

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. RICARDO SANTOS Y GONZALES A.K.A “RIC” AND ROMEO VICTORINO Y GONZALES A.K.A “CHU”, APPELLANTS.*G.R. No. 125352. December 17, 2002*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-125352/>**PER CURIAM:**

Before us on automatic review is the joint Decision[1] of the Regional Trial Court of Manila, Branch 35, acquitting the appellants of the crime of robbery in Criminal Cases Nos. 95-142827 and 95-144065 while convicting them of kidnapping for ransom and serious illegal detention in Criminal Cases Nos. 95-142826 and 95-144064 and to suffer the penalty of death.

The separate informations in Criminal Cases Nos. 95-142826 and 95-14406 for kidnapping for ransom and serious illegal detention defined and penalized under Article 267 of the Revised Penal Code, as amended by RA 7659, against herein appellants Ricardo Santos y Gonzales a.k.a. “Ric” and Romeo Victorino y Gonzales a.k.a. “Chu” identically read:

That on or about 9:30 in the morning of April 6, 1995, in Manila, Philippines, and within the jurisdiction of this Honorable Court, accused RICARDO G. SANTOS a.k.a. RIC and twelve (12) other John Does whose real and (sic) identities and whereabouts are unknown being a private individuals (sic), did then and there, willfully, unlawfully and feloniously, kidnap and deprive of their liberty, JIMMY UY and his female companions JENNIE UY and KATHLEEN PUA SUBIA against their will, for the purpose of extorting ransom from the latter’s parents and immediately thereafter said accused, did then and there willfully, unlawfully and feloniously detain and deprive them of their freedom and liberty up to and until about 3:00 o’clock in the afternoon of the same day insofar as JIMMY UY is concerned and up to and until about 10:00 o’clock in the morning of April 8, 1995 insofar as JENNIE UY and KATHLEEN PUA SUBIA are concerned after receiving the ransom money in the amount of One Million Five Hundred Thousand Pesos (P1,500,000.00), to the damage and prejudice of the parents of JENNIE UY and KATHLEEN PUA SUBIA in said amount and such other amounts as may be awarded to them under the provisions of the Civil Code.

CONTRARY TO LAW.

Upon arraignment, both accused, assisted by counsel, entered separate plea of “not guilty” to the charges of kidnapping for ransom and serious illegal detention. Considering that the criminal cases arose from the same incident and the prosecution would be presenting the same evidence, joint trial on the merits was conducted upon agreement of the parties.

As related by prosecution witnesses,[2] it appears that, on April 6, 1995 at about 9:30 in the morning, Kathleen Subia, together with her cousin, Jimmy Uy and his wife, Jennie, were traversing Juan Luna St. in Tondo, Manila on board a Nissan Sentra car being driven by Jimmy. Jennie was sitting beside her husband in the front seat while Kathleen was in the back seat directly behind Jimmy. Upon reaching the intersection of Juan Luna and Tayuman Streets, a black pick-up vehicle with plate no. ACW 186 suddenly bumped their car from behind. This “accident” turned out to be a ruse. As soon as Jimmy alighted to check the damage, three men, two of whom were armed

with handguns, also alighted from the pick-up vehicle. One of the armed men, Romeo Victorino, pushed Jimmy back into the car and took the driver's seat. The second man occupied the right front seat with Jimmy in the middle while the third positioned himself between Kathleen and Jennie at the back.

From the intersection of Juan Luna and Tayuman Streets, Victorino drove toward Caloocan City. When the car stopped at a traffic light somewhere in Caloocan City, the black pick-up vehicle pulled abreast and rolled down its left window. As the man seated to the right of Jimmy rolled down the car's right front window, someone from the pick-up vehicle instructed his cohorts to keep their captives bowed down and their eyes closed. The man who gave the instruction from the black pick-up was later identified by the three victims as herein appellant Ricardo Santos.

