

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DELIA REYES Y DELA CRUZ, ACCUSED-APPELLANT REY ARNEL REYES Y GARBONELLA, ACCUSED.

G.R. No. 107462. August 30, 1996

Ponente: PUNO, J.

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PUNO, J.:

Appellant Delia Reyes y dela Cruz and accused Rey Arnel Reyes y Garbonella were both charged with the crime of kidnapping in an information that reads as follows:

"That on or about the 8th day of May 1991, in the City of Angeles, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being both private individuals and one of them a former housemaid of the parents of the victim, conspiring, confederating and mutually helping one another, did then and there wilfully, unlawfully and feloniously and for still unknown purpose or reason kidnap ASNIA (Malagu) MOHAMAD, a minor of 4 1/2 years of age, permanently separating said female child from her parents Rasmia and Almadin Mohamad since then to the present time." [1]

The prosecution established that on May 8, 1991 at about 11:00 A.M., appellant went to the house of Almadin and Rasmia Mohamad in Angeles City, Pampanga to reapply as housemaid. Appellant was a former housemaid of the Mohamads and was immediately accepted as the Mohamads had then no househelp.[2] Appellant performed her chores, cleaned the house and attended to the Mohamads' six children. At about 3:00 in the afternoon, while Rasmia was in the market and Almadin was praying at the mosque in the upper floor of their house, appellant invited the couple's three daughters, namely, Aslima,[3] Badudin,[4] and Asnia, nicknamed Malagu, aged four and a half, to watch a movie in Dau, Mabalacat, Pampanga. The children readily agreed and they all left the house without telling their destination to anyone.[5]

They had not walked too far when appellant remembered they forgot to lock the door of the house. She instructed Aslima and Badudin to go back to the house and lock the door. Aslima and Badudin did as they were told but when they returned to the place where they left appellant and their sister, the two were no longer there.[6]

Aslima immediately informed her parents of the disappearance of appellant and Asnia. The Angeles City police searched for them but to no avail. The Mohamad couple organized a massive manhunt. They sought the help of approximately 100 persons composed of relatives, friends and police and intelligence officers in Manila and the neighboring provinces. They used the broadcast and print media. The search dragged on for almost two months until the police came upon accused Rey Arnel Reyes, appellant's cousin and also a former employee of the Mohamads. On interrogation, Rey Arnel gave leads as to appellant's whereabouts. It was at this time that the information charging appellant of kidnapping was filed in court. Rey Arnel Reyes was included as a co-accused.

Following Rey Arnel Reyes' leads, the police arrested appellant in Manila on July 7, 1991. The missing child, Asnia, was later found in the custody of an old lady in a squatter's area in Barangay Mabiga, Mabalacat, Pampanga.[7] Asnia was embraced by her crying father who noticed that she had become "very thin and very

pale."[8] Asked why she kidnapped Asnia, appellant replied "wala lang." [9]

Almadin and Rasmia Mohamad spent P300,000.00 more or less for reward money, transportation, board and lodging expenses in searching for Asnia. The couple also suffered mental and emotional anguish and spent sleepless nights worrying over their lost daughter.[10]

Appellant denied she kidnapped Asnia. She claimed that on May 8, 1991, at about 3:00 p.m., she asked permission from Almadin to take his three daughters for a walk. Almadin consented but told her not to walk too far away from the house. She took the children to the market where they purchased a pair of slippers. She met there a friend, Agnes Viriales. Agnes told appellant to go to Mabalacat to get the latter's clothes. Thereupon, appellant instructed the two older children to go home while she took Asnia with her to Mabalacat. She did not ask further permission from Almadin as he was praying in the mosque.

Appellant saw her sister, Clarita Reyes, who just arrived from La Union, in Agnes' house in Mabalacat. She was informed by Clarita that their mother died the previous day. She and her sister immediately left for San Fernando, La Union after instructing Agnes to bring Asnia to her family. Agnes and the Mohamads were acquaintances. After her mother's burial, appellant did not return to Angeles City but proceeded to Manila where she worked as an ago-go dancer.[11]

During the trial, accused Rey Arnel Reyes escaped from prison and was tried in absentia. On September 3, 1992, the trial court rendered judgment acquitting accused Rey Arnel Reyes for lack of evidence but convicting appellant of the crime of kidnapping. Appellant was sentenced to reclusion perpetua and ordered to indemnify the Mohamad couple actual and moral damages in the total amount of P300,000.00, thus:

"WHEREFORE, for lack of evidence, accused Rey Arnel Reyes y Garbonella is hereby ACQUITTED of the crime charged.

