

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARILYN RAFAEL VILLAMAR, ACCUSED-APPELLANT.

G.R. No. 121175. November 04, 1998

Ponente: ROMERO, J.

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ROMERO, J.:

Marilyn Villamar was charged with the crime of illegal detention and frustrated murder in an information dated November 9, 1993, the accusatory portion of which reads:

"That in or about and during the period beginning 7:00 a.m. of June 5, 1993 to 9:00 a.m. of the same day, in Barangay Cabalantian, Municipality of Bacolor, Province of Pampanga, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, MARILYN RAFAEL-VILLAMAR, suspecting that Maria Luz Cortez would not return her daughter Jonalyn Villamar whom she entrusted to said Maria Luz Cortez, did then and there wilfully, unlawfully and feloniously surreptitiously enter the house of Maria Luz Cortez and by means of force and intimidation and with threats to kill take said Maria Luz Cortez, a woman of 20 years old as the latter entered her house whom said accused detained and kept locked inside the house from 7:00 a.m. to 9:00 a.m. of June 5, 1993 or a period of two (2) hours, more or less, under restraint and against the will of the said Maria Luz Cortez and said accused during the period of detention maltreated and refused to release said Maria Luz Cortez until her demand for a sum of money and a getaway vehicle was given to her and on the occasion thereof, accused with evident premeditation and with intent to kill, did then and there wilfully, unlawfully and feloniously assault, attack and strike with a deadly weapon to wit: a knife and a chisel, one Maria Luz Cortez who as a result thereof, suffered various lacerated wounds on the head which ordinarily would cause the death of the said Maria Luz Cortez, thus performing all the acts of execution which should have produced the crime of murder as a consequence, but nevertheless did not produce it by reason of causes independent of her will, that is, by the timely arrival of the authorities who rescued Maria Luz Cortez which prevented her death.

CONTRARY TO LAW."

On November 23, 1993, the accused pleaded not guilty to the crime charged. Thereafter, trial on the merits proceeded.

The evidence for the prosecution established the following facts:

On February 11, 1993, Villamar went to the house of the private offended party Cortez and inquired if the latter was interested in adopting her daughter, explaining that her offer was due her husband's hasty departure. Unable to refuse, Cortez accepted the offer and immediately prepared a "Sinumpaang Salaysay" to formalize the adoption. Unfortunately, on June 5, 1993, Villamar, apparently regretting her decision, went to the house of Cortez and decided to take her daughter back. This sudden reversal was, of course, not taken lightly by Cortez, who vehemently refused to relinquish custody of the girl to Villamar.

Thereupon, a scuffle ensued between the two, during which Villamar managed to hit Cortez with a chisel on the head rendering the latter weak and immobilized, after which she threatened her with a pair of scissors. Villamar

was demanding that Cortez reveal where the "Sinumpaang Salaysay" was located. Meanwhile attracted by the commotion, a curious crowd was already gathering outside the Cortez residence. Sensing imminent danger, Villamar demanded money and a get-away vehicle to extricate herself from her predicament. However, on her way to the car, a melee ensued resulting in her immediate arrest by the responding policemen.

The defense, on the other hand, narrates a different scenario.

Villamar admits that a struggle did occur between her and Cortez, after the latter refused her request for the return of her child. However, while she acknowledged that she brandished a pair of scissors before Cortez, this was motivated more out of fear of the crowd assembled outside the house which might harm her. In other words, in order to protect herself, she had to use Cortez as a "human shield" to keep the crowd at bay.

The trial court, not having been convinced with Villamar's version of the incident, convicted her for serious illegal detention and less serious physical injuries, but at the same time acquitted her on the charge of frustrated murder. The dispositive portion of the decision reads as follows:

"Accordingly, finding the accused Marilyn Rafael Villamar to be guilty beyond reasonable doubt of the crime of Serious Illegal Detention and Less Serious Physical Injuries, the Court hereby sentences her as follows:

- 1) On the Serious Illegal Detention - for the accused to suffer the penalty of Reclusion Perpetua and all the accessory penalties as provided by law;
- 2) On the Less Serious Physical Injuries - for the accused to suffer a four (4) months imprisonment and any accessory penalty as maybe provided by law.

The accused is entitled to credit of her preventive imprisonment in accordance with the law.

SO ORDERED."[1]

Insisting on her innocence, Villamar has interposed the instant appeal.

The focal point of Villamar's thesis is that she cannot be guilty of serious illegal detention since she had no intention to deprive or detain Cortez of her liberty.[2]

Before a conviction for kidnapping and serious illegal detention under Article 267 of the Revised Penal Code can be sustained, the following elements must concur, namely: (a) the offender is a private individual, (b) kidnaps or detains another that will deprive the victim of his liberty, (c) the act of detention is illegal and (d) in the commission of the offense any of the following circumstances are present - the detention lasts for more than five (5) days; it is committed by simulating a public authority, serious physical injuries are inflicted or threats to kill are made and the person kidnapped is a minor, female or public officer.[3] It is important that indubitable proof be presented that the actual intent of the malefactor was to deprive the offended party of his/her liberty,[4] and not when such restraint of liberty was merely an incident in the commission of another offense primarily intended by the offender.[5]

Contrary therefore to the prosecution's assertions, we are of the opinion that Villamar had no intention to kidnap or deprive Cortez of her personal liberty. This is clearly demonstrated in the testimony of Villamar herself:

"Q

Were you able to reach at their house, the spouses Maria Luz Cortez?