Victorino then proceeded to Valenzuela before entering the North Diversion Road. Along the way, the three victims were stripped of their personal valuables worth P138,000.

At around 1:00 in the afternoon, the car stopped in an isolated ricefield somewhere in San Miguel, Bulacan. The abductors led the three victims to a semi-concrete house where they were blindfolded. Soon thereafter, the apparent leader of the abductors spoke to Kathleen demanding P50M from her father. Informed that her father would be unable to raise the amount, the man left them to discuss among themselves before releasing Jimmy to convey his demand to Kathleen's father.

Jimmy hailed a taxi and proceeded to the house of his father-in-law after the abductors dropped him off along Quezon Boulevard in Quezon City. He informed Kathleen's father, Ernesto Subia, of their abduction via long distance call to Isabela. The following day, April 7, 1995, Ernesto travelled all the way to Manila, to negotiate with the kidnappers. After haggling on the phone, the kidnappers finally settled for P1 .5M for the safe release of their hostages. It was Jimmy who delivered the ransom money at around 10:15 in the evening of the same day somewhere along North Diversion Road. He did not recognize the bagman due to extreme darkness in the area.

On April 8, 1995, Kathleen and Jennie were released by their abductors at 8:30 in the morning somewhere in Arayat, Pampanga. Both were blindfolded before leaving the safehouse but later on required to wear dark eyeglasses. The leader reminded Kathleen to redeem their personal valuables for P2M. Further instructions would be conveyed to her on April 10, 1995 by phone.

Meanwhile, the family of Kathleen reported the kidnapping incident to General Jewel Canson of the Philippine National Police (PNP). Hence, the agents of the PNP Capitol Command (CAPCOM) and the Presidential Anti-Crime Commission (PACC) were able to monitor a number of phone calls from their abductors since April 10, 1995. On May 4, 1995, the unidentified leader of the kidnappers called up Kathleen to instruct her driver and a maid to deliver the amount of P95,000, the amount earlier agreed upon, at a billboard near Kilometer 1 in Valenzuela in the evening of May 5, 1995 for the redemption of their personal valuables. On May 6, 1995, Kathleen, Jimmy Uy and his wife, Jennie, were summoned to the office of the PACC in Camp Crame where Kathleen and Jimmy executed their respective sworn statements.[3]

On May 14, 1995, Victorino was arrested in his house in San Miguel, Bulacan for illegal possession of a baby armalite and several rounds of ammunition confiscated by agents of the PACC by virtue of a search warrant[4] dated May 11, 1995 issued by Executive Judge Natividad Dizon of the RTC of Malolos, Bulacan. Following the arrest of Victorino, the same team of law enforcers arrested Ricardo Santos on the same day, also for illegal possession of a .45 caliber handgun, a .38 caliber magazine and six rounds of ammunition recovered from his house in Sta. Rosa, Nueva Ecija on the strength of a search warrant[5] dated May 11, 1995 issued by Executive Judge Johnson Ballutay of the RTC Cabanatuan City. Santos and Victorino were brought to the office of the PACC in Camp Crame, Quezon City.

On May 15, 1995, the three victims were summoned to the PACC office where they pointed to Victorino in a police line-up as the person who pushed Jimmy back into his car on April 6, 1995 and drove the same until reaching the house where Kathleen and Jennie were subsequently detained. Santos was also picked out by the victims from the police line-up as the person on board the black pick-up vehicle who ordered them to close their eyes and bow their heads.[6]

At the trial, the defense interposed alibi.

