

## PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. AGAPITO DE LA CRUZ, ACCUSED-APPELLANT.

*G.R. No. L-30912. April 30, 1980*

Ponente: MELENCIO-HERRERA, J.

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### MELENCIO-HERRERA, J.:

This is an automatic review of the Decision of the Court of First Instance of Basilan City in Criminal Case No. 1993, finding AGAPITO de la Cruz guilty as principal by inducement of the crime of Kidnapping and Serious Illegal Detention, and sentencing him to death.

By way of factual backdrop, the evidence establishes that one Antonio Yu owned 200 hectares of rubber and coconut land in Lantawan, Isabela, Basilan City. The victim, Yu Chi Chong, is his younger brother. The accused, AGAPITO de la Cruz, was an overseer of Antonio Yu for no less than ten years.

For the kidnapping and slaying of Yu Chi Chong, the City Fiscal of Basilan City filed against AGAPITO de la Cruz as Amended Information for Kidnapping with Robbery in Band and Murder, reading:

#### "AMENDED INFORMATION

The undersigned City Fiscal of Basilan amending his information on record, accuses Agapito dela Cruz, Moros Asmad alias Busol Atib Akot, Kohotan alias Arip Alian, Angih alias Ayub Alian, Amil alias Ibrahim Hambali, Baddih alias Rajah Abduraman, Ajah alias Hajim Alian, Andah alias Ajing Akdam, Alih Itum alias Sayari Atib Akot, Jamas Jumaidi y Andas and Oyong Asidin of the crime of kidnapping with robbery in band and murder, committed as follows:

That on or about the 6th day of March, 1968, and within the jurisdiction of this Honorable Court, viz., at Lantawan, Isabela, City of Basilan, Philippines, the above named accused, Agapito dela Cruz, as principal by inducement and his co-accused as co-principal by direct participation, armed with carbine and garand rifles, they being all private persons, conspiring and confederating together, aiding and assisting one with the other, did then and there willfully, unlawfully and feloniously, and for the purpose of extorting money for ransom, kidnap and deprive the liberty of one Yu Chi Chong and demand the amount of P50,000.00 as a consideration for the release of Yu Chi Chong and when Yu Chi Chong was already in the custody of the accused and taking advantage of their superior force, take and steal a wrist watch (Rado) worth P150.00 and cash money in the amount of P400.00, all worth the total amount of P550.00, Philippine cur-rency, belonging to said Yu Chi Chong and on the way from Basilan to Sulu, the said accused with treachery and evident premeditation, assault, attack and shoot Yu Chi Chong, which caused his death and thereafter dumped the body into the sea.

Contrary to law.

x x x x x x x x."

Of the eleven charged in the Information, only AGAPITO de la Cruz, Jamas Jumaidi and Oyong Asidin were apprehended. The rest have remained at large.

On September 24, 1968, the City Fiscal asked for the discharge of Jamas Jumaidi and Oyong Asidin to be utilized as state witnesses. The trial Court granted the Motion.

The evidence of the prosecution rested mainly on the testimonies of the two discharged witnesses and that of Mohamad Sagap Salip, who all pointed to AGAPITO de la Cruz as the mastermind in the kidnapping of Yu Chi Chong.

Mohamad Sagap Salip testified that sometime in October, 1967, the accused AGAPITO met with him, Alih Itum and a certain Asmad, at which he proposed to them the killing of Antonio Yu and the kidnap-ping of the younger brother, Yu Chi Chong, for a ransom. Apparently, Asmad subsequently contacted some people in Jolo, Sulu, for the purpose, the accused herein among them.

The two discharged witnesses, Jamas Jumaidi and Oyong Asidin narrated what transpired thereafter as follows: On March 5, 1968, with the other accused, they sailed for Basilan City on board an outboard watercraft. The watercraft landed on the beach of Look Sapi, Basilan City, where they met Mohamad Sagap Salip and Alih Itum. They stayed in Look Sapi until 7:00 o'clock in the evening and then left in the boat for Bangcao Sapa with Sagap Salip as their guide. (Bangcao Sapa is the landing place nearest the resi-dence of AGAPITO at Lantawan, Basilan City). They arrived at Bangcao Sapa at about 7:30 in the evening, and from there walked towards Lantawan. Two of the members of the group stayed in Bangcao Sapa to guard the motorboat. From Lantawan, they proceeded to AGAPITO's house, still with Sagap Salip as their guide, arriving there at about 3:00 o'clock in the morning.

