

## EN BANC

[ G.R. No. 157933, August 10, 2004 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ESMER MONTENEGRO; FREDDIE MACA (AT LARGE); KIKING SALAHAY (AT LARGE); BADIL SALAHAY (AT LARGE); MAMA MONTENEGRO (AT LARGE); AND FLORIE MEDRANO (AT LARGE), ACCUSED; ESMER MONTENEGRO, ACCUSED-APPELLANT.**

### DECISION

**AZCUNA, J.:**

Appellant Esmer Montenegro was charged together with Freddie Maca, Kiking Salahay, Badil Salahay, Mama Montenegro and Florie Medrano before the Regional Trial Court of Tandag, Surigao del Sur, Branch 27, for Kidnapping and Serious Illegal Detention on October 22, 2001. Inasmuch as all the other accused were at large, the trial proceeded only with respect to herein appellant Esmer Montenegro who had surrendered and who has been detained by the authorities. After trial, he was found guilty by the lower court and sentenced to death.

The case is before us on automatic review.

#### The Information

Appellant and his co-accused were charged under an information that reads, as follows:

The undersigned prosecutor hereby accuses KIKING SALAHAY, alias ENRIQUE MENDOZA, FREDDIE MACA, BADIL SALAHAY, ESMER MONTENEGRO, MAMA MONTENEGRO, and FLORIE MEDRANO, with the crime of KIDNAPPING AND SERIOUS ILLEGAL DETENTION, committed as follows:

That on the 23<sup>rd</sup> day of August 2001, about 7:30 in the morning, more or less, at Umalag, San Miguel, Surigao del Sur, Philippines, 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 kidnap and forcibly bring one Gerardo Mag-isa, 42 years old, to an undisclosed place for the purpose of extorting ransom, wherein the latter was detained and deprived of his liberty for a period of seven (7) days, to the damage and prejudice of said victim.

CONTRARY TO LAW. (In violation of Article 267 as amended by R.A. 7659).<sup>[1]</sup>

Upon arraignment, appellant pleaded not guilty.<sup>[2]</sup>

### **Pre-Trial**

On July 5, 2002 a pre-trial hearing was conducted and terminated on the same day, where the following admissions were made by appellant and recorded in a Pre-Trial Order:<sup>[3]</sup>

1. His identity as Esmer Montenegro;
2. the date and place of the incident, namely, August 23, 2001 at about 7:30 in the morning at Umalag, San Miguel, Surigao del Sur;
3. that with him were his co-accused Kiking Salahay, alias Enrique Mendoza, Freddie Maca, Badil Salahay, Mama Montenegro and Florie Montenegro;
4. the existence of the four-page letter of the victim addressed to his wife Rose;
5. that the victim Gerry Mag-isa was kidnapped and detained for seven days; appellant however alleged that he acted under the compulsion of an irresistible force;
6. the one-page letter also dated August 23, 2001 by the victim addressed to Rose.

Appellant, however, proposed for admission by the prosecution the defense of having acted under the compulsion of an irresistible force. The prosecution rejected the proposal.

### **The Prosecution's Evidence**

The prosecution offered the following as its exhibits:

- |             |   |   |
|-------------|---|---|
| Exhibit "A" | - | 4-page letter dated August 23, 2001 signed by Gerry Mag-isa and addressed to his wife Rose; |
| Exhibit "B" | - | 1-page letter signed by Gerry and addressed to his wife Rose.                               |

The prosecution did not present any witness nor any other evidence and relied mainly on the admissions made by appellant during the pre-trial hearing and on Exhibits "A" and "B" which it formally offered in evidence.

On July 5, 2002, the trial court issued the following Order:<sup>[4]</sup>

After the pre-trial and considering the admission of the defense in so far as the accused Esmer Montenegro is concerned, Assistant Provincial Prosecutor Elpidio I. Digaum moved to be allowed to formally offer his

evidence and rest his case. Granted. Formally offered in evidence are the following exhibits namely: the 4-page letter dated August 23, 2001 signed by Gerry the victim in this case addressed to his wife Rose marked as Exhibit "A" and the 1-page letter also dated August 23, 2001 signed by the same victim Gerry addressed to his wife Rose. The alleged purpose is to prove demand for money by the alleged kidnappers. The defense admitted the existence of Exhibits "A" and "B" and denied the purposes for which the same are offered.

Considering the admission of the existence of Exhibits "A" and "B", the same are ordered admitted. The purpose of the offer and objection thereto will be evaluated in the appreciation of the evidence. The prosecution having rested its case, the reception of defense is set for August 13, 2002 at 8:30 in the morning. x x x

### **Evidence For The Defense**

Appellant, in his defense, testified that in the early morning of August 23, 2001, he was fetched from his house located at Barangay Caromata, San Miguel, Surigao del Sur, by his uncle Freddie Maca, who asked him to accompany him to collect money from a certain person and who told him that he will give him P500. They proceeded to Barangay Umalag and when they reached the place, he was made to wait at the waiting shed while his uncle went to the house of a certain councilor to fetch a relative by the name of Mama Montenegro. When Freddie Maca came back, he was accompanied by Mama Montenegro and Kiking Salahay and Badil Salahay whom he noticed to be all armed with .45 and .38 caliber guns. Then they all proceeded to the mountain of Umalag.

They proceeded to the mountain of Umalag because the person who was indebted to Freddie Maca was invited to that area. When they reached their destination, Kiking Salahay pointed his gun at a person who later turned out to be Gerry Mag-isa.

Appellant asked Freddie Maca for permission to go home because he was afraid of what the group did. Freddie Maca relayed his request to Kiking Salahay. Fearing that he would report the matter to the police, Kiking Salahay said that it would be better for all of them if they just killed appellant. Appellant then begged for his life and stayed with the group.

