

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ALMA BISDA Y GAUPO AND GENEROSA “JENNY ROSE” BASILAN Y PAYAN, APPELLANTS.*G.R. No. 140895. July 17, 2003*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-140895/>**PER CURIAM:**

Before this Court on automatic review is the Decision[1] of the Regional Trial Court (RTC) of Marikina City, Branch 272, convicting appellants Alma Bisda and Generosa "Jenny Rose" Basilan, of kidnapping for ransom; sentencing each of them to the extreme penalty of death by lethal injection, and ordering them to indemnify the parents of the victim Angela Michelle Soriano the amount of P100,000 as moral damages, and to pay the costs of the suit.

The Case

In an Amended Information docketed as Criminal Case No. 98-2647-MK, the appellants were charged with the felony of kidnapping for ransom committed as follows:

That on or about the 3rd of September 1998, in the City of Marikina, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping one another, did there and then willfully, unlawfully, feloniously and knowingly kidnap, detain and deprive ANGELA MICHELLE SORIANO y SAN JUAN of her liberty for six (6) days for the purpose of extorting ransom from her/or her family.

Contrary to law.[2]

When arraigned, the appellants, assisted by counsel, entered separate pleas of not guilty.[3]

The Evidence for the Prosecution[4]

William Soriano, a training consultant by profession, and his wife Marymae Soriano, had two children: Kathleen Denise and Angela Michelle. They rented a house at No. 5 Col. Divino St., Concepcion, Marikina. Their landlady who lived nearby had a telephone with number 942-49-18.[5] During the school year 1997-1998, then five-year-old Angela was in Prep at the Mother of Divine Providence School in Marikina Heights, Marikina City. The couple employed Lea and Wendy Salingatog as the yayas of their children. Angela met appellant Jenny Rose Basilan when the latter visited her niece Wendy in the Soriano residence. Jenny Rose was, thus, no stranger to Angela.

About 11:00 a.m. on September 3, 1998, Angela's classes had just ended and she was on her way to her school bus which was parked outside the school campus near the exit gate. She was in her school uniform and wore black shoes. Unknown to Angela, appellants Alma and Jenny Rose were outside of the school gate waiting for her. When they saw Angela, Alma and Jenny Rose proceeded to the gate and showed a visitor's gate pass to the security guard. They approached the young girl, and told her that her parents were waiting for her at the Jollibee Restaurant. Angela initially refused to go with the two women, but because Alma held on to her hand so tightly and poked a knife at her, Angela had no choice but to go with them. They rode a tricycle and went to the Jollibee

Restaurant where Jenny Rose ordered spaghetti for Angela. When Angela did not see her parents, she wondered why she went with Jenny Rose and Alma in the first place. With Angela in tow, Alma and Jenny Rose boarded a white taxi and went to a "dirty house" where they changed Angela's clothes. The girl was made to wear blouse and shorts, yellow t-shirt and a pair of panties.[6]Alma and Jenny Rose took her earrings. They fed her with the spaghetti they earlier bought at the restaurant. Alma then left, leaving Angela and Jenny Rose in the house.

Jenny Rose sent Angela to sleep, and after a while, Alma returned. When Angela woke up, Alma and Jenny Rose served her merienda and allowed her to watch television. Henceforth, Angela was kept in the house. At one time, Alma and Jenny Rose tied up Angela's hands and feet, and placed scotch tape on her mouth. Angela was sometimes left alone in the house but the door was kept locked. To pass the time, Angela watched television and made drawings. Jenny Rose and Alma did not fail to feed and bathe Angela. Angela did not call her parents through the telephone number of their landlady.

In the meantime, when William arrived home shortly before noon on that day, Lea and Wendy told him that Angela had not yet arrived home from school. He rushed to the school to fetch Angela, but was informed by the school security guard that his daughter had already been picked up by two women, one of whom was registered in the visitor's slip as Aileen Corpuz. Because he did not know anyone by that name, William immediately proceeded to the registrar's office to verify the information, only to find out that "Aileen Corpuz" had earlier inquired at the said office about the possibility of transferring Angela to another school. The school staff panicked when William demanded to know how unknown persons were able to get his daughter. He then started calling his friends and relatives to help him locate Angela. He also sought the help of Rizza Hontiveros, a TV personality who promised to relay his plea to the Presidential Anti-Organized Crime Task Force (PAOCTF). The school staff also reported the incident to the Marikina Police Force which dispatched a team of investigators to the Soriano residence.[7]

When apprised of the incident, the PAOCTF organized a team headed by then Chief Inspector Ricardo Dandan with SPO4 Tito Tuanggang, SPO1 Charles Larroza and civilian agent George Torrente, as members, to conduct surveillance operations and to recover the victim and arrest the culprits. The team proceeded to the Soriano residence and to Angela's school to conduct an initial investigation.

At about 6:00 a.m. on September 4, 1998, William's landlady went to his apartment to tell him that a lady had called up earlier and left a message for him: "Pakisabi na lang kay Mr. Soriano na kakausapin ko siya bukas ng umaga." When the landlady asked who the caller was, the voice replied, "Hindi na importante iyon." [8]William thereafter convinced his landlady to have her telephone set transferred to his residence to facilitate communication with his daughter's abductors.[9]

Shortly before midnight that same day, George arrived at the Soriano residence and asked William if the kidnapper had already made contact. William responded that a woman had earlier called, through his landlady. George then instructed William to prolong the conversation should the kidnapper call again, to enable the agents to establish the possible location of the caller.[10]

On September 5, 1998 at around 9:25 p.m., William received a call from an unidentified woman who told him, "Kung gusto mo pang makita yong anak mo, maghanda ka ng five million pesos." He replied, "Saan naman ako kukuha ng five million? Alam mo naman na nakatira lang ako sa apartment." The caller said, "Hindi ko masasagotyan. Tatanungin ko na lang sa aking mga boss." William informed George of his conversation with the caller. George relayed the information by means of a hand-held radio to the other PAOCTF operatives standing by.[11]

On September 7, 1998, at about 11:25 a.m., Marymae received a telephone call from a woman demanding for

ransom money. The caller called two more times, at 7:00 p.m. and at 9:26 p.m. Marymae pleaded with the caller to reduce the ransom money to P25,000, or if that was not possible, to an amount not exceeding P50,000. The caller said, "Hindi ko masasagot iyan. Dadaihin na lang namin ang bata sa boss namin." Marymae relayed the conversation to William, their other daughter Kathleen and to George.[12]

At about noon that day, PAOCTF Chief of Operations Superintendent Michael Ray Aquino received a call from an anonymous source informing him that a woman who had talked about a ransom and had acted in a suspicious manner was spotted at the MSC Freight Service office located at No. 1303 Paz Street, Paco, Manila. Acting on the information, Ricardo, Charles, Tito and other PAOCTF operatives swooped down on the place and saw a woman, who turned out to be Alma Bisda, emerging from a small house at No. 1258 Paz Street, some fifty meters or so away from the said office. She had just bought food from an adjacent store at No. 1246 Paz Street, Paco, Manila. Surveillance operations were thereafter conducted.

At about 3:40 p.m. on September 8, 1998, George and Charles were at the Soriano residence. Ricardo and Tito were in the periphery of Alma's house, monitoring her whereabouts and movements. Alma again left her house and after locking the door, went to the small store nearby. She lifted the telephone and called someone. The telephone in the Soriano residence rang. When William lifted the receiver, he heard a voice similar to that of the woman who had called him the first time. The caller was asking where the money was. William told her that the P25,000 was ready, to which she replied, "Hindi ko masasagot iyan, dadalhin na lang namin ang bata sa aking boss." William told the caller that he was willing to give P50,000 but pleaded that he be given ample time to produce the money. The woman reiterated: "Hindi ko masasagot iyan." [13]

Ricardo and Tito heard the sound of a car horn blowing while Alma was using the telephone. Tito called up Charles and inquired whether he (Charles) heard the same sound while William was talking to the caller. After William hung up the telephone, he told George that he could hear the horn of a car blowing in the background. George then called up Ricardo by phone and relayed the information. When George inquired if Ricardo heard the sound of the horn of a car while Alma was talking over the telephone, Ricardo replied in the affirmative. The PAOCTF operatives concluded that Alma was the kidnapper.

After making the call, Alma hung up the telephone and returned to her house. The PAOCTF operatives followed. When Alma unlocked the door to the house, the operatives accosted her. She tried to escape, to no avail. Tito heard the cry of a child coming from inside the house, pleading for help: "Tita ilabas mo ako!" [14] He rushed to the house and saw the victim Angela. He then carried her outside to safety. The agents searched the house for evidence and found a pair of black shoes, a pair of panties, a yellow shirt, a set of blouse and shorts with red, yellow and white stripes. The evidence was placed in a plastic bag. [15] The victim and the suspects were thereafter brought to the PAOCTF office for proper documentation.

When informed that his daughter had already been rescued, William rushed to the PAOCTF headquarters where he and Angela were reunited. Angela identified Alma as her kidnapper. When William asked Alma why she kidnapped Angela and what she would do with the one-million-peso ransom she was demanding, she replied: "Kuya, wag kang maghusga, pareho lang tayong biktima." When William asked Alma: "Biktima, saan?" Alma replied: "Ang anak ko, kinidnap din nila." [16]

Chief Inspector Dandan turned over to Evidence Custodian P02 Joseph Bagsao, the pieces of evidence contained in a blue Shoe Mart (SM), plastic bag which the operatives found in Alma's house: a pair of black shoes, a pair of panties, a yellow shirt, a set of white blouse and shorts with red, yellow and white stripes, all of which were sized to fit a child of 4 to 7 years of age. [17]

On October 19, 1998, an Information for kidnapping for ransom was filed against Alma and Jane Doe.

On October 26, 1998, at around 11:00 a.m., Jenny Rose arrived at the PAOCTF Headquarters in Camp Crame, and proceeded to P02 Joseph Bagsao's office where she announced that she was one of Alma's cohorts. P02 Bagsao took Jenny Rose's fingerprints and entered the data in a fingerprint index card.[18] Jenny Rose was thereafter placed in a police line-up. Angela, who arrived at the PAOCTF office with her father, identified Jenny Rose as one of her kidnappers. Police Chief Inspector Atty. Aurelio C. Trampe, Jr., the Legal and Investigation Division Chief of the PAOCTF, later referred Jenny Rose to the Office of the City Prosecutor of Marikina City, for preliminary investigation.[19]

The prosecutor later amended the Information by deleting the name Jane Doe and substituting the name Jenny Rose Basilan y Payan as the second accused.

Alma's Evidence

Alma denied having kidnapped Angela for ransom. She testified that she was married, and a resident of Block 38, Lot 38, G. Maliputo Street, Phase II, Area 4, Kaunlaran Village, Navotas, Metro Manila. She was a businesswoman who ran a local employment agency for household help. She was also engaged in the business of buying and selling palay grains. Her local employment agency was located in Navotas. She had another office at No. 1258 Paz Street, Paco, Manila, which served as a bodega for items she sent to the province, as well as items she purchased. She had an adopted daughter named Mary Rose, who, in September 1998, studied at Harris School in Antipolo. She had employed Wendy Salingatog for a time as the *yaya* of her adopted daughter. Alma was then residing in V. Luna Street, Quezon City.

Alma employed Jenny Rose as secretary in her employment agency. In payment for services rendered, Jenny Rose was sent to school at the Lyceum of the Philippines to study B.S. Business Administration. She was also given an allowance.

In September 1998, Alma was looking for a school run by nuns that would be willing to accept her adopted daughter in the middle of the school year. Jenny Rose suggested the Divine Providence School in Marikina City. In the morning of September 3, 1998, Jenny Rose brought her to the said school. They proceeded to the administration office where Alma inquired if the school would allow her adopted daughter to enroll. When Jenny Rose and Alma were about to leave, a little girl, who turned out to be Angela, approached them and asked what Jenny Rose was doing in her school. Jenny Rose introduced Angela to Alma as her niece, and informed Alma that she would be bringing Angela with her to her boarding house in España Street.

At that point, Alma asked Jenny Rose and Angela if they wanted to eat. When they agreed, the three of them proceeded to the Jollibee Restaurant near the Meralco office in Marikina City. After eating, Alma bade them goodbye and was about to leave for her office when Jenny Rose asked if she and Angela could come along with her to Cubao. She acceded to the request, and they rode a Tamaraw FX taxi. Because Angela was getting sleepy, Alma offered to bring them to Jenny's boarding house in España, and dropped them off there. Alma thereafter proceeded to her office at 1258 Paz St., Paco, Manila, where she had been holding office since January 1997, and arrived thereat at about 2:00 p.m.

At or about 8:00 p.m. of the same day, Alma passed by Jenny Rose's boarding house to give her instructions on what to do the following day. She saw Angela crying profusely. She told Jenny Rose to bring Angela home, but Jenny Rose told her that Angela's parents would be coming to fetch her. Thinking that Angela was probably bored, Alma suggested that they stay in her office in Paco so that they could watch television while waiting for Angela's parents. Jenny Rose agreed. They arrived at the said office at around 8:40 p.m. Alma left at around 10:00 p.m. and went home to her rented house in Palmera Homes, Antipolo, where she stayed until September 6, 1998.

On September 7, 1998, at around 12:00 noon, Alma arrived at her office in Paco, Manila, and found that Jenny Rose and Angela were still there. Jenny Rose assured Alma that Angela would be fetched by her parents. At around 4:00 p.m., Alma instructed Jenny Rose to go to the province to collect some debts, Jenny Rose left for the province on the same day. Alma stayed in the office because she was having her menstrual period at the time and was not feeling well. She took care of Angela while Jenny Rose was away.

The next day, September 8, 1998, Alma was still in her office with Angela. At about 3:00 p.m., while she was watching television with Angela, someone knocked at the door. When she opened it, two male persons entered. One of them was Inspector Ricardo Dandan who showed her a photograph of Angela and asked if she knew the child. Alma answered in the affirmative. Ricardo then asked her, "Don't you know that this is kidnapping?" to which Alma replied, "I do not know." She also told Dandan that she did not know what was happening to her. Suddenly, Alma was handcuffed. Angela cried and asked Alma: "What are they doing to you, Tita?" She was brought to Camp Crame where she was interrogated and detained. Alma did not make any telephone calls that day. William, Marymae and Angela arrived at Alma's detention cell. When Angela saw her, the girl tried to run to Alma but William held on to his daughter. William asked Alma why she took Angela, Alma replied that it was Jenny Rose who brought the girl along with them. She told William that they were both victims.

