

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ANGELITO MARTINEZ AND DEXTER TAGLE, APPELLANTS.

G.R. No. 137519. March 16, 2004

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PER CURIAM:

For automatic review is the decision[1] of Branch 259 of the Regional Trial Court in Parañaque City finding appellants guilty beyond reasonable doubt of the crime of kidnapping for ransom and serious illegal detention as defined and penalized under Article 267 of the Revised Penal Code (RPC), as amended by RA 7659, and imposing upon them the death penalty and moral damages of P1,000,000. This case is now before us on automatic review.

In an amended information filed with the Regional Trial Court of Parañaque City, appellants Angelito Martinez and Dexter Tagle, together with accused Rosita Yu, Genaro de Jesus, Rigor Aguilar, Rico Basa and Dennis Rivera, were charged with kidnapping for ransom:

That at about 10:30 o'clock in the evening of 4 August 1996 along Quirino Avenue, Parañaque City and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another together with some other persons whose liabilities are still being determined in a preliminary investigation, did then and there, by force and intimidation, willfully, unlawfully and feloniously take, carry away and kidnap ATTY. AQUILES LOPEZ against his will, and thereafter detain him, thereby depriving ATTY. AQUILES LOPEZ of his liberty for the purpose of extorting ransom for his release.

Records show that on August 2, 1996, appellants Martinez and Tagle met with accused Aguilar, Rivera and Basa at the Emilio Aguinaldo College along Taft Avenue, Manila. The group conjured up a plan to kidnap any person for ransom on August 5, 1996.

On August 4, 1996 at around 6:00 p.m., on board a red Toyota Corolla with tinted windows and bearing a California plate, appellant Tagle and accused Aguilar and Rivera first proceeded to appellant Martinez' house in Valenzuela City. Wearing military and police uniforms, they then went to SM Mega Mall in Ortigas where they planned to intercept classy cars violating traffic rules as a prelude to spotting a suitable kidnap victim. Unable to find one, the group drove to Parañaque City. At around 10:30 p.m., the group spotted a black Honda Accord with plate no. TPA-762 along Quirino Avenue, Parañaque City. The driver of said car was later identified as the kidnap victim, Atty. Aquiles Lopez. Overtaking Lopez on the left (driver's side), appellant Martinez who was occupying the front seat, brandished a long firearm at him. Lopez tried to speed away but the red car succeeded in blocking his path. As Lopez brought his car to a stop, the group alighted from the red car and introduced themselves as members of the police Narcotics Command. He was able to see their faces clearly because the headlights of his car were on. Accused Aguilar approached him and demanded to see his car registration papers while appellant Tagle searched the trunk of his car. Realizing that Lopez was the president of a company, appellant Martinez ordered appellant Tagle and accused Aguilar to transfer him to the backseat of the black Honda Accord where he was handcuffed and blindfolded. The group drove to the North Expressway with appellant Tagle at the wheel of the black Honda. Accused Basa was seated at the front seat while appellant Martinez, victim Lopez and accused

Aguilar were at the back. Accused Rivera drove the kidnappers' red Toyota Corolla. Upon reaching the Sta. Rita exit, Lopez was transferred to the red car. They proceeded to appellant Martinez' house where the victim was held captive for four nights and three days.

During his detention, Lopez conveyed to his daughter Rosalinda Lopez Medina his abductors' demand for ransom of P10,000,000 which was later reduced to P2,000,000.

In the meantime, on August 5, 1996, the family of Lopez reported his disappearance to the Presidential Anti-Crime Commission (PACC) after his daughter received several phone calls early in the morning informing her of her father's kidnapping. After receiving the report, Senior Supt. Roberto Calinisan, head of the Task Force Habagat, immediately dispatched his men to ascertain the whereabouts of Lopez. On August 6, 1996, the monitoring team assigned to the northern sector of the metropolis spotted the black Honda Accord with plate no. TPA-762 parked inside a residence in Yakal Street, Fortune Village, Valenzuela, Metro Manila. At around 11:00 p.m. the next day, August 7, 1996, after surveillance operations confirmed that the victim was indeed being detained inside one of the rooms of the house, operatives of the PACC Task Force Habagat raided the said residence and successfully rescued Lopez. While the PACC agents were still inside the house, about three persons outside and on board a red Toyota Corolla traded shots with perimeter security personnel of the PACC Task Force. The occupants of the red car were able to elude arrest but appellant Martinez and accused Yu and de Jesus were arrested during the raid. Several items were recovered from the scene.[2]

In a subsequent report by the members of the Valenzuela Police, the same red Toyota Corolla with California plates was found abandoned inside Fortune Village Subdivision. Several items were likewise recovered inside the abandoned vehicle.[3]

On August 9, 1996, accused Aguilar and, on August 10, 1996, appellant Tagle surrendered to the authorities after learning that they were being implicated in the kidnapping of Lopez. Appellant Tagle even accompanied the operatives of the PNP-CIU in a follow-up operation at Fortune 7, Parada St., Valenzuela. The operation resulted as well in the recovery of some items.[4]

On arraignment and with the assistance of their respective counsels, appellants Martinez and Tagle, accused Yu, de Jesus and Aguilar all pleaded not guilty to the charge against them while accused Rivera and Basa remained at large. Pre-trial was terminated and trial proceeded accordingly.

The prosecution presented eight witnesses: kidnap victim Atty. Aquiles Lopez, the kidnap victim's daughter Rosalinda Lopez Medina, Sr. Insp. Narciso Ouano, Jr., SPO Jesus C. Sagisi, PNP member Romeo Biete, Chief Insp. Gilbert Cruz, Sr. Insp. Ronaldo Mendoza, and accused turned state witness Rigor Aguilar. For the defense, appellant Martinez testified in his behalf and presented as witnesses Felicidad Condino, Perla Condino and co-accused Rosita Yu. Appellant Tagle, on the other hand, testified in his own behalf and presented his mother, Manuela Tagle, as his other witness. Accused Yu and de Jesus did not present any witnesses but relied solely on their own respective testimonies.

On April 29, 1997, the prosecution filed a motion to discharge accused Aguilar from the information for utilization as state witness. The trial court granted the motion despite opposition from the accused and also denied their joint motion for reconsideration.

On July 1, 1997, appellant Martinez and accused de Jesus filed in the Court of Appeals a petition for certiorari and prohibition with prayers for the issuance of a writ of preliminary injunction and temporary restraining order, to nullify the trial court's order discharging accused Aguilar as state witness and denying their joint motion for reconsideration. After their petition was denied, a petition for review under Rule 45 was filed with this Court. We

denied said petition.

On December 7, 1998, the trial court rendered its decision:

WHEREFORE, PREMISES CONSIDERED, finding accused Angelito Martinez and Dexter Tagle GUILTY beyond reasonable doubt [of] the crime of Kidnapping for Ransom and Serious Illegal Detention as defined and penalized under Article 267 of the Revised Penal Code as amended by RA 7659, both accused Martinez and Tagle are hereby sentenced to the supreme penalty of death by lethal injection and to suffer the accessory penalties provided by law specifically Article 40 of the Revised Penal Code. They are also ordered to pay moral damages in the amount of P1,000,000.00 each.

As earlier pronounced, accused Rosita Yu and Genaro de Jesus are declared NOT GUILTY for insufficiency of evidence while the case against Dennis Rivera and Rico Basa is ordered archived pending their apprehension.

Rigor Aguilar, having been discharged to testify as a witness for the prosecution, is hereby set free pursuant to Section[s] 9 and 11 of Rule 119 of the Rules of Court and towards this end, the PACC is directed to immediately release him from custody unless there by (sic) some other reasons for his further detention.

