

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARNULFO ASTORGA, ACCUSED-APPELLANT.

G.R. No. 110097. December 22, 1997

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Actual detention or “locking up” is the primary element of kidnapping. If the evidence does not adequately prove this element, the accused cannot be held liable for kidnapping. In the present case, the prosecution merely proved that appellant forcibly dragged the victim toward a place only he knew. There being no actual detention or confinement, the appellant may be convicted only of grave coercion.

The Case

The foregoing principle is used by this Court in resolving the appeal of Arnulfo Astorga challenging the March 31, 1993 Decision[1] of the Regional Trial Court of Tagum, Davao convicting him of kidnapping.

In an Information[2] dated March 24, 1992 and docketed as Criminal Case No. 8243, Appellant Arnulfo Astorga was charged with violation of Article 267, paragraph 4 of the Revised Penal Code, allegedly committed as follows:

“That on or about December 29, 1991 in the Municipality of Tagum, Province of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent and by means of force, did then and there wilfully, unlawfully and feloniously kidnap Yvonne Traya, a minor, 8 years of age, thereby depriving her of her liberty against her will, to the damage and prejudice of said offended party.”

Arraigned on February 24, 1993, Appellant Astorga, duly assisted by his counsel,[3] pleaded not guilty to the charge. Trial on the merits ensued. The dispositive portion of the assailed Decision[4] reads as follows:[5]

“WHEREFORE, premises considered, the guilt of accused ARNULFO ASTORGA having been proven beyond reasonable doubt, pursuant to Article 267 paragraph 4 of the Revised Penal Code, [he] is hereby sentenced to Reclusion Perpetua to be served at the National Penitentiary, [Muntinlupa].”

This appeal was filed directly with this Court in view of the penalty imposed.[6]

The Facts

Evidence for the Prosecution

The evidence for the prosecution was narrated in the Decision of the trial court, as follows:[7]

“Prosecution witnesses extant from their testimonies categorically assert that around 6:30 P.M. children of neighbors were near the store of the grandparents of Yvonne Traya.

Incidentally, there was a brown out that evening hence candle was used. The daughter and nephew of her aunt Bebeth were quarelling [sic] about the possession of a flashlight until the glass got lost. Accused or ‘Boy’

Astorga, went near and asked her daughter Jane what happened. Glenda or Bebeth grabbed her baby and went home.

Accused told Yvonne to go with him to buy candy. She did not answer and accused immediately grabbed and hold [sic] her hand. Accused placed his hand on her shoulder and covered his [sic] mouth.

Yvonne was only eight (8) years old on 29 December 1991 when she was brought by the accused allegedly to buy candy. Some stores were closed; others were opened. Accused never went inside the store to buy candy. Instead she [sic] held and dragged Yvonne until they went inside the compound of Maco Elementary School. They were walking inside the perimeter fence, [while the accused was] holding closely the child. Later, there being no person around the gate, accused brought her out to the highway and walked towards the direction of Tagum.

Yvonne stays with her grandparents and so with her parents at Sitio Binuangan, Maco. She asked him where they were going and accused answered that they were going home. She told him that they were already on the opposite direction because her grandparent's house is at Binuangan, while their route was going towards Tagum. Indeed, it was an opposite direction. Notwithstanding the assertion of Yvonne that they were on the wrong direction, accused placed his hands on her shoulder and dragged her. She cried and protested that she must go home. Accused did not heed her plea and while she was forced to walk she continued crying.

While accused and Yvonne were walking in the situation as described, somewhere near the Luponlupon bridge they met some group of men. Having met on their opposite direction, the two, were noticed by the group of youngsters. The group were bound to Maco Catholic Church to see a drama. Having met the two and as noticed by the group accused keep [sic] on looking back at them. The group were suspicious about the man who was bringing a child. The group decided to follow them. Accused hurriedly walked fast with Yvonne, and to prevent from being overtaken, he carried the victim and ran. They were chased. After a distance of half a kilometer they were overtaken.

Edwin Fabila declared that Jonathan, one of his companions with others in chasing, asked the accused where they were bound. He answered towards Binuangan. The group noticed something suspicious because their destination was already towards Tagum which is an opposite direction to Binuangan.