Sometime on October 26, 1998, Jenny Rose visited Alma to ask for forgiveness and to assume full responsibility for the incident. Jenny Rose also informed her that she wanted to ask forgiveness from the Sorianos so that she could finish her schooling. It was only then that she realized what Jenny Rose had done to her. Nevertheless, she still believed that Jenny Rose was a good person. She advised her to go home and continue with her studies.

When Angela's sworn statement was shown to her, Alma noticed that Angela did not mention Jenny Rose as one of the two persons who had kidnapped her. Alma executed a handwritten statement denying the truth of the contents of Angela's affidavit.[20]

Jenny Rose's Evidence

Jenny Rose did not testify in her defense. She presented Atty. Aurelio Trampe, Jr. as her witness who testified[21] that he was the Legal and Investigation Division Chief of the PAOCTF. On October 26, 1998, he interviewed Jenny Rose when the latter surrendered to the task force. Jenny Rose insisted that she wanted to help Alma and get all the blame for the kidnapping. She wanted to admit her participation in the crime, and volunteered the information that she and Alma kidnapped Angela. Atty. Trampe, Jr. wrote a letter[22] to the Department of Justice requesting for her inclusion in the ongoing preliminary investigation. He believed that it would be more appropriate for the prosecutor handling the case to investigate and determine whether Jenny Rose was the Jane Doe referred to in the complaint. Atty. Trampe, Jr. admitted, however, that aside from the voluntary surrender of Jenny Rose, he did not have any other evidence to include her as one of the suspects in the case. Further, he did not provide a lawyer for Jenny Rose because he did not intend to conduct an exhaustive interrogation, and he knew that even if she admitted her participation, the statement would not be admitted as evidence.[23]

Jenny Rose adduced in evidence the letter of Atty. Trampe, Jr. to prove that she voluntarily surrendered and that there was lack of evidence against her.

On September 16, 1999, the trial court rendered judgment, the decretal portion of which reads:

WHEREFORE, foregoing premises considered, the accused ALMA BISDA y GAUPO and GENEROSA BASILAN y PAYAN are hereby found GUILTY beyond reasonable doubt of the crime of Kidnapping for Ransom penalized under Article 267 of the Revised Penal Code, as amended by RA 7659 and is sentenced to suffer the extreme penalty of DOUBLE DEATH by lethal injection, the two accused having conspired in the commission thereof. They are further ordered to pay solidarily the parents of the victim the amount of

P100,000.00 as moral damages, and costs of the suit.

SO ORDERED.[24]

The assigned errors ascribed by the appellants to the trial court may be synthesized, thus: (a) the trial court erred in convicting the appellants of kidnapping; (b) the trial court erred in sentencing the appellants to double death.[25] The Court will delve into and resolve the issues simultaneously.

The prosecution adduced proof beyond reasonable doubt that the appellants kidnapped the victim.

The appellants aver that the prosecution failed to muster proof, beyond reasonable doubt that, they kidnapped and illegally detained Angela. Angela in fact voluntarily went with them, and she was free to roam around the house, and to call her parents through the telephone of their landlady which Angela knew by heart.

There is no proof beyond reasonable doubt that the appellants conspired to kidnap Angela. Appellant Bisda avers that she is guilty only of slight illegal detention under Article 268 of the Revised Penal Code because (a) Angela stayed in her office for only three days; and (b) the circumstance of a female offender and a female offended party is not one of those included in the definition of kidnapping or serious illegal detention under Article 267 of the RPC.

The trial court's reliance on Angela's testimony is misplaced because the records do not show that Angela had the capacity to distinguish right from wrong when she testified in open court. The appellants point out that she was merely six years old at the time. Although Angela took an oath before she testified, the trial judge failed to ask any questions to determine whether or not she could distinguish right from wrong, and comprehend the obligation of telling the truth before the court. Hence, one of the standards in determining the credibility of a child witness was not followed. There is, thus, a veritable doubt that Angela told the truth when she testified.

Moreover, Angela's testimony is, besides being inconsistent on material points, contrary to ordinary human experience. Angela did not shout or cry when she was forced to leave the school premises and brought to the Jollibee Restaurant. Angela could have easily sought help from the security guard at the exit gate of the school and from the customers in the restaurant, or even from the tricycle and taxi drivers; but Angela did not. Angela even admitted that she voluntarily went with the appellants. She did not cry while detained in the office of appellant Bisda, and even admitted that it was only that time when she was rescued that she cried. The conduct of Angela, the appellants insist, is contrary to ordinary human experience, knowledge and observation. By her own admission in her sworn statement[26] to the PAOCTF agents, Angela was assisted by her parents while she was giving the said statement. This raised doubts as to the veracity of her testimony.

The contentions of the appellants are bereft of merit.

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 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. (As amended by RA No. 7659).[27]

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 or detained is a minor, female, or a public officer.[28] If the victim of kidnapping and serious illegal detention 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.[29] The word "female" in paragraph 1(4) of Article 267 of the Revised Penal Code refers to the gender of the victim and not of the offender.

The essence of the crime of kidnapping is the actual deprivation of the victim's liberty under any of the above-mentioned circumstances, coupled with indubitable proof of intent of the accused to effect the same.[30] There must be a purposeful or knowing action by the accused to forcibly restrain the victim because taking coupled with intent completes the offense.[31] Kidnapping which involves the detention of another is by its nature a continuing crime.[32]

The victim's lack of consent is also a fundamental element of kidnapping. The involuntariness of the seizure and detention is the very essence of the crime.[33] The general rule is that the prosecution is burdened to prove lack of consent on the part of the victim. However, where the victim is a minor especially if she is only five years old, lack of consent is presumed. She is incompetent to assent to seizure and illegal detention.[34] In this case, Angela was merely five years old when she was kidnapped; thus incapable of giving consent. The consent of such child could place the appellants in no better position than if the act had been done against her will. The appellants cannot rely on Angela's initial willingness to go along with them to the restaurant. As Judge Shepherd stated in *State v. Chisenhall*: [35]

It is clear that the consent of the child, obtained by means of persuasion, is no defense, since the result of such persuasion is just as great an evil as if it had been accomplished by other means.

A kidnapper should not be rewarded with an acquittal simply because she is ingenious enough to conceal her true motive from her victim until she is able to transport the latter to another place.

Although Angela was free to roam around in the "dirty house," to draw and to watch television during the entire period of her detention, and was regularly fed and bathed, the appellants are nevertheless guilty of kidnapping and illegally detaining the five-year-old child. As Judge McGill of the United States Court of Appeals said in *United States v. McCabe* [36], "to accept a child's desire for food, comfort as the type of will or consent contemplated in the context of kidnapping would render the concept meaningless."

In *People v. Baldogo*,^[37] this Court held that illegal serious detention under Article 267 of the Revised Penal Code as amended, includes not only the imprisonment of a person but also the deprivation of her liberty in whatever form and for whatever length of time. It includes a situation where the victim cannot go out of the place of confinement or detention or is restricted or impeded in his liberty to move.^[38] In this case, the door to the office of appellant Bisda was locked while Angela was detained therein. Even if she wanted to escape and go home, Angela, at her age, could not do so all by herself. During the period of her confinement, Angela was under the control of the appellants. The helpless child was waiting and hoping that she would be brought home, or that her parents would come and fetch her.

