

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EFREN L. HERNANDEZ, DIONISIO S. JACOB @ JOE, CELSO MANSUER @ BOY DAMO, JIMMY BOLANTE @ BAKULAW, (AT LARGE), ACCUSED, ALFREDO T...

G.R. No. 117624. December 04, 1997

Ponente: PUNO, J.

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PUNO, J.:

Fortune Magazine (March 1997 issue) described the country as the "Kidnapping Capital of Asia." The advent of the 90's saw a sharp increase in the incidence of kidnapping cases in the country. It has replaced bank robbery as a more lucrative criminal enterprise. The family of the victim, usually from the opulent Chinese community, readily pays the ransom and is sworn to silence by the threat of death of their loved one.

One of the earlier publicized kidnapping incidents is the abduction of six-year old SHARLEEN TAN, a preparatory student at the Immaculate Concepcion Academy in Greenhills, San Juan, Metro Manila. Charged with Kidnapping for Ransom were seven (7) accused, namely: CELSO MANSUER @ Boy Damo, JIMMY BOLANTE @ Bakulaw, EFREN L. HERNANDEZ, DIONISIO S. JACOB @ Joe, ALFREDO T. TUMANENG @ Fred, JOSE L. LORENZO @ Jomar and MARLON FAMODULAN.

The Information [1] against them reads:

"That on or about January 21, 1992, in the Municipality of San Juan, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, being then private individuals, conspiring, confederating, and mutually helping one another, for the purpose of extorting money as ransom from Jacinto and Shirley Tan and their family, did then and there, wilfully, unlawfully, and feloniously, kidnap, carry away, detained (sic), and deprived (sic) Sharleen Tan, a minor, of her liberty, without authority of law, with a threat to kill said Sharleen Tan if the desired amount of money could not be given, and against the will and consent of Sharleen Tan."

"CONTRARY TO LAW."

Only EFREN HERNANDEZ, DIONISIO JACOB, MARLON FAMODULAN, ALFREDO TUMANENG and JOSE LORENZO were captured by the operatives of the Central Intelligence Service (CIS). Accused CELSO MANSUER and JIMMY BOLANTE have evaded arrest and remain at large.

Upon arraignment, the five (5) accused pled "not guilty." During the pendency of the trial, accused HERNANDEZ and JACOB escaped from detention. They were tried in absentia.

The prosecution evidence consists of the testimonies of EVA STA. CRUZ, the victim's nanny, JACINTO TAN, the victim's father, and the CIS investigators who picked up the suspects and before whom they executed their extrajudicial confessions. The participation of each of the accused was established mainly from their extrajudicial confessions which were adduced in evidence.

The record shows that SHARLEEN TAN is the daughter of spouses Jacinto and Shirley Tan and granddaughter of Ramona Cheng. Sharleen lived with her family at #60 Polk Street, North Greenhills, San Juan, Metro Manila. She attended preparatory school at the nearby Immaculate Concepcion Academy in West Greenhills, San Juan.

EVA STA. CRUZ is the housemaid of Ramona Cheng and also acted as Sharleen's nanny. Eva, together with the driver, accused JOSE LORENZO, @ Jomar, would bring Sharleen to school in the morning and return in the afternoon to pick her up.

On January 21, 1992, at about 3:30 p.m., accused Lorenzo drove Eva to the Immaculate Concepcion Academy to get Sharleen. He parked the car in the school's parking lot and Eva alighted to get Sharleen. Minutes later, Eva, with Sharleen in tow, returned to the car. Sharleen took the backseat, behind the driver. While Eva was starting to board beside Sharleen, an unidentified man pushed her into the car and slumped beside her. The man held down Eva's nape close to the car's floor, and warned her: "Huwag kang sisigaw at kapag sumigaw ka ay babarilin ka namin." (Don't shout, otherwise, we'll shoot you). Eva heard the front door of the car open and felt another man take the front seat, beside the driver. Eva also felt the man in the front seat take Sharleen and cuddle her in his lap. She did not see their features for her nape was held down by the man beside her but she heard their voices. The car then sped away.

On the way, their driver, accused Lorenzo, asked the two men: "Saan tayo?" (Where are we going?). One of the men replied: "Sa dati." (The usual place).

After 20 minutes on the road, one of the men instructed the driver, accused Lorenzo, thus: "Bumusina ka ng tatlo(ng beses)." (Blow the horn thrice). The car slowed down and Eva heard somebody open an iron gate. The car stopped and allowed Sharleen and the man in the front seat to alight. The car again sped away.

After a couple of minutes, the man still holding Eva's head down assured her release so she could inform her employer of Sharleen's ransom. Eva was allowed to alight at an unfamiliar place.