A

Only the wife, sir.

Q

Upon reaching Maria Luz Cortez at their house, what happened next?

A

I talked to her, sir.

Q

When you talked to her what did you talk about?

A

I told her again that I wanted to regain custody of my daughter, sir.

Q

What did she tell you when you told her about that?

A

She told me again that I don't have to go back to their place because there was no more baby that I could get, sir.

Q

Upon hearing that, what did you do?

A

I still pleaded to (sic) her, sir."^[6]

The actuation of Villamar appear to be more of a product of a mother's desperation and distraught mind when her plea for the return of her child was refused by Cortez, unmindful of the consequences which her reckless outburst would cause to the latter. In a celebrated case, this Court rejected the kidnapping charge where there was not the slightest hint of a motive for the crime.^[7] In other words, what actually transpired was the rage of a woman scorned. The undeniable fact that the purpose of Villamar was to seek the return of her child was never assailed by the prosecution. Until the defendant's purpose to detain the offended party is shown, a prosecution for illegal detention will not prosper.

Still, the prosecution insists that assuming that Villamar had no intention to deprive Cortez of her liberty, the fact that she demanded and received One Thousand Pesos (P1,000.00) from Cortez constitutes a ransom within the contemplation of Article 267 of the Revised Penal Code.^[8] Again, we cannot agree with the prosecution's theory.

Under the law, as presently worded, it is essential that the kidnapping or detention was committed for the purpose of extorting ransom.^[9] In the instant case, there is no showing whatsoever that Villamar wanted to extort money from Cortez prior to their confrontation.

When accused-appellant coerced Cortez to reveal the whereabouts of the "Sinumpaang Salaysay" for the purpose of destroying the same, the act merely constituted grave coercion, as provided in Article 286 of the Revised Penal Code. The crime of grave coercion has three elements: (a) that any person is prevented by another from doing something not prohibited by law, or compelled to do something against his or her will, be it right or wrong; (b) that the prevention or compulsion is effected by violence, either by material force or such a display of it as would produce intimidation and, consequently, control over the will of the offended party; and (c) that the person who restrains the will and liberty of another has no right to do so; in other words, that the restraint is not made under

authority of law or in the exercise of any lawful right.[10]

While Villamar did compel Cortez to do something against the latter's will, it must be stressed that the same cannot be categorized as an act of illegal detention. Still, when Villamar was erroneously charged for illegal detention, such oversight will not preclude a guilty verdict for the crime of grave coercion. In the early case of *U.S. v. Quevengco*,^[11] and, recently, in *People v. Astorga*,^[12] we ruled that the offense of grave coercion is necessarily included in illegal detention; as such, an information for illegal detention will not bar the accused from being convicted of grave coercion, instead of the original charge.^[13]

Regarding the imposable penalty, while we are aware that on February 20, 1995, Republic Act No. 7890^[14] was passed increasing the penalty for crimes involving grave coercion from *arresto mayor* to *prision correccional*, such amendatory law will not be applicable in the instant case, for the simple reason that the offense was committed on June 5, 1993 two years before the said law was enacted. Villamar should not, therefore, be unduly prejudiced by the imposition of a more severe penalty than that provided in the law then in force.^[15]

Hence, we hold that the penalty of *arresto mayor*, which is from one month and one day to six months, is the proper penalty imposable for the offense of grave coercion. Considering that Villamar has been in detention since July 1995 to the present - a period of three years and three months - which is well beyond the six-month maximum period provided for in the old law, there is no more legal justification for her continued confinement. She has served for a longer period than she should.

WHEREFORE, in view of the foregoing, the appeal is **PARTIALLY GRANTED**. Appellant is convicted only for grave coercion and is sentenced to six (6) months of *arresto mayor*. Unless she is being held for some other lawful cause, her immediate **RELEASE** is hereby ordered, considering that she has served beyond the maximum penalty imposed by law. Costs de oficio.

SO ORDERED.

Narvasa, C.J. (Chairman), Kapunan, Purisima and Pardo, JJ., concur.

[1] Rollo, pp. 144-164.

[2] Rollo, p. 72.

[3] Reyes, the Revised Penal Code, Book Two, 1993, p. 475.

[4] *People v. De la Cruz*, 277 SCRA 173 (1997).

[5] *People v. Sinoc*, 275 SCRA 357 (1997).

[6] TSN, June 27, 1994, p. 9.

[7] *People v. Gadoy*, 250 SCRA 676 (1995).

[8] Rollo, p. 105.

[9] Reyes, The Revised Penal Code, Book II, 1993, p. 476.

[10] Aquino, The Revised Penal Code, 1988, pp. 66-67.

[11] 2 Phil. 412 (1903).

[12] G.R. No. 110097, December 22, 1997.

[13] Sec. 4, Rule 120. Judgment in case of variance between allegation and proof. - When there is variance between the offense charged in the complaint or information, and that proved or established by the evidence, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved included in that which is charged, or of the offense charged included in that which is proved.

[14] Republic Act No. 7890, "An Act Amending Article 286, Section Three, Chapter Two, Title Nine of Act No. 3815, As Amended, Otherwise Known as The Revised Penal Code."

[15] Article 22, Revised Penal Code.

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