

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMMEL DEANG, MELVIN ESPIRITU, AND NICSON (OR NIXON) CATLI, ACCUSED-APPELLANT.

G.R. No. 128045. August 24, 2000

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PER CURIAM:

“Everything that happens in this world happens at the time God chooses. He sets the time for birth and the time for death, . . .” (Ecclesiastes 3:1-8).

Though God has certainly set the time of Arthur Tanhueco's birth, the three men accused in this case unblinkingly usurped God's power to set the time of his death. In one virtual motion, they deprived him of his liberty; and demanded a considerable sum from his loved ones for his freedom, and yet, took his life despite achieving their purpose. For their acts, they shall have to answer to God and to society.

On 31 January 1997, the Regional Trial Court of Angeles City, Branch 59, rendered a decision[1] in Criminal Case No. 95-320, finding accused Rommel Deang, Melvin Espiritu, and Nicson (or Nixon) Catli (hereafter DEANG, ESPIRITU, and CATLI) guilty beyond reasonable doubt of the crime of kidnapping for ransom with homicide, and sentencing each of them to suffer the penalty of death. The case is now before this Court on automatic review, pursuant to Article 47 of the Revised Penal Code, as amended by Section 22 of Republic Act No. 7659.[2]

The following facts were established by the evidence for the prosecution:

In the morning of 5 July 1995, Arthur “Jay-Jay” Tanhueco (hereafter JAY-JAY), a second-year high school student of the Chevalier School in Angeles city, was walking on campus when he was summoned by a man. The latter talked to JAY-JAY for a short while then suddenly dragged him inside a white Nissan Sentra aided by the driver. Two students, Arnel Mariano and Juliet Somera, who were defense witnesses called to testify for DEANG, saw the abduction and identified the man who forced JAY-JAY into the car as ESPIRITU.[3]

The car sped away, narrowly missing pedestrian Ranulfo Quizon, but not before the latter had a good look at the driver, whom he cursed in the Pampanga dialect: “Putanayda mo, kalakalale ka!” He later identified the driver of the car as DEANG.[4]

JAY-JAY was held against his will as his captors negotiated with his parents, Arturo Tanhueco, Sr. and Shirley Tanhueco (hereafter, Arturo and Shirley), for the payment of a P3-Million ransom, which was reduced to P1.48 million.[5] The pay-off set on the evening of 12 July 1995 at the Game City Amusement Center in Balibago, Angeles City, did not, however, push through. Instead, Shirley was approached by a man in a polka dot shirt, who was earlier seen talking to a certain Miller.[6]

The next day, 13 July, a man who went by the name of “Bian” (ESPIRITU's alias) rang the Tanhuecos and told Shirley to bring the ransom money by herself to Carmenville Subdivision that evening. Once there, two men approached her. One of them, whom she identified as ESPIRITU, quickly occupied the driver's seat, while the

other, whom she identified as CATLI, sat behind them and examined the plastic bag containing the money. Shirley was made to sit beside ESPIRITU, and then blindfolded. After driving for about an hour, Shirley sensed a car passing by and stopping a short distance away. She was instructed to wait for her son, then she heard ESPIRITU and CATLI board the other car. For about an hour, Shirley sat waiting in the car, until an old man removed her blindfold. Her son JAY-JAY, however, was nowhere in sight.[7]

On 27 July 1995, after appropriate proceedings, Angeles City 2nd Asst. City Prosecutor Vicente J. Pornillos filed with the Regional Trial Court of Angeles City an information for KIDNAPPING against Miller Capil and five (5) "Does" who remained at large as of that time. The case was docketed as Criminal Case No. 95-320.[8]

In the course of the investigation of JAY-JAY's kidnapping, his father Arturo observed that the telephone calls made were traced to a house numbered 74-9 along Calachuchi St., Timog Park, Angeles City. Thus, on 20 July 1995, he visited said address, where he saw his nephew DEANG talking with a young man, later identified as ESPIRITU, in front of the house owned by a certain Reynaldo Cunanan.[9]

Once DEANG was in police custody, the police recovered, P100,000 from him. He then implicated in his sworn statement ESPIRITU, CATLI, and Benito Catli (hereafter Benito) in the kidnapping for ransom of JAY-JAY.[10] Accordingly, on 25 August 1995, the information was amended to specifically identify the "Does." Pursuant to the Amended Information,[11] ESPIRITU, CATLI, and Benito were charged as Miller's co-accused in the KIDNAPPING of JAY-JAY.

