

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOCELYN ACBANGIN Y RADAM, ACCUSED-APPELLANT.

G.R. No. 117216. August 09, 2000

Ponente: PARDO, J.

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PARDO, J.:

The case is an appeal from the decision of the Regional Trial Court, Branch 19, Bacoor, Cavite,[1] finding accused-appellant, Jocelyn Daria Radam Acbangin (hereinafter referred to as "Jocelyn") guilty beyond reasonable doubt of kidnapping and serious illegal detention, and sentencing her to reclusion perpetua. In the same decision, the court acquitted accused Juanita Niu (hereinafter referred to as "Niu").[2]

We state the facts.

On April 23, 1991, at around seven o'clock in the evening, Danilo Acbangin was worried when his daughter, four-year old Sweet Grace Acbangin (hereinafter referred to as "Sweet") did not come home.[3]

Sweet's father, Danilo, testified that he last saw Sweet on the same day, at six o'clock in the evening, playing in Jocelyn's house.[4] Jocelyn was the common law wife of his second cousin, Remy Acbangin.[5]

Danilo went to Jocelyn's house and looked for Sweet. There was no one there. [6]

At around seven fifteen in the evening, Danilo reported to the Barangay and the Bacoor Police Station that Sweet was missing.[7]

On the same day at eleven o'clock in the evening, Jocelyn arrived at Danilo's house without Sweet. When asked where the child was, Jocelyn denied knowing of the child's whereabouts.

On April 24, 1991, Danilo made a second report to the Bacoor Police Station, stating that Jocelyn returned without the child.[8]

On April 24, 1991, Jocelyn informed Danilo's mother-in-law that Sweet was in Niu's house in Tondo, Manila.[9]9

On April 25, 1991, the case was reported to the Manila police.[10]

Jocelyn accompanied Danilo, Sweet's grandfather and police officers to Niu's house.[11] Jocelyn personally knew Niu and was first to enter the house.[12] Jocelyn went up to the second floor of the house. She went down with Niu and Sweet.[13] Sweet was well-dressed and smiling.[14] She ran to her father and embraced him. Niu then voluntarily turned Sweet over to her father and the policemen.[15]

Pat. Manuel Lao testified that when he asked Niu how she came to have possession of the child, she answered that a certain "Helen" brought the child to her. This "Helen" could not be found.[16]

However, on the witness stand, Niu told a different story. Niu narrated that it was Jocelyn who brought Sweet to her house on April 23, 1991. Jocelyn told Niu that she was going to leave the child and was going to return to get

her.[17]

On April 26, 1991, a complaint for kidnapping a minor[18] was filed against accused appellant Jocelyn Acbangin, accused Niu, Helen Doe and Juana Doe with the Municipal Trial Court, Bacoor, Cavite, to wit:[19]

"That on the 23rd day of April 1991 (Tuesday) at about 7:00 P. M. at Brgy. San Nicolas, in the municipality of Bacoor, the above-named accused, conspiring, confederating and mutually helping each other, xxxxxxxxxxxxxxxxxxxx being a private person (sic), kidnapped and deprived one SWEET JOCELYN ACBANGIN, a xxxx four years old child (sic) without any justifiable cause which is prohibited by law to the damages (sic) and prejudice of said SWEET JOCELYN ACBANGIN and her relatives.

"CONTRARY TO LAW."

On September 2, 1991, an information for kidnapping a minor was filed with the Regional Trial Court, Bacoor, Cavite[20] against Niu, Jocelyn and two Mary Does, to wit:[21]

"That on or about the 23rd day of April 1991 at around 7:00 o'clock in the evening, at Barangay San Nicolas, Municipality of Bacoor, Province of Cavite, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping and aiding one another, the above-named accused Jocelyn Acbangin, being then the auntie of Sweet Grace Acbangin, and being then private individuals, did, then and there, willfully, unlawfully and feloniously, take, kidnap and deprive said Sweet Grace Acbangin of her liberty and failed to return her to the custody of her parents, thereby causing her damage and prejudice.

"CONTRARY TO LAW."

