

FIRST DIVISION

[G.R. No. 116488, May 31, 2001]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. AARON FLORES @ "RONITO", SULPECIO SILPAO Y ORTEGA @ "SULPING" AND EDGAR VILLERAN Y MAGBANUA, ACCUSED-APPELLANTS.

D E C I S I O N

YNARES-SANTIAGO, J.:

Sgt. Wennie Tampioc, Detachment Commander of the 7th Infantry Brigade detailed at Barangay Tabu, Ilog, Negros Occidental, and three (3) members of the local Citizen Armed Force Geographical Unit (CAFGU) under his supervision, namely, Aaron Flores *alias* "Ronito", Sulpecio Silpao y Ortega *alias* "Sulping" and Edgar Villeran y Magbanua, were charged before the Regional Trial Court of Kabankalan, Negros Occidental, Branch 61, with Kidnapping and Serious Illegal Detention. The Information charged as follows:

That on or about the 29th day of September, 1992, in the Municipality of Ilog, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with high powered firearms conspiring, confederating and helping one another, by means of force, violence and intimidation, did then and there, willfully, unlawfully and feloniously take, kidnap, detain and keep under guard one SAMSON SAYAM y GEPANAO from Km 117, Hda. Shangrella (*sic*), Brgy. Tabu, of the above-named municipality, and bring the latter to their detachment at Brgy. Tabu, under restraint and against his will, without proper authority thereof, thereby depriving said victim of his civil liberty since then up to the present.

CONTRARY TO LAW.^[1]

All the four accused pleaded "Not Guilty" when arraigned. Trial ensued and, based on the testimonial evidence presented, the trial court found the following antecedent facts to be undisputed.

On the night of September 29, 1992, the victim, Samson Sayam, was drinking beer at the store owned by Terry Cabrillos located at Barangay Tabu, Ilog, Negros Occidental. Sgt. Wennie Tampioc, Aaron Flores, Sulpecio Silpao and Edgar Villeran were at the same store drinking beer. Sayam joined the four accused at their table. Sometime later, all the accused and the victim left the store and walked towards the direction of the military detachment headquarters. After the accused left the store with Samson Sayam, witnesses heard a single gunshot followed by rapid firing coming from the direction of the detachment headquarters.^[2] That was the last

time Samson Sayam was seen, and despite diligent efforts of Sayam's mother and relatives, he has not been found.

It was the prosecution's contention that on that fateful evening, all four accused hatched a conspiracy to kidnap the victim and thereafter detain him at the detachment headquarters. They allegedly succeeded in their plot and, the prosecution avers, to this day the accused have not released Samson Sayam. All the accused, however, vehemently denied committing the acts charged.

The trial court held that the testimonial evidence failed to prove beyond reasonable doubt the existence of a conspiracy among the four accused. More specifically, the prosecution failed to show an apparent common design by and among the accused to kidnap and detain Samson Sayam against his will. Thus, the trial court proceeded to determine the individual liabilities of the four accused based on the degree of their participation in the commission of the offense charged.

The trial court gave credence to the prosecution's evidence that Samson Sayam was seen being forcibly dragged out of the store and pulled towards the direction of the detachment headquarters by accused Aaron Flores, Sulpecio Silpao and Edgar Villaran. Since Samson Sayam had not been seen nor heard from since then, the trial court held that the three accused were responsible for the former's disappearance.

As regards Wennie Tampioc, the trial court found that he left the store ahead of the three (3) co-accused and, thus, had nothing to do with the disappearance of Samson Sayam. Notably, none of the prosecution witnesses specifically or categorically mentioned Tampioc as among those who actively participated in bringing Samson Sayam by force to their headquarters. Unlike his co-accused who are natives of the place of the incident, Wennie Tampioc was newly assigned as Detachment Commander and did not know Samson Sayam, such that no ill-motive was attributed to him by the trial court. Likewise, the testimonies of prosecution witnesses Nelson Golez, on the one hand, and that of Carlos Manlangit, on the other hand, conflict as to the kind of firearm allegedly carried by Tampioc. While Golez stated that he was armed with an Armalite rifle,^[3] Manlangit testified that Tampioc was armed with a short firearm.^[4]

