

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EX-MAYOR APOLINARIO PERALTA AND ALBERT ABARRA, LEONILO DRIZ, ROMY EDRA, KIM SUNGA, BOY FRANCO, DENNIS VINOYA, OSCAR BARBA AND ...

G.R. No. 121971. October 16, 2000

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

Accused-appellants Romy Edra and Boy Franco appeal from the decision dated August 25, 1995, of the Regional Trial Court of Makati City, Branch 66, that found both guilty beyond reasonable doubt of kidnapping for ransom and sentencing each to suffer the imprisonment of reclusion perpetua.[1]

Appellants Edra and Franco with seven others namely: Ex-mayor Apolinario Peralta @ "Polly", Ex-Sgt. Albert Abarra,[2] Ex-CIC Leonilo Driz[3] @ "Nilo," Kim Sunga, Ex-Cpl. Dennis Vinoya[4] @ "Danny," Oscar Barba, and Ex-Cpl. Tony Antonio are co-accused in the Information which reads:

That on or about June 16, 1993 at around 10:00 o'clock in the morning in the Municipality of Makati, Metro Manila and within the jurisdiction of this Honorable Court, above-named accused while confederating, conspiring and mutually helping one another did then and there willfully, unlawfully and feloniously take and carry away a certain EVELYN CU-UNJIENG against her will to Barangay San Felipe, San Manuel, Tarlac where she was detained and constrained of her liberty for the purpose of demanding and extorting money from the husband of the victim as condition for the release of the victim from detention and on June 22, 1993 the victim was brought to the Municipality of Agoo, Province of La Union where the abductors received the amount of Four Million Pesos (P4,000,000.00) from Charlie Cu-Unjieng, husband of the victim, as ransom money and the victim was later brought to Sison, Pangasinan where the abductors divided the ransom money among themselves and afterwards brought the victim back to Manila where she was released from detention and captivity.

CONTRARY TO LAW.[5]

Peralta, Abarra, Franco and Edra were arrested. The other five accused remain at large.

When Edra and Franco were arraigned, they entered pleas of not guilty. Since the kidnap victim Evelyn Cu-unjieng and her husband Charlie Cu-unjieng refused to identify any of the accused, the prosecution filed a motion to discharge accused Abarra and Peralta to be state witnesses and asked them to be placed under the Witness Protection Program. The court approved the motion.

As found by the trial court, duly supported by evidence submitted by both the prosecution and the defense, the following are the facts of the case:

Sometime in May 1993, in an apartment rented by appellants Edra and Franco, the appellants together with Antonio, Vinoya, Sunga, Driz, Abarra planned the kidnapping of Mrs. Cu-unjieng. During the meeting, Driz

informed his co-accused that his brother-in-law, Alberto Florito, driver of Mrs. Cu-unjieng, informed him of the latter's wealthy Chinese employer whom they could kidnap for ransom. They then planned the kidnapping of Evelyn Cu-unjieng. Driz, Vinoya and Abarra would abduct her while on her way to her office. Sunga and Edra would post themselves along Ortigas Avenue as look-out and signal as soon as her car exited the Corinthian Gardens Subdivision in Quezon City. Franco would stay in his apartment to receive phone calls and instructions. Vinoya and Antonio would find a place to detain Cu-unjieng. They decided on the house of Peralta's mother in San Miguel, Tarlac,[6] for that purpose.

On Driz' instructions, on June 16, 1993, at around 9:00 A.M., Florito flashed the headlights of Cu-unjieng's car, three (3) times as he drove along Ortigas Avenue to signal that the intended victim was on board. Sunga and Edra, upon seeing the flashing headlights, waived their hands to signal Abarra, Vinoya and Driz, who were in the upper parking lot of Robinson's Galleria, facing the subdivision gate. The three boarded the Toyota Corolla owned and driven by Antonio and tailed the car of Cu-unjieng. When they reached Kamagong Street, Makati, Metro Manila, they overtook and cut the car and signaled Florito to stop. Abarra, Driz and Vinoya opened the rear doors of the car which Florito made sure was thereafter locked. Abarra took the driver's seat and ordered Florito to sit beside him, while Vinoya and Driz sat in the rear seat, with Mrs. Cu-unjieng between them. Vinoya blindfolded her with masking tape and ordered Abarra to proceed to the North Expressway and to the house of Peralta's mother in San Miguel, Tarlac. They arrived at 12:00 noon. It was Barba who opened the gates. Peralta was not in the house of his mother and was fetched by Vinoya and Antonio. Mrs. Cu-unjieng, who was still blindfolded, was locked in a room apart from Florito's.

