

## EN BANC

[ G.R. No. 172693, November 21, 2007 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. RICARDO SOLANGON<sup>[1]</sup> @ KA RAMIL, APPELLANT.**

### DECISION

**YNARES-SATIAGO, J.:**

On February 7, 2000, an Information was filed against appellant Ricardo Solangon, Apolonio Haniel and other John Does, the accusatory portion of which reads as follows:

That on or about March 26, 1992 at around 4:30 o'clock in the afternoon, more or less, in Sitio Calamintao, Barangay Alacaak, Sta. Cruz, Occidental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, in band, conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and feloniously kidnapped for ransom one Libertador F. Vidal @ Ador, while the latter was in the aforesaid place and was forcibly taken away to Sitio Tuoyan, Barangay Balao, Abra de Ilog, Occidental Mindoro where the said accused with intent to kill, with treachery and evident premeditation and abuse of superior strength, killed the said victim Libertador F. Vidal resulting to his untimely death.

CONTRARY TO LAW.<sup>[2]</sup>

Only appellant Solangon was arrested while the rest of the accused remain at large. During arraignment, Solangon pleaded not guilty.<sup>[3]</sup>

The facts of the case as summarized by the Court of Appeals are as follows:

During the 1992 local elections, Libertador F. Vidal alias Ador was a mayoralty candidate for the municipality of Sta. Cruz, Occ. Mindoro. On March 26, 1992, he was in the company of his sister Eden Vidal and other candidates for board members in the *Sangguniang Panlalawigan*. They were on their way home aboard four (4) vehicles from a campaign trail at Sitio Calamintao, Alacaac, Sta. Cruz, Occ. Mindoro. When they reached Balao river, they were blocked by seven (7) armed men, including appellant alias *Ka Ramil*, who introduced themselves allegedly as members of New People's Army (NPA). The latter ordered the campaigners to alight from their vehicles down to the river and commanded them to fall in line. While the alleged rebels aimed their guns at Ador's group, one *Ka Emil* asked "who is Ador Vidal?" When Ador identified himself, appellant immediately tied his hands behind his back with a nylon rope. The appellant's group then demanded campaign

permit fee of P50,000.00 and for the release of Ador. Apparently failing in the negotiation, appellant's group forcibly abducted Ador and took him to a mountain.

After a week, or on April 4, 1992, heeding the earlier instruction of the bandits, Marilou Vidal, Ador's wife, with Rodrigo Alcantara and Lando Mendoza, delivered the ransom money to appellant's group at a far place in Brgy. Kurtinganan, Sta. Cruz, Occ. Mindoro. When they asked the whereabouts of Ador, the appellant said that Ador would be home the following night. However, appellant's group did not honor their promise. Since then, Ador's relatives had never seen him alive.

On July 9, 1999, at about 3:00 p.m., appellant was arrested by the PNP Mobile Group, Mamburao, Occ. Mindoro while inside a bus going to San Jose, Occ. Mindoro. According to prosecution witness SPO2 Nelson Soquilon, he first met appellant on July 26, 1999 at the police barracks in Mamburao, Occ. Mindoro. There, appellant was investigated by P/Insp. Edilberto Ama. P/Insp. Ama instructed Soquilon and 13 other policemen to accompany appellant to a remote place where Ador's skeleton could be found, as earlier pointed by appellant. At the mountainous area of Brgy. Balao, Abra de Ilog, Occ. Mindoro, at which the policemen were unaware of the exact whereabouts of Ador, appellant dug about two (2) feet. A cadaver, including maong jacket and shorts believed to be that of Ador were found and retrieved.

Thereafter, Ador's relatives requested Dr. Edison Tan, Municipal Health Officer of Mamburao, Occ. Mindoro to arrange the skeleton. Ador's relatives were certain that the remains belonged to Ador, after recognizing his forehead, chin and lower dentures. The exact cause of death could not be determined. On July 28, 1999, the relatives of the victim brought the latter's skeleton to the house of Eden Vidal. On July 30, 1999, Ador's body was finally laid to rest.

Appellant's defense is alibi. He also denied being a member of the NPA. He claims that on March 26, 1992, he was in Sitio Langka, Abra de Ilog, Occ. Mindoro planting coconut trees; that in the years 1992 and 1993, he was just farming in their place and sometimes went to his sister who previously stayed in San Jose then transferred to Sablayan; that he is "tagalog" but his wife belongs to the minority; that on July 9, 1999 at about 3:00 p.m., as he was on board a bus from Abra de Ilog, at *Stop Over* restaurant in Brgy. 9, Mamburao, Occ. Mindoro, some soldiers boarded the bus with their long firearms pointed to him; that he was surprised as he just wanted to go to Sablayan to borrow palay seedlings; and that he was suddenly arrested and brought to the barracks.<sup>[4]</sup>

On August 31, 2004, the Regional Trial Court of Mamburao, Occidental Mindoro, Branch 44, rendered a Decision finding appellant guilty of the complex crime of kidnapping with murder. The dispositive portion of the Decision reads:

WHEREFORE, the Court finds that the guilt of the accused, Ricardo Solangon, in the commission of offense in the information, has been established with proof beyond reasonable doubt, it is hereby imposes

upon him the mandatory penalty of death, and ordered him to pay the heirs of Libertador Vidal the amount of P50,000.00 as civil indemnity, P50,000.00 as moral damages and P25,000.00 as exemplary damages and costs of the suit.

