

EN BANC

[G. R. No. 129970, April 05, 2000]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
EDUARDO PAVILLARE Y VARONA AND SOTERO SANTOS Y CRUZ,
ACCUSED, EDUARDO PAVILLARE Y VARONA, ACCUSED-
APPELLANT.**

DECISION

PER CURIAM:

Before us is an appeal from the decision of the Regional Trial Court of Quezon City, Branch 219 in Criminal Case no. Q96-65214 entitled People vs. Eduardo Pavillare y Varona, a prosecution for kidnapping for ransom.

On March 14, 1996 the accused-appellant and his co-accused were criminally charged as follows:

INFORMATION

"The undersigned accuses EDUARDO PAVILLARE Y VARONA and SOTERO SANTOS Y CRUZ of the crime of kidnapping for Ransom, committed as follows:

That on or about the 12th day of February, 1996, in Quezon City, Philippines, the above-named accused, conspiring, confederating with another person, whose true name, identity and whereabouts had not as yet been ascertained and mutually helping one another, by means of force, violence and /or intimidation did then and there, willfully, unlawfully and feloniously kidnap one SUKHJINDER SINGH at the corner of Scout Reyes and Roces Avenue, this City, and thereafter brought him at the corner of Aurora Boulevard and Boston street, this City, for the purpose of extorting ransom money in the amount of P20,000.00 Philippine currency, thereby detaining and depriving him of his liberty for more than three hours, to the damage and prejudice of the said offended party."

On April 29, 1996 both accused were arraigned and both pleaded "not guilty".

The accused Sotero Santos y Cruz filed a Motion to Dismiss the charge against him for failure of the private complainant to identify him as one of the malefactors. On February 28, 1997 the trial court granted the motion and acquitted accused Sotero Santos. The trial of the case proceeded only as against the accused-appellant Pavillare.

The private complainant, an Indian national named Sukhjinder Singh testified in court that at about noon of February 12, 1996 while he was on his way back to his

motorcycle parked at the corner of Scout Reyes and Roces Avenue, three men blocked his way. The one directly in front of him, whom he later identified as herein accused-appellant, accused him of having raped the woman inside the red Kia taxi cab parked nearby. Singh denied the accusation, the three men nevertheless forced him inside the taxi cab and brought him somewhere near St Joseph's College in Quezon City. One of the abductors took the key to his motorcycle and drove it alongside the cab. Singh testified that the accused-appellant and his companions beat him up and demanded one hundred thousand pesos (P100,000.00) for his release but Singh told him he only had five thousand pesos (P5,000.00) with him. The accused-appellant forced him to give the phone numbers of his relatives so they can make their demand from them. Singh gave the phone number of his cousin Lakhvir Singh and the appellant made the call. The private complainant also stated in court that it was accused-appellant who haggled with his cousin for the amount of the ransom.^[1] When the amount of twenty five thousand was agreed upon the complainant stated that the kidnappers took him to the corner of Aurora Boulevard and Boston streets and parked the cab there. The accused-appellant and two of the male abductors alighted while the driver and their lady companion stayed with the complainant in the car. When the complainant turned to see where the accused-appellant and his, companions went he saw his uncle and his cousin in a motorcycle and together with the kidnappers they entered a mini-grocery. Later the kidnappers brought the complainant to the mini-grocery where he met his relatives. The ransom money was handed to the appellant by the complainant's cousin, after which the accused-appellant counted the money and then, together with his cohorts, immediately left the scene.^[2]

Lakhvir Singh, the complainant's cousin, testified in court that the kidnappers made about three to four phone calls a few minutes apart. The kidnappers allowed him to talk to the private complainant to prove that he is indeed in their custody. The kidnappers also told Lakhvir that his cousin, Sukhjinder, raped their companion and threatened that unless Lakhvir pays one hundred thousand pesos for Sukhjinder's release "tutuluyan namin ito". Lakhvir told the kidnappers he does not have that much money and after some haggling the kidnappers settled for twenty five thousand pesos.^[3] The kidnappers also gave instructions to deliver the money outside the Aurora Boulevard branch of the Land Bank near the old Arcega's movie house. Lakhvir stated in court that he did as instructed. When he and another relative reached the designated place three men approached him and one of them, whom he identified in court as the accused-appellant herein, asked him "Ano dala mo ang pera?" Lakhvir said "yes" but, he refused to give the money until he saw his cousin. One of the kidnappers told him to follow them and they proceeded to a mini-grocery nearby. A few minutes later one of the kidnappers came with his cousin. Lakhvir handed the money to the accused-appellant who counted it before leaving with his companions.^[4] CODES

