

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ZOILO
“SONNY” BORROMEYO Y ALFARO,
ACCUSED-APPELLANT.**

G.R. No. 130843. January 27, 2000

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PER CURIAM:

The Regional Trial Court of Pasay City found the accused Zoilo A. Borromeo alias "Sonny" guilty of kidnapping a minor for ransom and sentenced him to death and to pay the offended parties moral damages of P250,000.00 and the costs of suit.[1]

The conviction of the accused Zoilo Borromeo is based on these factual findings of the trial court: On 3 January 1996 at around four o'clock in the afternoon Rowena Hernandez, owner and operator of a bakeshop in Pasay City, left with a friend to buy shoes for her son Kenneth. The little boy who at that time was one (1)-year and seven (7)-months old was then sleeping at the bakeshop under the watchful eye of his yaya, Annabelle Ponon. Outside the store was seated the accused, a bakery helper of Rowena who had earlier been discharged by her due to negative attitude problems.

When the child woke up Annabelle took him home. Some fifteen (15) minutes later Zoilo arrived at the Hernandez residence and told the nursemaid that "Ate Weng" (Rowena's nickname) had sent him to fetch Kenneth and bring him to her for shoe measurement. Annabelle gave Kenneth to Zoilo but shortly thereafter she realized that she should not have done so. Suspecting that something wrong was happening, she immediately reported the incident to Kenneth's father, Nelson, who was minding his watch repair store nearby. They looked for Kenneth but their initial search and inquiry yielded negative results. Kenneth could not be found. Nelson and Annabelle proceeded to the Pasay City Police Station to report the matter to the authorities.

At around seven o'clock that evening Rowena arrived. She was immediately informed by her husband that their son was missing. Distraught, they began a long search for Kenneth with the help of some relatives but to no avail. They could not find the boy. All the police could do was to advise them to go home and wait perhaps for a telephone call from the kidnapper. True enough, in the afternoon of the following day, 4 January 1996, Rowena received a telephone call. It was from accused Zoilo Borromeo who demanded ransom from her for the release of her son Kenneth. Zoilo told her, "Pasensiya ka na, Ate Weng, kailangan ng boss ko ang P300,000.00. Paghahatian ng grupo (I am sorry, Ate Weng, my boss needs P300,000.00. This will be divided among the members of the group)."

Rowena agreed to give the money on the condition that the child would not be harmed. Zoilo promised to call back. The next day, he did. It was Nelson who answered the telephone as Rowena had gone to the police station. The accused reiterated his earlier demand for ransom but Nelson informed him that he could produce only P250,000.00. Zoilo called back about noon of the following day. He agreed to the reduced amount. He specifically instructed Nelson to immediately bring the money with him to the parking lot in front of "Max's Restaurant" near the Baclaran Church in Pasay City.

Meanwhile, Nelson reported his telephone conversations with Zoilo to the police who hatched an entrapment scheme by preparing six (6) bundles of bogus bills, each bundle topped by a genuine five-hundred peso (P500.00) bill, which Nelson would hand over to Zoilo. The Pasay police also dispatched a team of law enforcers to the designated meeting site for the apprehension in flagrante of the accused and the rescue of the kidnapped child. The policemen positioned themselves strategically at the vicinity of the restaurant where the exchange was to take place, ready to arrest Zoilo as soon as he received the money.

At around two o'clock in the afternoon of that day, the accused arrived at the designated place. The policemen chosen to witness and assist in the entrapment personally saw Nelson hand over to Zoilo the "ransom money." As the two (2) men then walked away from the restaurant and were about to cross Roxas Boulevard, two (2) of the assigned policemen accosted them and swiftly nabbed Zoilo. At the Pasay City police station, Zoilo disclosed that the little boy Kenneth was in Sitio Kawilihan in Barangay Ipil, Alfonso, Cavite. Forthwith, the police, the Hernandez spouses and Zoilo left for Cavite, and found the kidnap victim inside a hut owned by Ernesto and Arsenia Viray. Ernesto executed a written statement that Zoilo had told them that Kenneth was his son and that he was leaving the boy with them as he was going back to Manila to get some clothes for the child.