More importantly, the trial court found that the identity of Sgt. Tampioc as one of the perpetrators of the crime was doubtful, because notwithstanding the fact that Nelson Golez knew Wennie Tampioc even before September 29, 1992,^[5] the original complaint filed before the Municipal Circuit Trial Court of Ilog Candoni, dated October 21, 1992, which was based on the affidavits of Golez and Carlito Manlangit, did not mention Wennie Tampioc as one of the respondents. The said affidavits merely mentioned an "unidentified member of the 7th IB, Philippine Army, assigned at Brgy. Tabu, detachment." At the time of the execution of the affidavits, the witnesses could have known that Wennie Tampioc was a sergeant, and that he was the commander of the detachment. Finally, the straightforward and emphatic manner in which Wennie Tampioc testified inspired belief in the trial court's mind.^[6]

On December 8, 1993, the trial court rendered the assailed judgment, the dispositive portion of which states:

WHEREFORE, premises considered, this Court finds the accused Aaron Flores, Edgar Villeran and Sulpecio Silpao GUILTY beyond reasonable doubt of the crime of kidnapping and serious illegal detention as defined and penalized in Article 267 of the Revised Penal Code and are each sentenced to suffer the penalty of *Reclusion Perpetua*; and there being no proof that Samson Sayam is dead, they are ordered to pay him jointly and severally, or, in the alternative, his heirs the sum of Fifty Thousand (P50,000.00) Pesos as damages, without subsidiary imprisonment in case of insolvency and to pay the costs of this suit.

The accused Wennie Tampioc is ACQUITTED on grounds of reasonable doubt.

The bail bonds of the said accused are ordered cancelled and the convicted accused ordered confined pending appeal if they so file an appeal, in accordance with Administrative Circular No. 2-92, dated January 20, 1992 of the Supreme Court.

SO ORDERED.^[7]

Two (2) separate appeals were brought before us. Accused-appellant Sulpecio Silpao raised the following errors:

- I. THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT SULPECIO SILPAO OF THE CRIME OF KIDNAPPING AND SERIOUS ILLEGAL DETENTION, UNDER ARTICLE 267, REVISED PENAL CODE.
- II. THE TRIAL COURT ERRED IN HOLDING THE ACCUSED-APPELLANT CAFGU SULPECIO SILPAO, AS AMONG THOSE WHO FORCIBLY BROUGHT SAMSON SAYAM TO THEIR HEADQUARTERS IN THE EVENING OF 29 SEPTEMBER 1992 AND RESPONSIBLE FOR SAMSON SAYAM'S DISAPPEARANCE.
- III. THE TRIAL COURT ERRED IN FINDING ACCUSED-APPELLANT CAFGU SULPECIO SILPAO GUILTY BEYOND REASONABLE DOUBT OF THE OFFENSE CHARGED.

On the other hand, accused-appellants Aaron Flores and Edgar Villeran interposed a joint appeal based on the sole error that:

THE TRIAL COURT ERRED IN FINDING ACCUSED-APPELLANTS AARON FLORES AND EDGAR VILLERAN GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF KIDNAPPING AND SERIOUS ILLEGAL DETENTION BASED ON CIRCUMSTANTIAL AND INSUFFICIENT EVIDENCE.

After a thorough review of the facts and evidence adduced before the trial court, we find that accused-appellants should be acquitted of the offense charged against them.

The crime of Kidnapping and Serious Illegal Detention is defined and penalized under Article 267 of the Revised Penal Code, as amended by Republic Act No. 7659. The elements of the offense are:

1. That the offender is a *private individual*.
2. That he *kidnaps* or *detains another*, or in any other manner *deprives* the latter of his *liberty*.
3. That the act of detention or kidnapping must be *illegal*.
4. That in the commission of the offense, any of the following circumstances are present:
 - (a) That the kidnapping or detention lasts for more than 3 days;
 - (b) That it is committed simulating public authority;
 - (c) That any serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made; or
 - (d) That the person kidnapped is a minor, female or public officer.^[8]

Clearly, accused-appellants cannot be charged with or convicted of the crime of Kidnapping and Serious Illegal Detention, since the first element of the said crime is that the offender must be a private individual. In the case at bar, accused-appellants were members of the local CAFGU at the time the alleged crime was committed.