The prosecution adduced proof beyond reasonable doubt that the appellants conspired to kidnap and illegally detain Angela. The appellants' testimonies even buttressed the testimonies of both the victim and the other witnesses for the prosecution.

Article 8 of the Revised Penal Code provides that there is conspiracy when two or more persons agree to commit a felony and decide to commit it.^[39] In *People v. Pagalasan*,^[40] 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.^[41] 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.^[42] 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.^[43] There must be intentional participation in the transaction with a view to the furtherance of the common design and purpose.^[44]

Each conspirator is responsible for everything done by his confederates which follows incidentally in the execution of a common design as one of its probable and natural consequences even though it was not intended as part of the original design.^[45] Responsibility of a conspirator is not confined to the accomplishment of a particular purpose of conspiracy but extends to collateral acts and offenses incident to and growing out of the purpose intended.^[46] 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.^[47] Conspirators are necessarily liable for the acts of another conspirator unless such act differs radically and substantively from that which they intended to commit.^[48] As Judge Learned Hand put it in *United States v. Andolscheck*,^[49] "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."

The appellants inveigled Angela into going with them by telling her that her parents were waiting for her at the Jollibee Restaurant. Appellant Bisda poked a knife at Angela and held her hands so tightly that the helpless child had no recourse but to come along. The appellants transported Angela on board a taxi and brought her to Cubao, and then to appellant Bisda's office at No. 1258 Paz St., Paco, Manila. The appellants tied her hands, covered her mouth with scotch tape, and detained her from September 3, 1998 until September 8, 1998, when she was providentially rescued by the operatives of the PAOCTF.

The collective, concerted and synchronized acts of the appellants before, during and after the kidnapping and the illegal detention of Angela constitute indubitable proof that the appellants conspired with each other to attain a common objective, i.e., to kidnap Angela and detain her illegally. The appellants are thus principals by direct participation in the kidnapping of Angela and illegally detaining her.

Appellant Basilan cannot escape conviction for the crime charged on her barefaced claim that she merely accompanied appellant Bisda to the latter's office with the victim in tow. The records show that the appellant presented as her sole witness Atty. Aurelio Trampe, Jr., then PAOCTF Legal and Investigation Division Chief, who testified that when she surrendered to him, the appellant admitted that she and appellant Bisda had kidnapped Angela:

ATTY. SALAMERA:

This court would like to be cleared (sic). Did she admit to you the condition of the alleged kidnapping on September 3, 1998?

WITNESS:

She volunteered that statement that she was together with Ms. Alma Besda (sic) kidnap (sic) Angela Michelle Soriano.[50]

The appellants' contention that the prosecution failed to establish that Angela understood the nature of an oath and the need for her to tell the truth must fail.

Section 1, Rule 132 of the Revised Rules of evidence provides that the examination of witnesses shall be under oath or affirmation:[51]

SECTION 1. Examination to be done in open court.-- The examination of witnesses presented in a trial or hearing shall be done in open court, and under oath or affirmation. Unless the witness is incapacitated to speak, or the question calls for a different mode of answer, the answers of the witness shall be given orally. (1a).[52]

An oath is defined as an outward pledge, given by the person taking it that his attestation or promise is made under an immediate sense of his responsibility to God.[53]The object of the rule is to affect the conscience of the witness and thus compel him to speak the truth, and also to lay him open to punishment for perjury in case he willfully falsifies.[54]A witness must be sensible to the obligation of an oath before he can be permitted to testify.[55]It is not, however, essential that he knows how he will be punished if he testify falsely.[56]Under modern statutes, a person is not disqualified as a witness simply because he is unable to tell the nature of the oath administered to a witness.[57]In order that one may be competent as a witness, it is not necessary that he has a definite knowledge of the difference between his duty to tell the truth after being sworn and before, or that he be able to state it, but it is necessary that he be conscious that there is a difference.[58]It cannot be argued that simply because a child witness is not examined on the nature of the oath and the need for her to tell the whole truth, the competency of the witness and the truth of her testimony are impaired. If a party against whom a witness is presented believes that the witness is incompetent or is not aware of his obligation and responsibility to tell the truth and the consequence of him testifying falsely, such party may pray for leave to conduct a voir dire examination on such witness to test his competency.[59]The court may motu proprio conduct the voir dire examination. In *United States v. Buncad*,[60] this Court held that when a child of tender age is presented as a witness, it is the duty of the judge to examine the child to determine his competency. In *Republic v. Court of Appeals*,[61] this Court held that:

[W]hen a witness is produced, it is a right and privilege accorded to the adverse party to object to his examination on the ground of incompetency to testify. If a party knows before trial that a witness is incompetent, objection must be made before trial that a witness is incompetent, objection must be made before he has given any testimony; if the incompetency appears on the trial, it must be interposed as soon as it becomes apparent.[62]

The competency of a person to take the prescribed oath is a question for the trial court to decide.[63]

If a party admits proof to be taken in a case without an oath, after the testimony has been acted upon by the court, and made the basis of a judgment, such party can no longer object to the admissibility of the said testimony.[64]He is estopped from raising the issue in the appellate court. This was the ruling of this Court in *Republic v. Court of Appeals*,[65] thus:

Simply put, any objection to the admissibility of evidence should be made at the time such evidence is offered or as soon thereafter as the objection to its admissibility becomes apparent, otherwise the objection will be considered waived and such evidence will form part of the records of the case as competent and admissible evidence. The failure of petitioner to interpose a timely objection to the presentation of Divinaflor's testimony results in the waiver of any objection to the admissibility thereof and he is therefore barred from raising said issue on appeal.

In this case, Angela was six years old when she testified.[66]She took an oath to "tell the truth, the whole truth and nothing but the truth" before she testified on direct examination. There was nary a whimper of protest or objection on the part of the appellants to Angela's competence as a witness and the prosecution's failure to propound questions to determine whether Angela understood her obligation and responsibility of telling the truth respecting the matter of her testimony before the court. The appellants did not even bother requesting the trial court for leave to conduct a *voir dire* examination of Angela. After the prosecution terminated its direct examination, the appellants thereafter cross-examined Angela extensively and intensively on the matter of her testimony on direct examination. It was only in this Court that the appellants raised the matter for the first time, that there was failure on the part of the prosecution to examine Angela on the nature of her oath, and to ascertain whether she had the capacity to distinguish right from wrong. It is too late in the day for the appellants to raise the issue.

The determination of the competence and capability of a child as a witness rests primarily with the trial judge.[67]The trial court correctly found Angela a competent witness and her testimony entitled to full probative weight. Any child regardless of age, can be a competent witness if she can perceive and perceiving, can make known to others, and that she is capable of relating truthfully facts for which she is examined.[68]In *People v. Mendiola*,[69] this Court found the six-year-old victim competent and her testimony credible. Also in *Dulla v. Court of Appeals*,[70] this Court gave credence to the testimony of a three-year-old victim. It has been the consistent ruling of the Court that the findings of facts of the trial court, its calibration of the testimonies of witnesses and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings are accorded by the appellate courts high respect if not conclusive effect absent clear and convincing evidence that the trial court ignored, misconstrued, or misinterpreted cogent facts and circumstances which if considered warrants a reversal or modification of the outcome of the case.[71] In this case, the Court finds no basis to deviate from the findings and conclusions of the trial court on the competency of Angela, and the probative weight of her testimony.