SPO1 Eduardo Frias testified for the prosecution that he was the police officer who took the sworn statement of the private complainant on February 14, 1996 pertaining to the February 12, 1996 incident.^[5] When the accused-appellant was apprehended in connection with another case involving the kidnapping of another Indian national the private complainant herein again showed up at the police station on March 11, 1996 and identified the accused-appellant as one of his kidnappers. Another sworn statement was executed by the private complainant after he identified the accused-appellant at the police station.^[6]

For the defense, the accused-appellant testified that on the whole day of February 12, 1996, the alleged date of the incident, he was at the job site in Novaliches where he had contracted to build the house of a client and that he could not have been anywhere near Roces Avenue at the time the complainant was allegedly kidnapped.^[7] One of his employees, an electrician, testified that the accused-appellant was indeed at the job site in Novaliches the whole day of February 12, 1996.^[8]

On July 15, 1997 the trial court rendered judgment as follows:

"WHEREFORE, finding EDUARDO PAVILLARE guilty beyond reasonable doubt of having committed the crime of kidnapping for the purpose of ransom, the Court hereby sentences him to suffer the penalty of Death; to indemnify the private complainant in the amount of P20,000.00, as actual damages, with interest at 6% percent per annum from February 12, 1996; to pay him the amount of P50,000.00 as moral damages; and to pay the costs.

The Branch clerk of Court is hereby directed to immediately transmit the entire records of the case to the Supreme Court for automatic review."^[9]

This, case is before us on automatic review.

The accused-appellant Pavillare prays for an acquittal based on reasonable doubt. On March 10, 1996 the accused-appellant was apprehended in connection with the kidnapping of another Indian national. While under police custody the appellant was required to stand in a police line-up where he was supposedly identified by the private complainant as one of his abductors. Five separate charges arising from five separate incidents of kidnapping, all of whom were Indian nationals, were filed against him. He claims that he was identified by the private complainant as one of his abductors because the Indians needed a "scapegoat" for the other four cases of kidnapping of Indian nationals then pending.

The appellant argues that the private complainant could not identify his captors by himself which is shown by the inconsistencies in his testimony and by the improper suggestion made by the investigating police officer pointing to the accused-appellant as one of the malefactors. In court the private complainant stated that he described his abductors to the police investigator while the latter typed his sworn statement. He said that two of the abductors look like policemen, the third one was "tall, a little bit aged" and the other one was the driver. Their female companion was pretty. Pavillare points out however, that the sworn statement given by the private complainant does not contain a physical description of the kidnappers and that SPO1 Frias, who took the complainant's statement, testified in court that the complainant described one of his abductors as short, bejeweled and with a pock marked face. The different descriptions allegedly given by the private complainant and the absence of a physical description of the kidnappers in his sworn statement supports the accused-appellant's contention that the complainant could not describe his abductors. Pavillare contends that his arrest in connection with a different case for the kidnapping of another Indian national provided the complainant an improper suggestion that he was indeed one of the culprits in this case. The appellant claims that SPO1 Frias pointed to him and conversed with the private complainant before

the latter was asked to identify the kidnappers. The time interval from the date of the incident on February 12, 1996 up to the day the accused-appellant was identified at the police line-up on March 11, 1996 further weakened the complainant's vague recognition of the culprits. Pavillare finally argues that he should not have been convicted of kidnapping for ransom but only of simple robbery as it is borne by the undisputed facts that the offenders were motivated by an intent to gain and not to deprive the complainant of his liberty. The money demanded by the offenders was not ransom money but one in the nature of a bribe to drop the accusation for rape of their lady companion.