AGAPITO met them when they arrived. He led them upstairs and gave them food. After eating, AGAPITO informed them that the two Chinese brothers would go to Lantawan on March 6, 1968 and that they were to kill Antonio Yu and kidnap Yu Chi Chong and demand ransom of P50,000.00. They agreed that P20,000.00 would go to AGAPITO, and P30,000.00 would be divided equally among the members of the group. After AGAPITO gave them instructions, they rested. He woke them up at 5:00 o'clock in the morning and led them towards Lantawan to the place of ambush. Sagap Salip, who was through with his job as the guide, was then sent home by the group, while AGAPITO proceeded to the camp of Antonio Yu. Baddih, a member of the group, was instructed to go to the copra kiln of Antonio Yu, and hitch a ride in the truck of Yu Chi Chong. The rest of the group waited in the ambush spot.

In the meantime, Antonio Yu and his brother Yu Chi Chong were preparing to leave Isabela to go to their Lantawan plantation to take delivery of newly made copra. Their departure was delayed due to engine trouble. Upon arrival of the truck at Lan-tawan, 40 to 50 sacks of copra were loaded to be taken back to Isabela. Antonio Yu had to go to Tairan on some other business and instructed his brother to go back to Isabela and take care of the copra cargo. Isabelo Mancenido accompanied Yu Chi Chong in the truck.

At around 1:00 o'clock p.m. as the truck neared the ambush spot, Baddih, as instructed, dropped his towel and requested Yu Chi Chong, who was driving, to stop the truck. When the truck came to a halt, the ambushers approached it and dragged Yu Chi Chong and Isabelo Mancenido therefrom. They shot at all of the tires with their assorted firearms, mostly carbine and garand rifles, and left with their quarry. Shortly thereafter, the group released Mancenido upon the latter's pleas for mercy.

They led Yu Chi Chong, with hands tied in front of him, through the forest towards Bangcao Sapa, passing through a house where they asked for water. Upon reaching Bangcao Sapa, they found that the tide was low, rendering it impossible for them to reach their boat. While waiting, Yu Chi Chong, in an attempt to escape, struck Angih with a piece of wood and tried to grab the gun of the latter but failed. Angih, in anger, fired at Yu Chi Chong several times, killing him.

The gunshots which killed Yu Chi Chong were heard by two Muslim villagers. The duo walked in the direction of the source of the shots and saw the dead body. The malefactors, in the meanwhile, hid in the mangrove swamp. The two Muslims left and then came back with a group of villagers who viewed the body. Thereafter, the villagers left, leaving the body where they saw it with the intention of returning the next day.

When the villagers had gone, the armed group immediately took the body of Yu Chi Chong and left for Jolo. They dumped the body in the middle of the sea. The body of Yu Chi Chong was never recovered.

The two Muslims, who heard the gunshots, were identified as Hajijul Salip Alam and Asadama Dansalan. They testified that during the night of March 6, 1968, they were on their way to Bangcao Sapa to go fishing. Attracted by the gunshots, they walked in the direction of the source of the shots. They saw a dead man who appeared to be fair complexioned, young, of regular build, wearing long khaki pants and a pair of white rubber shoes. They identified the deceased to be the same man in Exhibit "A", the picture of Yu Chi Chong.

Asadama Dansalan and Hajijul Salip Alam reported the matter to Isam Dansalan, and with a group of villagers, they went back to Bangcao Sapa to view the body. They decided to leave the body where they found it, agreeing that they would call the police the following day. When they returned to the place the next day, however, they found that the body was no longer there.

Antonio Yu, the older brother of Yu Chi Chong testified as to the possible motive of AGAPITO. He manifested that he hired AGAPITO in 1957 as an over-seer in his farm in Lantawan. In 1964, the management and administration of the farm was transferred to AGAPITO when Yu moved to Zamboanga to look after his hardware business there. In 1967, Yu returned to Basilan and took over the management of his farm. AGAPITO's job became that of a mere supervisor. When Antonio Yu took over the farm, he noticed a significant increase in the farm's production as compared to the yield during AGAPITO's administration. He also noticed that some of his cows were missing. This led him to be strict with AGAPITO and practically stripped the latter of all his powers.