On the other hand, this Court finds accused Delia Reyes y dela Cruz guilty beyond reasonable doubt as charged in the information for kidnapping. There being no modifying circumstance in attendance, the penalty of reclusion perpetua is hereby imposed upon said accused Delia Reyes y dela Cruz. She is also hereby ordered to indemnify the spouses Almadin and Rasmia Mohamad the sum of P200,000.00 as actual damages for expenses they incurred in the search for the victim, and P100,000.00 as moral damages, and also to pay the costs.

SO ORDERED." [12]

Hence, this appeal where she contends:

I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIME CHARGED INSPITE OF PROSECUTION'S FAILURE TO PROVE HER GUILT BEYOND REASONABLE DOUBT.

II

THE TRIAL COURT ERRED IN CONCLUDING THAT ACCUSED DELIBERATELY FAILED TO RESTORE THE MINOR/VICTIM TO HER PARENTS."

The crime of kidnapping under Article 270 of the Revised Penal Code is committed: (1) when the offender is entrusted with the custody of a minor person; and (2) the offender deliberately fails to restore the said minor to his parents or guardian.[13]

Appellant concedes that she was hired by the Mohamad family as a housemaid and that she was entrusted with the care of their children. She claims that the prosecution failed to prove that she deliberately and intentionally failed

to return Asnia to her parents. She contends that the death of her mother left her confused and bewildered. She rushed to La Union to see her mother's remains and relied on her friend, Agnes, to return Asnia to her parents. In wrongfully trusting her friend, she contends she could not be convicted of kidnapping.[14]

We find appellant's excuse incredible. To start with, appellant failed to corroborate the alleged death of her mother. Moreover, it is hard to believe that the news about the mother's death would so unsettle appellant that she had to rush to La Union without first returning Asnia to her parents in Angeles City. Asnia was a mere four and a half-year old child entrusted to her care and Angeles City is but a few kilometers away from Mabalacat. It would have taken appellant a few minutes to return to Angeles and tell the Mohamads about her predicament.

We hold that appellant's negligence is wanton and gross as to amount to a deliberate and willful scheme to take the child away from her parents. This willfulness is sufficiently established by the following circumstances: (1) appellant lured Asnia and her sisters into leaving their house; (2) she instructed the two elder sisters to go home but kept the youngest with her; (3) she and Asnia could not be located despite extensive search by the authorities and the widespread publicity generated through the television, radio and print media; (4) the child was found two months later and only after the arrest of appellant; and (5) appellant harbored ill-feelings against the Mohamad family. She revealed on the witness stand that the Mohamads did not pay her salary for five months when she worked for them in 1989.[15] In contrast, there is nothing to show that the witnesses for the prosecution were impelled by improper motives to testify falsely against appellant.[16]

The non-presentation of Asnia and Agnes Viriales to whom appellant entrusted Asnia, does not weaken the case for the prosecution. Even without their testimonies, there is sufficient evidence to prove appellant's guilt. If appellant believed that their testimonies could have exculpated her, she could have availed of the coercive processes of the court to have them produced as witnesses.[17] She failed to do so. Their non-presentation will not exculpate her.

IN VIEW WHEREOF, the decision of the Regional Trial Court Branch 58, Angeles City in Criminal Case No. 91-476 is affirmed. Costs against appellant.

SO ORDERED.

Regalado (Chairman), Mendoza and Torres, Jr., JJ., concur.
Romero, J., on leave.

[1] Records, p. 1.

[2] TSN of April 23, 1992, pp. 4-6, 14-16.

[3] Ten (10) years of age.

[4] Seven (7) years of age.

[5] TSN of May 14, 1992, p. 6; April 23, 1992, pp. 15-17.

[6] TSN of May 14, 1992, pp. 7-9.

[7] TSN of April 23, 1992, pp. 7-8; TSN of June 19, 1992, pp. 4-8.

[8] TSN of June 19, 1992, pp. 7-8.

[9] Id., pp. 8-9.

[10] TSN of April 23, 1992, pp. 11-13.

[11] TSN of July 3, 1992, pp. 3-7.

[12] Decision, p. 4, Rollo, p. 11.

[13] Reyes, Revised Penal Code, vol. 2, p. 482, 1993 ed.

[14] Appellant's Brief, pp. 9-11, Rollo, pp. 69-71.

[15] TSN of July 3, 1992, p. 15.

[16] *People v. Briones*, 219 SCRA 134 [1993]; *People v. Taneo*, 218 SCRA 534 [1993]; *People v. Tolentino*, 218 SCRA 337 [1993].

[17] *People v. Beltran*, G.R. No. 119306, July 31, 1996; *People v. Morico*, *supra*, at 220; *People v. Nabunat*, 182 SCRA 52 [1990].

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