

## EN BANC

[ G.R. No. 173308, June 25, 2008 ]

### PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ELMER DE LA CRUZ AND TRANQUILINO MARTINEZ, APPELLANTS.

#### D E C I S I O N

##### CORONA, J.:

For review is the November 2, 2005 decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. HC-CR No. 00947 affirming with modification the November 18, 2002 decision<sup>[2]</sup> of the Regional Trial Court (RTC) of Quezon City, Branch 89 in Criminal Case No. Q-99-80669 finding the accused-appellants Elmer de la Cruz (De la Cruz) and Tranquilino Martinez (Martinez) guilty of the crime of kidnapping for ransom and sentencing them to suffer the penalty of death.

Charged with the crime of kidnapping for ransom were accused-appellants De la Cruz and Martinez, along with three others, namely, Aldrin Tano (Tano), Romeo Dano (Dano) and Rex Tarnate (Tarnate). The information read:

That on or about November 9, 1998 in Quezon City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and feloniously take, carry away and deprive AARON DENNIS ONG Y RODRIGUEZ, a minor of eight (8) years old, of his liberty against his will for purposes of extorting money as in fact a demand for money was made as a condition for his release.

CONTRARY TO LAW.<sup>[3]</sup>

On arraignment, only accused-appellant De la Cruz, Tarnate and Tano, assisted by their counsel, appeared. They all entered a plea of not guilty. Accused-appellant Martinez was arrested subsequently and he likewise pleaded not guilty upon his arraignment. Dano, on the other hand, remains at large to the present.

During trial, the RTC received a letter from the Quezon City Jail Warden that accused Tarnate died of cardiac arrest during incarceration.

Thereafter, while in the process of presenting its witnesses, the prosecution filed a motion to discharge accused Tano as a state witness. Accused-appellants De la Cruz and Martinez filed their separate oppositions thereto. The RTC granted the motion and denied the motion for reconsideration.

The prosecution presented six witnesses, namely: the victim Aaron Dennis Ong (Aaron), his father Erwin Ong (Erwin), Delfin Quinano (Quinano), Fortunato Sauquillo (Sauquillo), state witness Tano and Chief Inspector Rolando Anduyan

(Anduyan) of the Presidential Anti-Organized Crime Task Force (PAOCTF).

As established during the trial, accused-appellant De la Cruz was employed by Erwin as a family driver. He brought Aaron, then an eight-year-old third-grade student, to and from Claret School.

State witness Tano relayed that on November 4, 1998, he, accused-appellants De la Cruz and Martinez, along with Dano, had a meeting wherein De la Cruz broached the idea of kidnapping Aaron. According to De la Cruz, the child was a "good catch" as his boss' family had "plenty of money." He knew this because he had accompanied Erwin to the bank thrice. Martinez agreed that it was a good idea to abduct Aaron.

The group discussed the plan to kidnap Aaron on two other occasions. On November 5, 1998, they agreed that Martinez should act as their leader, while De la Cruz would provide the tips. On November 8, 1998, De la Cruz informed them that he would raise the hood of the car he was driving upon his arrival at the Claret School as a signal to put the plan into action.

On November 9, 1998, De la Cruz fetched Aaron from school. As the boy took the car's front passenger seat, De la Cruz placed Aaron's bag at the back seat of the car. De la Cruz told the child that the car was overheating and proceeded to open the hood of the car and the rear compartment. He took a container of water and poured it on the car's engine. Martinez got inside the car and handcuffed Aaron's left wrist. De la Cruz then closed the rear compartment, boarded the car and seated himself behind the driver. He was also handcuffed by Martinez to Aaron.

Tano then went in and seated himself at the right side of the back seat beside De la Cruz and behind Aaron. Martinez then drove the car all the way to Batasan Hills where Dano resided. They fetched Dano who took over control of the car from Martinez. They proceeded to Minuyan, San Jose del Monte, Bulacan, reaching the place at around 8:00-9:00 p.m.

Upon arrival, they removed Aaron's handcuff and entered a vacant house. Martinez and Tano left Aaron with De la Cruz and proceeded to Tarnate's house. Martinez instructed Tarnate to feed the boy. He told the child not to make any noise as somebody was guarding them outside. He left Aaron and De la Cruz who later told the child that he was able to untie himself. Despite the chance to escape, however, he took a nap.

At around 10:00 p.m. that same evening, Martinez, Tano, Dano and Tarnate drove the Ongs' car and went back to Batasan Hills in Quezon City. When the vehicle overheated, they abandoned it and boarded a tricycle to get to their destination.

Erwin, who was by then frantically searching for his son in several hospitals and police stations, received a phone call at around 10:45 p.m. from a man who told him not to look for his son anymore as Aaron was with him. When Erwin asked to speak to his son, the man ignored him and told him to wait for another call.

The following morning, November 10, 1998, Martinez gave Tano a piece of paper with a telephone number. Written there were the words "*Maghanda ng tatlong milyon para sa kaligtasan ng anak mo.*" (Prepare P3 million for your son's safety.) He ordered Tano to call Erwin and relay the written message to him.