Later in the evening, Charlie Cu-unjieng, husband of the victim received phone calls that his wife was kidnapped and was told to cooperate and not to report the kidnapping to the police if he did not want his wife harmed. He was told the callers would get in touch with him again.

On June 17, Charlie received a phone call from the group demanding Twenty Million Pesos (P20,000,000.00) to be deposited in his wife's bank account. Charlie deposited only P50,000.00 at the Philippine Commercial International Bank, (PCIB, formerly Philippine Commercial Industrial Bank) Greenhills Branch. Later in the evening, Vinoya, Barba and Albert Abarra brought Florito to an undisclosed place in Tayog, Pangasinan. He was never seen again.

On June 18, at around 8:00 A.M., Antonio and Sunga went to Manila to negotiate with Charlie. Charlie informed them he could come up with only P150,000.00. The caller just ridiculed him. Antonio and Sunga returned to San Miguel, Tarlac at around 2:00 P.M. and informed the group that they asked P20,000,000.00 from Charlie.

On June 19, Abarra, Edra, Barba, Vinoya, Antonio and Peralta called Charlie. This time Charlie offered P10,000,000.00, which the kidnappers still refused.

On June 20, Charlie received another telephone call from the kidnappers. He requested to speak with his wife who told Charlie not to worry and that she was being treated well. He told her he was seeking the help of their friends to raise the ransom money.

On June 21, Sunga and Antonio agreed to a reduced pay-off and threatened Charlie that he will not see his wife again if he would not pay the reduced amount. They returned to Tarlac at 3:00 A.M. to inform the rest that they agreed to a P5,000,000.00 ransom to be delivered by Charlie on board a 1991 green Galant in La Union.

On June 22, 1993 at around 11:00 A.M., the kidnappers called Charlie. The ransom was further reduced to P4,000,000.00. The kidnappers instructed him to bring the money to Agoo, La Union. At around 2:00 A.M., Vinoya, assigned to look out for Charlie's car, called Abarra that he sighted the car pass towards Pangasinan.

Vinoya, Abarra and Antonio then used Evelyn's car to follow Charlie. Sunga and Driz joined them in Sison, Pangasinan. At about 3:30 P.M., Charlie saw his wife's car coming from the opposite direction. In La Union, he was signaled to stop. Vinoya and Abarra approached Charlie in his car and told him they would release Evelyn in Damortes, La Union. Abarra drove Charlie's car. He told them that the P4,000,000.00 was beside him. Later, Abarra and Vinoya got the money and boarded Evelyn's car.

Other pieces of evidence revealed that Peralta, Sunga, Antonio, Barba, Vinoya, Driz and appellant Edra, checked-in at Agri Master Lodge in Sison, Pangasinan where they divided the money. Each received P350,000.00. They agreed that the balance would be used for any contingent problem. Vinoya received the share of Abarra.

Unknown to the kidnappers, Charlie had informed the Presidential Anti-Crime Commission (PACC) about the kidnapping the very day she was kidnapped. Chief Inspector Michael Ray Aquino of the PACC talked to Charlie and the PACC traced the cellular phone used by the kidnappers. The PACC monitored the movement of Charlie and found out that Charlie agreed to pay the ransom somewhere between Tarlac and Baguio. The PACC posted undercover men along the highway and one of them spotted Charlie's car somewhere in Urdaneta, Pangasinan, heading north and followed it. The PACC operatives caught up with Evelyn's car when it met an accident. Abarra was captured but Vinoya escaped with the ransom money. When Charlie reached La Union, Abarra was already in the custody of the police.