In his defense, AGAPITO claimed that on March 5, 1968 he reported for work in the land of Antonio Yu as usual; that in the evening he had dinner in the house of Alfonso Flores and slept there that night. He strongly asserted that he never left that house from 7:30 in the evening after eating his supper until 6:00 in the morning when he woke up the following day; after breakfast he went to the copra kiln and supervised the laborers hauling coconuts; around noontime he and Antonio Yu had lunch in the house of Alfonso Flores; thereafter Antonio Yu left for Tairan. Between 12:30 P.M. and 1:00 P.M. he heard several shots. He became apprehensive and instructed his assistant to get his carbine. On the way to the copra kiln he was informed by some laborers that the truck which they had loaded with copra had been fired upon. He went towards the truck and searched for Yu Chi Chong. When he shouted he heard an answer from Isabelo Mancenido from up the hill. The latter related to him that Yu Chi Chong had been taken by bandits but that he himself was released.

AGAPITO continued working in the plantation until October 25, 1968 when he stopped because he wanted to actively engage in politics.

AGAPITO also claimed that Oyong Asidin, Jamas Jumaidi as well as the other witnesses who testified against him were paid by Antonio Yu.[1] In fact, he actually saw some witnesses being paid.[2] He maintained that he does not know any of the co-accused except Alih Itum Asmad.[3]

After a lengthy trial, a Decision was rendered by the trial Court on June 25, 1969, the dispositive portion of which reads:

"WHEREFORE, the Court finds the accused Agapito dela Cruz guilty beyond reasonable doubt of the crime of

kidnapping and serious illegal detention, as defined in Article 267 of the Revised Penal Code (amended by Republic Acts Nos. 18 and 1084). Finding that the crime was attended by the following aggravating circumstances, namely, abuse of confidence, commission of the offense in an uninhabited place, and abuse of superior strength, the crime having been committed with the aid of an outlaw band armed with unlicensed carbine and garand rifles in order to insure impunity, not offset by any mitigating circumstance, the accused, Agapito dela Cruz, should according to law, be, as he is, hereby sentenced to suffer the supreme penalty of death, with the accessories of the law, and costs; to in-demnify the heirs of the deceased, Yu Chi Chong, in the sum of P12,000.00.

SO ORDERED.

x x x x x x x x"

From this Decision, AGAPITO, on appeal contends:

- "1. That the trial Court erred to discard the false testimony given by the dis-charged accused Jamas Jumaidi and Oyong Asidin, by applying the maxim falsus in uno, falsus in omnibus;
2. That the trial Court erred to due credence to the testimony of Sagap Salip;
3. That the trial Court erred to convict the accused as mastermind or principal by inducement in the absence of the elements of conspiracy to the crime charged.
4. That the trial Court erred to consider the defense of alibi of the accused."

1. In support of the first assigned error, appellant points out that while Jamas Jumaidi, on direct examination, testified that, as he declared before the NBI, he saw the victim killed and dumped into the sea, on cross examination, he also admitted that in the statement to the NBI he answered that he did not know what had happened to the Chinese victim.[4]

This is not entirely accurate. The records show that Jamas Jumaidi had executed two Affidavits before the NBI. In the first (Exhibit 1), taken on July 8, 1968, he stated that he did not know what had happened to the Chinese and that it was only when they were back in Jolo that other companions told him that they had killed a Chinese. In his second Affidavit, however, executed on July 22, 1968, also before the NBI (Exh. C), he stated that while waiting for the tide to rise, Angih shot the Chinese and that they had dumped his body into the sea on their way to Jolo. This was the same declaration that he gave on the witness stand adding that the statement that he gave on July 8, 1968 was not entirely true, and that it was the Statement executed on July 22, 1968 which reflected the truth. When asked why he did not tell the truth right away, he replied that he did not want to be pinpointed as among those who had gone with the Chinese;[5] that he was thinking of himself as he did not want to be involved in the kidnapping and killing;[6] and that neither did he want to incriminate his companions whom he feared.[7]

While the two Statements are, indeed, at variance, the contradiction refers mainly to the involvement of Jamas Jumaidi and Oyong Asidin in the criminal act. But more importantly, the two Affidavits were invariably consistent on the crucial point of inquiry, namely, the role of AGAPITO in the kidnapping plot, the details thereof, the ransom to be demanded, and the distribution of the spoils.