Romeo Victorino claimed to have left Manila on April 3, 1995 for Sidlakan Saguise, Pres. Garcia, Bohol to attend a town fiesta on April 5 and 6, together with his wife and three children including three other relatives. They returned to Manila only on May 11, 1995 after leaving Bohol on May 9, 1995.[7]

For his part, Ricardo Santos stated that he was in the house of Barangay Councilman Renato Batongbakal in Barangay Berang, Sta. Rosa, Nueva Ecija on April 6, 1995 together with six others tending fighting cocks in preparation for the stag derby the following day. He went home at around 11:00 in the morning and remained there the whole afternoon. On April 7, 1995, Santos joined Councilman Batongbakal in the cockpit and stayed with him up to 4:00 in the afternoon. Thereafter, he proceeded to Estela's Refreshment Parlor along Maharlika Highway with a certain Eduardo Gonzales for some refreshments until 9:00 in the evening.[8]

After evaluating the evidence, the trial court rejected the defense of alibi and rendered the following judgment:

“WHEREFORE, judgment is rendered:

(1) Pronouncing accused RICARDO SANTOS y GONZALES, a.k.a. “RIC”, in Criminal Case No. 95-142826, and accused ROMEO VICTORINO y GONZALES, a.k.a. “CHU”, in Criminal Case No. 95-144064, guilty beyond reasonable doubt of KIDNAPPING FOR RANSOM AND SERIOUS ILLEGAL DETENTION, defined and penalized under Article 257 of the Revised Penal Code, as amended by Section 8 of Republic Act No. 7659, and sentencing both accused to suffer the penalty of DEATH, to be executed as provided by law, and to pay the costs;

The said two accused are ordered to pay, jointly and severally, to Ernesto Subia the sum of P1,500,000 as actual damages, and P500,000.00 to each of the three victims, namely, Kathleen Subia, Jennie Uy and Jimmy Uy, for moral damages, and each of them (the two accused) individually to pay each of the three victims P100,000.00 as exemplary damages. In the execution of the awards for moral and exemplary damages, the corresponding filing fees shall constitute a first lien on this judgment;

xxx xxx xxx

SO ORDERED.

Before us, appellant Romeo Victorino interposes the following assignment of errors:

I

THE COURT A QUO ERRED IN HOLDING THAT THE IDENTITY OF THE ACCUSED ROMEO VICTORINO, AS ONE OF THE KIDNAPPERS OF KATHLEEN SUBIA, JIMMY UY, AND HIS WIFE JENNIE, HAS BEEN CLEARLY, POSITIVELY AND CONVINCINGLY ESTABLISHED BY THE TESTIMONIES OF THE ALLEGED THREE (3) VICTIMS, WHO ACTUALLY SAW AND POSITIVELY IDENTIFIED ROMEO VICTORINO AS ONE (1) AMONG THEIR ABDUCTORS.

II

THE COURT A QUO ERRED IN DISREGARDING THE DEFENSE OF ALIBI IN FAVOR OF ACCUSED-APPELLANT, ROMEO VICTORINO, WHO HAS INDUBITABLY ESTABLISHED PHYSICAL IMPOSSIBILITY OF HIS PRESENCE AT THE PLACE AND TIME OF THE COMMISSION OF THE CRIME.[9]

On the other hand, appellant Ricardo Santos attributes the following errors to the trial court:

I

IN NOT BELIEVING THE TESTIMONY OF ACCUSED-APPELLANT AS CORROBORATED BY THE WITNESSES;

II

IN GIVING CREDENCE TO THE TESTIMONY OF KATHLEEN SUBIA, WITNESS FOR THE PROSECUTION, AND RELYING THEREON AS THE SOLE BASIS FOR RULING THAT ACCUSED RICARDO SANTOS WAS POSITIVELY IDENTIFIED AS A PARTICIPANT IN THE ALLEGED KIDNAPPING;

III

IN GIVING CREDENCE TO THE TESTIMONY OF JENNIE UY AS BEING CORROBORATIVE OF KATHLEEN SUBIA'S TESTIMONY;

IV

IN FINDING THAT THE FACT OF CONSPIRACY WAS PROVEN BEYOND REASONABLE DOUBT, THUS CONVICTING ACCUSED RICARDO SANTOS AS A CO-PRINCIPAL IN THE ALLEGED KIDNAPPING OF THE COMPLAINANTS KATHLEEN SUBIA, JIMMY UY AND JENNIE UY; and