In the meantime, on 17 July 1995, the dead body of an unidentified boy was found in Sitio Kaynalawit, Barangay Dayap, Laurel, Batangas, along the Tagaytay ridge below a ravine 15 to 30 meters from the road. The post-mortem examination of the cadaver revealed the cause of death as follows:

VICTIM DATA: An unidentified male dead person, around 14 to 15 years old, wearing Giordano white shirt black pants, Gamosa shoes.

PLACE OF INCIDENCE: Sitio Kaynalawit, Barangay bayap, Itaas, Laurel, Batangas

NATURE OF INCIDENCE: Mauling

PLACE DATE AND TIME OF AUTOPSY: Police Station, Laurel, Batangas at about 9:50 p.m., July 17, 1995

GENERAL FINDINGS

1. Skull Fracture over left temporo parietal area.
2. Multiple lacerated wds: 1-1 /2 inches (L) temporo parietal area.
3. Hematoma 2 inches over (R) eye.

CAUSE OF DEATH

Cerebral Hemorrhages.[12]

When the body was identified to be that of JAY-JAY, and such fact was linked to the kidnapping, the information was amended on 31 August 1995 to charge the accused not for mere kidnapping, but for KIDNAPPING FOR RANSOM WITH HOMICIDE. This time, DEANG was included in the indictment.[13]

Thereafter, 2nd Asst. City Prosecutor Pornillos moved that accused Miller Capil be dropped as co-accused after determining that he was erroneously charged on account of mistaken identity and DEANG did not mention in his sworn statement Capil's name.[14] Defense witness Arnel Mariano clarified the mistake when he testified on 17 May 1996 regarding the physical similarity of Miller and ESPIRITU. Thus, on 1 September 1995, the Information

was again accordingly amended, and as so amended, it reads:

The undersigned Second Assistant City Prosecutor accuses ROMMEL DEANG Y TANHUECO, MELVIN ESPIRITU, NIXON CATLI, BENITO CATLI, of the crime of KIDNAPPING FOR RANSOM WITH HOMICIDE committed as follows:

That on or about the 5th day of July, 1995, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually aiding and abetting one another, did then and there willfully, unlawfully and feloniously, and for the purpose of extorting money from the parents of ARTHUR TANHUECO, a minor, who was kidnap, carry away in an automobile, detain and later taking him into undisclosed place, thereby depriving him of his liberty; and accused herein despite having attained their purpose of demanding and receiving money as ransom for the release of said minor, the accused failed to release him to his parents, and instead the said accused with abuse of superior strength, evident premeditation and treachery killed said ARTHUR TANHUECO as a consequence.[15]

The trial court granted the motion to drop Capil as co-accused. The remaining accused, DEANG, ESPIRITU, CATLI, and Benito Catli, each entered a plea of not guilty on 29 September 1995, the scheduled arraignment and pre-trial.[16]

On 19 October 1995, counsel for accused CATLI filed an omnibus motion to suspend proceedings, to quash warrant of arrest, to hold preliminary investigation/examination, and to immediately release accused CATLI.[17] The motion was opposed by the prosecution and was denied by the court in its order of 7 November 1995.[18]

During the trial, a motion to discharge Benito to become a state witness was filed,[19] which was opposed by DEANG, ESPIRITU, and CATLI.[20] The trial court, however, granted the motion in an order dated 29 February 1996.[21] It reasoned thus:

