

## **FIRST DIVISION**

**[ G.R. No. 121982, September 10, 1999 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
LEONILO CUI Y BALADJAY, BEVERLY CUI Y CANTUBA, EDUARDO  
BASINGAN Y SABELLO, WILFREDO GARCIA, ALIAS "TOTO",  
JOSELITO GARCIA, ALIAS "TATA GARCIA", EMMANUEL GARCIA,  
ALIAS "MAWI", A CERTAIN SADAM, BIENVENIDO NACARIO Y  
PARDILLO, ALIAS "REY NACARIO", A CERTAIN EDGAR, A  
CERTAIN BENJIE, LUIS OBESO, ALIAS "LEOS", HILARIA SARTE,  
ALIAS "LARING", AND YUL ALVAREZ, ACCUSED.**

**LEONILO CUI Y BALADJAY, BEVERLY CUI Y CANTUBA, LUIS  
OBESO, ALIAS "LEOS", AND HILARIA SARTE, ALIAS "LARING",  
ACCUSED-APPELLANTS.**

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

**PUNO, J.:**

In the evening of December 5, 1990, some ten (10) armed robbers raided the compound of Johnny and Rose Lim on Edison Street, Lahug, Cebu City. The Lims, their three (3) children, and the employees of the family-owned business, William's Educational Supply, were able to see the faces of the leader Wilfredo alias "Toto" Garcia and two of his men, Mawe Garcia and a certain Edgar. The other robbers could not be identified as they had flour sacks over their heads.

The robbers carted away cash and jewelries worth twenty thousand pesos (P20,000.00). They also blindfolded and forcibly abducted seventeen (17) year old Stephanie, the youngest daughter of the Lims. They demanded a ransom of one million pesos (P1,000,000.00) for her release.

Johnny Lim turned over to Toto Garcia the ransom amount in the afternoon of the next day at an arranged meeting place. Stephanie, in turn, was released to her father.

Initially, the Lims kept the crime a secret. But on the third day, they reported the kidnapping to the Philippine National Police Cebu Metropolitan District Command (Cebu Metrodiscom) at Camp Sotero, Cabahug, Cebu City. The Metrodiscom Intelligence Security Team (MIST)<sup>[1]</sup> conducted an investigation and Johnny Lim was shown photographs of criminal elements to identify the suspects. From around ninety (90) photographs, Lim picked that of Toto Garcia.

The identification of Toto Garcia gave the MIST a valuable lead. Toto Garcia was known as the leader of a group of armed robbers called the Baong Gang. The gang's base of operation was pinpointed at Quiot, Pardo, Cebu. When the police learned from Lim that his house guard, Eduardo Basingan, hailed from Quiot, Pardo, Cebu

City, they decided to interrogate him.

Basingan's interrogation broke the case wide open. He identified Toto Garcia, Mawe Garcia and Edgar as the three (3) who did not wear masks, Sadam and Rey as the two (2) who held him and the Lims at gunpoint, and Tata Garcia, Yul Alvarez, a certain Benjie, a certain Leos and a certain Laring as the look-outs who stayed outside the Lim compound. He named Toto Garcia as the chief plotter of the crime at bar, and revealed that his neighbors and close family friends, the spouses Leonilo and Beverly Cui, participated in the plan. Basingan said he was asked to join the plot and was assured that he would not be under suspicion because he would be placed at gun point together with the other members of the Lim household when the crime is committed. However, he refused to join the plot during the December 2, 1990 meeting of the group at the residence of the Cuis in Quiot,. Pardo, Cebu City. Leonilo Cui even invoked their close ties as godfathers of each other's children but he was unmoved. At the meeting were Toto Garcia, Mawi Garcia, Edgar, Rey, Sadam and the Cuis.

On December 18, 1990, Basingan executed a sworn statement<sup>[2]</sup> reiterating these revelations in writing. Johnny and Rose Lim then formalized their complaint by executing a Joint Affidavit.<sup>[3]</sup> The members of the Metrodiscom Intelligence Security Team also executed a Joint Affidavit<sup>[4]</sup> relating their investigation. With these as bases, Assistant Prosecutor Bienvenido N. Mabanto, Jr. filed an Information<sup>[5]</sup> for Kidnapping with Ransom against Basingan, the Cuis, and the members of the group of Toto Garcia as identified by Basingan in his sworn statement.

On the same day, December 18, 1990, Basingan and Leonilo Cui were arrested.<sup>[6]</sup> Beverly Cui was also taken into custody on January 17, 1991.<sup>[7]</sup> The Cuis, however, were later granted bail and their plea for preliminary investigation was given due course.<sup>[8]</sup>

On March 14, 1991, Joselito "Tata" Garcia, Hilaria Sarte and her live-in partner, Luis Obeso, referred to by Basingan as "Laring" and "Leos", respectively, were arrested in the neighboring Negros Island. The next day, however, Tata Garcia died due to "hemorrhage, severe, secondary to gunshot wounds".<sup>[9]</sup> Upon presentation of his death certificate, the trial court ordered his name deleted from the information.

