

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
APOLINAR ACOSTA Y KILATAN AND CONSOLACION BRAVO Y
VILLANUEVA, DEFENDANTS AND APPELLANTS.***G.R. No. 11954. March 24, 1960*

Ponente: BAUTISTA ANGELO, J.

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Apolinar Acosta and Consolacion Bravo were charged before the Court of First Instance of Manila with kidnapping in that they connived in the taking of a minor for the purpose of extorting ransom from his parents, and having been found guilty, they were sentenced to suffer the penalty of death. Because of the nature of the penalty, the case was submitted to us for review in accordance with law.

In the morning of April 6, 1956, while she was preparing food in her house located at Geronimo St., Sampaloc, Manila, Melecia Karin, wife of Juan Albaira, noticed that her son was missing. The couple searched for the child in the neighborhood and when their efforts failed they reported the matter to the police authorities. At about 7:00 o'clock in the morning of the following day, April 7, 1956, Melecia Karin was called by a neighbor telling her that a person wanted to talk to her husband over the telephone. As her husband was out, Melecia answered the telephone. The woman on the other end of the line was talking to Melecia in English even if the latter asked her to speak in Tagalog because she did not understand English, and so Melecia had to request one Mrs. Mendoza to talk with the woman on the line. After the telephone conversation, Mrs. Mendoza informed Melecia that the woman was asking for P75.00 for the return of her son, the amount to be placed at the door of the Echague chapel between 9:00 and 10:00 o'clock of the same day.

Melecia set to look for the money, but unable to wait for her, her husband Juan Albaira borrowed from Capt. Garces, a neighbor, the amount of P15.00 which he placed in an envelope and deposited it at the time and place designated. Capt. Garces and Juan Albaira then went to Precinct No. 2 to ask for detectives to help; in arresting the culprit. After placing the money in an envelope together with a letter as above stated, the two entered a restaurant while the detectives posted themselves in front of the chapel inside a store and observed through a window the person who would pick up the envelope. Before 10:00 o'clock, a man coming from Quiapo stopped in front of the chapel and upon seeing the envelope stood for a while and looked around. Then, taking two paces he bent down and picked up the envelope, folded it once and placed it inside his pocket. When he proceeded on his way southward along Echague St., the detectives followed him and grabbed him at a spot 30 meters away from the chapel. They asked the man where the boy was but because he got frightened and was nervous he failed to give any answer. He gave his name as Apolinar Acosta. He was brought to Precinct No. 2 for investigation.

At about 2:00 o'clock in the afternoon of April 6, 1956, Consolacion Bravo went to the house of Antonia de Viernes at 1617 P. Herrera, Tondo, Manila, bringing along with her the missing child. She wanted to leave the child with her telling her that she quarreled with her husband. Mrs. Viernes refused to accept the child, but Consolacion Bravo left the child just the same saying that she would return for him at 5:00 o'clock that same

afternoon. At about 3:00 o'clock Mrs. Viernes had the child brought to the Meisic Police Station with the information that it was left at her house by Consolacion Bravo; whom she had known for about four years' before the incident. Then Consolacion Bravo was taken and investigated.

In the investigation Bravo stated that she took the child on April 6, 1956 and first brought him to Camp Murphy at the house of Miss Herminia Ocampo where she left him returning only for the child the following morning before bringing him to the house of Mrs. Viernes. When she left the child with Mrs. Viernes, she went shopping after which she went home at about 3:00 o'clock p.m. She intended to get the boy that same afternoon but while on her way she was met by two persons and the mother of the child and was taken to the police headquarters at Isaac Peral. She met there Apolinar Acosta. Her statement was taken down in writing. While her statement was being taken down, Consolacion pointed to Acosta who was then sitting three meters away as her confederate. When thus indicated, Acosta just, stared at Consolacion without uttering, a word. The statement of Acosta was also taken down in writing.

According to Juan Albaira, Jr., the kidnapped child, he was there at Guipit St. when he was taken by Consolacion Bravo and brought to a house at 8th Avenue, Camp Murphy. He was left there crying while Consolacion was away because Consolacion did not want to bring him home, and although he wanted to go home, he could not do so because he did not know his way and was warned not to leave. When Consolacion arrived at the house the following morning, she told him that they were going home but instead they went to the sea where he was asked to take a bath. They then proceeded to the house of Mrs. Viernes in Tondo where the boy was left behind when Consolacion went shopping after warning the boy not to leave the house. While alone the boy kept on crying until he was brought to the police precinct by two elder children of Mrs. Viernes.

Consolacion Bravo admitted having taken the boy away from the house of his parents and bringing him to Camp Murphy and later to Tondo where she placed him in the house of Antonia Viernes preparatory to carrying out her conceived plan. She also admitted having made the telephone call to inform the parents of the boy that they should place money at the door of the Echague chapel if they wanted to get him back. However, she denied having any intent to kidnap the boy for ransom alleging that she only wanted to test the love of the boy's parents for him as she had observed that they were not as loving to him as she was whom she claims to be her godson. She stated that she intended to bring home the child in the afternoon of April 7, 1956 after making her shopping at about 3:00 o'clock and had taken food for her house, but she was not able to do so because while she was on her way to Tondo to get the boy from the house of Mrs. Viernes, she was met by two detectives who brought her to their headquarters at Isaac Peral. She denied the truth of some of the statements appearing in Exhibit B alleging that she never pointed to Apolinar Acosta as her confederate. She claimed that she signed said exhibit because she was made to understand that she would be utilized as a state witness.

Her father Mariano Bravo testified as to her behavior after her treatment in the National Mental Hospital. He said that after she had returned from the hospital, she ran away from home but later returned for her clothes; that while at home she cooked food in such a way that it could not be eaten; that she destroyed her clothes with a pair of scissors, and when asked why she, was doing it she would not give any answer.

Apolinar Acosta, in turn, denied having any conspiracy, with Consolacion Bravo in kidnapping the missing boy although he admitted having picked up the envelope deposited at the entrance of the Echague chapel. He claimed that he found the envelope at the sidewalk in front of the chapel when he was on his way home at Pasay coming from Sta. Cruz, Manila, where he went at 6:00 o'clock in the morning as he used to do, and that when he saw the money and the envelope he immediately put the same in his pocket. He admitted, however, that when he was grabbed by the detectives he made no protest nor uttered any word.

The claim of appellant Consolacion Bravo that she has not committed any act of illegal detention in the person of boy Juan Albaira, Jr. for which she may be held responsible for kidnapping as charged cannot be entertained in the face of the facts she herself admitted in her testimony. Thus, she admitted having taken the boy from the home of his parents and brought him to several places with the warning not to leave until her return while at the same time she made a telephone call conveying the message to his parents that they should place money in an envelope and deposit it at the door of the Echague chapel if they wanted to get the boy back. She stated in Exhibit B that Mrs. Albaira should deposit the money between 9:00 and 10:00 o'clock in the morning of the same day at the door of Echague chapel and as though to implement that instruction, almost at the time indicated, a man showed up in front of the chapel and upon seeing the envelope stood for a while and looked around and perceiving no suspicion picked up the envelope, folded it and placed it into his pocket. This man turned out to be her co-accused Apolinar Acosta.

Of course, Consolacion Bravo tried to explain that the purpose of her scheme was not exactly to take away or kidnap the boy for ransom or to extort money but that she only wanted to test the love of the boy's parents for him for she had observed that they were not as loving as she was to him whom she claims to be her godson. But such scheme is hard to believe not only considering the ingenious way it was conceived but because we see no plausible reason for such test of affection of the parents towards the boy considering that she has been in continuous association with the boy as well as with his family so much so that she claims to be his godmother. The truth is that such pretense is belied not only by what she stated in the statement Exhibit B but by her own attitude in planning such scheme in conspiracy with her co-accused. The statement Exhibit B in the main dwells on the different schemes by which money could be obtained through extortion or kidnapping and a cursory reading thereof cannot but bring one to the conclusion that as agreed and conceived between Consolacion Bravo and her co-accused Apolinar Acosta she set to lure the boy into going with her without the knowledge of his parents as part of their scheme to extort money taking advantage of her moral and spiritual influence over the boy. Certainly, such a conduct and behavior do not jibe with her last minute avowal that her demand for money was merely to test the parents affection or love for their child.

It is true that Consolacion Bravo claims that some of the answers appearing in Exhibit B are not hers but were merely suggested or taught to her by the detective who conducted the investigation, but such claim deserves scant belief considering the details with which they were framed which the investigator could not have known at the time. They could have been supplied by her alone. And as the trial court well observed, "Her answer to the questions in Exhibit 'B' as well as her testimony during the trial induce the Court to believe that accused Consolacion Bravo was not insane or otherwise suffering some mental disease at the time of the commission of the crime. Her narrations reflect spontaneity and coherence which psychologically can not be associated with a mind affected by a mental disease."

An attempt was made to prove that appellant Consolacion Bravo was suffering from mental ailment through the testimony of Dr. Cristeta V. Fulgencio, a psychiatrist of the National Mental Hospital, in that she had been admitted and confined in that hospital because she showed signs or symptoms of acute depression of mind and that during the first days of her admission she was so sick that she could be classified as insane. But this attempt is now of no moment considering that, according to the same doctor, after four electric shock treatments the patient was found to have been restored to her normal state of mind, as in fact she was finally discharged on January 10, 1955 and since then she has not been returned to the hospital. Note, that the instant crime was committed on April 6, 1956.

There can also be no doubt as regards the complicity of appellant Apolinar Acosta considering his behavior before, during and after the commission of the crime. Remember that in the statement Exhibit B subscribed by

Consolacion Bravo in his presence, she made a narration of the various ways by which one can make easy money through extortion and kidnapping attributing the same to Acosta and as to which he did not lift a finger to deny. And when he was pointed to by Consolacion as the person, mentioned by her in her statement, he merely stared at her and did not utter a word. Then we have his behavior when he went to the Echague chapel to pick up the envelope containing the ransom money when before doing so he stood for awhile then looked around and when he did not perceive any suspicion he picked up the envelope and placed it in his pocket. And what is his reaction to such incriminating evidence. He merely said that he picked up the envelope because he saw it in the sidewalk near the chapel and when he found that it contained money he put it in his pocket, but he did not know it was ransom money. He denied having any acquaintance with Consolacion Bravo and disclaimed any knowledge of the plan of the latter to kidnap the boy. But such denial was not given credit by the trial court on the basis of the circumstances of this case.

Thus, in discrediting the story of this appellant, the lower court said: "In the first place, the imputation of Pat. Primo Muñoz to the effect that when he was arrested and was asked where the boy was he became pale and could not answer, was hot denied by said accused. He did not deny also the imputation of the said patrolman that when they took the envelope from his pocket he (accused) became nervous. The natural reaction of a person who only found something on the street when arrested by a policeman is to explain right then and there that he merely found the same. This, accused Apolinar Acosta did not do. In the second place, the imputation of Det. Lazaro Tolosa, Jr., to the effect that during the investigation when Consolacion Bravo pointed to Acosta, the latter did not say a word and only looked down on the floor, was not denied by the said accused. * * * In the third place, in his own written statement, (Exhibit '2'), he admitted that he was arrested by the policeman at about 10:00 o'clock in the morning of April 7, 1956 when he picked up an envelope containing money in front of the chapel at Echague. The time of the picking up of the envelope coincides with the time given by accused Consolacion Bravo when the money should be deposited at the door of the Echague chapel. This coincidence coupled with the fact that accused Apolinar Acosta does not appear to be a total stranger to accused Consolacion Bravo has convinced the Court that the two accused had some previous understanding relative to the commission of the crime charged by the prosecution."

The next question to be determined is whether or not the element of restraint is present as to constitute the crime of kidnapping with which the appellants are charged. On this point the trial court made this observation: "While it is true that the boy was playing while he was in the house at Murphy on April 6, 1956, the fact remains that he was under the control of the accused Consolacion Bravo who left him there, as he could not leave that house until she shall have returned for him. Because of his tender age and the fact that he did not know the way back home, he was then and there in a way deprived of his liberty. It is like putting him in a prison or in an asylum where he may have freedom of locomotion but not the freedom to leave it at will. The same thing can be said of his stay in the house at Tondo, where he was left by her on April 7, 1956." In addition, we may say that because the boy was of tender age and he was warned not to leave until her return by his godmother, he was practically a captive in the sense that he could not leave because of his fear to violate such instruction.

The crime committed is kidnapping as denned in the last paragraph of Article 267 of the Revised Penal Code, as amended by Republic Act No. 1084. However, we share the opinion of the trial court that the two appellants do not appear to belong to that type of kidnappers who deserve the supreme penalty of death considering the small amount involved and the circumstances under which it was committed. In view hereof, and for lack of the requisite vote, the Court has decided to impose upon them the penalty of reclusion perpetua.

Wherefore, the decision appealed from is modified by imposing upon appellants the penalty of reclusion perpetua, with costs.

Paras, C. J., Bengzon, Montemayor, Concepcion, Reyes, J. B. L., Barrera, and Gutierrez David JJ., concur.

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