The Jail Warden of Parañaque is also ordered to release Rosita Yu and Genaro de Jesus unless there be some reasons also for their further detention.

The Clerk of Court of this Court is directed to prepare the MITTIMUS for the immediate transfer of Angelito Martinez and Dexter Tagle to the Bureau of Corrections in Muntinlupa City and finally forward all the records of the case to the Supreme Court for automatic review in accordance with Section 8 Rule 122 of the Rules of Court and Article 47 of the Revised Penal Code as amended by Section 22 of RA 7659.[5]

In his brief,[6] appellant Tagle raises the following errors:

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT OF KIDNAPPING FOR RANSOM NOTWITHSTANDING THE INADMISSIBILITY OF THE EVIDENCE ADDUCED BY THE PROSECUTION.

THE TRIAL COURT ERRED IN UPHOLDING THE DISCHARGE OF STATE WITNESS RIGOR AGUILAR FROM THE INFORMATION IN ACCORDANCE WITH SECTION 9 [now Section 17], RULE 119 OF THE RULES OF COURT DESPITE HIS INADMISSIBLE AND INCONSISTENT STATEMENTS.

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT DEXTER TAGLE DESPITE THE FAILURE OF THE PROSECUTION TO PROVE THE EXISTENCE OF CONSPIRACY AMONG THE PERPETRATORS WITH CLEAR AND CONVINCING PROOF.

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT DEXTER TAGLE ON THE BASIS OF THE POSITIVE IDENTIFICATION BY THE VICTIM DESPITE THE FACT THAT HE WAS NOT ASSISTED BY COUNSEL DURING THE POLICE LINE-UP WHEN IDENTIFIED.

Appellant Martinez, on the other hand, assigns the following errors:[7]

THE TRIAL COURT ERRED IN FINDING MARTINEZ GUILTY OF THE CRIME OF KIDNAPPING.

THE TRIAL COURT ERRED IN RULING THAT ACCUSED-APPELLANT MARTINEZ WAS POSITIVELY IDENTIFIED BY THE (SIC) LOPEZ, THE KIDNAP VICTIM.

(THE) TRIAL COURT ERRED IN GIVING FULL CREDENCE TO THE TESTIMONY OF THE STATE WITNESS, RIGOR AGUILAR.

THE TRIAL COURT ERRED IN DISREGARDING ACCUSED APPELLANT'S DEFENSE OF ALIBI.

The issue in this case boils down to ascertaining whether or not the guilt of both appellants Martinez and Tagle was proven beyond reasonable doubt.

The defense stresses that, due to the doubtful identification and description by Lopez, there was a lack of ample evidence positively pinpointing appellants as the abductors. Appellant Martinez alleges that it was impossible for Lopez to clearly see his abductors and therefore his description of his kidnappers was too general and vague. On the other hand, appellant Tagle claims that the identification made by the victim during the police line-up was inadmissible because he stood there without the assistance of counsel.

We disagree. Lopez described the man who brandished a rifle at his left as "tall, well-built, slightly dark and wearing a police uniform," while the man who opened the trunk of his car "was wearing a white t-shirt, not very tall, fair complexioned but pretty well-built," and the man who ordered the others to put him at the back seat of the car "was tall, well-built, husky and wearing a camouflage uniform." The description given by the victim was acceptable as it sufficiently identified his abductors. In addition, Lopez stated in open court that he could recognize his kidnappers if he saw them again. Thus, even if the description he gave was allegedly general in character, recognition and description are two different processes that do not necessarily jibe. Description presupposes a facility of communication that many persons do not possess.[8]

The most important evidence was the positive testimony of Lopez recognizing appellants as his abductors. Common human experience tells us that when extraordinary circumstances take place, it is natural for persons to remember many of the important details. This Court has held that the most natural reaction of victims of criminal violence is to strive to see the features and faces of their assailants and observe the manner in which the crime is committed. Lopez positively identified appellant Martinez as one of his captors. He testified that he saw the faces of his abductors because the headlights of his car were focused on them when they alighted from their car. This enabled him to clearly see their faces. All too often, the face of the assailant and his body movements create a lasting impression on the victim's mind and cannot thus be easily erased from his memory.

