

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RUBIROSA PASTRANA Y TEFORA, ACCUSED-APPELLANT.

G.R. No. 143644. August 14, 2002

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This is an appeal from the decision[1] of the Regional Trial Court of Manila, Branch 18, convicting accused-appellant Rubirosa Pastrana y Tefora of the crime of kidnapping and failure to return a minor and imposing upon her the penalty of reclusion perpetua.

The information filed against accused-appellant reads:

That on or about March 16, 1997, in the City of Manila, Philippines, the said accused, being then entrusted with the custody of one WILLY SIASON Y GARPEN,[2] a minor child, nine (9) years of age, did then and there willfully, unlawfully and feloniously kidnap and detain said Willy Siason y Garpen, by then and there taking and carrying him away and deliberately failed to restore him to his mother or guardian.

Contrary to law.[3]

When arraigned on April 7, 1999, accused-appellant pleaded not guilty.[4] Trial on the merits thereafter ensued.

The antecedent facts reveal that complainant Erma Postejo was then working as a domestic helper in Canada. She has four children namely, Jenny, Doroteo, Aresola, and 9-year old Willy Garpen, Jr., her son by a common-law-relationship.[5]

Sometime in January 1997, while in Canada, Erma was introduced by her sister, Elma Saludarez[6] to spouses Leopoldo and Rebecca Frias who informed her that their daughter, accused-appellant Rubirosa Pastrana of Tondo, Manila, can help process Willy's travel documents to Canada. Erma agreed to hand the processing of her son's papers to accused-appellant and consequently sent her, on various occasions, Canadian dollars equivalent to a total of P18,300.00.[7]

On February 15, 1997, accused-appellant went to the house of Erma at 1229 Sampaguita St., Malaria, Tala, Caloocan City and introduced herself to the children of Erma as the one who will work out the processing of their travel documents to Canada.[8]

In one of the telephone conversations of Erma and accused-appellant, the latter informed Erma that Willy was suffering from acute bronchitis. Thus, Erma sent P5,610.00 to accused-appellant with the instruction that P3,000.00 thereof should be given to her other son, Doroteo, and the balance to be spent for Willy's medical treatment. Accused-appellant, however, gave Doroteo only P2,500.00 and not P3,000.00 as instructed by Erma.[9]

On March 16, 1997, accused-appellant fetched Willy and Aresola from Caloocan and brought them to her apartment in Tondo, for the purpose of bringing Willy to the hospital. On March 17, 1997, Aresola went home to attend her classes. That same day, Erma called up accused-appellant who informed her that she was not able to

bring Willy to the hospital because she used the money to pay her personal obligations.[10]

On March 19, 1997, Erma learned that Willy had already been treated and that accused-appellant demanded P4,000.00 for the alleged expenses she incurred for Willy's medical treatment. Accused-appellant also told Erma that the tap water in Tondo is not safe for Willy, thus, she asked her to send P60,000.00 to purchase a water purifier. Likewise, accused-appellant requested financial assistance from Erma for her job application in Singapore. Erma, however, refused to transmit the amounts asked by accused-appellant and ordered her to return Willy to Caloocan but the latter ignored her.[11]

On March 25, 1997, Erma found out from Aresola that accused-appellant did not return Willy to Caloocan. Aresola then tried to contact accused-appellant in Tondo, but she was told that she has left her apartment.[12]

On March 27, 1997, at around 11:00 a.m., accused-appellant went to Caloocan and informed Doroteo that Willy was missing. He was allegedly last seen playing inside her apartment in the morning of March 26, 1997. They searched for Willy but their efforts were fruitless.[13]

On April 24, 1997, Erma returned to the Philippines to look for her son. Through the help of the Volunteers Against Crime and Corruption (VACC), Erma discovered that, contrary to the claim of accused-appellant, Willy was not actually treated by Dr. Rebecca Nakpil Miranda.[14]

Accused-appellant vehemently denied the charges against her. She testified that she resided in an apartment in Tondo, Manila, and used to work as a liaison officer of a travel agency. Sometime in February 1997, she received a letter from her parents in Canada, requesting her to help Erma Postejo in the procurement of the travel papers of her son, Willy Garpen. On February 15, 1997, she went to the house of Erma Postejo in Caloocan, and introduced herself to the children of Erma. On March 16, 1997, she took Willy to her apartment in Tondo for the purpose of bringing him to Mary Johnston Hospital, where he was treated by Dr. Rebecca Nakpil Miranda for acute bronchitis. On various occasions, she received the total amounts of P18,000.00 and P5,610.00 from Erma for the expenses of Willy. On March 26, 1997, Willy disappeared. She allegedly last saw him playing inside their apartment that morning.[15]

On the same day, she reported Willy's disappearance to the authorities and did her best to find him. The following day, March 27, 1997, she went to Erma's relatives in Caloocan and informed them that Willy was missing. They searched for Willy but to no avail.[16]

On May 11, 2000, the trial court rendered the assailed judgment of conviction. The decretal portion thereof reads:

WHEREFORE, the court finds the accused, Rubirosa Pastrana, y Tefora, guilty beyond reasonable doubt of the crime of kidnapping and failure to return a minor under Article 270 of the Revised Penal Code and sentences her to suffer reclusion perpetua with all the accessory penalties provided by law and to pay the costs. On the civil liability of the accused she is ordered to pay the complainant moral damages and nominal damages in the sum of P500,000.00 and P100,000.00, respectively, with interest thereon at the legal rate of 6% per annum from this date until fully paid.

