ransom money. Harbir told him that he wanted to see Gurmail first before handing the money. So Pabillare led them to Gurmail who was in the car parked in front of the restaurant. Cañada opened the front window and they saw Gurmail. Rajeet then gave Pabillare P20,000.00 placed in an envelope. The latter opened the envelope

then winked at Corpuz and made a thumb-up sign. Forthwith Corpuz and Santos approached Pabillare. At this juncture, the policemen apprehended appellants Pabillare and Cañada and accused Corpuz and Santos. SPO1 Ruben Reyes recovered from Pabillare the ransom money and a .38 caliber revolver^[9] with six live ammunitions.^[10]

After the prosecution formally rested its case, accused Sotero Santos filed a demurrer to evidence^[11] which was granted by the trial court in its Order^[12] dated June 6, 1997.

Appellant Cañada's testimony is as follows: On March 10, 1996, Napoleon de Guzman, a mechanic, introduced to Silveriano Cañada, appellant's father, a certain Johnny who wanted to rent a vehicle. Silveriano was then engaged in a rent-a-car business. Johnny rented a Ford Telstar car for P1,000.00 which he would use in going to Fairview, Quezon City in order to check a car for sale. Silveriano instructed Cañada to drive for Johnny. Cañada acceded to his father's instruction and told Johnny to come back after lunch. At around 2:30 p.m., Johnny, together with appellant Pabillare, arrived. They then drove to Fairview. But because the owner of the car, which Johnny was supposed to buy was not yet around, they went to the house of Pabillare's mother-in-law at NIA Road, Quezon City. Both Pabillare and Johnny alighted. After 20 minutes, they boarded the car and returned to Fairview. On their way, they saw Gurmail Singh on board a motorcycle. Pabillare and Johnny ordered Cañada to chase Gurmail. When Gurmail stopped, Johnny and Pabillare brought him inside the car and they proceeded to San Francisco Del Monte. They stopped in front of an apartment. Pabillare and Johnny entered the apartment, while Gurmail and Cañada remained in the car. Thereupon, Johnny returned to the car with a woman. Cañada took a snack. When the woman left, Johnny and Pabillare went inside the car. Cañada did not see what went on inside because the glass windows of the car were heavily tinted. Afterwards, both Johnny and Pabillare left. Later, a boy arrived and relayed to Cañada Johnny's instruction to proceed to a big compound within the area. After Cañada parked the car, the boy disappeared. Cañada and Gurmail stayed in the place for about an hour. Then the boy came back and told Cañada to go to Jollibee. On their way, the boy alighted near the market. When they reached Jollibee, Johnny was already there. He ordered Cañada to park in front of the restaurant. But when Cañada opened the door of the car, a policeman suddenly poked a gun at him, dragged him outside and told him to lie on the pavement. Then he was brought to Police Precinct No. 10 and was pinpointed as one of the kidnapers of Gurmail. Criminal cases for robbery, illegal possession of firearms and kidnapping were filed against him. All the cases were dismissed, except kidnapping.^[13]

Appellant Pabillare testified that on March 10, 1996, he accompanied Johnny to San Pedro Subdivision in Novaliches, Quezon City to look for a car for sale. Cañada drove for them. When they reached the subdivision, the owner of the car was not there so they went to the house of his mother-in-law along NIA Road, Quezon City to see his wife and children. But they were not around. So he asked Cañada to bring him home. While on their way to Frisco, Johnny told Cañada to chase Gurmail. When Gurmail stopped, Johnny forcibly took him inside the car. Pabillare alighted and went home. At past 6:00 p.m., he went to Jollibee to buy snacks for his children. He saw Johnny there by chance. At around 7:00 p.m., several policemen arrived and arrested them. Immediately they were brought to a small room at the precinct and

while there, many Indian nationals came charging them with kidnapping.^[14]

After hearing, the trial court rendered its Decision, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered in the following:

(1) In Criminal Case No. Q-96-65215, the Court finds the accused Eduardo Pabillare y Varona and Conrado Cañada y Villongco **GUILTY** beyond reasonable doubt as principals of the crime of kidnapping or serious illegal detention for the purpose of extorting ransom defined in and penalized by Article 267 of the Revised Penal Code, as amended, and are hereby sentenced to suffer the penalty of **DEATH**.

