

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GLORIA MITTU Y CINTO AND GERVACIO SOLIDAD Y LLANES, ACCUSED-APPELLANTS.

G.R. No. 109939. June 08, 2000

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On appeal is the decision dated March 15, 1993 of the Regional Trial Court of Kaloocan City, Branch 121, in Criminal Case No. C-41128, convicting accused-appellants of the crime of kidnapping for ransom and sentencing them to suffer the penalty of reclusion perpetua.

Appellant Gloria Mittu y Cinto was a 37 year-old, sari-sari store owner residing at 80 Malolos Avenue, Bagong Barrio, Kaloocan City at the time of the incident. Appellant Gervacio Solidad y Llanes was employed by Mittu as an ice-cream vendor cum tricycle driver.[1]

Kidnapped was Vik Ramjit Singh, the 4-year old son of the spouses Dhanwant and Caridad Singh, together with Mary Gene Coña y Rodrigo[2], his 15-year old nursemaid.

The facts, as summarized by the Office of the Solicitor General, and which we find to be supported by the records, are as follows:[3]

"On August 31, 1992, around 7:45 a.m., four year-old Vik Ramjit Singh (Vikvik) and his fifteen-year old nursemaid, Mary Jane (Fanny or Pane) (sic) Coña, both of 51 Pilar St., Morning Breeze, Kaloocan City, were on their way to the Infant Jesus School at Asuncion Street, Morning Breeze, where Vikvik was a nursery student. While Vikvik and Pane were walking in front of a Catholic church, appellant Mittu suddenly grabbed them, saying, "Halika, punta kayo sa bahay," and then loaded them in a tricycle driven by appellant Gervacio Solidad (TSN, December 9, 1992, pp. 3-8; TSN, January 6, 1993, pp. 20-22).

Thereafter, the two appellants took the victims to Muntinlupa in a taxi where they were detained for two (2) days (TSN, December 9, 1992, pp. 3, 4 and 7, TSN, January 6, 1993, p. 22). During their captivity in Muntinlupa, they were brought to a public market where Mittu made Vikvik talk to his father on the telephone. Vikvik, whom appellant Mittu threatened to leave behind in the market if he told anyone that she was the one who took them, was only able to say, "Papa, kunin mo kami rito." (TSN, December 9, 1992, p. 4).

From Muntinlupa, Vikvik and Mary Jane were taken to Novaliches, where each one was hidden in separate houses (TSN, *ibid.*, p. 5).

Meanwhile, around 12:00 o'clock noon of August 31, 1992, the father of Vikvik, Dan Waht Singh, went home to find his wife, Caridad, crying. Caridad confided that their son and his "yaya" failed to come home from school. She narrated further that when she went to the Infant Jesus School to look for her son, the teacher told her that Vikvik did not attend school that day (TSN, January 6, 1993, p. 6; TSN, December 9, 1992, p. 12). They then looked for the child but he was nowhere to be found (TSN, January 6, 1993, p. 7).

Soon thereafter, the Singh spouses received a telephone call from an unidentified male caller who told them, "Your son is here." The caller told them not to report the matter to the police. After the warning, he hanged up (TSN, January 6, 1992, p. 7; TSN, December 9, 1993, pp. 12-14). That same day, the same person called and reiterated what he had told them earlier. (TSN, January 6, 1992, p. 7).

The following day, the Singh spouses received another call from the same person who this time demanded P100,000.00 for the release of their son. But when Dan Waht Singh said he could not raise the amount, the caller hanged up again. The Singh spouses also received similar calls on September 2, 1992 (TSN, December 9, 1992, pp. 12-14; TSN, January 6, 1993, pp. 7-8).

On the morning of September 3, 1992, the Singh spouses finally went to the National Bureau of Investigation (NBI) and sought its help to rescue their son and his "yaya". NBI Assistant Director Atty. Liongson, who received their complaint, instructed them to wait for another call from the abductors and arrange for the payment of the ransom money. (TSN, January 6, 1993, p. 9; TSN, December 15, 1992, p. 4).

On September 4, 1992, the unidentified person called again and instructed Dan Waht Singh to give the ransom money to one Gloria Mittu at the Barrio Fiesta Restaurant, EDSA, Kaloocan City, at 7:00 o'clock in the evening that same day, and they would give him his child. (TSN, January 6, 1993, pp. 9-10).

After receiving the call, Mr. Singh called up the NBI and informed them of the arrangement for the payment of the ransom money. With this development, NBI agents assigned to the case then mapped out a plan to arrest the abductors after the release of the kidnap victims and delivery of the ransom money (TSN, December 15, 1992, pp. 4-5).

Around 4:00 o'clock in the afternoon, the NBI agents, headed by Atty. Ruel Lazala, team leader, were dispatched to cover the "pay-off" area (TSN, December 15, 1992, p. 5-7, 15-16).

When they arrived at the Barrio Fiesta Restaurant along EDSA, Kaloocan City, the agents saw the Singh spouses already seated in one of the tables. The agents then posted themselves strategically around the restaurant. By 6:00 o'clock p.m., a woman, later identified as appellant Gloria Mittu, entered the restaurant and went straight to where Vikvik's parents were seated (TSN, *ibid.*, pp. 6, 16-18).

As soon as she reached the Singh spouses, appellant Mittu demanded for the whole amount of the ransom money, but Dan Waht Singh replied, "Cannot be, you give me my son." But Mittu refused to turn-over the kidnap victims unless half of the ransom money was given to her. Mr. Singh could do nothing else but accede to the demand and gave P50,000.00 to Mittu who, after receiving the money, went out of the restaurant (TSN, January 6, 1993, pp. 10-11; TSN, December 15, 1992, pp. 7, 16, 18).

When Mittu had gone, Mr. Singh conferred with Atty. Lazala inside the comfort room and informed him that appellant Mittu would be back after two (2) hours to bring the victims. (TSN, December 15, 1992, pp. 7-8).

Thereafter, the Singh spouses went home even as the NBI team, composed of Attys. de Villa, Liongson, Lazala and Laurence Nidera, held a briefing at the establishment adjacent to the Barrio Fiesta restaurant. They posted themselves at the left side corner of the restaurant, while another NBI team was posted at the right side (TSN, January 6, 1993, p. 11; TSN, December 15, 1992, p. 8). After two hours, Mr. and Mrs. Singh went back to the restaurant (January 6, 1993, *tsn, ibid.*).

Around 9:00 o'clock in the evening, Mary Jane or "Pane," the little boy's "yaya," went inside the restaurant. When Mr. Singh saw her, he went out, directly towards a taxicab in which he saw inside his son Vikvik with appellants Mittu and Solidaridad. The two appellants then let the boy out of the taxi and gave him to Mr. Singh (TSN, January 6, 1993, pp. 11-12; TSN, December 15, 1992, p. 9).

When Atty. Lazala saw the little boy already safe with his parents, he immediately signalled to the agents to arrest the appellants. After their arrest, the two kidnappers were then brought to the NBI headquarters

(December 15, 1992; tsn, pp. 9-10; January 20, 1993, p. 2).

Gloria Mittu admitted in the investigation that she still had in her possession part of the ransom money in the amount of P27,000.00 (TSN, January 20, 1993, p. 3). Another NBI team, thereafter repaired to her house in Bagong Barrio, Kaloocan City, where said appellant handed over to the team leader, Atty. Oscar Embido, NBI senior agent, the P27,000.00 that was part of the ransom money (TSN, *ibid.*, pp. 3, 5). When asked about the rest of the fifty thousand (P50,000.00) pesos, Mittu answered that she already used it to redeem a pawned jewelry. (TSN, *ibid.*, p. 6)."

On September 28, 1992, after preliminary investigation, the following Information for Kidnapping[4] was filed against appellants:

"The undersigned State Prosecutor of the Department of Justice accuses Gloria Mittu y Cinto and Gervacio Solidaridad y Llanes for violation of Article 267 of the Revised Penal Code (Kidnapping for ransom) committed as follows:

That on or about August 31, 1992 at around 7:45 o'clock in the morning in Caloocan City and within the jurisdiction of this Honorable Court above named accused while conspiring and confederating with one another did then and there wilfully, unlawfully and feloniously, with criminal intent, pull, take and carry away with the use of force, threat, stealth and intimidation the minors Vik Ramjit Singh and Mary Gene Coña y Rodrigo without their consent to Muntinlupa, Metro Manila where they were detained, kept, and constrained of their liberty until September 1, 1992.

