

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSEPHINE “JOSIE” SANTOS, MANNY BALTAZAR, JOHN DOE, PETER DOE AND ROGER DOE, ACCUSED-APPELLANTS.*G.R. No. 140074. February 27, 2002*

Ponente: VITUG, J.

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It is not unknown that a debtor occasionally would suffer from the malady of selective amnesia. The case is a tale of one unfortunate creditor who might have sought to rouse her absent-minded debtor from the haze of forgetfulness.

On 10 December 1996, at six o'clock in the morning, Leonida de la Peña was at home in Barangay Resurreccion, Umingan, Pangasinan, with her eight-year old niece, Christine Lovely Mae Delanos, when a passenger jeepney arrived. Five decently dressed men stepped down from the vehicle and entered the house. The first, who was attired in a business suit, introduced himself as Rocky Alberto and his companions as agents of the Criminal Investigation Service ("CIS").[1] Alberto asked Leonida about her unpaid obligation to Josephine Santos. Leonida answered that she had already paid the debt before the barangay captain of Umingan. Moments later, another vehicle, a brown colored car, stopped in front of the house. Henry Salimbay (the barangay captain of Umingan), Josephine Santos, Manny Baltazar and two unidentified males and one unidentified female, alighted. Leonida rushed to confront Salimbay, telling him that Josephine had sent the CIS agents to demand payment of her debt and that it was Josephine who should instead be accosted. Sensing an escalating tension between the two women, the barangay captain decided to leave, telling the parties that it was best for both of them to just amicably settle their differences.

It would seem that the association between Leonida de la Peña and Josephine Santos was one of friendship turned awry. On 22 March 1992, Josephine appeared to have given a one-year loan to Leonida but the latter was unable to timely pay the debt. For the next four years, Josephine would be unsuccessful in securing payment from her delinquent debtor. Josephine and Manny Baltazar, both residents of Baguio City, would travel all the way to Resurreccion, Pangasinan, to seek payment from Leonida but, in all these instances, Leonida would refuse to see Josephine and ignore the summons issued by the barangay captain. This unease between the two women was further heightened when Leonida subsequently filed a case for estafa against Josephine.

The eventful 10[th] of December 1996 was the scheduled conference between debtor and creditor before Henry Salimbay, the barangay captain, and the already irate Josephine, anticipating another rebuff from Leonida, decided to personally go to her house with Salimbay in tow. Leonida stubbornly maintained her having already settled the account. At this obstinate insistence, an enraged Josephine Santos shouted invectives at Leonida and began hurling things inside the house, scattering the palay and hitting, in the process, Felizarda Saturnino, an aunt of Leonida with a woodcarving. Josephine and Baltazar held Leonida, handcuffed her and, with the help of their companions, dragged her towards the parked passenger jeepney and forced her to board it. She described the

passenger jeepney as having a locked door at its passenger rear-end portion and two doors on either side at the driver's seat, with side glass windows which were about ½ foot high and 1 foot wide, too small for a person her size to pass through. Leonida was flanked by Rocky Alberto and one unidentified male in the passenger seat of the vehicle. On the front seat of the passenger jeepney were three other men. Josephine, along with Baltazar and three other companions, rode in the car.

The two vehicles traveled, the brown car leading the way and the passenger jeepney closely following behind. The convoy first made a stopover at the house of barangay captain Salimbay where Leonida heard Josephine and Baltazar call out, "Captain, we already got Nida." The group proceeded towards the direction of Carmen, Pangasinan, passing through San Leon, and finally progressing towards Kennon Road. Somewhere in the long stretch of the Kennon Road, the group stopped at the Twin Peaks, a hub of commercial establishments where Baguio-bound passengers would casually stop for refreshments. Leonida, from her seat at the passenger side of the jeepney, heard Josephine and Baltazar telling the men from the jeepney to step down from the vehicle and to partake of some refreshments. Josephine and one unidentified companion came up to her and tried to force her to sign a document forfeiting her property in favor of Josephine in satisfaction of the unpaid loan. Leonida balked at the suggestion. Failing to convince Leonida to sign the document, the group decided to continue with their journey.