When asked who is the child, accused answered Traya. Jonathan one of those who chased knew the family. He got from the accused Yvonne who showed some resistance. Nevertheless, the group brought her home at Binuangan. Likewise, accused was also brought by them to Yvonne's home. The house of accused and Yvonne were five (5) meters away. Accused wanted to talk to the parents of the victim, but he was driven by her aunt and adviced [sic] to leave otherwise he will be stabbed by Yvonne's father. He left and never talked with the family."

Evidence for the Defense

The facts as viewed by the defense are presented in the Appellant's Brief,[8] dated December 10, 1993:

"The defense consisted of the testimonies of Arbeth Nalcot and the accused-appellant himself.

Arbeth Nalcot, a resident of Tagum, Davao, testified tht [sic] in the afternoon of December 29, 1991, she was at the Municipal Hall of Maco, Davao. She saw Astorga with two (2) companions. They were drinking Red Horse and were already drunk. When they finished drinking, she went with Astorga to the latter's house. (TSN, pp. 7-8 and 18, March 23, 1993). The house of Astorga is about 5 meters away from the house of the complainant[.] Yvonne came and asked money from the accused to buy candy. The two went together and she was left behind. She told them to hurry up. When they failed to return, she looked for them, but because it was already dark, she did not find them. She went back to the house of the accused. (Ibid., pp. 10-11).

Arnulfo Astorga, a resident of Maco, Davao and a gold panner testified that ‘at around 1:00 P.M. of December 29, 1991, he arrived at Maco from Tagum. Upon arrival his two friends, Vicvic and Anding were already at his home. They decided to drink, hence they proceeded to Adecor Cottage and drank two gallons of Tuba. At around 2:00 P.M., they were at the market place and drink beer grande. At 5:00 P.M. on the same day, the three proceeded near the municipal hall and with some persons, they again continued their drinking spree taking up Red Horse wine’. (Decision, p. 3).

At about 6:00 P.M., he was already drunk and he went home. Yvonne approached him and asked him money to buy candy. He told her that they will buy. They were not able to buy because the two stores where they went were already closed. (TSN, pp. 12 and 13, March 24, 1993). He took her for a stroll for his drunkenness [sic] to subside. They walked inside the school premises which was about 20 meters away from the second store. They went out of the school compound going towards Lupon-lupon because due to his drunkenness [sic], he thought it was the way towards their house. (Ibid, pp. 14-15) They reached Lupon-lupon bridge, crossed it twice thinking that it was the bridge near the municipal hall. After reaching Purok, they met several persons, he was asked were (sic) they were heading, and he answered to Tagumpay, but he was told that they [sic] way was already going to Tagum. He requested those persons to guide them to Tagumpay. They asked him who was the child he was carrying. He answered that it was Traya’s child. (Ibid, pp. 16-17). He was carrying the child because he was already crying as she already wanted to go home. The group of persons, men and women, guided them. Yvonne was being held by the women. They arrived at Yvonne’s house. He talked to the auntie of the child and told her that he would converse with her but he was advised to go away because the father of Yvonne might hack him. So he went home. (Ibid, pp. 18-19)”

The Trial Court’s Ruling

The trial court justified its finding of guilt with the following discussion:[9]

“Accused insisted [that] he was already drunk hence when he took Yvonne to buy candy, he strolled with her so that his drunkenness be subsided.

All these defense version was rebutted by Yvonne when she categorically declared that she did not smell liquor on the accused.

His defense of intoxication has no leg to stand [on].

Consider these facts.

Never did he present Vicvic and Anding to corroborate that he was intoxicated that afternoon and at dusk because of their drinking spree from 1:00 P.M. until 5:00 P.M.

He did not rebut the testimonies of Fabila that when they noticed his actions suspicious bringing with him a child, he walked fast dragging Yvonne. When he noticed that the group of youngsters were chasing him, he carried Yvonne and ran until they covered a distance of half a kilometer in chasing them, until they had overtaken him.

If he was that intoxicated, being under stupor and weakened by liquor, he could not ran that fast carrying Yvonne for half a kilometer.

Moreover, Yvonne categorically in straight forward testimony asserted that she did not smell liquor on the accused.

Accused, naivety [sic], that because of his intoxication, he got lost and was not able to proceed with Yvonne to Binuangan was a shallow afterthought.

It must be recalled that Yvonne told him they were already going at opposite direction from home. Instead they were heading towards Tagum. Accused did not change course.