With the findings of guilt on Ricardo Solangon and the imposition of sentence upon him, the "Motion for Reconsideration" filed by him, thru Public Attorney's Office which seeks to reconsider the Order of this Court dated June 17, 2004 denying his release on recognizance is hereby DENIED for being moot and academic.

Since Ricardo Solangon has been classified or recognized as political offender under the Oslo Agreement entered into between the Negotiating Panel of the Government of the Republic of the Philippines (GNP) and the Negotiating Panel of the National Democratic Front of the Philippines (NDFP), the Court opines that the executive branch of the government that should now grant him a pardon or executive clemency in compliance with its commitment toward Peace Progress.

In view of the imposition of the death penalty upon Ricardo Solangon @ Ka Ramil, let the original folio of this case, together with the evidence, oral and documentary, be forthwith elevated to the Honorable Supreme Court for automatic review.

SO ORDERED.<sup>[5]</sup>

Appellant appealed to the Court of Appeals contending that, granting *arguendo* that he participated in the abduction of Libertador, such act will not constitute the crime of kidnapping because it is absorbed in the crime of rebellion penalized under Article 134 of the Revised Penal Code. He alleged that the skeletal remains were not properly identified as Libertador's for failure of the prosecution to subject the skeletal remains to DNA or dental analysis. He also alleged that his confession could not be used against him as it was made during custodial investigation and under duress.

The Court of Appeals affirmed the Decision of the trial court that appellant committed the complex crime of kidnapping for ransom with murder with the modification that appellant could not be considered a political offender.<sup>[6]</sup> The appellate court held that the kidnapping of Libertador, a mere mayoralty candidate, without evidence to indicate public uprising or taking arms against the government, and without any evidence of removing allegiance therefrom, does not constitute rebellion. It found that the kidnapping was done for the purpose of coercing the victim and his relatives to pay campaign money. It also noted that the acts of killing and burying the victim were incidental and could have been used only as means to compel the payment of the ransom money and to avoid the discovery of the crime. The appellate court likewise held that DNA examination was no longer necessary as the relatives of the victim had identified the same as Libertador's; and that appellant's act of voluntarily leading the police in retrieving the victim's body was not a confession but a strong *indicium* of guilt.

Hence, this petition.

The abduction and killing of Libertador happened on March 26, 1992 or prior to the date of effectivity of Republic Act (R.A.) No. 7659 or The Death Penalty Law on December 31, 1993. As held in *People v. Ramos*:<sup>[7]</sup>

Prior to 31 December 1993, the date of effectivity of RA No. 7659, the rule was that where the kidnapped victim was subsequently killed by his abductor, the crime committed would either be a complex crime of kidnapping with murder under Art. 48 of The Revised Penal Code, or two (2) separate crimes of kidnapping and murder. Thus, where the accused kidnapped the victim for the purpose of killing him, and he was in fact killed by his abductor, the crime committed was the complex crime of kidnapping with murder under Art. 48 of The Revised Penal Code, as the kidnapping of the victim was a necessary means of committing the murder. **On the other hand, where the victim was kidnapped not for the purpose of killing him but was subsequently slain as an afterthought, two (2) separate crimes of kidnapping and murder were committed.** (Emphasis supplied)

Thus, the applicable rule when the abduction and killing happened before December 31, 1993, as in the present case, is:

- a) Where the accused kidnapped the victim for the purpose of killing him, and he was in fact killed by his abductor, the crime committed was the complex crime of kidnapping with murder under Art. 48 of the Revised Penal Code, as kidnapping of the victim was a necessary means of committing the murder.
- b) Where the victim was kidnapped not for the purpose of killing him but was subsequently slain as an afterthought, two (2) separate crimes of kidnapping and murder were committed.

The trial court found that "the kidnapping was committed for the purpose of extorting ransom from the victim."<sup>[8]</sup> Similarly, the Court of Appeals noted that the obvious purpose of Libertador's abduction "was to coerce him to pay campaign money"<sup>[9]</sup> and that "the acts of killing and burying him were incidental and could have been used only as a means absolutely to compel the payment of the ransom money, and to avoid the discovery of the crime."<sup>[10]</sup> However, both courts found that the crime committed was the complex crime of kidnapping with murder.

We do not agree. We find that two separate crimes of kidnapping for ransom and murder were committed.

The present case falls under paragraph (b) of the foregoing rule that where the victim was kidnapped not for the purpose of killing him but was subsequently slain as an afterthought, two (2) separate crimes of kidnapping and murder were committed.

In the instant case, the records clearly show the elements of kidnapping, to wit: On March 26, 1992, appellant together with six (6) other armed men abducted Libertador for the purpose of extorting ransom money. They blocked Libertador's