V

IN MAKING CONCLUSIONS WHICH ARE ABSOLUTELY DEVOID OF ANY BASIS AND FOUNDATION, BOTH IN FACT AND IN LAW.[10]

In sum, the present appeal hinges on the assessment of credibility of witnesses. In this regard, the doctrinal principles guiding the Court in assessing the credibility of witnesses are: (1) the reviewing court will not disturb the findings of the lower court unless there is a showing that it had overlooked, misunderstood or misapplied some fact or circumstance of weight and substance that could affect the results of the case; (2) the findings of the trial court respecting the credibility of witnesses are entitled to great respect and even finality as it had the opportunity to examine their demeanor when they testified on the witness stand, and (3) a witness who testifies in a clear, positive and convincing manner and remains consistent on cross-examination is a credible witness.[11] Otherwise stated, absent any showing that the trial court's assessment of witnesses' credibility is flawed, this Court is bound by its findings.[12]

After a careful and thorough evaluation of the records, this Court finds no cogent reason to deviate from the assessment made by the trial court anent the credibility of the three victims who testified during the trial of these cases.

Kathleen Subia and spouses Jimmy and Jennie Uy, respectively gave clear and detailed narrations of their abduction at the corner of Juan Luna and Tayuman Streets at mid-morning of April 6, 1995. Their testimonies were not only consistent but also corroborative of each other on material points. They positively identified the appellants, Romeo Victorino and Ricardo Santos, as among their abductors.

In particular, Kathleen identified Romeo Victorino as the person who forced her cousin Jimmy to board their car after checking on the damage to the rear of their vehicle. Victorino himself boarded their car and occupied the driver's seat. The same witness also identified appellant Ricardo Santos as the person she saw giving instructions to his cohorts inside their car to keep their victims' heads down and their eyes closed, when the black pick-up rolled down its window at a traffic stop in Caloocan City. The pertinent portion of her testimony reads:

xxx xxx xxx

Q. Now, according to you, madam witness, the black pick-up which bumped the rear of your car moved towards the left side and then three men, according to you alight. What happened after that?

A. The three persons that alighted were have (sic) guns with them and they asked Jimmy to board the car on the driver side, sir.

Court:

Q. What arms were they carrying?

A. It's short fire arms or hand guns, Your Honor.

Prosecutor Fadullon

Q. All three of them asked Jimmy to go inside or to board the car in?

A. Only one while the two went to the right side of the car, sir.

Q. Now, this person who, according to you forced Jimmy to board the car, if you see him again, would you be able to recognize him?

A. Yes, sir.

Q. If he is in Court, will you be able to point to him, madam witness?

A. Yes, sir.

Q. Will you please rise from your seat and point to the person whom you point to as the one who forced Jimmy to go back to the car. Please step down and then tap him on the shoulder?

Court:

And then, as you tap that person whom you said ordered Jimmy to board the car on the shoulder then tell his name.

(at this juncture, the witness stepped down from the witness stand and tapped the shoulder of a certain person inside the courtroom)

Court:

Q: What is your name please? (Referring to the person tapped on the shoulder by the witness)

A. Romeo Victorino, Your Honor.

Prosecutor Fadullon

Q. Now, madam witness, the accused by the name of Romeo Victorino. Now, after he asked Jimmy to board the car, do you know what happened to the accused Romeo Victorino?

A. He boarded the car beside Jimmy, sir.

Q. You are referring to the driver's seat?[13]

xxx xxx xxx

Q. Now, what about the black pick-up which bumped to your car, madam, witness do you know what happened to it?

A. In one part of Caloocan, in a stop light, I saw the pick-up on the right side of the car we were on board while we were on board on stop, the black pick-up down his window on the left driver side while the glass window on the right, passenger's side back was also lowered down, sir.

