

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ELVIE EJANDRA @ ELVIES EJANDRA @ BEBOT EJANDRA @ ALEJANDRO EJANDRA @ BEBOT OCAY SUANGCO, MAGDALENA CALUNOD Y MAGANOY @ MAGDALENA SALIOT-...

G.R. No. 134203. May 27, 2004

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PER CURIAM:

This is a review on automatic appeal of the Decision[1] of the Quezon City Regional Trial Court, Branch 219, convicting appellants Elvie Ejandra, Magdalena Calunod, Edwin Tampus and Roel Revilla of kidnapping for ransom, and sentencing them to suffer the death penalty.

The Indictment

The accused were charged with kidnapping for ransom in an Information filed in the Regional Trial Court which reads:

That on or about July 2, 1997, in Quezon City, and within the jurisdiction of this Honorable Court, above-named accused, while confederating, conniving, conspiring, and helping each and one another, did then and there with the use of force, threat and intimidation, take and carry away, a nine-year-old minor child, Ed Henderson Tan, against the will and consent of the latter nor any of his natural and legal parents or guardian, to an unknown destination, detain, hold and control Ed Henderson Tan depriving him of his liberty, and during their control and custody of Ed Henderson Tan, call, demand and negotiate the payment of ransom money from Eddie Tan, the father of Ed Henderson Tan, for the safe release and return of the victim Ed Henderson, otherwise, the victim would be harmed or killed, the victim's father Eddie Tan actually paid the accused the amount of P548,000.00 as ransom money, for the safe release of the victim to the damage and prejudice of the victim Ed Henderson Tan and his father Eddie Tan.

CONTRARY TO LAW.[2]

The accused, assisted by counsel, were arraigned for the crime charged on November 11, 1997, and entered their respective pleas of not guilty.

The Evidence for the Prosecution

Ed Henderson Tan, the nine-year-old son of the spouses Eddie and Marileen Tan, was a Grade III student at the Philippine Institute of Quezon City (PIQC), located at Kitanlad, Quezon City.[3] At about 4:00 p.m. on July 2, 1997, Ed Henderson was dismissed from his classes and proceeded to the nearby house of his tutor in Chinese language, Huang Lao Shih.[4] Ed Henderson and his father, Eddie Tan, had earlier agreed that after the tutorial classes ended at 7:00 p.m., Ed Henderson would phone his father, who would then fetch him from his mentor's house.[5] The tutorial classes ended at 7:00 p.m., as scheduled, and Ed Henderson then proceeded to the store near the gate of the school to have his periodic test papers photocopied.[6] He left the store and was on his way back to the house of his tutor to wait for his father.

Suddenly, Edwin Tampus, armed with a revolver (de bola),[7] chased and overtook Ed Henderson at the Royalty

canteen near the school.[8] Tamos ordered the boy to proceed to a motorcycle parked nearby and warned the latter that if he refused, he would be shot. Petrified, Ed Henderson approached the motorcycle where appellants Elvie Ejandra and Roel Revilla were waiting. Ejandra had no legs (pilagay), while Revilla had curly hair. There was no lamp post outside the school premises but the lights inside the school were still on.[9] Ejandra covered Ed Henderson's mouth with his hand, pointed his gun at the boy[10] and warned the latter not to shout.[11] Revilla boarded the motorcycle and took the driver's seat. Ejandra sat behind him, and Tamos sat behind Ejandra. Tamos ordered Ed Henderson to board the motorcycle, or else, he would be shot.[12] The boy was then ordered to sit behind Tamos.[13]

Ed was brought to a one-storey house with cemented flooring and white-colored walls.[14] Once inside, he saw a man who was drinking, who turned out to be Antonio Huera, and a female, who turned out to be Magdalena Calunod.[15] Ed Henderson also saw a cell phone.[16] He was ordered to write down his father's telephone number, as well as that of their house and their store.[17] Ed Henderson did as he was told, and wrote down the number 737-61-77 the telephone number of his father, Eddie Tan. It appeared to the boy that Ejandra was the leader of his abductors because it was he who gave orders to the others.