Seeing a telephone lineman, she asked where she was and was told she was in Paterno Street, San Juan. She informed the lineman about the kidnapping and was allowed to use a phone to call her employer. Eva called up her employer's house, recounted the incident and asked that she be picked up at Paterno Street. Minutes later, Samson Cheng, Sharleen's uncle, fetched Eva and brought her back to the Tan residence.[2]

The kidnapping threw the parents and relatives of Sharleen in total panic despite the presence of the police. JACINTO TAN, Sharleen's father, received a call from one of the kidnappers demanding a 10M ransom. They haggled in the amount and reached no agreement. The police then left Tan's house.[3]

Thereafter, several phone calls were made by the kidnappers to the Tan family. Jacinto haggled for the payment of a lower ransom. He pleaded he be allowed to pay P409,000.00. After further negotiations, the kidnappers agreed to receive the reduced amount. They instructed Jacinto to leave the money in a garbage can in front of the Town and Country Lodge in Old Sta. Mesa, Manila. Jacinto complied and then returned to his house to await the call of the kidnappers on Sharleen's release. None came that night.[4]

A week later, or on January 28, 1992, the kidnappers again called up the Tan residence. They informed Jacinto that they had released Sharleen and left her at the Perpetual Help Hospital in España, Manila. Jacinto rushed to the hospital and found Sharleen who was extremely traumatized by the incident. Jacinto himself suffered from nervous breakdown.[5]

An intensive manhunt was launched to capture the kidnappers of Sharleen. CIS Chief Inspector Major Ruben Zacarias organized two (2) teams to conduct the hunt. The team composed of SPO3 Gregorio Cuachon and SPO1

Danilo T. Salas and headed by Inspector Warlito Platon was directed to verify the information that Sharleen was hidden by accused Alfredo Tumaneng in a house at #15 Kennedy Street, Road 20, Project 8, Quezon City. Officers Cuachon and Salas conducted a discreet surveillance of the area and were able to verify the information. They also found out that accused Tumaneng had left the safehouse and has transferred to Mayupis, Malabon, Metro Manila.

Seven (7) suspects were identified by the CIS. Five of them, namely, Hernandez, Tumaneng, Lorenzo, Jacob and Famodulan, were captured by the CIS operatives. Each executed an extrajudicial confession which became the basis of the criminal charge against them.

The first to be apprehended was accused EFREN HERNANDEZ. He was arrested on February 5, 1992 by the Central Police District (CPD) in connection with another crime. When the CPD learned that Hernandez was a suspect in the Tan kidnapping case, he was turned over to the CIS for investigation.

In the CIS, Hernandez waived his rights to remain silent and to counsel in the presence of one Atty. Solomon Villanueva and voluntarily admitted his participation in the crime. In his extrajudicial confession (Exhibit "G-3"), [6] dated February 6, 1992, Hernandez confirmed that in January 1992, his friend, accused Lorenzo, asked him to join his group to kidnap Sharleen Tan. He revealed their individual participation. He stated that accused Bolante and Jacob were the ones who abducted Sharleen. Accused Mansuer drove the taxi carrying Bolante, Jacob and Sharleen. They dropped off Sharleen at a house in John Kennedy Street, Project 8, Quezon City. It was Jacob who got in touch with Sharleen's family to demand for ransom. Mansuer and Jacob were the ones who picked up the ransom. After three (3) days, Jacob gave Hernandez 15,000.00 as his share of the ransom money at Isetann, Manila. The confession of Hernandez led to the apprehension of the other accused.[7]

The next to fall was accused ALFREDO TUMANENG. SPO3 GREGORIO CUACHON of the CIS Special Investigation Branch was part of the team which checked the information given by suspect Hernandez that Sharleen was brought to a house at #15 Kennedy Street, Quezon City. SPO3 CUACHON and SPO1 DANILO SALAS conducted a discreet surveillance of the area. They learned from the neighbors that Tumaneng used to live in said house but has transferred residence in Mayupis, Malabon, Metro Manila. They reported their findings to Major Zacarias, Chief Inspector of the CISC, who instructed them to verify if the suspect was still in Malabon. Cuachon and Salas traced Tumaneng in a rented apartment. They invited Tumaneng to their office to shed light on the kidnapping case.[8]

At the CIS office, Tumaneng was investigated by SGT. ROMEO CUDIA.[9] Informed of his constitutional rights, Tumaneng opted to waive his right to counsel. Even then, Sgt. Cudia called up Atty. Solomon Villanueva, a retired member of the Judge Advocate's Office (JAGO) and has since been engaged in private practice, to assist Tumaneng in waiving his right to counsel. Tumaneng accepted Atty. Villanueva as his counsel. He then executed his extrajudicial confession in the presence of Atty. Villanueva.[10]

In his confession (Exhibit "A"),[11] dated February 6, 1992, Tumaneng revealed that he had known accused Hernandez for about a year prior to the kidnapping. He divulged that on January 21, 1992, Sharleen was brought to his house at #15 Kennedy Street, Road 20, Project 8, Quezon City, by accused Hernandez and Bolante, aboard the latter's taxi. He fed Sharleen and attended to her needs for five (5) days. On January 26, 1992, at about 8:00 a.m., Hernandez phoned him and promised to pick up Sharleen that day. Tumaneng waited but Hernandez did not show up. He waited until the next day, January 27, 1992 but there was no word from Hernandez.

In the morning of January 28, 1992, Bolante dropped by Tumaneng's house. Tumaneng informed Bolante about his plan to release Sharleen and leave her at the Perpetual Hospital where she would be safe. Bolante agreed. At about 8:00 p.m. that night, they took Sharleen and left her at the third floor of the Perpetual Hospital. Tumaneng

proceeded to Sta. Mesa where he instructed Sharleen's parents to pick her up at the Perpetual Hospital.

In his confession, Tumaneng revealed that at the beginning of their plan, he did not know the other men involved in the plan to abduct Sharleen Tan. Later on, however, accused Hernandez identified to him the other conspirators as Bolante, Mansuer, Lorenzo and Jacob. Tumaneng came to know them by face. He denied receiving any part of the ransom money.

The next to fall in the hands of the CIS was accused driver JOSE "Jomar" LORENZO. The CIS received information that accused Lorenzo accompanied the wife of accused Hernandez to Crame to visit Hernandez who was then already detained at the CIS office. However, Lorenzo was found by Major Ruben Zacarias waiting in front of the Crame gate.

Lorenzo disclosed to Major Zacarias that he was contemplating on surrendering himself. He was invited to the CIS office where he gave a statement. Atty. Solomon Villanueva was called at the CIS office to assist Lorenzo during the investigation. Like the previous suspects, Lorenzo waived his right to counsel and agreed to execute an extrajudicial confession in the presence of Atty. Villanueva (Exhibit "F").[12]

In his extrajudicial confession (Exhibit "F"),[13] dated February 7, 1992, Lorenzo admitted his participation in the abduction of Sharleen but claimed he was not privy to the place where Sharleen was hidden. He stayed with accused Mansuer at the latter's house in San Andres Bukid, Manila, after the abduction. He then lost contact with his co-conspirators. He got scared when he read in the newspapers about the capture of accused Hernandez. He decided to surrender to the authorities. He stated that he did not know that ransom money was demanded from Sharleen's parents. Lorenzo also denied receiving any share of the ransom money. In his statement, he declared his intention to cooperate with the CIS so that all his co-conspirators would be captured, especially the ones who escaped with the ransom money. [14]

On February 8, 1992, accused DIONISIO JACOB @ Joe was captured by the CIS operatives. SPO1 HERMES MONTILLA recounted [15] that on said date, he was directed by Major Zacarias to join the team of Senior Inspector Platon and SPO1 Danilo Salas in going to San Pablo City to apprehend accused Jacob. They were accompanied by accused Hernandez.

The CIS team asked the help of the 266th PNP Company in locating Jacob in San Pablo City. They proceeded to the Office of Senior Inspector Esguerra, Station Commander of San Pablo City. From the description given by Hernandez, Inspector Esguerra was able to trace Jacob's residence in barangay San Cristobal, San Pablo City. Upon inquiry, the police were informed by a relative of Jacob that he was not around. Some of the CIS operatives, however, noticed a man's figure moving inside a nearby hut. They approached the hut, saw a man hiding under a wooden bed who attempted to flee but failed. Accused Hernandez identified the man as accused Jacob.

The police interrogated Jacob about his share of the ransom money. Jacob confirmed Hernandez' revelation that he had a share in the ransom. However, only P8,000.00 was left for he had already bought a colored television and a karaoke system. Jacob and his common-law wife, Margarita Albiso, were invited to Manila by the CIS for further investigation. At the CIS office, Jacob executed an extrajudicial confession and waived his right to counsel in the presence of Atty. Solomon Villanueva and his common-law wife Margarita Albiso. [16]

In his confession (Exhibit "D"), [17] dated February 8, 1992, Jacob admitted his involvement in the kidnapping of Sharleen. He named Mansuer, Hernandez, Bolante and Tumaneng as his accomplices. He clarified that he did not participate in the actual abduction. Bolante informed him that they had kidnapped a child. Bolante requested him to negotiate with Sharleen's parents for the payment of the ransom. Jacob acceded and, using the codename "Papa Charlie," called up Sharleen's parents to demand payment of the ransom. They initially demanded a P2M ransom

but Sharleen's father pled that it be reduced to P409,000.00. Jacob made several phone calls to the Tan family during the negotiation for payment of the ransom. After haggling, accused Mansuer and Hernandez acceded to the reduced ransom. Sharleen's family paid and left it in Sta. Mesa. They requested a boy to pick up the money. Jacob's share of the ransom was 50,000.00. He confirmed that Sharleen was in their custody for more than a week.

Finally, on February 8, 1992, at about 11:00 p.m., the last suspect, accused MARLON FAMODULAN, was invited by the CIS operatives to shed light on the kidnapping of Sharleen Tan. He executed a sworn statement (Exhibit "E") where he waived his rights to remain silent and to counsel in the presence of Atty. Solomon Villanueva.

In his extrajudicial confession (Exhibit "E"),[18] dated February 10, 1992, Famodulan declared that he did not know Sharleen Tan and her parents. He came to know accused Hernandez in 1985 through his brother Romeo Famodulan. In January 1992, Hernandez asked him to pick up some money in a trash can, near a Meralco post in front of the Town and Country Lodge. He asked why the money was in that site. He was told just to get the money. He was promised a reward if he did the errand. He did as he was told and turned over the money to accused Hernandez, Mansuer and Jacob. Hernandez then handed him his reward. Famodulan insisted he was not aware about the kidnapping incident. He stated that he did not know that the money he took in the trash can represented the ransom paid by the family of Sharleen.

For their defense, appellants simply denied complicity in the kidnapping of Sharleen. Appellants LORENZO and TUMANENG claimed that their extrajudicial confessions were elicited under duress. Appellant FAMODULAN maintained that he merely picked up the money as directed by accused Hernandez.

On the stand, appellant LORENZO admitted that he was employed as collector and driver in the business of the Tan family. On January 21, 1992, at about 3:30 p.m., he was asked by Shirley Tan to pick up her daughter Sharleen in school. He and Sharleen's nanny, Eva Sta. Cruz, proceeded to the Immaculate Concepcion Academy to fetch Sharleen. He waited for Eva and Sharleen at the school's parking lot. The two arrived and boarded the backseat of the car. When he started the ignition, a man suddenly got into the backseat and poked a gun at his face. Another man took the front seat beside him and also poked a gun at him. Thus, Lorenzo claimed he did not see the features of the kidnappers who ordered him to drive. He obeyed, worried about the safety of Sharleen and the maid. Then, the man beside him asked his companion: "Saan tayo?" ("Where to?"). The man at the backseat replied: "Sa dati." ("The usual place"). One of the men gave directions on where to go. When they reached Guevarra Street, they stopped at a place where three (3) vehicles were parked. The man beside him took Sharleen and alighted from the car. The other man was left at the backseat and ordered him to drive on.

When they reached Paterno Street in San Juan, the kidnapper at the backseat ordered him to stop. Eva, the nanny, was made to alight. Lorenzo was then directed to proceed to N. Domingo Street, also in San Juan, where he was left by the kidnapper. He was warned not to report the incident to the police, otherwise, Sharleen would be killed. The man also threatened to harm Lorenzo's family. The kidnapper then took the car and drove away.

From N. Domingo Street, Lorenzo proceeded to the house of his friend William Sierra in Mandaluyong for advise. William told him to lie low for a while. He followed William's advice and did not report the matter to the police. Neither did he contact his employer. Even his own family was not aware of his whereabouts. He did not return to his house and stayed only with friends after the incident. Lorenzo's testimony was corroborated by his friend William Sierra.

Appellant Lorenzo also denied that on February 7, 1992, at about 7:00 p.m., he accompanied accused Hernandez' wife to visit Hernandez at the CIS detention cell. Lorenzo claimed he just happened to be in front of the Crame gate that night when he was arrested by the CIS operatives. He was on his way to 8th Avenue, Cubao, Quezon

City.

Lorenzo alleged he was maltreated by the CIS operatives. Then, he was asked to sign a document but was not allowed to read it. The document turned out to be an extrajudicial confession (Exhibit "F"). After two (2) days, he was introduced to Atty. Villanueva who told him he would handle his defense if he could pay P20,000.00 acceptance fee and P2,000.00 for appearance fee. Lorenzo refused as he did not have that much money. He denied to Atty. Villanueva his complicity in the kidnapping. Nonetheless, Atty. Villanueva affixed his signature on his extrajudicial confession. During the inquest before Fiscal Lugtu, Lorenzo kept mum about the maltreatment. He was afraid of the CIS operatives who accompanied him at the inquest.[19]

Accused TUMANENG also disowned his extrajudicial confession (Exhibit "A"). He charged that he was coerced by the CIS agents to confess. He was forcibly taken from his aunt's house in Maysilo, Malabon, and brought to the CIS detention cell where he was tortured. Then, he was ordered to sign an extrajudicial confession without the assistance of a lawyer. When he was presented to Fiscal Lugtu for inquest, he confirmed his confession for he was afraid of the CIS agents who were present.[20]

Finally, 24-year old appellant FAMODULAN maintained his innocence about the kidnapping incident. At the trial, he confirmed that he knew accused Hernandez since 1985 for they were neighbors. A week before his arrest on February 8, 1992, he and his friends, Allan and Toto, were jogging along V. Mapa Street, Sta. Mesa, Manila, at about 4:30 a.m. When they reached the Town and Country Lodge, accused Hernandez and another man who were on board a taxi called him. As he approached the taxi, he told his friends to continue jogging. When he reached the taxi, Hernandez placed his arm around his shoulder, poked a knife at him and ordered him to pick up a package in the trash can in front of the Lodge. He obeyed and handed the package to Hernandez who in turn gave him 200.00 for his effort. The taxi then left. Famodulan caught up with his jogging companions and they proceeded to Luneta.[21]

Sixteen (16) years old ALVIN "Allan" LASO, one of the jogging companions of accused Famodulan, corroborated Famodulan's testimony. Laso declared that while they were jogging in front of the Town and Country Lodge, they saw two men across the street, on board a taxi. One of them called Famodulan. Famodulan broke away from their group, crossed the street and approached the man. Laso and his other companion continued jogging but slowed down their pace so Famodulan could catch up with them later. While they were jogging, Laso saw Famodulan pick up a plastic bag and hand it over to the unidentified man who then gave Famodulan some money. Thereafter, Famodulan continued jogging and caught up with his companions. They continued jogging up to Luneta Park where they took their breakfast.[22]

On February 8, 1992, at about 11:00 p.m., Famodulan was picked up by the police at his house. He was brought to Camp Crame where he was investigated without the assistance of a lawyer. After his interrogation, his statement was reduced into writing (Exhibit "E").[23] The investigating officer then told him he has a right to engage the services of his own counsel. As he was unable to get his own lawyer, he was introduced to Atty. Solomon Villanueva by the investigator. The investigator then ordered him to sign his statement. Atty. Villanueva did not assist or advise him during the custodial investigation.[24]

On August 27, 1993, the five (5) accused were convicted of the crime charged.[25] The dispositive portion of the decision reads:

"WHEREFORE, and in the light of all the foregoing discussions, the Court renders judgment finding the accused EFREN HERNANDEZ, DIONISIO S. JACOB, ALFREDO T. TUMANENG, JOSE L. LORENZO and MARLON T. FAMODULAN (sic) guilty beyond reasonable doubt of the crime charged and imposes upon the aforementioned accused the penalty of RECLUSION PERPETUA. The said accused are likewise ordered

to indemnify the complainant in the amount of P409,000.00 which represents the ransom money the latter parted with. The television set and karaoke (PANASONIC) confiscated from accused DIONISIO JACOB as a consequence of this case and which per records were brought out of a part of the ransom money paid by complainant Jacinto Tan are ordered to be turned over to Jacinto Tan. No other civil indemnification may be made as no other evidence on this aspect was adduced.

"Insofar as the accused CELSO MANSUER and JIMMY BOLANTE are concerned, let the records of this case be sent to the files there to remain until the said accused are apprehended and brought to court.

"Cost against the accused.

"SO ORDERED."

Hence this recourse by appellants Tumaneng, Lorenzo and Famodulan.[26]

In their Brief,[27] appellants TUMANENG and LORENZO impugn their conviction on the grounds that: (a) their warrantless arrests were illegal; and, (b) their extrajudicial confessions were obtained without the benefit of a competent and independent counsel of their own choice.

Upon the other hand, appellant FAMODULAN proffers the following contentions to support his acquittal: (a) he was not positively identified as one of the conspirators; (b) he was arrested and investigated in violation of his constitutional rights; (c) his February 10, 1992 affidavit is invalid and insufficient to warrant his conviction, and; (d) the evidence of his alleged participation in the crime is insufficient to justify his conviction.[28]

The prosecution evidence is anchored mainly on the extrajudicial confessions of appellants and the testimony of Eva Sta. Cruz. Of the seven (7) accused, only appellant LORENZO, the driver, was positively identified by Sta. Cruz. Appellants TUMANENG and FAMODULAN were convicted on the basis of their extrajudicial confessions. The convictions of accused-at-large Hernandez and Jacob, who were tried in absentia, were also based on their confessions. The kidnap victim, Sharleen Tan, was not presented by the prosecution, possibly due to her tender age and the traumatic impact of the incident on her.

Interestingly, none of the appellants proffered an alibi. Appellant TUMANENG, while denying participation in the kidnapping, did not reveal his whereabouts at the time of the felony. Appellants LORENZO and FAMODULAN admitted their presence at the scene of the crime but both claimed they were merely coerced to participate in the kidnapping. Appellant LORENZO averred he was forced at gunpoint to drive the car used to kidnap Sharleen. Appellant FAMODULAN alleged he was collared by accused Hernandez while jogging and was ordered, at knifepoint, to pick up the ransom inside a trash can in front of The Town and Country Lodge.

There is no question that appellants were arrested without the benefit of a warrant and under circumstances other than those justifying a warrantless arrest. [29]Clearly, their warrantless arrests violated the Constitution.[30] However, jurisprudence is settled that an accused may be estopped from assailing the illegality of his arrest if he fails to move for the quashing of the Information against him before his arraignment. [31] In the case at bar, by entering a plea of not guilty and participating in the trial, appellants waived their right to challenge the legality of their warrantless arrests.[32]

Appellants then charge that the trial court erred in considering their extrajudicial confessions for two (2) reasons: First, their execution was involuntary for they were maltreated by the CIS operatives, and second, they were not provided with a competent and independent counsel of their own choice.

We rule that appellants' extrajudicial confessions are admissible in evidence. It bears emphasis that extrajudicial confessions are presumed to be voluntary for no sane person would confess to a crime unless he has committed it. Thus, the burden is on the accused to prove the involuntariness of his confession.[33] In the case at bar, appellants

did not satisfactorily discharge this burden.

We cannot sustain appellants' charge that they were coerced to execute their confessions. Their accusation lacks proof and is belied by the records. No medical certificate was presented to prove their maltreatment. Neither did they exhibit any physical marks of violence. The records reveal that appellants did not file an administrative or criminal complaint against their alleged torturers. During the preliminary investigation, appellants even subscribed their confession before Fiscal Reynaldo Lugtu who certified that he personally examined appellants and was fully convinced that they voluntarily executed and understood their extrajudicial confessions. Hence, the trial court rightly rejected appellants' allegation of maltreatment.[34]

We also note that appellants' confessions are replete with details which could have been known only to them. The events narrated in the extrajudicial confessions, from the start of the abduction of Sharleen until her release, are so detailed that they could not have been concocted by persons who were innocent of the crime at bar.

Appellants further insist that Atty. Solomon Villanueva who was provided by the CIS operatives to assist them in the waiver of their rights to silence and to counsel is neither an independent nor a competent lawyer. They pound on the fact that Atty. Villanueva was once a member of the Judge Advocate's Office and his sympathies are suspect. They also assail the competence of Atty. Villanueva to assist them during the custodial investigation. Allegedly, at no instance did Atty. Villanueva prevent appellants from incriminating themselves.

We are unpersuaded that in the case at bar, the constitutional requirement on assistance of a competent and independent counsel was violated. The fact that Atty. Villanueva is a retired member of the Judge Advocate's Office should not cast doubt on his impartiality in assisting appellants during their custodial investigation. There is no concrete evidence of bias on the part of Atty. Villanueva. Appellants' charge is specious and speculative. In *People v. Aquino*, [35] we disabused the mind of the public regarding the prevalent misconception that the role of a lawyer in criminal investigation under the right to counsel provision of the Constitution is to prevent an accused from incriminating himself. We explained in explicit terms that the right to counsel is designed to preclude the slightest coercion as would lead the accused to admit something which is false. It ought to follow that a lawyer should never prevent an accused from freely and voluntarily telling the truth whether in an extrajudicial statement or testimony in open court. While our litigation is adversarial in nature, its purpose is always to ascertain the truth for justice is not justice unless predicated on truth. The accused under investigation is assisted by counsel to avoid the pernicious practice of extorting false or coerced admissions or confessions from them.

In the case at bar, appellants waived their rights to remain silent and to counsel in the presence and with the assistance of Atty. Villanueva. Atty. Villanueva cannot be faulted when he did not prevent appellants from truthfully answering the questions propounded by the investigators. For allowing the free flow of truth, Atty. Villanueva cannot be deemed as an incompetent counsel. A lawyer's oath binds him to prevent falsehood and not to suppress truth.

With the proper admission of their extrajudicial confessions, we find that the guilt of appellants TUMANENG and LORENZO was proved beyond reasonable doubt. It again bears stressing that appellant LORENZO was convicted not only on the basis of his extrajudicial confession, but also on the positive identification by prosecution witness EVA STA. CRUZ, the victim's nanny. She unequivocally declared that when Sharleen was abducted, she heard appellant Lorenzo ask the unidentified men where they were going. The latter replied they would go to the "usual place." Appellant Lorenzo fully understood the reply because from then on, no conversation ensued among the men. They continued their trip in silence. No further directions were given to Lorenzo as to where they were headed. After a while, Lorenzo stopped the car at an unidentified place where Sharleen and one of the kidnappers alighted. [36]

Appellant Lorenzo urges that no weight should be given to the testimony of Eva whose head was held down by one of the kidnappers when she heard this brief exchange of words. Appellant Lorenzo insists that he did not talk with the kidnappers and it was the two (2) unidentified men who engaged in conversation. Lorenzo claims he was forced to drive the car at gunpoint. After the abduction, he was made to alight and the kidnapper took the car from him and sped away. He did not report the incident to the Tan family or the police for fear that Sharleen would be killed by her abductors. He also insists that throughout the incident, he had no opportunity to see the features of the malefactors.

We are unpersuaded. The transcripts show that Eva's testimony was categorical and credible. She had known appellant Lorenzo for about a year prior to the incident for they were both working for the same employer, the Cheng family. We find it highly improbable that Eva was mistaken when she identified appellant Lorenzo as the one who asked the kidnappers where they were going at the time of the abduction. She was familiar with Lorenzo's voice. Equally important is the fact that the defense failed to show that there was any grudge or ill-feeling between Eva and appellant Lorenzo as would impel her to implicate him in the kidnapping charge.

In contrast to Eva's credible testimony, appellant Lorenzo's version of the incident is full of improbabilities. For one, his assertion that he did not get to see the features of the kidnappers who forced their way into the car is unlikely. His own account of the incident proves that he had several opportunities to see the features of the abductors. One of the kidnappers was seated beside him in the car. The other was seated at the back. While driving, it was improbable that Lorenzo did not even get a glimpse of the features of any of these men, either in the rear view mirror, while making a turn or thru his peripheral vision. Appellant Lorenzo also testified that after Eva was made to alight, he was left alone in the car with the kidnapper who later ordered him to stop the car. The kidnapper directed him to leave and took the driver's seat. At this point, Lorenzo could not have missed the man's features. Lorenzo's own story belies his claim that he had no opportunity to identify the kidnappers.