Q. And then, what happened after that, madam witness?

A. Inasmuch as I peeped, I overheard that someone saying that we should close our eyes and our heads bow down, sir.

Q. And these persons inside the pick-up, if you see them again, will you be able to identify them, madam witness?

A. Yes, sir.

Q. Now, may I request you may please rise will you please go to the place where this person is whom you claimed to be one of the persons inside the black pick-up and tap him on the shoulder?

A. Yes, sir.

Court:

Tell the name of the person you will tap on the shoulder.

A. Yes, Your Honor.

(at this juncture, the witness stepped down from the witness stand and tapping the shoulder of a certain person inside the courtroom and mentioned the name Ricardo Santos)

Court:

(referring to the person tapped by the witness)

Q. What is your name please?

A. Ricardo Santos, Your Honor.[14]

Corroborating the testimony of Kathleen, Jenny disclosed that her attention was drawn to the person who forced her husband to get back into their car. She had a good look and recognized the said person whom she identified in court as appellant Victorino:

Q. After your car was bumped at the rear by the black pick-up what happened?

A. Jimmy alighted from the car to look on (sic) the damage made on the car.

Q. And then what happened, madam witness?

A. While the black pick-up parked on the left side front of our car, sir.

Q. What happened after this black pick-up parked on the left portion of your vehicle?

A. Three (3) male persons alighted with guns, sir.

Q. Of these three persons, madam witness, do you know who were carrying guns?

A. Yes, sir.

Q. How many were carrying guns?

A. Two, sir.

Q. Do you know what kind of firearms they were carrying with them, madam witness?

A. What I know is that they were carrying hand guns, sir.

Q. After these three persons alighted from the pick-up, what happened?

A. The one carrying a gun went to Jimmy who was then behind the car forcing him to go back to the car.

Q. Let us get this clear. This person who told your husband to go back to the car, where was his gun?

A. It was tucked on the right portion of his body, sir.

Q. If you see this person who forced your husband to go back inside your car, will you be able to identify him?

A. Yes, sir.

Q. Is he present in this Court room right now?

A. Yes, sir.

Q. May I request madam witness to please rise from your seat and approach this person as having approached your husband and tap him on the shoulder at the same time give his name to Honorable Court.

Court:

Permission granted.

FOR THE RECORD

(at this juncture the witness stepped down from the witness stand and tapped the shoulder of a certain person inside the court room, who when asked by the Honorable Court gave his name as Romeo Victorino)

Q. According to you madam witness, the person you identified as Romeo Victorino who forced your husband to enter your vehicle after he told your husband to go inside the vehicle, do you know what he did?

A. Yes, sir.

Q. What did he do?

A. He also entered our car, sir.

Q. Where exactly was he positioned inside your car?

A. He sat himself at the driver's seat.[15]

For his part, Jimmy said he literally had a face-to-face encounter with appellant Victorino as he strove to recognize the person who was pushing him from behind back into their car. Appellant Victorino even sat beside him the driver's seat and commandeered their vehicle until they reached their destination. He also recognized

appellant Santos as one of the persons on board the black pick-up vehicle that earlier bumped their car. His testimony on this point reads:

Q. So what happened Mr. witness after your car was bumped from the rear by the black pick-up?

A. I parked my car on the side and alighted from the car and inspected the damage.

Q. And what happened after that, after you drove out from the car and check the damage of your car?

A. The black car drove to the left side of my car and then three persons alighted from the same car. One of the three persons was handling a short firearm.

Q. Now, when you said this black car, are you referring to the same black pick-up which bumped your car.

A. Yes, sir, I was referring to the same car.

Prosecutor Fadullon:

Q. According to you, three men alighted from the pick-up, and one of the men was carrying a shot got (sic). Now, what did this person do with the short firearm.

A. Then he pushed me inside my car in the driver seat.

Q. This person whom you claimed had in his possession a short firearm, and pushed you inside the driver seat, if you can see him again, would you be able to recognize him?