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Again, not only force was employed in having Yvonne as captive by dragging, slapping her mouth and was holding her tight, but accused also used psychological means of scaring her about a red eyed ghost.

Through this means and efforts, Yvonne was deprived of her liberty and was by force prevented to go home to her parents.

On rebuttal, Yvonne denied that she asked money from accused to buy candy. She also denied as testified by defense witness Arbeth Nalcot that she went to the house of the accused on 29 December 1991 or on any other dates to ask money from Astorga for candy.

Defense evidence are [sic] punctured with unbelievability in his off tangent and incredible theory of drunkardness. His alleged being lost in the direction of Binuangan in spite of Yvonne's insistence and that of the person they met that he was on the wrong way considering that there are no criss crossing roads except the highway, is preposterous."

The Issues

Appellant imputes the following errors to the trial court:[10]

I

The trial court erred in giving credence to the testimonies of the prosecution's witnesses which were replete with inconsistencies and contradictions.

II

The trial court erred in convicting the appellant despite the fact that Yvonne Traya was not detained, locked-up or deprived of her liberty.

III

The trial court erred in convicting the appellant despite the fact that appellant had no motive to kidnap Yvonne Traya."

In the main, appellant challenges the credibility of the prosecution witnesses and the legal characterization of the acts imputed to him.

The Court's Ruling

The appeal is partly meritorious. Appellant should be convicted only of grave coercion, not kidnapping.

First Issue: Credibility of Prosecution Witnesses

Appellant contends that the testimonies of the prosecution witnesses are not worthy of credence because they were inconsistent and improbable. He cites the following:

"Glenda Chavez testified that she was present when the accused told Yvonne that they will buy candy. She sensed that the accused was drunk. (TSN, pp. 10-11, March 10, 1993). These testimonies were contradicted by Yvonne Traya when she declared that Glenda Chavez had already went [sic] inside their house when [the] accused told her that they will buy candy (TSN, pp. 10, March 16, 1993). She testified that she did not smell

liquor on the accused. (Decision, pp. 3-4)

Edwin Fabila testified that their group was able to overtake the accused at a distance of 2 fathoms and they [sic] him about 15 to 20 meters (TSN, p. 35, March 10, 1993). Arnel Fabila, on the other hand, testified that they overtook the accused after chasing him at a distance of half kilometer (TSN, p. 10, March 11, 1993).

Yvonne Traya testified that the accused could not ran fast carrying her because she was heavy. (TSN, p. 19, March 16, 1993). However, Arnel Fabila declared that they were able to overtake the accused only after chasing him at a distance of half kilometer (TSN, p. 10, March 11, 1993) meaning accused was running fast.”[11]

We hold, however, that inconsistencies in the testimonies of witnesses concerning minor details and collateral matters, like the examples cited by appellant, do not affect the substance, veracity or weight of their declarations. These inconsistencies reinforce, rather than weaken, their credibility, for different witnesses of startling events usually perceive things differently.[12] Indeed, the testimonies of the prosecution witnesses cannot be expected to be uniform to the last detail.

The testimony of Glenda Chavez that the accused was drunk at that time allegedly contradicted Yvonne’s statement that the accused did not smell of liquor. This does not detract from the credibility of either witness. Yvonne, then an eight-year-old child,[13] and her Aunt Glenda, then twenty-seven years old,[14] do not have the same experiences or level of maturity; hence, their perceptions of events differ. More important, whether the accused was drunk or not is an insignificant detail that does not substantially affect the testimonies of these witnesses.

Further, the discrepancy in the witnesses’ estimate of the distance covered by the men who chased appellant does not render their testimonies incredible.[15] Quite the contrary, such discrepancy shows their candor and sincerity, demonstrating that their testimonies were unrehearsed.[16] Yvonne testified that when appellant noticed the group of men following them, he carried her and ran. Yvonne’s testimony is in accord with that of Arnel Fabila -- a member of the group who chased appellant -- that they were able to overtake appellant after chasing him half a kilometer.[17]

Appellant’s challenge to the credibility of the prosecution account is also premised on the alleged failure of the trial court to consider the following points:[18]

“a) that the alleged victim admitted that she and the accused casually moved around the school premises, as if they were strolling; That when they were already in the highway, they were also walking openly and casually until they were met by a group of youngster[s].