On the witness stand Zoilo gave a different account of the incident. He admitted that he was with the child on 3 January 1996. He however claimed that it was because the child's parents, Rowena and Nestor, allowed him to take Kenneth out for a leisurely stroll. When he and the child reached Baclaran Church, they took a bus to Tagaytay where his aunt lived. He said that he failed to return Kenneth to his parents soon enough because he was hurrying to report for work in Cainta, Rizal. He remonstrated however that he had called up Rowena and apologized to her for his failure to bring Kenneth home immediately.[2]

The trial court found this defense insipid, weak and totally insufficient to overthrow the quantum of evidence adduced by the prosecution which established the guilt of the accused beyond reasonable doubt. Consequently, it held the accused liable for kidnapping Kenneth, a minor, for ransom under Art. 267 of the Revised Penal Code as amended.[3]

The accused assails the court a quo for having seriously erred in convicting him on the basis of the weakness of his evidence and not on the strength of the prosecution's cause. He argues pointedly that the questioned decision dwells largely on discrediting his defense with nothing much said about the credibility of the testimonies of the witnesses for the prosecution.

We disagree with this postulation. A meticulous evaluation of the case yields the indisputable conclusion that the prosecution sufficiently proved its case against the accused. We are in no way disposed to disturb the findings of the court a quo.

The identity of the accused, much less his guilt, has been adequately established by clear and convincing evidence. Taken altogether - the testimony of complainant Rowena Hernandez that Zoilo was seated outside her bakeshop that fateful afternoon of 3 January 1996; that it was Zoilo who called her on 4 January 1996 apologizing for having taken Kenneth with him and demanding money in exchange for the child's freedom purportedly because "kailangan ng boss ko ang P300,000.00. Paghahatian ng grupo;" and, that it was Zoilo who led them to Alfonso, Cavite where he hid Kenneth; the unshaken avowal by Annabelle Ponon that it was Zoilo who took Kenneth from her on the pretext that the little boy was going to have his shoe measurement taken; the positive uncontested declarations of the police officers that Nelson Hernandez informed them that Zoilo called and instructed him to bring the money to a designated meeting place after agreeing to reduce the amount by P50,000.00; that they forthwith prepared bogus bills as ransom to be brought by Nelson Hernandez to his rendezvous with Zoilo; that they saw the transaction between Nelson and Zoilo actually take place; and, that their

colleagues, apprehended the accused after he took the money from Nelson Hernandez -all these constitute persuasive, unassailable proof of the commission of the crime by the accused himself.

Set against the solid evidence for the prosecution, the defense of the accused, which notably remains uncorroborated, must crumble and fall apart. Zoilo's insistence that the parents of Kenneth allowed him to take the child for a walk to the Baclaran Church flies in the face of the contrary testimony of Annabelle that Zoilo had told her that he was taking Kenneth to his mother upon the latter's instructions for the purpose of measuring the size of his feet for a pair of shoes. Moreover, it was highly improbable that Rowena would give permission to Zoilo to bring the child out for a walk, more so to Alfonso, Cavite. Had she done so she would not have been so terrified and alarmed as to immediately report to the police when she got home from the shoe store and learned that her baby Kenneth was missing and that Zoilo was the person who kidnapped the boy. It was also quite inconceivable that Rowena, and Nelson for that matter, would entrust their one (1)-year and seven (7)-month old baby boy to Zoilo, whom they earlier dismissed as their baker "due to negative attitude problems," for a promenade to Baclaran since the child was in the care of the nursemaid Annabelle with whom the child was more comfortable, having been his nanny already for sometime.

The accused next argues that he failed to return Kenneth promptly to his parents because he had to leave hurriedly for work in Cainta, Rizal. This is a feeble attempt to tone down his culpability. For if he had no evil design on Kenneth and his parents, he could very well have brought Kenneth back to his Pasay home from Baclaran Church en route to his work, if indeed he was employed, in Cainta, Rizal, a town located northeast of Pasay, instead of bringing the baby down south to Tagaytay, a place very far away from Cainta.

Most detrimental to the case of the accused is his barefaced denial that he extorted ransom from the Hernandez spouses despite his being caught red handed in the entrapment. The testimonies of prosecution witnesses SPO1 Quirino Glico, police investigator,[4] and Police Inspector Rolando Bihasa[5] who personally witnessed the accused receiving the ransom, bogus as it was, from the child's father at the parking lot in front of "Max's Restaurant" remained unchallenged and uncontroverted throughout the proceedings. The accused never exerted any effort to rebut these declarations.

The essence of the crime of kidnapping is the actual deprivation of the victim's liberty coupled with indubitable proof of intent of the accused to effect the same.[6] And if the person detained is a child, the question that needs to be addressed is whether there is, evidence to show that in taking the child, there was deprivation of the child's liberty and that it was the intention of the accused to deprive the mother of the child's custody.[7]

We find abundant evidence of this fact in this case. It has been established with great certainty that Kenneth was deprived of his liberty, having been taken by the accused without the consent of the child's parents who had custody over him. The accused had to employ artifice and subterfuge to get hold of the victim, taking him from his nanny on his false posturing that it was on the orders of the child's mother. It finally dawned on the nanny later that this could not be so because Rowena had left more than an hour ago for a department store in Makati City to buy shoes for the boy! Zoilo then kept the child for two (2) days in a far-flung place south of Manila in the care of a couple while negotiating with his parents for the payment of ransom. Discernible from this fact is the intent of the accused to keep the child under detention for as long as no ransom was paid to him for his release. Then again, there was no voluntary restoration by the accused of the child to his parents. Kenneth was recovered only after the police intervened and the accused was apprehended. When taken to the police station for the requisite investigation, Zoilo confessed that he brought the baby boy to a remote barangay in Alfonso, Cavite, and that he demanded money from the parents for the release of their child so that he could start a bakery business.

There is no question that the elements of kidnapping for ransom were sufficiently established: (a) the accused is a

private individual; (b) the accused kidnapped or detained the victim and deprived him of his liberty; and, (c) the deprivation of the victim's liberty was illegal. As provided for in Art. 267 of the Revised Penal Code as amended, the imposition of the death penalty is mandatory if the victim is a minor. In this case, the minority of Kenneth Hernandez was never disputed. Assuming *arguendo* that minority was not proved, still under the same provision of law, the imposition of the death penalty is obligatory if the kidnapping was committed for the purpose of extorting ransom from the victim or any other person. This was certainly so in this case. To recapitulate, minority and the demand for the payment of ransom, both specifically described in the Information, were clearly established by the State, free of any scintilla of doubt.

In light of these premises, the Court finds no reversible error in the questioned decision of the trial court. Consequently, it is left with no alternative but to sustain the imposition of the death penalty upon the accused as it is proper and in accordance with law.

Four (4) Justice of the Court maintain their position that RA 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 of Pasay City, Branch 119, finding accused Zoilo Borromeo y Alfaro, also known as "Sonny," GUILTY beyond reasonable doubt of kidnapping a minor for ransom and sentencing him to death is AFFIRMED, with the MODIFICATION that the award of moral damages is reduced to P100,000.00. Costs against the accused.

In accordance with Art. 83 of the Revised Penal Code, as amended by Sec. 25 of RA 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., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., JJ., concur.

[1] Decision penned by Judge Salvador de Guzman, RTC-Br. 119, Pasay City, Crim Case No. 96-8180 dated 19 September 1997.

[2] TSN, 3 February 1997, pp., 3-4

[3] Art. 267, The Revised Penal Code, as amended by RA 7659, reads: Kidnapping and Serious Illegal detention -Any private individual who shall kidnap or detain another, or in any 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 (3) 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 of 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.

[4] TSN, 14 August 1996, p. 11.

[5] TSN, 15 July 1996, p. 14.

[6] *People v. Ramos*, G.R. No. 118570, 12 October 1998, 297 SCRA 618.

[7] *People v. Villanueva*, G.R. No. 116311, 1 February 1996, 253 SCRA 155.

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