In the meantime, Eddie went to fetch his son at 7:00 p.m. at his tutor's house, but the boy was nowhere to be found.[18] Frantic, Eddie contacted his friends and relatives and asked if they knew where his son was, to no avail. He even called up hospitals, inquiring if a boy named Ed Henderson had been admitted as a patient.[19] Shortly after midnight, Eddie received a call from his house that someone had earlier called up his mother, Benita Tan, with the information that his son had been kidnapped[20] and that the kidnappers wanted to talk to the parents.[21] Eddie rushed back home.

At 12:30 a.m., Eddie received a call through his home phone, informing him that his son had been kidnapped. The caller demanded P10,000,000 for the safe release of his son.[22] When Eddie informed the caller that he did not have P10,000,000, the latter hung up the phone.[23]

In the meantime, as ordered by Ejandra, Ed Henderson called up his father, through the kidnappers' cellular phone, to urge his father to pay the ransom money.[24]

Thereafter, Eddie received several calls threatening him that if he refused to pay the ransom they demanded, the kidnappers would cut Ed Henderson's ear and finger and, thereafter, kill the boy and dump his body in an isolated place. Eddie pleaded for mercy but the caller would simply hang up the telephone.[25]

Eddie and his family were terrified of the caller's threats that they could hardly sleep. They lost their appetite just thinking of what Ed Henderson would suffer in the hands of his kidnappers.[26] At 6:00 p.m. on July 3, 1997, a Sunday, Eddie received another call informing him that the kidnappers had agreed to reduce the ransom to P5,000,000.[27] Eddie told the caller that he did not have P5,000,000 and pleaded that the ransom be reduced. However, the caller merely repeated his threat that the kidnappers would cut Ed Henderson's fingers and ears, and dump the boy in an isolated place.[28]

Meanwhile, Eddie began borrowing money from his relatives and friends. He received another call reiterating the demand for ransom. He told the caller that he would try to raise P585,000 but the caller told Eddie to raise P600,000. Eddie was finally able to borrow P548,000 from his relatives and friends. When the caller called anew, Eddie revealed that he was able to raise only P548,000 and reiterated that he could no longer borrow any additional amount.[29]

At 10:00 a.m. the next day, July 4, 1997, another call from the kidnappers came through, and Eddie reiterated that he could no longer raise any additional amount. The caller hung up, but called again and informed Eddie that the

kidnappers had agreed to accept a ransom of P548,000.00.[30] At about noon, the caller contacted Eddie and instructed him to place the money in a newspaper and to bring the money to the parking lot in front of the Sto. Domingo Church in Quezon City within ten minutes. The caller further instructed Eddie to open the doors and windows of his car upon arriving at the designated spot. Eddie was also told that a man would approach him and call him “Eddie.”

Eddie did as he was told.[31] He placed the money in a newspaper and placed it in a Shoe Mart (SM) plastic bag.[32] He then proceeded to the designated place on board his Besta van. He parked the van in the parking lot in front of the convent adjacent to the Sto. Domingo Church.[33] He opened the doors and windows, then alighted from the van. Momentarily, appellant Calunod approached Eddie and called out, “Eddie...a...Eddie.” Eddie noted that Calunod had a scar on her right temple. Eddie was taken aback because he was expecting a man to approach him. Nevertheless, when he heard Calunod say “Eddie,” he handed over the plastic bag which contained the money.[34] He asked her how his son was, [35] and she told him not to worry because she would bring the boy home. Calunod then walked to the gate of the Sto. Domingo Church.[36] Eddie went home to wait for his son’s return. Shortly after his arrival at their house, Eddie received two telephone calls from a male and a female, respectively, who informed him of his son’s impending release.

Between 3:00 to 3:30 p.m. of July 4, 1997, Ed Henderson was told that he would be brought back home.[37] The boy then called up his mother and told her that he would be back soon. Tamos and Calunod boarded Ed Henderson in a taxi. Calunod ordered the boy to pretend that she was his aunt.[38] Ed recalled that it was also Calunod who took care of him and gave him food in the house where he was detained.[39] The taxi stopped near the Imperial Drugstore at E. Rodriguez Avenue, where Calunod instructed Ed Henderson to get down. She gave the boy P50.00 for his fare back home. The boy took a taxi and was soon reunited with his waiting family.

On July 7, 1997, Ed Henderson Tan gave a sworn statement to PO3 Terencio Claudio of the Criminal Investigation Division in Camp Crame, Quezon City. [40] He was shown photographs of suspects of kidnappings and he identified, from the pictures shown to him, Elvie Ejandra alias Alejandro Ejandra and Magdalena Calunod [41] as two of his kidnappers.

The Case for the Accused

Edwin Tamos denied any involvement in the kidnapping of Ed Henderson, and invoked alibi as an additional defense. He claimed that the first time he met Elvie Ejandra and Magdalena Calunod was in Camp Crame, Quezon City, after he was arrested, with Roel Revilla, on board the latter’s tricycle at 10:00 p.m. on August 13, 1997. He knew Antonio Huera, who lived in the same place and solicited bets for “ending.” He also knew Roel Revilla, who was a tricycle driver. Tamos claimed that he was arrested without any warrant therefor, and that he was handcuffed, mauled and blindfolded. He was asked if he was a kidnapper, but denied that he was one and was forced to sign a piece of paper. He testified that he eked out a living as a butcher of pigs at Villa Beatriz, Old Balara, Quezon City. He sold the butchered pigs three times a week within the neighborhood. His aunt, Biba Oray, financed his business.[42] Tamos also averred that he owned three fighting cocks.[43]

Tamos claimed that on July 2, 1997, he was so tired of butchering pigs and opted to stay home the whole day and night. At 10:00 p.m., he went out of his house and bought cigarettes.[44] He returned home immediately thereafter and slept.[45] He and his aunt made plans to buy pigs to be butchered. He was also at home the following day, July 4, 1997, tending to his three fighting cocks.[46]

Roel Revilla, likewise, denied any involvement in the kidnapping of Ed Henderson and also interposed an alibi. He testified that he arrived from Sogus, Southern Leyte on August 5, 1997 and stayed in the house of Antonio Huera, his brother’s friend at Villa Beatriz, Old Balara, Quezon City. Huera worked at the Tarpark and promised

that he would help Revilla get a job there.[47] He was arrested on August 13, 1997 by the Presidential Anti-Crime Commission (PACC) agents, along with Huera and Tampos. They were brought to Camp Crame, Quezon City, where they were blindfolded, mauled and tortured. He was asked if he was a kidnapper, but he denied any involvement in the incident. He averred that he did not know of any reason why Ed Henderson would implicate him in the kidnapping.

Magdalena Calunod denied any involvement in the crime charged. She testified that she was a thirty-five-year-old businesswoman from Iligan City. She had a stall in Manggahan in 1994, but the same was demolished in 1995. She returned to Iligan City and tended fighting cocks from 1995 to 1997. [48] In August 1997, she was residing in a rented house at Bidasari, Lagro Subdivision, Quezon City. Sometime on August 14, 1998, she and Ejandra were on their way to Nueva Ecija when policemen blocked their vehicle. She, at first, thought that the men were hold-uppers because they were divested of their money, pieces of jewelry and clothes. The policemen were not armed with any warrant of arrest. She admitted that she had been charged of kidnapping in another case in the Regional Trial Court of Quezon City on August 10, 1997.

Elvie Ejandra also denied any involvement in the kidnapping of Henderson. Like the other accused, he interposed the defense of alibi. He testified that he and Magdalena Calunod were married.[49] Since 1994, he had been engaged in the business of onions and ready-to-wear clothes which they sold in Baclaran and Divisoria. They also had a stall in Manggahan where they sold onions.[50] When their stall was demolished in 1994, they went back to Iligan City.[51] On July 2, 1993, he and Calunod were in Iligan City tending fighting cocks. They returned to Quezon City from Iligan City only on July 9 or July 10, 1997.[52] They were arrested on August 14, 1997 by policemen while they were on their way to Sicsican, Nueva Ecija. When he was arrested, he had a driver's license in the name of Bebot Suangco.[53] He averred that he did not have any cell phone, but had a car with plate no. 413.[54]