Edwin Fabila, one of the prosecution’s witnesses, corroborated the fact that the two were walking casually along the highway when he first saw them;

b) That it is highly incredible that accused and the alleged victim will not be seen or noticed by the people travelling or those persons residing along the highway if it was true that the accused was dragging her and she was continuously crying from her residence up to a distance of more than one kilometer;

c) That the accused and the alleged victim were travelling at a very slow pace; a distance of barely a kilometer for a period of more than two hours;

d) That the accused was very drunk, having been drinking different kinds of intoxicating liquors from 1:00 p.m. to 5:00 p.m., causing him to be confused on which way they should take in going home.

e) That the accused was not hurt by the group of youngsters who allegedly rescued the child, nor was immediately brought to the municipal hall which was just near the house of the victim for the filing of the

necessary charge; this [sic] actuations only confirm the fact that the accused merely sought their help in guiding them home, and

f) That it took more than one week for the complainant and her parents to file the case at the Fiscal's Office."

We cannot sustain these contentions. The charge is not belied by the one-week delay in the filing of the complaint. It has been held that delay or vacillation in making a criminal accusation does not necessarily weaken the credibility of a witness where such delay is satisfactorily explained.[19] In the present case, one week was reasonable, considering that the victim was a resident of Binuangan and that the case was filed in Tagum, Davao.

Furthermore, the group whom appellant met did not hurt or bring him to the municipal hall, because they deemed it more urgent at the time to rescue Yvonne and to bring her home, which they actually did.[20] There is no settled rule on how a group of young men should react upon seeing a young girl snatched by an older man. Verily, violence is not the only normal reaction of young men who see a girl being forcibly taken.

Appellant's claim that he and Yvonne were merely strolling and walking casually does not negate the fact that Yvonne was deprived of her will. As noted by the trial court, appellant used physical force and psychological means in restraining her.[21] Despite her young age, Yvonne was able to clearly recount the events that transpired on that fateful night.

Moreover, there is no merit in the argument that the people travelling or living along the highway should have noticed appellant and Yvonne. The fact is that a group of men actually noticed and ultimately chased them.

All in all, appellant utterly fails to justify a departure from the long settled rule that the trial court's assessment of the credibility of witnesses should be accorded great respect on appeal.[22]

Second Issue: No Motive to "Kidnap"

Petitioner contends that "[t]here was no evidence presented to prove why the accused should kidnap Yvonne Traya." He submits that "the prosecution had failed to prove [any] motive to support the alleged kidnapping incident, thus, making the theory of the defense more credible and believable." [23]

The contention is insignificant. Motive is not an element of the crime. Furthermore, motive becomes material only when the evidence is circumstantial or inconclusive, and there is some doubt on whether a crime has been committed or whether the accused has committed it. Indeed, motive is totally irrelevant when ample direct evidence sustains the culpability of the accused beyond reasonable doubt.[24] In this case, the identity of appellant is not in question. He himself admitted having taken Yvonne to Maco Central Elementary School.

Third Issue: Kidnapping or Coercion?

Appellant contends that the prosecution failed to prove one essential element of kidnapping -- the fact of detention or the deprivation of liberty. The solicitor general counters that deprivation of liberty is not limited to imprisoning or placing the victim in an enclosure. Citing *People vs. Crisostomo*, [25] he argues:

'(T)he act proven in the record constitutes (kidnapping). It is no argument against this conclusion that the accused deprived the offended party of her liberty without placing her in an inclosure; because illegal detention, as defined and punished in our Code, may consist not only in imprisoning a person but also in detaining her or depriving her in any manner of her liberty.'" [26]

We agree with appellant's contention this time.

Under Article 267 of the Revised Penal Code, [27] the elements of kidnapping are as follows:

"1. That the offender is a private individual.

2. That he kidnaps or detains another, or in any other manner deprives the latter of his liberty.

3. That the act of detention or kidnapping must be illegal.

4. That in the commission of the offense, any of the following circumstances is present:

(a) That the kidnapping or detention lasts for more than five (5) days; or

(b) That it is committed simulating public authority; or

(c) That any serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made; or

(d) That the person kidnapped or detained is a minor, female, or a public officer.”