On March 22, 1991, Obeso and Sarte filed their own motions for preliminary investigation.<sup>[10]</sup> Their motions were granted in an Order dated April 2, 1991.<sup>[11]</sup>

On April 1, 1991, Basingan executed a second sworn statement<sup>[12]</sup> reiterating his first. In addition, he detailed the role of the Cuis in the planning of the crime at bar.

After preliminary investigation, Prosecutor Manuel J. Adlawan found that the participation of the Cuis was only that of accomplices. Thus, on May 13, 1991, an Amended Information was filed downgrading the charge against the Cuis as mere accomplices in the kidnapping with ransom of Stephanie Lim. It reads:

"That on or about the 5th day of December, 1990, at about 9:00 P.M. more or less and for sometime subsequent thereto, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said

accused, all private individuals, conniving and confederating together, and mutually helping with one another, armed with unlicensed firearms, with deliberate intent, with intent of gain, enter the dwelling house of spouses Johnny and Rose Lim and while inside therein with violence and intimidation, take and carry away cash and jewelries in the amount of P20,000.00 from the possession of and belonging to spouses Johnny and Rose Lim and that on the occasion thereof, and in connection therewith and for the purpose of extorting ransom from said spouses Johnny and Rose Lim, herein accused, in pursuance of their superior strength did then and there kidnap and detain Stephanie Lim 17 years old [sic] daughter of spouses Johnny and Rose Lim and while Stephanie Lim was under detention in the place other than the latter's dwelling place, the said accused demanded the amount of P1,000,000.00 for the release of Stephanie Lim to which demands and for fear of the latter's life spouses Johnny and Rose Lim delivered and caused to be delivered the amount of P1,000,000.00 to said accused; and accused-

"(1) Leonilo Cui y Baladjay and

"(2) Beverly Cui y Cantuba

who are hereby charged for the same offense as accomplices cooperate in its execution by previous acts and subsequently profiting in the effects of the crime by receiving the amount of P10,000.00 from the principal accused as their share of the loot, to the damage and prejudice of Johnny, Rose and Stephanie Lim in the total amount of P1,020,000.00.

"CONTRARY TO LAW."<sup>[13]</sup>

On May 15, 1991, Basingan, the Cuis, Obeso and Sarte were arraigned and they all pleaded not guilty.<sup>[14]</sup> On June 27, 1991, Basingan escaped from prison.<sup>[15]</sup>

Trial on the merit ensued against the Cuis, Obeso and Sarte. Basingan was tried in absentia.

On February 13, 1992, Bienvenido Nacario, alias "Rey Nacario", was arrested. On arraignment on April 13, 1992, he pleaded not guilty. However, on May 5, 1992, he, too, escaped from detention and remains at large to this date.

On August 18, 1992, the prosecuting fiscal manifested before the trial court that, per newspaper report, Toto Garcia had been killed in Davao.

On December 6, 1993, the trial court convicted the Cuis, Obeso, Sarte, Basingan and Nacario.<sup>[16]</sup> It held:

"In the light of the totality of the evidence adduced in the case at bar and the law and aforementioned jurisprudence, the Court is convinced that a conspiracy was hatched by all the accused in perpetrating the crime charged. For instance, as borne out by the testimony of Sgt. Narciso Ouano, Jr., police investigator of the Cebu Metrodiscim [sic], accused Eduardo Basingan declared during his investigation that the plan was indeed carried out and he knew all the persons who participated in that robbery, naming Toto Garcia, Tata Garcia, Mawi Garcia, Rey, Edgar, Sadam, Yul Alvarez, Benjie, Leo and Laring. When the named robbers

entered the residence of his master Johnny Lim, the robbers were wearing masks except Toto Garcia, Mawi Garcia and Edgar. The others, Rey, Sadam, Laring, Leo, Benjie and Yul Alvarez were wearing masks but Basingan was still able to identify them in spite of the fact that they were wearing masks because these persons were familiar to him already as they used to frequent the house of Leonilo and Beverly Cui. At the time of the robbery, only Toto Garcia, Mawi Garcia, Edgar, Rey and Sadam went inside the house of his master while Yul Alvarez, Benjie, Leos and Laring were guarding outside the building. On December 7, 1990, two days after the robbery, he was called by his Comadre Beverly Cui and the latter handed to him the amount of P40,000.00 in her house, saying that Toto Garcia left the said amount to be given to him. During their talk, Basingan verbally told them about the incident relative to the kidnapping and his having received P40,000.00 from Toto Garcia as his share of the ransom. A formal investigation was conducted by Sgt. Armando Ballon in the presence of Atty. Elias Espinosa who assisted Eduardo Basingan.