Antonio Huera also denied the charge and interposed the defense of alibi. He testified that he was employed by the Car Parts Manufacturing as a power press operator.[55] However, when his employment was terminated on June 25, 1997, he became a collector of bets for "ending." [56] On July 27, 1997, he was in the house of his uncle, which was a stone's throw away from his own house at No. 7, Don Fabian Street, Villa Beatriz Subdivision, Old Balara, Quezon City.[57] His grandfather died that day in Southern Leyte[58] and was later buried on July 3, 1997.[59] Roel Revilla spent the night in his house when he arrived from Southern Leyte.[60] Huera also admitted that Elvie Ejandra was his classmate in high school, who visited him on August 5, 1997.[61] He was arrested at 5:30 a.m. of August 14, 1997 at his house, on the mere suspicion that he was a kidnapper. He and two others were brought to Camp Crame, Quezon City, where he was beaten and maltreated.

On June 4, 1998, the trial court rendered judgment convicting the accused of kidnapping for ransom defined and penalized in Article 268 of the Revised Penal Code, and sentenced each of them to suffer the death penalty. Antonio Huera, was acquitted for insufficiency of evidence, The decretal portion of the decision reads:

WHEREFORE, finding accused Edwin Tampos, Elvie Ejandra, Magdalena Calunod, and Roel Revilla GUILTY beyond reasonable doubt of the crime of Kidnapping for ransom, the court hereby sentences each of them to suffer the penalty of DEATH; to pay the victim, Ed Henderson Tan and his family, the amount of P548,000.00 as actual damages with legal interest until fully paid, and P1,000,000.00 as moral damages; and to pay the costs.

Accused Antonio Huera is hereby ACQUITTED for insufficiency of evidence. The Warden of Quezon City Jail is hereby ordered to release him from custody unless he is being detained for another charge or unlawful case.

SO ORDERED.[62]

The Present Appeal

Appellants Ejandra and Calunod do not dispute that they kidnapped Ed Henderson. They merely assert that the prosecution failed to prove that they had a cellular phone, implying that they could not have used it to demand ransom for the victim's release. It was their daughter, Sherry Mae Saliot who was the subscriber to telephone number 490-55-95. They also assert that they were arrested without any warrant therefor.[63]

For their part, appellants Tamos and Revilla contend that the trial court erred in not acquitting them of the crime charged on reasonable doubt.[64] They aver that Ed Henderson could not have recognized them as two of those who kidnapped him at 7:00 p.m. on July 2, 1997 in the vicinity of the Philippine Institute of Quezon City, because the place was dark. They assert that it was physically impossible for four people to ride on a motorcycle. The appellants aver that Ed Henderson's testimony is unreliable, as police officers coached him and taught him what to say during a confrontation between him and the suspects in Camp Crame, Quezon City.

Appellant Revilla posits that the boy could have mistaken him for Tito Lozada with whom the appellants were when they were arrested. He argues that he merely stayed in the house of Huera and since the latter was acquitted, he should also be acquitted. Appellant Revilla insists that his extrajudicial confession is not admissible in evidence against him because he was forced by policemen into signing the same. He argues that the trial court erred in not considering his alibi, that on July 2, 1997 he was in Sogus, Southern Leyte. Appellant Tamos further alleges that it was unlikely that he would be involved in the kidnapping because he was engaged in the lucrative business of being a butcher and meat vendor. He asserted that he was forced into signing a piece of paper in Camp Crame; hence, the said paper is inadmissible in evidence against him.

For its part, the Office of the Solicitor General submits that in failing to assail any irregularity in their arrest before they were arraigned for the crime charged on November 11, 1997, the appellants thereby waived their right to do so. The appellants even failed to file their respective counter-affidavits during the preliminary investigation of the charge against them at the Department of Justice. Moreover, the prosecution adduced overwhelming evidence to prove the crime charged that the appellants were the perpetrators of the said crime.