Additionally, appellant claims that Oyong Asidin also admitted not having told the truth to the NBI when placed under cross-examination,[8] for which reason, his testimony is neither deserving of credence. But as far as this witness is concerned, he was similarly situated as Jamas Jumaidi. He had executed two Affidavits of the same tenor as Jumaidi's (Exhs. 3 and D). In the first he negated knowing what had happened to their Chinese victim, but in the second, narrated it in full detail. In both Affidavits, however, he too, consistently pointed to AGAPITO as the mastermind in whose house the criminal scheme was hatched and plotted.

We find no error on the part of the trial Court, therefore, when it gave credence to the testimonies of the two state witnesses. The rule "falsus in uno, falsus in omnibus" is not mandatory. It does not apply where the declarants are motivated by a desire to exculpate themselves and not really to pervert the truth as we find to be the case with respect to the two state witnesses.

"x x x The rule falsus in uno falsus in omnibus is not a mandatory rule of evidence, but rather a permissible one, which allows the jury or the court to draw the inference or not to draw it as circumstances may best warrant. (70 C.J., 783). The rule has its limitations, when the mistaken statement is consistent with good faith and is not conclusively indicative of a deliberate perversion, the believable portion of the testimony should be admitted. (III Wigmore secs. 1009-1015, pp. 674-683). There are, therefore, these requirements for the application of the rule, i.e., that the false testimony is as to a material point, and there should be a conscious and deliberate intention to falsify.[9]

"x x x The said rule should not apply where there is sufficient corroboration on many grounds of the testimony; where the mistakes are not on the very material points; where the errors do not arise from an apparent desire to pervert the truth but from innocent mistakes and the desire of the witness to exculpate himself though not completely."[10]

Appellant, in the Reply Brief filed on November 13, 1972, argues that the statement of Jamas Jumaidi, to the effect that he does not know what happened to Yu Chi Chong, is material to the case as it refers to the body of the crime itself. While it is true that this is a material point, the death of Yu Chi Chong has been proven by evidence other than the testimony of Jamas Jumaidi and Oyong Asidin. Empty shells and bloodstains were found in the place where Yu Chi Chong was shot. Asadama Dansalan and Hajijul Salip Alam also positively identified the victim as the person in Exhibit "A", the picture of Yu Chi Chong.[11]

2. Further, it is the accused's contention that the testimony of Sagap Salip should not be given credence. The trial Court, however, in its Decision, found that the testimony of Sagap Salip was unassailed, and was, in itself sufficient to support the accusation. A close scrutiny of the records of the case will show that the testimony of the two discharged witnesses corroborate on substantial points that of Sagap Salip. We, therefore, do not find any reason to reverse the findings of the trial Court. It has been uniform jurisprudence "that with respect to the credibility of witnesses, the trial Court's findings and conclusions command great respect and weight,"[12] subject to certain exceptions which are non-existent here.

3. AGAPITO further assails the conclusion of the trial Court finding him guilty as a principal by inducement reasoning that "since he did not take part in the commission of the crime, conspiracy does not exist," and consequently he incurs no criminal liability.

This contention is untenable. The requisites necessary in order that a person may be convicted as a principal by inducement are:

"1. That the inducement be made directly with the intention of procuring the commission of the crime; and

"2. That such inducement be the determining cause of the commission of the crime by the material executor."[13]

The foregoing requisites are indubitably present in this case. The two discharged witnesses testified that Asmad and Amil contacted them to go to Basilan to do a job for AGAPITO.[14] When the group was brought face to face with him, he lost no time in laying down the strategy for the killing of Antonio Yu and the kidnapping of Yu Chi Chong for ransom. It was he who knew when the truck of the intended victims would go to Lantawan to load the copra to be delivered to Isabela. He knew the route that the truck would take and the approximate time that it was to pass by. He even selected the ambush place. Clearly, he had the positive resolution to procure the

commission of the crime. He, too, presented the strongest kind of temptation, a pecuniary gain in the form of ransom, which was the determining factor of the commission of the crime by his co-accused. Without him the crime would not have been conceived, much less committed. Clearly, he was a principal by induction, with collective criminal responsibility with the material executors, his co-accused.