A. Yes, sir.

Q. And he is present in the courtroom, would you be able to point him? Mr. Witness?

A. Yes sir, I can.

Q. Is he present in this courtroom Mr. witness?

A. Yes sir, he is.

Prosecutor Fadullon:

Will you be able to point to him?

Witness:

A. Yes sir, I can.

Prosecutor Fadullon:

At this juncture, we would like to request Your Honor, that the witness be allowed to step down from the witness stand and approach the person whom he referred to as the person who pushed him inside the car and tap him to (sic) his shoulder.

Court:

Permission granted. You tap that person.

Court Interpreter:

Witness step (sic) down from the witness stand and tapped the shoulder of the person inside the courtroom who according to the witness is Romeo Victorino. And the accused is now answer (sic) to that name, Romeo Victorino.[16]

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Q. You mentioned Mr. witness that there were persons inside the black pick-up is that correct?

A. Yes, sir.

Q. If you see these persons who were inside that pick-up again would you be able to identify them?

Witness:

A. Only one.

Prosecutor Fadullon:

Q. Now, if that person is present in the courtroom will you be able to point to him Mr. witness?

A. Yes, sir.

Q. Is he present in this courtroom?

A. Yes, sir he is.

Prosecutor Fadullon:

At this juncture Your Honor, we would like again to request that the witness be allowed to step down from the witness stand to approach the person whom he claims to be inside the black pick-up.

Court:

The same instruction.

Court Interpreter:

At this juncture the witness step down (sic) from the witness stand and again tapped the shoulder of the person inside the courtroom.

Court: (to the witness) Court Interpreter:

And again same person gave his name as Ricardo Santos.[17]

Appellants seek to capitalize on the alleged wavering of Kathleen Subia during the cross-examination that the three persons who boarded their car were not in the courtroom. After painstaking examination of her testimony, we conclude that she was merely confused owing to the lengthy and rigorous cross-examination by the defense counsel. Indeed, her clear and positive testimony on direct-examination far outweighed whatever minor inconsistencies there were during her cross-examination. Upon clarificatory questions from the court, Kathleen re-affirmed her testimony on direct-examination that appellant Victorino, who was present in court, was one of the persons who boarded their car:

Court:

xxx xxx xxx

Q. All right. Did you not say earlier that Romeo Victorino was the one who drove our car?

A. Yes, Your Honor.

Q. So that from your statement, Romeo Victorino was one of the three persons inside the car?

A. Yes, Your Honor.

Q. Now, do you know that Victorino whom you identified earlier is one of the accused in this case?

A. Yes, Your Honor.[18]

It should be pointed out that the crime was perpetrated by the appellants and their companions (still at large) in broad daylight. From the facts of the case, the three victims had more than sufficient opportunity to recognize their abductors. Besides, this Court fails to discern any improper motive which could have impelled the said three victims to maliciously impute to appellants such a heinous crime as kidnapping for ransom. Hence, their testimonies are entitled to full faith and credence.[19] As keenly observed by the trial court:

xxx There is no claim, much less was it shown, that they have been actuated by improper motive which induced them to impute the heinous crime of kidnapping for ransom on the two accused. Prior to April 6, 1995 they were absolute strangers. They have not known nor met each other before that date. Thus, the Court could not imagine any reason why the three victims would pick the two accused out of sixty-eight million Filipinos and charged them with such a serious crime. The absence of evidence as to an improper motive which actuated the principal witnesses for the prosecution to testify in the manner they did against the accused strongly sustains the conclusions that no such improper motive existed, and that their testimonies are worthy of full faith and credence. Besides, as actual victims of the frightful and terrifying crime of kidnapping for ransom, Kathleen Subia, Jennie Uy and Jimmy Uy are naturally interested in vindicating the outrageous wrong done to their persons. Their natural interest in securing the conviction of the perpetrators would strongly deter them from implicating persons other than the real culprits. Otherwise, the latter could escape with impunity the strong and just arm of the law.[20]