The Spanish version of Article 267 of the Revised Penal Code uses the terms “lockup” (encerrar) rather than “kidnap” (secuestrar or raptar). Lockup is included in the broader term of “detention,” which refers not only to the placing of a person in an enclosure which he cannot leave, but also to any other deprivation of liberty which does not necessarily involve locking up.[28] Likewise, the Revised Penal Code was originally approved and enacted in Spanish. Consequently, the Spanish text is controlling in cases of conflict with the English version, as provided in Section 15 of the Revised Administrative Code.[29]

A review of the events as narrated by the prosecution witnesses ineluctably shows the absence of “locking up.” Victim Yvonne Traya testified:[30]

Q. And after that what happened next?

A. When Auntie Bebeth went inside her house she was already bringing her child and bringing with her candle. And Arnulfo Astorga told me that we will buy candy, sir.

Q. And after that?

A. And while I was not answering the question he immediately grabbed me.

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Q. And after that, after he held your hand, what did he do next?

A. He placed his hands on my shoulder and also covering [sic] my mouth.

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Q. And after that what did he do next?

A. He brought me to the school.

Q. What school did Boy Astorga bring you? What is the name of the school?

A. Maco Central Elementary School.

Q. How far is Maco Central Elementary School from your house?

A. A little bit near.

Q. When Boy Astorga brought you to school, was it dark?

A. Yes, sir.

Q. Exactly where in Maco Elementary School did Boy Astorga bring you?

A. Inside the gate, sir.

Q. And once inside the gate what did he do to you?

A. We were going around the school?

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Q. Do you know why you were going around the school?

A. Yes, sir.

Q. Why, what did he do?

A. We were going around and when he saw that there is no person in the gate we passed at that gate.

Q. And where did he go after passing that gate?

A. Towards Lupon-lupon, sir.

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Q. What about you, did you talk to him?

A. I asked him where we were going and he told me that we are going home and I told him that this is not the way to our house, and we did not pass this way. (Witness gesturing a certain direction).

Q. And so when you said that that is not the way, when you said that is not the way because our house is towards Binuangan...

By the way, you said you were going to Lupon-lupon, do you know to what direction is going to Lupon-lupon, to what place is Lupon-lupon going to?

A. Yes, sir.

Q. Where?

A. Going to my place.

Q. Do you know the place where it was going? What is that place?

A. On the road going to Tagum.

Q. Now, what about your house, where is it going?

A. To Binuangan.

Q. And so when you ... what did he do next when you said that is not the place going to your house?

A. We continued walking and he also placed his hands on my shoulder and dragged me, sir.

Q. What about you, what did you do when he was dragging you?

A. I was crying, sir.

Q. Did you say any word to him when you were crying?

A. Yes, I told him that we are going home.

Q. And what did Boy Astorga say?

A. He told me that we will be going home, and told me not to make any noise because if I will make any noise we will be lost on our way.

Q. And so, what did you do?

A. I continued crying, sir.

Q. And after that, what happened?

A. We continued walking and we met a person and he asked Boy Astorga where we are going, sir.

Q. What did that man ask Boy Astorga?

A. The man asked Boy Astorga where are you going, and Boy Astorga answered, to Binuangan, but the man continued to say that this way is going to Tagum and not to Binuangan any more.

Q. What else did the man ask, if any?

A. I further said that we will already leave, and we will be the ones to go to Binuangan, and after that, Boy Astorga put me down because he urinated. So, at that instance, I ran, but, after he urinated, he already took hold of me not to run any more because there is a ghost.

Q. When you said you ran away after Boy Astorga left you when he urinated, where did you run?

A. Towards Binuangan, sir.

Q. Towards the direction of your house?

A. Yes, sir.

Q. And you were overtaken again by Boy Astorga?

A. Yes, sir.

Q. What did he do to you when you were overtaken by Boy Astorga?

A. He took hold of me again and he told me, he threatened me that there is [sic] a red eyes but I answered him that is [sic] not a red eyes of the ghost but that is a light coming from the vehicle.

Q. Now, what happened next?

A. He placed a necklace on me, sir.

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A. He was dragging me and I was crying when he was dragging me.

Q. While you were being dragged did you make any plea to him?

A. Yes, I told him that I will go home.

Q. And what did he say?

A. He said that we will go home but I know [sic] that that place we are [sic] heading to is [sic] not a way to our home but it is [sic] the opposite.

