

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
BENEDICTO RAMOS Y BINUYA ALIAS “BENNIE,”
ACCUSED-APPELLANT.**

G.R. No. 118570. October 12, 1998

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PER CURIAM:

This is an automatic review of the decision of the RTC-Br. 78, Quezon City, in Crim. Case No. Q-94-58036 finding accused-appellant BENEDICTO RAMOS y BINUYA guilty of two (2) separate heinous crimes - kidnapping for ransom and murder - and sentencing him to suffer the supreme penalty of DEATH in each case to indemnify the heirs of the victim in the amount of P50,000.00 plus P105,150.00 for funeral expenses.[1]

On 13 July 1994, at about six-thirty in the morning, an American pastor named Malcolm Bradshaw was driving his car along EDSA to take his daughter Michelle to school. At the bus stop between Corinthian Gardens and the corner to White Plains Avenue, Quezon City, he saw a woman, later identified as the victim Alicia Abanilla, struggling to break away from the arms of a man known later to be accused-appellant Benedicto Ramos y Binuya alias "Bennie." The woman hailed a passenger bus and then a white car to no avail. Perhaps no one comprehended the situation she was in. Realizing that the woman was in deep trouble, Bradshaw stopped his car and blew his horn repeatedly to attract the woman's attention. She was hysterical and Bradshaw was to her heaven-sent. She grabbed the opportunity and ran towards Bradshaw's car and hopped in at the back seat. Unfortunately for her, Ramos caught up with her and squeezed himself into the same car.

From EDSA Bradshaw turned right towards White Plains Avenue where he was flagged down by a traffic policeman. As Bradshaw slowed down Ramos pulled out his gun and ordered him to go straight ahead, which the latter obeyed. As they cruised along White Plains avenue, Alicia handed her wallet to Michelle and asked the latter to look in there for some medicine. Later she took back her wallet and tried to look for her medicine herself. As she went through the contents of her wallet a receipt fell off and landed on the left side of Michelle. Alicia then asked the accused, "Bennie, has Cecil had her baby?" "No," replied Ramos. Is she having it by caesarian?" Ramon did not answer. "Does Cecil know that you are doing this to me x x x that you are holding me hostage?" Again Ramos did not answer.[2]

Upon reaching Katipunan Avenue in front of Blue Ridge Subdivision, Ramos told Bradshaw to stop at Rajah Matanda Street, Project 4, Quezon City, where he got off and pulled Alicia out of the car. She clung to the shoulder of Michelle muttering, "God bless you. Pray for me and notify my family." Then she placed her arm around Bradshaw's neck and softly whispered to him, "I will probably not get out of this with my life. Tell my family my situation." At about ten of seven, Ramos finally succeeded in pulling Alicia out of the vehicle.

Soon after, Bradshaw discovered the receipt dropped by Alicia Abanilla which contained her name and residence telephone number. Thus after taking his daughter to school, he proceeded to his office, called the number in the receipt and inquired about Mrs. Abanilla. The maid informed him that Mr. and Mrs Abanilla had already left for work at Meralco. Later that morning, at the instance of Bradshaw, one of his employees called up a friend at

Meralco to inquire about Mrs. Abanilla, and the former was told that Mrs. Abanilla was at that time apparently being held hostage by a man who was demanding ransom for her release.

Meanwhile, at around seven-fifteen, Alicia called up her boss, Atty. Pastor del Rosario, for whom she worked as a confidential secretary at Meralco. Atty. Del Rosario was still in bed. She begged him not to ask any question but said that she needed P200,000.00 in cash immediately, otherwise, she might not be able to go home anymore. She assured him that she had enough funds in the bank to repay him. She then requested him to give the money to Inday, a lady messenger at Meralco, with instruction to deliver the money to her at Glori Supermart at Sikatuna Village. Atty. Del Rosario suggested that the money be delivered instead by a Meralco security personnel but she refused, saying, "Please not security, I do not want them to know what happened to me." Towards the end of their conversation, Alicia entreated, "Sir, you are the only one who can help me now, I cannot turn to anyone else. Please help me." [3]

Del Rosario hurriedly gathered P200,000.00 in cash, placed the money in a white envelope and tucked it in a plastic bag. He then ordered his driver, Serrano Padua, to fetch Inday from Meralco. When Inday arrived, Del Rosario gave her the money and told his driver to take her to Mrs. Abanilla at Glori Supermart with specific instruction to give the money to no else but Mrs. Abanilla. [4]

At around seven-thirty, a taxicab driven by Antonio Pineda passed by. Ramos and Mrs. Abanilla boarded the cab and took the back seat. They proceeded towards Anonas Extension in Sikatuna Village near Glori Supermart. Ramos instructed Pineda to park his taxi in front of the Supermarket as they had to wait for someone. For P700.00 Pineda agreed to wait for them so he could take them later to Norzagaray, Bulacan. Driver Serrano Padua and Inday finally arrived at their rendezvous. Pineda, who was requested by Alicia to receive the money, approached them and asked about the package for Mrs. Abanilla. However, Inday refused to give the money saying that she was instructed to deliver it only to Mrs. Abanilla. Pineda went back to the taxi and informed his passengers of Inday's refusal. Mrs. Abanilla gave her identification card to Pineda and told him to ask Inday to face the taxi and show herself through the window. Pineda went back to Inday, gave Mrs. Abanilla's ID and asked her to approach the taxi to see Mrs. Abanilla. Inday recognized Alicia so the former handed the money to Pineda. Thereupon, Ramos told Pineda, "Tara, deretso tayo sa Norzagaray."

On the way to Norzagaray travelling along Commonwealth Avenue, Ramos suddenly changed his mind and decided to head for Bocaue, Bulacan, instead. During the entire trip, Pineda noticed Alicia looking very pale, fidgety and apparently perturbed.

Upon arriving in Bocaue, they went straight to the St. Paul Hospital compound where they parked. Pineda and Ramos got off to relieve themselves by a fence. Pineda noticed a revolver tucked in Ramos' waist. Afterwards, Ramos told Pineda to leave the taxi for while as he was going to discuss something with his companion. Obviously, he was interested in counting the money in the plastic bag. As Pineda waited for his passengers to call him, he observed that this woman passenger kept opening and closing the rear door of his taxi as if trying to get out.

Pineda became uneasy. He slowly inched himself towards his taxi. There he saw Ramos straggling his woman companion. So he told Ramos, "Boss, iba na yata iyang ginagawa mo ah, baka mapadamay ako diyan!" He boarded his taxi and asked his passengers to transfer to another vehicle as he did not want to get involved on what was going on. But Mrs. Abanilla pleaded, "Mama', huwag mo akong iiwanan dito dahil papatayin ako ng lalaking ito. May kapatid ka din na babae." Ramos retorted, "Hoy! Pati iyong isip ng driver nililito mo." Then he ordered Pineda to take them back to MacArthur Highway where they would take another ride.

As Pineda drove out of the hospital compound, Mrs. Abanilla panicked and held him by the shoulder pleading,

"Huwag mo akong iiwanan dito." When Pineda reached MacArthur Highway near Sto. Niño Academy in Bocaue he saw a traffic aide, Gil Domanais, who was directing traffic. He had a gun on his waist. Upon seeing the armed traffic aide, Pineda stopped his cab, got off and told Domanais that his male passenger had been strangling his female companion. He also narrated that his passengers, who had been with him since morning, refused to get off his cab and he had not yet been paid by them. Domanais suggested to him to bring his passengers to the police station.

Domanais peeped through the window of the taxi and saw Ramos with his left arm around the shoulders of Alicia. She was crying. She told Domanais that Ramos was armed with a revolver and was hurting her. At that moment Ramos pulled out his gun prompting Domanais and Pineda to run away and take cover. Ramos then transferred to the driver's seat and drove the cab away. In a desperate effort to free herself, Alicia opened the left rear door and jumped out of the cab; unfortunately, her blouse was caught in the process. As a consequence, she was dragged by the vehicle. Ramos suddenly stopped the taxi, and as Alicia attempted to rise, he aimed his gun at the back of his hapless victim, fired at her twice, hitting her just above her nape. Domanais, who was armed with a .38 caliber pistol and witnessing the shooting, fired at Ramos; but he missed him. Then he called for police assistance as Ramos fled on foot.

On the same day, responding elements of the Bocaue Police Station apprehended Ramos in a grassy area at the Violeta Metroville Subdivision. The police confiscated his .22 caliber Smith and Wesson Magnum with four (4) live ammunitions and two (2) spent shells, and recovered a bag containing - P138,630.00 consisting of P1,000.00 and P500.00 bills.

Mrs. Abanilla's body was left at the scene of the shooting, lying face down parallel to the taxi. Dr. Benito B. Caballero, Medico-Legal Officer of the Province of Bulacan, conducted the autopsy and testified that the cause of death was "shock due to massive external. . . intracranial. . . hemorrhage due to gunshot wound in the head penetrating the skull and the brain tissue." [5]

Thereafter an Information was filed against Benedicto Ramos y Binuya alias "Bennie" charging him with the complex crime of kidnapping for ransom with murder, to which he pleaded not guilty. To expedite the proceedings, the prosecution and the defense agreed during the pre-trial that the testimony of their witnesses would be in the form of affidavits which would be the bases for the cross-examination. Trial on the merits then ensued.

For his part, Ramos denied having kidnapped and killed the victim. In his Sinumpaang Salaysay [6] he narrated his version of the incident -

3. Na, ang bintang sa akin na 'kidnapping for ransom with murder' ay walang katotohanan sapagkat ang totoo ay ang mga sumusunod: a. Ang yumaong si Alicia Abanilla ay aking ninang sa kasal noong ikinasal kami ng aking asawang si Cecillia Pascual noong 17 October 1993 sa Sta. Rita Parish Church, Quezon City. Bago ako at ang aking asawa ikasal sa nabanggit na simbahan ay kasal na kami sa isang civil marriage noong June 30, 1993 sa City Hall ng Maynila x x x d. Na, dahilan sa wala akong hanapbuhay mula ng ako'y tanggalin sa Meralco, ako'y nagsabi sa aking ninang Alice na ako ay paluwagan ng kaunting halaga ng pera dahil sa ang aking asawa ay manganganak at wala akong panggastos. Ang una kong sabi sa kanya ay noong unang linggo ng Hulyo, 1994 sa pamamagitan ng telepono sa Meralco. Ang sabi niya sa akin huwag akong mag-alala pagkat tutulong siya sa akin kapag manganganak na ang aking asawa. Ngunit pinagbawalan niya akong magpunta sa kanyang bahay o kaya sa kanyang opisina, kaya sa telepono lamang kami nag-uusap x x x g. Sapagkat ako'y ayaw papuntahin ng aking ninang Alice sa kanyang bahay at sa kanyang opisina, at ang sabi niya ay abangan ko na lamang siya sa EDSA kanto ng White Plains, ang ginawa ko inabangan ko siya sa kanyang rota patungo sa kanyang opisina. Ng kami ay magkita sa EDSA sa may kantong patungong White Plains, sinabi ko agad sa kanya na kailangan ko na 'yong ipinangako niyang tulong para sa aking asawa. Ang sabi niya sa akin bukas na

raw niya ibibigay at doon din sa lugar na iyon kami magkita. Hindi ako pumayag at doon kami nagtalo, pagkat sabi ko sa kanya pupunta ng ospital ang asawa ko at ngayon din kailangan ko ng pera. Habang kami nagtatalo, may dumarating na sasakyang Toyota Corolla Station Wagon na ang driver ay Amerikano at pinara ng ninang Alice ko at hinintuan kami ng kano na napag-alaman ko nitong bandang huli na si Malcolm Bradshaw, at isinakay si ninang Alice at sumakay na rin ako x x x j. Ng kami ay dumating sa St. Paul Hospital sa Bocaue, napag-alaman kong wala doon ang asawa ko, kaya't sabi ko kay ninang Alice tutuloy kami sa Norzagaray, sa bahay ng aking biyenang at baka nandoon pa si Cecil. Ayaw ng sumama ni ninang Alice sa Norzagaray dahil nahihiya daw siya sa biyenang ko, kaya't kami nagtalo. Gusto kong makumbinsi si ninang Alice na sumama sa Norzagaray kaya pinakiusapan ko ang driver ng taxi na lumayo muna sandali pagkat may pag-uusapan kami ni ninang Alice at sumunod naman ang driver na lumayo sa taxi x x x k. Sinabi ko kay ninang Alice na kailangan sumama siya sa akin sa Norzagaray at siya ang magbigay ng pera kay Cecil upang malaman ni Cecil na ang pera ay galing sa kanya. Ito sa dahilan na kung ako ang magbibigay ng pera sa asawa ko, baka itong si Cecil ay magduda na masama ang pinanggalingan ng pera at matakot, at magkaroon ng shock at duguin. Ang aking pangamba na baka magduda si Cecil na ang pera ay galing sa masamang paraan ay dahil sa ako nga ay napagbintangan na nagpalsifica ng tseke ni Atty. del Rosario at yun din ang dahilan ng aking pagkakatanggal sa trabaho ko sa Meralco x x x l. Hindi kami nagkasundo ng ninang ko at maya-maya dumating na ang driver at nagyaya na dahil gutom na raw siya. Pumayag ako na lumakad na ang taxi at ang plano ko ay ituturo ko sa driver ang daan patungo sa Norzagaray, ngunit pagdating sa MacArthur Highway, hininto ng driver ang taxi sa kanang parte ng Highway patungong Maynila at bumaba ang driver at kinausap yung traffic aide na may baril at nakatayo sa tabi ng highway. Hindi ko narinig kung ano ang sinabi ng driver sa traffic aide ngunit ng makapag-usap na sila, ang traffic aide ay lumapit sa taxi na para bagang magiimbestiga. Ng sumilip ang traffic aide sa bintana ng taxi sa tapat ng driver na noon ay nakabukas, sinabi ng ninang Alice na may baril ang kasama ko. Ang traffic aide ay natakot at biglang lumayo at kumuber sa tabi ng pader at ang driver naman ay tumakbong palayo. Ang ginawa ko ay lumipat ako sa lugar ng driver at ang plano ko ay ako na ang magmamaneho patungong Norzagaray pagkat ang driver tumakbo na at nangangamba ako na baka kung ano na ang nangyayari kay Cecil at wala sa ospital x x x m. Ng lumakad na ang taxi, si ninang Alice na noon ay nakaupo pa rin sa likuran ng driver seat, biglang tumayo at dinampot ang baril na dala ko na noon ay nasa tabi ko sa upuan ng driver at biglang binuksan ang kaliwang pinto sa hulihan at bababa ngunit nahawakan ko ang damit niva ng aking kaliwang kamay, pagkat nakahawak sa manibela ang kanang kamay ko at siya hindi nakababa agad. Sa aming pagbubuno pagkat hinihila ko siya na mapaupo muli at siya naman ay pilit na bumababa, pumutok ang hawak niyang baril ng dalawang beses. Maya-maya may pumutok na isa at biglang tumumba si ninang Alice at bumagsak sa kalsada na ang ulo ay patungo din sa direksyon ng taxi x x x n. Ng makita ko si ninang Alice na bumagsak sa kalsada, bigla akong bumaba at dinampot ko yung baril na noon ay nabitiwan na ni ninang Alice at dinampot ko rin ang bag ng ninang ko at tumakbo akong papalayo pagkat naalala ko yung traffic aide na nakakuber sa tabi ng pader na noon ay malapit pa sa taxi.

After trial, the court a quo convicted Ramos of two (2) separate crimes - kidnapping for ransom and murder - instead of the complex crime charged in the Information. It held that there was no proof that the victim was kidnapped for the purpose of killing her so as to make the offense a complex crime. Thus, the killing of the victim was found to be merely an afterthought, making accused-appellant liable for two (2) separate offenses.

In this petition, accused-appellant imputes to the trial court the following errors: First, the lower court erred in concluding that his guilt was proved beyond reasonable doubt; Second, the lower court erred in disregarding vital pieces of evidence in his favor; and, Third, the lower court erred in finding him guilty of the crimes of kidnapping for ransom and murder.

Specifically, accused-appellant argues that kidnapping was never sufficiently established. He maintains that all throughout the incident the victim was not under detention at any moment nor was she deprived in any manner of her liberty; that if there was some kind of pressure or force employed upon the victim, such pressure or force did not amount to a deprivation of liberty but was merely a matter of persuasion that moved the victim to go with him

voluntarily.

We resolve. The essence of the crime of kidnapping as defined and penalized under Art. 267 of The Revised Penal Code, as amended by Sec. 8 of RA No. 7659[7] is the actual deprivation of the victim's liberty coupled with an indubitable proof of intent on the part of the malefactor to effect such restraint on the offended party's liberty. The term "actual deprivation of liberty" consists not only of placing a person in an enclosure but also of detaining a person or depriving him in any manner of his liberty.[8]

In the instant case, actual restraint of the victim's liberty was evident from the moment she was forcibly prevented by accused-appellant from going to at Meralco and taken instead against her will to Bulacan. Her freedom of movement was effectively restricted by her abductor who, armed with a .22 caliber Smith and Wesson revolver which instilled fear in her, compelled her to go with him to Bulacan. This is clear from the testimonies of witnesses Bradshaw and Pineda, thus -

Bradshaw:

4. On 13 July, 1994, at around 6:30 a.m., I was driving from my home in Wilson St. to the Marcos Highway, to bring my seventeen (17) year old daughter, Michelle, to school. I was driving a 1981 Toyota Corolla station wagon, with plate no. PAZ 395. Between the gate of Corinthian Village and the right turn towards White Plains Avenue, at the bus stop, I saw a lady, struggling and breaking away from an unidentified male (the "male").

x x x

25. The male got down and started to pull out the lady from the car. The lady held on to my daughter and in a quiet voice, whispered to her, "God bless you, please tell my family my situation." The male kept trying to pull her out. As she was about to be pulled out of the car, she then held on to me with her right arm and in a quiet voice, whispered to me, "I will probably not get out of this with my life. Tell my family my situation." I asked her, "How can we? We don't even know your name." [9]

Pineda:

Q54: Habang nasa biyahe kayo ay wala ka bang nakitang takot o tanda ng pangamba sa panig ng babae?

S: Meron po. Pag tumitingin ako sa rear view mirror ko ay napapansin kong maputlang-maputla yung babae na parang takot na takot.

x x x

Q56: Pag nagsasalita ba yung babae ay may napapansin ka bang nerbiyos sa boses niya?

S: Meron ho.

x x x

Q71: Pagkatapos ay ano ang sumunod na pangyayari?

S.- Noong naiinip na ako ay bumalik na ako sa dalawa at nagtanong ako ng ganito "ano ba boss?" Ang sagot sa akin ng lalaki ay bigyan ko uli sila ng fifteen minutes na pag-uusap. Ang ginawa ko ay lumayo uli at nakipagkuwentuhan sa isang driver na gumagawa ng pintuan ng kaniyang kotse. Pagkatapos tinanong ko ang kakuwentuhan ko kung anong oras na at ang sabi ay 12:45 p.m. na raw kaya inip na inip na ako. Paglingon ko sa taxi ay napansin kong bukas-sara iyong pintuan sa side ng babae at sa wari ko ay parang gustong bumaba ng taxi, maya-maya ay napansin kong sakal-sakal na noong lalake iyong babae.

Q72: Ano ang ginawa mo pagkatapos mong makita na sinasakal iyong babae?

S: Lumapit po ako at sinabi ko sa lalake na "Boss, iba na yata iyang ginagawa mo ah, baka mapadamay ako diyan." Pagkasabi ko ay binitiwang noong lalake iyong babae na parang gustong palabasin parang walang nangyari. Pumasok ako sa taxi ko at sinabi ko sa lalake na "lumipat na lang kayo ng sasakyan baka mapadamay pa ako diyan." Ang sabi sa akin ng babae "Mama, huwag mo akong iiwanan dito, dahil papatayin ako ng lalaking ito. May kapatid ka din na babae." x x x At habang inilalabas ko ang taxi ay nagpapanic na ang babae at kumakapit na sa kaliwang balikat ko at umiiyak na nagsasabing "huwag mo akong iiwan dito" x x x[10]

From the narration of facts by the prosecution witnesses we note that on at least three (3) occasions the victim tried, albeit unsuccessfully, to get away from appellant: the first attempt was at EDSA when she struggled to free herself from his clutches and hailed a bus and a white car but without success, and later, when she jumped into the car of Bradshaw to escape; the second was at St. Paul Hospital, Bocaue, when witness Pineda noticed from a distance the rear door of his taxi being repeatedly opened and closed by his woman passenger as if trying to get out; and, finally, at MacArthur Highway when the victim jumped out of the taxicab but her blouse was caught at the rear door (although appellant claims he grabbed her blouse and forced her back into the cab[11]). It was during this final attempt to free herself that she was gunned down from behind by accused-appellant in cold blood. If there really was no restraint on her person, as appellant insists, there would have been no reason for her to attempt to escape.

Furthermore, from her statements to witnesses Bradshaw, Del Rosario and Pineda, the victim clearly hinted at her abduction and the imminent threat on her life. She whispered to Bradshaw, "I will probably not get out of this with my life. Tell my family my situation." To Atty. Del Rosario she said, "I need P200,000.00 in cash immediately, otherwise I might not be able to go home anymore; Sir, you are the only one who can help me now, I cannot turn to anyone else. Please help me." And, to witness Pineda, "Mama, huwag mo akong iiwanan dito dahil papatayin ako ng lalaking ito. May kapatid ka din na babae."

It may be observed at this juncture that the victim kept on repeating she was going to die. She even exclaimed to Pineda that she would be killed by accused-appellant. One thing is certain from those statements of the victim, i.e., that she was virtually at the mercy of her tormentor who at that moment was already in complete and effective control of her.

The claim of the defense that the force or pressure employed against the victim was in fact merely a matter of persuasion and not constitutive of restraint on the victim's liberty, taxes credulity. Definitely, the acts of forcibly pulling the victim out of the car of witness Bradshaw, strangling her while inside the taxi of Pineda, pulling her back into the cab when she attempted to flee, and eventually shooting the victim twice in the head and hitting her, can hardly, be considered as "merely a matter of persuasion." On the contrary, these circumstances are positive indications of the victim's detention by appellant against her will.

The victim might have carried occasional conversations with the accused, but this fact did not negate the existence of kidnapping. Evidently, that was just the victim's way of mentally and emotionally coping with the harrowing and dangerous situation she was in. After all, appellant was not a total stranger to her, she being a principal sponsor at his wedding. She had to start a conversation not only to calm herself down but also to appease her captor.

For kidnapping to exist, it is not necessary that the offended party be kept within an enclosure to restrict her freedom of locomotion. It is enough that, as in the instant case, she was in any manner deprived of her liberty, unable to move - and get out - as she pleased.[12]

Accused-appellant next contends that there was no proof he demanded or received money from anybody, since it

was the victim herself who asked money from Atty. Del Rosario, and her statement that "she needed P200,000.00 immediately, otherwise, she might not be able to go home anymore," does not suggest that someone was demanding money from her or that she was being kidnapped; that if his intention was to kidnap the victim for the purpose of extorting ransom, then he could have just left the victim and brought the money with him; that, in fact, when the victim gave the money to him after it was delivered to her by Pineda who received it in turn from Inday, he (appellant) just dropped the money on the floor of the taxi and it was the victim who picked it up and placed it in her bag.

The arguments are as puerile as they are untenable. The statement of the victim that "she needed P200,000.00 immediately otherwise she might not be able to go home anymore," should not be interpreted in isolation. Rather, its true meaning should be ascertained in the light of all the surrounding circumstances. When the victim called up Atty. Del Rosario, she was already being held hostage against her will by the accused who, armed and violent, had no qualms in maltreating his Ninang and subsequently shooting her twice and killing her.

By his own admission, accused-appellant really did ask for money, from the victim although he tried to impress upon the trial court that it was merely a loan. Consider the following statement of accused-appellant -

x x x sinabi ko agad sa kanya na kailangan ko na 'yong pinangako niyang tulong para sa aking asawa. Ang sabi niya sa akin bukas na raw niya ibibigay at doon din sa lugar na iyon kami magkita. Hindi ako pumayag at doon kami nagtalo, pagkat sabi ko sa kanya pupunta ng ospital ang asawa ko at ngayon din kailangan ko ng pera.[13]

The tenor of the foregoing statement unmistakably shows that accused-appellant was not merely borrowing but was actually demanding money from the victim, reminding her of her supposed promise to lend him money for his wife's delivery. Common experience tells us that when borrowing money, persuasion is used, for debt implies a favor, a request. Thus, the words of accused-appellant "hindi ako pumayag, "doon kami nagtalo," and "ngayon din kailangan ko ng pera," are inconsistent with his excuse that he was just borrowing money from the victim.

Moreover, while the records do not disclose that accused-appellant specified the exact amount he needed, the victim was nevertheless explicit in her plea to Atty. Del Rosario to procure for her P200,000.00 in cash immediately. The nagging questions are: Why P200,000.00? Why not just, say, P50,000.00 or even P100,000.00, which was more than enough to cover the hospitalization expenses of appellant's wife? Why "loan" a hefty sum to a person who had been out of work for quite sometime due to a previous misconduct likewise involving money, and whose capacity to pay was doubtful?

Nonetheless, the explanation of the accused that what happened was just a simple case of borrowing money coupled with a request that the victim accompany him to Bulacan so his wife would believe the money was really borrowed and did not come from an illegal source, was too lame and anemic, and disproved by subsequent events. Indeed, it hardly conforms to human nature that after appellant was loaned a considerable amount he would suddenly turn vicious toward his own benefactress, strangle her and shoot her to death for no sane reason than that she refused to go with him to Bulacan.

From all indications, therefore, no other logical meaning can be ascribed to the victim's statement to Atty. Del Rosario than that the money was intended as ransom, i.e., as consideration for her release from captivity.

While it may be true that it was the victim, not accused-appellant, who made the call and asked for the money, it must be stressed nonetheless that actual demand for ransom by the accused from the relatives or friends of the victim is not necessary, much less essential, as the demand may be made directly on the victim herself. This convenient method commonly resorted to by kidnappers, more often, proves to be very effective not only in compelling the relatives and friends of victims to pay ransom but also in concealing the identities of the

malefactors.

The fact also that the money was delivered to and received by the victim personally did not make it any less a ransom prize. After it was handed to the victim, she gave it to accused-appellant who was seated beside her at the back seat of the taxi. Clearly, accused-appellant, who was in total control of the situation, obtained actual and constructive possession of the ransom money when it was delivered to the victim.[14]

On his conviction for murder, accused-appellant points out contradictions in the testimonies of prosecution witnesses Antonio Pineda and Gil Domanais concerning their positive identification of appellant as the one who shot the victim. According to accused-appellant, Antonio Pineda testified on direct examination thus -

Q:

Sinabi mo kanina na nakita mong binaril ng dalawang beses sa ulo yung sakay mong babae noong kasama niyang lalaki, nakita mo ba ito?

A:

Oo, po.[15]

And on cross-examination Pineda testified -

Q:

But you did not see the person who fired the shots?

A:

No, sir.

Q:

And you ran away, is that correct?

A:

Yes, sir.[16]

The same witness also gave two (2) places of his birth, namely, tubo sa Baclaran and tubong Bisaya (taga Antique ang ama at Bicol ang ina) -

T: Ano ang iyong tunay na pangalan, edad, tirahan at ibang bagay hinggil sa iyong pagkatao?

S: Antonio Pineda Jr. y Lirio, 22 taong gulang, binata, tubo sa Baclaran, Paranaque, Metro Manila at nakatira/stay-in taxi driver sa No. 65 Matahimik St., Teacher's Village, Quezon City, at ang aking mga magulang ay may permanent address sa Block F-28, Lot 9, CDC 12 Area D, Barangay San Nicolas, Dasmariñas,

Cavite.[17]

x x x

Q: Pakisabi ang iyong buong pangalan at iba pang mga bagay-bagay na maaaring mapagkakilanlan sa iyo?

S: Ako po si Antonio Pineda Jr. y Lirio, 22 taong gulang, binata, tubong Bisaya (taga Antique ang ama at Bicol ang ina) at stay-in taxi driver sa No. 65 Matahimik St., Teacher's Village, Quezon City, at ang aking mga magulang ay may permanent address sa Block F - 28, Lot 9, CDC 12 Area D, Barangay San Nicolas, Dasmariñas, Cavite.[18]

Moreover, according to appellant, Pineda gave two (2) different versions as to who caused the taxi to stop at MacArthur Highway -

S:

x x x Tuloy-tuloy po ako ng pagtakbo ko at pagdating ko sa kanto ng MacArthur Highway na malapit sa Petron station at Sto. Niño Academy ay may nakita akong traffic aide na nakauniporme ng khaki at may sukbit na baril. Ang ginawa ko ay bigla akong nagpreno sa tabi sabay labas ng taxi at nilapitan ko iyong traffic aide.[19]

T.-

Ano ang ginawa ninyo sa Highway kung mayroon?

A:

Pinatigil po ni Bennie yung taksi at nagtalo silang dalawa ng biktima.[20]

On the part of witness Gil Domanais, appellant draws our attention to the witness' statement to the police that appellant shot the victim twice in the head, while on cross-examination the same witness declared -

Q:

But since you are (sic) at the back, your position was at the back of the taxi, you did not know, who fired the gun, is that right?

A:

I know, sir.

Q:

Why do you say you know?

A:

Because the shots came from inside the taxi, sir.

Q:

But you did not know who actually fired the shots?

A:

I'm very sure that it was the suspect who fired the gun, sir.

Court:

Did you see the suspect fire the gun?

A:

I saw it sir.

Q:

But you did not hit him because actually you cannot (sic) see him when you fired your gun, is that correct?

A:

I saw him and it was the upper shoulder that was showing, sir.[21]

Accused-appellant stresses that witness Domanais was merely presuming it was accused-appellant who fired at the victim. Thus, insofar as the murder is concerned, the prosecution failed to establish the guilt of accused beyond reasonable doubt.

We disagree. The shooting of the victim took place in the presence of and within the auditory perception of witness Pineda who was just ten (10) meters away from the scene. He heard the shots from the taxi whose lone occupant at that time was accused-appellant. In addition, witness Pineda explained that he earlier saw appellant attempting to kill the victim by strangulation; thus, he concluded, and rightly so, that it was appellant who shot the victim to death.

With respect to Pineda's supposed inconsistent statements on where he was born, this was sufficiently explained by him during his cross-examination -

Q:

Mr. Pineda, you gave your statement to the police on July 13, at about 11:40 in the evening, and you were asked about your name and other personal circumstances. Your answer is (sic) - You are Antonio Pineda, tubo sa Baclaran, Parañaque, Metro Manila. Now in your second statement given to Atty. Abad on the 26th of July, you were asked the same question and you answered you are (sic) Antonio Pineda, tubong Bisaya. Now will you explain to us why in your first statement you said that you are (sic) tubong Parañaque and then in your second statement, you are (sic) tubong Bisaya, which is correct?

A:

My father is a Visayan and my mother is a Bicolana and I was born here in Manila, sir.

Q:

In other words, you were not born in the Visayas?

A:

No sir. [22]

By saying therefore that he was "tubong Bisaya" despite the fact that he was born in Manila, Pineda was merely disclosing his Visayan origin on his father's side.

The other alleged inconsistencies in Pineda's -sworn statements - as to who caused the cab to stop along the highway refer to minor details which cannot impair his credibility. On the contrary, such inconsistencies even guarantee that his testimony was not a product of perjury.[23] As succinctly observed by the trial court -

x x x although the testimonies of the two (2) prosecution witnesses, namely,, Antonio Pineda, driver of the taxi cab wherein accused and the victim rode from Quezon City up to Bocaue, Bulacan, and Gil Domanais, the traffic aide, contained minor inconsistencies, the same even bolstered their credibility showing that their testimonies were unrehearsed. So, also, prosecution witnesses testified in categorical, straightforward, spontaneous and frank manner.[24]

As for the allegation that Domanais was merely presuming it was accused-appellant who fired at the victim, suffice it to state that Domanais categorically testified that it was accused-appellant who shot the victim in the head. On cross-examination, he gave a detailed account of how the shooting took place -

Q:

But since you are (sic) at the back, your position was at the back of the taxi, you did not know who fired the gun, is that right?

A:

I know, sir.

Q:

Why, do you say you know?

A:

Because the shots came from inside the taxi cab, sir.

Q:

But you did not actually saw (sic) who fired the shots?

A:

I'm very sure that it was the suspect who fired the gun, sir.

Court:

Did you see the suspect fire the gun?

A:

I saw it, sir.

A:

I was on the side of the taxi, sir.

Court:

I thought you ran and took cover on the wall.

A:

The wall where I hid was only low, sir, that is why when I stood up, I could easily see, sir.[25]

As can be seen from the foregoing dialogue, the trial court clarified the matter with witness Domanais who positively identified accused-appellant as the assailant. Moreover, in his sworn statement Domanais categorically stated -

x x x x Sakay po siya na isang taxi at siya po ay tumalon ngunit nakawit po sa pinto ang damit niya kaya po siya nakaladkad ng taxi ng kaunti at ng ihinto po ng suspect ang taxi dahilan po sa bago nangyari ito ay tumakbo po ang driver ng taxi ay dinukwang na lang po ng suspect ang biktima at binaril nga po ng dalawang beses sa ulo.[26]

The suggestion that it was witness Domanais' shot which hit the victim is belied by the evidence. The medico-legal officer who autopsied the victim testified that the entry wound at the back of the victim's head measured 0.75 centimeters and that based on the character of the wound the bullet causing it was fired from a .22 caliber gun similar to that confiscated from accused-appellant. Therefore, the fatal shot could not have come from witness Domanais' .38 caliber pistol.[27] Moreover, witness Domanais affirmed that it was only after he saw accused-appellant shot the victim twice in the head that he opened fire at accused-appellant.

The rule in this Jurisdiction on the matter of credibility of witnesses is well-settled. Unless there is a showing that the trial court had overlooked, misunderstood or misapplied some fact or circumstance of weight and substance

that would have affected the result of the case, the appellate court will not disturb the factual findings of the lower court, which had the opportunity to observe the demeanor of the witnesses while testifying and was in a better position to gauge their credibility and appreciate properly the relative weight of the often conflicting evidence for both parties.[28]

In the present case, we find no cogent reason to overrule the judgment of the trial court giving credence to the declarations of prosecution witnesses Pineda and Domanais who positively identified accused-appellant as the perpetrator of the crime. Moreover, the accused anchored his defense on bare denial. Certainly, this negative assertion cannot prevail over the unimpeached testimony of the prosecution witnesses describing in sufficient detail how accused-appellant shot the victim. In the face of the clear and positive declaration of witnesses, the defense of denial hardly assumes probative value and goes even farther down the drain in the absence of any evidence of ill motives on the part of the witnesses to impute so grave a wrong against accused-appellant.[29]

Thus when accused-appellant suddenly, unexpectedly and without warning, shot the victim from behind twice after the latter failed in her attempt to escape but was dragged instead by the cab where she was held captive, and while in a pitiable state of utter helplessness, the crime committed cannot be any less than murder qualified by treachery.

Considering the evidence extant on record, we agree with the trial court that victim Alicia Abanilla was indeed kidnapped for ransom and then murdered by accused-appellant. But the kidnapping for ransom and murder should not be treated as separate crimes for which two (2) death penalties must as a consequence be imposed. Instead, under Art. 267 of The Revised Penal Code, as amended by RA No. 7659, accused-appellant should be convicted of the special complex crime of KIDNAPPING FOR RANSOM WITH MURDER and impose upon him the maximum penalty of DEATH.

Prior to 31 December 1993, the date of effectivity of RA No. 7659, the rule was that where the kidnapped victim was subsequently killed by his abductor, the crime committed would either be a complex crime of kidnapping with murder under Art. 48 of The Revised Penal Code,[30] or two (2) separate crimes of kidnapping and murder. Thus, where the accused kidnapped the victim for the purpose of killing him, and he was in fact killed by his abductor, the crime committed was the complex crime of kidnapping with murder under Art. 48 of The Revised Penal Code, as the kidnapping of the victim was a necessary means of committing the murder.[31] On the other hand, where the victim was kidnapped not for the purpose of killing him but was subsequently slain as an afterthought, two (2) separate crimes of kidnapping and murder were committed.[32]

However, RA No. 7659 amended Art. 267 of The Revised Penal Code by adding thereto a last paragraph which provides -

When the victim is killed or dies as a consequence of the detention, or is raped, or is subjected to torture or dehumanizing acts, the maximum penalty shall be imposed.

