

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FREDDIE YAMBOT Y DELOS SANTOS, FRANCIS VERSOZA, ARNILO GAVIOLA Y CARBAJAL, MARCIANO SAYASA, AND EDGARDO LINGAN, ACCUSED-APPELL...

G.R. No. 120350. October 13, 2000

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PER CURIAM:

For automatic review here is the Decision[1] of Branch 171, Regional Trial Court of Valenzuela, in Criminal Case No. 3964-V-94, finding appellants guilty of the crime of kidnapping for ransom; and sentencing them as follows:

"WHEREFORE, finding the accused Freddie Yambot y delos Santos, Francis Versoza, Arnelo (sic) Gaviola y Carbajal, Marciano Sayasa and Edgardo Lingan Guilty beyond reasonable doubt of the offense of Kidnapping for Ransom as charged, they are hereby sentenced, each, to death by electrocution pursuant to Article 81 of the Revised Penal Code, as amended.

The accused are likewise sentenced each to indemnify the offended party the sum of P50,000.00.

The ransom money recovered is hereby ordered to be returned to its lawful owners upon proper receipt and identification provided, however, the prosecution will not need the same in the prosecution of the rest of the accused who are still at large.

Let the complete record of the case be immediately forwarded to the Honorable Supreme Court for automatic review in accordance with Article 47 of the Revised Penal Code as amended by Section 22 of Republic Act No. 7659.

SO ORDERED."[2]

Filed on February 17, 1994 by Senior State Prosecutor Ferdinand R. Abesamis and State Prosecutor Leo B. Dacera III, the Information indicting Regio Jamon y Laurit and Juan Cruz; and the herein appellants, Rogelio Freddie Yambot y delos Santos, Francis Versoza, Arnilo Gaviola y Carbajal; and ten (10) others, whose true names are not mentioned, except for their aliases, Ka Roy, Ka Berto, Ka Jessie, Ka Jek, Ka Boy, Ka Lacay, Ka Warly, Ka Jimbo, Ka Alex, and Ka Jun Perez, respectively, alleges:

"That on or about February 7, 1994, in Valenzuela, Metro Manila, Philippines, and within the jurisdiction of the Honorable Court, the aforementioned accused, conspiring, confederating, and mutually helping one another, did then and there wilfully, unlawfully and feloniously kidnap FRANCISCO J. BERNABE for the purpose of extorting ransom, as in fact demand therefor in the amount of P20,000,000 was made by the abovenamed accused, detaining the said offended party in Jaen, Nueva Ecija, until the latter was rescued on February 13, 1994.

CONTRARY TO LAW"[3]

Upon arraignment on March 18, 1994, appellant Freddie Yambot y delos Santos, assisted by Atty. Tiberio U. Prado; and appellant Arnilo Gaviola, with the assistance of Atty. Froilan Zapanta, pleaded not guilty to the

accusations against them.[4] Appellant Francis Versoza likewise entered a negative plea upon arraignment on April 4, 1994.[5]

On June 3, 1994, the prosecution amended the Information to include, among others, Renato Jamorawon and appellant Marciano Sayasa (AKA Romy Sayasa).[6] The amended Information was further amended to include appellant Edgardo Lingan.[7] Arraigned thereunder, appellants Marciano Sayasa and Edgardo Lingan, assisted by Atty. Froilan Zapanta, pleaded not guilty.[8]

On June 21, 1994, the trial court of origin, on motion of the prosecution, discharged accused Renato Jamorawon to serve as a state witness.[9]

Complainant Francisco J. Bernabe, his wife, Araceli Bernabe, Jay Daniel Santiago (Legal Assistant of Filipino Telephone Corporation), Chief Inspector Wilfredo J. Reyes of Task Force Habagat, Sr. Inspector Paul G. Tucay (deputy executive officer of Special Operation Task Group) and state witness Renato Jamorawon were presented as witnesses for the Prosecution.

On the other hand, Romualdo Dasig, Emma Sayasa, Francisco del Monte, and appellants Arnilo Gaviola, Marciano Sayasa and Edgardo Lingan testified for the defense.

Summarized in the appellee's brief, the version for the People runs thus:

"On February 2, 1994, Marciano Sayasa, Edgardo Lingan, Francis Versoza, Jun Perez, Juan Cruz, Ka Berto and accused turned state witness Renato Jamorawon were at a house in Bagbaguin, Valenzuela, Metro Manila, discussing a plan to kidnap Francisco Bernabe. Sayasa presided over the meeting and discussed the plan. The plan was for the group to be divided into two teams. One team would be composed of Ka Berto, Ka Ryan, Juan Cruz, and Jamorawon (the First Team). The other team consisted of Sayasa, Versoza, Peres and Lingan (the Second Team). Sayasa designated Jamorawon as the driver of the First Team. The plan was discussed for several days before it was finalized on February 6, 1994 (TSN, June 27, 1994, pp. 7-8, 11-14, 17-18; TSN July 11, 1994, p. 5-7).

On February 7, 1994, at around 5:30 in the morning, the First Team posted themselves in an alley near Francisco's house situated at Km. 15 A. Marcelo Street, Dalandan, Valenzuela, Metro Manila. They were on board a light blue Sigma Galant car. On the other hand, the Second Team positioned themselves at the corner of an alley and MacArthur Highway on board a red Galant car, to serve as back -up. Both teams waited for Francisco to come out (TSN June 27, 1994, pp. 18-20, 23; TSN April 4, 1994 p.5).

Shortly thereafter, Francisco and his wife Arceli Bernabe left their house in their Toyota Corolla car. Their intended destination was the National Food Authority compound where they planned to jog. Unknown to them, they were being followed by the First Team in the Sigma Galant car, driven by Jamorawon, along A. Marcelo Street. All of a sudden, the Sigma Galant overtook the Toyota Corolla and blocked its path. The Toyota Corolla stopped, and Francisco and Arceli saw three men (Ka Ryan, Ka Berto and Juan Cruz) with drawn Armalite rifles, alight from the Sigma Galant. One posted himself in front of the Toyota Corolla, and the other two, by the front doors. The three armed men forcefully took Francisco and Arceli from the Toyota Corolla and boarded them in the Sigma Galant. The First Team then sped off towards MacArthur Highway and proceeded to Meycauayan (TSN June 27, 1994, p. 19; TSN April 4, 1994, pp. 6-9; TSN April 6, 1994, pp. 8-13).

While inside the Sigma Galant, Francisco and Arceli were blindfolded. Both heard one of the members of the First Team, Juan Cruz alias Ka Libay, call a certain Colonel and report, "Colonel, nakuha na namin ang target". The Colonel appears to be Yambot for according to Jamorawon, Yambot was the one Cruz called from the Sigma. Francisco likewise heard the members warn Arceli that something would happen to him if she would not follow all their instructions. The First Team later dropped Arceli along the way in Meycauayan with a

ransom note and proceeded to Sapang Jaen, Nueva Ecija. The Second Team went to Bagbaguin as planned. In the meantime, Arceli went home and told her son what had happened (TSN April 4, 1994, pp. 9-13, 15-17; TSN April 6, 1994, p. 15, 17; TSN June 27, 1994, pp. 23-26).

Upon arriving at Sapang Jaen, the First Team brought Francisco to their safehouse and left him under the custody of Gaviola and Ka Alex. The First Team then went to Yambot's house, which was about three to four electric posts away (TSN June 27, 1994, pp. 26-27,31.) There, together with Yambot, they discussed how they would coordinate with Arceli. As agreed, Juan Cruz, in the presence of Yambot and Jamorawon, called up Arceli through cellular phone from Yambot's house and demanded the amount of P20 million for the release of Francisco (TSN June 27, 1994, pp. 27-28,32). Arceli replied that it was impossible for her to produce the amount of money asked. After this discussion, Jamorawon and Ka Ryan left for Bagbaguin, Valenzuela, on a bus. They left behind the red Galant car parked at Yambot's house after changing its plate number (TSN June 27, 1994, p.33).

On that same day, Task Force Habagat of the Presidential Anti-Crime Commission (PACC) received information that a certain Francisco Bernabe of Valenzuela had been kidnapped. Colonel Panfilo Lacson, then head of the task force, instructed Chief Inspector Wilfredo F. Reyes to deploy several teams in Valenzuela, Metro Manila, to conduct surveillance. Reyes and his teams stayed several days and nights along MacArthur Highway near the Bernabes' residence. From time to time, Chief Inspector Reyes was informed by the headquarters of the task force about the developments in the negotiation for the pay off (TSN May 18, 1994, pp. 7-12).

On February 12, 1994, around 8:00 in the morning, Chief Inspector Reyes received information from Colonel Lacson that the negotiation for the pay off was finalized. Araceli was to bring the money in the amount of P2,370,000.00 in a white double cab pick-up via Ventereaes street. Chief Inspector Reyes instructed his teams to look for the street and follow Araceli's vehicle. On Ventereaes St., Chief Inspector Reyes who was on board a tinted L-300 van, and his teams tailed Araceli's vehicle for more than an hour up to Canumay (TSN May 18, 1994, pp. 12-15). Araceli was receiving instructions about the pay off site from Perez through cellular phone (TSN April 6, 1994, pp. 25-27).

While Chief Inspector Reyes and his teams were tailing Araceli's vehicle, Versoza, Lingan Sayasa, Perez, Ka Berto, Ka Ryan, Ka Cesar and Jamorawon positioned themselves in Bagbaguin at the boundary of Valenzuela and Novaliches which was the pay off area. Sayasa was in one corner, and Ka Ryan in the other corner. The rest, Versoza, Lingan, Ka Berto, Ka Cesar, Perez and Jamorawon, remained on board the red Galant (TSN June 27, 1994, pp. 40-41).

Near a lumber factory in Bagbaguin, Araceli's vehicle suddenly stopped. The L-300 van which was behind Araceli's car also slowed down. At that moment, Chief Inspector Reyes noticed a red Galant with plate No. NHF-762 parked at the left side of the road facing the opposite direction with three persons in it. The three persons looked tense. Senior Inspector Paul Tucay, one of the operatives, informed Chief Inspector Reyes that two persons were walking towards his vehicle and Araceli's vehicle. Chief Inspector Reyes saw the two persons approach the vehicle of Araceli from the rear. One of them, Ka Cesar, was wearing a black chaleco, while the other, Ka Versoza a blue shirt with collar. Ka Cesar received from Araceli the green bag containing the ransom money, while Versoza stood beside Ka Cesar.

Chief Inspector Reyes ordered his driver to slowly proceed and approach Araceli's vehicle. When Chief Inspector Reyes was just a few meters away from Arceli's car, there were gun shots. Chief Inspector Reyes immediately went out of the L-300 van and with a drawn gun, placed his back against the wall of the lumber factory. He saw his operatives firing their guns at an open field. On the other hand, Senior Inspector Tucay saw the two persons, Versoza and Ka Cesar, running and firing at the operatives. He also saw the men on board the red Galant fire. After the shooting, Ka Cesar, the man in black chaleco, lay dead on the ground with a Browning 9 mm caliber pistol near him. Versoza, the man in blue shirt, was hit on his thigh and surrendered.

The rest escaped. The red Galant was later found abandoned in Valenzuela (TSN May 18, 1994, pp. 15-31; TSN June 1, 1994 pp. 30-31).

Chief Inspector Reyes and Senior Inspector Tucay supervised the interrogation of Versoza to determine the whereabouts of Francisco. Versoza voluntarily divulged the location of the safehouse in San Isidro, Nueva Ecija. Chief Inspector Reyes appointed Senior Inspector Tucay to lead a team to San Isidro.

Upon arriving in San Isidro, Senior Inspector Tucay and his team coordinated with the local police. They sealed off the safe house and rescued Francisco. In the process, they caught Gaviola while reaching for his submachine pistol beside him. Ka Alex, the other guard, was able to escape (TSN June 1, 1994, pp. 17-22, 26; TSN April 4, 1994, p. 38; TSN May 20, 1994, p.11).

After the rescue, Chief Inspector Reyes and his team proceeded to Yambot's house at Sapang Jaen, Nueva Ecija. There, they arrested Yambot and confiscated from him a cellular phone and the blue Galant parked near the house.

Previously, though research and investigation, particularly at the Pilipino Telephone Corporation (PILTEL), the PACC operatives were able to determine that Yambot was the owner of the cellular telephone used in calling Araceli. (TSN May 20, 1996, pp. 9-11, 13-14)."[10]

Appellant Marciano Sayasa placed reliance on denial and alibi. He testified that from February 3, 1994, up to the first week of June 1994, he was in Hinundayan, Southern Leyte. A house painter by occupation, he further theorized that state witness Renato Jamorawon whom he first met in November 1993, offered him a job. Renato Jamorawon gave him an initial payment of P8,000.00 which he accepted, thinking that it was in consideration of a painting job. When he learned that the money was a partial payment for participation in the kidnapping of Francisco Bernabe, this appellant recounted that he refused to get involved in the kidnapping although he failed to return the money of Renato Jamorawon.[11] His failure to retribute the P8,000.00 angered and prompted the latter to implicate him (appellant Marciano Sayasa) in the commission of the crime sued upon.[12]

Appellant Edgardo Lingan, a part time house painter, declared that in February 1993 he stayed in the house of his uncle at Maisan, Valenzuela, Metro Manila.[13] He insisted that he had nothing to do with the kidnapping of Francisco Bernabe and that prior to his arrest, he did not know and had never seen the other appellants.[14]

Appellant Arnilo Gaviola, a construction worker, also claimed that he does not know the other appellants and he came to know them only in court.[15] He further stated that a certain Renato Mendoza brought him to Nueva Ecija and hired him to cement the front portion of a two storey-house. But according to him, he does not know what town in Nueva Ecija is the said house situated.[16] He denied having seen complainant Francisco Bernabe in the same house.[17] On February 12, 1994, at around 12:30 noon, while he and a certain Alex were waiting for the construction materials, armed police officers barged into the house and arrested them; this appellant recounted.[18]

Appellants Freddie Yambot y delos Santos and Francis Versoza were not able to adduce evidence in their behalf. In its order dated May 15, 1995, the trial court declared their waiver of the right to present evidence and considered the case submitted for decision.[19]

On May 22, 1995, after trial, the lower court handed down the judgment of conviction under automatic review.

The joint brief filed by appellants Freddie Yambot y delos Santos and Francis Versoza, is anchored on the assignment of errors, that:

I.

THE TRIAL COURT GRAVELY ERRED IN NOT AFFORDING ACCUSED-APPELLANTS FREDDIE

YAMBOT AND FRANCIS VERSOZA OF THEIR STATUTORY AND CONSTITUTIONAL RIGHTS, HENCE, THEY SHOULD BE ACQUITTED.

II

THE TRIAL COURT GRAVELY ERRED IN DISCHARGING ACCUSED RENATO JAMORAWON, UTILIZING HIM AS A STATE WITNESS, AND ADMITTING HIS TESTIMONY AS EVIDENCE

III.

THE TRIAL COURT GRAVELY ERRED IN NOT ACQUITTING ACCUSED-APPELLANTS FREDDIE YAMBOT AND FRANCIS VERSOZA ON THE GROUND OF REASONABLE DOUBT.[20]

Appellants Edgardo Ligan and Arnilo Gaviola theorize that:

I

THE TRIAL COURT ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE TESTIMONY OF STATE WITNESS RENATO JAMORAWON AND IN DISREGARDING THE THEORY OF THE DEFENSE.

II

THE TRIAL COURT ERRED IN FINDING THE ACCUSED, GUILTY OF THE CRIME OF KIDNAPPING, DESPITE THE INSUFFICIENCY OF THE PROSECUTION EVIDENCE THAT WOULD WARRANT CONVICTION BEYOND REASONABLE DOUBT.[21]

Appellant Marciano Sayasa, through his own counsel, asseverated that he should be acquitted on the grounds, that:

I

HIS CONVICTION BY THE LOWER COURT IS SOLELY BASED ON RENATO JAMORAWON'S (THE STATE WITNESS) TESTIMONY - A TESTIMONY EMANATING FROM A POLLUTED SOURCE, FILLED WITH MAJOR AND IRRECONCILABLE INCONSISTENCIES, AND UNCORROBORATED IN SOME MATERIAL POINTS;

II.

THE COURT A QUO DID NOT APPRECIATE HIS EVIDENCE AND IN FACT HAD A MENTAL PREJUDICE AGAINST THE SAME; AND

III.

THE PROSECUTION FAILED TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[22]

Section 9, Rule 119 of the Rules on Criminal Procedure, provides:

"Sec. 9. Discharge of accused to be state witness. - When two or more persons are jointly charged with the commission of any offense, upon motion of the prosecution before resting its case, the court may direct one or more of the accused to be discharged with their consent so that they may be witnesses for the state when after requiring the prosecution to present evidence and the sworn statement of each proposed state witness at a hearing in support of the discharge, the court is satisfied that:

(a) There is absolute necessity for the testimony of the accused whose discharge is requested;

(b) There is no direct evidence available for the proper prosecution of the offense committed, except the testimony of the said accused;

- (c) The testimony of said accused can be substantially corroborated in its material points.
- (d) Said accused does not appear to be the most guilty;
- (e) Said accused has not at any time been convicted of any offense involving moral turpitude

Evidence adduced in support of the discharge shall automatically form part of the trial. If the court denies the motion for discharge of the accused as state witness, his sworn statement shall be inadmissible in evidence."

Applying the foregoing rule in point, the Court is of the opinion, and so holds, that the trial court erred not in discharging Renato Jamorawon to be used as a state witness. As aptly argued by the Solicitor General, the discharge of Renato Jamorawon meets the requirements of the aforecited provision of law because, first, Jamorawon's testimony is absolutely necessary in the prosecution of the offense, as there is no direct evidence to establish the identity of appellants Edgardo Lingan, Freddie Yambot, and Marciano Sayasa; second, Jamorawon's testimony could be substantially corroborated on material points by the other prosecution witnesses and the documentary evidence. The testimony of Jamorawon regarding the day and time happenings when the kidnapping complained of occurred, the manner of execution thereof, number of persons involved, vehicles used, the communication of the kidnappers with Araceli Bernabe through out the progress of the kidnapping, were all confirmed by the testimonies of prosecution witnesses Francisco Bernabe, Araceli Bernabe and Jay Daniel Santiago; and third, Jamorawon does not appear to be the most guilty. The rule on the discharge of a state witness looks at his actual and individual participation in the commission of the crime.[23] In the case under scrutiny, Jamorawon did not preside over the meeting which planned the kidnapping. His actual participation in the conspiracy was merely his being the driver of the group. Evidently, the discharge of Renato Jamorawon as a state witness is warranted under the attendant circumstances considering that he is a mere subordinate, receiving orders from his superiors; and finally, Jamorawon had never been convicted of a crime involving moral turpitude. The crimes of slight physical injuries through reckless imprudence and illegal possession of deadly weapon of which he had been convicted,[24] did not involve moral turpitude. Moral turpitude connotes an act of vileness, or depravity in private and social duties which a man owes to his fellowman, or to society, done out of a spirit of cruelty, hostility, or revenge.[25]

Slight physical injuries being a light offense, can not be considered a grave violation of the moral sentiment of the community or done in the spirit of cruelty, hostility or revenge. Neither does possession of a deadly weapon involve moral turpitude. The act of carrying a weapon by itself is not inherently wrong in the absence of a law punishing it.

Appellants Edgardo Lingan and Marciano Sayasa argued that Renato Jamorawon's testimony is not worthy of belief for it comes from a polluted source and is not corroborated by other evidence.

Well-entrenched is the doctrine that the factual findings of the trial court, especially on the assessment or appreciation of the testimonies of witnesses, are accorded great weight and respect. The trial court has the singular opportunity to observe the witnesses "through the different indicators of truthfulness or falsehood, such as the angry flush of an insisted assertion or the sudden pallor of a discovered lie or the tremulous mutter of a reluctant answer or the forthright tone of a ready reply; or the furtive glance, the blush of conscious shame, the hesitation, the sincere or the flippant or sneering tone, the heat, the calmness, the yawn, the sigh, the candor or lack of it, the scant or full realization of the solemnity of an oath, the carriage and mien".[26]

A meticulous examination and perusal of the transcript of stenographic notes at bar indicates that the testimony of Renato Jamorawon jibes with the testimonies of the other prosecution witnesses. Verily, the observation by the Solicitor General is well supported by a solid factual basis, to wit:

"First. Jamorawon testified that he was the driver of a blue Sigma Galant on February 7, 1994; his companions were Ka Ryan, Juan Cruz and Ka Berto who were all armed like him; they blocked the car of Francisco; and his three companions alighted and took Francisco and Araceli from the Toyota Corolla and forced them into the Sigma Galant (TSN June 27, 1994 pp. 12, 18-21). This testimony jibes the testimony of Francisco and Araceli. They similarly testified in their direct examinations that their car was blocked by a light blue Galant; and three armed men with armalite rifles approached them and took them by force (TSN April 4, 1994 pp. 7 -9; TSN April 6, 1994 pp. 9-13).

Second. Jamorawon testified that the kidnappers coordinated and communicated with each other and with Araceli through cellular telephones (TSN June 27, 1994 pp. 26-27). Jay Daniel Santiago, the Pilipino Telephone Corporation (PILTEL) representative, confirmed this by testifying in court that Mobiline telephones bearing numbers 3081611, 3094599 and 3095391 registered under the name Freddie Yambot (Exhibits Q-2 to T -5) were used to make calls to each other and to telephone No. 292- 3401 registered under the name of Bernabe Steel Manufacturing (TSN, May 6, 1994 pp. 9, 16-18, 21- 23, 27-37). Likewise, it was confirmed by Araceli when she testified that she received calls from June Perez.

Third. Jamorawon testified that on the day of the pay off he, Jun Perez, Ka Berto, Ka Cesar and Ka Bing, or Versoza, were on board a red Galant, and that they positioned themselves in Bagbaguin at the boundary of Valenzuela and Novaliches; that Versoza and Ka Cesar approached Araceli's vehicle and Ka Cesar took the ransom money; that elements of Task Force Habagat arrived and a gunfight ensued (TSN June 27, 1994 pp. 41-43). This testimony coincides with the testimonies of Chief Inspector Wilfredo Reyes and Senior Inspector Paul Tucay. Reyes Testified that the most prominent car that he noticed in the area was a red Galant parked at the left side of the road with three persons inside (TSN May 18, 1994, pp 17-18); that he saw two persons approached the vehicle of Araceli, one wearing black chaleco and the other a blue shirt with collar; that the man in black chaleco received the money while the other was standing beside the first man; that a gunfight later on took place between his operatives and the kidnappers; that after the gun fight, he saw the man in black chaleco sprawled on the ground dead, while the man in blue shirt surrendered to his operatives (TSN May 18, 1994, pp. 25-29). Senior Inspector Tucay testified that while entering the pay off area he informed Chief Inspector Reyes that the two males were walking towards his car; that the two males were proceeding towards the L-200 vehicle of Araceli that he heard bursts of gun fire; that he saw these two males shooting at his fellow operatives; and that the other men on board the red car also fired at his team (TSN June 1, 1994, pp. 12-13, 30-31).

Fourth. The plan to kidnap Francisco, as testified to by Jamorawon, was corroborated by the manner the kidnapping was executed.

Fifth. Jamorawon testified that after the meeting and before the actual kidnapping of Francisco, they posted themselves near Bernabe's place for one week (TSN June 27, 1994 pp. 16-17). This was confirmed by Francisco when he testified that his actual kidnapping, while he was jogging, he saw a red Galant several times, sometimes with its hood open as if it was being fixed (TSN April 15, 1994, pp. 14-16).

Sixth. Jamorawon testified that right after the kidnapping, they left the Sigma Galant at Yambot's house (TSN June 27, 1994, p.33). This was confirmed by Chief Inspector Reyes when he testified that when they arrested Yambot in his house they confiscated the Sigma Galant parked at the vicinity of the house (TSN May 20, 1994, pp. 13-14).

Seventh. Jamorawon implicated Gaviola and Versoza in the commission of the offense. The two were positively identified respectively by Francisco and Chief Inspector Reyes as members of the kidnap gang."^[27]

With the aforesated corroborations, the Court discerns no basis for doubting the testimony of state witness Renato Jamorawon. The alleged inconsistencies pointed out by appellant Marciano Sayasa are of no moment.

On page three (3) of his Sinumpaang Salaysay,^[28] Renato Jamorawon was asked the question: "Sinu-sino ang

mga kasali sa pagplano sa pagkidnap kay Mr. Bernabe?" Thereto, he answered: "Si JIMBO/MARIS, si Jun Perez, KA RYAN, KA BERTO, KA ROY, KA LIBAY, SI CESAR, KA BING (Francisco (sic) Versoza), Arnelo (sic), Alex Tuazon, at ako." In his June 27, 1994 testimony before the court,[29] however, he mentioned the names of: Marciano Sayasa, Francis Versoza, Ka Berto, Jun Perez and Juan Cruz, when asked as to who were with him when they planned the kidnapping of Francisco Bernabe on February 2, 1994.

Nevertheless, such seeming inconsistency can be reconciled. In the Sinumpaang Salaysay wherein the question propounded did not specify the day or days when the planning took place. In the testimony of Jamorawon before the trial court, he was clearly asked who were the persons with him on February 2, 1994, when they discussed the kidnapping plan.

If it was only on February 2, 1994, that the plan of kidnapping was discussed, there would, indeed, be a discrepancy between the direct testimony of Jamorawon and his Sinumpaang Salaysay. A careful perusal of Jamorawon's testimony, however, discloses that February 2, 1994 was not the only day when the said planing was held. The kidnapping complained of was planned and continuously discussed for five days, from February 2, 1994 until February 6, 1994. On those days, according to Jamorawon, some of his co- conspirators were present and some were not there.[30]

The other inconsistencies alluded to by appellant, such as the failure of Jamorawon to mention in his direct testimony that Sayasa called up Araceli and to state the full name of Ka Alex, are trivial and inconsequential. They do not in anyway impair Jamorawon's identification of his co-conspirator. At any rate, variance between the testimony and the affidavit of a witness does not of itself affect his credibility.[31]

Then too, the supposed discrepancy between the testimony of Jamorawon and that of Araceli Bernabe as to the date when Ka Jun Perez called up the latter deserves scant consideration. It is too insignificant and minor to affect Jamorawon's entire testimony. Besides, the said discrepancy is just a matter of one day.

The claim of appellant Arnilo Gaviola that he had no knowledge of the kidnapping of private complainant is barren of any sustainable basis. Francisco Bernabe positively identified the said appellant as the person posted as his guard during his period of captivity. The said testimony of Francisco Bernabe deserves reliance considering that it came from the victim himself who had no reason to falsely implicate Arnilo Gaviola as one of the culprits. Where there is no evidence to show that the witnesses for the prosecution were actuated by improper motive, their identification of appellant as the assailant should be given full faith and credit.[32]

Appellant Arnilo Gaviola's participation in the commission of the offense charged was likewise testified on by Chief Inspector Reyes and Senior Inspector Tucay. Chief Inspector Reyes and Senior Inspector Tucay, particularly the latter, arrested Gaviola inside the safe house in the act of getting the submachine pistol. Such fact proves Gaviola's participation as guard, and belies his theory that he was merely hired to cement the front portion of the house where private complainant was detained.

The Court finds no tenability in the defense of denial and alibi interposed by appellants. Denial and alibi cannot prevail over the positive testimonies of the prosecution witnesses detailing out appellants' individual acts in the perpetration of the crime.[33] Furthermore, the alibi theorized upon by appellants cannot prosper for their failure to prove the physical impossibility of their presence in the locus criminis at the appropriate time of commission of the crime.[34]

But as regards appellants Freddie Yambot and Francis Versoza, it appears that they were denied due process of law. Enshrined in the constitution is the paramount right of the accused to "xxx have a compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. xxx" Procedural due process

cannot possibly be satisfied without a "law which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial." [35] The constitutional right of the accused to be heard on his defense is inviolate. No court of justice under our system of government has the power to deprive him of that right. [36]

In the case under consideration, appellants Yambot and Versoza were scheduled to present evidence on December 12, 14, 16, 19, 21 and 23, 1994. Thus, on December 7, 1994, subpoena was issued to appellants' witnesses Marie Maniego of Sapang Jaen Nueva Ecija and police officer Joe Villena of Gapan Police Station, Gapan Nueva Ecija. [37] Said subpoena, however, was not served on Marie Maniego, who was unknown at the given address, while in the case of Joe Villena, he received the subpoena only on December 9, 1994. [38]

Meanwhile, Atty. Tiberio U. Prado, the lawyer of appellants Freddie Yambot and Francis Versoza, was able to secure a temporary restraining order from the Court of Appeals enjoining the trial court from continuing with the proceedings in the case. [39] On February 7, 1995, the prosecution presented an omnibus motion to resume trial and/or for the release of ransom money. [40] The hearing on said omnibus motion was set by the court on March 31, 1995, [41] on which date, however, when the omnibus motion to resume trial and/or for the release of ransom money was to be heard, Atty. Tiberio Prado failed to appear. The court then granted the motion to resume the trial and scheduled the presentation of evidence for appellants Yambot and Versoza on April 19, 1995, at 8:30 in the morning, with a warning that the court would consider their failure to appear as abandonment of their right to come forward with their evidence. [42]

At the hearing on April 19, 1995, the trial court, on motion of Atty. Prado, reset the presentation of evidence for appellants Yambot and Versoza to May 15, 22, and 26, 1995; and issued the corresponding subpoena for witnesses Marie Maniego and Joe Villena, even as it reiterated its warning to declare a waiver of appellants' right to adduce evidence. [43]

On May 15, 1995, Atty. Prado pleaded for a resetting of the presentation of evidence on the ground that the subpoenaed witnesses did not appear. The record shows that the subpoena issued by the trial court remained unserved on Marie Maniego, while Joe Villena received the subpoena on May 11, 1995. [44] Atty. Prado further prayed for the issuance of a warrant of arrest in order to compel Joe Villena to testify. Thereupon, the trial court issued a warrant of arrest against witness Joe Villena, declaring him in contempt of court for repeated failure to appear before the court. Nevertheless, it ignored the plea of appellants' counsel to present Joe Villena as witness and submitted the case for decision; ratiocinating as follows:

"xxx The court is left with no other choice but to order the presentation of the evidence for the said accused waived and the case is now submitted for decision.

The disposition of the case has already suffered so much delay. This case was filed as early as on February 17, 1994.

As prayed for by counsel for accused Yambot and Versoza, Joe Villena is hereby ordered arrested for contempt of court for repeated failure to appear despite notices.

The promulgation of the decision in this case is hereby set on May 22, 1995 at 8:30 a.m., without postponement.

SO ORDERED." [45]

On May 22, 1995, immediately before the promulgation of the decision, counsel for appellants moved for a reconsideration of the aforequoted order but to no avail.

From the foregoing, it can be gleaned uneeringly that the delay in the progress of the case under scrutiny is not

entirely attributable to appellants Yambot and Verzosa. The trial court should have granted said appellants' prayer for the presentation of their witness. It is worthy to note that the trial court issued a warrant of arrest against witness Joe Villena but denied the counsel of said appellants to present Joe Villena as a witness. In cases involving death penalty, such as the case at bar, "the Court exercises the greatest circumspection"; "there can be no stake higher and no penalty more severe xxx than the termination of a human life." [46] Appellants Freddie Yambot and Marciano Sayasa must be afforded ample opportunity to defend themselves before rendition of judgment, "lest our conscience be bothered for rendering an irrevocable and irreversible error." [47]

Conformably therewith, in *People vs. Hipolito Diaz y De Guzman*, [48] the Court held:

"It is well settled that the right to be heard by himself and counsel is one of the constitutional rights granted to the accused. Not only this but he likewise has the right to present evidence for his defense. Accordingly, denial of due process can be successfully invoked where no valid waiver of rights has been made, as in the instant case.

We note that accused-appellant's counsel was fairly notified of the scheduled hearings. Despite this, he did not attend any of the four settings. Even on the fourth setting, counsel for accused-appellant did not even bother to file a motion for postponement. Understandably, the court a quo deemed it best to adhere to the policy on speedy disposition of cases for the wheels of justice must turn unhampered by undue delay. However, we find that under the circumstances, the accused-appellant was, in effect, denied due process when the successive non-appearance of his counsel was construed as a waiver of his right to present evidence. Since the imposable penalty under the facts of the case at bar may be death, the trial court should have been more circumspect in outrightly denying the accused-appellant his opportunity to present his side, particularly since he himself was present during the four hearings. Clearly, such presence is a strong indication that accused-appellant was in truth interested in presenting his side but unfamiliarity with the highly technical rules of judicial proceedings prevented him from doing so."

As regards appellants Arnilo Gaviola y Carbajal, Marciano Sayasa, and Edgardo Lingan, the trial court correctly imposed upon them the supreme penalty of death. Section 8 of Republic Act No. 7659 amending Article 267 of the Revised Penal Code, reads:

" Article 267. Kidnapping and serious illegal detention. - Any private individual who shall kidnap or detain another or in any other manner deprive him of his liberty, shall suffer the penalty of reclusion perpetua to death:

xxx xxx xxx

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 circumstance above-mentioned were present in the commission of the offense.

xxx xxx xxx"

Four Members of the court maintain their stand that R.A. 7659 is unconstitutional insofar as it prescribes the death penalty. Nonetheless, they submit to the ruling of the majority of the Court i.e., that the law is constitutional and the death penalty should be imposed in this case.