That the victims on September 1, 1992 were later transferred by the accused to Novaliches, Quezon City where the victims were separately detained, kept and constrained of their liberty until September 4, 1992.

That the accused while detaining the victims demanded and extorted money and did receive money from Dhanwant Singh, father of Vik Ramjit (sic) Singh and employer of Marygene Cona (sic) in the amount of One Hundred Thousand Pesos as ransom money for the release of the victims to the damage and prejudice of Dhanwant Singh.

CONTRARY TO LAW.

Manila for Kaloocan City. September 17, 1992.

THEODORE M. VILLANUEVA
State Prosecutor II"

On November 10, 1992, appellants entered their respective pleas of not guilty upon arraignment.[5] Thereafter, trial ensued. The prosecution presented the following witnesses: (1) Vik Ramjit Singh, the four-year old victim; (2) Mary Gene Coña, his nursemaid; (3) Dhanwant Singh and Caridad Singh, parents of Vik Ramjit; (4) Laurence Nidera; and (5) Atty. Oscar Emdibo, both Special Investigators of the National Bureau of Investigation (NBI).

For the defense, appellants testified on their behalf. Appellant Mittu testified that she knew both of the Singh spouses since 1982. She claimed that they fabricated the kidnap story when they failed to collect from her the monetary obligations of her husband, an Indian National, who was already deported by the Bureau of Immigration.[6] She also claimed that Vik Ramjit Singh and his nursemaid used to visit her in her house so that Vik Ramjit could play with her son, Arjon. She insisted that the sum of P27,000.00 confiscated from her by NBI agents was her own money.[7]

For his part, appellant Solidaridad denied any knowledge of the kidnapping claiming that he was a mere employee of Mittu and that he merely drove Mittu and the two victims to the Barrio Fiesta Restaurant, without knowing the purpose of their trip to said restaurant.[8]

On March 15, 1993, the trial court rendered a decision,[9] the dispositive portion of which states:

"WHEREFORE, in view of the foregoing, this Court finds both accused GLORIA MITTU and GERVACIO SOLIDAD, GUILTY beyond reasonable doubt of the crime of KIDNAPPING For Ransom, defined and penalized under the last paragraph of Article 267 of the Revised Penal Code and are hereby sentenced to suffer the penalty of RECLUSION PERPETUA.

SO ORDERED."

Appellants filed separate briefs. Appellant Mittu contends that the trial court erred in not holding that - [10]

I. ... THE PROSECUTION FAILED TO ESTABLISH THE CORPUS DELICTI OF THE CRIME AND CONSEQUENTLY, IN NOT ACQUITTING THE ACCUSED-APPELLANT.

II. ... CONSIDERING THAT THE ACCUSED-APPELLANT AND THE SINGH SPOUSES KNEW EACH OTHER VERY WELL, IT WOULD HAVE BEEN CONTRARY TO HUMAN NATURE FOR THE ACCUSED-APPELLANT TO RECEIVE THE SO-CALLED RANSOM MONEY FROM THE SAID SPOUSES, AND AT A PUBLIC PLACE AT THAT.

III. ... THE AMOUNT OF P27,000.00 CONFISCATED FROM THE ACCUSED-APPELLANT TO BE PART OF THE RANSOM MONEY WAS ACTUALLY HER OWN MONEY.

On the other hand, appellant Solidad assigns only one error:[11]

THE TRIAL COURT ERRED IN FINDING GERVACIO SOLIDAD GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF KIDNAPPING FOR RANSOM.

Appellant Mittu contends that the prosecution failed to establish the corpus delicti since the ransom money was not properly identified in court. The Office of the Solicitor General points out, however, that corpus delicti refers to the actual commission of the crime charged, and not merely to things involved in the commission of the crime. In this case, the fact of commission of the crime was duly proven by the testimonies of the prosecution witnesses.

While appellant Mittu claims that the money confiscated from her were proceeds of a loan, the OSG contends that such testimony is self-serving and unsupported by receipts of the alleged loan transaction.