"x x x The denial of accused Luis Obeso and Hilaria Sarte as to their participation in the commission of the crime does not hold water for they were duly identified even during the initial phase of the commission of the crime. They were the renters of the house where Stephanie, the kidnapped victim, was placed. Stephanie had identified the house. The flight of these two accused to Bacong, Dumaguete City is indicative of their guilt. x x x

"The prosecution has indeed established the guilt of the accused beyond reasonable doubt as against accused Eduardo Basingan, Bienvenido Nacario y Pardillo, @ "Rey Nacario," Luis Obeso, @ "Leos", Hilaria Sarte, @ "Laring", Leonilo Cui y Baladjay and Beverly Cui y Cantuba, the latter two are only as accomplices, to the crime of kidnapping with ransom. x x x".<sup>[17]</sup>

They were sentenced to suffer the following penalties:

"WHEREFORE, in view of all the foregoing considerations, JUDGMENT is hereby rendered convicting the accused Eduardo Basingan, Bienvenido Nacario y Pardillo @ "Rey Nacario," Luis Obeso, @ "Leos", Hilaria Sarte, @ "Laring", as principals for the crime of KIDNAPPING WITH RANSOM and shall suffer the penalty of reclusion perpetua and the accused Leonilo Cui and Beverly Cui being accomplices, to suffer an imprisonment of eight (8) years and one (1) day of prision mayor, as minimum, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal, as maximum. They are further ordered to jointly restitute to the victim the ransom money less the amount recovered. Accused Hilaria Sarte and Luis Obeso, being detention prisoners are credited in full during the whole period of their detention provided that they signify in writing that they will abide with the rules and regulations of the penitentiary.

"x x x

"SO ORDERED."<sup>[18]</sup>

Obeso and Sarte filed their Notice of Appeal<sup>[19]</sup> on May 19, 1994. The Cuis filed theirs<sup>[20]</sup> on May 31, 1994.

In their Brief dated April 21, 1997, Obeso and Sarte prayed for their acquittal on the following grounds:

"I

"THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANTS ON THE BASIS OF THE EXTRA-JUDICIAL STATEMENT MADE BY EDUARDO BASINGAN AND THE TESTIMONY OF SGT. NARCISO OUANO JR. THEREON, WHICH ARE HEARSAY EVIDENCE.

"II

"THE TRIAL COURT ERRED IN FINDING THE TWO ACCUSED-APPELLANTS AS PRINCIPALS BY CONSPIRACY DESPITE THE ABSENCE OF ANY COMPETENT AND CONVINCING PROOF OF THEIR CULPABILITY."<sup>[21]</sup>

On June 25, 1997, the Cuis also filed their Brief. They contended:

"I. THE TRIAL COURT ERRED IN NOT FINDING THAT THE CONSTITUTIONAL RIGHTS OF APPELLANTS-SPOUSES LEONILO CUI AND BEVERLY CUI TO REMAIN SILENT, TO COUNSEL AND AGAINST SELF-INCRIMINATION HAD BEEN GROSSLY VIOLATED DURING THEIR CUSTODIAL INVESTIGATION.

"II. THE TRIAL COURT ERRED IN NOT EXCLUDING HEARSAY EVIDENCE OFFERED TO PROVE ALLEGED CONSPIRACY AND PARTICIPATION OF APPELLANTS-SPOUSES LEONILO CUI AND BEVERLY CUI, AS ACCOMPLICES IN THE CRIME CHARGED."<sup>[22]</sup>

On August 13, 1998, the Office of the Solicitor General filed, in lieu of an Appellee's Brief, a Manifestation<sup>[23]</sup> recommending the acquittal of the Cuis, Obeso and Sarte on the ground that the prosecution failed to present adequate proof of their guilt beyond reasonable doubt. It was postulated:

"It is clear that the only piece of evidence that would link appellants directly to the kidnapping of Stephanie Lim is the Sworn Statement executed by Eduardo Basingan (Exhibit "C") implicating appellants and describing their participation in detail. Basingan's extra-judicial confession, however, is inadmissible for being hearsay as he was not presented by the prosecution as its witness, he having escaped after arraignment. Hence, appellants were not afforded the opportunity to cross-examine him. Cross-examination is an indispensable instrument of criminal justice to give substance and meaning to the constitutional right of the accused to confront the witnesses against him and to show that the presumption of innocence has remained steadfast and firm x x x. It was intended to prevent the conviction of the accused upon depositions or ex-parte affidavits, and particularly to preserve the right of the accused to test the recollection of the witness in the exercise of his right