The group proceeded to Barangay Bitaugan and stayed there for one day and two nights. On the second night, however, at about 11:00 o'clock in the evening, they discovered that Gerry Mag-isa had escaped. Seizing the opportunity to leave the group, he asked permission to go home to which the group agreed.<sup>[5]</sup>

Upon reaching Barangay Caromata, he immediately reported the incident to Barangay Captain Felicula Gran who promised to assist him. She accompanied him in surrendering to Sgt. Nacional of the Philippine Army who picked him up and brought him to the Municipal Hall of San Miguel where he was detained until the case was filed.<sup>[6]</sup>

### **The Trial Court's Decision**

After trial, the lower court, finding that the prosecution had established the crime

charged, rendered its decision on November 20, 2002 convicting appellant of the crime of Kidnapping with Serious Illegal Detention and sentencing him to death.<sup>[7]</sup>

In its decision, the trial court presented the following facts:<sup>[8]</sup>

Evidence for the prosecution show[s] that on August 23, 2001, at about 7:30 in the morning, at Umalag, San Miguel, Surigao del Sur, the victim Gerry Mag-isa was at the mining site together with Arsenio L. Darasan, Ricardo P. Cabangbang, and Joseph C. Flores. At that moment, a man arrived who said that he was instructed by the Barangay Captain of Umalag, San Miguel, Surigao del Sur, by the name of Kapitan Piling, to invite Gerry Mag-isa and to bring him to her residence because it was the fiesta of her Barangay. Because they were so busy at that time, Gerry Mag-isa refused to go with him and instead handed him an amount of P200.00 when he left. Not long after fifteen minutes had passed, after said person left, three men arrived with the same intention of inviting him to the house of Kapitan Piling. However, when the three men were at the makeshift hut they suddenly pulled out their .45 and .38 caliber handguns and ordered Gerry Mag-isa, Arsenio L. Darasan, Ricardo P. Cabangbang and Joseph C. Flores to drop to the ground. That while still lying face on the ground, they saw Kiking Salahay, the leader of the group, hand over a piece of paper to Gerry Mag-isa and [Kiking Salahay] ordered him to write a note to his wife, telling her to give the amount of Two Million Pesos (P2,000,000.00) for the release of her husband. That soon after the note was written, they instructed Arsenio Darasan, Joseph C. Flores and Ricardo P. Cabangbang to bring said note to the wife of the victim. That after they left with Gerry Mag-isa, they immediately went to Tandag, Surigao del Sur (See Joint Affidavit of Arsenio L. Darasan, et al. in page 24 of the record).

The allegation of the victim Gerry Mag-isa (See Affidavit on page 23 of the record) shows that he was forcibly abducted and kidnapped about 7:00 in the morning of August 23, 2001, at Barangay Umalag, San Miguel, Surigao del Sur. He stated, that he was treated well by the kidnappers, except that when he answered to the call of nature, he was watched closely and they were asking money from his family. The kidnappers also took from him the amount of P320.00 which was spent for their food in the mountains and his chainsaw amounting to P18,000.00. After spending 7 days at the hands of the captors, specifically on August 30, 2001, at about 1:00 o'clock in the morning, while they were asleep, he was able to escape and reached Barangay Bagyang, San Miguel. He was able to know the leader of the kidnappers by the name of Kiking Salahay, alias Enrique Mendoza because they called him "kumander". They were armed with a .45 caliber, two .38 caliber handguns and sharp bladed military knives.

Appellant in his brief assigns a single error, to wit;

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED.

In support of his sole assignment of error, appellant seeks exemption from criminal liability under Article 12, Paragraph 5 of the Revised Penal Code which provides that

"any person who acts under the compulsion of an irresistible force" is exempt from criminal liability. He cites the following circumstances which would place him under the umbrella of this exemption:

1. He was forced to join the kidnappers because he was threatened with bodily harm and death.
2. He did not attempt to escape because the leader Kiking Salahay and his companions carried with them .45 and .38 caliber firearms.
3. He was not allowed to leave the group because Salahay feared that the accused would report the matter to the police.<sup>[9]</sup>

The specific act which allegedly constitutes this irresistible force is the statement of Kiking Salahay that it would be better for the group if they just killed appellant in response to his request to be allowed to go home. Appellant thus begged for his life and was left with no choice but to stay with the group.<sup>[10]</sup>

As a result, appellant argues that he was reduced to a mere instrument. He did not act of his own volition and the fear of being killed and the fact that his uncle Freddie Maca had moral ascendancy over him forced him to stay with the group. These circumstances, therefore, he contends, exempt him from criminal liability. In support, appellant cites the ruling in *People v. Del Rosario*.<sup>[11]</sup>

### **The Solicitor General's Recommendation**

The Solicitor General filed a Manifestation and Motion (In Lieu of Brief),<sup>[12]</sup> recommending the acquittal of appellant on the ground that the exacting proof of guilt beyond reasonable doubt was not met, thus:

x x x

13. The appeal is meritorious
14. Under the criminal justice system, the burden of proof lies with the prosecution. **(Rule 115, Section 1, Revised Rules of Criminal Procedure)**. That burden must be discharged on the strength of the prosecution's own evidence, without relying on the weakness of the defense. Proof beyond reasonable doubt, or that quantum of proof sufficient to produce a moral certainty that would convince and satisfy the conscience of those who are to act in judgment, is indispensable to overcome the constitutional presumption of innocence **(People v. Batocoy, G.R. Nos. 137458-59, prom. April 24, 2003)**.
15. Such proof is lacking in this case.
16. The prosecution merely offered in evidence the following documents: