

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROSEMARIE DE LA CRUZ Y NIEVA, ACCUSED-APPELLANT.

G.R. No. 120988. August 11, 1997

Ponente: MELO, J.

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MELO, J.:

Accused-appellant Rosemarie de la Cruz was caught holding a seven-year old schoolgirl by the hand and leading her out of the school grounds. Charged with kidnapping and serious illegal detention of a minor, she was convicted, and accordingly sentenced to suffer the penalty of no less than reclusion perpetua. Accused-appellant contends that her guilt has not been established by proof beyond reasonable doubt and that the entire case is nothing but an overreaction to the situation.

The Information charged:

That on or about September 27, 1994, in the City of Manila, Philippines, the said accused, being then a private individual and without authority of law, did then and there willfully, unlawfully and feloniously kidnap, detain or in any manner deprive one WHIAZEL SORIANO y CRUZ, seven years of age, of her liberty, against her will and consent.

Contrary to law.

(p. 5, Rollo)

The case was docketed as Criminal Case No. 94-139168 before the Regional Trial Court of the National Capital Judicial Region (Branch 35, Manila). After accused-appellant entered a plea of not guilty, trial commenced. The testimony of the principal witnesses for the prosecution may be summarized in the following manner:

Cecilia Caparos, a neighbor of Whiazel Soriano, the victim, testified that on September 27, 1994, at around 11:30 o'clock in the morning, she was waiting for her two children inside the compound of the Aurora A. Quezon Elementary School when she saw Whiazel held on the hand and being led away by a woman later identified as accused-appellant. Knowing that Whiazel was enrolled in the afternoon class, she went after them and asked accused-appellant where she was going with Whiazel. Accused-appellant answered that she asked Whiazel to bring her to Rowena Soriano, the child's mother. Cecilia then turned to Whiazel and asked her why she was with accused-appellant. Whiazel answered that accused-appellant requested her to look for the latter's child. Cecilia grew suspicious because of the inconsistent answers, Whiazel's terrified look, and the scratches on the child's face. She told accused-appellant that she will bring accused-appellant to a teacher because she did not trust accused-appellant. Accused-appellant was "surprised and reasoned out", but just the same agreed to go to a teacher (pp. 3-9, 11-13, tsn, April 3, 1995).

The victim, Whiazel Soriano (sometimes referred to in the record as Reazel or Rhiazel), at the time of the incident, was a Grade 1 pupil at the Aurora A. Quezon Elementary School in Malate, Manila. She testified that she voluntarily went with accused-appellant after being asked for help in looking for the school dentist. Whiazel

also mentioned that accused-appellant asked for her assistance in looking for accused-appellant's child in a place far away from school. She was neither threatened nor hurt in any way by accused-appellant. She was not led out of the school; in fact they never got out of the school compound. When Cecilia Caparos saw them, Whiazel told accused-appellant that she wanted to go. Accused-appellant refused, and held Whiazel's hand. Whiazel did not try to escape. She did not even cry; well, not until they went to a teacher (pp. 3-9, tsn, April 7, 1995).

For the defense, Eufemia Magpantay, guidance teacher at Aurora A. Quezon Elementary School, testified that on September 27, 1994, at around noontime, accused-appellant, Whiazel, her teacher Mrs. Rioganes, and Cecilia Caparos went to her office. The incident was related to her. Asked what she was doing with Whiazel, accused-appellant said she wanted the child's help in looking for the school dentist. Accused-appellant reiterated this before the assistant principal to whom they all later went. This witness testified that the school allows patients who are not connected with the school to consult at the clinic. Further, she also mentioned that the students of the Aurora A. Quezon Elementary School, the same being a public school, come mostly from low to average income families (pp. 4-9, tsn, April 28, 1995).

Accused-appellant's mother-in-law, Gorgonia Nieva, testified that on the day prior to the incident, accused-appellant had asked her to look for Dr. Luisa Medina, a dentist. Accused-appellant's daughter was then sick. Her inquiries showed that the dentist no longer had her clinic at her house; instead she may be found at the Aurora A. Quezon Elementary School. Thus, the next day, she went with accused-appellant to Manila to look for the dentist. They parted ways when they arrived at the school at around 11 o'clock in the morning (pp. 3-12, tsn, April 24, 1995).

Accused-appellant testified that when she got to the school, she asked a guard where the clinic was. The guard gave her directions, and told her to pass through the same gate on her way out. When she got to the clinic, no one was there so she left. On her way out, a girl, later identified as Whiazel, walked with her at arm's length (nakasabay). She did not hold the child; she did not look at the child; they did not talk; not even smiles were exchanged. Before she could get out of the school, a woman (Cecilia Caparos) called her; hurled invectives at her, and accused her of kidnapping Whiazel. Accused-appellant got mad but nevertheless offered no resistance when Caparos dragged her and brought her to the office of the guidance counselor. There, Caparos repeated her charges against accused-appellant, which accusations the latter denied. Whiazel was asked by the guidance counselor if accused-appellant was really going to kidnap her; she answered no. Very much the same things were said later at the principal's office (pp. 2-8, tsn, April 21, 1995). At the request of the principal, five policemen later came and brought accused-appellant to Station No. 5 of the Western Police District (pp. 14-15, Rollo).

Lending credence to the testimony of the prosecution witnesses, the trial court rendered the appealed decision finding accused-appellant guilty beyond reasonable doubt of the crime of kidnapping and serious illegal detention of a minor, as:

It has been established with moral certainty that with neither legal reason nor just cause, the accused took hold of the child Whiazel by the hand, and led her towards the gate of the school compound against her will, evidently to bring her out of the school perimeter. But before they could actually exit through that gate, the child saw a neighbor (obviously Cecilia Caparos) and told the accused that she wanted to go to her neighbor. The accused, however, refused and did not agree to let the child go and continued to hold her, for which reason, she was not able to get away from the accused . . .

That the accused did not employ any physical force on Whiazel Soriano in detaining and restraining her freedom provides no significant consequence to relieve the former from the resultant effects of her consummated criminal act, for it cannot be denied that she had exerted sufficient moral intimidation on the child which effectively controlled and influenced her will . . . At such tender age and immature mind she can

easily be awed and cowed by a person such as the accused.

(pp. 24-26, Ibid.)

Accordingly, accused-appellant was sentenced to suffer the penalty of reclusion perpetua, and to pay the victim, through her parents, P50,000 as moral damages (p.26, Ibid.).

Accused-appellant interposed the instant appeal, contending that her act of holding the child by the hand and leading her out of the school premises cannot be considered an act of kidnapping without leaving room for reasonable doubt. Accused-appellant points out that Whiazel did not categorically state that accused-appellant tried to kidnap her. On the contrary, the child testified that she voluntarily went with accused-appellant and that she was neither forced nor intimidated into accompanying accused-appellant. Also, it is said, accused-appellant's excuse for going to Whiazel's school to look for Dr. Medina is buttressed by the fact that she had a tooth extracted in jail sometime in November 1994; and that contrary to Whiazel's statement, the guidance teacher, Eufemia Magpantay, testified that even persons not connected with the school are allowed to consult Dr. Medina at the school's dental clinic. Accused-appellant thus contends that she had a valid reason for being at the school premises, as indeed, she did not run away and instead faced her accuser. All these circumstances, accused-appellant submits, constitute reasonable doubt as to her guilt which, therefore, necessitate her acquittal (pp. 4-8, Accused-Appellant's Brief; pp. 53-57, Rollo).

The People, through the Office of the Solicitor General, argue that Whiazel was deprived of her liberty, no matter how short a time, the moment accused-appellant, a person unknown to Whiazel, prevented her from going over to her neighbor, Cecilia Caparos. Under the circumstances, considering that she is of such tender age, deprivation of liberty was consummated even in the absence of force or threats upon the victim. (pp. 6-7, Plaintiff-Appellee's Brief).

In a prosecution for kidnapping, the intent of the accused to deprive the victim of the latter's liberty, in any manner, needs to be established by indubitable proof (People vs. Puno, 219 SCRA 85 [1993]). The acts held by the trial court, and maintained by the People, as consummating the crime of kidnapping in this case are those when accused-appellant held the victim's hand and refused to let go when the victim asked to go over to her neighbor, who by then already saw what was happening. This happened for only a very brief span of time and the evidentiary record shows that there were a good number of people present at that time, that a guard was stationed at the gate, and that there was at least a teacher nearby. The child could have just as easily shouted for help. While it does not take much to scare the wits out of a small child like Whiazel, under the attendant circumstances, we cannot say with certainty that she was indeed deprived of her liberty. It must further be noted that up to that brief moment when Cecilia saw them, and the child asked to be let go, the victim had gone with accused-appellant voluntarily. Without any further act reinforcing the inference that the victim may have been denied her liberty, even taking cognizance of her minority, the Court hesitates to find that kidnapping in the case at bar was consummated. While it is a well-entrenched rule that factual findings of trial courts, especially when they concern the appreciation of testimony of witnesses, are accorded great respect, by exception, when the judgment is based on a misapprehension of facts, as we perceive in the case at bar, the Court may choose to substitute its own findings (People vs. Padua, 215 SCRA 266 [1992]).

To our mind, the felony committed is kidnapping and serious illegal detention of a minor in the attempted stage only. The attempted phase of a felony is defined as when the offender commences the commission of a felony, directly by overt acts, and does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance (Article 6, Revised Penal Code). The overt act must be an external one which has direct connection with the felony, it being "necessary to prove that said

beginning of execution, if carried to its complete termination following its natural course without being frustrated by external obstacles nor by the voluntary desistance of the offender, will logically and necessarily ripen to a concrete offense” (Padilla. Criminal Law: Revised Penal Code Annotated, vol. I, 1987 ed., p. 141 citing *People vs. Lamahang*, 61 Phil 703).

In the case at bar, accused-appellant already commenced her criminal scheme by taking hold of Whiazel by the hand and leading her out of the school premises. As mentioned earlier, these do not sufficiently establish that kidnapping had been consummated. However, considering other attendant facts and circumstances, it does reveal that accused-appellant had less than noble intentions with the victim. Firstly, the child was led to believe that accused-appellant wanted to see the dentist. It is not clear, however, that there really was a Dr. Medina employed by the school as dentist. Not even the guidance counselor who testified for the defense made any specific mention of the doctor. Secondly, if accused-appellant wanted to see the dentist, why was she on her way out? If it is true she had already gone to the clinic and found no one there and that she then decided to leave, what else was she doing with the child? Thirdly, accused-appellant did not simply ask for directions; she wanted the victim to accompany her. That seems suspicious enough. And of all people, why ask a seven-year old? Fortunately, the further progress and completion of accused-appellant’s felonious design was thwarted by the timely intervention of Cecilia Caparos, the victim’s neighbor.

The Court thus holds that the felony committed by accused-appellant in the case at bar is not kidnapping and serious illegal detention of a minor in the consummated stage, but rather in its attempted stage.

Nevertheless, we believe that the trial court erred in granting moral damages in the amount of P50,000 despite the absence of any evidence on record that the victim suffered sleepless nights, serious anxiety, fright, or similar injury. All that the record reveals is that the victim cried when they were at the guidance counselor’s office, nothing more. Inasmuch as moral damages are granted not to enrich, but rather to compensate the victim for the injury suffered (*Bautista vs. Mangaldan Rural Bank, Inc.*, 230 SCRA 16 [1994]), proof of moral suffering must be introduced, failing in which, such an award is not proper (*People vs. Manero, Jr. et. al.*, 218 SCRA 85 [1993]).

Since the crime is only in its attempted stage, the penalty imposable under Article 267 of the Revised Penal Code, as amended by R.A. 7659, which is reclusion perpetua to death, has to be lowered by two degrees (Article 51, Revised Penal Code). Two degrees lower from reclusion perpetua to death would be prision mayor, which has to be imposed in its medium period in the absence of any mitigating or aggravating circumstance (Article 64, Revised Penal Code). Applying further the Indeterminate Sentence Law, the imposable penalty would range from prision correccional, as the minimum, to prision mayor in its medium period, as the maximum.

WHEREFORE, premises considered, the appealed decision is MODIFIED in that accused-appellant is found guilty beyond reasonable doubt of attempted kidnapping and serious illegal detention. Accordingly, accused-appellant is sentenced to suffer an indeterminate penalty of two (2) years and one (1) day of prision correccional, as minimum, to eight (8) years and one (1) day of prision mayor, as maximum. The award for moral damages in the amount of P50,000 is hereby DELETED.

SO ORDERED.

Narvasa, C.J., (Chairman), Davide, Jr., Francisco, and Panganiban, JJ., concur.

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