On the allegation of appellant Tagle that his identification by the victim during the line-up without his counsel violated his constitutional right (to counsel), suffice it to say that such right attaches only upon the start of an investigation, i.e., when the investigating officer starts to ask questions to elicit information, confession or admission from the accused. In this case, when appellant Tagle was identified by Lopez in the police line-up, he had not yet been held to answer for the criminal offense for which he has since been charged and convicted. Thus, appellant Tagle's right to counsel could not have been violated as the confrontation between the State and the accused had not yet begun. This Court has consistently held that the prohibition against custodial investigation conducted without the assistance of counsel does not extend to a person in a police line-up. This particular stage of an investigation where a person is asked to stand in a police line-up has been held to be outside the mantle of protection of the right to counsel because it as yet involves a general inquiry into an unsolved crime and is purely investigatory in nature. It has also been held that an identification without the presence of counsel at a police line-up does not preclude the admissibility of an in-court identification.[9]

Appellant Tagle claims that, when the police line-up was conducted, he was already indicted for the offense charged and thus had the right to counsel. This is not correct for it has been ruled that a person's right to counsel while under custodial investigation cannot be invoked until such time as the police investigators start questioning, interrogating or exacting a confession from the person under investigation.[10] During the police line-up, appellant Tagle was not interrogated at all and no statement or confession was extracted from him. Therefore, there was no deprivation of his right to counsel because the accusatory process had not yet begun nor had the

police, at that stage, exacted a confession from him.

Moreover, the appellants have not shown any ill-motive on the part of the victim to fabricate charges against them. It is well-settled that when there is no evidence to show that the prosecution witness is actuated by an improper motive, identification of the appellants as the offenders should be given full faith and credit.[11]

Furthermore, appellant Tagle avers that the prosecution failed to prove the existence of conspiracy. On this point, we have time and again held that conspiracy need not be established by direct proof of prior agreement by the parties to commit a crime but that it may be inferred from the acts of the accused before, during and after the commission of the crime which indubitably point to a joint purpose, concerted action and community of interest.[12] The conspiracy in this case was clear from the overt acts of the accused which facilitated the kidnapping of Lopez.

The group of Tagle, masterminded by appellant Martinez, armed with high-powered weapons and simulating public authority, carried out their plan to commit kidnapping for ransom. Contrary to appellant Tagle's contention, his complicity in the kidnapping was established not only by the testimony of state witness Rigor Aguilar but also by the testimony of victim Lopez himself. Both Aguilar and Lopez positively identified him. It is well-settled that the trial court's evaluation of the credibility of witnesses must be accorded great respect owing to its opportunity to observe and examine the witnesses' conduct and demeanor on the witness stand.[13] In this case, the trial court found the testimonies of Aguilar and Lopez totally credible.[14] This Court finds no reason to depart from the findings of the court a quo.

The appellants also fault the trial court for not giving credence to their defense of alibi, claiming that where the evidence of the prosecution is weak, the defense of alibi assumes importance and bears looking into. This contention, however, must fail in the face of the positive identification of the appellants as the perpetrators of the crime by the victim himself and state witness Aguilar.

Tagle averred that on August 4, 1996, he was at home helping his mother prepare for the death anniversary of his father. He accompanied her to Divisoria and later, at around 7:00 p.m., he went to the house of accused Rivera who wanted to borrow his car. Thereafter, he visited to his girlfriend and went home at around 11:00 p.m. His mother, Manuela Tagle, corroborated his story. On the other hand, appellant Martinez stated that on August 2, 1996, he was at the Ninoy Aquino International Airport in Parañaque to fetch one Perla Condino. Perla and her mother, Felicidad Condino, attested that Martinez accompanied Felicidad in fetching Perla from the airport. Further, appellant Martinez alleged that, in the evening of August 4, 1996, he was with his girlfriend, accused Rosita Yu, in Valenzuela. He was awakened when the group of accused Aguilar arrived at around 1:00 a.m. on August 5, 1996 and asked to spend the night in his house.