On May 26, 1992, accused Niu and accused-appellant Jocelyn were arraigned. Both pleaded "not guilty." [22]

At the trial, Jocelyn testified that: For six years, she was employed as Niu's housemaid. While working for Niu, she took care of several children of different ages. The number of children in Niu's household would vary from seven to fourteen. According to Jocelyn, Niu was in the business of selling children. On April 23, 1993, Sweet was brought to Niu's house by a certain Celia and Helen. Jocelyn recognized Sweet as her niece. Upon seeing Sweet, she decided to go to Sweet's parents in Bacoor, Cavite. She then accompanied Sweet's father, along with some policemen to Niu's house.[23]

On June 22, 1994, the trial court rendered the appealed decision. We quote its fallo:[24]

"WHEREFORE, premises considered, only accused Jocelyn Acbangin is hereby found Guilty Beyond Reasonable Doubt of the crime of Kidnapping and Serious Illegal Detention punishable under Article 267 of the Revised Penal Code with the imposable penalty of Reclusion Perpetua to Death. Thus, she should suffer the prison term of Reclusion Perpetua.

"This Court finds the above penalty to be too harsh to be imposed against 23-year old and third year high school student-accused Jocelyn Acbangin. The evidence on record had not clearly indicated that Danilo Acbangin and minor-victim Sweet Grace Acbangin during the latter's two day stay in the house of Juanita Niu has been emotionally or physically injured. The degree of malicious intent of accused Jocelyn does not warrant the excessive penalty of Reclusion Perpetua.

"In connection with Article 5 of the Revised Penal Code, this Court recommends to His Excellency, the President of the Philippines, thru the Secretary of Justice, that executive clemency be extended to accused Jocelyn Acbangin as a means of mitigating the undue harshness of the penalty herein imposed.

"Also send a copy of this Decision to the Provincial Warden of Trece Martires City for his information and guidance.

"SO ORDERED." [25]

On August 8, 1994, accused-appellant filed a notice of appeal with the trial court. [26]

Accused-appellant contends that her guilt was not proven beyond reasonable doubt. [27]

We deny the appeal.

Jocelyn knew for two days where Sweet was. In fact, it was she who brought Sweet to Niu's house. The fact that she later on felt remorse for taking Sweet to Tondo, Manila and showed Sweet's father where the child was, cannot absolve her. At that point, the crime was consummated. Jocelyn's repentance and desistance came too late.

The elements of serious illegal detention are: [28]

"(1) that the offender is a private individual;

"(2) that he kidnaps or detains another, or in any manner deprives the latter of his liberty;

"(3) that the act of detention or kidnapping must be illegal;

"(4) in the commission of the offense any of the following circumstances are present:

"(a) that the kidnapping or detention lasts for more than 5 days;

"(b) that it is committed simulating public authority;

"(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 is a minor, female or public officer. (underscoring ours)"

In the case at bar, all the aforementioned requisites were present and were proven beyond reasonable doubt.

In cases of kidnapping, if the person detained is a child, the question is whether there was actual deprivation of the child's liberty, and whether it was the intention of the accused to deprive the parents of the custody of the child. [29]

Sweet was deprived of her liberty. True, she was treated well. However, there is still kidnapping. For there to be kidnapping, it is not necessary that the victim be placed in an enclosure. It is enough that the victim is restrained from going home. Given Sweet's tender age, when Jocelyn left her in Niu's house, at a distant place in Tondo, Manila, unknown to her, she deprived Sweet of the freedom to leave the house at will. It is not necessary that the detention be prolonged. [30]

The intention to deprive Sweet's parents of her custody is indicated by Jocelyn's hesitation for two days to disclose Sweet's whereabouts and more so by her actual taking of the child. Jocelyn's motive at this point is not relevant. It is not an element of the crime.

Sweet's testimony, stating that it was Jocelyn who brought her to Niu's house, should not be disregarded. Section 20, Rule 134 of the Revised Rules of Court provides that, "All persons who can perceive, and perceiving, can make known their perception to others may be witnesses." A witness' young age will not deter him or her from being a competent and credible witness. To be a competent child witness, the following criteria must be met: (a) capacity of observation; (b) capacity of recollection and (c) capacity of communication. [31] All these were met by Sweet. Besides, the trial court's assessment of Sweet's credibility should be upheld and respected since its assessment was not tainted with arbitrariness or oversight of any material fact. [32]

Burdensome and harsh as it may be, the trial court correctly imposed the penalty of reclusion perpetua. True, Sweet was not maltreated. True also, that at the time of the crime, Jocelyn was only 21 years old. However, the crime as defined by law was committed. *Dura lex sed lex*. The law may be harsh, but it is the law.