Appellants must come to grips with case law that 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.[72] In *People vs. Alba*,[73]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. Angela was barely six years old when she testified. Considering her tender years, innocent and guileless, it is incredible that Angela would testify falsely that the appellants took her from the school through threats and detained her in the "dirty house" for five days. In *People v. Dela Cruz*,[74]this Court also ruled that ample margin of error and understanding should be accorded to young witnesses who, much more than adults, would be gripped with tension due to the novelty and the experience in testifying before the trial court.

The credibility of Angela and the verisimilitude of her testimony is not impaired by her failure to shout for help when the appellants took her, or to make any attempt to call her parents or to escape from her captors and to use the telephone to call her parents. At five years old, she could not be expected to act and react to her kidnapping and detention like an adult should. She did not shout and seek help from the school security guards because the appellants told Angela that her parents were waiting for her. Appellant Basilan was the niece of Angela's *yaya*. She then believed that nothing was amiss. It was only when she failed to see her parents that Angela blamed herself for going with the appellants in the first place.

Atty. Laracas:

Now, they told you that your parents were at Jollibee. When you did not see your parents, what did you do?

Witness:

I told myself, why did I go with them.

Atty. Laracas:

So you just told that to yourself?

Witness:

Yes, ma'am.

Atty. Laracas:

So initially, Angela, you are not blaming yourself when you went with Jenny Rose?

Witness:

Yes, ma'am.[75]

The evidence on record shows that appellant Bisda poked a knife at Angela and her hands were held tightly by the appellants as they proceeded to the restaurant from the school. Although the Soriano spouses were by Angela's side when the latter gave her sworn statement[76]in the PAOCTF office, there is no showing on record that the spouses ever influenced their daughter to prevaricate. Significantly, the appellants' counsel did not even cross-examine Angela on her sworn statement.

In this case, appellant Bisda asserts that Angela's testimony contains four inconsistencies on material points; hence, is incredible. First, Angela testified on cross-examination that the appellants approached her but she did not talk to them.[77]In contrast, Angela testified on cross-examination that she saw appellant Basilan, and talked to her.[78]Second, Angela testified on direct examination that she first came to know the identities of the kidnappers when she was brought to the "dirty house." [79]Angela contradicted herself when she testified on cross-examination that when she was brought to the said house, she already knew appellant Basilan.[80] Third, Angela testified on direct examination that she went with the appellants to the Jollibee Restaurant when they held her hands firmly.[81]On cross-examination, Angela testified that the appellants threatened her when they kidnapped her by pointing a knife at her which made her cry.[82]Angela further contradicted herself when she testified on direct examination that the appellants pointed a knife at her "one night." [83] Fourth, Angela said that when she was in the office of appellant Bisda in Paco, Manila, her feet were tied and her mouth was covered with scotch tape.[84]However, on cross-examination, Angela revealed that she was free to roam around and even watched television and made drawings.[85]

Anent the first and second set of inconsistencies adverted to by the appellants, the same pertain only to minor and

peripheral matters and not to the principal occurrence or the elements of the crime charged, and the positive identification of the appellants. Hence, the credibility of Angela, and that of her testimony were not impaired by the said inconsistencies.[86]The inscrutable fact is that the appellants took the victim from the school and detained her at the office of appellant Bisda at No. 1258 Paz St., Paco, Manila, until she was rescued. Whether or not Angela talked with the appellants as she was being brought to the restaurant or that she came to know of the identities of the kidnappers before or when she was brought to the dirty house, are inconsequential. The overwhelming evidence on record is that no other than the appellants kidnapped her from her school and illegally detained her from September 3 to 8, 1998. Indeed, when asked to point and identify her kidnappers, Angela did so spontaneously and positively.[87]

Pros. Junio:

If you see... this Alma Besda (sic), if you will be able to see her again, if you see her again, will you be able to recognize her?

Witness:

Yes, ma'am.

Pros. Junio:

Will you point to her.

(The witness is pointing to a lady, seated at the second from the left at the corner at the last seat.)

Court:

Identify yourself.

(The person pointed to, stood up and identified herself as Alma Besda [sic]).

Pros. Junio:

What about Jenny Rose, will you be able to recognize her?

Witness:

Yes, ma'am.

Pros. Junio:

You point to her Angel.

(The witness is pointing to the first lady seated on the left side)

Court:

Stand up and identify yourself.

The lady stood up and identified herself as Jenny Rose Basilan.[88]

Appellant Basilan did not controvert the evidence of the prosecution that she was the niece of the yaya of the victim, and that the said appellant, at one time, went to the Soriano residence where Angela saw and met her. The victim was, thus, acquainted with appellant Basilan even before the kidnapping.

Angela testified on direct examination, thus:

Atty. Junio:

So when Alma and Jenny Rose told you that Mommy and Daddy were at Jollibee, what did you do?

Witness:

I did not want to go with them but they held me firm.

Pros. Junio:

What part of the body did they hold firmly?

Witness:

My hands.

Pros. Junio:

After Alma and Jenny Rose held your hand firmly, what did, where did you go?

Witness:

To Jollibee.[89]

Angela was not asked by the public prosecutor whether or not the appellants threatened her with any weapon before proceeding to the Jollibee Restaurant. The additional fact was revealed by Angela, ironically, on cross-examination:

Atty. Salamera:

Now, were you threatened on September 3 at around eleven in the morning when both accused allegedly abducted you?

Witness:

Yes, sir.

Atty. Salamera:

There are two accused, who threatened you?

Witness:

They pointed knife against me.

Atty. Salamera:

Who pointed the knife upon your person?

Witness:

Alma, sir.

Atty. Salamera:

Did you cry?

Witness:

Yes, sir.

Atty. Salamera:

Did you also cry inside the Jollibee?

Witness:

No, sir.

Atty. Salamera:

Was Alma still holding a knife at the Jollibee?

Witness:

No, sir.[90]

The prosecutor tried on re-direct to take advantage of Angela's revelation but the appellants' counsel, realizing that he had just committed a faux pas, objected to the questions of the public prosecutor. It turned out that the latter was himself confused because instead of adverting to a knife, as testified to by Angela, he blurted that appellant Bisda used a gun in intimidating the victim. Even Angela must have been bewildered by the repartees of the prosecution and the appellants' counsel such that, instead of answering "one time," to the questions of the prosecutor, she said "one night."

Redirect:

Pros. Junio:

Angel, how many times did Alma and Jenny Rose point a knife at you?

Atty. Salamera:

Objection. Improper at this point in time. First it was not covered.

Pros. Junio:

How many times did Alma point a gun?

Atty. Salamera:

Knife, your Honor.

Pros. Junio:

It was covered on cross.

Court:

Objection denied. Overruled. Witness may answer.

Witness:

One night.[91]

There was, thus, no inconsistency in Angela's testimony on this point.

Angela's hands were tied, and her mouth was covered with scotch tape the day after she was brought to the dirty house. Angela testified on direct examination, thus:

Pros. Junio:

Okay, where did you go?

Witness:

To the dirty house.