"One is induced to commit a crime either by a command (precepto) or for a consideration (pacto), or by any other similar act which constitutes the real and moving cause of the crime and which was done for the purpose of inducing such criminal act and was sufficient for that purpose. The person who gives promises, or offers the consideration and the one who actually commits the crime by reason of such promise, remuneration or reward are both principals." [15]

"The inducer need not take part in the commission of the offense. One who induces another to commit a crime is guilty as principal even though he might have taken no part in its material execution." [16]

4. Lastly, the accused seeks shelter behind his defense of alibi. He alleges that he was in the house of Alfonso Flores in the night of March 5, 1968, and that he never left the house from 7:30 in the evening up to 6:00 in the morning when he woke up the following day. His defense was corroborated by Federico Hilay who testified that he was with the accused that night; that they had supper together; and that he saw AGAPITO again the next day in the kitchen eating breakfast. Alfonso Flores corroborated Hilay's testimony.

The weakness of the accused's defense, however, lies in the fact that the house of Alfonso Flores is only about a kilometer away from his own house, the place where the meeting between him and his co-accused took place and where the criminal plans were laid down. [17] "The well-settled doctrine is that for alibi to be acceptable, it must be shown that the place where the accused was alleged to be when the offense was committed must be located at such a distance that it was well-nigh impossible for him to be at the scene of the crime." [18] Since the distance between Agapito's house and that of Alfonso Flores was only one kilometer, it was not impossible for the accused to have left Flores' house to return to his own to confer with the group, assuming that he was, as he alleged, in Flores' house.

The defense of alibi of the accused is further negated by the testimonies of Jamas Jumaidi, Oyong Asidin and Sagap Salip, who categorically implicated the accused and vividly described the details of the meeting. "The rule is settled that the defense of alibi is worth-less in the face of positive identification by prosecution witnesses pointing to the accused as particeps criminis. Moreover, the defense of alibi is an issue of fact the resolution of which depends almost entirely on the credibility of witnesses who seek to establish it. In this respect the relative weight which the trial Judge accords to the testimony of the witnesses must, unless patently inconsistent with the evidence on record, be accepted." [19]

5. The final point for consideration is the nature of the crime or crimes that AGAPITO should be held guilty of.

While the Information filed against all the accused charged them with the crime of Kidnapping with Robbery in Band and Murder, the trial Court convicted AGAPITO only of the crime of Kidnapping and Serious Illegal Detention as defined in Article 267 of the Revised Penal Code, stating that:

"We find that the original plan of the accused was to kidnap, not to rob or commit murder. There is in fact no evidence as to the charge of robbery. The evidence does not show that there was any intention to commit murder and the killing of the victim, Yu Chi Chong, happened unexpectedly, that is, only in consequence of the outlaw band's effort to prevent Yu Chi Chong's escape. Murder here may be said to have been absorbed in the crime of kidnapping, for 'in kidnapping, it is immaterial whether or not the victim was killed' (People vs. Suarez, 82 Phil. 484; People vs. Tan, 88 Phil. 152)." [20]

In this, we find reversible error. In the Suarez case cited by the trial Court, the Supreme Court considered the

killing of the victim of kidnapping as "imma-terial" because the appellants were prosecuted for the crime of Kidnapping only. This Court held in said case:

"Counsel for the appellants contends that these should be convicted only as accomplices. He claims that, there being no evidence to show that they had taken part in a conspiracy to kill Esteban Mungcal, -- because, according to the evidence for the defense, after De Hora, his companion and Fermin Suarez had hogtied Esteban Mungcal, the appellants were left in a house and had nothing to do with the killing of Esteban, -- they cannot be held guilty as co-principals of the crime of kidnapping. This contention is, however, based on the erroneous assumption that the fact of the killing of Esteban Mungcal constituted the principal element of the offense for which the appellants were prosecuted be-fore, and found guilty by, the trial court. But the appellants were not accused of the murder or the killing of Esteban they were accused of kidnapping, as defined and punished under article 267, paragraph 1, of the Revised Penal Code. The essential element or act which makes the offense of kidnapping is the deprivation of an offended party's liberty under any of the four instances enumerated in said article, the illegal detention of the victim for more than five days being one of such instances. The fact that an accused person has directly participated in the kidnapping or illegal detention of another is sufficient to make him guilty as co-principal in the crime of kidnapping; it is immaterial whether or not the victim was subsequently killed by any or all of them. In the present case there is no doubt that the appellants had taken active part in the kidnapping of Esteban Mungcal and that the acts committed by them have made them guilty as co-principals. The fact that they may have not taken part in the subsequent killing of Esteban Mungcal has only the effect of making them less guilty than those who actual-ly took part in the killing -- but they are guilty just the same. As above stated, the appellants should therefore be held liable as co-principals in the crime of kidnapping penalized under article 267, paragraph 1, as amended, of the Revised Penal Code." (Emphasis supplied)[21]

The situation, however, is different in the case at bar where AGAPITO was charged in the Information with the crime of Kidnapping with Robbery in Band and Murder. The evidence is clear that the victim Yu Chi Chong was kidnapped, as planned, primarily for the purpose of ransom in the amount of P50,000.00, and was murdered because he attempted to escape his captors.