We agree with the trial court that a strict application of Art. 267 of the Revised Penal Code would be too harsh, taking into consideration the minimal injury caused by the offense. We agree that the accused be recommended to the Chief Executive for the possible exercise of his pardoning power.

WHEREFORE, we AFFIRM in toto the decision of the Regional Trial Court, Branch 19, Bacoar, Cavite, dated June 22, 1994, finding accused appellant JOCELYN RADAM ACBANGIN guilty beyond reasonable doubt of kidnapping and serious illegal detention defined and penalized under Article 267 of the Revised Penal Code, and sentencing her to reclusion perpetua, with all the accessory penalties of the law and to pay the costs.

Pursuant to Article 5 of the Revised Penal Code,[33] we recommend to His Excellency, the President of the Philippines, through the Secretary of Justice, the grant to accused-appellant JOCELYN RADAM ACBANGIN of either a commutation of sentence to an indeterminate penalty of prision correccional to prision mayor or executive clemency, considering that she has been in preventive detention since April 29, 1991.[34] Let a copy of this decision be forwarded to His Excellency, the President of the Philippines, through the Secretary of Justice.

No costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Ynares-Santiago, JJ., concur.

[1] In Criminal Case No. B-91-453, dated June 22, 1994, Judge Edelwina C. Pastoral, presiding.

[2] Rollo, pp. 14-23.

[3] TSN, July 13, 1992, pp. 3-6.

[4] Accused-appellants house is three houses away from Danilo Acbangins house. Danilo Acbangins residence was at 238 San Nicolas, Bacoar, Cavite (TSN, August 24, 1992, p.3).

[5] TSN, July 13, 1992, p. 7.

[6] TSN, July 22, 1992, pp. 2-6.

[7] TSN, August 24, 1992, pp. 6-8.

[8] Ibid., p. 9.

[9] TSN, July 13, 1992, pp. 6-11.

[10] TSN, August 24, 1992, p. 11.

[11] Narra St., Tondo, Manila.

[12] Jocelyn was employed as Nius housemaid from April 1982 to June 1986, and from 1988 to November 12, 1990 (TSN, September 21, 1993, pp. 4-5).

[13] TSN, July 6, 1992, pp. 2-6.

[14] TSN, August 24, 1992, p. 13.

[15] Ibid. p. 12.

[16] TSN, July 13, 1992, pp. 6-7.

[17] TSN, September 21, 1993, pp. 5-7.

[18] Filed by PAT-PNP Investigator Carlito P. Gener.

[19] Rollo, p. 2; Regional Trial Court Record, p. 2.

[20] The information was filed by 1st Asst. Provincial Prosecutor Diego C. Agustin.

The information was approved by Provincial Prosecutor Herminio P. Gervacio.

[21] Regional Trial Court Record, p. 22.

[22] Regional Trial Court Record, p. 23.

[23] TSN, October 4, 1993, pp. 1-36.

[24] Rollo, pp. 22-23

[25] RTC Decision, Rollo, pp. 173-182.

[26] Rollo, p. 24.

[27] Ibid., p. 65.

[28] People v. Fajardo, G.R. Nos. 105954-55, September 28, 1999.

[29] People v. Borromeo, G.R. No. 130843, January 27, 2000.

[30] People v. Pavillare, G.R. No. 129970, April 5, 2000.

[31] People v. Galas, G.R. No. 114007, September 24, 1996; People v. Nang, G.R. No. 107799, April 15, 1998.

[32] People v. Garchitorena, G.R. No. 131357, April 12, 2000.

[33] Article 5, Revised of the Penal Code, xxx In the same way the court shall submit to the Chief Executive, through the Department of Justice, such statement as may be deemed proper, without suspending the execution of the sentence, when a strict enforcement of the provisions of this Code would result in the imposition of a clearly excessive penalty, taking into consideration the degree of malice and the injury caused by the offense.

[34] Unable to post bail, she was confined initially at the Bacoar, Cavite Police Station, per Order of Commitment, RTC Record, p. 7; in June 1991, she was transferred to the Provincial Jail, Trece Martires City, Cavite (RTC Record, p. 16), until January 17, 1995, when she was committed to the Correctional Institution for Women, per letter of the Officer In Charge to the Clerk of Court, Third Division, Supreme Court, Rollo, p. 28.

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