In Baguio City, the group proceeded to a building along the Naguillan Road which Leonida recognized to be Precinct I of the Baguio City police. She saw Josephine and Baltazar enter the police precinct. Later emerging from the police station, the duo told their companions to alight from the jeepney. Baltazar then took over the wheel of the passenger jeepney while Josephine seated herself beside Leonida in the passenger seat of the vehicle. The latter had no idea where they were heading. It was only much later, upon seeing several tombs within the vicinity, when she realized that they had taken her to the local cemetery. Leonida overheard Josephine and her companions, while they were alighting from the vehicle, say that they were "going to kill her at 8:00 (that) evening." Rocky Alberto then showed up, and he was ordered to watch Leonida while Josephine and Baltazar said they would go elsewhere to take something to eat.

Left alone with Alberto, Leonida begged for mercy. Alberto proved to be a good Samaritan and helpfully handed over to her a steel pipe from a narrow opening in the rear door of the jeepney. Armed with the steel pipe, Leonida hit the glass front window of the passenger vehicle and made her exit. She and Alberto then flagged down a taxicab, which took them to the Dagupan bus station where, after relating her harrowing experience to the bus personnel, she and Alberto were able to hitch a ride on a Manila-bound passenger bus. Alighting at the Carmen junction, they took a tricycle for the remaining leg of their journey home.

The next day, accompanied by Rocky Alberto, Leonida filed a complaint before the Umingan Police Station. Alberto, upon giving his official statement before the Umingan authorities, was unable to produce any document to prove his being a CIS agent.

Felizarda Saturnino, an aunt of Leonida, sought to corroborate the statement of her niece. According to Felizarda, the common-law husband of Leonida, a certain "Itong," arrived shortly after the group had left. Upon learning what had happened to Leonida, Itong made inquiries. Barangay captain Salimbay informed him that a warrant of arrest had been issued against Leonida. Later, when she and Itong went to the Umingan police station, to report the abduction, they were instructed to first ascertain whether a warrant of arrest was indeed issued against Leonida.

A subsequent examination by Dr. Maria L. Chan showed that Leonida had sustained multiple abrasions and hematoma in both upper extremities secondary to mauling.

On 19 March 1997, an accusatory information for the crime of Kidnapping was filed against Josephine Santos, Manny Baltazar and three other unidentified persons -

"That on or about the 10[th] day of December, 1996, in the morning, at Bgy. Resurreccion, municipality of Umingan, province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, including three (3) Does whose identities have not yet been established, being a private individual and without any legal justification and simulating public authority, and by means of force, conspiring, confederating and helping one another, did then and there willfully, unlawfully and feloniously take and handcuff both hands of one LEONIDA DE LA PEÑA, then load her to a passenger jeepney and brought her to a public cemetery at Naguillan Road, Baguio City, thereby depriving her of her liberty by detaining inside a passenger jeepney and threatening her with death but was able to escape, to the damage and prejudice of said LEONIDA DELA PEÑA.

"Contrary to Article 267 of the Revised Penal Code."[2]

The accused pled "not guilty" to the offense charged.

Josephine Santos and Manny Baltazar have vehemently denied the accusation. The defense version is narrated by the Public Attorney's Office in its brief for accused-appellant Josephine Santos.

"Manny Baltazar, testified that in the early morning of December 10, 1996 he together with his co-accused Josie Santos, Ester Dino, Leo Badecao and Sheriff William Baden, left Baguio City on board a Toyota Crown car on their way to Caranglaan, Nueva Ecija to pick-up fifty (50) cavans of rice and visit his 31/2 hectare land. Since they were passing by Umingan, Pangasinan, accused Josie Santos suggested that they dropped by Resurreccion, Umingan, Pangasinan to collect unpaid debts of Leonida dela Peña. Before proceeding to the house of Leonida, they sought the help of Resurreccion Barangay Captain Henry Salimbay. Captain Salimbay accompanied them to the house of Leonida. They reached Leonida's house at around 6:00 o'clock in the morning.

"He parked the car near the yard of Kagawad Dumaguig as the vehicle could not get through the alley leading to the house of Leonida because a passenger jeepney blocked the way, while Josie and Captain Salimbay proceeded to the house of Leonida. After five (5) minutes Captain Salimbay left the place. Thereafter, he heard Leonida and Josie quarreling inside the house. He immediately proceeded to Leonida's house, pulled Josie and brought her to the parked car. Then, he returned to Leonida's house and plead to the latter to settle their differences between themselves to avoid trouble but she (Leonida) denied that she was indebted. Then, the four (4) men inside the house handcuffed Nida and left.

"He informed Josie that Leonida could not pay. Thus, they left the place and dropped by at Captain Salimbay's place and informed the latter's wife that they were leaving.