In the following cases, the Court convicted the accused of the complex crime of Kidnapping with Murder: *People vs. Ging Sam, et al.*, 94 Phil. 139 (1953); *Parulan vs. Rodas and Reyes*, 78 Phil. 855 (1947) and *People vs. Parulan*, 88 Phil. 615 (1951); *People vs. Umali, et al.*, 100 Phil. 1095 (1957) Unreported case; *People vs. Tulale*, 97 Phil. 953 (1955), Unreported case; *Peo-ple vs. Escarda and Saliente*, 88 Phil. 789 (1950), Un-published Decision; *People vs. Francisco and Dasalla*, 96 Phil. 976 (1955), Unreported case; *People vs. Joa-quin*, 89 Phil. 807 (1951), Unpublished Decision.

Having found that AGAPITO is a principal by inducement and conspiracy being evident, he should, therefore, be held guilty of the same crime committed by the material executors in furtherance of the offense which he induced them to commit.

"The general rule is well settled that, where several parties conspire or combine together to commit any unlawful act, each is criminally responsible for the acts of his associates or confe-derates committed in furtherance of any prosecution of the common design for which they combine. In contemplation of law the act of one is the act of all. x x x It is immaterial, as affecting the question of co-equal respon-sibility, that one or more were not actually present at the consummation of the preconceived design." [22]

And although the nefarious scheme was to kill Antonio Yu and to kidnap for ransom his brother Yu Chi Chong, con-sidering the presence of conspiracy among the accused, the actuality that it was the latter instead who was murdered makes AGAPITO liable as well for all the consequences re-sulting from the carrying of the crime into effect.

"If there was an under-standing to commit an offense, all who participated in the pre-concerted crime are liable for the means which each of them employed to carry such crime into effect and for the con-sequence thereof." [23]

The crime committed is the complex crime of Kidnapping for ransom with Murder. Pursuant to Article 48 of the Revised Penal Code, the penalty for the more serious crime, or Kidnapping for ransom, which under Article 267 of the same Code, as amended, is death, should be imposed. The penalty, being single and indivisible, consideration of the aggravating circumstances discussed by the trial Court need no longer be undertaken as that penalty will have to be applied regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed (Article 63, Revised Penal Code). However, for lack of the required number of votes for the imposition of the capital punishment, the penalty to be imposed is the next lower in degree or reclusion perpetua.

WHEREFORE, the accused-appellant, Agapito de la Cruz, is hereby sentenced to suffer the penalty of reclusion perpetua; to indemnify the heirs of the deceased Yu Chi Chong in the sum of P12,000.00; and to pay the costs.

**SO ORDERED.**

Fernando, C.J., Teehankee, Concepcion, Jr., Fernandez, Guerrero, Abad Santos, and De Castro, JJ., concur.  
Barredo, J., concur in the opinion of Justice Aquino.  
Makasiar, J., reserves his vote.  
Aquino, J., dissents in a separate opinion.  
Antonio,[\*] J., took no part.

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[1] T.s.n., Feb. 3, 1969, p. 994.

[2] T.s.n., Feb. 3, 1969, pp. 1015-1017.

[3] T.s.n., Feb. 3, 1969, pp. 1022-1026

[4] Q. No. 7, Exh. 1-B.

[5] T.s.n., Nov. 20, 1968, p. 89.

[6] T.s.n., Ibid, p. 147.

[7] T.s.n., Ibid, p. 116

[8] T.s.n., Nov. 21, 1968, p. 240.

[9] Lyric Film Exchange, Inc. vs. Cowper, 36 Off. Gaz., 1642.

[10] People vs. Dasig, 93 Phil., 618 (1953).

[11] T.s.n., January 28, 1969, p. 504.

[12] People v. Mahinay, 80 SCRA 273 (1977).