The contentions of the appellants do not persuade. Ed Henderson positively and in a straightforward manner testified that appellant Tamos was the one who chased and grabbed him near his school, and that it was appellant Revilla who drove the motorcycle from the school to the house where he was detained. Ed Henderson was able to recognize the two appellants because the lights inside the PIQC illuminated the place where he was chased and grabbed by appellant Tamos. The victim even noticed that appellant Revilla, who drove the motorcycle, had curly hair. Appellant Tamos was so close to Ed Henderson, as it was he who poked the gun at the boy, and even warned the latter that he would be shot if he refused to board the motorcycle. The testimony of Ed Henderson pointing to appellants Tamos and Revilla as two of his kidnappers near the PIQC, reads:

ATTY. CHUA:

Q

What were you doing when you were kidnapped?

A

I have something xeroxed, sir.

Q

Can you tell this court how you were “nahuli?”

A

When I finished xeroxing something, I was running and then somebody chased me, sir

Q Who was the one chasing you?

A “Yung humuli sa akin.”

Q If he is in court, will you please step down from the witness stand and point him to us?

A Yes, sir.

INTERPRETER:

Witness stepping down from the witness stand and proceed (sic) to a man wearing yellow T-shirt who when asked to identify himself he gave his name as Edwin Tampos.

ATTY. CHUA:

Q After this man whom you pointed to, caught you, what did you do?

A He showed me a gun, sir.

Q After he showed you a gun, what did you do?

A He told me “sakay.”

Q Where?

A In a motorcycle, sir. [65]

...

ATTY. ROUS:

Q Mr. Witness, who was the one driving the motorcycle?

A The person with curly hair, sir.

Q Where were you seated when you were boarded...

ATTY. CHUA:

At what point in time because he rode the motorcycle twice, Your Honor.

ATTY. ROUS:

Q When you were taken from your school, who was the person driving?

A The person with curly hair, sir.

Q When you were taken from your school, where were you seated in the motorcycle?

A I was positioned “sa pangatlo,” sir.

Q What do you mean by “pangatlo?”

A The first one in the motorcycle was the driver, the curly hair, the second one is Edwin Tamos and I was on the third part.

Q What was the color of this motorcycle?

A Red, sir.[66]

Moreover, Ed Henderson was with appellants Revilla and Tamos when they reached the house where the boy was detained. The lights inside the house were on and Ed Henderson saw the appellants Revilla and Tamos at close range. The victim, likewise, identified appellant Tamos when the latter and Calunod boarded him in a motorcycle in broad daylight in the afternoon of July 4, 1997. Tamos and Calunod brought the boy to the Imperial Drugstore at E. Rodriguez Avenue where he boarded a taxicab that brought him home. Ed Henderson’s testimony on this matter is quoted, viz:

Q You said you were able to go home. Do you recall what date they released you?

A Yes, sir.

Q What date was that?

A July 4, 1997, sir.

Q Around what time were you released?

A In the afternoon, sir.

Q How were you able to go home?

A At first they load me in a motorcycle and they hailed me a taxicab, sir.

Q Who were with you in the motorcycle?

A Edwin Tamos and the female, sir.

Q What happened after the female called the taxicab?

A

She told me to pretend that she is my aunt and afterwards, she gave me P50.00.[67]

Finally, appellants Revilla and Tamos were identified by Ed Henderson in open court, pointing to both of them as two of his kidnappers.

It bears stressing that Ed Henderson was only nine years old and in Grade III when he was kidnapped. In *People vs. Bisda, et al.*, [68] the kidnap victim Angela was barely six years old when she testified. We held that, considering her tender years, innocent and guileless, it is incredible that she would testify falsely that the appellants took her from the school through threats and detained her in the “dirty house” for five days. Thus, testimonies of child victims are given full weight and credit.

The testimony of children of sound mind is likewise to be more correct and truthful than that of older persons.[69] In *People vs. Alba*, [70] this Court ruled that children of sound mind are likely to be more observant of incidents which take place within their view than older persons, and their testimonies are likely more correct in detail than that of older persons.

