

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALMA GARALDE Y TAN AND KIL PATRICK IBERO ACCUSED-APPELLANTS.

G.R. No. 128622. December 14, 2000

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-128622/>

PER CURIAM:

This is an automatic review of the Joint Judgment, dated 27 December 1996, of the Regional Trial Court, Branch 79 of Quezon City in Criminal Cases Nos. Q-94-58657 and Q-94-58658, finding accused-appellants Kil Patrick Ibero and Alma Tan Garalde guilty beyond reasonable doubt of the crime of Kidnapping for Ransom and Serious Illegal Detention, as principal and accomplice, respectively. The trial court sentences accused-appellant Ibero to suffer the maximum penalty of death and accused-appellant Garalde to suffer the penalty to reclusion perpetua.

The Information in Criminal Case No. Q-94-58657 charged accused-appellant Garalde and her husband Roque Garalde with violation of Presidential Decree No. 1866 (Illegal Possession of Firearms and Ammunition), as amended, as follows:

That on or about the 20[th] day of August 1994, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and feloniously have in their possession and under their custody and control the following, to wit: 1) two (2) M16 rifles, one of which bearing serial no. RP146697 and other has a defaced serial number; 2) two (2) rifle Grenades; and 3) one hundred twenty five (125) rounds of ammunitions of M16 rifle, without first having obtained the proper license therefore.

Contrary to law.[1]

The Information in Criminal Case No. Q-94-58658 charged accused-appellants, together with Roque Garalde and several unidentified John does, with Kidnapping and Serious Illegal Detention defined and penalized under Article 267 of the revised Penal Code, as amended by Republic Act No. 7659, as follows:

That on or about August 9, 1994 in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together, confederating and mutually helping one another, did then and there by means of force, violence against and intimidation of person and a gunpoint, willfully, unlawfully and feloniously kidnap, carry away and detain Paolo Bellosillo (13 years old), John Bellosillo (8 years old), and Niño Bellosillo (11 years old), who are minors, and Dianita Bebita, Janidy Dumagpi and Antonio Paquera against their will and consent, thus depriving them of their liberty, for the purpose of extorting ransom for their release, which, after payment thereof in the amount of P410,000.00 and two sets of jewelry, the kidnapped victims were released, and the accused divided the ransom money among themselves, to the damage and prejudice of the afore-named victims.

Contrary to law.[2]

Among those charged, only accused-appellants were arraigned and both entered a plea of not guilty. A joint trial of the two cases ensued. The prosecution presented as its witnesses Kathryn "Kata" Bellosillo, Dianita Bebita, Paolo Bellosillo and C/Insp. Michael Ray Aquino. As culled from their testimonies, the facts of the case are as

follows:

On 9 August 1994, at about 6:45 in the morning, Paolo Bellosillo (13 years old), his brother John Bellosillo (8 years old) and their cousin Niño Bellosillo (11 years old), all grade school students at the Ateneo de Manila University, were on board a Toyota Lite Ace van driven by Antonio Paquera, the family driver. The boys were on their way to school. With them were their yayas, Dianita Bebita and Janidy Dumagpi. When they were near the corner of Scouts Limbaga and Ybardolaza Streets in Quezon City, a taxi suddenly bumped the right portion of the van. As a result of the impact, the van stopped. Three (3) men hurriedly alighted from the taxi and approached the van. One of them poked his gun at Dianita and ordered her not to make a scene. They then forced their way inside the van and blindfolded all the passengers. Dianita, who was seated in the front seat beside the driver, and Antonio, the driver, were instructed to move to the back of the van. One of the men then took the wheel and drove the van. After being on the road for a considerable length of time, they stopped and the kidnap victims were brought to a house where they were kept inside a room.[3]

At around 7:45 in the morning of the same day, Mrs. Kathryn Bellosillo, mother of Paolo and John, who was then in the hospital watching over her sick daughter, received a call from Sonny Boy, her brother-in-law and father of Niño. He told Kathryn the he just received a call from a stranger who told him that Paolo, John and Niño were kidnapped. The caller demanded ten million pesos (P10,000,00.00) in exchange for the release of the boys. Kathryn forthwith called up the Ateneo to check if the boys attended their classes. Kathryn talked to Father Cuerquis, the grade school principal, who confirmed that the boys were not in their respective classrooms. The Bellosillo family then sought the help of General Panfilo Lacson of the Presidential Anti-Crime Commission (PACC).[4]

In the evening of the same day, Kathryn received another call from one of the kidnappers. The man on the line spoke sternly and told Kathryn, "makinig kang mabuti. Pera lang ang kailangan namin. Maghanda kayo ng P10 million. Pag hindi ninyo naibigay, sasampulan naming kayo. Patay ang driver, tapos ang dalawang yaya, tapos young tatlong bata." During the following days, the kidnappers, through a man who identified himself as "Mang Ernesto," contacted Kathryn several times by telephone. Mang Ernesto asked Kathryn if they already have the money. On 12 August 1994, upon her plea, Kathryn was able to speak to Paolo on the phone. Paolo begged his mother to give the kidnappers the money so that they could go home. Kathryn told her son that they were trying their best to raise the amount demanded by the kidnappers. Kathryn tried to prolong her conversation with her son in order that the PACC men would be able to trace where the call was being made.[5]

Meanwhile, as soon as he was informed about the kidnapping, General Lacson dispatched C/Insp. Michael Ray Aquino to conduct an investigation. At about 10:00 in the morning of 9 August 1994, Aquino, Sr. Insp. Paul G. Tucay and Insp. Milo B. Pagtalunan, with their respective teams, immediately went to Scout Limbaga. They learned from the ambulant vendors and bystanders in the area that the Lite Ace van carrying the Bellosillo children was cut by a taxi and a blue Toyota Corolla car with the commemorative plate number ALMA in front. Following a procedure called "back-tracking," the PACC men divided themselves into three teams to track the possible routes taken by the kidnappers after the abduction. Aquino and his team sighted a blue Toyota Corolla with plate number TCJ 185 along Commonwealth Avenue. There were at least four suspicious looking passengers in said car. Aquino and his followed the Toyota Corolla. Aquino then contacted the other teams to ask for their assistance in tailing the car. Aquino's team was joined by the team of Pagtalunan in the Quezon City Elliptical Circle and by the team of Tucay in Philcoa. They followed the blue Toyota Corolla until it stopped in front of a house in Evangeline Pascual St., B.F. Resort Village, Las Piñas. The house was owned by a certain Atty. Manzano.[6]

Thereafter, Aquino and his team went back to Camp Crame. Aquino, however, instructed the team of Tucay to

stay behind and keep an eye on the Toyota Corolla. Aquino then contacted the LTO to ask about the ownership of the Toyota Corolla with plate number TCJ-185. He was informed that the car was registered under the name of accused-appellant Alma Garalde with address at U.P. BLISS, Quezon City. It was learned that Alma Garalde is married to co-accused Roque Garlade. It was further discovered that accused-appellant Garalde no longer resided in U.P. BLISS but in Frankville Subdivision, Novaliches, Quezon City.[7][7]Id., at 12-13.7