. . . First, there is absolute necessity for the testimony of Benito Catli, for despite the presentation of witnesses by the prosecution, none of them testified on the exact manner the crime was committed. The question as to who masterminded the commission of the offense, the manner it was committed and the actual participation of the four accused. The existence of the alleged conspiracy can be gleaned from the sworn statement of Benito Catli. Second, the crime charged against the four accused is kidnapping for ransom with homicide. The testimony of the witnesses for the prosecution was limited to the fact of kidnapping and the fact of the victim's death. The circumstances leading to the death of the victim and the manner he was killed was not yet established. Without accused Benito Catli's testimony, no other direct evidence is available for the prosecution to prove the elements of the crime charged against the four accused. Third, his testimony was and could be corroborated by the prosecution's witnesses Fourth, he does not appear to be the most guilty. In his sworn statement, he was merely asked by the three other accused to join them in their already perceived plan of kidnapping a certain person Fifth, there is no evidence that he has at any time been convicted of any offense involving moral turpitude.

DEANG, ESPIRITU, and CATLI had a common defense: denial and alibi. DEANG claimed that on the date in question, he was watching television at his house on Jesus St., Angeles City. For his part, ESPIRITU maintained that he accompanied his niece, Carmella Arcilla, to a Protestant school at Henson St., also in Angeles City.[22] Finally, CATLI, a cousin of state witness Benito, said that between 5 and 17 July 1995, he never left their family store located at the Panlilio Apartments, Jesus St., Angeles City.[23]

After trial on the merits, the court found the evidence of the prosecution to be more credible, disregarded the defense of alibi set up by DEANG, ESPIRITU, and CATLI, and decreed as follows:

WHEREFORE, premises considered, accused Rommel Deang, Melvin Espiritu and Nicson Catli are held civilly

liable to pay jointly and severally the heirs of the victim Arthur "Jay-jay" Tanhueco, Jr:

1. the sum of P1,480,000.00 actually given as ransom money minus P100,000.00;
2. P30,000.00 for the wake and funeral expenses;
3. P10,000.00 for expenses in transporting the cadaver of the victim from Laurel, Batangas to Angeles City;
4. the sum of P3,000,000.00 pesos for and as moral damages; and
5. the sum of P50,000.00 as attorney's fees.

Finding all the accused GUILTY beyond reasonable doubt of the crime of Kidnapping For Ransom With Homicide, accused Rommel Deang, Melvin Espiritu and Nicson Catli are all sentenced to suffer the supreme penalty of DEATH.[24]

The capital punishment having been imposed by the trial court, the assailed judgment is now with this Court on automatic review.

DEANG insists that the trial court erred in (a) convicting him on the basis of inadequate and insufficient evidence; (b) basing his conviction on his alleged extrajudicial confession which is inadmissible in evidence; (c) convicting him on the basis of illegally obtained evidence; (d) not upholding his constitutional right to counsel during his custodial investigation; and (e) not considering that he was illegally arrested and detained.

ESPIRITU, aside from asserting the lack of evidence to convict the three of them, assigns as error the failure of the trial court to appreciate his alibi.

CATLI avers that the trial court erred in: (a) proceeding with his arraignment without a preliminary investigation; (b) admitting in evidence, giving weight and credence to, and relying chiefly on the alleged extrajudicial confession of accused DEANG in convicting them; (c) granting the discharge of Benito Catli when he was the most guilty of the four accused and by giving weight to his testimony; (d) ignoring his defense of alibi; and (e) convicting him despite a clear lack of motive.

After a meticulous review of the voluminous records and the evidence adduced by the parties, this Court agrees with the findings of the trial court and, consequently, affirms the conviction of accused-appellants DEANG, ESPIRITU and CATLI.

Shirley's narration of the events that followed the abduction of her son JAY-JAY is convincingly clear. Her testimony proved beyond any doubt that JAY-JAY was kidnapped, that she complied with the ransom demands of the malefactors, and that she had sufficient knowledge of their identities because she personally dealt with them. Her testimony may have had minor inconsistencies, but these did not affect her credibility. It is settled that inconsistencies on minor and trivial matters only serve, to strengthen rather than weaken the credibility of a witness because they erase any suspicion of rehearsed testimony.[25]

JAY-JAY's father Arturo also had a hand in piecing together the evidence against accused-appellants. He went to the place from where the telephone calls made by the kidnappers were traced and found his nephew, DEANG, conversing in front of the house with a man who was later identified as ESPIRITU. This eventually paved the way to the questioning of DEANG, who owned up the crime and supplied the information that, in turn, led the police to CATLI, ESPIRITU and Benito.