In the case at bar, the trial court found the testimony of Ed Henderson credible and entitled to full probative weight. Well settled is the rule that the findings of facts of the trial court, its calibration of the testimonies of witnesses, its assessment of the credibility of the said witnesses and its evidence based on the said findings are given high respect if not conclusive effect by the appellate court, unless the trial court overlooked, misconstrued or misinterpreted facts and circumstances of substance which if considered will alter the outcome of the case.[71] We have meticulously reviewed the records and find no justification to deviate from the findings of facts of the trial court, its assessment of the credibility of Ed Henderson and the veracity and probative weight of his testimony.

The appellants' denials and alibi, which are merely self-serving evidence cannot prevail over the positive, consistent and straightforward testimony of Ed Henderson.[72] Alibi is an inherently weak defense because it is easy to fabricate and highly unreliable.[73] To merit approbation, the accused must adduce clear and convincing evidence that he was in a place other than the situs criminis at the time the crime was committed, such that it was physically impossible for him to have been at the scene of the crime when it was committed.[74] Appellants Revilla and Tamos failed to prove their alibi. They relied merely and solely on their bare and dubious testimonies to prove their defense. Appellant Revilla, likewise, failed to adduce any documentary evidence to prove exactly when he left Sogus, Southern Leyte, via a domestic vessel and the time and date of his arrival in Manila.

The acquittal of Huera on reasonable doubt is not a ground for the acquittal of appellant Revilla. As gleaned from the trial court's decision, Huera was acquitted on reasonable doubt because the only evidence against him was the testimony of Ed Henderson, that when he and his kidnappers arrived in the house where the latter was thereafter detained, he saw Huera drinking. There is no evidence against Huera relating to the boy's detention and his release on July 4, 1997. There is even no evidence that Huera was in the house when Ed Henderson was detained on July 3 and 4, 1997.

Contrary to the assertion of the appellants, it is not physically impossible for four people to ride on a motorcycle, taking into account the sizes and weights of the riders. Ed Henderson was, after all, only nine years old at that time.

The Court also rejects appellant Tamos' plea that the Court take discretionary judicial notice that the business of butchering pigs and selling their meat is, by nature, a lucrative business. The appellant was burdened to prove his claim that he was so affluent that it was incredible for him to indulge in kidnapping for ransom. The appellant failed to do so, and merely relied on his bare testimony. There is no evidence how much the appellant earned from the business he was allegedly engaged in. In contrast, the appellants collected P548,000.00 by way of ransom from Eddie Tan for the kidnapping of his son.

The fact that the cellular phone used by the kidnappers to demand ransom was owned by Sherry Mae Saliot, the daughter of appellants Ejandra and Calunod, does not constitute evidence that the said appellants could not have used the said phone to demand ransom from Eddie Tan. Sherry Mae Saliot could have just given the phone to her parents for their use, while she paid for the charges thereon.

We agree with the Office of the Solicitor General that the appellants Ejandra and Calunod waived any irregularities relating to their warrantless arrest when they failed to file a motion to quash the Information on that ground, or to object to any irregularity in their arrest before they were arraigned. They are now estopped from questioning the legality of their arrest.[75]

In *People vs. Bisda*,[76] we had the occasion to state:

... In *People v. Pagalasan*, this Court held that conspiracy need not be proven by direct evidence. It may be

inferred from the conduct of the accused before, during and after the commission of the crime, showing that they had acted with a common purpose and design. Conspiracy may be implied if it is proved that two or more persons aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their combined acts, though apparently independent of each other were, in fact, connected and cooperative, indicating a closeness of personal association and a concurrence of sentiment. Conspiracy once found, continues until the object of it has been accomplished unless abandoned or broken up. To hold an accused guilty as a co-principal by reason of conspiracy, he must be shown to have performed an overt act in pursuance or furtherance of the complicity. There must be intentional participation in the transaction with a view to the furtherance of the common design and purpose.

... Conspirators are held to have intended the consequences of their acts and by purposely engaging in conspiracy which necessarily and directly produces a prohibited result, they are, in contemplation of law, chargeable with intending that result. Conspirators are necessarily liable for the acts of another conspirator unless such act differs radically and substantively from that which they intended to commit. As Judge Learned Hand put it in *United States v. Andolscheck*, “when a conspirator embarks upon a criminal venture of indefinite outline, he takes his chances as to its content and membership, so be it that they fall within the common purposes as he understands them.”