SO ORDERED.[17]

Hence, the instant appeal based on the following assignment of errors:

I

THE TRIAL COURT ERRED IN HOLDING THAT THE ACCUSED WAS ENTRUSTED WITH THE CUSTODY OF WILLY SIASON Y GARPEN (sic) (WILLY).

II

ASSUMING THAT THE ACCUSED WAS ENTRUSTED WITH THE CUSTODY OF WILLY, THE TRIAL COURT ERRED IN HOLDING THAT THE ACCUSED KIDNAPPED, DETAINED AND/OR DELIBERATELY FAILED TO RESTORE WILLY TO HIS MOTHER OR GUARDIAN.

III

THE TRIAL COURT ERRED IN FOCUSING ON PERCEIVED WEAKNESS OF THE DEFENSE INSTEAD OF DETERMINING WHETHER THE PROSECUTION'S EVIDENCE IS STRONG ENOUGH TO MEET THE REQUISITE STANDARD OF PROOF BEYOND REASONABLE DOUBT.

IV

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED AND IN NOT ACQUITTING HER ON THE GROUND OF REASONABLE DOUBT.

V

THE TRIAL COURT ERRED IN ORDERING THE ACCUSED TO PAY COMPLAINANT P500,000.00 MORAL DAMAGES AND P100,000.00 NOMINAL DAMAGES, WITH INTEREST THEREON AT 6% PER ANNUM FROM DATE OF THE JUDGMENT UNTIL FULL PAYMENT.[18]

Kidnapping and failure to return a minor under Article 270 of the Revised Penal Code has two essential elements, namely: (1) the offender is entrusted with the custody of a minor person; and (2) the offender deliberately fails to restore the said minor to his parents or guardians. What is actually being punished is not the kidnapping of the minor but rather the deliberate failure of the custodian of the minor to restore the latter to his parents or guardians. The word deliberate as used in Article 270 must imply something more than mere negligence - it must be premeditated, headstrong, foolishly daring or intentionally and maliciously wrong.[19]

In the case at bar, there is no question that accused-appellant was entrusted with the custody of 9-year old Willy. Erma and her children trusted accused-appellant that they sent her money for the processing of Willy's travel documents, and more importantly, they allowed Willy to stay in her apartment. Regardless of whether Willy stayed in accused-appellant's apartment permanently or temporarily, the first element of the offense charged is satisfied because during said period Willy was entrusted to accused-appellant who undertook the responsibility of seeing to it that he was well-taken care of.

As to the second element, accused-appellant contends that her failure to return Willy was never deliberate inasmuch as her inability to return him to his mother and/or guardian was due to his disappearance which was definitely beyond her control.

The contention is without merit. It was actually her failure to heed Erma's order on March 19, 1997 to return Willy to their residence in Sampaguita St., Malaria, Tala, Caloocan City, that consummated the offense. We agree with the finding of the trial court that accused-appellant deliberately failed to return Willy in order to use him as a pawn when her demands were turned down by Erma. The willfulness of accused-appellant's omission is adequately established by the following circumstances, to wit: 1) accused-appellant's representation that she had Willy treated by Dr. Rebecca Nakpil Miranda of Mary Johnston Hospital which was found to be false; 2) accused-appellant's act of giving Doroteo P2,500.00 and not P3,000.00 as instructed by Erma; 3) accused-appellant's use for her personal indebtedness of the money sent by Erma and her demand for additional P4,000.00 allegedly for the hospital expenses of Willy; 4) accused-appellant's demand of P60,000.00 for the installation of a water purifier in her apartment allegedly for Willy's safety, and for additional money for her job application in Singapore; and 5) the lapse of seven days during which accused-appellant willfully failed to return Willy to Caloocan, which is only an hour away from her residence in Tondo, until his disappearance.

Evidently, accused-appellant deliberately ignored Erma's instruction to return Willy to Caloocan so she can use him as a pawn to demand money. She had 7 days from the time she was ordered by Erma on March 19, 1997, until March 26, 1997 when Willy mysteriously disappeared, to bring him to Caloocan but she stubbornly refused to return him. It was this deliberate failure of accused-appellant to return custody of Willy to his relatives that gave rise to her culpability under Article 270 of the Revised Penal Code. Hence, the disappearance of Willy and accused-appellant's inability to return him to Caloocan by reason thereof has no bearing on the crime charged as it was her wilfull disobedience to Erma's order that consummated the crime. Accused-appellant's self-serving denial cannot prevail over the prosecution witnesses' positive testimony disproving her representations. As observed by the trial court, her "demeanor and attitude...on the witness stand had given [the court] the impression that, unlike the complainant and the other prosecution witnesses, [she] was not sincere, straightforward and truthful." [20]

Then too, the Court is not convinced of accused-appellant's argument that the information filed against her is defective because it states that the crime was committed on March 16, 1997 when in fact, Willy disappeared on March 26, 1997. To repeat, the disappearance of Willy on March 26, 1997 is not material to the crime charged. The first element of the crime was met on March 16, 1997, when accused-appellant took custody of Willy and the second requisite attached on March 19, 1997, when accused-appellant deliberately failed to return Willy. Furthermore, the objection to the information should have been raised by accused-appellant before she entered her plea if she truly believed that the information failed to conform substantially with the prescribed form. Failure to do so is deemed a waiver of such ground. [21]

In the final analysis, the issue posed here is the credibility of witnesses. As consistently ruled by the Court, we will not interfere with the judgment of the trial court in determining the credibility of witnesses unless there appears on record some fact or circumstance of weight and influence which has been overlooked or the significance of which has been misinterpreted. Factual findings of the trial court, especially on the credibility of witnesses, are accorded great weight and respect. This is so because the trial court has the advantage of observing the witnesses through the different indicators of truthfulness or falsehood. [22] In the instant case, there is no reason for us to disregard the trial court's finding that the testimonies of the prosecution witnesses are entitled to full faith and credit.

Considering that accused-appellant's guilt was established beyond reasonable doubt, the trial court correctly imposed upon her the penalty of reclusion perpetua pursuant to Article 270 of the Revised Penal Code.

In *People v. Bernardo*, [23] the Court held that Article 270 of the Revised Penal Code is clearly analogous to cases of illegal and arbitrary detention or arrest which justify the award of moral damages as provided for in Article 2219 of the Civil Code. Likewise, under Article 2221 of the Civil Code, nominal damages are adjudicated in order that a right of the plaintiff, which has been violated by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him. Conformably, the Court sustains the trial court's award of damages but reduces the amount of moral damages from P500,000.00 to P100,000.00, and the nominal damages from P100,000.00 to P50,000.00.

The award of interest on damages is proper and allowed under Article 2211 of the Civil Code, which states that in crimes and quasi-delicts, interest as part of the damages may, in a proper case, be adjudicated in the discretion of the court.

WHEREFORE, in view of all the foregoing, the decision of the Regional Trial Court of Manila, Branch 18, convicting accused-appellant Rubirosa Pastrana y Tefora of the crime of kidnapping and failure to return a minor and imposing upon her the penalty of reclusion perpetua is **AFFIRMED**, with the **MODIFICATION** that the

awards of moral and nominal damages are reduced to P100,000.00, and P50,000.00, respectively, with legal interest of six percent (6%) per annum from May 11, 2000, the date of the judgment of the trial court.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Vitug, and Austria-Martinez, JJ., concur.

[1] Penned by Judge Perfecto A.S. Laguio, Jr.

[2] “Willy Garpen y Siason” per his Birth Certificate (Exhibit “A”, Rollo, p. 81).

[3] Rollo, p. 7.

[4] Records, p. 47.

[5] TSN, September 7, 1999, pp. 2-4, 35-36; Exhibit “A”, Rollo, p. 81.

[6] Sometimes spelled as “Salvadores” in the records.

[7] TSN, September 7, 1999, pp. 6-10.

[8] TSN, November 11, 1999, pp. 3-5.

[9] TSN, September 7, 1999, pp. 11-15.

[10] Ibid., pp. 17-18; September 10, 1997, pp. 24-27.

[11] Exhibit “C”, Records, p. 16; TSN, September 7, 1999, pp. 18-22.

[12] TSN, September 7, 1999, p. 23; September 10, 1999, pp. 7-8.

[13] TSN, November 11, 1999, pp. 10-11.

[14] TSN, September 7, 1999, pp. 25-27; January 31, 2000, pp. 43-45, 60.

[15] TSN, December 13, 1999, pp. 4-19; February 29, 2000, pp. 5-6.

[16] Ibid., pp. 21-40.

[17] Rollo, p. 103.

[18] Rollo, pp. 54-55.

[19] People v. Bernardo, G.R. No. 144316, March 11, 2002, citing People v. Bondoc, 232 SCRA 478 1997; People v. Ty, 263 SCRA 745 1996.

[20] Rollo, p. 29.

[21] People v. Macaya, 351 SCRA 707, 714 2001, citing People v. Losano, 310 SCRA 707 1999; Rules of Court, Rule 117, Sections 1 and 3(d); Rule 117, Section 8, in conjunction with Rule 110, Sections 6-12.

[22] People v. Pacantara, G.R. No. 140896, May 7, 2002, citing People v. Remudo, G.R. No. 127905, August 30, 2001; People v. Abella, 339 SCRA 129 2000 .

[23] Supra.

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