As to appellant Gervacio, the OSG belies his claim of innocence since he actively participated in the kidnapping by driving the tricycle where the victims were boarded and by accompanying appellant Mittu during the entire incident up to the entrapment at the Barrio Fiesta restaurant. Further, at the time of the entrapment, appellant Solidad was not driving his tricycle but was on board the taxi with the two victims.

The crucial issue, in our view, involves the assessment of credibility of witnesses. Could the version succinctly narrated by the two victims, the parents of the 4-year old boy, and the NBI agents possibly be concocted as so alleged by the appellant Mittu and her cohort, appellant Solidad?

Countless times have we ruled that the findings of the trial court on the credibility of witnesses and their testimonies are entitled to the highest respect and will not be disturbed on appeal in the absence of any clear showing that the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which would have affected the result of the case. The trial court is in a better position to decide the question of credibility, having seen and heard the witnesses themselves and observed their behavior and manner of testifying.[12]

In the present case, the 4 year-old boy and his nursemaid testified on the circumstances of the kidnapping.[13] Their testimonies were duly corroborated by the testimonies of the Singh spouses and the NBI agents who

entrapped appellants. Against this array of categorical testimonies, appellants could only offer their feeble denials and excuses. Categorical, consistent and positive identification, without any ill motive on the part of the eyewitness, prevails over unconvincing alibi and unsubstantiated denials. These latter testimonies are self-serving statements, undeserving of weight in law.[14]

Note that the NBI agents had no motive to falsely testify against appellants. Without evidence that they falsely testified, we shall presume regularity in their performance of official duties.[15]

Appellant Mittu who masterminded the kidnapping admitted her motive in kidnapping the boy and his nursemaid. In her Sworn Statement executed before the Anti-Organized Crime Division of the NBI, she stated she kidnapped the boy because she wanted to take revenge on the Singh spouses for having her husband, Surinder Omar Mittu, deported in 1991.[16]

On her claim that it is against human nature to kidnap a person well known to the kidnappers, the records reveal that the last time appellant Mittu saw the spouses Singh was in 1985, some seven (7) years prior to the kidnapping. Whatever bond they had were severed by the seven years and the deportation of Surinder Omar Mittu. Besides, familiarity with the victims or their families has never rendered the commission of the crime impossible or improbable, but has in fact at times even facilitated its commission.

The evidence also shows that appellants acted in concert with each other in perpetrating the kidnapping. Conspiracy exists when two or more persons come to an agreement concerning the commission of a crime and decide to commit it.[17] Appellants' acts demonstrate that they conspired to kidnap the victims. Appellant Mittu lured the boy and his nursemaid to board the tricycle driven by appellant Solidar.[18] Appellant Solidar drove to the house of Mittu and left his tricycle there. Together with their captives, they took a taxi to Muntinlupa where they stayed for two days. Thereafter, they brought the two minors to Novaliches in the house of appellant Mittu's cousin.[19] Appellants made repeated phone calls to the Singh spouses asking for ransom money in the amount of P100,000.00.[20] Appellants then instructed Mr. Singh to bring the money and meet appellant Mittu at the Barrio Fiesta in Kaloocan City.[21] Both appellants were apprehended after they delivered the boy and his nursemaid at the designated meeting place.[22]

Kidnapping for ransom is penalized under Article 267 of the Revised Penal Code which provides:

"Kidnapping and serious illegal detention.- Any private individual who shall kidnap or detain another, or in any manner deprive him of his liberty, shall suffer the penalty of reclusion perpetua to death:

1. If the kidnapping or detention shall have lasted more than five days.
2. If it shall have been committed simulating public authority.
3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained; or if threats to kill him shall have been made.
4. If the person kidnapped or detained shall be a minor, female or a public officer.

The penalty shall be death where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances above-mentioned were present in the commission of the offense."

We find that the following elements of kidnapping were proven by the prosecution: First, appellants are private individuals. Second, they kidnapped or detained the victims in Muntinlupa and then transferred them to Novaliches, Quezon City. Third, the act of detention or kidnapping was illegal. Fourth, in the commission of the

offense, the persons kidnapped were both minors, Vik Ramjit being 4 years old, and the nursemaid, being 15 years old.