In the case at bar, the overt acts of the appellants were so coordinated to attain a common purpose -- that of kidnapping and detaining Ed Henderson for ransom. Appellants Ejandra, Tamos and Revilla abducted the victim. Appellant Revilla drove the motorcycle from the place of abduction to the house where the victim was detained. Appellant Calunod guarded the victim during the latter's detention, and later brought the victim to E. Rodriguez Avenue in Quezon City prior to his release, along with appellant Tamos. Appellant Calunod also collected the ransom from the victim's father. All the foregoing facts indubitably show that the appellants conspired to kidnap the victim for ransom.

Article 267 of the Revised Penal Code, as amended by Republic Act No. 7659, 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 his liberty, shall suffer the penalty of reclusion perpetua to death.

- If the kidnapping or detention shall have lasted more than three days.
- If it shall have committed simulating public authority.
- If any serious physical injuries shall have been inflicted upon the person kidnapped or detained, or if threats to kill him shall have been made.
- If the person kidnapped or detained shall be a minor, except when the accused is any of the parents, female or a public officer.

The penalty shall be death where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances 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 dehumanizing acts, the maximum penalty shall be imposed.[77]

For the accused to be convicted of kidnapping or serious illegal detention, the prosecution is burdened to prove beyond reasonable doubt all the elements of the crime, namely, (1) the offender is a private individual; (2) he kidnaps or detains another, or in any manner deprives the latter of his liberty; (3) the act of detention or kidnapping must be illegal; and (4) in the commission of the offense, any of the following circumstances is

present: (a) the kidnapping or detention lasts for more than three days; (b) it is committed by simulating public authority; (c) any serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made; or (d) the person kidnapped and detained is a minor, the duration of his detention is immaterial. Likewise, if the victim is kidnapped and illegally detained for the purpose of extorting ransom, the duration of his detention is immaterial.[78]

To warrant an imposition of the death penalty for the crime of kidnapping and serious illegal detention for ransom, the prosecution must prove the following beyond reasonable doubt: (a) intent on the part of the accused to deprive the victim of his liberty; (b) actual deprivation of the victim of his liberty; and, (c) motive of the accused, which is ransom for the victim or other person for the release of the victim. The purpose of the offender in extorting ransom is a qualifying circumstance which may be proven by his words and overt acts before, during and after the kidnapping and detention of the victim.[79] Neither actual demand for nor actual payment of ransom is necessary for the crime to be committed.[80] Ransom, as employed in the law, is so used in its common or ordinary sense; meaning, a sum of money or other thing of value, price, or consideration paid or demanded for redemption of a kidnapped or detained person, a payment that releases from captivity.[81] It may include benefits not necessarily pecuniary which may accrue to the kidnapper as a condition for the victim's release.[82]

In this case, the appellants not only demanded but also received ransom for the release of the victim. The trial court correctly sentenced the appellants to death. However, considering the factual milieu of this case, we find the trial court's award of P1,000,000 as moral damages to be too excessive, and shall reduce the same to P350,000. Furthermore, the trial court erred in failing to hold the appellants, jointly and severally, liable for the payment of damages to Ed Henderson and his parents. Under Article 110 of the Revised Penal Code, the principals are, jointly and severally, liable for the civil liabilities arising from the delict.

Three Justices of the Court maintain their position that Rep. 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 that the death penalty can be lawfully imposed in the case at bar.

IN LIGHT OF ALL THE FOREGOING, the Decision of the Regional Trial Court of Quezon City, Branch 219, convicting appellants Elvie Ejandra alias Elvies Ejandra alias Bebot Ejandra alias Bebot Oca y Suangco, Magdalena Calunod y Maganoy alias Magdalena Saliot-Suangco, Roel Ceron Revilla and Edwin Tampus y Amparo of kidnapping for ransom under Article 267 of the Revised Penal Code, as amended, sentencing each of them to suffer the death penalty is **AFFIRMED** with **MODIFICATION**. The aforementioned appellants are **ORDERED** to pay, jointly and severally, to the victim Ed Henderson Tan and his parents P350,000 as moral damages, and to pay, jointly and severally, to the Spouses Eddie and Marileen Tan, the amount of P485,000 as actual damages.