Q. So, what happened next?

A. He continued dragging me and after that we met plenty of persons and I shouted for help and at that instance, he slapped my mouth and after a few steps he already carried me.

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A. He continued walking and I also continued crying and I told him that I want to go home and he told me that we are heading towards home, but I told him that the way we are going to is not the way to our house.

Q. By the way, when you shouted [for] help, was it loud?

A. Yes, sir.

Q. So, what happened next?

A. He continued running and he stopped several vehicles but they did not stop, so, we just continued walking.

Q. After that, what happened next?

A. He moved closer to the banana plants. He looked back and he saw that persons were already chasing him and after that he carried me and ran."

From the foregoing, it is clear that the appellant and the victim were constantly on the move. They went to Maco Elementary School and strolled on the school grounds. When nobody was at the Luponlupon bridge, appellant took the victim to the highway leading to Tagum, Davao. At that time, Yvonne pleaded with appellant that she really wanted to go home to Binuangan, but appellant ignored her pleas and continued walking her toward the wrong direction. Later on, the group of Witness Arnel Fabila spotted them. Appellant Astorga carried the victim and ran, but Fabila's group chased and caught up with them.

This narration does not adequately establish actual confinement or restraint of the victim, which is the primary element of kidnapping.[31] Appellant's apparent intention was to take Yvonne against her will towards the direction of Tagum. Appellant's plan did not materialize, however, because Fabila's group chanced upon them. The evidence does not show that appellant wanted to detain Yvonne; much less, that he actually detained her. Appellant's forcible dragging of Yvonne to a place only he knew cannot be said to be an actual confinement or restriction on the person of Yvonne. There was no "lockup." Accordingly, appellant cannot be convicted of kidnapping under Article 267 of the Revised Penal Code.

Rather, the felony committed in this case is grave coercion under Article 286 of the same code. Grave coercion or coaccion grave has three elements: (a) that any person is prevented by another from doing something not prohibited by law, or compelled to do something against his or her will, be it right or wrong; (b) that the prevention or compulsion is effected by violence, either by material force or such a display of it as would produce intimidation and, consequently, control over the will of the offended party; and (c) that the person who restrains the will and liberty of another has no right to do so or, in other words, that the restraint is not made under authority of a law or in the exercise of any lawful right.[32] When appellant forcibly dragged and slapped Yvonne, he took away her right to go home to Binuangan. Appellant presented no justification for preventing Yvonne from going home, and we cannot find any.

The present case should be distinguished from *People vs. Rosemarie de la Cruz*. [33] Here, Appellant Astorga tricked Yvonne to go with him by telling her that they were going to buy candy. When Yvonne recognized the deception, she demanded that she be brought home, but appellant refused and instead dragged her toward the opposite direction against her will. While it is unclear whether Appellant Astorga intended to detain or "lock up" Yvonne, there is no question that he forced her to go with him against her will. In *Rosemarie de la Cruz*, Victim Whiazel voluntarily went with accused. Furthermore, the accused in that case failed to consummate the crime of kidnapping because of the timely intervention of the victim's neighbor. Thus, the Court held in that case:[34]

"In a prosecution for kidnapping, the intent of the accused to deprive the victim of the latter's liberty, in any manner, needs to be established by indubitable proof (*People vs. Puno*, 219 SCRA 85 [1993]). The acts held by the trial court, and maintained by the People, as consummating the crime of kidnapping in this case are those when accused-appellant held the victim's hand and refused to let go when the victim asked to go over to her neighbor, who by then already saw what was happening. This happened for only a very brief span of time and the evidentiary record shows that there were a good number of people present at that time, that a guard was stationed at the gate, and that there was at least a teacher nearby. The child could have just as easily shouted for help. While it does not take much to scare the wits out of a small child like Whiazel, under the attendant circumstances, we cannot say with certainty that she was indeed deprived of her liberty. It must further be noted that up to that brief moment when Cecilia saw them, and the child asked to be let go, the victim had gone with accused-appellant voluntarily. Without any further act reinforcing the inference that the victim may have been denied her liberty, even taking cognizance of her minority, the Court hesitates to find that kidnapping in the case at bar was consummated. While it is a well-entrenched rule that factual findings of trial courts, especially when they concern the appreciation of testimony of witnesses, are accorded great respect, by exception, when the judgment is based on a misapprehension of facts, as we perceive in the case at bar, the Court may choose to substitute its own findings (*People vs. Padua*, 215 SCRA 266 [1992])."