Moreover, appellant Lorenzo denies that he accompanied Hernandez' wife at Camp Crame to visit accused Hernandez who has been detained as a suspect in the kidnapping of Tan. Lorenzo maintains that when he was apprehended outside the Crame gate, he only happened to be standing there as he was waiting for a public transportation to take him to Cubao, Quezon City. It strains the imagination to believe that at the time of his arrest, appellant Lorenzo had such bad luck as to be standing in front of Crame while his co-accused were being investigated therein. The incident could not have been an instance of being at the wrong place at the wrong time. The prosecution's evidence that Lorenzo accompanied Hernandez' wife to Crame is thus more credible.

We note too that appellant Lorenzo's demeanor during and after the abduction is inconsistent with his stance of innocence. Lorenzo declared he was made to alight at N. Domingo Street, in San Juan, just a few blocks away from Paterno Street where Eva Sta. Cruz was left by the kidnappers. Yet, after he was released, appellant Lorenzo did not make any effort to return to Paterno Street to locate Eva and confirm her safety. We do not view this omission as the natural reaction of a man who claims he merely obeyed the commands of the kidnappers due to his concern for the safety of his co-employee Eva Sta. Cruz and the kidnap victim Sharleen Tan. Another unsettling fact is that, after the abduction, appellant Lorenzo did not contact his employer nor his own family to tell them what happened or his whereabouts. He simply dropped from sight after the kidnapping. We thus find his behavior unusual for a man who underwent this kind of an ordeal.

In sum, we find appellant Lorenzo's version of the kidnapping incident too preposterous to be worthy of credit. Appellant Lorenzo's complicity in the crime was proved by the prosecution beyond reasonable doubt.

For his part, appellant FAMODULAN points out that even on the basis of the contents of his extrajudicial confession, he could not be convicted of the crime charged. He claimed that he was merely requested to pick up

the money in the garbage can. When he asked why the money would be in that site, appellant Hernandez dismissed his question and told him to just get the money. He was not told how much money was involved as he was just promised a reward. Since he needed some money at that time, he complied. In his extrajudicial confession, appellant Famodulan insisted that he was not aware that the money he delivered to appellant Hernandez was the ransom paid for the release of a kidnap victim.

We agree. After evaluating the totality of the prosecution's evidence, we find that it failed to prove beyond reasonable doubt that Famodulan was part of the conspiracy of the other accused to kidnap Sharleen Tan. A conspiracy exists when two or more persons come to an agreement to commit a felony and decide to commit it.[37] In the case at bar, a scrutiny of the records reveals that in both his extrajudicial confession and court testimony, appellant Famodulan was consistent in claiming he was not aware about the kidnapping activities of accused Hernandez and the other accused in this case either before, during or immediately after he picked up the money. Indeed, all that the prosecution was able to establish is that Famodulan was ordered to pick up the money in the garbage can without knowing that his co-accused had earlier kidnapped Sharleen and that the money represented the ransom paid by her family. Appellant Famodulan was completely unaware of the kidnapping scheme plotted by his co-accused. This conclusion is bolstered by the fact that in the extrajudicial confessions executed by his supposed cohorts, not once was appellant Famodulan's name mentioned as a co-conspirator. [38] Clearly, the records would bear that the plan to abduct Sharleen was hatched by the six (6) accused, with the exception of Famodulan. He only came into the picture after the actual abduction and demand for payment of ransom when the six (6) accused hesitated in exposing themselves to danger and decided to ask someone else to pick up the ransom left by the victim's family. No proof was adduced by the prosecution to prove that Famodulan knew about the kidnapping plot hatched and actually executed by the six (6) accused. Hence, we find there was no agreement to commit the felony between appellant Famodulan on the one hand, and his co-accused on the other, as would warrant a finding that appellant Famodulan was part of the conspiracy to kidnap Sharleen Tan.

We come now to the penalty. In response to the escalating incidence of heinous crimes in the country, Article 267 of the Revised Penal Code penalizing kidnapping for ransom, was amended by R.A. 7659 on December 31, 1993 which restored the extreme penalty of death in such cases. However, the crime at bar was committed on January 21, 1992, almost a year before the amendment of Article 267. Hence, the penalty imposable on appellants Lorenzo and Tumaneng is the penalty next lower in degree, i.e., reclusion perpetua.

IN VIEW WHEREOF, the appealed Decision of the trial court is MODIFIED. The conviction of appellants ALFREDO T. TUMANENG and JOSE L. LORENZO for the crime of kidnapping for ransom is AFFIRMED, while appellant MARLON FAMODULAN is ACQUITTED for insufficiency of evidence.

SO ORDERED.

Regalado (Chairman), and Martinez, JJ., concur.

Mendoza, J., on official leave.

[1] Dated February 19, 1992; Rollo, pp. 7-9.