As to the other accused, Alfredo Corpuz y Flores, the Court finds the said accused **GUILTY** beyond reasonable doubt as an accomplice of the crime of kidnapping or serious illegal detention for the purpose of extorting ransom defined in and penalized by Article 26 of the Revised Penal Code, as amended, and is hereby sentenced to suffer the penalty of *reclusion perpetua*. The period within which the accused Alfredo Corpuz was detained at the City Jail of Quezon City shall be credited to him in full provided that he agrees in writing to abide by and follow strictly the rules and regulations of the said institution.

(2) In Criminal Case No. Q-96-65216, the Court finds the accused Eduardo Pabillare y Varona **GUILTY** beyond reasonable doubt of Violation of P.D. No. 1866, as amended by R.A. No. 8294, and is hereby sentenced to suffer the indeterminate penalty of from two (2) years and four (4) months of *prision correccional* minimum as the minimum penalty to four (4) years and two (2) months of *prision correccional* medium as the maximum penalty and to pay a **FINE** of fifteen thousand pesos (P15,000.00).

All the three (3) accused shall pay the costs.

IT IS SO ORDERED."

The capital punishment having been imposed upon appellants Cañada and Pabillare, the assailed Decision is now with this Court for automatic review.

In his brief, Cañada raises the following assignments of error:

"1. THE TRIAL COURT ERRED IN FINDING CONSPIRACY BETWEEN APPELLANT AND HIS CO- ACCUSED IN THE COMMISSION OF THE OFFENSE; AND

"2. THE TRIAL COURT ERRED IN NOT ACQUITTING APPELLANT OF THE OFFENSE CHARGED ON THE GROUND OF REASONABLE DOUBT"^[15]

For his part, Pabillare ascribes to the trial court the following errors:

"I

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT EDUARDO PABILLARE GUILTY BEYOND REASONABLE DOUBT OF THE CRIMES OF KIDNAPPING FOR RANSOM AND ILLEGAL POSSESSION OF FIREARM

"II

THE TRIAL COURT GRAVELY ERRED IN CONSIDERING THE INCREDIBLE AND INCONSISTENT TESTIMONIES OF THE PROSECUTION WITNESSES

"III

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT FOR ILLEGAL POSSESSION OF A .38 PALTIK HAVING RENDERED THE SAME WITHOUT JURISDICTION"^[16]

Appellant Cañada contends that he did not conspire with the other accused who were strangers to him. He merely drove the car Johnny rented from his father. If he were a conspirator, he would not have driven his father's Ford Telstar and expose himself unnecessarily considering that its plate number was prominently visible. Moreover, there is no evidence that he assisted appellant Pabillare and Johnny in dragging the victim inside the car. He denies that he was guarding the victim. In fact, the victim was not restrained of his movement. He could have gone out of the car by simply unlocking the doors. Neither was there a threat to his life since appellant Pabillare, who was in possession of a gun, stayed away for sometime. Likewise, there is no proof that he had any motive to commit or consent to the commission of the crime. At most, he was a victim of circumstances.

Appellant maintains that the *ponente* is not the trial judge. Consequently, having no opportunity to observe the demeanor of the victim on the witness stand, he should not have believed the latter's testimony.

For his part, appellant Pabillare contends that the prosecution witnesses have inconsistent versions with regard to the amount and manner of payment of the ransom money. While the Indian witness testified that he and Gurmail's cousin handed the money to Pabillare, the police officer who headed the entrapment, declared on the witness stand that only one person delivered the money. Also, Gurmail testified that the ransom money was P25,000.00, however, his cousin stated that it was P20,000.00. The prosecution witnesses also were inconsistent regarding the color of the envelope containing the money.

The above contentions and arguments boil down to the issue of credibility of the witnesses for the prosecution and for the defense.

It is a legal truism of long standing that we accord great respect to the factual conclusions drawn by the trial court, particularly on the matter of credibility of witnesses, unless some material facts have been overlooked or misconstrued as to affect the result. In this case, we find no such material fact from the record that would impair the correctness of the conclusions of the trial.

The trial court gave credence to the testimony of the victim who testified as follows: