

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. WILLIAMSON PICKRELL AND AUGUSTO NOLASCO, APPELLANTS.

G.R. No. 120409. October 23, 2003

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is an appeal from the decision[1] of the Regional Trial Court of Pasig, Branch 166, in Criminal Case No. 88357, convicting the appellants Williamson Pickrell and Augusto (Jing) Nolasco of kidnapping for ransom and physical injuries and sentencing them to suffer the penalty of reclusion perpetua.

An Amended Information was filed charging appellants and there co-accused Alexander Nolasco and Eusebia Galzote with kidnapping for ransom which reads:

That on or about the 5[th] day of September, 1991, in the Municipality of Pasig, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping and aiding one another, did then and there willfully, unlawfully and feloniously by force, kidnap for ransom and take away in a taxicab one FAR EAST RAYMOND AUSMOLO, a 16-year-old minor from San Joaquin, Pasig, Metro Manila and brought him to a house/building in Parañaque, Metro Manila where he was detained against his will for two (2) days and while under detention, accused, through telephone calls to his mother, Mrs. Anita L. Ausmolo, demanded the amount of P100,000.00 as ransom money for his release but being unable to get the amount, accused with intent to kill, conspiring and mutually helping and aiding one another began to employ physical violence on said Far East Raymond Ausmolo, by mauling and bludgeoning him and believing him to be already dead, placed his body in a box and transported and dumped him in a trash can located in a vacant lot of the EVACOM in Barangay San Isidro, Parañaque, Metro Manila, where his body was found by the residents thereat and one Mr. Valeriano Veloso, a Barangay Councilman, sensing that there is still life left in him, brought him to the Olivares General Hospital for treatment of his injuries which said victim fortunately survived by the timely medical intervention of doctors in said hospital.

Contrary to law.[2]

Alexander (Cocoy) Nolasco and appellant Augusto (Jing) Nolasco were arrested, but managed to escape. Augusto was rearrested, but Alexander has remained at large. Augusto Nolasco, Williamson (Bill) Pickrell and Eusebia Galzote, when arraigned, assisted by counsel, pleaded not guilty to the crime charged.

Evidence for the Prosecution

Anita Ausmolo and her teenage son, Far East Raymond Ausmolo, were close to Mary Pickrell and the latter's 33-year-old son, Williamson (Bill) Pickrell such that Williamson called Anita "mother." When Mary's property at Ilang-Ilang Street, Rosario Subdivision, Pateros, Metro Manila, was foreclosed and sold at public auction by the bank, she asked Anita to buy the property for her, and Anita accommodated Mary. For a time, Mary and her son stayed in the said property, but later on moved out to No. 6, Ususan, Taguig, Metro Manila.

Anita was concurrently the treasurer, member of the board of directors, one of the administrators, and the chairperson of the disciplinary board of the students' body of Southern Rizal Institute, located at the junction of Ususan, Taguig and Bagong Kalsada, Pateros, Metro Manila. Through her intercession, Williamson was employed as a substitute teacher in the said school. Far East was also enrolled in the school's high school department.

At 1:00 p.m., on August 27, 1991, Williamson, Far East, and Christopher Roxas, a friend and neighbor of Far East, were in the office of Augusto "Jing" Nolasco, located at No. 8270 Dr. A. Santos Avenue, Sucat, Parañaque, Metro Manila. Williamson, Augusto, Far East and Christopher rented a room at the Villa Lourdes Resort to have a "good time." They took shabu which was supplied by Augusto. Williamson took pictures of Far East and Christopher with their erect private organs in full view. The three left the resort between 6:00 p.m. and 8:00 p.m.

At 6:00 a.m., on September 5, 1991, Far East was at the junction of San Joaquin, Pasig, waiting for a ride. He was on his way to school to attend review classes in Algebra for the NCEE examination. Momentarily, Williamson arrived. He held Far East by the hand, and asked the latter to accompany him to Augusto's office where he, Williamson, was scheduled to meet someone. Far East balked, telling Williamson that he had review classes, but the latter persisted. Far East finally relented and agreed to go with Williamson. At that time, Christopher, who was on his way to buy P0.50 worth of pan de sal at the Lakabania Bakery located at the junction of San Joaquin, saw Williamson as he held Far East's hand.

Williamson and Far East arrived at Augusto's office at 7:00 a.m. They found Augusto's son, Alexander "Cocoy," in the ground floor, while Augusto was in his office at the second floor. Williamson went to Augusto and asked him if the man Williamson was going to meet had already arrived. Augusto replied in the negative. Williamson went back to Far East and told the latter what he had just learned. Far East intimated that he was leaving to attend his review classes but Williamson prevailed upon him to stay. Far East agreed to stay until 10:00 a.m.

By 11:00 a.m., no one had arrived at the office. Unable to wait any longer, Far East told Williamson that he really had to go. The two went to the second floor where Far East told Augusto that he was leaving. Augusto, who was holding an axe, suddenly put down the weapon and proceeded to tie Far East's hands behind his back. When Far East demanded to know why he was being tied up, Augusto replied, "May atraso ang tatay mo sa akin." Augusto warned Far East not to resist, otherwise he would be shot. Augusto then tied Far East's feet with hard, brown-colored tape and covered his mouth with an object.

Williamson told Augusto to call up Far East's mother, Anita, to demand ransom in exchange for her son's freedom. Augusto left the room and returned after twenty minutes. He then placed Far East in a box made of rough wood, about three feet long and two meters wide. Far East protested and demanded to know why he was being placed in the box. Augusto ignored the boy. The box was apparently too small, as Far East's shoulders protruded therefrom. Augusto punched Far East, kicked the left side of his shoulders, arms and chest, to compel the latter to press his body inwards. Still, the box could not be closed. Exasperated, Augusto hauled Far East from the box.

Williamson ordered Far East to write a letter to his mother, to ask for ransom in exchange for his release. Perspiring profusely, Far East did as he was ordered and gave the letter to Williamson. Augusto ordered Far East to change his clothes.

Augusto, Williamson, and Alexander then brought Far East out of the office and hailed a taxi. This time, Augusto held a hammer and screwdriver in his right hand, while his left hand held on to Far East's shoulder. He warned Far East not to shout, otherwise he would be shot. The three boarded a taxi. Far East was seated at the back between Augusto and Alexander, while Williamson positioned himself beside the driver. It was about 2:00 p.m.

The taxi stopped three or four times. The kidnappers and their victim got off at Zapote, Las Piñas, in front of a house owned by Eusebia Galzote. The men placed Far East in the kitchen. Augusto left, and Williamson informed Far East that Augusto was going to call Anita, his mother. Momentarily, Augusto returned and told Williamson, "Matigas pa, ayaw magbigay."

Augusto then ordered Eusebia's son to buy some medicine. When the boy returned from the errand, he gave the medicine to Augusto, who in turn forced Far East to ingest five tablets. Far East, who was by then feeling feverish, was brought to the second floor of the house. Augusto and Williamson conferred and decided to transfer Far East to another place. Williamson told Far East that his mother, Anita, had promised to give the ransom money the next day, and that they were going to a house that belonged to Williamson's aunt.

Augusto, Williamson and Far East left the house at 8:00 p.m. and boarded a taxi. As before, Augusto was armed with a hammer and a screwdriver. Far East was seated at the back seat, with Augusto to his left and Williamson at his right. Far East was transported to a garbage dump in a secluded, grassy area in Ibacum, Barangay San Isidro, Parañaque, Metro Manila. They alighted from the taxi. Augusto told Far East to sit in front of a tree and forced the latter to ingest six to seven tablets. The boy then lost consciousness.

At 2:30 p.m. earlier that day, Anita had just arrived at the Southern Rizal Institute. Her secretary, Angie Roldan told her that a male person called at around 1:00 p.m., and identified himself as "Mr. Rodriguez." The man said that he had an urgent message, that he wanted to talk to Anita, and that he would call again. At 3:00 p.m., "Mr. Rodriguez" called and told Anita that he had custody of her son; and if she wanted to see him again, she was to prepare P100,000.00 to be delivered at J.P. Rizal Street, Makati, Metro Manila. The man told Anita that he would call again at 4:00 p.m., and hung up. "Mr. Rodriguez" called, as promised, and demanded to know if the P100,000.00 was ready. Anita replied that the money was not yet available, because the banks were already closed. She pleaded that she be given until the next day to produce the money. The caller agreed and told Anita that he would call again before she left the school. After she put the phone down, Anita asked Mrs. Lolita Casipit, Far East's class adviser, if her son had attended his classes that morning. Mrs. Casipit replied that Far East was absent that day. She also informed Anita that Christopher had seen Far East and Williamson earlier that morning at the San Joaquin junction.

Anita decided to seek police assistance. At about 6:00 p.m., she proceeded to the Pasig Police Station to report her son's kidnapping. On her way there, she was able to confirm from a tricycle driver that her son was seen with Williamson earlier that morning at the junction of San Joaquin. Anita thereafter told the authorities that Williamson had kidnapped her son at the San Joaquin junction earlier that morning, and lodged a complaint for kidnapping against the suspect.

The Station Commander formed a team composed of Capt. Martina, Cpl. PO3 Oscar Mansibang, Cpl. Adelino Ziga, Cpl. Bognot, SPO1 Braulio Basco and Pat. Raul Casino. After coordinating with the Parañaque Police Station, the police officers, with Anita and Christopher, proceeded to Augusto's Parañaque residence. By then, it was already dawn of September 6, 1991. Augusto was not there. His son, Alexander, told the policemen that Augusto could be found at Door-D, Francisco Commercial Building, No. 8270 Dr. A. Santos Avenue, Parañaque, Metro Manila. The police operatives rushed to the place and saw Williamson with Monette Nolasco, Augusto's wife. The police officers brought Williamson to the Parañaque Police Station.

Anita spoke to Williamson, imploring him to reveal the whereabouts of her son. Williamson admitted that he was the one who brought Far East to Augusto's office from the San Joaquin junction. He agreed to bring the police operatives to a vacant lot in Sitio Ibacum, Parañaque, where Far East was brought. PO3 Oscar Mansibang contacted the Pasig Police Station to inform his superior that he and the other operatives were on their way to the

place where Far East had apparently been transported.

At about 6:30 a.m. that same day, San Isidro Barangay Captain Valeriano Veloso was in Sitio Ibacum, Barangay San Isidro, Parañaque, helping out as a traffic aide. A cigarette vendor approached Valeriano and reported seeing a body in a grassy area at the garbage dumping site. Valeriano proceeded to the place, which was about 100 meters away. Valeriano saw Far East lying on his back; his face was bloated, his eyes swollen, and his clothes bloodied all over. Valeriano thought that Far East was already dead. He moved the boy's head and the latter moaned. Far East was still able to identify himself when Valeriano asked who he was. The boy also told Valeriano that he was punched and hit with a hammer by several persons, one of whom was a homosexual. Valeriano then reported the incident to the Parañaque Police Headquarters by mobile phone. At this point, PO3 Mansibang was monitoring the mobile phone as he was making a report to his superior at the Pasig Police Station. He overheard Valeriano saying that he had found Far East in a vacant lot along Ibacum, Barangay San Isidro, Parañaque. PO3 Mansibang forthwith told Anita that Far East had been found. Williamson blurted, "Mother, may pera ka man, patay na ang bata."

By the time the police operatives and Anita arrived at Ibacum, Far East was being boarded on a police mobile patrol car. The boy was brought to the Olivares General Hospital in Parañaque, where he was rushed to the emergency room.

At the hospital, the police operatives were told that there was a possibility that Far East could die of his injuries. They decided to take Far East's statement,[3] fearing that he could die any moment. Pat. Adelino Ziga was assigned to write down the questions and Far East's answers thereto. The boy was questioned in the presence of his mother and Dr. Candelaria Morellos. Far East stated that his hands and feet were bound in ropes, and that he was mauled by Williamson, Augusto, Alexander and a woman.

Meanwhile, the police authorities took Alexander into custody, and also arrested Eusebia Galzote. The police operatives proceeded to the Villa Lourdes Resort but failed to locate Augusto.

Far East was subjected to an x-ray examination which showed that he had a fracture in the skull. The doctor advised Anita to transfer her son to another hospital, better-equipped with the appropriate apparatus to treat the boy's serious injuries. Anita transferred Far East to the Medical City Hospital. Dr. Agaton Manintim, the attending physician, signed a Medico-Legal Certificate stating that Far East sustained injuries, including contusions and abrasions in the arms and the torso, front and back, apparently due to cigarette and electrical burns:

- Lacerated wound, 4 cms., linear, overlying a fronto-temporal bone, right;
- Lacerated wound, 3-4 cms. long, overlying the occipito-parietal area ®;
- Lacerated wound, zygomatic area, right, 3 cms.;
- Contusion/Hematoma, ® cheek;
- Multiple Contusions and Abrasions in the torso, front and back, and arms apparently due to cigarette burns & electrical burns; There are also contusions in the lower extremity, byt.;
- Periorbital Contusion/Hematoma, right.[4]

According to Dr. Manintim, the lacerated wounds could have been caused by any hard object, such as a clenched fist or a piece of wood. The Chief of the Department of Radiology, Dr. Bienvenido Lapuz, performed a CT scan, and prepared a report thereon containing the following findings:

- Comminuted depressed fracture along the parasagittal segment of the right frontoparietal bone;

- Pneumocranium and a thin subdural hematoma underneath the above- mentioned fracture;
- Comminuted fracture of the right occipito-parietal bone;
- Contusion hematoma with edema and pneumocranium underneath the above-mentioned fracture (No. 3);
- The basal and posterior fossa structures were not disturbed. Cisterns and ventricles were essentially normal.[5]

The doctor also pointed out that were it not for the boy's immediate rescue and the timely medical attention of the doctors, the latter could have died from his wounds.

On September 9, 1991, the police operatives received information that Augusto was seen at the Our Lady of Airways Subdivision in Parañaque. The police operatives proceeded to the place and arrested him.

Evidence of Augusto Nolasco

Augusto denied the charge. He testified that at 2:30 p.m. on August 27, 1991, he arrived in his office at the second floor of Door-D, Francisco Commercial Building, Dr. A. Santos Avenue, Paranaque, Metro Manila, and saw Williamson, a homosexual, and two teenagers, Far East and Christopher. Williamson introduced Far East to Augusto as his boyfriend. The group asked if they could have a drinking spree in his office, but Augusto refused. He told Williamson that they could have their drinking spree in one of the rooms at the Villa Lourdes Resort. Williamson agreed. Far East, Christopher, and Williamson went to the resort to rent a room.

Augusto went to the resort and rented a room of his own between 5:00 p.m. and 6:00 p.m. Williamson, Far East and Christopher thereafter joined Augusto in his room. Williamson told Augusto that the three of them wanted to take shabu, and inquired where Far East could "score" some. When Augusto told Williamson that he did not know, Far East brought out a plastic bag of shabu from his pocket. For his part, Christopher produced aluminum foil, tissue paper and other paraphernalia for the use of shabu. The "shabu session" lasted for about twenty minutes. Williamson took pictures of Christopher and Far East with their erect private organs in full view. Before the three left the resort, Far East asked Augusto if they could come back for for another "shabu session." Upon Far East's request, Augusto promised to look for a supplier.

At 8:00 a.m. on September 5, 1991, Augusto was in his office, sleeping. When he woke up at 9:10 a.m., he saw that Williamson and Far East were already in the first floor of his office. They went upstairs and Far East asked Augusto if he knew of anybody who supplied shabu. Far East told Augusto that shabu cost P2,000.00 per gram in Pateros while it cost only P800.00 in Las Piñas. He then asked Augusto if he could use shabu in his office, and Augusto obliged. Far East used shabu for about 25 minutes. Apparently not content, Far East insisted on buying more shabu. Augusto replied that he would bring them to Pulang-lupa, Las Piñas, where they would probably find someone who would be willing to sell the substance.

At 1:00 p.m., Augusto, Williamson and Far East took a taxi and arrived at a house somewhere in Pulang-lupa, Las Piñas. Augusto left to look for a supplier at 2:00 p.m. He was able to contact a friend, who promised to call back. Augusto returned to the house and found Williamson and Far East in the kitchen. Far East had become impatient, and had taken his supply of shabu and its paraphernalia from his pocket. Far East got high on the substance for about 15 minutes. The three continued their conversation until 10:00 p.m. Williamson and Far East then left the house. Augusto stayed until 10:00 p.m. of the next day.

Evidence of Williamson Pickrell

Williamson denied the charge. He testified that he owned and operated a beauty parlor in Ususan, Taguig, Metro

Manila. In 1991, he was appointed as a substitute teacher of History for the second year high school students at the Southern Rizal Institute. Far East was one of his students. Since the boy often sought his advice, they became intimate. Far East became his boyfriend, and often spent the night with him at his house. On August 27, 1991, he and Far East went to the office of his friend, Augusto Nolasco, at Dr. A. Santos Avenue, Parañaque, Metro Manila. Far East wanted to know if Augusto knew of a supplier of shabu. Augusto told Far East that he would try to find one, but that he was not promising anything.

At 6:00 a.m. on September 5, 1991, Far East arrived at the house of Williamson's grandmother in Sto. Rosario Subdivision. Far East told Williamson that his family was known in Pateros and that no one would dare sell shabu to him there, and asked the latter to go with him to Augusto's place. Far East assured Williamson that his mother had allowed him to go, and had even given him money for the trip. The two then boarded a passenger jeepney and alighted at the Bagumbayan terminal. They boarded another passenger jeepney bound for Sucat. They alighted at the Sucat interchange and joined a line of passengers queuing to board a jeepney going to Parañaque. The vehicle was full of passengers.[6] They thereafter alighted at the Jollibee Restaurant in Parañaque and had breakfast. They sat side by side, so intimate with each other that the service crew in the restaurant even joked and kidded them about it. Far East and Williamson again boarded a passenger jeepney and finally alighted in front of Augusto's house. Augusto was still asleep. When Augusto woke up at around 9:00 a.m., they went up to the second floor. Williamson introduced Far East as his boyfriend, who wanted to buy shabu. Far East then asked Augusto if he knew of a supplier of the prohibited drug. Augusto told Far East to wait for him as he wanted to change clothes first. Far East asked Augusto if he could use shabu while waiting, and the latter obliged.

In the meantime, Williamson talked with Augusto about the plans and projects of the cursillistas. Williamson went down to the ground floor and saw a woman, whom he later came to know as Nora Torres.

Williamson and Far East waited for Augusto until 1:00 p.m. They boarded a taxi to Pulang-lupa where Far East was scheduled to meet a drug pusher. They waited. When the drug pusher had still not shown up by 10:00 p.m., Far East and Williamson decided to leave. Augusto opted to stay put. Williamson and Far East boarded a taxi. Williamson asked Far East to drop him off at Augusto's office, since he had left some personal belongings there. It was by then already 10:30 p.m. to 11:00 p.m. Williamson alighted from the taxi in front of Augusto's office. It was the last time that he saw Far East.

Williamson admitted that he told Anita that he was the one who brought Far East to Augusto. He clarified, however, that he meant that he did so because Far East was looking for a drug pusher who could supply him with shabu.

Nora Torres corroborated the testimonies of Augusto and Williamson. She testified that at 8:00 a.m. on September 5, 1991, she arrived at the parlor owned by Monette Nolasco, Augusto's wife. Since Monette was not yet in, Nora opted to have her nails manicured. She saw a homosexual and another person, whom she later learned were Williamson and Far East, talking and caressing each other. After 30 minutes, Williamson and Far East went to the second floor of the house. She left the parlor at 10:00 a.m.

Evidence of Eusebia Galzote

Eusebia denied the charge. She testified that she herself was a cursillista like Augusto, who worked as a clerk at the Department of Engineering and Public Works in Makati. At 8:00 a.m. on September 5, 1991, she reported for work and was in her office up to 5:05 p.m. She immediately went home to her residence at No. 3181 Visita Street, Barangay Sta. Cruz, Makati, Metro Manila.

Eusebia first met Augusto at the cursillo house. They met for the second time only when he went to their office to

see his friends, who also were members of the cursillo.

On September 6, 1991, after office hours, she went out of the house to see her Kumadre Lucila to collect the payments for tocino that the latter had bought from her, and also to get new orders. While she was at Lucila's house, police authorities arrived and arrested her.

The Verdict of the Trial Court

On September 2, 1994, the trial court rendered judgment convicting the accused Williamson Pickrell and Augusto Nolasco of the crime charged in the Information, but acquitted Eusebia Galzote based on reasonable doubt. The decretal portion of the decision reads:

WHEREFORE, the court finds accused Williamson Pickrell and Augusto Nolasco guilty beyond reasonable doubt, as principal, of the crime charged in the information and are hereby sentenced to suffer the penalty of reclusion perpetua, and pay jointly and severally, the victim the sum of P50,000.00, as moral damages, and the victim's mother Anita Ausmolo the amount of P200,026.05, as actual and compensatory damages and P50,000.00, as attorney's fees, plus the costs of suit.

On the ground of reasonable doubt, the court finds accused Eusebia Galzote not guilty of the crime charged in the information.

SO ORDERED.

Pasig, Metro Manila, September 2, 1994.[7]

The Case on Appeal

On appeal, the appellants contend that the prosecution failed to prove beyond cavil that they conspired to kidnap and detain Far East. Appellant Pickrell merely "invited" Far East to accompany him to the office of appellant Nolasco and that Far East had agreed. Contrary to the charge of kidnapping, the appellants insist that Far East never resisted nor complained to the passengers of the jeepney on their way from the Pasig junction to the said office. Neither did he complain to the service crew of the Jollibee Restaurant where he and appellant Pickrell took their breakfast, and, even while he was at the office of the appellant Nolasco. The purported kidnap victim did not complain to the driver of the taxi, while they were on their way to Eusebia Galzote's house in Zapote, Las Piñas.

The appellants also contend that Far East could have easily escaped when he was with the appellants in Zapote, Las Piñas, but that he never tried to do so. They also point out that the purported kidnap victim never intimated in his written statement at the Olivares Hospital that he was kidnapped and detained by the appellants. According to the appellants, the testimonial evidence adduced by the prosecution to prove their guilt for the crime charged was discordant, besides being contrary to ordinary human experience. The court likewise erred in giving credence to the testimonial evidence of the prosecution and in disbelieving the appellant's testimonial evidence. Thus, the prosecution failed to prove that the appellants kidnapped and detained the victim.

The Ruling of the Court

The Court shall delve into and resolve the issues posed by the appellants simultaneously.

The contentions of the appellants are bereft of merit.

Article 8 of the Revised Penal Code provides that there is conspiracy when two or more persons agree to commit a felony and decide to commit it. In *People of the Philippines vs. Alma Bisda and Generosa Basilan*,^[8] this Court held that conspiracy need not be proven by direct evidence. It may be inferred from the conduct of the accused before, during and after the commission of the crime, showing that they had acted with a common purpose and

design. Conspiracy may be implied if it is proved that two or more persons aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their combined acts, though apparently independent of each other were, in fact, connected and cooperative, indicating a closeness of personal association and a concurrence of sentiment. Conspiracy once found, continues until the object of it has been accomplished unless abandoned or broken up. To hold an accused guilty as a co-principal by reason of conspiracy, he must be shown to have performed an overt act in pursuance or furtherance of the complicity. There must be intentional participation in the transaction with a view to the furtherance of the common design and purpose.[9]

The Court further held that:

Each conspirator is responsible for everything done by his confederates which follows incidentally in the execution of a common design as one of its probable and natural consequences even though it was not intended as part of the original design. Responsibility of a conspirator is not confined to the accomplishment of a particular purpose of conspiracy but extends to collateral acts and offenses incident to and growing out of the purpose intended. Conspirators are held to have intended the consequences of their acts and by purposely engaging in conspiracy which necessarily and directly produces a prohibited result, they are, in contemplation of law, chargeable with intending that result. Conspirators are necessarily liable for the acts of another conspirator unless such act differs radically and substantively from that which they intended to commit. As Judge Learned Hand put it in *United States v. Andolscheck*, "when a conspirator embarks upon a criminal venture of indefinite outline, he takes his chances as to its content and membership, so be it that they fall within the common purposes as he understands them." [10]

Article 267 of the Revised Penal Code reads:

ART. 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.

- If the kidnapping or detention shall have lasted more than three days.
- If it shall have been committed simulating public authority.
- 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.
- 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.[11]

For the accused to be convicted of kidnapping and serious illegal detention, the prosecution is burdened to prove beyond reasonable doubt all the elements of the crime, namely, (1) the offender is a private individual; (2) he kidnaps or detains another, or in any manner deprives the latter of his liberty; (3) the act of detention or kidnapping must be illegal; and (4) in the commission of the offense, any of the following circumstances is present: (a) the kidnapping or detention lasts for more than three days; (b) it is committed by simulating public authority; (c) any serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made; or (d) the person kidnapped or detained is a minor, female, or a public officer. If the victim of kidnapping and serious illegal detention is a minor, the duration of his detention is immaterial. Likewise, if the victim is kidnapped and illegally detained for the purpose of extorting ransom, the duration of his detention is immaterial. The essence of the crime of kidnapping is the actual deprivation of the victim's liberty under any of

the above-mentioned circumstances, coupled with indubitable proof of intent of the accused to effect the same.[12]

The victim's lack of consent is also a fundamental element of kidnapping and serious illegal detention. The involuntariness of the seizure and detention is the very essence of the crime.[13] Although the victim may have inceptually consented to go with the offender to a place but the victim is thereafter prevented, with the use of force, from leaving the place where he was brought to with his consent and is detained against his will, the offender is still guilty of kidnapping and serious illegal detention.[14] Citing its decision in *Unites States vs. Wesson*,[15] and the decision of the United States Court of Appeals (5th Circuit), the United States Court of Appeals (9th Circuit), ruled in *United States vs. Redmon*,[16] that:

The evidence shows that Redmond confined the victim, by means of handcuffs and otherwise, while holding her for his sexual gratification and transporting her across state lines. Although he originally inveigled the victim into accompanying him by promising her ice cream, he later confined her by force. The fact that one originally accompanies another without being forced does not prevent the occurrence of a kidnapping where force is later used to seize or confine the victim. See *United States v. Wesson*, 779 F.2d 1443 (9th Cir. 1986); *United States v. Johnson*, 514 F.2d 92 (5th Cir.), cert. denied, 423 U.S. 1020, 96 S.Ct. 459, 47 L.Ed.2d 344 (1975). The subsequent use of force by Redmond brought him within the ambit of the indictment.[17]

In this case, appellant Pickrell inveigled Far East into accompanying him to the office of the appellant Nolasco in Sucat, Parañaque, on the pretext that he was to meet a man there. Far East had no inkling that the appellants had intended to lure him to the said office thereafter, detain him, through force and intimidation, pending payment by his mother, Anita, of P100,000.00 as ransom. When Far East insisted on leaving the office of the appellant Nolasco at 11:00 a.m., the latter, in connivance with appellant Pickrell, prevented him from doing so. The appellants tied Far East's hands and feet, covered his mouth, and threatened to shoot him if he resisted. On orders of appellant Pickrell, appellant Nolasco demanded ransom from Anita for her son's release. Appellant Nolasco, in connivance with his co-appellant, Pickrell, placed Far East in a box, only to take the victim out afterwards when they found that it was too small to contain the latter's entire body. In the process, appellant Nolasco mauled and kicked the victim. The appellants thereafter transported Far East to the house of Galzote in Zapote, Las Piñas, where the boy was detained. When Anita pleaded that she be given until the next day to give the ransom, appellants Nolasco and Pickrell transported the victim anew on board a taxi to a grassy area in Ibacum, Barangay San Roque, Parañaque, where appellant Nolasco, using a hammer, inflicted injuries on the victim. Far East even sustained cigarette and electrical burns. The victim unsuspectingly consented to go with appellant Pickrell, only to be illegally detained and subjected to physical injuries with threats of being killed. Even as police authorities learned where the appellants dumped Far East, appellant Pickrell heartlessly blurted to Anita: "Mother, may pera ka man, patay na ang bata." [18]

There is thus no iota of doubt that the appellants are guilty of kidnapping and serious illegal detention.[19] To exonerate the appellants for the simple reason that the victim had initially voluntarily agreed to go with one of them, is for the Court to reward them simply because they were ingenious enough to conceal their true motive from the victim until he was transported to another place.[20]

While Far East may not have narrated the details of the kidnapping and illegal detention in his statement at the Olivares General Hospital, nonetheless, this does not affect his credibility as a witness and the verisimilitude of his testimony. It bears stressing that when he was briefly interviewed by Pat. Adelino Ziga at the Olivares Hospital, Far East was so weak because of his wounds; the attending physicians were even fearful that he could die any moment. Far East was not in such a state of mind as to enable him to narrate in full the lurid details of his kidnapping and illegal detention. Even then, he stated that his hands and feet were tied, and that he was

transported by the appellants. The statement of the victim jibed with his testimony that appellant Nolasco tied his hands with a rope, and bound his feet with hard masking tape.[21]

The credibility of Far East's testimony was not enfeebled by his failure to seek help from the taxi drivers while he was transported from one place to another, i.e., from the office of appellant Nolasco in Sucat, Parañaque; to the house of Eusebia Galzote in Zapote, Las Piñas; and from the said house to Ibacum, Parañaque. His credibility as a witness stands, despite his failure to attempt to escape from the house in Las Piñas. The evidence on record shows that he was constantly guarded by appellant Nolasco, who was armed with a screw driver and a hammer,[22] and appellant Pickrell. Far East could not have escaped from the taxicab without being killed and, thus, fearing for his life, opted not to do so. Self-preservation is, after all, still recognized as the most fundamental human instinct.[23]

The inconsistencies between Far East's testimony and that of Anita, as alleged by appellant Pickrell, as to the precise time when appellant Nolasco demanded ransom money in the amount of P100,000.00; as to whether Anita agreed to pay ransom or not; and the inconsistencies alleged by the said appellant between the testimonies of Anita and PO3 Mansibang as to the identity of the person who demanded ransom are peripheral and inconsequential. Whether Anita received the demand for ransom from the appellant at 2:30 p.m. or 3:00 p.m., as testified to by her, is a trivial matter. The proven fact is that appellant Nolasco demanded ransom from Anita in the afternoon of September 5, 1991, while the appellants and Far East were still in the office of appellant Nolasco. Appellant Nolasco thereafter renewed his demand for ransom at about 4:00 p.m., only to be told that Anita needed more time, until the next morning, to deliver the ransom money.

There is no inconsistency between Anita's testimony that she agreed to give ransom, and Far East's account that he heard appellant Nolasco tell appellant Pickrell about his mother's refusal to give ransom. While Anita agreed to give the ransom in exchange for her son's release, she also told appellant Nolasco that she could not as yet deliver the money that afternoon as the banks were closed. Neither is there any inconsistency between Anita's testimony, that appellant Nolasco identified himself as "Mr. Rodriguez," and PO3 Mansibang's account, that Anita told him that the person who demanded ransom from her was "unidentified." Anita had no personal knowledge of the identity of the person who introduced himself to her as "Mr. Rodriguez." As it was, appellant Nolasco used a fictitious name when he demanded ransom from Anita.

The record is bereft of any evidence to show that Far East nurtured any ill motive to testify falsely against the appellants. The well-settled rule is that absent any such evidence showing any ill motive, the logical conclusion is that no such improper motive exists, and that the testimony is worthy of full faith and credit.[24] The appellants' defense of denial of the crime charged is merely negative self-serving evidence, which cannot prevail over the positive, straightforward and credible testimony of the victim, Far East.[25]

The Crime Committed by the Appellants

The trial court convicted the appellants of the crime charged in the Information and sentenced them to reclusion perpetua. A cursory reading of the Information will show that the appellants were charged with two crimes, namely, kidnapping for ransom under Article 267 of the Revised Penal Code, and frustrated homicide under Article 249, in relation to Article 6 of the Revised Penal Code.[26] The trial court correctly ruled that the appellants kidnapped and illegally detained the victim for the purpose of extorting ransom. Although the appellants failed to receive any ransom money for the victim's release, the crime of kidnapping and serious illegal detention for ransom was nonetheless committed.

In *People vs. Pagalasan*,[27] this Court ruled that to warrant the imposition of the death penalty for the crime of kidnapping and serious illegal detention for ransom, the prosecution must prove beyond reasonable doubt: (a)

intent on the part of the accused to deprive the victim of his liberty; (b) actual deprivation of the victim of his liberty; and (c) motive of the accused, which is ransom for the victim or other person for the release of the victim. The purpose of the offender in extorting ransom may be proved by his words and overt acts before, during and after the kidnapping and detention of the victim. Neither actual demand for nor actual payment of ransom is necessary for the crime to be committed. Ransom, as employed in the law is so used in its common or ordinary sense; meaning, a sum of money or other thing of value, price, or consideration paid or demanded for redemption of a kidnapped or detained person, a payment that releases from captivity. It may include benefits not necessarily pecuniary which may accrue to the kidnapper as a condition for the release of the victim.

However, the trial court erred in not convicting the appellants of frustrated homicide as alleged in the Information. The appellants also committed frustrated homicide because as was shown in Far East's statement,[28] he was hit by a hammer. He sustained lacerated wounds on the fronto-temporal bone and on the occipito-parietal area, which could have caused his death were it not for the timely medical intervention. Although there is no direct evidence that the appellants inflicted the said injuries on the victim, the evidence on record shows that the last persons who were with the victim before the latter was abandoned in the grassy area at Barangay San Isidro, Parañaque, were the appellants. The presumption then is that the appellants were the ones who inflicted the injuries on the victim. Considering the location, number and nature of the wounds sustained by the victim, as well as the weapon used to cause the said injuries, the appellants inflicted the injuries on the victim with intent to kill the latter.[29] In fact, appellant Pickrell blurted to Anita after revealing that Far East had been located, "Mother, may pera ka man, patay na ang bata."

The Court is thus convinced that the appellants intended to kill the victim only as an afterthought, after failing to receive the ransom money from Anita in the afternoon of September 5, 1991. Appellant Nolasco called up Anita at about 4:00 p.m. to inform her where and how the money was to be delivered. However, he failed to contact her as promised before she left the school. The appellants brought Far East to Zapote, Las Piñas. The appellants decided to kill the victim after the latter was given tablets which rendered him unconscious. The appellants thereafter inflicted the almost-fatal injuries on the victim. Appellants Pickrell and Nolasco are thus guilty of two crimes: kidnapping for ransom and frustrated homicide.[30]

Proper Penalties for the Crimes

The trial court correctly sentenced the appellants to suffer the penalty of reclusion perpetua. Although under Article 267 of the Revised Penal Code, the imposable penalty for kidnapping and serious illegal detention for ransom is the death penalty, the imposition of the death penalty was suspended at the time the said crimes were committed. Hence, the penalty lower by one degree, which is reclusion perpetua, should be imposed on the appellants.

The felony of frustrated homicide committed by the appellants was aggravated by the use of a motor vehicle,[31] because the appellants used a taxi in transporting the victim to San Isidro, Parañaque, where the latter was abandoned after serious physical injuries were inflicted on him. However, the said aggravating circumstance was not alleged in the Information, as mandated by Section 8, Rule 110 of the Revised Rules of Criminal Procedure. Although the crime was committed before the said rules took effect on December 1, 2000, the same should be applied retroactively, as the same is favorable to the appellants.[32]

The penalty for homicide under Article 249 of the Revised Penal Code is reclusion temporal. The imposable penalty for frustrated homicide is one degree lower than reclusion temporal which is prision mayor. To determine the minimum of the indeterminate penalty, the penalty of prision mayor should be reduced by one degree to prision correccional. The maximum of the indeterminate penalty shall be taken from the medium period of prision

mayor. The minimum period of the indeterminate penalty shall be taken from any period of prision correccional.

Hence, for frustrated homicide, the appellants should be meted an indeterminate penalty of three years of prision correccional, in its medium period as minimum, to nine years and one day of prision mayor, in its medium period, as maximum.

Civil Liabilities of the Appellants

The trial court correctly held that the appellants are liable for moral damages, actual damages, and attorney's fees to the victim Far East Raymond Ausmolo, for having committed the crime of kidnapping for ransom against him.[33] The appellants are also liable for moral damages to the same victim in the amount of P30,000.00 for their conviction of frustrated homicide, and P25,000.00 as exemplary damages, conformably to current jurisprudence.[34]

IN LIGHT OF ALL THE FOREGOING, the Decision of the Regional Trial Court of Pasig, Branch 166, in Criminal Case No. 88357, is **AFFIRMED WITH MODIFICATION**. Appellants Williamson Pickrell and Augusto Nolasco are found guilty of kidnapping for ransom defined and penalized under Article 267 of the Revised Penal Code and are sentenced to suffer the penalty of reclusion perpetua. The appellants are ordered to pay, jointly and severally, to the victim Far East Raymond Ausmolo the amounts of P50,000.00 as moral damages; P200,026.05 as actual damages; and P50,000.00 as attorney's fees.

The appellants are found guilty of frustrated homicide under Article 249 in relation to Article 6 of the Revised Penal Code and are sentenced to suffer an indeterminate penalty of three years of prision correccional, in its medium period, as minimum, to nine years and one day of prision mayor, in its medium period, as maximum. The appellants are ordered to pay, jointly and severally, to the victim Far East Raymond Ausmolo the amounts of P30,000.00 as moral damages and P25,000.00 as exemplary damages. Costs against the appellants.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, Austria-Martinez, and Tinga, JJ., concur.

[1] Penned by Judge Jesus G. Bersamira.

[2] Records, pp. 45-46.

[3] Exhibit "A," Vol. II, Folder of transcript of stenographic notes.

[4] Exhibit "F."

[5] Exhibit "C-1" (Folder of transcript of stenographic notes).

[6] Exhibits "1" to "3."

[7] Records, p. 365.

[8] G.R. No. 140895, July 17, 2003.

[9] Id. at 21.

[10] Id.

[11] The crimes subject of the case were committed before Republic Act No. 7659 took effect.

- [12] *People vs. Bisda*, supra, p. 17.
- [13] *Id.* at 18.
- [14] *People vs. Santos*, 283 SCRA 443 (1997).
- [15] 779 Federal Reporter, 2d. 1443 (1986).
- [16] 803 Federal Reporter, 2d. 438 (1986).
- [17] *Id.*, supra.
- [18] TSN, 10 February 1992, p. 22 (Ausmolo).
- [19] *People vs. Cua*, 232 SCRA 507 (1994).
- [20] *State vs. Chisenhall*, 11 Southeastern Reporter, 518 (1890).
- [21] TSN, 3 April 1992, p. 37 (Ausmolo).
- [22] TSN, 3 April 1992, pp. 28-29 (Ausmolo); *Id.* at 46-47 (Far East).
- [23] *People vs. Cajara*, 341 SCRA 191 (2000).
- [24] *People vs. Tortosa*, 336 SCRA 604 (2000).
- [25] *People vs. Torres*, 247 SCRA 212 (1995).
- [26] Art. 6. Consummated, frustrated and attempted felonies.--

...

A felony is consummated when all the elements necessary for its execution and accomplishment are present; and it is frustrated when the offender performs all the acts of execution which would produce the felony as a consequence but which, nevertheless, do not produce it by reason of causes independent of the will of the perpetrator.

- [27] G.R. Nos. 131926 and 138991, June 18, 2003.
- [28] Exhibit "F."
- [29] *People vs. Delim*, G.R. No. 142773, January 28, 2003.
- [30] *People vs. Enanoria*, 209 SCRA 577 (1992).
- 30 Article 14, paragraph 1 - That the crime be committed with the aid of persons under fifteen years of age or by means of motor vehicles, motorized watercraft, airships, or other similar means. (As amended by Rep. Act No. 5438, approved Sept. 9, 1968.)
- [32] *People vs. Caabay*, G.R. 129961-62, August 25, 2003.
- [33] *People vs. Bisda*, supra.
- [34] *People vs. Catubig*, 363 SCRA 621 (2001).

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