[13] U.S. vs. Indanan, 24 Phil. 203; People vs. Kiichi, 61 Phil. 609; all cited in Reyes, L.B., Revised Penal Code, 1977 ed., Book I, p. 498.

[14] T.s.n., Nov. 20, 1968, p. 68.

[15] AQUINO, Revised Penal Code, 1976 Ed., Vol. One, p. 431, citing People vs. Indanan, 24 Phil. 203, 207

(1913) and *People vs. Asaad*, 55 Phil. 697 (1931).

[16] *Ibid.*, citing *U.S. vs. Leal, et al.*, 1 Phil. 118 (1902); *People vs. Timbang, et al.*, 74 Phil. 295 (1943); *People vs. Alcaraz, et al.*, 103 Phil. 533 (1958); *People vs. Manigbas, et al.*, 109 Phil. 469, 480 (1960).

[17] T.s.n., Feb. 3, 1969, p. 1000.

[18] *People v. Mahilay*, 63 SCRA 422 (1975).

[19] *People v. Peralta*, 25 SCRA 759 (1968), citing *People vs. Berdida, et al.*, 17 SCRA 520 (1966), and other cases.

[20] p. 251, CFI Record.

[21] 82 Phil. 484, 488-489.

[22] 12 C. J., pp. 577-578, cited in *People vs. Ging Sam, et al.*, 94 Phil. 139, 164 (1953).

[23] *U.S. vs. Cornejo*, 28 Phil. 457 (1914); *People vs. Pareja*, 30 SCRA 693 (1969).

[\*] Mr. Justice Felix Antonio took no part as he was the Solicitor General at the time the People's Brief was filed.

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## DISSENTING OPINION

### AQUINO, J.:

I dissent. In my opinion, the crime committed by Agapito de la Cruz, the disgruntled and dismissed overseer of Antonio Yu, who induced and masterminded the kidnap-ping for ransom of his brother, Yu Chi Chong, is either attempted serious illegal detention or kidnapping for ransom or consummated slight illegal detention, both of which are punished by reclusion temporal.

It is true that the plan was to commit kidnapping for ransom and that the kidnapping was accomplished but since the evidence does not show that ransom was actually de-manded, an important element of kidnapping for ransom (qualified serious illegal detention) is missing.

To consummate the kidnapping for ransom, there should be an overt act of demanding ransom from the victim or any other person (*People vs. Ong*, L-34497, January 30, 1975, 62 SCRA 174).

I believe that for a person to be guilty of kidnapping for ransom, a capital case par excellence, it is not sufficient that the kidnapping for ransom was planned and that the kidnapping was implemented. It is necessary that there should be a demand for ransom.

There is no complex crime of kidnapping with murder in this case because the kidnapping was not deliberately re-sorted to as a means for the perpetration of the murder. The killing was made on the spur of the moment when the victim assaulted his guard and tried to escape.

This case is different or distinguishable from the typical cases of consummated kidnapping for ransom with murder such as *People vs. Sta. Maria*, L-19929, October 30, 1965, 15 SCRA 222; *People vs. Paras*, L-23111, March 29, 1974, 56 SCRA 248; *People vs. Ging Sam*, 94 Phil. 139 and *Parulan vs. Rodas and Reyes*, 78 Phil. 855 and *People vs. Parulan*, 88 Phil. 615.

The fact that the kidnapping was accomplished and that the circumstances mentioned in article 267 of the Revised Penal Code were not present means that the crime committed may also be categorized as consummated slight

illegal detention under article 268 of the Revised Penal Code.

The killing of the kidnapped victim by Angih alias Ayub Alian (at large) was homicide only. For that killing, which was not contemplated in the conspiracy or which was not planned by the conspirators, only Angih, the actual killer, is responsible.

De la Cruz, as a principal by inducement, cannot be held responsible for it. He was not present at the scene of the killing. He did not induce it and he could not have prevented it.

The rule in article 4 of the Revised Penal Code that a person is criminally liable although the wrongful act done be different from that which he had intended or that an offender is liable for all the natural consequences of his felonious acts cannot be invoked to hold De la Cruz liable for the homicide. Being a principal by inducement, he is answerable only for the crime which he induced which was kidnapping or illegal detention.

Considering the aggravating circumstances attending the attempted kidnapping for ransom or the consummated crime of slight illegal detention, he should be sentenced to twelve years of prision mayor as minimum to eighteen years of reclusion temporal as maximum.

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