State witness Benito Catli's testimony is crucial to the determination of the guilt or innocence of accused-appellants. He maintained that it was DEANG, ESPIRITU, and CATLI who conceptualized, planned and executed the abduction. Thereafter, the three mapped out how to get the ransom from JAY-JAY's parents. Benito also declared that the boy was held against his will.[26] As correctly observed by the trial court:

The victim was brought to the ancestral home of Nicson Catli's family at San Juan, San Luis, Pampanga. Nicson Catli was the one who guarded the victim, while Melvin Espiritu negotiated for the ransom money and Rommel Deang was the one who monitored the movement of the Tanhueco family. Benito Catli also testified that Nicson Catli and Melvin Espiritu were the ones who met Shirley Tanhueco at Carmenville and that it was Nicson Catli who was carrying the ransom money when he transferred from the car of Mrs. Tanhueco to the car being driven by Benito Catli. The three of them, Melvin, Nicson and Benito thereafter brought the victim to Manila at the Longwood Hotel and the three of them also counted the ransom money. When Benito and Melvin returned to Angeles City in the early morning of July 13, 1995, Nicson Catli was left in Manila to guard Jay-Jay, Tanhueco. Then on July 17 or 18, 1995, it was Nicson Catli who gave Benito Catli the amount of P50,000.00 and told him that Turo or Jay-Jay Tanhueco was already dead. Nicson even told Benito that Nicson, Rommel and Melvin went to Tagaytay. From there, Rommel shot Jay Jay Tanhueco with a paltik revolver and thereafter Rommel and Melvin threw Turo down the cliff.[27]

Recovered from the possession of DEANG were peso bills in the amount of P100,000,[28] which was part of the ransom money.

The Nissan Sentra car that was used in the forcible taking of JAY-JAY at the Chevalier School campus on 5 July 1995 was properly identified by witnesses and was traced to Bali Cars, which rented it out to ESPIRITU on several occasions in July 1995, coinciding with the dates pertinent to the kidnapping of JAY-JAY, the delivery of the ransom money, and the taking of JAY-JAY to Longwood Hotel in Manila.[29] The trial court found ESPIRITU's testimony on the circumstances surrounding said transactions incredible and declared thus:

The explanations made by Melvin Espiritu on why he rented a car on July 5, 1995 is unmeritorious. He alleged that he rented the car at 6:00 a.m. in favor of Benito Catli per the latter's request. Benito Catli's house is nearer and more accessible to Bali Cars. Benito Catli allegedly went to San Luis the night before and told him to leave the car to Catli's sister. Likewise, his explanation, on why he rented a car on July 14, 1995 does not deserve consideration. It is improbable for her mother not to call them considering that she will not be going home on July 14, 1995 and the succeeding days thereafter. Melvin rented a car on July 14, 1995 allegedly to fetch his mother at the airport and who did not arrive on the said date. He went on again on July 15 and 16, 1995 using the rented car hoping that his mother would come. They did not call their mother in Hong Kong although they can call her up when there is an emergency. This Court believes that such narration was used by the defense only to justify his renting a car on July 14, 1995. The car he rented on July 14, 1995 was returned only on August 4, 1995 and he paid P26,400.00 for it.[30]

All the foregoing, especially the pivotal testimony of state witness Benito Catli, established beyond any shadow of a doubt that DEANG, ESPIRITU, and CATLI committed, and are guilty of, the crime for which they were charged, namely, kidnapping for ransom with homicide.

There is no merit to DEANG's claim that his extrajudicial confession is inadmissible for having been obtained in violation of his constitutional rights under custodial investigation.

Paragraph 1, Section 12, Article III of the Constitution provides that:

Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If a person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

And Section 2(a) of R.A. No. 7438 states that:

Any extrajudicial confession made by a person arrested, detained or under custodial investigation shall be in writing and signed by such person in the presence of his counsel or in the latter's absence, upon a valid waiver, and in the presence of any of his parents, older brothers and sisters, his spouse, the municipal mayor, the municipal judge, district school supervisor, or priest or minister of the gospel as chosen by him; otherwise, such extrajudicial confession shall be inadmissible as evidence in any proceeding.[31]

DEANG asserts that he was not advised of his constitutional rights and that his confession was dictated by PO3 Primo Jamisolamin. He adds that the lawyer who assisted him, Atty. Mariano Y. Navarro, was not his counsel of choice and that the latter did not ascertain whether his confession was freely given. Moreover, he claims, Atty. Navarro did not see him write and sign the purported confession. DEANG further states that he was never asked any question at that time relating to the incident under investigation.

PO3 Jamisolamin, however, testified that DEANG was informed of his constitutional rights and, when asked if he understood them, DEANG replied in the affirmative. When apprised of his right to counsel, DEANG also said that he had a lawyer, Atty. Mariano Navarro. Jamisolamin further testified that Atty. Navarro was right in front of DEANG when the latter was giving his confession.[32] DEANG's confession was in written form, signed by him, as well as by Atty. Navarro.[33]

SPO2 Mario Nulud, who was present at the time DEANG was giving his confession, corroborated PO3 Jamisolamin's testimony that DEANG was read his constitutional rights; and that the latter's lawyer, Atty. Navarro, was present during the investigation.

Moreover, a perusal of the extrajudicial confession of DEANG explicitly shows that he was, indeed, informed of his constitutional custodial rights and that he was represented by a counsel of his choice, Atty. Navarro, at the time said confession was being executed, notwithstanding his disavowal of said counsel's services on appeal. The pertinent portion of the extrajudicial confession reads:

PASUBALI: Ginoong, Rommel Deang, ipinagbibigay alam ko sa iyo na ikaw ngayon ay sumasailalim ng isang pagsisiyasat at inuusig tungkol sa isang kasalanan na kung saan ikaw ay nasasangkot sa isang krimen (kidnapping). Bago ang lahat, pinaalala ko sa iyo na sa ilalim ng ating Saligang Batas ikay ay may may sariling karapatan at ito ay ang sumusunod:

- a. Karapatan mo ang magsawalang kibo sa anumang itatanong sa iyo.
- b. Karapatan mong magkaroon ng patnubay ng isang manananggol, ikaw ay bibigyan ng ating gobierno na walang bayad o sa sarili mong pili o kagustuhan. Ito ba ay nauunawaan mo?

SAGOT: OPO (initialed)

TANONG: Pagkatapos na maipabatid sa iyo ang inyong karapatan sa ilalim ng ating saligang batas na magsawalang kibo, nais mo bang ipagpatuloy ang imbestigasyong ito?

SAGOT: OPO (initialed)

TANONG: Kailangan mo ba ng isang manananggol?

SAGOT: Opo, Si Atty. Mariano Y. Navarro po (initialed).

TANONG: Pinapaalala ka rin sa iyo na anumang salaysay ang ibibigay mo sa imbestigasyong ito ay maaring gamitin laban sa iyo. Ito ba ay nauunawaan mo?

SAGOT: OPO (initialed)

TANONG: Handa ka na bang magbigay ng isang kusang loob na salaysay?

SAGOT: Opo, sir.[34]

In light of the positive assertions of PO3 Jamisolamin and SPO2 Nulud, police officers who have not been shown to harbor any ill-motive in testifying against DEANG, and are even presumed to have acted regularly, the self-serving and uncorroborated claims of the latter must fail. The Court finds no constitutional and legal infirmity in the signed extrajudicial confession of DEANG and affirms its admissibility in evidence.

Neither is there merit in DEANG'S claim that his arrest and the search of his house were conducted in violation of his constitutional right against warrantless arrests and searches. As he did not question the legality of his arrest before he was arraigned, he is deemed to have waived such defense. In any case, no proof of the purported illegal arrest was ever presented by the defense. What is clear from the record is that, when invited by the police, he willingly submitted himself to investigation.

With regard to the alleged illegal search and seizure, SPO2 Mario Nulud testified that DEANG conceded to accompany the police to his house in order to surrender his share of the ransom money. He brought them to his room upstairs. There DEANG showed and gave to the police officer P100,000 in P500-peso bills, some of which were marked.[35] It must be reiterated at this point that a consented warrantless search is one of the exceptions to the proscription under Section 2, Article III, of the Constitution.[36] The consent of the owner of the house to the search effectively removed any badge of illegality.

Neither is the Court impressed with DEANG's assertion that the students who witnessed the kidnapping of JAY-JAY pointed to Miller Capil as the one who forced JAY-JAY into the car. Arnel Mariano and Juliet Somera actually identified ESPIRITU as the culprit. A closer scrutiny of the testimonies of the witnesses reveals that Miller and ESPIRITU bear physical resemblance. On the other hand, DEANG was positively identified by Ranulfo Quizon, who remembered him as the driver of the white Nissan Sentra used in abducting JAY-JAY.[37] Moreover, he was tagged by Benito Catli as one of the co-conspirators in the commission of the crime charged.

CATLI, for his part, contends that there was a violation of his right to a preliminary investigation. He filed a separate action before the Court of Appeals, docketed therein as CA-G.R. SP No. 39287, raising this issue. In its decision promulgated on 15 March 1996, the Court of Appeals dismissed the petition on this ground:[38]

[T]he records show that only accused Benito Catli filed a Motion for Reinvestigation. The three (3) other accused did not invoke their right to a preliminary investigation. So much so that after entering into arraignment on September 30, 1995, this right was deemed waived. At any rate, it is settled that the absence of preliminary investigation does not impair the validity of the information or otherwise render the same defective and neither does it affect the jurisdiction of the court over the case or constitute a ground for quashing the information.[39]

Preliminary investigation is generally inquisitorial, and it is often the only means of discovering those who may be reasonably charged with a crime to enable the prosecutor to prepare his complaint or information. It is not a trial of the case on the merits and serves no purpose except to determine if a crime has been committed and whether there is probable cause to believe that the accused is guilty thereof. It does not place in jeopardy the person against whom it is taken.[40] It has been consistently held that the absence of a preliminary investigation does not impair the validity of the criminal information or render it defective.[41] In this case, CATLI is deemed to have waived his right to preliminary investigation when he entered his plea during arraignment.[42]

CATLI also repeats his objection to the utilization of Benito Catli as state witness. This issue is well within the discretion of the trial judge. Assuming *arguendo* that the trial court did err, this Court has held several times in the past that any witting or unwitting error of the prosecution in asking for the discharge of an accused, and of the trial court in granting the petition for discharge, would not deprive the discharged accused of the acquittal

specified in Section 10 of Rule 119 and of the constitutional guarantee against double jeopardy, as long as no question of jurisdiction is involved. It is also relevant to note that the improper or mistaken discharge of an accused would not affect his competence as a witness or render inadmissible his testimony.[43]

CATLI'S argument that he had no motive to kidnap anybody because his family was well-off is irrelevant. In the first place, the rich and the poor can and do commit crimes. Possession of wealth does not make one a saint, and poverty alone does not make one a criminal. In the second place, proof of motive, in general, is not necessary to pin a crime on the accused if the commission of the crime has been proven and the evidence of identification is convincing.[44] In the present case, CATLI was identified by Benito Catli, his cousin, as one of the co-conspirators in the planning and execution of the kidnapping for ransom and the killing of JAY-JAY.

The common defense of DEANG, ESPIRITU, and CATLI is alibi. DEANG said he was in his house in Jesus St., Pulong Bulo, Angeles City when the kidnapping was executed on 5 July 1995. He was, however, positively identified by Quizon, who was almost hit by the white Nissan Sentra immediately after JAY-JAY was kidnapped.

ESPIRITU, on the other hand, claims that Benito Catli asked him to rent a car on 5 July 1995. He thus rented a car at Bali Cars at approximately half past six in the morning, after which he deposited the car at the residence of Benito Catli. He got back home in Timog Park, Angeles City, at around 7:00 a.m. then brought his niece to school at around 7:30. He left the school at around 8:00 o'clock and reached home some thirty minutes later, where he stayed the rest of the day.

CATLI maintains he was tending his sister's store at Jesus St., Angeles City, the entire two months of July and August, including the 5th of July.

Alibi is the weakest of all defenses for it is easy to fabricate and difficult to disprove. For this reason, it cannot prevail over the positive identification of the accused by witnesses.[45] For alibi to prosper, the requirements of time and place must be strictly met. It is not enough to prove that the accused was somewhere else when the crime was committed. He must demonstrate that it was physically impossible for him to have been at the scene of the crime at the time of its commission.[46]

Chevalier School, where the kidnapping occurred, is in Pampanga. The residences of DEANG and ESPIRITU, and the store of CATLI's sister, are all located in Angeles City, Pampanga. Each of them miserably failed to show that it was physically impossible for them to be at the Chevalier School at the time JAY-JAY was kidnapped.

In light of the overwhelming evidence for the prosecution, establishing their authorship of and culpability for the crime charged, the alibis of DEANG, ESPIRITU, and CATLI were rightfully disregarded by the trial court as obvious fabrications.

Article 267 of the Revised Penal Code, as amended by Section 8 of Republic Act No. 7659, provides that:

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:

- 1) if the kidnapping or detention shall have lasted more than three days
- 2) xxx
- 3) xxx
- 4) if the person kidnapped or detained shall be a minor, except when the accused is any of the parents, female or a public officer.

The penalty shall be death where the kidnapping or detention was committed for the purpose of extorting ransom

from the victim or any other person, even if none of the circumstances above-mentioned were present in the commission of the offense.

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. (Emphasis supplied)

The presence of any of these two circumstances - the ransom demand or the death of the victim - already calls for the imposition for the death penalty. Here, they are both present. The guilt of DEANG, ESPIRITU, and CATLI for the kidnapping for ransom and death of JAY-JAY having been established beyond reasonable doubt, the Court has no other recourse but to agree with the penalty imposed by the trial court.

Four Justices of the Court have continued to maintain their view that Republic Act No. 7659 is unconstitutional insofar as it prescribes the death penalty. Nevertheless, they submit to the ruling of the majority to the effect that this law is constitutional and that the death penalty can be lawfully imposed in the case at bar.

In the matter of damages, the Court notes that the trial court awarded actual damages in the amount of P30,000 for wake and funeral expenses, and P10,000 as expenses for transporting the victim's body from Batangas to Pampanga. These must be deleted for lack of supporting evidence. The amount of the ransom money, less P100,000, must, however, be returned to the Tanhuecos.

The award of moral damages in the amount of P3 million must be reduced to P500,000.

The law also allows exemplary damages in criminal cases as part of the civil liability of the malefactors when the crime is attended by one or more aggravating circumstances.[47] As discussed above, this requisite has already been met. Exemplary damages are, however, imposed "not to enrich one party or impoverish another but to serve as a deterrent against or as a negative incentive to curb socially deleterious actions." [48] In the case at bar, exemplary damages in the amount of P100,000 are awarded to the private complainants, by way of example or correction, in addition to the other damages herein awarded.[49]

Finally, the Court observes that no civil indemnity for the death of the victim was decreed. In line with prevailing jurisprudence,[50] the amount of P50,000 is hereby also awarded.

WHEREFORE, the decision of the Regional Trial Court, Branch 59, Angeles City, in Criminal Case No. 95-320, sentencing accused-appellants ROMMEL DEANG, MELVIN ESPIRITU, and NICSON CATLI to suffer the penalty of death, is hereby **AFFIRMED**, with the following modifications as to damages:

- (1) the award of actual damages in the amount of P30,000 for funeral and wake expenses, and P10,000 for transporting the victim's body from Batangas to Pampanga, are hereby set aside;
- (2) the award of P3 million in moral damages is reduced to P500,000; and
- (3) the amounts of P50,000 as indemnity for the death of Arthur Tanhueco, and P100,000 as exemplary damages, are hereby also awarded.

The awards of restitution of the ransom money in the amount of P1,480,000, less the P100,000 which was recovered, and attorney's fees in the amount of P50,000, stand.