WHEREFORE, the Decision of Branch 171 Regional Trial Court of Valenzuela in Criminal Case No. 3964-V-94 under automatic review is **AFFIRMED** with respect to appellants Arnilo Gaviola y Carbajal, Marciano Sayasa, and Edgardo Lingan who are hereby adjudged **GUILTY** beyond reasonable doubt of the crime of kidnapping for ransom and are sentenced to suffer the death penalty. The award by the trial court on the civil aspect of the case stands.

But, with respect to appellants Freddie Yambot y delos Santos and Francis Versoza, the judgment of conviction against them is SET ASIDE; and the trial court is hereby ordered to receive the evidence on their behalf and to render judgment on them based on the evidence for the prosecution already adduced and that of Freddie Yambot and Francis Versoza.

Upon finality of this Decision, let certified true copies thereof as well as the records of the case be forwarded without delay to the Office of the President for possible exercise of executive clemency insofar as appellants Arnilo Gaviola y Carbajal, Marciano Sayasa and Edgardo Lingan are concerned, pursuant to Article 83 of the Revised Penal Code, as amended by Section 25 of R.A. No. 7659.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., JJ., concur.

[1] Penned by Judge Adriano R. Osorio.

[2] O.R., p. 547.

[3] Id., p. 2.

[4] Id., p. 56.

[5] Id., p. 63.

[6] Id., p. 126.

[7] Id., p. 159.

[8] Marciano Sayasa was arraigned on June 13, 1994, while Edgardo Lingan was arraigned on June 27, 1994. (See pp. O.R., pp. 156 and 173).

[9] O.R. p. 165.

[10] Rollo, pp. 372-381.

[11] TSN, direct examination of Marciano Sayasa, November 4, 1994, pp. 14-21.

[12] Id., pp. 27-28.

[13] TSN November 18, 1994, pp. 14-21.

[14] Id., p. 11-14.

[15] TSN December 2, 1994, pp. 8-9.

[16] Id., p. 4.

[17] Id., p. 20.

[18] Id., pp. 3, 5 and 6.

[19] O.R. pp. 504-506.

[20] Rollo, pp. 103-104.

- [21] Brief for Appellants Edgardo Ligan and Arnilo Gaviola, Rollo, p. 258.
- [22] Rollo, p. 205.
- [23] People vs. Ocimar, 212 SCRA 647, p. 656; citing: People vs. Padilla, 177 SCRA 644.
- [24] See O.R. pp. 276-277.
- [25] People vs. Jamero, 24 SCRA 206, p. 245; citing: Moore vs. State, 67 So. 789 and 54 CJS 935.
- [26] People vs. Quijada, 259 SCRA 191, pp. 212-213; citing: People vs. De Guzman, 188 SCRA 407 [1990]; People vs. De Leon, 245 SCRA 538 [1995]; People vs. Delovino, 247 SCRA 637 [1995].
- [27] Appelle's Brief, Rollo, pp. 393-397.
- [28] Exhibit AA-8
- [29] TSN June 27, 1994, pp. 7-8.
- [30] TSN, June 27, 1994, pp. 17-18 and July 11, 1994, pp. 5-7.
- [31] People vs. Quiming, 222 SCRA 371, p. 376; citing: People vs. Fule, G.R. No. 83027, February 28, 1992.
- [32] People vs. Somera, 173 SCRA 684, 692; citing: People vs. Dollantes 151 SCRA 592.
- [33] People vs. Abonada 169 SCRA 530, p. 538; citing: People vs. Jacobo Alcantra, G.R. No. 74737, July 29, 1988; People vs. Dagangon, 145 SCAR 464; People vs. Bacosas, 137 SCRA 531; and People vs. Porras 255 SCRA 514, 525, citing: People vs. Miranday 242 SCRA 620; People vs. Claudio, 261 SCRA 647; People vs. Yadao 216 SCRA 1; and People vs. Cabuang 217 SCRA 675.
- [34] People vs. Batulan, 253 SCRA 52, p. 64; citing: People vs. Kipte 42 SCRA 198; People vs. Macayan 126 SCRA 322; People vs. Sabugan 231 SCRA 744; and People vs. Cabreros, 244 SCRA 362.
- [35] Alonte vs. Savellano, Jr., 287 SCRA 245, p. 261, citing: Darmouth College vs. Woodward, 4 Wheaton 518, citing Webster.
- [36] People vs. Lumague, Jr., 111 SCRA 515, p. 528; citing: Abriol vs. Homeres, 84 Phil. 525, 534.
- [37] O.R. p. 354.
- [38] Id., p. 358.
- [39] Id., pp. 361-362.
- [40] Id., pp. 369-373.
- [41] Id., p. 374.
- [42] Id., p. 488.
- [43] Id., p. 498.
- [44] Id., p. 501.
- [45] Id., pp. 505-506.
- [46] People vs. Gallo, 284 SCRA 590, p. 596; citing: People vs. Galera, G.R. No. 115938, October 10, 1997.
- [47] People vs. Amado Sandrias Javier, G.R. No. 126096, July 26, 1999.

[48] G.R. No. 131149-50, July 28, 1999.

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