Both appellants failed to establish that it was impossible for them to be at the scene of the crime. In the case of Tagle, the fact that he accompanied and helped his mother prepare for his father's death anniversary was of no moment for he admitted that he left their house in the evening of August 4, 1996. It was therefore not impossible for him to join the other accused to commit the crime and still be back home immediately thereafter. In the case of Martinez, his claim that he was then sleeping at home in Valenzuela at the time the crime was committed deserves scant consideration. Since both Ortigas and Parañaque City are no more than a few hours' drive from Valenzuela, it was not impossible for Martinez to be physically present at the crime scene at the time of its commission.

The alibis proffered by the appellants cannot prevail over the unequivocal testimony of the victim categorically and positively pointing to them as his abductors. The defense of alibi, to be given full credit, must be clearly established and must not leave room for doubt.

The contention of both appellants that the discharge of Aguilar as state witness was erroneous as it allegedly failed to comply with the conditions set forth under Rule 119, Section 17 of the Rules of Court^[15] lacks merit. The discharge of an accused as a state witness is at the discretion of the court. The prosecution can only propose such discharge and the court can refuse it if the objective of the prosecution will not be served thereby. Absolute certainty is not required in the determination of whether the conditions for discharge are present since the trial court has perforce to rely in large part on the representations of the prosecution. In this case, there was no other direct evidence available to prove the conspiracy to commit kidnapping and to establish the circumstances leading to Lopez' abduction. Hence, the necessity of discharging Aguilar as state witness. In any event, Aguilar's testimony was substantially corroborated by those of the other prosecution witnesses. Furthermore, Aguilar did not appear to be the most guilty among the accused since it was clear that he was not the leader of the group. In addition, there was no showing that Aguilar had ever been previously convicted of any offense involving moral turpitude.

Appellant Tagle likewise contends that Rule 119, Section 9 of the Rules on Criminal Procedure (now Section 17 of the Revised Rules, as amended on October 3, 2000) requires that the sworn statement of the accused intended to be discharged must be presented in court. Since Aguilar's sworn statement was obtained without the assistance of an independent counsel (he secured the services of the assisting lawyer in the execution of his sworn statement), it was made in violation of his constitutional rights. Hence, it was inadmissible and could not be made the basis of his discharge as state witness.

It can be gleaned, however, from the sworn statement of Aguilar that he was the one who obtained the services of the lawyer who assisted him in the execution of his sworn statement. It was also significant that Aguilar was duly informed of his constitutional rights. He was warned that any statement he made could be used against him and that he was entitled to be assisted by a lawyer of his choice. At this point, Aguilar, on his own accord, chose the assisting counsel to act as his lawyer. Considering the foregoing circumstances, this Court is of the view that Aguilar's admissions in his sworn statement, voluntarily made and later confirmed by him in open court during the trial, negated the challenge now interposed as to the admissibility of such sworn statement.

Furthermore, appellant Tagle alleges that since the pieces of evidence presented were inadmissible for having been obtained without a search warrant, his conviction based thereon was erroneous. This argument does not hold water either. The extraordinary circumstances leading to the rescue of Lopez did not require a search warrant. The PACC had reasonable grounds to believe that a crime was then being committed. Its agents conducted a series of surveillance operations to confirm and ascertain that the victim was indeed being detained inside one of the rooms in the house where the Black Honda Accord was parked.

There was consequently more than sufficient probable cause to warrant the action they undertook. In such an urgent situation, a search warrant could lawfully be dispensed with. Furthermore, appellant Tagle's conviction was based not solely on the items recovered during the raid but also on the testimony and positive identification by victim Lopez and state witness Aguilar.

Also, in his futile attempt to secure exculpation, appellant Martinez would have us believe that the testimonies of Lopez and state witness Aguilar on the manner the abduction was carried out conflicted with each other. Lopez allegedly testified that a firearm was poked at him to make him stop but Aguilar mentioned that a siren blast was used to make him stop. He further alleged that Lopez tried to speed away while Aguilar testified that Lopez slowed down. Furthermore, the victim stated that three armed men alighted from the red car while Aguilar testified that all five of them got down therefrom. In addition, appellant Martinez averred that the testimonies of Lopez and Aguilar contradicted each other as to the roles the accused played, the clothes they wore and the abductors' seating arrangement inside the black Honda car.

Appellant's attempts to destroy the prosecution witnesses' testimonies are futile. The inconsistencies cited refer to minor details. The rule is that inconsistencies in the testimonies of prosecution witnesses on minor details and collateral matters do not affect the substance of their declaration, their veracity or the weight of their testimonies. The inconsistencies and discrepancies pointed out by appellant Martinez are not of such nature as would warrant the reversal of the decision appealed from.

Appellants were charged with and convicted by the trial court of the crime of kidnapping for ransom and serious illegal detention under Article 267 of the RPC as amended by RA 7659.[16] To warrant the imposition of the death penalty for the crime of kidnapping for ransom and serious illegal detention, the prosecution must prove beyond reasonable doubt: (a) the intent of the accused to deprive the victim of his liberty; (b) the actual deprivation of the victim of his liberty and (c) the motive of the accused to exact ransom for the release of the victim. The purpose of the offender in extorting ransom is a qualifying circumstance which may be proved by words or overt acts before, during or after the kidnapping and detention of the victim.[17] Neither actual demand for nor actual payment of ransom is necessary for the crime to be committed.[18]

Based on the evidence on record, the following facts were indisputably established: (1) Lopez was abducted on August 4, 1996 by five men including appellants Martinez and Tagle; (2) the victim was detained in the house of appellant Martinez against his will and was deprived of his liberty, and (3) the kidnappers demanded payment of ransom, initially in the amount of P10,000,000, for the release of the victim. After several negotiations, it was reduced to P2,000,000. The daughter of Lopez testified that she received several phone calls demanding the aforesaid amounts for the release of her father. Clearly, all the elements and qualifying circumstance to warrant conviction for the crime of kidnapping for ransom and serious illegal detention were established beyond reasonable doubt. As provided in Article 267 of the RPC, the penalty of death is imposable where the detention is committed for the purpose of extorting ransom.

The award by the trial court of P1,000,000 as moral damages should be modified. Under Article 2219, paragraph 5 of the Civil Code, moral damages may be awarded to a victim of illegal detention or arrest. The appellants brandished a firearm at the victim, blindfolded him and took him captive in Valenzuela. The victim suffered mental, physical and psychological trauma. Under the circumstances, there is sufficient basis for an award of moral damages in the amount of P300,000.[19]

We also note that an aggravating circumstance, whether ordinary or qualifying, entitles the offended party to exemplary damages within the meaning of Article 2230 of the Civil Code.[20] This requisite has been met in this case. A band of five men, using a motor vehicle, abducted the victim and demanded ransom for his liberty. Article 2234 of the Civil Code provides that, while the amount of the exemplary damages need not be proved, the Court may impose exemplary damages in addition to moral damages. In this case, we have already awarded the latter. In order to serve as a deterrent against socially deleterious acts, we hold that the victim is entitled to exemplary damages in the amount of P100,000 by way of example or correction, in addition to the moral damages herein awarded.[21]

In the light of these premises, the Court finds no reversible error in the decision of the trial court. Consequently, it is left with no alternative but to sustain the imposition of the death penalty on the appellants.

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

WHEREFORE, the decision of the Regional Trial Court, Branch 259 of the Regional Trial Court in Parañaque City in Criminal Case No. 96-739 finding appellants Angelito Martinez and Dexter Tagle guilty beyond

reasonable doubt of the crime of kidnapping for ransom and serious illegal detention and imposing upon them the death penalty is hereby AFFIRMED with the MODIFICATION that they shall pay the victim in solidum the amount of P300,000 as moral damages and an additional amount of P100,000 as exemplary damages.

In accordance with Section 25 of RA 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.

Costs against appellants.

SO ORDERED.

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

Puno, and Panganiban, JJ., on leave.

[1] Penned by Judge Zosimo V. Escano, RTC-Br. 259, Parañaque City, Criminal Case No. 96-739 dated December 7, 1998; Rollo, pp. 434-466.

[2] One M-16 Caliber 5.56 SN9049453 with eighty-nine rounds of live ammunition, one Colt Caliber .45 pistol with seven rounds of live ammunition, one set of PNP uniform with cap and necktie, one black T-shirt with PNP markings, twenty-six empty shells of Caliber .45, one black Honda Accord with plate no. TPA-762, one metallic gray Mitsubishi Lancer GLX with plate no. TFZ-509, one white Mitsubishi Lancer without plate, one metallic gray Honda Civic with plate no. TFG-392, detached plate no. TPA-762, other license plates, and a set of golf clubs.

[3] Several plate nos., ATM cards, PNP uniform with a Rivera nameplate, PNP khaki pants and upper garment, calling cards in the name of Dexter Tagle, belts, several plastic paper bags and other pertinent documents.

[4] One Caliber .22 North American Magnum revolver with five rounds of live ammunition, one Nokia cellular phone, one white polo shirt owned by Dennis Rivera, one 1996 registration sticker, and one nameplate marked Tagle.

[5] Rollo, pp. 64-65.

[6] Rollo, p. 92.

[7] Rollo, p. 173.

[8] *People vs. de Roxas*, 6 SCRA 666 [1962].

[9] *People vs. Pavillare*, 329 SCRA 684 [2000].

[10] *People vs. Buntan, Sr.*, 221 SCRA 421 [1993]

[11] *People vs. Gonzales, Jr.*, 182 SCRA 393 [1990].

[12] *People vs. Lising*, 285 SCRA 595 [1998].

[13] *People vs. Bracamonte*, 257 SCRA 380 [1996].

[14] RTC Decision, p. 31; Rollo, p. 64.

[15] SEC 17. Discharge of accused to be state witness. — When two or more persons are jointly charged with the commission of any offense, upon motion of the prosecution before resting its case, the court may direct one or more of the accused to be discharged with their consent so that they may be witnesses for the state, when after requiring the prosecution to present evidence and the sworn statement of each proposed state witness at a hearing in support of the discharge, the court is satisfied that:

- (a) There is absolute necessity for the testimony of the accused whose discharge is requested;
- (b) There is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of said accused;
- (c) The testimony of said accused can be substantially corroborated in its material points;
- (d) Said accused does not appear to be the most guilty; and
- (e) Said accused has not at any time been convicted of any offense involving moral turpitude.

Evidence adduced in support of the discharge shall automatically form part of the trial. If the court denies the motion for discharge of the accused as state witness, his sworn statement shall be inadmissible in evidence.

[16] ARTICLE 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:

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

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

[17] People vs. Pagalasan, G.R. Nos. 131926 and 138991, June 18, 2003.

[18] People vs. Salimbago, 314 SCRA 282 [1999].

[19] People vs. Bisda, G.R. No. 140895, July 17, 2003.

[20] People vs. Catubig, 363 SCRA 621 [2001].

[21] People vs. Deang, 338 SCRA 657 [2000].

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