Back at the vacant house where Aaron and De la Cruz were being kept, Quinano peeped inside, saw the two and asked them why they were there. De la Cruz responded by asking him to open the door. Quinano, who was with two women (one of them Editha Arizobal, Tarnate's common-law wife), opened the door. When they asked De la Cruz what they were doing inside the vacant house, the latter replied that their car was borrowed for a medical emergency. Aaron, on the other hand, told Quinano that some men took their car and left them there. One of the women suggested that they report the incident to the police. De la Cruz said no and replied that he just wanted to go home.

Quinano then brought the two to the *barangay* hall and presented them to *barangay kagawad* Sauquillo who took their statements and entered them in the *barangay* logbook. This was signed and verified by both Aaron and De la Cruz. Erwin was then informed by phone that his son was already in the custody of the *barangay* officials in Barangay Minuyan, San Jose del Monte, Bulacan.

When Erwin arrived, the *barangay* chairman recommended that the incident be reported to the San Jose del Monte, Bulacan Police. They went to the police station to file a complaint and give their statements. They were fetched by PAOCTF personnel and met up with Col. Cesar Mancao at McDonald's Commonwealth Avenue. The latter assigned Chief Inspector Anduyan to investigate the case.

After discussing the events surrounding the incident, Aaron, Erwin, De la Cruz, Anduyan and his team proceeded to San Jose del Monte, Bulacan and interviewed Sauquillo. After learning that Tarnate and Editha Arizobal were in charge of the vacant house where the two had been kept, Anduyan went to Tarnate's house to investigate. Tarnate immediately admitted his participation and revealed information on the identities and whereabouts of the other accused. He named Dano, Tano, and Martinez and led Anduyan's group to Martinez's house in Batasan Hills.

Anduyan and his men proceeded to Batasan Hills and there waited for the other accused. An hour later, a taxicab arrived and the three other accused alighted. As the police team moved to arrest them, Dano and Martinez were able to escape in the confusion and only Tano was arrested. The house was searched and the authorities found Aaron's bag inside. Anduyan spoke with the cab driver who identified the escapees as Dano and Martinez. The police recovered Dano's and Martinez's identification (ID) cards and two guns which were brought to Camp Crame.

When the identification cards were shown to Aaron, he was able to identify Dano and Martinez. Anduyan and his men were able to arrest Martinez later on in connection with another kidnapping case.

The defense presented the testimonies of both accused-appellants. Martinez's defense hinged on denial and alibi. De la Cruz, on the other hand, invoked his innocence.

After trial on the merits, the RTC convicted both accused-appellants of the crime charged. The dispositive portion of the decision<sup>[4]</sup> read:

WHEREFORE, premises considered, judgment is rendered finding accused Elmer dela Cruz and Tranquilino Martinez guilty of the crime of Kidnapping with Ransom as defined and penalized under paragraph of Art. 267 of the Revised Penal Code. Accordingly, accused Elmer dela Cruz and Tranquilino Martinez are hereby each sentenced to death.

With respect to Rex Tarnate, his conviction cannot be pronounced as the same has been extinguished by his death.

With cost against convicted accused.

The case was forwarded to this Court on automatic review but we referred it to the CA in accordance with *People v. Mateo*.<sup>[5]</sup> The CA affirmed the RTC decision:

**WHEREFORE**, premises considered, the Decision of the Regional Trial Court of Quezon City, Branch 89 in Criminal Case No. Q-99-80669 sentencing accused-appellants Elmer dela Cruz and Tranquilino Martinez to DEATH for kidnapping for ransom is **AFFIRMED** with the **MODIFICATION** that they shall pay *in solidum* the amount of twenty five thousand pesos (P25,000.00) as exemplary damages to the victim, Aaron Dennis Ong.

Finding that the penalty of death should be imposed, We thereby **CERTIFY** the case and elevate the entire record to the Supreme Court for review<sup>[6]</sup> and final disposition, pursuant to Section 13 (a & b), Rule 124 of the Revised Rules of Court.

SO ORDERED.

We affirm accused-appellants' guilt.

In his brief, Martinez averred that there was no valid warrant for his arrest when he was shot in the back by police officers at the time of his arrest. He recounted that he was merely walking along Roxas Boulevard and was not committing any illegal act at the time, nor did the arresting officers have any knowledge of facts indicating that he had just committed a crime. As such, his arrest without a warrant could not be justified.

We agree with the CA that, even if his arrest was unlawful because of the absence of a valid warrant of arrest, he was deemed to have waived his right to assail the same, as he never bothered to question the legality thereof and, in fact, even voluntarily entered his plea. In *People v. Asis*,<sup>[7]</sup> we held that the accused-appellants therein were deemed to have waived their right to assail the legality of their arrest when they voluntarily submitted themselves to the court by entering a plea, instead of filing a motion to quash the information for lack of jurisdiction over their person.

Martinez further argued that the court *a quo* erred in ruling that he was a co-conspirator in the crime charged as the identification by the minor victim that he was one of the perpetrators of the crime was unreliable and that the testimony of the state witness regarding his complicity in the crime was doubtful. He harped on the fact that Aaron could not have possibly taken a good look at the person he later