In view of the positive identification made by the three victims during the trial, the respective alibi of the appellants must be rejected.[21] Alibi is a weak defense; it should be rejected when the identity of the accused is sufficiently and positively identified by an eyewitness to the commission of the crime.[22]

In fact, appellant Victorino's defense of alibi itself was never established. To support his claim that he was allegedly in Sidlakan Saguise, Pres. Garcia, Bohol, attending the town fiesta from April 5 to 9, 1995, appellant presented the following: 1) Ticket No. 0808440[23] of Carlos Go Thong Lines dated April 3, 1995 in the name of Romeo Victorino for the voyage of the "MV Our Lady of Akita" from Manila to Cebu; 2) Master's Oath of the Chief Mate;[24] 3) passenger's list;[25] and 4) the testimonies of defense witnesses Lourdes Victorino and Charlito Atop.

As admitted by defense witness Angela Racoma, head supervisor of the passage section of the Carlos Go Thong Lines in Manila, however, the ticket, by itself, cannot establish that the person to whom the same was allegedly issued actually boarded the vessel on the date indicated thereon. For this purpose, they had to consult the purser's report which was accomplished after the tickets were inspected on board. However, the purser's report, which could have proven that the appellant was on board - if in fact he was really on board - the "MV Our Lady of Akita" when it left the port of Manila on April 3, 1995, was never offered by the defense in evidence, for no explainable reason. Besides, the same defense witness also admitted that their office had no way of knowing whether the person who actually boarded vessel was the same person whose name was reflected on the ticket.

The Master's Oath of the Chief Mate and the passengers' list which were offered by the defense to show that the ticket purchased in the name of Romeo Victorino was actually used on the date indicated therein were correctly disregarded by the trial court. The said documents were mere photocopies and their originals were not produced in court. Likewise, the proper procedure for introduction of the said secondary evidence as prescribed under the rules on evidence was not observed. Section 3, Rule 130 of the Rules of Court provides that:

SEC. 3. Original document must be produced; exceptions. –

When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:

- (a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;
- (b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;
- (c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and
- (d) When the original is a public record in the custody of the public officer or is recorded in a public office.

Appellant Victorino failed to prove that the original of the subject documents were lost or destroyed or could not be produced in court after diligent efforts on his part. In addition, according to defense witness Racoma, the pieces of information contained therein were based on the report relayed to her from their office in Cebu City. This was therefore hearsay which was inadmissible in evidence.

Neither can we give credence to the testimonies of appellants' cousin, Lourdes Victorino, and Charlie Atop who is a close relative of appellant's wife. Both defense witnesses testified that appellant Victorino was allegedly with them on those dates in Bohol. We find their testimonies to be biased in favor of appellant in the face of the positive and convincing identification made by the victims in open court. Curiously enough, the appellant absolutely failed to offer any evidence about his return trip to Manila.

The crime committed by appellants Romeo Victorino and Ricardo Santos is kidnapping and serious illegal detention, defined and penalized under Art. 267 of the Revised Penal Code, as amended by Section 8 of RA 7659, which provides that:

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 abovementioned were presented in the commission of the offense.

When the victim is killed or dies as a consequence of the detention or is raped, or is subjected to torture or dehumanizing acts, the maximum penalty shall be imposed.

It is clear from their coordinated acts that the two appellants conspired with their companions, still at-large, in committing the crime. Appellants Victorino and Santos were both on board the black pick-up vehicle before the former got off to board their victims' Nissan Sentra car. At a traffic stoplight in Caloocan City, Santos instructed

his co-conspirators to ensure that the victims, heads were kept down and their eyes closed. Thereafter, the two vehicles proceeded to their destination where the victims were held against their will until the ransom was paid.