"On their way to Carmen, Rosales, Pangasinan, they took the national highway in Balungao where they saw Leonida's father-in-law, Leoncio dela Peña. They offered a ride to Leoncio and dropped him at Balungao district jail. Since it was already late, they cancelled their plan to go to Nueva Ecija and drank tuba at a nearby store. Thereafter, they proceeded to Baguio City.

"Along the highway at Binalonan, Pangasinan, somebody flagged them down. He pulled over beside the passenger jeepney which was previously parked in front of Leonida's house. A man from the jeepney approached them and invited Josie for a conversation in the jeepney. After 20 minutes, Josie returned and told them to go back to Resurreccion because Leonida would give them the palay. They returned to Resurreccion. Unfortunately, they were not able to get the palay because Leonida's husband was not around, so they left the place and proceeded to Baguio City via the Kennon Road.

"While they were approaching Twin Peaks at Kennon Road, the man who flagged them down in Binalonan

signaled again. He parked the car near the passenger jeepney. Josie, Leonida and the alleged CIS agent took their snacks in the canteen while he remained in the car. After 30 minutes, Josie returned and instructed him to proceed to a police station near the city hall for she was going to file a complaint for estafa against Leonida. However, a policeman instructed them to proceed to Precinct No. 1 at Naguillan Road. He accompanied Josie to the precinct but the policemen also told them that since the transaction was consummated in Resurreccion, the case should be filed in Pangasinan. Incidentally, when accused-appellants were inside the precinct, Leonida was inside the parked passenger jeepney. When they were about to go home, Rocky Alberto approached Josie. After few minutes of conversation, they agreed to go home, leaving behind Leonida and the alleged CIS agent.

"Furthermore, he denied all the allegations made by Leonida and branded them as pure lies. (TSN pp. 4-12; June 9, 1998; TSN pp. 2-15; July 14, 1998).

"Josephine 'Josie' Santos, testified that in the early morning of December 10, 1996, she together with her driver, accused Manny Baltazar, Ester Dino, Leo Badecao and William Baden were on their way to Caranglaan, Nueva Ecija. Upon her insistence, they dropped by at Resurreccion, Umingan, Pangasinan to collect the debt of Leonida 'Nida' dela Peña amounting to P87,000.00. Before they proceeded to Leonida's house they sought the assistance of Barangay captain Henry Salimbay who previously summoned Leonida before his office to settle her indebtedness.

"Josie Santos and Captain Salimbay entered the house of Leonida while her companions were left in the parked car. When they entered the house, she noticed the presence of five (5) alleged CIS members, one of whom was Rocky Alberto talking to Leonida. She informed Leonida that she was collecting her indebtedness to which the latter replied, 'I already paid my indebtedness on you. Vulva of your mother. I will have a warrant against you'. She also replied, 'You did not pay even a cent'. Thereafter, an altercation ensued between them. The barangay captain left them arguing. While they were altercating, Manny Baltazar arrived and pulled her to the parked car. When they were leaving, Leonida and the five (5) men also left on board the passenger jeepney.

"On their way to Nueva Ecija, they dropped by at Captain Salimbay's house informing the latter's wife that they were not able to collect Leonida's debt. The passenger jeepney overtook them in front of Salimbay's house. While they were cruising towards the national highway, they chanced upon Leonida's father-in-law, Leoncio. They offered him a ride and dropped him at the highway going to Balungao. Along the highway, they passed upon a tuba vendor and they drank. After drinking, they decided to cancel their trip to Nueva Ecija and returned to Baguio City.

"In the highway between Urdaneta and Binalonan, one of the CIS companions (Rocky Alberto) of Leonida flagged them down. She alighted and talked to Rocky Alberto who informed her that Leonida was willing to deliver fifty (50) cavans of palay in payment of her obligation. They returned to Resurreccion but Leonida's husband refused to give the palay. Unable to get the palay, they proceeded to Baguio City via Kennon Road. At Twin Peaks along Kennon Road, Rocky Alberto flagged them down again. Rocky asked why they did not have the palay to which she replied that Leonida's husband refused to give. Rocky suggested that they proceed to his house in Baguio City to settle the problem, but she insisted that they should instead proceed to the police. Rocky agreed. While she and Rocky were talking, Leonida was eating inside the canteen at Twin Peaks.

"From Twin Peaks, they proceeded to the Central Police Station of Baguio City to file an estafa case against Leonida but they were referred to a sub-station in Naguillan Road. They were not able to settle their differences nor filed a complaint for estafa because Nida and the five (5) alleged CIS men hurriedly left the police sub-station.