In accordance with Section 25 of Rep. Act No. 7659, amending Section 83 of the Revised Penal Code, let the records of this case be forthwith forwarded, upon finality of this Decision, to the Office of the President for possible exercise of the pardoning power.

SO ORDERED.

Vitug, (Acting Chief Justice), Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., Azcuna, and Tinga, JJ., concur. Davide, Jr., C.J., and Puno, J., on official leave.

[1] Penned by Judge Jose Catral Mendoza.

- [2] Records, pp. 1-2.
- [3] TSN, 16 February 1998, pp. 8-10.
- [4] Id. at 68.
- [5] Id. at 106-107.
- [6] Id.
- [7] Id.
- [8] Id. at 35-36.
- [9] Id. at 70.
- [10] Id. at 111.
- [11] Id.
- [12] Id. at 110-111.
- [13] Id. at 33.
- [14] Id. at 37.
- [15] Id. at 21.
- [16] Id. at 39-40.
- [17] Id. at 115.
- [18] TSN, 9 February 1998, p. 13.
- [19] Id. at 13-15.
- [20] Id. at 15-18.
- [21] Id.
- [22] Id. at 19-20.
- [23] Id. at 21-22.
- [24] TSN, 16 February 1996, p. 24.
- [25] TSN, 9 February 1998, pp. 22-23.
- [26] Id. at 24.
- [27] Id. at 25.
- [28] Id. at 26-27.
- [29] Id. at 28-30.
- [30] Id. at 31-32.
- [31] Id. at 33-35.
- [32] Id. at 62.

- [33] Id. at 56.
- [34] Id. at 37-39.
- [35] Id. at 64.
- [36] Id. at 64-65.
- [37] Id. at 40-41.
- [38] TSN, 16 February 1998, p. 26.
- [39] Id. at 27.
- [40] Exhibits “1” to “1-B,” Records, pp.8-9.
- [41] Records, pp. 10-11.
- [42] TSN, 21 May 1998, pp. 3-4.
- [43] Id. at 8.
- [44] Id. at 6.
- [45] Id. at 7.
- [46] Id. at 8.
- [47] TSN, 23 March 1998, pp. 26-27.
- [48] Id. at 4-6.
- [49] TSN, 17 April 1998, p. 20.
- [50] Id. at 11-12.
- [51] Id. at 13.
- [52] Id. at 14.
- [53] Id. at 21.
- [54] Id. at 24.
- [55] Id. at 36; Exhibit “I.”
- [56] Id. at 49-50.
- [57] TSN, 27 April 1998, p. 39.
- [58] Ibid.
- [59] Exhibit “3”- Huera.
- [60] TSN, 27 April 1998, pp. 45-46.
- [61] Id. at 46-47.
- [62] Records, p. 150.
- [63] Rollo, p. 74.

[64] Id. at 49, 185-195.

[65] TSN, 16 February 1998, pp. 14-18.

[66] Id. at 31-33.

[67] TSN, 16 February 1996, pp. 25-27.

[68] G.R. No. 14895, July 17, 2003.

[69] People vs. Molas, 286 SCRA 684 (1998).

[70] 305 SCRA 811 (1999).

[71] People vs. Bisda, supra.

[72] People vs. Virtucio, 326 SCRA 198 (2000).

[73] People vs. Mansueto, 336 SCRA 715 (2000).

[74] People vs. Baid, 336 SCRA 656 (2000);

[75] People vs. Del Mundo, 366 SCRA 471 (2001).

[76] Supra.

[77] As amended by RA No. 7659.

[78] People vs. Pagalasan, G. R. No. 131926 and 138991, June 18, 2003.

[79]Id., supra.

[80]People vs. Salimbago, supra.

[81] Cited in People vs. Akiran, 18 SCRA 240 (1966).

[82] United States vs. Cleveland, 56 Supp. 890 (1944).

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