The penalty prescribed by Article 267 of the Revised Penal Code, as amended by Section 8 of RA 7659, where the purpose of the kidnapping and serious illegal detention is to extort ransom from the victim, or any other person, is death. Ernesto Subia testified during the trial that he raised the ransom money of P1.5 million which was subsequently delivered by his nephew, victim Jimmy Uy, at Kilometer 1 in North Diversion Road, the place chosen by the kidnappers.[26]

In the light of these premises, the Court finds no reversible error in the questioned decision of the trial court. Consequently, we are left with no alternative but to sustain the imposition of the death penalty.

We also find the award of exemplary damages to be in order to serve as example and deterrence for the public good. However, we reduce the same to P25,000. We also reduce the award of moral damages to P300,000 based on prevailing jurisprudence.[27]

Three members of the Court maintain their position that RA 7659, insofar as it prescribes the death penalty, is unconstitutional. Nevertheless, they submit to the ruling of the Court, by a majority vote, that the law is constitutional and that the death penalty should be accordingly imposed.

WHEREFORE, the judgment of the Regional Trial Court of Manila, Branch 35 in Criminal Case Nos. 95-142826 and 95-144064 convicting the appellants of kidnapping for ransom and serious illegal detention, and sentencing them to suffer the penalty of death, and to pay jointly and severally the amount of P1.5 million as actual damages, is hereby AFFIRMED, subject to the MODIFICATION that the awards of moral and exemplary damages are hereby reduced to P300,000 and P25,000, respectively.

In accordance with Article 83 of the Revised Penal Code, as amended by Section 25 of RA 7659, upon finality of this decision, let the records of these cases be forwarded to the Office of the President for possible exercise of executive clemency.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Mendoza, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr. and Azcuna, JJ., concur.

[1] Penned by Judge Ramon P. Makasiar, Rollo, pp. 31-66.

[2] TSN, October 23, 1995, pp. 6-100; TSN, October 24, 1995, pp. 6-81; TSN, November 14, 1995, pp. 4-33; Id., pp. 36-72; TSN, November 21, 1995, pp. 7-74.

[3] Exhibits “A”; “D”.

[4] Exhibit “F”.

[5] Exhibit “G”.

[6] Exhibits “B”, “E”, “H”.

[7] TSN, December 5, 1995, pp. 25-41.

[8] TSN, January 23, 1996, pp. 4-48.

[9] Appellant’s Brief for Romeo Victorino, Rollo, pp. 209-231.

- [10] Appellant's Brief for Ricardo Santos, Rollo, pp. 74-100.
- [11] People vs. Penaso, 326 SCRA 311, 318-319 [2000].
- [12] People vs. Quijon, 325 SCRA 453, 461 [2000]); People vs. Galam, 325 SCRA 489, 496-497 [2000]; People v. Paglinawan, 324 SCRA 97, 110-111 [2000].
- [13] TSN, October 23, 1995, pp. 10-12.
- [14] TSN, October 23, 1995, pp. 16-17.
- [15] TSN, October 23, 1995, pp. 9-13.
- [16] TSN, November 14, 1995, pp. 39-41.
- [17] TSN, November 14, 1995, pp. 44-46.
- [18] TSN, October 23, 1995, p. 91.
- [19] People vs. Galam, 325 SCRA 489, 500 [2000]; People vs. Milliam, 324 SCRA 155, 166 [2000].
- [20] Rollo, p. 58.
- [21] People vs. Pavillare, 329 SCRA 684, 703 [2000]; People vs. Suelto, 325 SCRA 41, 48 [2000].
- [22] People vs. Suza, 330 SCRA 167, 184 [2000].
- [23] Exhibit "3"-Victorino.
- [24] Exhibit "6"-Victorino.
- [25] Exhibit "6-D"- Victorino.
- [26] TSN, November 14, 1995, pp. 17-18.
- [27] People vs. Borromeo, 323 SCRA 547, 555 [2000].

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