The kidnapping was qualified by the demand for ransom. The father of Vik Ramjit testified that he received phone calls asking for the amount of One Hundred Thousand Pesos (P100,000.00) for the release of his son and that he was instructed to proceed to the Barrio Fiesta restaurant in Kaloocan City to hand over the amount to appellant Gloria Mittu.[23] All these events transpired under the surveillance of the NBI team which promptly pounced on appellants after the pay-off and turn-over of the kidnap victims.

Appellant Mittu argues that the failure of the prosecution to identify the ransom money in court is tantamount to the prosecution's failure to prove the corpus delicti of the crime. We find this assigned error not only without factual basis but also legally infirm. The records show that the one hundred peso (P100) bills amounting to P27,000.00 were offered in evidence, and over the objections the defense, admitted by the court.[24] More importantly, the corpus delicti in the crime of kidnapping for ransom does not pertain to the ransom money itself. Corpus delicti is the fact of the commission of the crime which may be proved by the testimony of the witnesses who saw it.[25] The fact of kidnapping has been duly proved by the categorical testimonies of the prosecution witnesses who pointed to appellants as the perpetrators.

As to the proper penalty, Article 267 of the Revised Penal Code, prescribes the penalty of death for the crime of kidnapping for ransom. The death penalty, however, could not be imposed because the kidnapping for ransom took place on August 31, 1992, prior to the reimposition of the death penalty.[26] Hence, the proper penalty is the penalty next lower in degree which is reclusion perpetua, an indivisible penalty.[27]

WHEREFORE, the decision finding accused-appellants GLORIA MITTU y CINTO and GERVACIO SOLIDAD y LLANES guilty beyond reasonable doubt of the crime of kidnapping as defined and penalized under Article 267 of the Revised Penal Code, and sentencing them to reclusion perpetua with all the accessory penalties under the law, is AFFIRMED. Costs against appellants.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

[1] TSN, February 1, 1993, p. 21.

[2] Spelled as "Mary Jane" in the TSN, December 9, 1992; "Marygene" in the Sinumpaang Salaysay dated September 8, 1992, Records, pp. 28-29.

[3] Rollo, p. 130; Brief for Appellee, p. 3.

[4] Records, pp. 2-3.

[5] Records, p. 45.

[6] TSN, February 1, 1993, pp. 12-13.

[7] Id. at 19.

[8] TSN, February 9, 1993, pp. 3-4.

[9] Records, pp. 91-99.

[10] Rollo, pp. 87-88.

- [11] Rollo, p. 47.
- [12] *People v. Andres, et. al.*, G.R. No. 122735, September 25, 1998, pp. 13-14.
- [13] TSN, December 9, 1992, p. 9; TSN, January 6, 1993, pp. 21-22.
- [14] *People v. Sala*, G.R. Nos. 76340-41, July 28, 1999, p. 32.
- [15] *People v. Guiamil*, 277 SCRA 658, 669 (1997); *People v. Ramos*, 240 SCRA 191, 201 (1995)
- [16] Records, pp. 14-15; In her testimony dated February 8, 1993, p. 7, she said her husband was deported in 1989.
- [17] Article 8, second par. of the Revised Penal Code.
- [18] TSN, January 6, 1993, p. 21.
- [19] TSN, December 9, 1992, p. 4.
- [20] TSN, January 6, 1993, pp. 7-8.
- [21] TSN, December 9, 1992, p. 14; TSN, January 6, 1993, p. 9.
- [22] TSN, December 15, 1992, pp. 9-10.
- [23] TSN, January 6, 1993, pp. 10-12; Sworn Statement of Dhanwant Singh dated September 5, 1992, Records, pp. 12-13.
- [24] TSN, January 20, 1993, pp. 10-12; TSN, February 1, 1993, pp. 4-5; Exhibits "E," "E-1" to E-28."
- [25] *People v. Agsunod, Jr.*, G.R. No. 118331, May 3, 1999, p. 8; *People v. Kalim*, 81 Phil. 107, 111 (1948)
- [26] Republic Act No. 7659, otherwise known as the death penalty law, took effect on December 31, 1993.
- [27] *People v. Lucas*, 240 SCRA 66, 76 (1995)

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