The Information, dated March 24, 1992, filed against Astorga contains sufficient allegations constituting grave coercion, the elements of which were sufficiently proved by the prosecution. Hence, a conviction for said crime is appropriate under Section 4, Rule 120 of the 1988 Rules on Criminal Procedure:

"Section 4. Judgment in case of variance between allegation and proof. -- When there is variance between the offense charged in the complaint or information, and that proved or established by the evidence, and the offenses as charged is included in or necessarily includes the offense proved, the accused shall be convicted of

the offense proved included in that which is charged, or of the offense charged included in that which is proved.”

At the time the felony was committed on December 29, 1991, the penalty imposed by law for grave coercion was arresto mayor and a fine not exceeding five hundred pesos.[35] The Indeterminate Sentence Law does not apply here because the maximum penalty does not exceed one year.[36] However, appellant has been imprisoned for more than six (6) months. He has more than served the penalty imposable for such an offense.[37]

WHEREFORE, the appeal is hereby PARTIALLY GRANTED. Appellant is CONVICTED only of grave coercion and is sentenced to six (6) months of arresto mayor. Unless he is being detained for any other valid cause, his IMMEDIATE RELEASE is herewith ordered, considering that he has more than served the maximum penalty imposable upon him. The director of prisons is DIRECTED to inform this Court, within five days from receipt of this Decision, of the actual date the appellant is released. No costs.

SO ORDERED.

Narvasa, C.J., (Chairman), Romero, Melo, and Francisco, JJ., concur.

[1] Penned by Judge Marcial L. Fernandez.

[2] Original Records, p. 1; rollo, p. 5.

[3] Atty. Fortunato M. Maranian; records, p. 34. The Public Attorney’s Office, however, filed Appellant’s Brief before this Court.

[4] Records, pp. 60-66; Rollo, pp. 13-19.

[5] Ibid., p. 66; Rollo, p. 19.

[6] The case was deemed submitted for resolution upon receipt by the Court on January 16, 1996 of the letter of the Bureau of Corrections dated January 11, 1996 confirming the confinement of the appellant at the New Bilibid Prisons.

[7] Decision, pp. 1-3; Rollo, pp. 13-15.

[8] At pp. 5-7; Rollo, pp. 40-42.

[9] Decision, pp. 3-7; Rollo, pp. 15-19.

[10] Appellant’s Brief, p. 1; Rollo, p. 36; original text in upper case.

[11] Ibid., pp. 8-9; Rollo, pp. 43-44.

[12] People vs. De Leon, 248 SCRA 609, 619, September 28, 1995; People vs. Buka, 205 SCRA 567, 583, January 30, 1992.

[13] TSN, March 16, 1993, p. 5.

[14] TSN, March 10, 1993, p. 5.

[15] People vs. Nicolas, 241 SCRA 67, 74, February 1, 1995 citing People vs. Payumo, G.R. No. 81761, July 2, 1990, 187 SCRA 64; People vs. Irene, 164 SCRA 121; August 5, 1988; People vs. Cariño, 165 SCRA 664, September 26, 1988; People vs. De Gracia, 18 SCRA 197, September 29, 1966; People vs. Muñoz, 166 SCRA 730, July 29, 1988; Cordial vs. People, 166 SCRA 17, September 27, 1988.

[16] People vs. Padilla, 242 SCRA 629, 642, March 23, 1995 citing People vs. Lase, 219 SCRA 584 [1993];

People vs. Jumamoy, 221 SCRA 333, April 7, 1993; People vs. Ducay, 225 SCRA 1, August 2, 1993; People vs. De Guzman, 188 SCRA 407, 411, August 7, 1990; People vs. Gadiana, 195 SCRA 211, March 13, 1991; People vs. Madriaga, 211 SCRA 698, 712, July 23, 1992; People vs. Custodio, 197 SCRA 538, May 27, 1991; People vs. Cabato, 160 SCRA 98, 107, April 15, 1988; People vs. Salufrania, 159 SCRA 401, 416, March 30, 1988.