Meantime, Barba and Peralta went to the Cement Plant Factory in Sison, Pangasinan, where Peralta's wife resided.[7] Evelyn Cu-unjieng was released on June 23 at 7:00 A.M. at Claro M. Recto, Manila.

Peralta was arrested on July 4, 1993. On July 15, 1993, Edra was brought by his unidentified relative to a certain Col. Ebo, Group Commander of the Military Intelligence Group and was immediately detained in the same detention cell with Franco.

As earlier stated, of the four arrested, Abarra and Peralta turned state witnesses and testified for the prosecution in the trial of appellants Edra and Franco who, during arraignment, pleaded not guilty.

Edra's version of his participation is as follows: On June 16, 1993 while he was eating his lunch in his apartment, Sunga arrived and asked him to be accompanied to Tarlac. When they reached the Peralta place at San Miguel, Tarlac, he met Antonio, Barba, and Abarra. He also noticed Driz and Vinoya assisting a blindfolded woman. They stayed in said house from June 16 to June 22, 1993. During his stay there he did the marketing and cooking for the group.[8] Sunga informed him they were demanding a P20 million ransom for the kidnapped woman. On the night of June 16, 1993, Barba, Driz and Abarra left the compound with Florito, and when they returned, Florito was no longer with them. On June 22, 1993, they went to Urdaneta, Pangasinan. In Urdaneta, he pretended he had to relieve himself but instead boarded a passenger bus bound for Pasay and got off in Cubao, Quezon City. When he reached his apartment he narrated the events to his wife but not to the police. He returned to Tarlac two (2) days after for fear of his life. He went to Zambales, and received a telegram from his wife informing him the newspapers reported him as among those involved in the kidnapping of Cu-unjieng. On July 15, 1993, he surrendered to Col. Ebo.

Appellant Franco's narration of his involvement is as follows: He admitted that he knew all eight of his co-accused. However, from June 16 to June 22, 1993, he did not see any of them except Edra since he shared the apartment with him. Their respective wives were sisters. On these dates, he was in the apartment all the time. Although he admitted there was a telephone in the apartment,[9] he denied he received any phone calls from any of his co-accused during those days. He also denied he received any share of the ransom.

Despite the vehement denials of appellants Franco and Edra, the trial court found them part of a conspiracy to kidnap Evelyn Cu-unjieng. On September 1, 1995, the trial court promulgated its decision and disposed as follows:

IN VIEW OF THE FOREGOING, JUDGMENT IS HEREBY RENDERED FINDING Romy Edra and Boy Franco guilty beyond reasonable doubt of kidnapping Evelyn Cu-unjieng for ransom and the Court hereby sentences Romy Edra and Boy Franco to suffer imprisonment of reclusion perpetua.

Let a warrant issue for the arrest of Tony Antonio, Danny Vinoya, Kim Sunga, Oscar Barba and Nilo Driz.

SO ORDERED.[10]

Now, before this Court, Romy Edra and Boy Franco, assail the aforementioned decision assigning that the trial court erred in the following:

- IN FAILING TO SHOW SUFFICIENT, COMPETENT, POSITIVE AND CONCLUSIVE EVIDENCE TO SUPPORT A FINDING OF THE PRESENCE OF THE ALLEGED CONSPIRACY BETWEEN HEREIN APPELLANTS AND THE CO-CONSPIRATORS.

- IN RELYING MAINLY ITS DECISION ON THE TESTIMONIES OF ACCUSED ALBERT ABARRA AND EX-MAYOR APOLINARIO PERALTA WHO WERE EXCLUDED FROM THE INFORMATION AS STATE WITNESSES DESPITE ITS (THE TRIAL COURT'S) RELUCTANCE AS THEY WERE THE ONES WITH GREATER PARTICIPATION CONSIDERING THAT ALBERT ABARRA WAS ALSO RESPONSIBLE FOR THE KILLING OF THE KIDNAP VICTIM'S DRIVER AND CACHE OF FIREARMS WAS FOUND AT THE HOUSE OF THE MOTHER OF EX-MAYOR PERALTA IN TARLAC, WHERE THE VICTIM WAS DETAINED FOR ONE WEEK.

- IN FAILING TO APPRECIATE THE FACT THAT NONE OF THE PRINCIPAL WITNESSES, THE KIDNAP VICTIM, EVELYN CU-UNJIENG, HER HUSBAND CHARLES CU-UNJIENG AND SENIOR INSPECTOR MICHAEL RAY AQUINO OF THE PACC EVER SAW EITHER OF THESE TWO (2) APPELLANTS PERFORM ANY OVERT ACT IN THE FURTHERANCE OF THE KIDNAPPING; THAT EVEN DURING THE TRIAL, COMPLAINANT AND HER HUSBAND WERE HESITANT TO IDENTIFY THE ACCUSED SO THE PROSECUTION FILED A MOTION TO DISCHARGE ALBERT ABARRA AND EX-MAYOR APOLINARIO PERALTA TO ACT AS STATE WITNESSES OVER THEIR OBJECTION AND OPPOSITION WHICH MOTION WAS APPROVED BY THE HONORABLE LOWER COURT WITH RELUCTANCE. (UNDERSCORING OURS, PLS. SEE PAGE 2, 1[ST] PAR. OF THE ASSAILED DECISION).

- IN FAILING TO APPRECIATE THE VOLUNTARY SURRENDER OF THE APPELLANTS TO THE POLICE AUTHORITIES AFTER SEEING THEIR NAMES PUBLISHED IN THE NEWSPAPER.

In considering these assigned errors, we find the crucial issue for determination is whether there is sufficient evidence to prove beyond reasonable doubt that appellants conspired with their co-accused to kidnap Evelyn Cu-unjieng for ransom. Corollary is the question of whether the testimonies of the two accused who turned into state witnesses are credible and sufficient to establish the appellants' guilt.

Appellants Edra and Franco argue that the trial court failed to show competent, sufficient, and conclusive evidence that they conspired with the other co-accused. They say that the trial court's reliance on the testimonies of the two state witnesses, Abarra and Peralta, are not enough to establish that they were part of the conspiracy to commit the crime. Appellants point out that even the trial court only "reluctantly" excluded Abarra and Peralta from the Information inasmuch as the two apparently had greater participation in the kidnapping. Appellants emphasize that witness Abarra was one of those responsible for the killing of the driver, Florito, while it was with

witness Peralta's knowledge and consent that the kidnappers used his mother's house as hideaway and it was in the same house where a cache of firearms was found. Additionally, except for the state witnesses, no one testified that they saw appellants conspire with the other co-accused to kidnap the victim for ransom. Neither the victim nor her husband nor PACC Inspector Ray Aquino could testify on the alleged conspiracy involving the appellants.

The Office of the Solicitor General, in the Appellee's Brief, refutes appellants' denials. First, the OSG avers that appellants' denial of their participation in the conspiracy is belied by positive evidence and they are as guilty as the other accused because in a conspiracy, the act of one co-conspirator is the act of all. Second, regardless of the trial court's "reluctance," it was necessary to discharge Abarra and Peralta in the Information to become state witnesses since there was no other evidence to implicate the accused inasmuch as the victim and her husband refused to identify the kidnappers.

Based on the testimonies of the state witnesses, we find the following:

With respect to appellant Edra, witness Abarra testified on the extent of appellant Edra's participation. He said that Edra and Franco were present in the four or five meetings held in the latter's apartment,[11] where the two lived. According to Abarra, on June 16, 1993, Edra was with co-accused Kim Sunga along Ortigas Avenue and assigned to give the signal to the others when the victim's car passed the subdivision gate;[12] Edra was among those assigned to see if there were cars following the kidnappers when they left the hideaway; and Edra arrived with Sunga at the hideaway in the afternoon of the kidnapping.[13]

Witness Peralta, corroborated Abarra's testimony that Edra arrived with Sunga in a white Sentra in the hideout of the kidnappers during the afternoon of the kidnapping.[14] In addition, Peralta also said that Edra was part of the group to whom accused Antonio reported that the ransom was going to be P20,000,000.00;[15] According to Peralta, he first met Edra during the birthday of Antonio held in Edra and Franco's apartment;[16] They met again at a baptismal party. Edra was among those in his mother's house from June 16 to 22. When Edra arrived with Sunga, Edra was told to stay, market and cook for the group.[17] On the day of the pay-off, said Peralta, Edra with Oscar Barba, another accused, were instructed to go to La Union.[18] On June 23, 1995, Edra was among those who checked-in at the Agri Master Lodge in Sison, Pangasinan where the ransom money was divided. Edra received his share,[19] according to Peralta.

Edra denies that he was part of the conspiracy. He admits he was in the apartment he shared with Franco on the morning of June 16, 1993, and stuck to his story that at about noon, while eating his lunch, Sunga arrived and asked to be accompanied to Tarlac. When they arrived at the hideout, he saw a blindfolded woman being led out of the house. He overheard Driz explain to Antonio that the woman was going to the comfort room. He admitted he stayed in the compound from June 16 to June 22, 1993 and he cooked for the group.[20] He also witnessed four men leave the compound the night of June 16 and only three returned early at dawn of the following day. On June 22, he saw his co-accused leave. He went with Barba to Al's Restaurant in Urdaneta, Pangasinan, and had some snacks. It was then when he eluded Barba, got a bus to Cubao, hid in the province and learned from his wife that he was implicated in the kidnapping of Mrs. Cu-unjieng, so he surrendered to Col. Ebo. Thereafter, he was detained in the ISAF cell with Franco.

On cross-examination he said he knew his other co-accused even before June 16, 1993. He met Peralta during a birthday celebration in his apartment; Abarra, when the latter sold him a telephone line; Barba, when he accompanied Peralta; Vinoya, because he was a townmate; Driz, because he came with Vinoya; and Sunga, thru Vinoya. He did not meet Antonio because the latter always remained in the car when Vinoya would use his phone.[21]

In sum, Edra would impress upon this Court that he was a reluctant participant in the conspiracy to kidnap Mrs.

Cu-unjieng and he got involved only because he accompanied Sunga and was intimidated into staying in the hideout as cook.

As to Franco, Abarra categorically said that he did not see nor talk to Franco during all the time the group was in his mother's compound. However, he admitted he was informed that Franco was in his (Franco's) Sampaloc apartment to receive phone calls for the others.[22] That Edra and Franco shared in the loot was only told to him by others. He asserted that everything he knew of Franco's participation was what others told him.[23]

Called to the witness stand, Franco admitted having a phone in his apartment and knowing the other co-accused. He said he was in his apartment from June 16 to 22. He received phone calls from a Lulu, a Lillian and an Evelyn asking him about Vinoya who was a townmate of Edra. He told these women that Vinoya was in the province. He did not get any calls from anyone in the group during these days. He had no explanation why Abarra nor Peralta would implicate him in the kidnapping.[24]

Appellants Edra and Franco were convicted on the basis of conspiracy. Conspiracy exists when two or more persons come to an agreement to commit a crime and decide to commit it. Like the crime itself, the conspiracy must be proved beyond reasonable doubt.[25] Considering that the conspiratorial acts are done in secrecy often resulting in the paucity of hard evidence against the conspirators, proving the existence of a conspiracy is a difficult burden for the prosecution to discharge.

When confronted with the lack of hard evidence against persons accused of a crime, the Rules of Court allow one or more of several accused to be discharged from the information to convert them into state witnesses for the purpose of convicting those who appear to be most guilty. Rule 119, Section 9 of the Revised Rules of Court is the pertinent rule. It states:

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 other direct evidence available for the proper prosecution of the offense committed, except the testimony of 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. (Emphasis supplied)

There is a rationale for discharging more than one accused where several are charged in an Information. Since no other prosecution witness could substantially corroborate the testimony of a discharged witness, two are discharged to meet the requirement of substantial corroboration. Such corroboration is necessary to ascertain the truthfulness of statements emanating from an accused who turns state witness but is obviously a tainted source. To use the testimony of one discharged accused to corroborate the testimony of another discharged co-accused, however, could be tantamount to using a tarnished testimony to vouch for another tarnished testimony. Thus in

US vs. Abanzado,[26] we said:

However much it is to be regretted that the use of participes criminis as witnesses . . . results in setting some guilty persons at liberty, and in some instances, at least, makes the state a party to the setting of a premium upon treachery and to the grant of a reward for conduct from which every honorable man instinctively recoils with horror and disgust...

And we noted:

...the practical experience of the ages seems to have demonstrated the necessity for the retention of the practice, under proper restrictions and regulations, in any system of criminal procedure which sacredly conserves the right of all accused persons not to be required to give evidence against themselves. (Stress supplied.)

Recently, in Chua vs. Court of Appeals, et. al.[27] we warned against injudicious, arbitrary and capricious exclusion of the accused from the information to be state witnesses:

... While it is true that, as a general rule, the discharge or exclusion of a co-accused from the Information, in order that he may be utilized as a prosecution witness rests upon the sound discretion of the trial court, this discretion should be exercised by it strictly on the basis of the conditions set forth in Rule 119, Section 9 of the Rules on Criminal Procedure. The Court's discretion is not absolute and arbitrary. Sound judicial discretion should be exercised with due regard to the proper administration of justice.

In appellant Edra's case, we note that the accounts of the state witnesses significantly parallel the admissions made by Edra himself. Among these instances are: (1) Peralta said Edra and Sunga arrived in the hideout at around 4:30 to 5:00 in the afternoon of June 16, 1993.[28] Edra testified that Sunga and he arrived in the Peralta compound in the afternoon of June 16, 1993 and stayed there up to June 22.[29] (2) Abarra testified that Barba, Vinoya, the driver Florito and he left the compound on the evening of June 16, drove to a remote place where he witnessed Florito set on fire after hearing a shot. Later, Barba, Vinoya and he returned to the hideaway compound.[30] Edra, narrated that in the evening of June 16, he saw the three board a car with a blindfolded man and later returned without the man.[31] Peralta confirmed that indeed the events narrated by Edra and Abarra did take place.[32] Edra said he and Barba left the compound on June 22 and went to Al's Restaurant in Urdaneta and it was then that he managed to slip from Barba.[33] Peralta testified that on June 22, Edra and Barba were instructed to go to La Union.[34] All three testimonies concur that Edra did the marketing and cooking for the group. In our view, the congruence of these events and details separately narrated more than meets the requirement of substantial corroboration in accordance with the rules as far as the participation of appellant Edra is concerned.

Furthermore, we are not convinced that Edra remained with the group because he was intimidated by them. Edra's avowal that he was a "reluctant" cook is a lame explanation of his presence in the compound. We are convinced that his story about slipping from Barba and surrendering are afterthoughts to evade prosecution. During his trips to the market, he could have escaped, as he did when he claimed he successfully slipped from Barba when he got into a bus bound for Manila on June 22. We also observed that Edra did not deny Abarra's story that the former acted as look-out for the car of the victim. The records show that he was in the meeting in the apartment of which he was co-lessee, he acted as look-out, he cooked for the group and participated from the start to finish. These circumstances and the testimonies of Abarra and Peralta, corroborated substantially by appellant Edra himself establish beyond any doubt his participation in the conspiracy to kidnap Mrs. Cu-unjieng for ransom.