The aforesaid awards shall be paid to the heirs of Arthur Tanhueco and accused-appellants are solidarity liable for the payment thereof.

In accordance with Article 83 of the Revised Penal Code, as amended by Section 25 of Republic Act No. 7659, upon finality of this decision, let the records of this case be forwarded to the Office of the President for possible exercise of pardoning power.

Costs de officio.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., JJ., concur.

[1] Original record (OR), vol. 3, 1006-1038; Rollo, 66-98. Per Judge Eliezer R. de los Santos.

[2] Entitled “An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Code as Amended, Other Special Laws, and for Other Purposes,” which took effect on 31 December 1993 (People v. Simon, 234 SCRA 555 [1994]).

[3] TSN, 17 May 1996, 17-19; 21 May 1996, 24-26.

[4] TSN, 20 October 1995, 35-36.

[5] TSN, 8 December 1995, 20-21; TSN, 7 November 1995, 19-20.

[6] TSN, 8 December 1995, 32.

[7] Id., 32-33, 35-41.

[8] OR, vol. 1, 1.

[9] TSN, 7 November 1995, 25-26.

[10] OR, vol. 2, 528-530.

[11] OR, vol. 1, 59-60.

[12] Exhibit “AA.”

[13] OR, vol. 1, 78.

[14] OR, vol. 1, 82-83.

[15] Id., 84.

[16] Id., 124-125.

[17] Id., 145-153.

[18] Id., 166-170.

[19] OR, vol. 1, 394-395.

[20] Id., 414-419, 422-430, 432-438.

[21] OR, vol. 2, 441-443.

[22] Rollo, 471.

[23] Id., 345-346.

[24] OR, vol. 3, 1038.

[25] People v. Diaz, 262 SCRA 723, 732 [1996] .

[26] TSN, 15 March 1996, 12, 35-36.

[27] OR, vol. 3, 1031-1032.

[28] Exhibit “N” to “N-28-a.”

[29] Exhibit “E.”

[30] OR, vol. 3, 1032-1033.

[31] Section 2(d), Republic Act No. 7438.

[32] TSN, 21 November 1995, 14.

[33] Exhibit “S,” 525-527.

[34] OR, vol. 2, 528.

[35] TSN, 28 November 1995, 12-14.

[36] See *Mustang v. CA*, 257 SCRA 430, 449-450 [1996]; 1 JOAQUIN G. BERNAS, *THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY*, 1987 ED., 104-105.

[37] TSN, 20 October 1995, 35-36.

[38] OR, vol. 2, 478-485; Per Romeo A. Brawner, J., Minerva Gonzaga-Reyes and Buenaventura J. Guerrero, JJ., concurring.

[39] *Id.*, 482-483.

[40] *Paderanga v. Drilon*, 196 SCRA 86, 90 [1991].

[41] *People v. Casiano*, 1 SCRA 478-483 [1961] ; *Socrates v. Sandiganbayan*, 253 SCRA 773, 792 [1996] .

[42] OR, vol. 1, 124-125; See *People v. Villanueva*, 265 SCRA 318 [1996] .

[43] *People v. Jamero*, 133 PHIL. 127 [1968] ; *People v. Torrefranca*, 151 SCRA 143 [1987] ; *Bogo-Medellin Milling Co., Inc. v. Son*, 209 SCRA 329, 337-338 [1992] ; See *People v. Armada*, 225 SCRA 644 [1993] .

[44] *People v. Alviar*, 59 SCRA 136, 160 [1974] .

[45] *People v. De la Cruz*, 217 SCRA 283 [1993] ; *People v. Kenysis*, 221 SCRA 628 [1993] ; *People v. Kyamko*, 222 SCRA 183 [1993] .

[46] *People v. De la Cruz*, 229 SCRA 755[1994] .

[47] Article 2230, Civil Code.

[48] *Del Rosario v. Court of Appeals*, 267 SCRA 158, 173, [1997] , citing *Mecenas v. Court of Appeals*, 180 SCRA 83 [1989].

[49] Article 2229, Civil Code.

[50] *People v. Verde*, 302 SCRA 690, 706 [1999] .

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