The CAFGU was created pursuant to Executive Order No. 264 for the purpose of complementing the operations of the regular force formations in a locality.^[9] It was composed of civilian volunteers who were tasked to maintain peace and order in their localities, as well as to respond to threats to national security. As such, they were provided with weapons, and given the authority to detain or order detention of individuals.^[10]

The Solicitor General recognizes the error of charging and convicting accused-appellants of Kidnapping and Serious Illegal Detention for the reason that the appellants are not private individuals, but public officers. As such, the Solicitor General submits that, under the facts alleged, accused-appellants can only be liable for the crime of Arbitrary Detention, defined and penalized in Article 124 of the Revised Penal Code. The prosecution maintains that inasmuch as all the other elements of Arbitrary Detention were alleged in the criminal information filed against the accused-appellants, they may still be convicted of said crime.

Arbitrary detention is committed by any public officer or employee who, without legal grounds, detains a person.^[11] Since it is settled that accused-appellants are public officers, the question that remains to be resolved is whether or not the evidence adduced before the trial court proved that Samson Sayam was arbitrarily detained by accused-appellants.

As far back as the case of *U.S. v. Cabanag*,^[12] it was held that in the crime of illegal or arbitrary detention, it is essential that there is actual confinement or restriction of the person of the offended party. The deprivation of liberty must be proved,^[13] just as the intent of the accused to deprive the victim of his liberty must also be established by indubitable proof.^[14]¹ In the more recent case of *People v. Fajardo*,^[15] this Court reiterated the ruling in *U.S. v. Cabanag*, *i.e.*, there must be uncontroverted proof of both intent to deprive the victim of his liberty, as well as actual confinement or restriction.

Detention is defined as the actual confinement of a person in an enclosure, or in any manner detaining and depriving him of his liberty.^[16] A careful review of the records of the instant case shows no evidence sufficient to prove that Samson Sayam was detained arbitrarily by accused-appellants. While the prosecution witnesses testified that accused-appellants were seen walking with Samson Sayam toward the direction of the detachment headquarters, there is no shred of evidence that he was actually confined there or anywhere else. The fact that Samson Sayam has not been seen or heard from since he was last seen with accused-appellants does not prove that he was detained and deprived of his liberty. The prosecution, however, argues that Samson Sayam was deprived of his liberty when accused-appellants forced him to go with them when they left the store of Jerry Cabrillos and brought him to the detachment headquarters.

We assayed the testimonies of the prosecution's main witnesses, namely, Carlito Manlangit and his son Jerry Manlangit. Carlito Manlangit's testimony was offered to prove that Samson Sayam was forcibly taken from the store and that the latter tried his best to free himself from his abductors. And yet, all that Carlito testified to was that he saw Samson Sayam crossing the street alone from the store of a certain Moleng; that the four accused, who were armed, followed Sayam and asked for his residence certificate; that the four accused apprehended Samson Sayam and brought him to the detachment headquarters; and that he went home after he saw Samson Sayam talking to the accused.^[17]

It is readily apparent that Carlito Manlangit's testimony failed to prove the stated purpose thereof, *i.e.*, that Samson Sayam was taken forcibly to the detachment headquarters. To be sure, the witness did not state that Samson Sayam was pulled, dragged, or coerced to go with accused-appellants. Neither did he say that Samson Sayam was taken at gunpoint. There is also no relevant testimony to the effect that Samson Sayam tried his best to free himself from the clutches of accused-appellants. For if that were the truth, the reactions of Carlito Manlangit do not conform to human experience. If he really witnessed Samson Sayam being apprehended, forcibly taken, and trying to free himself, it cannot be logically explained why Carlito Manlangit just went home,^[18] instead of doing anything to help Samson Sayam. He admitted that he did not immediately report the incident to the authorities.^[19] More telling is the absence of testimony to the effect that Samson Sayam was being taken to the detachment headquarters against his will, that he was protesting his apprehension, or that he was asking for help, considering that there were other people within hearing and seeing distance. Most damaging is Carlito Manlangit's statement that he did not see Samson Sayam in the detachment headquarters with any or all of the accused.^[20] In fine, Carlito Manlangit's