"She denied all the criminal imputations made by Leonida against her. The private complainant visited her in jail and made a proposal for her to pay the former P500,000.00 as a settlement. (TSN pp. 3-12; December 7, 1998; pp. 3-13; February 22, 1999; p. 11 April 12, 1999)."[3]

The defense failed to convince the court a quo; on 09 July 1999, the court convicted the accused on the ground

that the deprivation of private complainant Leonida de la Peña of her liberty, regardless of its purpose and although lasting for less than twenty-four hours, was sufficient to support the charge of kidnapping. Finding then Josephine Santos and Manny Baltazar guilty beyond reasonable doubt of the crime of kidnapping, the trial court imposed the extreme penalty of death –

"WHEREFORE, as mandated by law, and having found the accused Josephine Santos @ 'Josie' of Irisan, Baguio City and the accused Manny Baltazar @ 'Candro' of 197 Marcos Highway, Baguio City GUILTY beyond reasonable doubt of the crime of kidnapping Leonida de la Peña, a female, on December 10, 1996, attended with a host of aggravating circumstances with none to mitigate as above noted, the Court hereby sentences them to each suffer the penalty of DEATH, aside from the accessory penalties imposed under Article 40 of the Revised Penal Code.

"Additionally, the subject accused are hereby ordered to indemnify Leonida de la Peña, her heirs, assigns or successors-in-interest for moral damages in the sum of P30,000.00 and to pay the costs."[4]

Hence, the automatic appeal, and central to it is the staunch denial made by appellants of any responsibility for the alleged kidnapping incident.

While appellants admitted having gone to the house of Leonida on 10 December 1996, they, however, strongly denied having abducted her. It was true, according to them, that they did chance upon the CIS agents two times on their way to Baguio - the first at a point between Urdaneta and Binalonan and the second time at the Twin Peaks by the Kennon Road – but that these encounters were "purely accidental."

The trial court had well-founded reasons to conclude that the so-called "encounters" between the CIS agents and Josephine Santos and company were indeed far from being "purely accidental." The time of arrival of the two groups at the residence of Leonida de la Peña on the early morning of 10 December 1996 was only a matter of minutes of each other. The CIS agents evidently knew and, in fact, inquired about Leonida's existing account with Josephine Santos. At least twice later on the same day, the CIS agents and the group of Josephine Santos met at stopovers on the way to Baguio City. Appellant Josephine Santos even said that, at a point between Urdaneta City and Binalonan, they were flagged down by the CIS agents in order to tell her that Leonida de la Peña had finally consented to allow Josephine to get the palay in payment of Leonida's debt.

But that is just about all. Nothing else can be gathered to support the charge of kidnapping.

That there was an existing debt, and that the same remained unpaid as of 10 December 1996, would seem certain. Leonida de la Peña herself acknowledged that no less than Henry Salimbay, the barangay captain, accompanied appellants to her residence for the purpose of collecting payment. The complainant claimed that appellants had dragged and forced her to board the passenger jeepney but, strangely enough, the incident had failed to attract the attention of neighbors, among whom was a kagawad, who could have somehow lent a helping hand to the hapless hostage. The group was then said to have made a stopover at the house of barangay captain Salimbay and later at the police station at the Baguio City Hall and subsequently at a police station along Naguillan. It was rather unusual for would-be kidnappers to request the intervention of the local barangay captain, and then, with their hostage in tow, to brazenly stop at a police station not just once but twice; the first at the police station at the Baguio City Hall and the second at a police station by the Naguillan Road. The complainant was neither bound nor gagged and the jeepney where she allegedly was being held hostage had been parked just meters away from the police station.

The testimony given by Baltazar and Santos would seem to be more plausible than what Leonida asseverated. Josephine Santos and her group, with the assistance of CIS agents, brought complainant to Baguio City in order to surrender her to the custody of Baguio City authorities where Josephine Santos thought she could rightly seek

redress. She was advised, however, that it was in the province of Pangasinan, not Baguio City, where a case could be lodged. According to Manny Baltazar -

"Q.

Where in Baguio did you proceed?

"A.

At the police department of the city hall.

"Q.

Do you know the reason why you went to the police station of Baguio?

"A.

Josie said that it is better to file an estafa case against Nida.

"Q.

Did she actually go to the police station against Nida?

"A.

I accompanied Nida at precinct 7, sir.

"Q.

Is that the police station near the city hall?

"A.

Yes, sir.

"Q.

What happened?

"A.

When she went to precinct 7 the officer said that the case is in the jurisdiction of station 1.

"Q.

Where is this station 1?

"A.

Naguillan Road, sir.

"Q.

What did you do when they told [you] that it was station 1 of Baguio police which has jurisdiction over the case of Josie?

"A.

We went to station 1, sir.

"COURT:

"Q.

Is this station 1 located beside the cemetery?

"A.

It is far, sir.

"Q.

How far, if you know?

"A.

About 200 meters, sir.

"x x x x x x x x

"Q.

What happened then at police station no. 1?

"A.

I parked my car in front of the station 1 and I accompanied Josie to the station, sir.

"Q.

What happened when you were inside the station with Josie?

"A.

When we went inside station 1 a companion of Nida who has an amputated hand told us that this is the place where you can file your complaint and I will leave you.

"ATTY. GUILLERMO:

"Q.

Up to now, do you know the name of this man with an amputated arm who told you that [he] will leave you?

"A.

What I know, sir, is Rocky.

"Q.

Do you know this Rocky Alberto?

"A.

Yes, sir.

"Q.

Is he one of the men who rode in that jeepney with Nida according to you?

"A.

Yes, sir.

"Q.

How about Nida de la Peña, did you see her while you were in the police station?

"A.

She was inside the jeep, sir.

"X X X X X X X X

"Q.

What happened when Rocky Alberto left you at precinct no. 1 of the Baguio police with Josie Santos?

"A.

I talked to the police that Josie will be going to file a case.

"Q.

And what happened after that?

"A.

When Josie was about to file a case, they were talking to each other and they found out that the money which was given to Nida was received at Resurreccion and therefore the station has no jurisdiction.

"Q.

What happened after that?

"A.

When the station did not accept the complaint, I advised her that we must have to go home."[5]

Similarly, Josephine Santos declared thusly:

"A.

After that he told me that we will just proceed to my house in Baguio and we would talk the matter over.

"Q.

What did you do when you were told that you were going to Baguio?

"A.

I questioned him why in my house why not at the police station so that things would be legal because my claim

consist of her account and I do not know about your claim, anyway she was with you.

"x x x x x x x x

"ATTY. GUILLERMO

"Q.

What happened next after that?

"A.

We went to the Baguio police station to wait for them.

"Q.

Were you able to reach Baguio City?

"A.

Yes, sir.

"Q.

You said you were supposed to go to the police station were you able to reach the police station?

"A.

Yes, sir.

"Q.

Where in Baguio is that police station?

"A.

We first went to the main police headquarters but the main office advised us to report to sub-station I which had jurisdiction.

"Q.

Where was this police station?

"A.

Naguillan Road, sir.

"COURT

"Q.

Is that near the cemetery?

"A.

Yes, sir.

"ATTY. GUILLERMO

"Q.

When you were told to go to the police sub-station, did you go?

"A.

Yes, sir.

"Q.

Who were your companions?

"A.

Manny, sir."[6]

Rocky Alberto, in his own sworn statement before the Umingan authorities a day after the incident, corroborated the version of appellants -

"Q.

Ano pa ang sumunod na pangyayari, noong hindi pumayag na pumirma si De la Peña?

"A.

Kami po ay nagtuloy sa Baguio City at tumuloy kami sa Precinct I ng PNP sa Naguillan Road, at noong huminto ang sasakyan nina Josie ay bumaba siya (Josie) at si Manny Baltazar at umalis na ang sasakyan nina Josie at pumasok sina Manny at Josie sa loob ng prisinto kung kaya sumunod ako sa loob at doon ay nalaman ko na gustong mag-file ng estafa case laban kay Leonida de la Peña at doon ko pa lang nalaman na walang kasong nakafile at wala ring warrant of arrest laban kay Leonida de la Peña. At dahil ayaw naman pumayag ang mga pulis doon na gawin ang gusto nina Josie Santos ay lumabas na kaming tatlo nina Josie, at doon ay kinausap ko sina Josie Santos na ako ay pupunta sa aming opisina at pagkatapos ay babalik ako at iuuwi ko si De la Peña dahil wala naman pala siyang kaso, kung kaya umalis na ako at iniwan ko si Leonida de la Peña sa aming sasakyan."[7]

On the witness stand, complainant herself identified Rocky Alberto as being one of the cohorts in her abduction; yet, she categorically denied that Alberto had kidnapped her. She testified:

"Q.

Did you also tell the barangay captain that Rocky Alberto was one of the CIS people who helped kidnap you?

"A.

I just told him that he is the one who accompanied me home, sir.

"Q.

You did not answer my question. My question was did you tell the barangay captain that Rocky Alberto your companion was one of those who kidnapped you earlier on December 10, 1996, please answer the question.

"A.

I did not tell that anymore, sir.

"x x x x x x x x

"COURT

"Q.

You did not tell the barangay captain that Rocky Alberto was one of those who kidnapped you because as a matter of fact Rocky Alberto did not kidnap you?

"A.

I was not able to tell that, sir.

"Q.

Answer the question. You did not tell the barangay captain that your companion Rocky Alberto was one of those who earlier kidnapped you because in point of fact you were never kidnapped by Rocky Alberto - that is the question, do you understand?

"A.

That is true, sir.

"Q.

So it is clear that Rocky Alberto never kidnapped you?

"A.

No, sir."^[8]

The circumstances that have surfaced instead warrant a conviction for grave coercion.^[9] Grave coercion is committed when a person prevents another from doing something not prohibited by law or compelling him to do something against his will, whether it be right or wrong, and without any authority of law, by means of violence, threats or intimidation. Its elements are - First, that the offender has prevented another from doing something not prohibited by law, or that he has compelled him to do something against his will, be it right or wrong; second, that the prevention or compulsion is effected by violence, either by material force or such display of force as would produce intimidation and control over the will of the offended party; and, third, that the offender who has restrained the will and liberty of another did so without any right or authority of law. Where there is a variance between the offense charged in the complaint or information and that proved and the offense charged necessarily includes the lesser offense established in evidence, the accused can be convicted of the offense proved.^[10] Grave coercion carries the penalty of prision correccional and a fine not exceeding P6,000.00. There being no aggravating or mitigating circumstance, the penalty shall be imposed in its medium term. Applying the Indeterminate Sentence Law the minimum that can be imposed is anywhere from one (1) month and one (1) day to six (6) months of arresto mayor, as minimum, and from two (2) years, four (4) months and one (1) day to four (4) years and two (2) months of prision correccional, as maximum.

WHEREFORE, the judgment of conviction under review is MODIFIED. Appellants Josephine Santos and Manny Baltazar are ACQUITTED of the crime of Kidnapping; instead, said appellants are found guilty beyond reasonable doubt of the crime of grave coercion, and sentenced to suffer the indeterminate penalty of from six (6) months of arresto mayor, as minimum, to three (3) years and six (6) months of prision correccional medium, as maximum, and to pay a fine of P3,000.00. Costs de oficio.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Kapunan, Mendoza, Panganiban, Quisumbing, Buena, Ynares-Santiago, De Leon, Jr., Sandoval-Gutierrez, and Carpio, JJ., concur.

[1] Records show that the agency was alternately known as Criminal Investigation Service (CIS) and Criminal

Investigation Group (CIG), Records, p. 151.

[2] Rollo, p. 10.

[3] Rollo, pp. 105-109.

[4] Rollo, p. 66.

[5] TSN, 14 July 1998, pp. 7-9.

[6] TSN, Josephine Santos, 22 February 1999, pp. 12-13.

[7] See “Sinumpaang Salaysay” of Rocky Alberto before the Umingan Police executed on 11 December 1996, Records, p. 14.

[8] TSN, Leonida de la Peña, 04 November 1997, pp. 4-5.

[9] Article 286. Grave coercions. – The penalty of prision correccional and a fine not exceeding Six thousand pesos shall be imposed upon any person who, without any authority of law, shall, by means of violence, threats, or intimidation, prevent another from doing something not prohibited by law, or compel him to do something against his will, whether it be right or wrong.

If the coercion be committed in violation of the exercise of the right of suffrage, or for the purpose of compelling another to perform any religious act, or to prevent him from exercising such right or from so doing such act, the penalty next higher in degree shall be imposed. (As amended by RA No. 7890, approved Feb. 20, 1995.)

[10] Section 4, Rule 120, Rules of Court –

Judgment in case of variance between allegation and proof. When there is variance between the offense charged in the complaint or information, and that proved or established by the evidence, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved included in that which is charged, or of the offense charged included in that which is proved.

Section 5, Rule 120 of the Rules of Court provides –

When an offense includes or is included in another. An offense charged necessarily includes that which is proved, when some of the essential elements or ingredients of the former, as this is alleged in the complaint or information, constitute the latter. And an offense charged is necessarily included in the offense proved, when the essential ingredients of the former constitute or form a part of those constituting the latter.

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