

## THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LEONARDO GIBERSON, JR., ACCUSED-APPELLANT.

*G.R. No. L-54131. January 30, 1982*

Ponente: DE CASTRO, J.

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### DE CASTRO, J.:

Leonardo Giberson, Jr. was charged with kidnapping and serious illegal detention in the Court of First Instance of Cebu which sentenced him, after due trial, as follows:

"Wherefore, evidence and circumstances considered pursuant to the provision of Article 267 of the Revised Penal Code, the Court finds accused Leonardo Giberson Jr. guilty beyond reasonable doubt of the crime of Kidnapping and serious Illegal Detention, and he is hereby sentenced to suffer imprisonment of Fourteen (14) Years and to pay the costs." [1]

Accused Leonardo Giberson, Jr. appealed the decision to the Court of Appeals, which imposed the penalty of reclusion perpetua and thereupon certified this case to this Court, as it so stated in the dispositive portion of its Resolution which reads:

"WHEREFORE, this case is hereby certified to the Supreme Court in accordance with its resolution in the case of People vs. Ramos, 88 SCRA 486, 489-490. Let the entire record of this case be elevated to the said Court for review." [2]

After the records of the case had been transmitted to this Court on June 11, 1980, an "Urgent Motion to Withdraw Appeal" was filed by appellant on June 26, 1980, in the Court of Appeals which forwarded the motion to this Court on July 30, 1980. It was referred for comment to appellant's counsel, Atty. Olegario R. Sarmiento, who merely manifested that he had no objection thereto, [3] but the Solicitor General opposed the motion and recommended its denial. [4] The opposition of the Solicitor General was referred to appellant's counsel by our Resolution dated August 5, 1981, for reply, but the latter never complied. It appearing that the motion to withdraw appeal is unsigned, and in view of the opposition of the Solicitor General which is meritorious, to which appellant's counsel filed no reply, the Motion to Withdraw appeal is hereby denied.

The Resolution of the Court of Appeals makes a thorough evaluation of the evidence, and We adopt the findings of fact of said Court as our own, which We quote and made part of this Decision as follows:

"There is no dispute that on June 8, 1977 at about 9:00 o'clock in the morning the accused took the 5-month old son of Felixberto Cantiveros and Teresita Cantiveros from their residence in Tungkop, Minglanilla, Cebu. The accused brought the infant, named Marlon Cantiveros, to Butuan City and there left the infant with his friends (t.s.n., January 19, 1978, pp. 14, 28; January 24, 1978, p. 27). Felixberto Cantiveros and his wife reported the loss of their infant son to the Philippine Constabulary. Not long after the accused was arrested in Cebu City and the infant recovered (t.s.n., January 19, 1978, pp. 5, 7, 13-15, 17; t. s. n., January 24, 1978, p. 26).

"The only issue before Us is whether or not the appellant should be penalized under Article 271 (2) of the

Revised Penal Code in view of his defense that he is the father of the infant Marlon Cantiveros.

"There is no credible and corroborated evidence that the appellant is indeed the father of Marlon Cantiveros. All there is in the record is his testimony that he is the father of Marlon. Besides, the appellant is an unreliable witness. There are several instances in the record showing substantial inconsistencies and improbabilities in his testimony.

"For instance, on direct examination the appellant claimed that after having sexual relations with Teresita Cantiveros for nearly a month in her conjugal home he was called to duty in Mindanao in February of 1976 and proceeded to Bohol in January of 1977 (t.s.n., January 24, 1978, pp. 14-15). Yet on 'cross-examination, he claimed that his last intimate relation with Teresita Cantiveros (which she vigorously denied) was in May of 1976 (Ibid., p. 28). There is a substantial difference here of 3 months. If it were true that he was called to duty in Mindanao in February of 1976, then Teresita Cantiveros should have given birth to Marlon not later than November of 1976, considering the normal period of gestation. Even assuming that the last intimate affair between the appellant and Teresita Cantiveros took place in May of 1976, then Marlon should have been born not later than February of 1977. But the fact is Marlon Cantiveros was born on January 5, 1977 (Exhibit 2, CFI Record, p. 11).

"Another example of appellant's unreliability is his testimony that he stayed in the house of Felix and Teresita Cantiveros from January to June of 1977 and had intimate relations there with Teresita Cantiveros (t.s.n., January 24, 1978, pp. 16-17, 19), which Teresita Cantiveros vigorously denied. We find it unnatural that Teresita Cantiveros would have allowed the appellant to stay in her conjugal home and have intimate relations with him. That is not only dangerous and risky but a direct assault upon the honor and integrity of her husband. It is just incredible for it is not probable under the circumstance. The test of the truth of human testimony is its conformity to common knowledge, observation and experience. As said in *People vs. Dayag*, 56 SCRA 439, 449-450, whatever is repugnant to this belongs to the miraculous and is outside of judicial cognizance.

"Still another illustration of the unreliability of the appellant is his claim that he is an enlisted man in the Philippine Constabulary. This is simply belied by the records of the Philippine Constabulary of Cebu (Exhibit B, Folder of Exhibits, p. 2) as well as by the testimony of Master Sgt. Victoriano Villaremo (t.s.n., February 27, 1978, p. 2)."[5]

It may be added that under the circumstances of his birth, the child, Marlon Cantiveros, is disputably presumed to be the legitimate child of the spouses, Teresita Cantiveros and Felixberto Cantiveros, wife and husband respectively, joined as such in lawful wedlock. In the absence of a strong and conclusive evidence that the child was sired by appellant, which he utterly failed to present, having relied only on his self-serving testimony that the child is his, appellant's claim of paternity is legally and factually unavailing.

We also affirm the imposition of the penalty of reclusion perpetua by the Court of Appeals, as was also recommended by the Solicitor General. The judgment of the trial court which imposed only fourteen (14) years of reclusion temporal, should accordingly be modified.

WHEREFORE, the judgment appealed from, modified as above indicated by imposing on appellant the penalty of reclusion perpetua for the crime charged, is affirmed in all other respects, with costs.

### **SO ORDERED.**

Barredo, (Chairman), Aquino, Concepcion, Jr., Abad Santos, Erica, and Escolin, JJ., concur.

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[1] p. 9, Decision, Annex A to Appellant's Brief, p. 26, Rollo.

[2] pp. 38-39, Rollo.

[3] p. 44, Rollo.

[4] p. 58, Rollo.

[5] pp. 35-37, Rollo.

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