[2] Testimony of Eva Sta. Cruz; March 29, 1993 TSN, pp. 10-24; Sworn Statement of Sta. Cruz, dated February 10, 1992 (Exhibit "I"); Original Records, pp. 214-216.

[3] Although as per the testimony of Eva Sta. Cruz, the police were initially called by the victim's family after they learned about the kidnapping, it does not appear on the record that the victim's family further involved the police during the negotiation for the release of Sharleen and during the actual payment of the ransom.

[4] Testimony of Jacinto Tan; March 29, 1993 TSN, pp. 6-7. Sworn Statement of Tan, dated February 10, 1992

(Exhibit "K"); Original Records, pp. 218-219.

[5] Ibid.; The prosecution also made of record that during the trial proper, prosecution witnesses Eva Sta. Cruz and Jacinto Tan received death threats prior to their actual testimony in court; June 22, 1992 TSN, pp. 8-9; July 14, 1992 TSN, pp. 2-3.

[6] Original Records, p. 212.

[7] Testimony of Major Ruben Zacarias, Chief Inspector of the CISC; April 14, 1993 TSN, pp. 27-28.

[8] Testimony of SPO3 Gregorio Cuachon; June 22, 1992 TSN, pp. 23-34.

[9] Ibid., p. 34.

[10] Testimony of Sgt. Romeo Cudia; August 3, 1992 TSN, pp. 25-26

[11] Original Records, pp. 194-197.

[12] Testimony of Major Zacarias; April 14, 1993 TSN, pp. 22-24.

[13] Original Records, pp. 192-198.

[14] Extrajudicial Confession (Exhibit "F"), Original Records, pp. 208-209.

[15] During his testimony, accused Jacob was present in court and was identified by SPO1 Montilla. Montilla was cross-examined by Atty. Daguna who initially represented Jacob during the trial. The record shows that it was after Montilla's testimony that Jacob escaped from detention.

[16] Testimony of SPO1 Hermes Montilla; July 14, 1992 TSN, pp. 15-21, 31-32.

[17] Original Records, pp. 201-204.

[18] Original Records, pp. 205-207.

[19] Testimony of accused Lorenzo; May 27, 1993 TSN, pp. 7-14; May 31, 1993 TSN, pp. 2-26.

[20] Testimony of accused Tumaneng; July 22, 1993 TSN, pp. 3-30; July 29, 1993 TSN, pp. 3-11.

[21] Testimony of accused Famodulan; May 5, 1993 TSN, pp. 3-9.

[22] May 26, 1993 TSN, pp. 4-17.

[23] Supra.

[24] Testimony of accused Famodulan; May 5, 1993 TSN, pp. 9-14.

[25] Penned by Judge Santiago G. Estrella, Regional Trial Court, Pasig City, Branch LXVIII; Rollo, pp. 28-32.

[26] The Public Attorney's Office of the Department of Justice, representing appellants Tumaneng and Lorenzo, filed a joint Brief, while appellant Famodulan, represented by Atty. Leon Tapel, Jr. filed a separate Brief.

[27] Rollo, pp. 57-123.

[28] Appellant Famodulan's Brief, Rollo, pp. 148-155.

[29] Section 5, Rule 113 of the Rules of Court provides for the circumstances when arrest may be lawfully made by a person without a warrant. Thus:

a. when, in his presence, the person to be arrested has committed, is actually committing, or is attempting to

commit an offense;

b. when an offense has in fact just been committed, and he has personal knowledge of facts indicating that the person to be arrested has committed it;

c. when the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

[30] Section 2, Article III.

[31] *People v. Lopez, Jr.*, 245 SCRA 95, 105-106 [1995]; *People v. Samson*, 244 SCRA 146, 150 [1995]; *People v. Compil*, 244 SCRA 135, 144 [1995].

[32] *People v. Llenaresas*, supra, citing *People v. Macam*, 238 SCRA 306 [1994]; *People v. De Guzman*, 224 SCRA 93 [1993]; *People v. Codilla*, 224 SCRA 104 [1993]; *People v. Rabang*, 187 SCRA 682 [1990]; *Gimenez v. Nazareno*, 160 SCRA 1 [1988].

[33] *People v. Ruelan*, 231 SCRA 650, 657 [1994], citing *People v. Enanoria*, 209 SCRA 577 [1992]; *People v. Estevan*, 186 SCRA 182 [1990]; *People v. Talla*, 181 SCRA 133 [1990]; *People v. Dela Cruz*, 115 SCRA 184 [1982].

[34] *People v. Garde*, G.R. No. 103968, July 11, 1996; *People v. Llenaresas*, 248 SCRA 629 [1995].

[35] 186 SCRA 851, 859-860 [1990], citing *People v. Layuso*, 175 SCRA 47, 53 [1989], and *Gamboa v. Cruz, et al.*, 162 SCRA 642 [1988].

[36] March 29, 1993 TSN, pp. 14 & 19.

[37] Article 8, paragraph 2, Revised Penal Code.

[38] See Tumaneng's, Jacob's and Lorenzo's extrajudicial confessions, Original Records, at pp. 197, 202, 211-212, respectively.

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