This amendment introduced in our criminal statutes the concept of "special complex crime" of kidnapping with murder or homicide. It effectively eliminated the distinction drawn by the courts between those cases where the killing of the kidnapped victim was purposely sought by the accused, and those where the killing of the victim was not deliberately resorted to but was merely an afterthought. Consequently, the rule now is: Where the person kidnapped is killed in the course of the detention, regardless of whether the killing was purposely sought or was merely an afterthought, the kidnapping and murder or homicide can no longer be complexed under Art. 48, nor be treated as separate crimes, but shall be punished as a special complex crime under the last paragraph of Art. 267, as amended by RA No. 7659.

Obviously, the instant case falls within the purview of the aforequoted provision of Art. 267, as amended.

Although the crime of kidnapping for ransom was already consummated with the mere demand by the accused for ransom - even before the ransom was delivered - the deprivation of liberty of the victim persisted and continued to persist until such time that she was killed by accused-appellant while trying to escape. Hence, the death of the victim may be considered "a consequence of the kidnapping for ransom."

Four (4) members of the Court, although maintaining their adherence to the separate opinions expressed in *People v. Echegaray*[33] that RA No. 7659 insofar as it prescribes the penalty of DEATH is unconstitutional, nevertheless, accede to the ruling of the Court, by a majority vote, that the law is constitutional and that the death penalty should accordingly be imposed.

WHEREFORE, accused-appellant BENEDICTO RAMOS y BINUYA alias "BENNIE" is found guilty beyond reasonable doubt of the special complex crime of KIDNAPPING FOR RANSOM WITH MURDER under Art. 267 of The Revised Penal Code, as amended by RA No. 7659, and is accordingly sentenced to suffer the maximum penalty of DEATH. Accused-appellant is ORDERED to indemnify the heirs of victim Alicia Abanilla in the amount of P50,000.00 plus P105,150.00 for burial expenses.

Conformably with Art. 83 of The Revised Penal Code as amended by Sec. 25 of RA No. 7659, upon the finality of this Decision, let the records of the case be forwarded forthwith to the President of the Philippines for the exercise at his discretion of his power to pardon the accused-appellant.

SO ORDERED.

Regalado, (Acting C.J.), Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Martinez, Quisumbing, and Purisima, JJ., concur.

Narvasa, C.J., On Official Leave.

Pardo, J., No part. Did not take part in the deliberation.

[1] Decision rendered by Judge Percival Mandap Lopez.

[2] Sworn Statement of Malcolm R. Bradshaw, Exh. "A"

[3] Sworn Statement of Atty. Pastor del Rosario dated 14 July 1994; Exh. "EE."

[4] TSN, 6 September 1994, pp. 54-57.

[5] TSN, 30 August 1994, pp. 13-14.

[6] Original Records, pp. 188-194; Exh. "L."

[7] As amended by Sec. 8, RA No. 7659, Art. 267 of The Revised Penal Code now reads: Art. 267. Kidnapping and serious illegal detention. - Any private individual who shall kidnap or detain another, or in any manner deprive him of his liberty, shall suffer the penalty of reclusion perpetua to death:

1. If the kidnapping or detention shall have lasted more than three (3) days.
2. If it shall have been committed simulating public authority.
3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained, or if threats to kill him shall have been made.
4. If the person kidnapped or detained shall be a minor, except when the accused is any of the parents, female or a public officer.

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

When the victim is killed or dies as a consequence of the detention or is raped, or is subjected to torture or dehumanizing acts, the maximum penalty shall be imposed.

[8] *People vs. Gungon*, G.R. No. 119574, 19 March 1998.

[9] See Note 2.

[10] *Salaysay ni Antonio Pineda Jr. y Lirio*; Exh. "H."

[11] TSN, 12 October 1994, pp. 8-12.

[12] *People vs. Dayon*, G.R. No. 94704, 21 January 1993, 217 SCRA 335.

[13] See Note 6.

[14] See Note 7.

[15] Exh. "G."

[16] TSN, 30 August 1994, pp. 27-28.

[17] Exh. "F."

[18] See Note 15.

[19] *Ibid.*

[20] *Ibid.*

[21] TSN, 30 August 1994, pp. 44-46.

[22] TSN, 30 August 1994, p. 21.

[23] See *People vs. De la Torre*, G.R. Nos. 90804-05, 1 July 1991, 198 SCRA 663.

[24] Decision of RTC-Br. 78, Quezon City, p. 22.

[25] TSN, 30 August 1994, p. 44.

[26] *Sinumpaang Salaysay ni Gil Domanais*; Exh. "J"

[27] TSN, 30 August 1994, pp. 44-47; *Id.*, 6 September 1994, pp. 26-28.

[28] *People v. Clemente*, No. L-23463, 28 September 1967, 21 SCRA 261; *People v. Dela Cruz*, G.R. No. 108180, 8 February 1994, 229 SCRA 754; *People v. Florida*, G.R. No. 90254, 24 September 1992, 214 SCRA 227.

[29] See Note 8.

[30] Art. 48. Penalty for complex crimes. - When a single act constitutes two or more grave or less grave felonies, or when the offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period.

[31] *Parulan v. Rodas*, 78 Phil. 855 (1947).

[32] People v. Enanoria, G.R. No. 92957, 8 June 1992, 209 SCRA 577.

[33] G.R. No. 117472, 7 February 1997, 267 SCRA 682.

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