While there is evidence to show that appellant Edra surrendered to a Col. Ebo on July 15, 1993, the circumstance of his voluntary surrender cannot mitigate the penalty imposed on him since reclusion perpetua is an indivisible

penalty.[35]

As to appellant Franco, witness Abarra testified that Franco and Edra were in the apartment during the four to five meetings.[36] Abarra, corroborated by Peralta, also testified that Franco was assigned to man the telephone in the apartment and receive phone calls for and from their group. When asked if Franco was ever in the Peralta compound at any time, Abarra categorically answered, no. According to him, "Boy Franco was left behind." [37] He was left behind to answer the telephone call, according to co-accused Danny Vinoya.[38] However, according to Abarra, the information he had of Edra and Franco's participation were only told to him.[39] Abarra even qualified why Franco and Edra were in the meeting. His testimony reads as follows:

PROS. VILLANUEVA:

And who participated in the meeting?

WITNESS:

Ernesto Antonio, Danny Vinoya, Kim Sunga, Nilo Dris and me and of course, because they were living there, Boy Franco and Romy Edra.

COURT:

Who are your clients?

ATTY. BUENAFLORES:

Accused Edra and Franco.

COURT:

He mentioned them, is it not?

PROS. VILLANUEVA:

Yes, Your Honor.

ATTY. BUENAFLORES:

Because they were living there, Your Honor.[40]

x x x

The trial court, in convicting Franco, stated that it found "without sense" Franco's claim that his co-accused went to his house sometime in June just to use a phone (makikitawag).[41] It found "too shallow" Franco's claim that Vinoya told him to receive and pass on to him the calls from his girlfriend.[42] That appellants Franco and Edra lived in the same apartment, where a phone was used to transmit message to and from the kidnappers, among themselves, and in connection with calls to and from the victim's husband, is undisputed and fully corroborated. Given the proof on the conspiracy to kidnap for ransom the victim, wherein appellant Franco had participated, we find the proof of his guilt sufficiently established.

WHEREFORE, the decision of the Regional Trial Court of Makati City, Branch 66, finding appellants ROMY EDRA and BOY FRANCO guilty of kidnapping for ransom and sentencing each of them to reclusion perpetua is hereby AFFIRMED. Costs against appellants.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

- [1] Rollo, p. 122.
- [2] As spelled in the title of the RTC Decision.
- [3] Also spelled Dris.
- [4] Sometimes spelled Vinuya.
- [5] Records, p. 2.
- [6] TSN, November 23, 1994, pp.11, 20.
- [7] TSN, April 4, 1995, pp. 17-18.
- [8] TSN, June 8, 1995, p. 10.
- [9] TSN, May 22, 1995, p. 13.
- [10] Records, p. 412.
- [11] TSN, November 23, 1994, pp. 7-8, 20, and 25.
- [12] Id. at 25, 49-50.
- [13] Id. at 82.
- [14] TSN, February 16, 1995, pp. 18-19.
- [15] Id. at 37.
- [16] TSN, March 29, 1995, pp. 3-4.
- [17] TSN, April 4, 1995, pp. 3-9.
- [18] Id. at 10-15.
- [19] TSN, February 16, 1995, pp. 53-56.
- [20] TSN, June 8, 1995, pp. 7 and 19.
- [21] Id. at 45-48.
- [22] TSN November 23, 1994, p. 11.
- [23] TSN, April 5, 1995, pp. 2-3.
- [24] TSN. May 22, 1995, pp. 9-12
- [25] People vs. Marquita, G.R. Nos. 119958-62, March 1, 2000, p. 9.
- [26] 37 Phil 655, 666 (1918).

[27] 261 SCRA 112, 120 (1996).

[28] TSN, April 4, 1995, pp. 7-8; February 16, 1995, pp.18-20.

[29] TSN, June 8, 1995, pp. 8-16.

[30] TSN, November 23, 1994, p. 43-46.

[31] TSN, June 8, 1995, pp. 22-24.

[32] TSN, April 4, 1995, pp. 12-16. February 16, 1995, p. 23-28.

[33] Supra, note 31 at 28-30.

[34] TSN, March 29, 1995, p. 38.

[35] Article 63, Revised Penal Code.

[36] TSN, November 23, 1994, pp. 8-9.

[37] Id. at 11.

[38] Ibid.

[39] Supra, note 36.

[40] Id. at 7-8.

[41] Rollo, p. 170.

[42] Ibid.

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