[17] TSN, March 11, 1993, p. 10.

[18] Appellant's Brief, pp. 11-12; rollo, pp. 46-47.

[19] People vs. Dabon, 216 SCRA 656, 667, December 16, 1992; People vs. Banayo, 195 SCRA 543, March 22, 1991; People vs. Yambao, 193 SCRA 571, February 6, 1991; People vs. Santiago, 197 SCRA 556, May 28, 1991; People vs. Canciller, 206 SCRA 827, 831, March 4, 1992; People vs. Baysa, 172 SCRA 706, April 25, 1989.

[20] TSN, March 16, 1993, pp. 20-21.

[21] Decision, pp. 6-7; Rollo, pp. 18-19.

[22] People vs. Ramos, 240 SCRA 191, 201, January 18, 1995; People vs. Dolar, et al., 231 SCRA 414, 422-423, March 24, 1994; People vs. De Guzman, 216 SCRA 754, 759-760, December 21, 1992.

[23] Appellant's Brief, p. 13; rollo, p. 48.

[24] People vs. Sta. Agata, 244 SCRA 677, 684, June 1, 1995 citing People vs. Cayetano, 223 SCRA 770; People vs. Magpayo, 226 SCRA 13; People vs. Joya, 227 SCRA 9.

[25] 46 Phil. 775 (1923).

[26] Appellee's Brief, p. 13; rollo, p. 81.

[27] Prior to its amendment by Section 8, RA No. 7659, effective December 31, 1993. The crime happened in 1991.

[28] Aquino, The Revised Penal Code, 1988 ed., Vol. III, pp. 1-2 citing Groizard and Cuello Calon.

[29] Aquino, The Revised Penal Code, 1988 ed., Vol. I, pp. 3-4, citing People vs. Manaba, 58 Phil. 665; People vs. Mesias, 65 Phil. 267; People vs. Yabut, 58 Phil. 479; People vs. Balubar, 60 Phil. 698; People vs. Abilong, 82 Phil. 172; Cadiz, 1 ACR and other cases; Reyes, The Revised Penal Code, Criminal Law, Twelfth Edition, 1981, Book One, pp. 17-18.

[30] TSN, March 16, 1993, pp. 10-18.

[31] People vs. Godoy, 250 SCRA 676, 728, December 6, 1995; People vs. Cua, 232 SCRA 507, 516, May 25, 1994; People vs. Puno, 219 SCRA 85, 93-94; February 17, 1993; United States vs. Ancheta, 1 Phil. 165 (1902); United States vs. De Leon, 1 Phil. 163 (1902); People vs. Remalate, 92 Phil. 48 (1952); People vs. Guerrero, 103 Phil. 1136 (1958); People vs. Ong, et al., 62 SCRA 174, January 30, 1975; People vs. Ty Sui Wong, et al., 83 SCRA 125, May 12, 1978; People vs. Jimenez, et al., 105 SCRA 721, July 24, 1981.

[32] Aquino, supra, pp. 66-67.

[33] G.R. No. 120988, August 11, 1997, per Melo, J.

[34] At pp. 7-8.

[35] Article 286 was amended by R.A. No. 7890 on February 20, 1995.

[36] Section 2 of Indeterminate Sentence Law (Act No. 4103 as amended by Act No. 4225).

[37] Article 29 of the Revised Penal Code pertinently provides:

“Article 29. Period of preventive imprisonment deducted from term of imprisonment. -- Offenders or accused who have undergone preventive imprisonment shall be credited in the service of their sentence consisting of deprivation of liberty, with the full time during which they have undergone preventive imprisonment if the detention prisoner agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners, except in the following cases:

1. When they are recidivists, or have been convicted previously twice or more times of any crime; and
2. When upon being summoned for the execution of their sentence they have failed to surrender voluntarily.

xxx xxx xxx

Whenever an accused has undergone preventive imprisonment for a period equal to or more than the possible maximum imprisonment of the offense charged to which he may be sentenced and his case is not yet terminated, he shall be released immediately without prejudice to the continuation of the trial thereof or the proceeding on appeal, if the same is under review. In case the maximum penalty to which the accused may be sentenced is destierro, he shall be released after thirty (30) days of preventive imprisonment. (As amended by RA No. 6127, and further amended by EO No. 214, prom. July 10, 1987).”

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