Pros. Junio:

Who was with you or who were with you at that time?

Witness:

Alma Besda (sic) and Jenny Rose, ma'am.

Pros. Junio:

Where is this dirty house located?

Witness:

I do not know, ma'am.

Pros. Junio:

Upon arriving at that dirty house, what did you do?

Witness:

They changed my clothes once.

Pros. Junio:

Do you remember the color of the dress?

Witness:

No, ma'am.

Pros. Junio:

After they changed your dress or your clothes, what happened next? What did they do to you?

Witness:

They fed me, ma'am.

Pros. Junio:

After they fed you, what did you do?

Witness:

They send (sic) me to sleep.

Pros. Junio:

When you woke up, what did they do to you?

Witness:

They fed me (pinamiryenda) (sic)

Pros. Junio:

After you ate your "miryenda" (sic) what else did they do to you?

Witness:

They allowed me to watch tv, ma'am.

Pros. Junio:

What about your hands, your mouth, what did they do?

Witness:

They tied my hands.

Pros. Junio;

And your mouth?

Witness:

It was sealed with scotch tape.

Pros. Junio;

And your feet?

Witness:

They were also tied, ma'am.

Pros. Junio:

Who tied your hands?

Witness:

The two of them, ma'am.

Pros. Junio:

Will you mention their names again?

Witness:

Alma Besda (sic) and Jenny Rose.[92]

On cross-examination, Angela testified that on the day she was rescued, she could watch the television, make drawings and roam around the room:

Atty. Larracas:

You did . . . At that time you were allegedly rescued, Jenny Rose was not at the place where you were rescued?

Witness:

She was not there, ma'am.

Atty. Larracas:

All along you were watching tv (sic) at the place where you were taken?

Witness:

Only once, ma'am.

Atty. Larracas:

And when you were not watching tv (sic), what were you doing Angela in that dirty house?

Witness:

I was drawing, ma'am.

Atty. Larracas:

So you watched tv once and the rest of the time you were drawing?

Witness:

Yes, ma'am.

Atty. Larracas:

Of course, you cannot draw if your hands were tied, Angela?

Witness:

Yes, ma'm.

Atty. Larracas:

So your hands were not tied?

Witness:

No, ma'am.

Atty. Larracas:

You can move along freely at that time?

Witness:

Yes, ma'am.

Atty. Larracas:

You can walk?

Witness:

Yes, ma'am.

Atty. Larracas:

You can drink?

Witness:

Yes, ma'am.

Atty. Larracas:

Of course, you cannot walk if your feet were tied and cannot drink if your mouth was sealed?

Witness:

Yes, ma'am.

Atty. Larracas:

When the police arrived, what were you doing?

Witness:

I cried, ma'am.[93]

It is not quite clear whether the counsel for the appellants were asking about Angela's activities during her detention, or during her rescue. Taking into account Angela's answers, it is evident that her hands were tied and her mouth covered with scotch tape the day after she was kidnapped, but that she was free to roam around the room, practice on her drawings and watch television during the rest of the period of her detention.

PROPER PENALTIES

The appellants aver that the prosecution failed to prove that in kidnapping and illegally detaining the victim, they intended to demand ransom from her parents. William Soriano, the victim's father, failed to prove that the appellants or any of them called through the telephone demanding ransom. The collective testimonies of police operatives Tito Tuanggang, Ricardo Dandan and George Torrente were hearsay evidence; hence, barren of probative weight. The trial court likewise failed to take into account the voluntary surrender of appellant Basilan.

The Office of the Solicitor General, for its part, posits the view that the prosecution mustered the requisite quantum of evidence to prove that the appellants and no other demanded ransom from the parents of the victim.

The appellants' contention does not hold water. Admittedly, the prosecution failed to adduce direct evidence that the appellants demanded ransom for the release of the victim. However, the prosecution adduced circumstantial evidence to prove beyond reasonable doubt that the appellants, or at least one of them, demanded ransom from the Soriano spouses for the release of their daughter.

To warrant the imposition of the death penalty for the crime of kidnapping and serious illegal detention for ransom, the prosecution must prove 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 proved by his words and overt acts before, during and after the kidnapping and detention of the victim.[94]Neither actual demand for nor actual payment of ransom is necessary for the crime to be committed.[95]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.[96]It may include benefits not necessarily pecuniary which may accrue to the kidnapper as a condition for the release of the victim.[97]

Circumstantial evidence is sufficient to prove the qualifying circumstance if (a) there is more than one circumstance; (b) the facts from which the inferences are proven; (c) the combination of all the circumstances is such as to produce a conviction beyond a reasonable doubt. The circumstances proved should constitute an unbroken chain which leads to one fair and reasonable conclusion pointing to the accused to the exclusion of others as the one who demanded ransom. The circumstances proved must be consistent with each other, consistent with the hypothesis that the accused is guilty, and that at the same time inconsistent with any other hypothesis except that of guilty.[98]The prosecution must rely on the strength of its evidence and not on the weakness of that

of the appellants.[99]

In this case, the chain of circumstantial evidence adduced by the prosecution proves that no one other than the appellants or one of them called up the spouses Soriano through the telephone and demanded ransom of P5,000,000:

- Appellant Basilan is the niece of Wendy Salingatog, who was for a time the housemaid of appellant Bisda;
- The appellants kidnapped Angela shortly before noon on September 3, 1998, and detained her at No. 1258 Paz Street, Paco, Manila, where appellant Bisda held office;
- The following morning, William was informed by his landlady that a woman had earlier called up over the telephone requesting her to inform William that she (the caller), would call again the next day, September 5, 1998;
- On September 5, 1998, William received a telephone call from a woman demanding a ransom of P5,000,000 for Angela's freedom. When William complained that he did not have the amount, she told William that she cannot be responsible for it and that she would inquire from her bosses. William's testimony reads:

Pros. Junio:

And what did she tell you?

Witness:

She told me KUNG GUSTO MO PANG MAKITA IYONG ANAK MO, MAGHANDA KA NG FIVE MILLION PESOS.

Pros. Junio:

What did you told (sic) her if any?

Witness:

SAAN AKO KUKUHA NG FIVE MILLION PESOS? ALAM MO NAMAN NA NAKATIRA LANG AKO SA APARTMENT.

Pros. Junio:

What did she say?

Witness:

She answered, HINDI KO MASASAGOT YAN.

Pros. Junio:

Did she tell you why she could not respond to you?

Witness:

She continued to say "TATANUNGIN KO NA LANG SA AKING MGA BOSS." [100]

- In the morning of September 7, 1998, Inspector Ricardo Dandan and SPO4 Tito Tuanggang, acting on an anonymous tip, rushed to the vicinity of No. 1303 Paz Street, Paco, Manila, the office of the MSC Freight Service, to conduct surveillance operations. Later in the afternoon, they saw appellant Bisda emerging from a small house about fifty meters from the office of the MSC Freight Service;

- At about 3:40 p.m. on September 8, 1998, appellant Bisda emerged from the house at No. 1258 Paz Street, and went to the small store near the house. Chief Inspector Dandan and Tito Tuanggang were about two meters from the store and saw appellant Bisda enter the same, lift the telephone and talk to someone over the telephone;

- At about the same time, William received a telephone call from a woman demanding where the money was and when William replied that he was ready with P25,000, the woman replied: Hindi ko masasagot iyan, dadalhin na lang namin ang bata sa aking boss." When William intimated that he could raise P50,000 but pleaded for more time to produce the amount, the woman retorted: "Hindi ko masasagot iyan." William's testimony reads:

Pros. Junio:

On September 8, 1998, at about 3:40 in the afternoon, what happened if any?

Witness:

At around 3:40 in the afternoon of September 8, a lady caller called again. I answered the telephone.

Pros. Junio:

Who was this lady caller?

Witness:

I would say, my perception is it was the same lady caller who called the first time I answered the telephone.

Pros. Junio:

And what did she tell you?

Witness:

And she told me where is the money.

Pros. Junio:

And what did you tell her?

Witness:

And I also told her if its okay with you, my twenty-five is ready.

Pros. Junio:

Then what did she say?

Witness:

She said "HINDI KO MASASAGOT IYAN, DADALIN NA LANG NAMIN ANG BATA SA AKING BOSS."

Pros. Junio:

What happened next after that?

Witness:

I would like to plead that I will make it fifty thousand, just give me ample time.

Pros. Junio:

How did she react to your suggestion?

Witness:

"HINDI KO MASASAGOT IYAN." Then she hanged (sic) the phone.[101]

- After making the telephone call, appellant Bisda left the store and returned to the house at No. 1258 Paz Street, Paco, Manila;
- The operatives from the PAOCTF followed appellant Bisda and confronted her before she could enter the house. The operatives then barged into the premises of No. 1258 Paz Street where they saw Angela in the room;
- When William arrived at the PAOCTF office, with Angela that day, he inquired from appellant Bisda why she kidnapped Angela and what she would do with the P5,000,000 ransom she was demanding, and the appellant replied: "Kuya, wag (sic) kang nang maghusga, pareho lang tayong biktima." When William asked Alma: "Biktima, saan?" The appellant replied: "Ang anak ko, kinidnap din nila."

In light of the foregoing facts, there can be no other conclusion than that appellant Bisda demanded a ransom of P5,000,000 from William Soriano; hence, she is GUILTY of kidnapping for ransom. Being a conspirator, appellant Basilan is also guilty of the said crime. The penalty for kidnapping for ransom is death, a single and indivisible penalty. The aggravating circumstance of use of a motor vehicle under Article 14, paragraph 20 of the Revised Penal Code was attendant in the commission of the crime.[102] However, said circumstance, as well as the voluntary surrender of appellant Basilan, are inconsequential in the penalties to be imposed on the said appellants, conformably to Article 63 of the Revised Penal Code.[103]

CIVIL LIABILITIES OF THE APPELLANTS

The trial court awarded P100,000 moral damages to the spouses William and Marymae Soriano, the parents of the victim. The trial court did not award any moral and exemplary damages to the victim. The decision of the trial court has to be modified. Under Article 2219, paragraph 7, of the New Civil Code, moral damages may be awarded to a victim of illegal arrest and detention. In this case, the appellants poked a knife on the victim as they took her from the school. The appellants also tied her hands, and placed scotch tape on her mouth. The hapless victim was so shocked when operatives of the PAOCTF barged into the office of appellant Bisda, and took custody of the victim that she cried profusely. The victim suffered trauma, mental, physical and psychological ordeal. There is, thus, sufficient basis for an award of moral damages in the amount of P300,000.[104] Since there were demands for ransom, not to mention the use by the appellants of a vehicle to transport the victim from the school to the Jollibee Restaurant and to the office of appellant Bisda, the victim is entitled to exemplary damages in the amount of P100,000.[105] Although the victim claims that the appellants took her earrings, the prosecution failed to prove the value of the same.

IN LIGHT OF ALL THE FOREGOING, the Decision of the Regional Trial Court of Marikina City, Branch 272, is AFFIRMED WITH MODIFICATION. The appellants, Alma Bisda and Generosa "Jenny Rose" Basilan, are found guilty beyond reasonable doubt of kidnapping for ransom under paragraph 4 and the last paragraph of Article 267, of the Revised Penal Code, and are sentenced to suffer the penalty of death by lethal injection. The appellants are hereby directed to pay jointly and severally to the victim Angela Michelle Soriano the amount of P300,000 by way of moral damages and P 100,000 by way of exemplary damages. Costs against the appellants.

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 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. Costs against the appellants.

SO ORDERED.

Bellosillo, Puno, Vitug, Panganiban, Ynares-Santiago, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., Azcuna, and Tinga, JJ., concur.
Quisumbing, and Sandoval-Gutierrez, JJ., on official leave.

[1] Penned by Judge Reuben P. De La Cruz.

[2] Records, p. 1 (Folder 1).

[3] Id. at 24.

[4] The prosecution presented SPO4 Tito Tuanggang, PAOCTF civilian agent George Chavez Torrente, SPO2 Joseph Bagsao, Chief Inspector Ricardo de Guzman Dandan, Angela Michelle Soriano, and William Soriano as witnesses.

[5] TSN, 21 June 1999, pp. 104-105 (William Soriano); TSN, 7 June 1999, p. 17 (George Chavez Torrente).

[6] Exhibit "C; TSN, 21 June 1999, pp. 27-29 (Angela Soriano).

[7] TSN, 21 June 1999, pp. 84-96.

[8] Id. at 97-98.

[9] TSN, 21 June 1999, pp. 104-105 (William Soriano); TSN, 7 June 1990, p. 33 (George Chavez Torrente).

[10] TSN, 7 June 1999, p. 20 (George Chavez Torrente); TSN, 21 June 1999, p. 103 (William Soriano).

[11] TSN 21 June 1999, pp. 99-102 (William Soriano).

[12] Id. at 105-110.

[13] Id. at 111-113.

[14] TSN, 2 June 1999, p. 84 (Tito Tuanggang).

[15] Exhibit "C."

[16] TSN, 21 June 1999, pp. 147-148 (William Soriano).

[17] Exhibit "C," Records, p. 101 (Folder 1).

[18] Exhibit "D," Id. at 5 (Folder 2).

[19] Exhibit "E," Id. at 7.

[20] Exhibit "1," Records, pp. 17-19 (Folder 2).

[21] TSN, 7 July 1999.

[22] Exhibit "1," Records, p. 8 (Folder 2).

[23] TSN, 7 July 1999, pp. 25-33.

[24] Records, pp. 188-189 (Folder 1).

[25] The appellant Basilan is represented in this case by the Public Attorney's Office while appellant Bisda is represented by the Free Legal Assistance Group (Anti-Death Penalty Task Force).

[26] Exhibit "F."

[27] Supra.

[28] *People v. Salimbago*, 314 SCRA 282 (1999).

[29] *People v. Pagalasan*, G.R. No. 131926 and 138991, June 18, 2003.

[30] *People v. Borromeo*, 323 SCRA 547 (2000).

[31] *People v. Soberano*, 281 SCRA 438 (1997).

The word kidnap has a technical meaning at common law. It is defined as the forcible abduction or stealing away of a man, woman or child. The derivation of the word "kidnapping" is kid (child) and nap (to seize, to grasp) [*Gooch v. United States*, 82 F. 2d. 534 (1936)].

[32] *People v. La Marca*, 144 N.E. 2d. 420 (1957).

[33] *Chatwin v. United States*, 90 L. ed. 198 (1945).

[34] Such an age is ipso facto proof of mental incapacity. *Chatwin v. United States*, supra; *City Commonwealth v. Nickerson*, 87 Mass. 518 (1862).

[35] 11 S.E. 518 (1890).

[36] 812 F. 2d. 1660 (1987).

[37] G.R. Nos. 128 106-07, January 24, 2003.

[38] In his commentary on the Spanish Penal Code, Eugenio Cuello Calon says:

Son elementos de este delito: 1. El hecho de privar a una persona de su libertad. El texto legal preve dos modalidades de privacion de libertad, el encierro y la detencion. Encerrar significa recluir a una persona en un lugar de donde no puede salir, detener a una persona equivale a impedirle or restringirle la libertad de movimiento. Se encierra al que se recluye en una habitacion como al que se deja en un foso de donde no puede salir; sufre encierro el que trasladandose a un punto en automovil no puede apearse en el de su destino por no parar or atenuar la velocidad el conductor. Sufre detencion quien hallandose aun en sitio no cerrado no puede moverse, v. gr., por estar atado a un arbol, o con los pies ligados, tambien el privado de movimiento por haber sido narcotizado, embriagado o hipnotizado. (Cuello Calon Derecho Penal, Tomo II [Parte Especial], Undecima edicion, p. 645).

[39] *People v. Baldogo*, supra.

[40] G.R. Nos. 131926 & 138991, June 18, 2003.

[41] *People v. Quilaton*, 324 SCRA 670 (2000).

[42] *McDoonald v. United States*, 89 F.2d. 128 (1937).

[43] *People v. Elijorde*, 306 SCRA 188 (1999).

[44] *People v. Del Rosario*, 305 SCRA 740 (1999).

[45] 15A C.J.S. § Conspiracy, p. 828.

[46] *Ibid*.

[47] *Ingram v. United States*, 259 F. 2d. 886 (1958).

[48] *Pring v. Court of Appeals*, 138 SCRA 185 (1985).

[49] 142 F. 2d. 503 (1944).

[50] TSN, 7 July 1999, p. 21.

[51] When Angela testified, the Rule on Examination of a Child Witness was not yet in effect. Under Section 7 of the said Rule, before testifying, a child shall take an oath or affirmation to tell the truth. The Rule took effect on December 1, 2000.

[52] *Supra*.

[53] 2 *Buv. Law Dictionary* 248.

[54] *Tice v. Mandel*, 76 N.W.2d 124 (1956).

[55] *Lee v. Missouri, Pac. Ry. Co.* 73 P. 110 (1903).

[56] *State v. Langford*, 14 So. 181 (1893).

[57] *State v. Lu Sing*, 85 P. 521 (1906).

[58] *Lee v. Missouri, Pac. Ry. Co.*, *Supra*.

[59] *Voir dire* is a French phrase meaning "To speak the truth." It may refer to a preliminary examination to ascertain whether he possesses the requires qualifications, being sworn to make true answers (*State v. Fox*, 149 S.E. 735 [1929]).

[60] 25 *Phil.* 530.

[61] 349 SCRA 451 (2001).

[62] *Supra*.

[63] *Birmingham RY., Light & Power Co. v. Jung*, 49 So. 434 (1909).

[64] *People v. McAdoo*, 77 N.E. 260 (1906).

[65] *Supra*.

[66] Section 6, of the Rule on Examination of a Child Witness reads:

SEC. 6. Competency.--Every child is presumed qualified to be a witness. However, the court shall conduct a competency examination of a child, *motu proprio* or on motion of a party, when it finds that substantial doubt exists regarding the ability of the child to perceive, remember, communicate, distinguish truth from falsehood, or appreciate the duty to tell the truth.

(a)

Proof of necessity.-- A party seeking a competency examination must present proof of necessity of competency

examination. The age of the child by itself is not a sufficient basis for a competency examination.

(b)

Burden of proof.-- To rebut the presumption of competence enjoyed by a child, the burden of proof lies on the party challenging his competence.

(c)

Persons allowed at competency examination.-- Only the following are allowed to attend a competency examination:

- (1) The judge and necessary court personnel;
- (2) The counsel for the parties;
- (3) The guardian ad litem;
- (4) One or more support persons for the child; and
- (5)

The defendant, unless the court determines that competence can be fully evaluated in his absence.

(d)

Conduct of examination.-- Examination of a child as to his competence shall be conducted only by the judge. Counsel for the parties, however, can submit questions to the judge that he may, in his discretion, ask the child.

(e)

Developmentally appropriate questions.-- The questions asked at the competency examination shall be appropriate to the age and developmental level of the child; shall not be related to the issues at trial; and shall focus on the ability of the child to remember, communicate, distinguish between truth and falsehood, and appreciate the duty to testify truthfully.

(f) Continuing duty to assess competence.-- The court has the duty of continuously assessing the competence of the child throughout his testimony.

[67] *Dulla v. Court of Appeals*, 326 SCRA 32 (2000).

[68] *People v. Gonzales*, 311 SCRA 547 (1999).

[69] 337 SCRA 418 (2000).

[70] *Supra*.

[71] *People v. Emocling*, 297 SCRA 214 (1998).

[72] *People v. Molas*, 286 SCRA 684 (1998).

[73] 305 SCRA 811 (1999).

[74] 276 SCRA 352 (1997).

[75] TSN, 21 June 1999, pp. 56-57.

[76] Exhibit "7."

[77] TSN, 21 June 1999, pp. 48-50.

[78] Id. at 50-51.

[79] Id. at 18-19.

[80] Id. at 31-32.

[81] Id. at 10-11.

[82] Id. at 40-42.

[83] Id. at 69-70.

[84] Id. at 15-17.

[85] Id. at 61-64.

[86] Sumalpong v. Court of Appeals, 268 SCRA 764 (1997).

[87] TSN, 22 June 1999, pp. 8-10.

[88] Supra.

[89] TSN, 21 June 1999, pp. 10-11.

[90] Id. at 40-42.

[91] Id., at 69-70.

[92] TSN, 21 June 1999, pp. 13-17.

[93] Id., at 61-64.

[94] People v. Pagalasan, supra.

[95] People v. Salimbago, supra.

[96] Cited in People v. Akiran, 18 SCRA 239 (1966).

[97] United States v. Cleveland, 56 Supp. 890 (1944).

[98] People v. Quitariorio, 285 SCRA 196 (1998).

[99] People v. Cesario, 306 SCRA 464 (1999).

[100] TSN, 21 June 1999, pp. 99-100.

[101] TSN, 21 June 1999, pp. 111-113.

[102] 20. That the crime be committed with the aid of persons under fifteen years of age, or by means of motor vehicles, airships, or other similar means.

[103] Art. 63. Rules for the application of indivisible penalties.--In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

[104] People v. Catubig, G.R. No. 137842, August 23, 2001.

[105] People v. Deang, 338 SCRA 675 (2000).

ABOUT BATAS.ORG

Study smarter at BATAS.org

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

The complete Philippine law library - free for everyone.

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

Audio case-brief lectures.

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

Bar review built on the science of memory.

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

The full law-school curriculum.

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

Mock exams that tell you where you stand.

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

A study planner that keeps you on pace.

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

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

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

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

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