As earlier mentioned, Kathryn was able to talk to Paolo by phone on 12 August 1994. The call was traced to the house of Atty. Manzano in Las Piñas. At around this time, the PACC men who manned said house confirmed that they saw the Toyota Corolla arrive with four (4) men and a boy who was presumably Paolo.[8] After a series of negotiations over the phone, the Kidnappers agreed to reduce the ransom from P10,000,000.00 to P410,000.00 in cash and several pieces of jewelry valued at P80,000.00.[9]

At dawn of 16 August 1994, the kidnappers released Dianita. They allowed her to go home and talk to Kathryn about the payment of the ransom. When Dianita arrived at the Bellosillo residence, she was crying. She told Kathryn that the kidnappers directed her to go home in order to get the ransom money and deliver it to them.[10] Subsequently, Kathryn received a call from Mang Ernesto who gave the instructions on how the payment of the ransom was to be made.[11]

As per instructions of the kidnappers, Dianita herself drove the Lite Ace van to the east Avenue Medical center at around 7:30 to 8:30 in the morning of that same day. She brought with her the P410,000.00 in cash plus the jewelry. Again, as instructed, she parked the van at the parking lot but left the engine running. She went to the back of the van, blindfolded herself and covered her head with a sweater. A few minutes later, she felt somebody opening the door of the van. The person who entered the van asked if the money was with her. Dianita answered in the affirmative. The van moved and they traveled for a time. They stopped at some place where another man asked if the money was already there. The man in the van replied in the affirmative. The van moved again. Dianita was informed that they were taking her to the children. The van eventually stopped and the kidnappers left. Sensing that she was already alone, Dianita removed her blindfold. She recognized the place to be Novaliches. She waited for the children until 1:00 in the afternoon but they never came. She called up Kathryn and told the latter about what happened. The family driver fetched Dianita in Novaliches without the children.[12]

Earlier, Kathryn contacted the PACC about the pay off which was to take place at the east Avenue Medical Center. Several PACC men were dispatched by Aquino to monitor the pay off. The men observed that the Toyota Corolla with plate number TCJ-185 was at said hospital. They (PACC men) tailed the van and the Toyota Corolla when these two vehicles left the hospital. The surveillance lasted for about three (3) hours but the authorities lost the subject vehicles at around 11:30 in the morning in Congressional Avenue, Quezon City.[13]

The following day, the PACC men conducted an intensive investigation at Frankville Subdivision in Novaliches, Quezon City. Upon discreet inquiries in said neighborhood, they were able to locate the Toyota Corolla with plate number TCJ-185 in No. 45 Frankville Subdivision, Novaliches, Quezon City. The car was parked in the garage of a two-storey house. Aquino and his team saw several men coming in and out of the house. One man was later identified as Roque Garalde, husband of accused-appellant Garalde. The PACC, however, decided to refrain from taking any action as yet so as not to compromise the safety of the kidnap victims.[14]

At around 4:00 in the morning of 18 August 1994, after nine (9) days in captivity, Paolo, John and Niño, together with the family driver, Antonio Paquera, were released. They were blindfolded and told to board the car. They rode the car which seemed to drive around in circles. Finally, it stopped and they were directed to get off. The kidnappers gave them P100 for their fare and instructed them to count from 1 to 20 before they remove their blindfolds. They did as told. After taking off their blindfolds, the boys and Antonio hailed a taxi. When they

finally got home, their families were already waiting for them. They had a tearful but joyous reunion.[15]

On 19 August 1994, the PACC, through P/Insp. Brimar Rodica, applied for and was issued search warrants by Judge Pablito M. Rojas, RTC, Branch 160 of Pasig City.[16] The warrants authorized the search of the residence of Roque and Alma Garalde in No. 45 Frankville Subdivision, Novaliches, Quezon City, in connection with the crimes of kidnapping with ransom and illegal possession of firearms. Armed with these warrants, on 20 August 1994, Aquino together with SPO4 Roberto Lancaon, SPO2 Rolando Jimenez, SPO1 Guillermo Ramos, SPO2 Virgilio Baragan and SPO1 Wilfredo Cuartel, conducted a search of the said house which resulted in the recovery of, among others, the Toyota Corolla with plate number TCJ-185, firearms, various kinds of ammunition and cellular phones.[17] The firearms and ammunition were found in one of the rooms in the second floor of the house. Several photographs were also recovered. For record purposes, the search was taped on video by the PACC operatives. Upon verification with the Firearms and Explosives Unit in Camp Crame, it was learned that neither Roque nor accused-appellant Garalde was a licensed firearms holder.[18]

Present during the search were the children of Roque Garalde and a certain Serapio Moresca. Moresca was brought to the Task Force Habagat headquarters for investigation. He voluntarily gave a statement and was subsequently released. The photographs recovered from the house of the Garaldes were then shown to the kidnap victims for identification. They identified accused-appellant Ibero as one of their abductors from these photographs.[19]

Thereafter, the PACC operatives went back to B.F. Resort, Las Piñas and showed the photographs to the security guards of said subdivision. The guards stated that they recognize one of the men in the photographs to be accused-appellant Ibero. On 22 August 1994, the police authorities arrested accused-appellant Ibero in Parañaque at the back of a church. The following day, he was made to stand in a police line-up together with other men. Accused-appellant Ibero was singled out by the kidnap victims as one of their abductors.[20]

During their respective testimonies, Dianita and Paolo again positively identified accused-appellant Ibero as one of the three men who abducted them on 9 August 1994.[21] they narrated that it was accused-appellant Ibero who blindfolded the family driver and ordered him to move to the back of the van.[22] It was likewise accused-appellant Ibero who blindfolded Paolo in the van.[23] Dianita further positively identified accused-appellant Garalde. Dianita testified that on the fifth day of their abduction, her blindfold was removed. She then saw accused-appellant Garalde peep through the door of the room where they were kept. Dianita heard accused-appellant Garalde, "itali ninyong mabuti iyan at baka makawala." Accused-appellant Garalde was referring to the driver, Antonio, who was then blindfolded and tied.[24]

Moreover, Paolo narrated that sometime during their abduction, he was brought to a different house. It was there where he was able to talk to his mother on the phone.[25] After his telephone conversation with his mother, he was brought back to the house where the other kidnap victims were kept. He also testified that on the fifth day of their abduction he heard a woman say "talian n'yo iyan ng mabuti at baka makawala pa yan." He did not see the woman because he was blindfolded at that time. When he viewed the videotape taken by the PACC operatives during the search, Paolo recognized one of the rooms shown there as the same room where they were kept.

According to Paolo, he recognized the room because there were times when their blindfolds were removed.[26]

As his defense, accused-appellant Ibero interposed the defense of alibi. He averred that in the evening of 8 August 1994, he was in the house of his sister in 3196 Quirino Avenue, Tambo, Parañaque. They were celebrating the birthday of their aunt. Accused-appellant Ibero and his friends, Edward Abel and Clynt Magos, had a drinking spree until 2:00 in the morning of the following day. They did not go home any more but just slept in the sala. Accused-appellant Ibero woke up at around 9:00 in the morning of 9 August 1994. He drank coffee and cleaned

the house until 12:00 in the morning.[27]

On 22 August 1994, accused-appellant Ibero was still in his sister's house. At 4:00 in the afternoon, Noemi, an acquaintance of his and housemaid of Atty. Manzano, arrived. She asked him if he knew someone who could drive. Apparently, she and her friends were going on an outing and they needed a driver. He told her that he did not know how to drive. A few minutes after their conversation, several men in civilian clothes arrived. They were looking for him. When they ascertained his identity, they immediately poked a gun at him. Afraid, accused-appellant Ibero instinctively raised both his arms. The men forthwith handcuffed him. He was brought to Camp Crame where they showed him several photographs. One photograph showed accused-appellant Ibero with his friends. Said picture was taken on 28 July 1994 during the birthday treat of Noemi at Pizza Hut inside Manuela Complex in Las Piñas.[28] This was the photograph used by the prosecution to identify him. Accused-appellant Ibero was directed to give the names of the other persons in the photographs as well as their addresses.[29]

To further exculpate himself from any participation in the abduction of the Bellosillo children, accused-appellant Ibero claimed that he first saw Dianita and Paolo only some time in September 1994 at the Department of Justice. He allegedly never saw them previous thereto.[30]

In support of accused-appellant Ibero's defense of alibi, the defense presented Edward Abel and Ruth Catague. Their testimonies substantially corroborated accused-appellant Ibero's claim that he was in Tambo, Parañaque the entire morning of 9 August 1994.[31]

Accused-appellant Garalde, on the other hand, denied any involvement in the kidnapping. She averred that she is engaged in the garment business as well as the door-to-door delivery services to and from Japan. Aside from these businesses, she derives income from renting out a room in their two-storey house to her townmates whenever they are in Manila. Sometime in August 1994, two (2) men rented one of the rooms in the second floor. She did not know these men but her husband knew them. The other room in the second floor was occupied by the children. The masters bedroom is in the groundfloor.[32]

Accused-appellant Garalde tried to show that during the time that the kidnapping happened, she was busy attending to the family business. She recounted that in the morning of 9 August 1994, she was in the house and did her usual work. She observed that there was a van parked outside the house between 8:00 to 9:00 in the morning but she did not see its passengers. Her husband was also in the house. After she finished cleaning the house, they went to the pier in South Harbor to get the package which was arriving from Japan. The following day, after the couple had eaten their lunch, they went to the Department of finance to pick up some documents in connection with the shipment they were expecting from Japan. The shipment arrived on 18 August 1994.[33]

At around 2:00 in the morning of 20 August 1994, accused-appellant Garalde, while waiting for her husband to arrive, was watching a videotape. She heard the dogs bark and there was persistent knocking on the door. She opened the front window and looked outside. She saw several armed men. Someone suddenly grabbed her neck and ordered her to open the door. A long gun was aimed at her. She opened the door and the men immediately entered the house. They went to the kitchen and to the rooms in the second floor. Accused-appellant Garalde could not do anything because she was being held. The children who were sleeping in the second floor were awakened by the commotion. They cried. Accused-appellant Garalde pleaded that she be allowed to go to the children. The men who were holding her obliged and so accused-appellant Garalde went upstairs to comfort the children. She assured them that these men were visitors. This seemed to assuage the fear of the children because they went back to sleep. Accused-appellant Garalde saw the men ransack the house. The other rooms in the second floor were in disarray.[34]

The men later on brought accused-appellant Garalde to the living room downstairs. They showed her photographs and asked her to identify her husband, Roque, in these photographs. She told them that he was not in those photographs. Aquino then slapped her. They brought her to the masters bedroom and when she asked them what they wanted, the men answered that they were looking for money and pieces of jewelry. Accused-appellant Garalde uttered that she did not know anything about it. She was again slapped on the face. They repeatedly questioned her regarding the whereabouts of her husband. She was then blindfolded and her hands were tied at the back.[35]

Accused-appellant Garalde averred that the men who raided her house had no search warrant. When asked about the receipt purportedly listing the items seized from the house with her signature, accused-appellant Garalde claimed that she was made to sign a blank paper. Thereafter, she was brought to camp Crame. She saw her car parked outside the office of one Major Reyes. Later in the afternoon, she talked to the father of Paolo and John. He asked her if she knew the mastermind of the kidnapping. She replied that she did not.[36]

The following day, Dianita approached accused-appellant Garalde and told the latter that she looked familiar. Dianita thought accused-appellant Garalde worked for a realty firm. Accused-appellant Garalde told Dianita that she was mistaken because she (accused-appellant Garalde) just came back from Japan where she worked as a janitress at the Embassy of Peru. She stayed there for ten (10) years and came back to the Philippines only on September 1992.[37]

During the early part of the criminal investigation, accused-appellant Garalde was initially represented by Atty. Manzano, her brother-in-law (husband of her sister). She replaced Atty. Manzano, however, because there was a misunderstanding between him and Roque. According to accused-appellant Garalde, all her relatives are against Roque.[38]

In support of accused-appellant Garalde's defense of denial, the defense presented her son Joselito Gile and Evelyn Palijo. Evelyn testified that accused-appellant Garalde is her aunt. Evelyn owns a sari-sari store where she sells potholders and doormats, among other goods. She gets these items from accused-appellant Garalde on consignment basis. From 9 to 18 August 1994, she was in the house of accused-appellant Garalde almost every day to get the goods from her. Evelyn did not observe any unusual activities in the house. On one occasion, she heard voices of men coming from the second floor. They were talking and laughing. She did not hear voices of children. On 18 August 1994, Evelyn's daughter told her that there was a man in their sari-sari store earlier who asked the address of accused-appellant Garalde.[39]

Joselito testified that at dawn of 20 August 1994, he heard somebody knock at the door of his house calling his name. When he opened the door, he saw Jun Moresca, his mother's houseboy, with several unidentified armed men. The men forcibly entered his house and proceeded to ransack the house. They informed him that they were looking for money and pieces of jewelry. When they did not find anything, they ordered Joselito to go with them to his mother's (accused-appellant's Garalde's) house. When they reached the house of his mother, Joselito was surprised to find it in disarray. He was brought to the room and he found his mother there but they were not allowed to speak to each other. The men showed him photographs of people unknown to him. When questioned, Joselito informed them that he did not know the other people staying in said house because he goes there only to see his mother. He and his stepfather, Roque, are not in good terms with each other. Joselito observed that one of the men wore jacket with PACC printed on it.[40]

Joselito intimated that there was an attempt to extort money from his family. The men even knew that he has sisters abroad and suggested that he ask money from them to pay the ransom money. On 21 August 1994, he was fetched by the PACC. They brought him to a store near his mother's house. They encouraged him to cooperate

with them as they assured him that they were not after his mother but that they were only after his stepfather.[41]

After consideration of the evidence adduced by both the prosecution and defense, the trial court rendered judgment convicting accused-appellants Ibero and Garalde of kidnapping for ransom and serious illegal detention as principal and accomplice, respectively. Accused-appellant Garalde was, however, acquitted of the charge of illegal possession of firearms. The dispositive portion of the Joint Judgment reads:

WHEREFORE, judgment is hereby rendered in Crim. Case No. Q-94-58657, acquitting accused Alma Tan Garalde of the crime of Violation of P.D. 1866 (Illegal Possession of Firearms and Ammunitions) for failure of the prosecution to prove her guilt beyond reasonable doubt.

In Crim. Case No. Q-94-58658, judgment is rendered finding accused Kil Patrick Ibero and Alma Tan Garalde guilty beyond reasonable doubt of the crime of Kidnapping for Ransom and Serious Illegal Detention, as principal and accomplice, respectively, penalized under Article 267 of the Revised Penal Code, as amended by Republic Act No.7659. Accused Kil Patrick Ibero is hereby sentenced to suffer the maximum penalty of DEATH. Accused Alma Tan Garalde is hereby sentenced to suffer the penalty of reclusion perpetua, the penalty one degree lower than that prescribed for kidnapping for ransom pursuant to Article 52 in relation to Article 61 (1) of the Revised Penal Code.

Accused Alma Tan Garalde shall be credited in full of her preventive imprisonment by reason of this case.

SO ORDERED.[42]

In his appeal brief, accused-appellant Ibero alleged that the trial court erroneously convicted him. He raised the following issues:

I

WHETHER OR NOT THE PROSECUTION WAS ABLE TO PROVE BEYOND REASONABLE DOUBT THE POSITIVE IDENTIFICATION OF APPELLANT IBERO NOTWITHSTANDING THE EVIDENCE ON THE CONTRARY, TO WIT:

A) THE ALLEGED EYE-WITNESSES OF THE PROSECUTION WERE ALL IN A STATE OF SHOCK, NERVOUS, FRIGHTENED, CONFUSED, AND VERY MUCH AFRAID THAT THEY MIGHT BE KILLED BY THE KIDNAPPERS;

B) THE PROSECUTION'S EYEWITNESS ONLY SAW THE ACCUSED ONCE I.E. ON THE VERY SHORT MOMENT WHEN THEY WERE SUDDENLY ABDUCTED BY THE KIDNAPPERS. IN FACT, BOTH OF THEM TESTIFIED THAT THEY NEVER SAW APPELLANT IBERO DURING THEIR NINE (9) DAYS OF CAPTIVITY ALBEIT THEIR BLINDFOLD WAS REMOVED ONCE IN A WHILE;

C) THE HARROWING INCIDENT HAPPENED VERY FAST; AND

D) THEY WERE IMMEDIATELY BLINDFOLDED AND SIMULTANEOUS THEREWITH SPRAYED WITH AN UNKNOWN SUBSTANCE CAUSING THEM TO FEEL DIZZY.

II

WHETHER OR NOT THE TESTIMONY OF THE ALLEGED MASTERMIND ROQUE IS BENEFICIAL TO THE PARTICIPATION OF THE DEFENDANT-APPELLANT OF THE ALLEGED CRIME.[43]

In her appeal brief, accused-appellant Garalde made the following assignment of errors:

First Assignment of Error

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED DESPITE FAILURE OF THE

PROSECUTION TO POSITIVELY IDENTIFY HER.

Second Assignment of Error

THE TRIAL COURT ERRED IN NOT FINDING THAT DELAY IN MAKING A CRIMINAL COMPLAINT SERIOUSLY IMPAIRS THE CREDIBILITY OF PROSECUTION'S EVIDENCE.

Third Assignment of Error

THE TRIAL COURT ERRED IN GIVING UNDUE CREDENCE TO THE EVIDENCE OF THE PROSECUTION DESPITE ITS BEING FRAUGHT WITH MATERIAL INCONSISTENCIES AND IMPROBABILITIES.

Fourth Assignment of Error

THE TRIAL COURT ERRED IN NOT GIVING WEIGHT TO THE DENIAL OF THE ACCUSED DESPITE ITS BEING SUBSTANTIATED BY CLEAR AND CONVINCING EVIDENCE.

Fifth Assignment of Error

THE TRIAL COURT ERRED IN NOT CONSIDERING THE NON-FLIGHT OF THE APPELLANT DESPITE AMPLE OPPORTUNITY TO DO SO AS AN INDICATION OF HER INNOCENCE.

Sixth Assignment of Error

THE TRIAL COURT ERRED IN CONVICTING THE APPELLANT DESPITE FAILURE OF THE PROSECUTION TO OVERCOME THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE IN HER FAVOR.[44]

The respective appeals of accused-appellants Ibero and Garalde must fail.

Both appeals hinge on accused-appellants' contention that the prosecution failed to prove their guilt beyond reasonable doubt to warrant conviction for the crime of kidnapping for ransom and serious illegal detention. They vigorously assail Paolo's and Dianita's positive identification of accused-appellants in relation to their participation in the commission of the crime.

Accused-appellant Ibero contends that under the circumstances that they were in at the time of the abduction, i.e., in state of shock, nervous, frightened and dizzy, not to mention that the incident happened very fast, Paolo and Dianita could not have seen the faces of the kidnappers. It was thus allegedly highly improbable for Paolo and Dianita to positively identify accused-appellant Ibero as one of those who abducted them. This contention deserves scant consideration. The Court seriously doubts that the vision of Paolo and Dianita was even slightly impaired by their fear or shock at the time.

On the contrary, there is no reason to disbelieve Paolo and Dianita's claim that they saw the faces of their abductors considering that the kidnappers brazenly perpetrated the crime in broad daylight without even bothering to hide their faces by donning masks. Moreover, there was clearly ample opportunity for Paolo and Dianita, as well as the other kidnap victims, to see the faces of their abductors from the time they (abductors) alighted from the taxi, approached the van, forced their way inside the van until they blindfolded the passengers therein.

The kidnap victims, namely, Paolo, John, Niño, Janidy, Dianita and Antonio, all identified accused-appellant Ibero as one of their abductors at the police line-up conducted during the criminal investigation of the case.[45] More significantly, the testimonies of Paolo and Dianita during the trial identifying accused-appellants and

describing their respective participation in the kidnapping were consistent, straightforward and categorical.

Dianita incriminated accused-appellant Ibero in this wise:

xxx

Atty. Cruz:

Now, Ms. Witness, will you please tell the Hon. Court what unusual thing happened at 6:45 a.m. of August 9, 1994?

A- A vehicle bumped our vehicle, sir, and we were blocked.

Q- Do you recall what kind of vehicle this was which bumped your Light Ace that morning?

A- It was a taxi, sir.

Q- Do you recall, Ms. Witness, who were riding that taxicab when it bumped your vehicle?

A- Yes, sir, three (3) male persons.

Q- Now, Ms. Witness, if you were to see those three (3) men again today, will you be able to recognize them?

A- Yes, sir.

Q- Is there any among the three (3) men who got off the taxicab that morning who is present in this courtroom today?

A- Yes, sir.

Q- Would you kindly point to that person present in the courtroom today if you can see him?

A- That man in blue T-shirt, sir.

Q- May I make it of record that the witness pointed to a man wearing a blue shirt.

May I request, Your Honor, that the man identify himself? May I make it of record that the witness pointed to Mr. Kil Patrick Ibero one of the accused in this case.[46]

xxx

Atty. Cruz:

Thank you, Your Honor.

So, at that point, Ms. Witness, all six (6) of you were at the back. Would you know, Ms. Witness, what happened to the third man who approached the front portion of the vehicle?

A- He took the driver's seat, sir.

Q- And again, Ms. Witness, will you please tell the Court who actually blindfolded the driver Antonio Paquero?

A- Patrick Ibero, sir.

Atty. Cruz:

The accused Ibero?

Answer-

Yes, sir.[47]

Even during cross-examination, Dianita remained firm in her declaration that accused-appellant Ibero was one of the malefactors who kidnapped them:

Atty. Tuazon: That is the absolute right of the accused to confer with the counsel. Dianita, let us go back now to August 9, 1994 when on board the van and according to you the van where you were boarded was bumped by a taxi and three (3) men alighted therefrom, two of them seated at your right in the front seat which we identified as person No.1, the one seated immediately at your right and person No.2, at your farther right and the third person, the one seated at the driver's seat. Was Patrick Kil Ibero one of these three men or persons you are referring to on that August 9, 1994? Answer- Yes, sir.[48] Again, on re-direct examination, Dianita testified thus: xxx Q- During your cross you stated that the PACC operatives showed to you pictures of the accused Kil Patrick Ibero, was that the first time Miss Witness, that you got to see Ibero, thru these pictures that were shown to you at the PACC? A- No, sir. Q- When was the first time that you actually saw accused Kil Patrick Ibero? A- August 9 at 6:45 a.m., sir. Q- For purposes of clarification, you are referring to the date and time of the kidnapping, Miss Witness? A- Yes, sir. Q- Earlier counsel for the accused Ibero asked you if after the blindfold was installed on your face to cover eyes, whether or not you see at all. Miss Witness, for the record, during those five days that you were blindfolded were you totally sightless or were you not able to see anything at all? A- No, sir, I was able to peep thru the lower portion of the tape when I would stretch my face upward. Q- Miss Witness, will you please tell the Court why you back to the PACC on August 23 when you made your second statement dated August 23, 1994 which I am showing to you now marked as Exh. C? A- Because they said that they were able to arrest some persons and I was asked to identify, sir. Q- And were you able to identify these persons who were arrested by the PACC operatives? A- Yes, sir. Q- Is any of those persons present in this courtroom this afternoon? A- Yes, sir. Q- Will you please point to him or he if they are present? A- That one, sir. (Witness pointing to a person seated at the second row of courtroom bench wearing yellow T-shirt who when asked his identity declared that he is Kil Patrick Ibero.) Q- Is that the same person

Miss Witness, that you earlier declared as the one who blindfolded you on August 9? A- Yes, sir.[49]

Paolo was equally certain as Dianita about accused-appellant Ibero:

xxx

ATTY. CRUZ:

It was around after 6:30 you were on your way to school, the taxi cab hit the right front portion of the van that you were riding, what happened if anything happened after the taxi cab hit the right front portion of the van?

A-

Three (3) men got off the taxi cab, sir.

Q-

Did anything transpired after they got off the taxi cab?

A-

They approached the van and forced their way in, sir.

Q-

They forced their way into where, Mr. Witness?

A-

Inside the van, sir.

Q-

At that time, Mr. Witness, where were you seated inside the van?

A-

Middle portion, sir.

Q-

Who were seated in the front portion of the van?

A

The driver Antonio Paquera and our yaya Dianita Bebita, sir.

Q-

And who were seated at the back portion of your van?

A-

The maid Janidy Dumagpi, sir.

Q-

Who was seated beside you in the middle portion of the van?

A-

My brother John and cousin Niño, sir.

Q-

You testified that these three (3) men who alighted from the taxi cab and forced their way into the van, were they successful in entering the van, Mr. Witness?

A-

Yes, sir.

Q-

Do you recall, Mr. Witness, what transpired after they had gone inside your van?

A-

Yes, Sir.

Q-

Will you please tell the Court what transpired after they found themselves inside the van, these three (3) men?

A-

They told my companions to transfer to the middle portion of the van and they said that it was a kidnapped. Then, they blind-folded us and they sprayed something which made us feel really dizzy, Sir.

Q-

These three (3) men who got off the taxi cab and forced their way in to your van, Mr. Witness, would you be able to recognize or identify them again if you are to see them today?

A-

Yes, sir.

Q-

Mr. Witness, I ask you to please look around this courtroom and tell this Honorable Court whether or not those three (3) men or any of those three (3) men who entered your van that morning is or are present?

A-

Yes, sir.

Q-

Are the three (3) men present in this court room?

A-

One of them, sir.

Q-

Will you please point out to the Honorable Court who this person is who is among the three (3) men who entered forcibly your van on August 9, 1994?

A-

Yes, sir.

Q-

Will you please point him out? Will you describe what he is wearing?

A-

He is wearing a yellow t-shirt, sir.

Q-

What row?

A-

First row, sir.

Q-

Will you please point to him?

A-

(Witness pointing to the person of the accused who gave his name as Kil Patrick Ibero.)[50]

xxx

Q-

Do you remember who among the three (3) persons who entered your van blind-folded you?

A-

Yes, sir.

Q-

Is that person who blind-folded you that morning present in this court room this afternoon?

A-

Yes, sir.

Q-

Will you point to that person who blind-folded you that morning of August 9, 1994? Is he the same person pointed out earlier?

A-

Yes, sir.

ATTY. CRUZ:

May we make it of record, your Honor, that the witness pointed to accused Kil Patrick Ibero.

Q-

Are you very certain, Mr. Witness, that it was accused Ibero who blind-folded you?

A-

Already answered.[51]

xxx

Q-

Will you tell the Honorable Court what was your participation or what was the extent of your involvement in this investigation conducted by the PACC?

A-

There was a photograph shown to me by the PACC AND I pointed out to the accused Kil Patrick Ibero in that photograph. Second, there were around four (4) men that there were lined-up together and I pointed to the accused again.

Q-

Which accused did you point out from that line-up, Mr. Witness?

A-

Kil Patrick Ibero, sir.

Q-

When was this line-up in relation to the showing to you of the photograph? Which came first, the line-up or the photograph?

A-

The line-up, sir.

Q-

Who did you point out in this line-up again?

A-

Kil Patrick Ibero, sir.

Q-

The same you pointed out earlier?

A-

Yes, sir.

Q-

Was there any other involvement or participation on your part in this investigation?

A-

Yes, sir.

Q-

What video tape is this?

A-

It was shown to us by the PACC, sir, and I pointed out to them that this was the same house where we were

kept in captivity for nine (9) days.

Q-

Was there any other involvement on your part in this investigation, Mr. Witness?

A-

Yes, sir.

Q-

Will you tell the Honorable Court what is your involvement or participation?

A-

I gave them my sworn statement, sir.

Q-

Mr. Witness, earlier you mentioned that you were shown a photograph depicting the portrait of Mr. Kil Patrick Ibero, I am showing to you this previously marked as Exhibit O, is this the reproduction of that photograph that you saw?

A-

Yes, sir.

Q-

There is a person marked as Exhibit O-1, do you recognize that person?

A-

Yes, sir.

Q-

Who is this person?

A-

Kil Patrick Ibero, sir.

Q-

The one who blind-folded you?

A-

Yes, sir.[52]

During cross-examination, counsel for accused-appellant Ibero tried, but failed, to elicit from Paolo an admission that he did not actually see accused-appellant Ibero but that he was merely incriminating the latter upon instructions of the PACC. Paolo unequivocally declared that he personally identified accused-appellant Ibero as one of their abductors without help from any one. He testified on cross-examination thus:

xxx

Q- And in fact you were only able to identify him in the picture that was shown to you because one of the investigators pointed to you? Is it not a fact Paulo that you were only able to identify the accused Ibero because he was pointed by one of those investigators that he is one of those kidnappers?

A- Sir, I was able to identify him by myself.

Q- But those police investigators also helped you in identifying the picture of accused Ibero?

A- No, I did it by myself. I pointed out that he was the man who blind-folded me.[53]

With respect to accused-appellant Garalde, she was likewise positively identified by Dianita as follows:

Q-

During your detention, Mr. Witness, did you get to recognize any of your kidnappers apart from accused Ibero?

ATTY MANZANO-

The question is leading, Your Honor, because he Mentioned something like apart from the accused Ibero which she already identified so he assumes that there is another one.

COURT-

There was already a preliminary. All right, answer.

A-

Yes, sir.

ATTY CRUZ-

Will you please point to this person, Ms. Witness?

Answer-

That woman sir, sir.

Q-

May I make it of record, Your Honor, that the witness pointed to a lady wearing a black and white checkered blouse.

COURT-

Witness pointed to a woman who gave her name as Alma Garalde.

ATTY. CRUZ-

Will you please tell the Hon. Court, Ms. Witness, the circumstances leading toward your recognition of the accused Garalde as one of your kidnappers?

A-

Because on August 10, 1994, I heard a voice of a woman at 45 Franksville St., Novaliches, Quezon City in a room and said, "Italing mabuti baka makawala."

Q-

Did you actually see this person who uttered these words, Ms. Witness?

ATTY. MANZANO-

Objection, Your Honor, she said she heard a voice.

ATTY CRUZ-

What is the objection, Your Honor? My next question is did you actually see?

ATTY. MANZANO-

The objection will be it is leading because it can be answered with yes or no.

ATTY CRUZ-

Your Honor please, earlier she testified that she recognized. We would like to know the extent of that recognition, Your Honor.

COURT -

But she will be incompetent because according to her she was still blindfolded. The blindfold was removed five (5) days after August 9.

ATTY CRUZ-

Yes, Your Honor, but if she will be allowed to explain how she recognized, she would be able to explain, Your Honor.

ATTY. MANZANO-

That is precisely why I am objecting, Your Honor. She will be incompetent. On August 10, one day after the alleged kidnap, she was still blindfolded.

COURT-

At this point of time, the question has no basis.

ATTY CRUZ-

Your Honor please, if I may proceed.

Will you please clarify, Ms. Witness, exactly how you came to recognize the accused Garalde?

A-

Because on August 14, 1994, on my fifth day in that room, they removed by blindfold, sir.

Q-

And how did that lead to your recognition of the accused Garalde, Ms. Witness?

A-

I saw a woman peeped through the door and said, "Itali ninyong mabuti iyan at baka makawala". She was referring to our driver Antonio Paquero who was still blindfolded and tied, sir.

Q-

Now, Ms. Witness, this lady whom you saw and heard on August 14, was she the same lady you heard on

August 10?

A-

Yes, sir.

Q-

Is this the same lady you just identified earlier in the courtroom today, the accused Garalde?

A-

Yes, sir.[54]

All throughout her testimony, Dianita never vacillated about the identity of accused-appellant Garalde and her participation in the commission of the crime. Counsel for accused-appellant Garalde cross-examined Dianita, thus:

Atty. Manzano-

Tell us, Madam Witness, when for the first time did you see or meet the accused Garalde?

A- It was on August 14, sir, at their house.

Q- According to your affidavit dated September 5, 1994 you saw a woman peep at the door, by peeping you mean she only showed half of her face or half of her body, is that correct?

A- Has that affidavit been marked?

Atty. Manzano-

Tell us, Madam Witness, when for the first time did you see or meet the accused Garalde?

A-

It was on August 14, sir, at their house.

Q-

According to your affidavit dated September 5, 1994 you saw a woman peep at the door, by peeping you mean she only showed half of her face or half of her body, is that correct?

A-

Has that affidavit been marked?

Atty. Cruz-

As Exhibit D, Your Honor. Counsel is referring to paragraph 3 of the affidavit.

Answer-

Yes, sir.

Atty. Cruz-

If Your Honor please, may we make it of record that the witness made motions that what was shown was the upper half of the body. She made this motion from the breast upwards.

Atty. Manzano-

Now, On August 20 when you first gave your sworn statement, is it not a fact that the PACC investigators informed you that one of the suspects was a woman, is that correct?

Answer-

No, sir.

Q-

But is it not a fact that on August 23 while you were in the office of the PACC at Camp Crame, you were introduced to a certain woman by the name of Alma?

A-

Yes, sir.

Q-

And that despite the fact that you met that woman you did not tell the investigators about what you saw or heard about her, is that not correct?

A-

No, sir.

Q-

So much so that in your three (3) sworn statements even after you had met the suspect Alma Tan Galalde, you failed to specify that in your affidavit, is that correct?

A-

Yes, I told Mrs. Bellosillo that she was the one I saw and I heard.[55]

On re-direct examination, Dianita, without any trace of hesitation, definitively inculcated accused-appellant Galalde thus:

xxx

Atty. Cruz-

Miss Witness, from the time when the Lite Ace stopped on August 9, 1994 at the place where you were held-up to your release, how many female voices did you hear as far as you can remember?

A-

One (1), sir.

Q-

Miss Witness, did you get to know whose female voice this was?

A-

At first I do not know, sir, but later I came to know when we went to the PACC.

Atty. Cruz:

Q-

Earlier on cross-examination you testified that you saw the accused Garalde for the first time in the place where you were detained. Do you recall what accused Garalde was doing at that time when you saw her for the first time at the place where you were detained together with the children?

A-

Yes, sir.

Q-

When you saw her for the first time do you recall what accused Garalde was saying or doing at the time you saw her?

A-

Yes, sir.

Q-

Will you please tell us what accused Garalde did and said at that time?

A-

She peeped thru the door and gave instruction to tie them very well because they might escape, sir, she was referring to our driver who was still tied and blindfolded at that time.

Q-

Miss Witness, to foreclose any doubt as to the identity of this woman that you saw whose voice you recognized when the Lite Ace stopped at Novaliches at that time, is that female you saw that time present in the courtroom this afternoon?

Atty. Fajardo:

Your Honor please, there is nothing in the record that would say that the voice was heard on August 9, at the time the parties arrived at Novaliches, Your Honor. Her testimony is that - we heard a voice on August 10, the following day, so on that basis the question propounded by the private prosecutor is objectionable, Your Honor.

Atty. Cruz:

I invoke the records, Your Honor, the witness testified that when the Lite Ace arrived she heard a female voice. In fact one of the cross-examination questions of Atty. Manzano on that point is, whether or not she was sure that it was a voice of a female. I can take a time to search from the transcript, Your Honor. What I am establishing Your Honor, is whether or not she can identify again that woman whom she saw peeping thru the door to give an instruction to tie the driver so the question is for her to tell us now whether or not that woman whom she saw peeped thru the door to give the instruction to tie up the driver tightly is present in the courtroom.

COURT:

She already identified the accused.

Atty. Cruz:

Yes, Your Honor, she already identified. I am asking only her to re-affirm as to the identity of the person whom she saw peeped thru the door.

Atty. FAJARDO:

We submit, Your Honor.

COURT:

Answer.

WITNESS:

A-

Yes, sir.

Atty. CRUZ:

Q-

Will you please point to her, Miss Witness?

Atty. CRUZ:

Make it of record that the witness stepped down the witness stand and approached a person wearing green and black stripe blouse who when asked identified herself as Alma Garalde.[56]

In light of this positive identification by Paolo and Dianita, accused-appellants' defenses of alibi and denial cannot be given credence. Indeed, alibi is the weakest defense, being easy to fabricate and difficult to disprove. A positive identification of the accused, where categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying on the matter prevails over the alibi and denial. When there is no evidence to show any dubious reason or improper motive why a prosecution witness would testify falsely against an accused or falsely implicate in a heinous crime, the testimony is worthy of full faith and credit.[57]

To buttress his claim of innocence, accused-appellant Ibero attached to his appeal brief newspaper accounts relating to the arrest of Roque Garalde.[58] In these news articles, Roque Garalde purportedly revealed the names of those involved in the kidnapping as: "Jimmy (the mastermind), Dante, James, Jun, Antoy, Morris and Wendel." Accused-appellant Ibero's name was not mentioned; hence, this is allegedly sufficient proof of his innocence. This contention is untenable.

These newspaper reports are incompetent and inadmissible for being hearsay.[59] Besides, these newspaper accounts cannot prevail over the positive identification of accused-appellants.

For her part, accused-appellant Garalde harps on the fact that the sworn statements of the kidnap victims, specifically that of Dianita, did not contain any inculpatory facts and circumstances linking her to the kidnapping. This omission is not fatal to the prosecution's case against accused-appellant Garalde. As explained by Dianita, she only answered the questions that were asked of her. And the questions propounded to her during the early stages of the criminal investigation mainly related to the identity of the persons who actually abducted them on 9 August 1994. In any case, ex-parte statements are almost invariably incomplete and oftentimes inaccurate.[60] Indeed, the infirmity of the affidavits as evidence is much a matter of judicial experience.[61]

Accused-appellant Garalde also makes much of the alleged inconsistencies between the testimonies of Paolo and Dianita relative to the circumstances leading to the identification of accused-appellant Garalde. Among others, the inconsistencies pointed out by accused-appellant Garalde are:

- While Dianita claimed that she saw accused-appellant Garalde peep through the door; Paolo testified that they

were all blindfolded at the time;

- Paolo averred that he heard the female voice for the first time on 9 August 1994 when they were still inside the van. Dianita stated that she first heard the female voice when they were being led to the second floor of the house;
- Only Dianita heard a female voice saying "Itali ninyong mabuti iyan at baka makawala" when all the kidnap victims were kept in the same room;
- In contrast with the testimonies of the PACC, the kidnap victims never mentioned about the Toyota Corolla with the commemorative plate ALMA;
- When they conducted surveillance at the BF Resort, Las Piñas, the PACC did not take a photograph of the Toyota Corolla;
- The PACC described accused-appellant Garalde's car as a blue Toyota Corolla. Kathryn mentioned a white car; and
- There was discrepancy in the dates mentioned by the PACC operatives on when they discovered the "safehouse." [62]

These purported inconsistencies and discrepancies are too minor to warrant the reversal of the judgment of conviction. They do not affect the truth of the testimonies of witnesses, e.g., Paolo and Dianita, nor do they discredit their positive identification of accused-appellants. On the contrary, such trivial inconsistencies strengthen rather than diminish the prosecution's case as they erase suspicion of a rehearsed testimony and negate any suspicion that the same was merely perjured. [63]

Further, accused-appellant Garalde's postulation that her non-flight proves her innocence cannot hold water. There is no established doctrine to the effect that, in every instance, non-flight is an indication of innocence. [64] As correctly observed by the Office of the Solicitor General in its appellee's brief, accused-appellant Garalde did not flee because she erroneously believed that, after the payment of the ransom and the kidnap victims were released, everything went smoothly as planned. Her non-flight was thus due to complacency and not because she is innocent.

Accused-appellants were charged with and convicted of the crime of kidnapping for ransom and serious illegal detention. Article 267 of the Revised Penal Code reads:

Art. 267. Kidnapping and serious illegal detention.- Any private individual who shall kidnap or detain another, or in any other manner deprive him of liberty, shall suffer the penalty of reclusion perpetua to death;

1. If the kidnapping or detention shall have lasted more than three days.
2. If it shall have been committed simulating public authority.
3. 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.
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.

The elements of the crime of kidnapping and serious illegal detention are: (a) the accused is a private individual; (b) the accused kidnaps or detains another, or in any manner deprives the latter of his liberty; (c) the act of detention or kidnapping must be illegal; and (d) in the commission of the offense, any of the four (4) circumstances mentioned above is present.[65] Moreover, if the kidnapping was committed for the purpose of extorting ransom, the imposition of death penalty is mandatory. This qualifying circumstance, i.e., demand for the payment of ransom, was specifically alleged in the Information filed against accused-appellants in Criminal Case No. Q-94-58658.

Based on the evidence on record, the following facts have been indisputably established:

- Paolo, John and Niño, all minors, together with Dianita, Janidy and Antonio, were abducted on 9 August 1994 by three (3) men including accused-appellant Ibero;
- The kidnap victims were detained inside the house against their will and, except for Dianita and Janidy who were released earlier, were deprived of their liberty for nine (9) days;
- The kidnappers demanded payment of ransom initially in the amount of P10,000,000.00 for the release of the victims. Upon the plea of Kathryn, mother of Paolo and John, the said amount was reduced to P410,000.00 and several pieces of jewelry valued at P90,000.00. This amount was actually delivered to the kidnappers by Dianita in the morning of 16 August 1994;
- At one time during their captivity, Dianita saw accused-appellant Garalde peep through the door and heard her say, "Itali ninyong mabuti iyan at baka makawala," referring to the driver, Antonio.

Clearly, all the elements and qualifying circumstance to warrant conviction for the crime of kidnapping for ransom and serious illegal detention in this case have been established beyond reasonable doubt.

With respect to accused-appellants' respective participation in the commission of the crime, the Court fully agrees with the findings of the trial court that accused-appellants Ibero and Garalde are liable as principal and accomplice, respectively. Accused-appellant Ibero was held liable as a co-principal by reason of conspiracy. A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decided to commit it. The proof of the agreement need not rest on direct evidence; the agreement itself may be inferred from the conduct of the parties disclosing a common understanding between them relative to the commission of the offense. Jurisprudential account tells us consistently that the conduct of the accused before, during, and after the commission of the crime may be considered to show an extant conspiracy.[66] Accused-appellant Ibero's overt acts of participating in the actual abduction of the victims and blindfolding them on 9 August 1994 incontrovertibly showed that he conspired with the other kidnappers in pursuance of their common felonious purpose.

On the other hand, Article 18 of the Revised Penal Code penalizes as accomplices those persons who cooperate in the execution of the offense by previous or simultaneous acts not indispensable to the consummation of the offense. Accomplices cooperate in the execution of the crime by previous or simultaneous acts, by means of which they aid, facilitate or protect the execution of the crime, without, however, taking any direct part in such execution, or forcing or inducing others to execute it, or contributing to its accomplishment by any indispensable act.[67]

As testified by Dianita, accused-appellant Garalde's participation consisted in her act of peeping through the door at one time during the victims' captivity and uttering, "itali ninyong mabuti iyan at baka makawala," referring to the driver, Antonio. This participation was simultaneous with the commission of the crime. This circumstance

alone, however, was not indispensable to the commission of the crime. Accordingly, the trial court rightfully convicted accused-appellant Garalde as an accomplice.

In fine, the Court affirms the conviction of accused-appellants Ibero and Garalde as principal and accomplice, respectively, for the crime of kidnapping for ransom and serious illegal detention. The Court is constrained to impose the supreme penalty of death on accused-appellant Ibero as said penalty is mandated by Article 267 of the Revised Penal Code, as amended by Republic Act No. 7659. The penalty imposable on accused-appellant Garalde, as accomplice, is reclusion perpetua, the penalty one degree lower than that prescribed for the said crime pursuant to Article 52 in relation to Article 61 (1) of the Revised Penal Code.

Four (4) Justices of the Court maintain their position that Republic Act No.7659 is unconstitutional insofar as it prescribes the death penalty; nevertheless, they submit to the ruling of the majority that the law is constitutional and the death penalty can be lawfully imposed in the case at bar.

WHEREFORE, the Decision of the Regional Trial Court, Branch 79 of Quezon City in Criminal Case No. Q-94-58658 finding accused-appellants Kil Patrick Ibero and Alma Tan Garalde guilty of kidnapping for ransom and serious and illegal detention as principal and accomplice, respectively, and imposing upon accused-appellant Ibero the maximum penalty of DEATH and upon accused-appellant Garalde the penalty of reclusion perpetua is AFFIRMED in toto.

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

SO ORDERED.

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

[1] Information, 1-2; Records, pp. 3-4.

[2] Information, pp. 1-2; Records, pp. 6-7.

[3] TSN, Testimony of Dianita Bebita, 8 November 1994, pp. 5-18.

[4] TSN, Testimony of Kathryn Bellosillo, 25 October 1994, pp. 4-11.

[5] Id., at 12-16.

[6] TSN, Testimony of C/Insp. Michael Ray Aquino, 6 April 1995, pp. 2-10.

[7] TSN, Testimony of C/Insp. Michael Ray Aquino, 6 April 1995, pp. 2-10.

[8] Id., at p. 15.

[9] See Note 4, at 16.

[10] See Note 3, at 24.

[11] See Note 4, at 18-19.

[12] See Note 3, at 25-30.

- [13] See Note 6, at 20-21.
- [14] TSN, Testimony of C/Insp. Michael Ray Aquino, 11 July 1995, pp. 7-9.
- [15] TSN, Testimony of Paolo Bellosillo, 1 June 1995, pp. 29-30.
- [16] Search Warrants Nos. 418 and 419, Exhibits "J" and "J-1," respectively; Records, Volume I, pp. 48 and 50.
- [17] Exhibits "K-1" to "K-13."
- [18] See Note 14, at 8-14.
- [19] Exhibits "O" and "O-1."
- [20] See Note 14, at 23-25.
- [21] See Note 3, at 9-10 and Note 15, at 14-15.
- [22] See Note 3, at 13.
- [23] See Note 15, at 17.
- [24] See Note 3, at 20.
- [25] See Note 15, at 23-26.
- [26] *Id.*, at 36.
- [27] TSN, Testimony of Kil Patrick Ibero, 15 November 1995, pp. 6-8.
- [28] Exhibit "O".
- [29] See Note 27, at 14-16.
- [30] *Id.*, at 17.
- [31] TSN, Testimony of Edward Abel, 13 December 1995, pp. 7-11; TSN, Testimony of Ruth Catague, 13 December 1995, pp. 14-15.
- [32] TSN, Testimony of Alma Tan Garalde, 7 September 1995, pp. 4-5.
- [33] *id.*, at 5-10.
- [34] *Id.*, at 12-15.
- [35] *Id.*, at 15-20.
- [36] *Id.*, at 21-23.
- [37] *Id.*, at 23-26.
- [38] TSN, Testimony of Alma Tan Garalde, 10 October 1995, pp. 6& 17.
- [39] TSN, Testimony of Evelyn Palijo, 30 October 1995, pp. 3-9.
- [40] TSN, Testimony of Joselito Gile, 9 November 1995, pp. 6-12.
- [41] *Id.*, at 13-21.
- [42] Joint Judgment, 27 December 1996, p. 27.; Rollo, p. 64.

- [43] Accused-appellant Ibero's Brief, pp. 11-12; Rollo, pp. 281-282.
- [44] Accused-appellant Alma Tan Garalde's Brief, pp. 5-7; Rollo, pp. 94-96.
- [45] Exhibits "C" and "P"; Records, pp. 38 and 295, respectively.
- [46] See Note 3, at 9-10. Underscoring ours.
- [47] *Id.*, at 13-14. Underscoring ours.
- [48] TSN, Testimony of Dianita Bebita, 14 December 1994, p. 39. Underscoring ours.
- [49] TSN, Testimony of Dianita Bebita, 4 April 1995, pp. 12-13. Underscoring supplied.
- [50] See Note 15, at 13-16. Underscoring supplied.
- [51] *Id.*, at 17. Underscoring ours.
- [52] *Id.*, at 31-31. Underscoring ours.
- [53] TSN, Testimony of Paolo Bellosillo, 8 June 1995, p. 6. Underscoring ours.
- [54] See Note 3, at 18-21. Underscoring ours.
- [55] See Note 48, at 20-21.
- [56] See Note 49, at 8-11. Underscoring ours.
- [57] *People vs. Francisco*, G.R. No. 118073, 23 September 1999, p. 6; *People vs. Abrecinoz*, 281 SCRA 59 (1997); *People vs. Letigio*, 268 SCRA 227 (1999).
- [58] Roque Garalde was arrested on 26 April and was arraigned only on 30 May 1996. He was subsequently convicted of the crime of kidnapping for ransom and serious illegal detention (Crim. Case No. Q-94-58658) and sentenced to suffer the penalty of DEATH by the Regional Trial Court, Branch 95 (Special Criminal Court) of Quezon City. The case is now with this Court on automatic review and docketed as G.R. Nos. 136815-16.
- [59] *People vs. Fajardo*, G.R. Nos. 105954-55, 28 September 1999, p. 9.
- [60] *People vs. Salimbago*, G.R. No. 121365, 14 September 1999, p. 5.
- [61] *People vs. Cañada*, 253 SCRA 277 (1996); *People vs. Alaca*, 211 SCRA 595 (1992); *People vs. Lagota*, 194 SCRA 92 (1991).
- [62] See Note 44, at 11-16; Rollo, pp. 100-105.
- [63] See Note 60.
- [64] *Argoncillo vs. CA*, 292 SCRA 313 (1998); *People vs. Inocencio*, 229 SCRA 517 (1994).
- [65] See Note 60.
- [66] *People vs. Gungon*, 287 SCRA 618 (1998).
- [67] *People vs. Cui*, G.R. No. 121982, 10 September 1999, p. 14, citing Aquino, Ramon C., *The Revised Penal Code*, Vol. I, 1987 ed., p. 531.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.