The Solicitor-General filed brief praying for the affirmance in toto of the appealed decision. The appellee contends that in court the private complainant unhesitatingly and consistently identified the accused-appellant Pavillare as one of the kidnappers. Throughout his narration of the incident in court the complainant referred to Pavillare as one of the kidnappers because he was the one who made the phone call and the one who received the ransom money. The complainant had more than adequate opportunity to observe his abductors and he testified in court that Pavillare is one of them. As a sign of the complainant's candor, he admitted in court that he does not recognize the other co-accused, Sotero Santos, as one of his abductors and for which reason the case was dismissed against him. The complainant's failure to state an accurate description of the kidnappers in his sworn statement does not belie his identification of Pavillare in court as it is the general rule that affidavits are often inaccurate and incomplete. The argument of the accused-appellant that his identification in the police line-up was made with improper motive either from the other Indian nationals who were at the police station or from SPO1 Frias is without evidentiary basis. Moreover, the complainant's testimony is corroborated by the testimony of his cousin who met the kidnappers and handed over the ransom money to them. The trial court did not err in giving credence to the complainant's identification of Pavillare as one of the abductors.

The Solicitor-General further contends that the accused-appellant's alibi that he was in Novaliches when the crime was committed cannot stand against the positive identification of two witnesses and that his alibi does not make it physically impossible for him to be at the crime scene at the time it happened. As regards accused-appellant's plea to be convicted instead of simple robbery is without legal nor factual basis. The complainant was restrained of his liberty even if only for a few hours and his captors demanded money for his release which in fact they did after the ransom money was paid. Whether or not the kidnappers only wanted money from the complainant the manner by which they compelled him to give money, i.e. by restraining his liberty until the ransom money was paid, constitutes kidnapping for ransom. Finally, the submission that the offenders demanded a bribe and not ransom money is likewise unfounded. There is no evidence that any one of the kidnappers was a public officer in the performance of his duties when they demanded money from the complainant in exchange for his liberty.

Accused-appellant Pavillare filed Reply brief to reiterate his contention that the prosecution did not controvert his testimony to the effect that the complainant could not recognize his abductors and that it was SPO1 Frias who pinpointed him to the private complainant as one of the malefactors. Pavillare cites the complainant's failure to identify his own relative who met him at the police station after the arrest of the accused-appellant and argues that considering that the complainant was held captive only for about two hours and the interval of almost one month from the day

of the incident up to the time the accused-appellant was identified at the police line-up, the complainant was deprived of any reliable recollection of his captors. The complainant's failure to give a physical description of the abductors when he gave a sworn statement to the police two days after the incident supports the accused-appellant's contention that the complainant could not identify his captors. It is also claimed that the improper identification of the accused-appellant at the police line-up without the assistance of counsel renders the said identification, including that made in court inadmissible in evidence.

The appeal is without merit.

The accused-appellant's defense that the identification made by the private complainant in the police line-up is inadmissible because the appellant stood at the line-up without the assistance of counsel is without merit.

Section 12 (1) Art III of the Commission states that "Any person under investigation for the commission of an offense shall have the right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel." Thus the prohibition for custodial investigation conducted without the assistance of counsel. Any evidence obtained in violation of the constitutional mandate is inadmissible in evidence.^[10] The prohibition however, does not extend to a person in a police line-up because that stage of an investigation is not yet a part of custodial investigation.^[11] It has been repeatedly held that custodial investigation commences when a person is taken into custody and is singled out as a suspect in the commission of the crime under investigation and the police officers begin to ask questions on the suspect's participation therein and which tend to elicit an admission.^[12] The stage of an investigation wherein a person is asked to stand in a police line-up has been held to be outside the mantle of protection of the right to counsel because it involves a general inquiry into an unsolved crime and is purely investigatory in nature.^[13] It has also been held that an uncounseled identification at the police line-up does not preclude the admissibility of an in-court identification.^[14] The identification made by the private complainant in the police line-up pointing to Pavillare as one of his abductors is admissible in evidence although the accused-appellant was not assisted by counsel. In court, the private complainant positively identified Pavillare as one of his captors and testified as follows:

"Q: Were you able to recognize the faces of the men and woman who abducted you on the afternoon of February 12, 1996?

A: Yes, sir I can recognize if I see them again.

Q: If you see them in court will you be able to identify them?

A: Yes, sir.

Q: Please point to them if the accused are inside the court room?

A: That man, sir.

INTERPRETER:

Witness pointing at a man seated inside the court room and when asked to identify himself he gave his name as Eduardo Pavillare.

ATTY. CRUZ: