

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. NELSON ANCHETA PUA AND BENLEY ANCHETA PUA, APPELLANTS.

G.R. No. 144050. November 11, 2003

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PER CURIAM:

This is an automatic appeal from the Decision[1] of the Regional Trial Court of Quezon City, Branch 103, in Criminal Case No. Q-99-80570, convicting appellants Nelson ("Bong") Ancheta Pua and Benley Ancheta Pua of kidnapping for ransom and sentencing them to suffer the death penalty; and to pay damages to the victim Jocelyn Caleon.

The Indictment

The appellants and their cousin Nelson Laddit Pua were charged with kidnapping for ransom in an Information, the accusatory portion of which reads:

That on or about November 23, 1998, at San Jose City, Nueva Ecija, the above-named accused, conspiring, confederating and mutually helping one another and grouping themselves together, did, then and there, by force and intimidation, and with the use of firearms, wilfully, unlawfully and feloniously take, carry away and deprive JOCELYN CALEON Y LARIOSIA of her liberty against her will for the purpose of extorting ransom, as in fact a ransom of ONE AND A HALF MILLION PESOS (P1,500,000.00) was actually paid to them by the victim's father as a condition for her release, and which release was only made on November 29, 1998 (or a period of six days detention) at the Congressional Village, Quezon City, and within the jurisdiction of this Honorable Court, to the damage and prejudice of JOCELYN L. CALEON and family in the said amount and such other amounts as may be awarded to her and her family under the provisions of the Civil Code.

CONTRARY TO LAW.[2]

Accused Nelson Laddit Pua remained at-large. Upon arraignment, the appellants, assisted by counsel, entered their respective pleas of not guilty to the charge.[3]

The Case for the Prosecution[4]

The Spouses Simplicio and Remedios Caleon, residents of Cauayan, Isabela, had two daughters, Shiela and Jocelyn.[5] In 1986, Jocelyn was enrolled as a freshman at the Philippine Yuh Chiau School in Cabatuan, Isabela. She met appellant Benley, who was then enrolled in the same school as a sophomore. His brother, appellant Nelson Ancheta Pua, was likewise enrolled in the school as a third year high school student. In 1987 when Jocelyn was a sophomore, she met accused Nelson Laddit Pua, the cousin of the appellants.[6] By then, appellant Benley was in his third year, while appellant Nelson Ancheta Pua was in his senior year. Jocelyn saw the appellants during the school alumni reunions held in 1992, 1994 and 1997.[7]

The Spouses Caleon were engaged in the business of selling household appliances and hardware in Cauayan, Isabela, where they resided. They had twelve stores in Regions 2 and 3, including one located in San Jose, Nueva Ecija, under the business name S & J Marketing which they put up in 1996.[8] The spouses assigned their daughter Jocelyn in mid-1998 to manage the said store. They employed Adrian Layag as warehouseman, Angelito

Binalay as helper, and Noel dela Cruz as driver.[9] Jocelyn resided in the store except on weekends when she visited her parents in Cauayan, Isabela.

Accused Nelson Laddit Pua was thin and Chinese looking. He had fair complexion and an over-bite as well, as his upper front teeth were prominent and protruding.[10] He and his cousins, the appellants, met and decided to kidnap Jocelyn for ransom. To consummate the crime, they needed a motor vehicle and a place to detain Jocelyn as they awaited the delivery of the ransom money.

At 6:00 p.m. on November 19, 1998, accused Nelson Laddit Pua arrived at the Monarch Rent-A-Car Hormop Transport, Inc. at No. 1139 Don Quijote, Sampaloc, Manila. He rented a white Mazda Familia from November 19 to 22, 1998 for P7,700, inclusive of a P3,000 deposit.[11] He also executed a rental agreement for the lease of the car where he indicated his address as "No. 1758 Yakal Street, Sta. Cruz, Manila." Accused Nelson Laddit Pua had rented cars from the company on previous occasions, including a Nissan Sentra with Plate No. UEJ 744 way back in July 7, 1998. In the rental agreement covering this earlier transaction, the appellant stated that he was a resident of No. 58A1 Asuncion Street, Morning Breeze Subdivision, Caloocan City, with telephone number 363-28-96.[12]

Appellant Benley went to Baguio City and talked to Marcelo Opiana, the caretaker of the house at No. 59 Gibraltar Road, Baguio City, owned by Catalina Salazar.[13] Appellant Benley offered to lease the basement of the house[14] for three days.[15] He told Opiana that he and his brother, his girlfriend and another companion would be staying there.[16] Marcelo agreed to lease the basement to the appellant for P2,000.[17]

Instead of returning the white Mazda Familia to the Monarch Rent-A-Car on November 22, 1998, accused Nelson Laddit Pua extended the lease agreement to November 26, 1998.[18]

At about 6:10 p.m. on November 23, 1998, Adrian and Noel were closing the store in San Jose. Jocelyn, who was wearing a pair of blue pants and a blouse, was at the store supervising the employees. She had P9,000 in her pocket, the gross sales of merchandise from another store. Suddenly, a white four-door sedan stopped near Jocelyn. Two men, wearing bonnets and armed with handguns, alighted from the vehicle and forced Jocelyn inside. She was made to sit at the back of the car between two of her abductors. The driver, whose face was also hidden by a bonnet, revved up the car and sped away. Jocelyn shouted and struggled, but the kidnapper to her right forced her face down on the floor of the car. She was also handcuffed, and her face was covered with a white cloth. Her abductors told her not to worry as they were only after money.[19]

After about an hour, Jocelyn and her kidnappers checked in at the Cocheros' Inn at the National Highway, Carmen, Rosales, Pangasinan.[20] She was brought to the bathroom and was told to sit on a toilet bowl. Her kidnappers divested her of the P9,000 in her pocket, her watch and keys, and forced her to divulge to them the telephone number of her father in Cauayan, Isabela. Jocelyn told them that her father's number was 634-55-98.[21] The kidnappers then ordered her to stay in the comfort room, with a warning that if she did not cooperate, they would get back at her family. They made it clear to her that she did not know them, but that they knew both her and her family.

Adrian called Simplicio and reported that Jocelyn had been kidnapped by unidentified persons. Simplicio contacted Ernesto Subia, whose daughter had also been kidnapped, and the latter referred him to Col. Michael Ray Aquino of the Presidential Anti-Organized Crime Task Force (PAOCTF). Simplicio was able to contact Col. Aquino, who instructed him on how to deal with the kidnappers in case he was contacted.

At about midnight, Simplicio received a telephone call from one of the kidnappers. The man told him that he and his companions were holding Jocelyn and demanded P5,000,000 as ransom in exchange for her safety and release.

Simplicio pleaded to the man not to harm his daughter and asked for more time to raise the money.[22]

At 9:00 a.m. the next day or on November 24, 1998, Simplicio called Col. Aquino and told the latter what transpired the night before. Col. Aquino advised Simplicio to negotiate with the kidnappers for the reduction of the P5,000,000 ransom demand. Col. Aquino thereafter dispatched Col. James Mela, Major Alexander Rafael and PO3 Rodolfo Mahor to assist Simplicio. The agents placed an electronic device on Simplicio's telephone to facilitate the monitoring of calls from the kidnappers.[23] Meanwhile, Jocelyn was taken out of the comfort room and placed in another room. She was constantly under guard.

At about 3:00 p.m. to 4:00 p.m., Simplicio received a telephone call from the same kidnapper who demanded that Simplicio raise P5,000,000 if he wanted his daughter to be released alive; otherwise, Jocelyn would be hurt. Simplicio pleaded for the reduction of the ransom. Jocelyn heard the kidnappers as they talked to her father and agreed to reduce the ransom to P3,000,000.[24] Simplicio was able to talk to Jocelyn over the telephone. She assured her father that she was fine.

Jocelyn slept that night in handcuffs. She was guarded by one of the kidnappers who checked on her by touching her every now and then.[25]

At noon of November 25, 1998, Jocelyn was taken out of the room and boarded onto a vehicle. Jocelyn's head was still covered with a piece of cloth. After about five hours of travel, the kidnappers and their victim arrived in Baguio City. Jocelyn was brought to the basement of the house earlier leased by appellant Benley from Marcelo Opiana.[26] Jocelyn knew that she was in Baguio because the temperature was noticeably cold.[27]

At 3:30 p.m. that day, Simplicio received another telephone call from the same kidnapper. Simplicio pleaded that the P3,000,000 ransom be reduced further. The caller refused and warned Simplicio that if he failed to raise the amount, Jocelyn would be harmed. Simplicio informed the caller that he had not yet raised the amount because business was bad. He once more pleaded for the reduction of the ransom. The caller remained noncommittal and told Simplicio to wait for another call the next day at 3:00 p.m. Simplicio was also warned not to inform the police authorities about their negotiations.

In the morning of November 26, 1998, the handcuffs and the cloth covering Jocelyn's head were finally removed. She was given a sweatshirt with the word "Army Airborne" printed on it, a shirt and two pairs of underwear. Jocelyn inspected the room.[28] She made scratches on the walls and on some cabinets,[29] hoping that after her release, she would somehow find her way back to the room and identify the place where she was detained. At lunchtime, Jocelyn was given noodles and bottled water. The bottled water had a price tag on it which read "Benguet Supermarket." [30] Jocelyn removed the price tag and kept it.

At 5:00 p.m., Simplicio received another telephone call from the same kidnapper. He was informed that the kidnappers had agreed to reduce the ransom further to P1,500,000. Simplicio was then told to be ready to deliver the amount on November 28, 1998, and to await further instructions. The kidnapper also got Simplicio's cell phone number, which the latter disclosed as 0912-344-9391.[31] Later that evening, one of the kidnappers whispered to Jocelyn that she could relax, as her father had already agreed to pay the ransom of P1,500,000.

On the same day, accused Nelson Laddit Pua returned the white Mazda Familia to the Monarch Rent-A-Car. He was with a male companion who identified himself as Rodrigo Sarmiento. They rented another car, a honey beige 1997 Mazda Familia GLX, with Plate No. URX 876, for one month or until December 26, 1998 for the amount of P42,000 a month, with a P5,000 deposit. "Rodrigo Sarmiento" executed a rental agreement over the car where he indicated his address as "c/o Nelson Pua at No. 75 Dr. Alejos Street, Quezon City." [32] He paid the amount of P37,200 as rental for the car.

At 4:00 p.m. on November 27, 1998, the kidnappers called again and demanded to know if Simplicio was ready with the P1,500,000 ransom. When they were told otherwise, the kidnappers became angry and informed Simplicio that the delivery of the ransom money scheduled for the next day was cancelled because police authorities were hot on their trail.[33]

At lunchtime on November 28, 1998, the kidnapper who was assigned to guard Jocelyn entered the room and served her noodles. This time, he had no cover on his head. Jocelyn looked at the mirror of the built-in dresser in front of her[34] and was shocked to see the face of a former schoolmate, appellant Nelson Ancheta Pua.[35] Fearing that she might be harmed, Jocelyn did not show any sign of recognition. At 3:00 p.m. that day, appellant Nelson Ancheta Pua returned Jocelyn's watch and keys. Jocelyn again saw appellant Nelson Ancheta Pua that evening when the latter brought food for her dinner. In both instances, the appellant's face was not covered.

At about this time, Simplicio received a telephone call from the same kidnapper. He was told to proceed to the McDonald's Restaurant in San Fernando, La Union at twelve midnight. He was instructed to wait in front of the said restaurant. When the caller asked him what vehicle he would be using, Simplicio replied that he would come in a white pick-up truck with Plate No. BBU 375.[36] Simplicio immediately informed the PAOCTF of the kidnapper's instructions. Simplicio was told to comply with the kidnappers' orders and was informed that two PAOCTF agents would be sent to accompany him. SPO2 Edwin Pastor and PO3 Rodolfo Mahor arrived at Simplicio's house. The three of them boarded a four-door Isuzu pick-up truck and arrived in front of the McDonald's Restaurant at about 11:50 p.m. Simplicio, who sat at the back seat, had the P1,500,000 ransom placed in a leather bag.[37]

At about 1:30 a.m. to 2:00 a.m. of November 29, 1999, SPO2 Pastor saw appellant Benley near a terminal, about two to fifteen meters from their vehicle. He had two cell phones tucked at his waist and appeared to be drunk. He walked right in front of the pick-up truck, then boarded a tricycle.[38]

Simplicio thereafter received a call from the kidnapper, who asked how many companions were with Him. When Simplicio replied that he had two companions, he was told to send them away. Simplicio did as he was told and asked SPO2 Pastor and PO3 Mahor to leave the vehicle.[39] The two agents asked their superiors for instructions on how to proceed, and were told to leave Simplicio alone in the vehicle. SPO2 Pastor and PO3 Mahor did so and took a tricycle to the Philippine Rabbit Terminal, about 200 meters away from the pick-up truck. [40]

Simplicio received another call from the same kidnapper, and was instructed to drive to Aringay, La Union. Simplicio replied that he could not drive because of his arthritis. Simplicio was then told to transfer to the driver's seat of the truck, open the window on that side, and place the bag containing the ransom money on top of the window. Simplicio did as he was told. Almost immediately, a car stopped beside the pick-up truck and someone from the car took the bag. The car then sped away towards the south.[41] The PAOCTF agents followed the car but lost track of it.

For his part, Simplicio drove the pick-up truck from San Fernando, La Union to Pozorrubio, Pangasinan and met SPO2 Pastor and PO3 Mahor at a gasoline station. They then proceeded to San Jose City to await Jocelyn's release. [42]

Between 4:00 to 4:30 a.m., appellant Benley and a slim, male companion with dark complexion arrived at a house in Barangay Ambaracao, Naguilian, La Union. It was owned by Manuelito Orperia, a farmer by profession. Appellant Benley was then wearing maong pants and leather shoes soaked in mud. He was also carrying a bag. The appellant identified himself as Michael Ong, and told Manuelito that someone had wanted to kidnap a member of his family, but that he and his companion were able to escape. He then asked if there was a vehicle available for rent. Manuelito found the story convincing and accompanied appellant Benley to Billy Rimando,

who owned a passenger jeepney. Billy agreed to rent his vehicle to the appellant for P1,000. The group proceeded to Baguio City. Joel Rimando was at the wheel, and his passengers, aside from appellant Benley and his companion, were Manuelito, Walter Rimando and Francisco Estipular. Before Benley and his companion alighted from the vehicle, the appellant gave P400 to Manuelito who used it to buy milk for his children.[43]

At 3:00 p.m. of the same day, appellant Nelson Ancheta Pua told Jocelyn that she was about to be released. The kidnappers returned the clothes which were earlier lent to Jocelyn. Appellant Nelson Ancheta Pua approached Jocelyn from behind and gave her P1,000 for her fare in going home after her release. Jocelyn faced the appellant and took the money. The appellant had no cover on his head and face. Jocelyn asked to be allowed to go to the comfort room.[44] Appellant Nelson Ancheta Pua agreed. The appellant thereafter opened the door and gave Jocelyn a pair of sunglasses,[45] and instructed the latter to wear it and to pretend to be sick. He warned her to cooperate with him and his companions so that no harm would be inflicted on her. Jocelyn put the sunglasses on and went out of the house, with appellant Nelson Ancheta Pua's arm on her shoulder. Outside the house, Jocelyn surreptitiously let the sunglasses slip down her face, and saw appellants Benley and Nelson Ancheta Pua loading their baggage in the van, about seven meters away from the house.[46] She also saw the accused Nelson Laddit Pua near the van. Their faces were not covered. Jocelyn was made to sit in the rear passenger seat.[47] After a five-hour drive, Jocelyn was dropped off at the Congressional Village, Quezon City. Jocelyn then contacted her sister Shiela and told the latter she had already been released. After two hours, her cousins Roderick and Esperanza fetched her and brought her to their house at Araneta Avenue, Quezon City.[48]

Jocelyn called up her father and told him that she was kidnapped by appellants Benley and Nelson Ancheta Pua. Simplicio told her that Col. Aquino of the PAOCTF would be coming to talk to her. When the colonel arrived an hour later, Jocelyn disclosed that she was kidnapped by appellants Benley and Nelson Ancheta Pua and another male person. She also gave him the pair of sunglasses that appellant Nelson Ancheta Pua made her wear, as well as the price tag of the Benguet Supermarket for the bottled water.[49]

On November 30, 1998, the PAOCTF learned that the police authorities in La Union found the Mazda Familia car with Plate No. URX 876 abandoned in Caba, La Union. They also learned that the car was registered under the name of the Monarch Rent-A-Car. When the personnel of the company were questioned, the agents were told that "Rodrigo Sarmiento c/o Nelson Pua" had rented the car. The company records also indicated that "Nelson Pua" had two addresses: No. 75 Dr. Alejos Street, Quezon City and at No. 1758 Yakal Street, Sta. Cruz, Manila. On the other hand, the addresses of one "Nelson Pua Ancheta" was stated as No. 58 Asuncion Street, Morning Breeze Subdivision, Caloocan City[50] and No. 161 Ibay Street, La Loma, Quezon City. The agents proceeded to these locations but failed to find their quarry. They learned, however, that the occupants of the houses in these addresses were from Aurora, Isabela.

The PAOCTF agents forthwith proceeded to Cauayan, Isabela and learned that appellant Benley had been charged with violation of B.P. No. 22 before the Municipal Trial Court of Cauayan, Isabela, docketed as Criminal Cases Nos. 98-123 and 98-163. A "Nelson Pua" had also been charged with violation of B.P. No. 22 in Criminal Cases Nos. 98-243, 98-244 and 98-245. The agents secured copies of warrants of arrest issued in the following cases: Criminal Case No. 98-123 dated February 27, 1998; Criminal Case No. 98-163 dated March 6, 1998;[51] and Criminal Cases Nos. 98-243, 98-244 and 98-245 dated November 27, 1998 and August 18, 1998, respectively.[52] Unknown to the agents, the "Nelson Pua" indicated in Criminal Cases Nos. 98-243 to 98-245 as the accused therein, was actually the accused Nelson Laddit Pua, and not the appellant Nelson Ancheta Pua.[53]

On December 29, 1998, the accused Nelson Laddit Pua contacted the Monarch Rent-A-Car and reported that the Mazda Familia he had rented on November 26, 1998 had been carnapped. Ferdinand Palacio reported the call to the PAOCTF.

In the meantime, the PAOCTF agents conducted a surveillance of appellant Nelson Ancheta Pua's residence at No. 58A1 Asuncion Street, Morning Breeze Subdivision, Caloocan City. The agents were equipped with a video camera to facilitate the operation.

On January 15, 1999, the PAOCTF agents saw a woman emerge from the house under surveillance. She left momentarily, and returned on board a taxi. The woman then went back inside the house, and thereafter again boarded the taxi, carrying pieces of luggage. She and a man, who turned out to be appellant Nelson Ancheta Pua, travelled to Rizal Avenue, Manila, where the latter alighted and went to an automated teller machine (ATM) booth. Appellant Nelson Ancheta Pua then returned to the taxi, while the woman in turn alighted. The agents followed the taxi to Tayuman Street, where the appellant got down and went to a nearby house. When the appellant returned, another male person was with him, who turned out to be appellant Benley. The latter was also carrying pieces of luggage. With the two appellants on board, the taxi proceeded to Pier 12 at Tondo, Manila.

The agents contacted the Monarch Rent-A-Car and requested an employee to join them at Pier 12 and assist in identifying the two male passengers who alighted from the taxi. The employee arrived and when shown a video-clip of the appellants, identified them as the same persons who had rented cars from the company. In the meantime, the appellants boarded the vessel "Princess of the Universe" bound for Cebu. The PAOCTF agents, armed with the warrants of arrest issued by the MTC in Criminal Cases Nos. 98-243, 98-244, 98-123 and 98-163, boarded the vessel and arrested appellants Benley and Nelson Ancheta Pua near their cabin. The appellants were brought to the PAOCTF Headquarters in Camp Crame, Quezon City, where they were turned over to the Legal and Law Enforcement Division for investigation. The agents found a pistol and live ammunitions in appellant Benley's possession. They also confiscated cash money from the appellants.

On January 17, 1999, the PAOCTF agents summoned Jocelyn and Simplicio to Camp Crame, Quezon City. Jocelyn, her sister, and her father arrived shortly thereafter.

Six male persons, including appellants Benley and Nelson Ancheta Pua, formed a police line-up. When Jocelyn was asked to identify her kidnappers in the line-up, she pointed to and identified appellants Benley and Nelson Ancheta Pua. Jocelyn then asked the PAOCTF officers if she could talk to the appellants in private. The officers agreed. In the presence of her father and sister, Jocelyn asked the appellants why she was kidnapped. The appellants spontaneously begged for Jocelyn's forgiveness, and told her that they had not really meant to kidnap her. The appellants pleaded that they be allowed to return the P1,500,000 ransom money in exchange for their lives. They told Jocelyn that they were prepared to suffer a long prison term, but were afraid to die for the crime they committed. Jocelyn wept as she recalled her ordeal at the hands of the appellants, and their pleas failed to sway her.[54] A short while later, someone approached Jocelyn and told her that appellant Nelson Ancheta Pua still had a lot of things to say to her; but Jocelyn refused to meet with him again. She instead told the emissary to tell the appellant to write down what he wanted to say, and promised to read the message. The emissary thereafter handed a letter to Jocelyn where appellant Nelson Ancheta Pua pleaded that his uncle and brother be allowed to talk to Jocelyn's mother to discuss arrangements for the return of the ransom money they earlier received.[55] The appellant also pleaded for "another chance," and for Jocelyn to spare their lives.[56]

Jocelyn ignored appellant Nelson Ancheta Pua's letter. She gave a sworn statement to SPO1 Joel A. Lapaz where she identified the appellants as two of the men who kidnapped her.[57] Simplicio also gave a sworn statement to PO2 Joseph Bagao. [58] PO2 Edwin Pastor executed an affidavit identifying appellant Benley as one of the men who took delivery of the ransom in front of the McDonald's Restaurant in San Fernando, La Union.[59] Chief Inspector Alexander Rafael also executed an affidavit.[60]

On January 18, 1999, the NBI agents brought Jocelyn to the basement of the house at No. 59 Gibraltar Street,

Baguio City, where she was detained from November 25 to 29, 1999. Jocelyn gave her supplemental statement to NBI agent Arnold Lazaro,[61] confirming that the said basement was the same place where she was held captive by the kidnappers until she was released.

On January 19, 1999, the relatives of the appellants arrived at the Caleon residence to once more plead for mercy for the latter's plight. They were the appellants' mother Leticia Pua, their brother Chito Pua and their uncle and aunt the Spouses Mariano and Veronica Pua. The appellant Nelson's wife Josephine and their child also came. Simplicio was in Baguio during this time, and it was his wife Remedios who met with the visitors, Remedios was noncommittal. The appellants' relatives again went to the Caleon residence on January 26, 1999 and told Simplicio that they were so sorry that Jocelyn had been kidnapped by the appellants, and that the entire Pua family was trying to raise the amount of P1,500,000 so that it could be returned to them. They pleaded that the appellants be spared their lives, and Leticia even told Simplicio that she would kneel before Jocelyn if that was what it would take for the latter to forgive her sons. Simplicio simply told Leticia that they had already filed a case against the appellants, and that it was up to the court to decide the matter. Nevertheless, Mariano and Veronica Pua, Chito, Josephine and Leticia returned, and offered to give ransom money back in exchange for Nelson and Benley's freedom. Simplicio was, however, adamant.

Simplicio and some PAOCTF agents went to the Cochero's Inn in Carmen, Rosales, and to No. 59 Gibraltar Street, Baguio City, where Jocelyn had been detained. They took photographs of the said places.[62]

The Case for the Appellants[63]

Appellant Nelson Ancheta Pua denied kidnapping Jocelyn. He testified that he was a businessman, and that he and Jocelyn were schoolmates. He left his residence at No. 58 A1 Asuncion Street, Morning Breeze Subdivision, Caloocan City on November 27, 1998 and arrived at Barangay Macatal, Aurora, Isabela, to help his widowed mother, Leticia Pua, harvest calamansi in their farm. He stayed at his mother's house up to November 29, 1998. He was in Laoag City on January 12 to 15, 1999. The appellant also averred that he was arrested on January 15, 1999 without any warrant therefor, and was blindfolded and mauled by PAOCTF agents headed by Major Alexander Rafael. A gun was poked at him, and he was hit with a helmet, and his legs were swollen. He and his brother appellant Benley were detained at Camp Crame, Quezon City until January 17, 1999.

Although appellant Nelson Ancheta Pua admitted that he wrote the letter addressed to Joy,[64] he explained that he did so while he was detained at the PAOCTF cell in Quezon City, only on orders of Major Alexander Rafael. Major Rafael, who was outside the appellant's cell when he wrote the letter, dictated several corrections. The appellant also denied renting any car from the Monarch Rent-A-Car.

Appellant Benley, for his part, testified that he was a businessman, and that he knew Jocelyn because they studied in the same high school. He made it clear that they had had no misunderstanding before the kidnapping, and even had common friends, like Shirley Uy and Janet Subia. He also testified that he had a small house in Macatal, Aurora, Isabela, where the family had a farm consisting of about 14 hectares: 2 hectares were devoted to planting calamansi, 10 hectares for corn crops and 2 hectares to palay growing. He and his brother appellant Nelson and their mother Leticia employed workers in their farm. He was in Macatal, Aurora, Isabela from November 23, 1998 up to December 1998. He spent New Year's eve in a hotel in Ilocos with his wife and kids, his brother Nelson and their mother and a few other companions between December 28, 1998 and January 2, 1999. They returned to Macatal afterwards. On January 12, 1999, the appellants went to Manila en route to Cebu to watch the "Sinulog." However, in the early evening of January 15, 1999, while they were on board a boat then docked at Pier 12 in Tondo, Manila, several armed men arrested them for undisclosed reasons. They were not shown any warrants of arrest. Appellant Benley later came to know that the men were from PAOCTF.

Appellant Benley corroborated his brother's testimony, that they were mauled and blindfolded while detained at Camp Crame. He also testified that he was forced to ingest a substance which tasted like human excrement. He denied kidnapping Jocelyn, and also denied picking up the bag containing the ransom money in front of the McDonald's Restaurant in San Fernando, La Union. Appellant Benley further denied renting the basement of the house of Catalina Salazar in Baguio City, as well as the passenger jeepney owned by Billy Rimando. According to appellant Benley, he had no inkling that his mother Leticia, his father-in-law Cornelio Pua, his elder brother Chito, his wife Josephine and his aunt approached Jocelyn's father twice, to ask for some sort of settlement.

Jeremias Frias, a farmer who owned a two-hectare farm adjacent to the land owned by Leticia Pua at Macatal, Aurora, Isabela, corroborated the appellants' alibi. He testified that from November 22, 1998 to the first week of December 1998, he saw the appellants harvesting calamansi in their farm in Macatal.

Prospero C. Guillermo, a tricycle driver and a barangay kagawad of Macatal, Aurora, Isabela, testified that he saw the two appellants in Macatal in the months of September, October, November and December 1998.

Renato Calimag, a barangay kagawad of Apiat, Aurora, Isabela, located some two kilometers from Barrio Macatal, testified that he was a worker in the appellants' farm. He saw the brothers harvesting calamansi in November 1998. In December 1998, the two brothers tended to "their other harvests." He also saw them "during New Year's time."

Eufemio dela Cruz, the appellants' neighbor, also a barangay kagawad of Macatal, Aurora, Isabela, testified that he saw them in Macatal from sunrise to sundown everyday from January 1998 to December 1998 and in January 1999. The appellants apparently always passed by his house. He stopped seeing the appellants only in February 1999. He testified that he could see the house of the appellants from the barangay hall.

The appellants adduced evidence to prove that when they were arrested on January 15, 1999, they were divested of their valuables, none of which was part of the ransom. They also adduced evidence that Criminal Cases Nos. 98-123 and 98-163 were dismissed as early as March 23, 1998.[65] The appellants also alleged that on January 16, 1999, the appellants were brought out of their detention cell and were presented to Simplicio and one Marvin. The meeting was held to enable the latter to familiarize themselves with the physical appearance of the appellants, prior to the formation of the police line-up where they were later identified as Jocelyn's kidnappers.

After trial, the trial court rendered judgment finding the appellants guilty as charged. The decretal portion of the decision of the court reads:

ACCORDINGLY, judgment is hereby rendered finding the herein accused NELSON PUA y ANCHETA and BENLEY PUA y ANCHETA GUILTY beyond reasonable doubt as PRINCIPALS in the crime of Kidnapping for Ransom in violation of the Revised Penal Code, as amended, and each of them is hereby sentenced to DEATH, the only penalty prescribed by law for Kidnapping for Ransom.

On the civil aspect, the two accused are ordered to pay the kidnapped victim Miss Jocelyn Caleon the sum of P8,000.00 and Mr. Simplicio Caleon the sum of P1.5 million in actual damages and also to pay Miss Jocelyn Caleon the sum of P300,000.00 as moral damages. Costs versus the accused.

Let an Alias Warrant of Arrest be issued, without bail, in this case against co-accused Nelson Pua y Laddit who has remained at-large to this date.

Pursuant to law and the Rules of Court, let the complete records of this case be forwarded forthwith to the Honorable Supreme Court for automatic review in view of the death sentence imposed in this case.

SO ORDERED.[66]

The appellants assail the decision of the trial court, contending that the prosecution failed to prove their guilt beyond reasonable doubt. They assert that the testimony of Jocelyn identifying them as the kidnappers is unreliable and barren of probative weight.

The appellants contend that Jocelyn could not have seen and identified them as her kidnappers because despite her claim that she revealed the identities of her kidnappers to Col. Aquino of the PAOCTF on November 29, 1998, the PAOCTF agents never conducted any search and arrest operations in Barangay Macatal, Aurora, Isabela, where they and their widowed mother Leticia Pua had their farm and residence. Instead, the PAOCTF agents conducted raids only in Barangay Nampicuan, Aurora, Isabela, in the third week of December 1998, and in the Poblacion, San Manuel, isabela in the first week of January 1999 for the apprehension of the accused Nelson Laddit Pua. Jocelyn did not even execute any sworn statement narrating the details of the kidnapping, as well as the identities of her kidnappers. They also allege that PO3 Rodolfo Mahor could not have seen that it was appellant Benley who received the ransom money because there were other persons milling about in the area. They also point out that Major Rafael testified that the money found in the possession of appellant Nelson Ancheta Pua was not part of the ransom money. Furthermore, Jocelyn's identification of the appellants as her kidnappers is flawed, for the added reason that Simplicio and "Marvin" were given a chance by the PAOCTF on January 16, 1999 to familiarize themselves with the appellants' physical features. Simplicio, in turn, briefed Jocelyn on January 17, 1999 to make sure that the appellants would be identified before the latter were presented in the police line-up.

Finally, the appellants insist that the contents of the handwritten letter[67] were dictated to the appellant Nelson Ancheta Pua by Major Alexander Rafael while the latter was detained at the PAOCTF cell in Quezon City. The appellants also point out that they were illegally arrested without any valid warrants therefor; hence, the said letter is inadmissible in evidence. The appellants further insist that appellant Nelson Ancheta Pua was not a signatory to the rental agreement, [68] as the signature of the lessor therein was different from his genuine signatures.[69] Hence, they conclude, the rental agreements are likewise inadmissible in evidence.

The Office of the Solicitor General, on the other hand, contends that even without appellant Nelson Ancheta Pua's letter,[70] Jocelyn's testimony, corroborated by the other testimonial and documentary evidence on record, is proof beyond reasonable doubt of the guilt of the appellants for the crime charged. The appellants failed to assail their arrest and the jurisdiction of the court over their persons before their arraignment; hence, are barred from assailing the same and claiming before this Court the inadmissibility of appellant Nelson Ancheta Pua's letter in evidence. Although appellant Nelson was not a signatory to the rental agreements,[71] the agreement is still admissible in evidence to prove that he conspired with appellant Benley and accused Nelson. Having conspired with appellant Benley and accused Nelson Laddit Pua as borne by the other evidence on record, the appellant Nelson Ancheta Pua is as guilty of kidnapping and serious illegal detention for ransom as the appellant Benley.

The contentions of the appellants are barren of merit.

By assailing the credibility of Jocelyn and the probative weight of her testimony, the appellants thereby dispute the findings of the trial court. But the legal aphorism is that the findings of the trial court, its calibration of the testimonial evidence of the parties, its assessment of the probative weight of the evidence on record and its conclusions anchored on the said evidence are accorded by the appellate court high respect, if not conclusive effect, because of the unique advantage of the trial court of observing at close range the demeanor, deportment and conduct of the witnesses as they testify, unless the trial court ignored, misunderstood or misinterpreted cogent facts and circumstances which if considered would change the outcome of the case.[72] The trial court found Jocelyn to be a credible witness and her testimony forthright, spontaneous and definite. The court minutiosely considered the evidence on record and found no reason to deviate from the findings and conclusions of the trial

court on the identities of the appellants as Jocelyn's kidnappers.

The trial court ruled, based on the evidence on record, that when Jocelyn testified, she positively, unerringly and spontaneously identified the appellants as her kidnappers. She pointed to the appellants when asked by the prosecutor to point to and identify the culprits from among those in the courtroom:

First, Joy positively identified Nelson Pua y Ancheta as one of her kidnappers because when said kidnapper fed her from behind with food at lunchtime on Saturday, November 28, 1998, she was able to take a peek at him craning her neck to look at him from a mirror fronting a dresser beside her. Said kidnapper, evidently because Joy had been such an obedient victim, did not put on his bonnet anymore that time. Joy saw his face again that day.

Second, Joy could not have been mistaken as to the identity of Nelson because she has known him for a long, long time, not only in high school, Philippine Yuh Chian (sic) School, where both studied at the same time, she as a first year student, paid) that, as the sunglass she was wearing (the glasses were covered with packing tape) slid a little down her nose that she was able to see Benley Pua, together with Nelson Pua, loading their luggage inside the van that was to take her to Quezon City.

Fourth, the opportunities and incidents under which Joy was able to identify her two kidnappers appear to this court as having arisen, not just from sheer luck, but due to the neglect and lack of professionalism displayed by these two young brothers. Nelson delivered food to Joy from behind her while she was seated, but forgot that there is a mirror placed at a nearby dresser from which the victim could take a side glance to see who her kidnapper was, and then, while the two kidnappers took care to tape the sunglasses she was made to wear so she can't see them, they made her stop for a while standing on the driveway while they put her inside the van and, more importantly, they forgot to tape the sunglasses to her face thereby enabling Joy to slide the sunglasses down her nose by a slight tilt of her and thus enabling her to identify not only Nelson, but Benley as well with whom she is also well- acquainted.[73]

In convicting the appellants for the crime charged, the trial court relied not only on the testimonies of Jocelyn and Simplicio but also on the testimony of SPO2 Edwin Pastor, not to mention those of PO3 Rodolfo Mahor, Major Alexander Rafael, Marcelo Opiana, Emiliano Agaton, Manuelito Orperia, as well as assorted documentary evidence. All of these constitute proof beyond reasonable doubt that the appellants and the accused Nelson Laddit Pua conspired to kidnap and illegally detain Jocelyn for ransom and in fact kidnapped and illegally detained her for ransom in the amount of P1,500,000 which the appellants took from her father, Simplicio Caleon.

As testified to by Simplicio and SPO2 Pastor, on November 28, 1998, Simplicio was ordered by the kidnappers to proceed in front of the McDonald's Restaurant in San Fernando, La Union and to park his vehicle before midnight. Shortly thereafter, appellant Benley sauntered by and passed in front of the parked vehicle. There is no evidence that other persons were milling about between SPO2 Pastor and the appellant. Simplicio thereafter received a call instructing him to get rid of his two companions and to place the ransom money on top of the rolled-down window of the vehicle, opposite the driver's seat. The ransom money was then taken by the kidnappers. Admittedly, there is no direct evidence that the appellants received the bag containing the P1,500,000 ransom. However, the confluence and sequence of events, from the time Jocelyn was kidnapped, the negotiations for the delivery of the ransom to the appellants, the call from one of the kidnappers instructing Simplicio to bring the ransom money to San Fernando, La Union, up to the time the ransom money was taken by the kidnappers, constitute a tapestry of circumstantial evidence on the appellants' participation in the kidnapping of Jocelyn and the delivery of the ransom money.

Jocelyn's testimony identifying the appellants as two of her kidnappers cannot be discredited on the bare claim that the PAOCTF agents failed to conduct search and arrest operations in Barangay Macatal, Aurora, Isabela,

where the appellants' mother Leticia Pua resided and where their farm was located. Although Jocelyn and the appellants were schoolmates, there is no evidence on record that she knew the appellants' home addresses. Hence, she could not have revealed such information to Col. Aquino after the kidnappers released her on November 29, 1998. Moreover, on November 30, 1999, or barely a day after Jocelyn's release, the PAOCTF agents learned from the Monarch Rent-A-Car personnel that the appellants and accused Nelson Laddit Pua were residing at the addresses indicated in the rental agreements. [74] The agents forthwith conducted search and arrest operations in the places enumerated therein, but the appellants were nowhere to be found. At that point in time, the PAOCTF agents were unaware that the appellants' mother resided in Aurora, Isabela. When the agents later learned of this, they secured copies of warrants of arrest of "Nelson Pua" and appellant Benley from the MTC of Cauayan in Criminal Cases Nos. 96-123 and 96-163 and 98-243 to 98-245. Moreover, the PAOCTF agents did not know that there were two persons going by the name "Nelson Pua" who were involved in the kidnapping, namely, accused Nelson Laddit Pua and his cousin, the appellant Nelson Ancheta Pua. The agents were not even aware that the Nelson Pua who was charged in Criminal Cases Nos. 98-243 to 98-245 before the MTC of Cauayan, Isabela was the accused Nelson Laddit Pua and not the appellant Nelson Ancheta Pua. The Court, thus, agrees with the following ruminations of the trial court:

The defense claim then that since Joy knows them, she should have had them arrested earlier than January 1999 lacks much substance. Indeed, the PAOCTF, as asserted by both accused, raided the house of Nelson Pua y Laddit and that of his father sometime in December 15, 1998 and it appears that PAOCTF intelligence-gathering was, at that time not fool-proof because the one they thought was Nelson Pua, one of the accused in this case, was not really the Nelson charged here, but another Nelson Pua, a namesake and cousin of the accused, who, unlike the herein Nelson Pua, is residing not in Isabela province but in Guadalajara, Guadalupe, Cebu City. As far as this Court has observed it, not a few Chinese or Filipinos of Chinese descent here are quite good in this kind of trickery and/or gobbledygook.[75]

Jocelyn and the appellants were schoolmates at the Philippine Yuh Chiau School in Cabatuan, Isabela. Appellant Benley admitted when he testified that he and Jocelyn and the other witnesses for the prosecution had no quarrels nor misunderstandings. There is no evidence on record that Jocelyn, the officers and agents of the PAOCTF, as well as Marcelo Opiana and Manuelito Orperia, had improper motives to so actuate them; the presumption then is that no such ill motive existed and that their testimonies are worthy of full faith and probative weight.[76]

The appellants anchored their defense on their denial of the charge and their alibi, asserting that when Jocelyn was kidnapped in San Jose, Nueva Ecija, in the evening of November 23, 1998 and illegally detained until the evening of November 29, 1998, they were in their mother's house in Barangay Macatal, Aurora, Isabela, helping the latter harvest calamansi and other produce in their farm. But as Jocelyn and Simplicio testified on January 19, 1999 and on two other occasions, the appellants' mother Leticia, her other son Chito, appellant Nelson's wife Josephine, and the appellants' Uncle Mariano and Aunt Veronica pleaded to Jocelyn's parents for mercy and forgiveness, and for the latter to agree to the restitution of the ransom money of P1,500,000 in exchange for the lives of the appellants. The appellants never presented their mother Leticia to controvert the testimony of Jocelyn and Simplicio and to corroborate their defenses. By pleading for mercy for her sons and offering to retribute the ransom money, Leticia thereby belied the appellants' alibi and denial of their receipt of the ransom money. The Court notes that the visits of the appellants' mother, brother, uncle and aunt to Jocelyn and Simplicio on three occasions ensued at the heels of appellant Nelson Ancheta Pua's Letter dated January 17, 1999 to Jocelyn, which reads:

Jan. 17, 1999

Joy,

Sorry na lang sa nagawa namin sa inyo. Wala naran talaga kaming balak na ikaw ang kukunin namin, parang

nadaan lang kami sa store ninyo. Kaya nagkaroon kami ng idea. Pero Joy and Shiela, wala na karning magagawa kasi nagawa na namin kaya sorry na lang ulit sa inyong pamilya pero kung pwede Joy pakisabi naman sa Papa mo na bigyan niya kami ng pagkakataon para magbago. Ang ibig kong sabihin Joy, sana pakiusap lang na gusto namin makausap ang Mama mo, Kuya Chito, at si Uncle Mar Pua para pag-usapan namin kung saan kami kukuha ng 5M para ibalik sa inyo. Ang pinag-usapan kasi namin ni Benley ipapabenta na lang namin yung mga bukid at bahay sa Aurora para makapagbalik sa inyo. Tapos Joy sa kulungan na lang kami para mapagdusahan namin yung nagawa namin sa inyo. Kaya kung puwede Joy, Shiela pakisabi naman sa Papa at Mama niyo na sana bigyan pa kami ng isang buhay. Kasi Joy and Shiela, alam ninyo naman, na hindi naman namin gawain ang ganito at hindi naman siguro kami ganon kasama. Ang inaaalala (sic) ko yung misis at ang anak ko, kaya Joy & Shiela, sana bigyan niyo naman kami ng pagkakataon para makita ko pa kung paano naman lumaki ang anak ko kahit na nasa bilangguan kami ng kapatid ko si Benley. Thanks, sana maunawaan ninyo kami.

Nelson "Bong" Pua[77]

When the appellant Nelson wrote the foregoing letter, he was not under custodial investigation. He wrote to Jocelyn without any prodding from the PAOCTF officers and agents, to reiterate his plea for mercy and forgiveness. The appellant Nelson failed to prove his assertion that the contents of the letter and the corrections thereon were indeed dictated by Major Rafael. As gleaned from the letter, the appellant even pleaded to Jocelyn that he, his mother, brother and his uncle be given a chance to talk to Jocelyn's mother and discuss the restitution of the ransom money. Major Rafael could not have known the names of the appellants' uncle and brother, whether the appellants' family owned a farm in Aurora, and the appellants' plan for their relatives to once more plead to Jocelyn's mother for mercy. Appellant Nelson even asserted when he testified that when he wrote the letter, Major Rafael was not in his detention cell. Hence, the latter could not have dictated to the appellant what to write down. As to why Major Rafael could not have dictated the corrections on the letter of the appellant, the trial court reasoned, thus:

. . . The court studied those "corrections" and is not convinced that they are dictated corrections, mainly because the corrections were simple grammatical (the letter was in Tagalog) corrections that have nothing to do with the making up of a synchronized story.

For example, the 1st sentence says "Sorry na lang sa nagawa namin sa inyo." The words "sa inyo" was originally written "sa yo." In the middle of the letter was inserted between "nagbago" and "ibig kong sabihin (next sentence) the word "Ang." At the latter part of the letter where it says "and anak ko Joy" was inserted the word "nga" between "ko" and "Joy." In the penultimate sentence where it said "ang anak ko kahit nasa bilangguan kami" was a word between "ko" and "kahit" which was crossed out with several horizontal lines. Said crossed out word could not, have been an ignorance of fact on the kidnapping by Maj. Rafael as that sentence refers to Nelson's request for a final chance so he could see how his children would grow even if he is in jail. Such an expression could not have been known to Maj. Rafael or something he could have been mistaken about. The subject of the said sentence is Nelson's situation, vis-à-vis, his family, now that he is in jail.[78]

Not only did appellant Nelson Ancheta Pua write to Jocelyn; he and appellant Benley, also without any prodding from the PAOCTF officers and agents, spontaneously pleaded to Jocelyn, her father and sister for mercy, and for their lives to be spared. This can be gleaned from the testimony of Jocelyn on direct examination:

ATTY. CRESCINI:

Q-

On January 17, 1999 while you were being investigated, do you recall if there was any occasion that you were able to talk with the accused Nelson Pua?

WITNESS:

A- Yes, after the police line up, I was able to talk with Nelson Ancheta and Benley Pua.

ATTY. CRESCINI:

Q- Where, in what particular place did you talk to them?

WITNESS:

A- That was in the office of the Presidential Anti-Organized Crime Task Force at Camp Crame.

ATTY. CRESCINI:

Q- Why, were you able to talk with these 2, at whose instance was there a confrontation between the 3 of you?

WITNESS:

A-

I was asking if I could talk to them. And they were asked if they were willing to be face to face with me and my Dad and my sister. They agreed and we were able to talk in front (sic) of the personnel present.

ATTY. CRESCINI:

Q- Are you saying that your father Mr. Simplicio Caleon and your sister Shiela were also there?

WITNESS:

A- Yes, sir.

ATTY. CRESCINI:

Q- And other agent of PAOCTF?

WITNESS:

A- Yes, sir.

ATTY. CRESCINI:

Q- What did you talk about?

WITNESS:

A-

I was asking why. It was my initial feeling I was asking why it was to happen and they were asking for an apology and they were saying that he regretted for what he did. They were unhappy about what they did. And they were proposing that they will return the 1.5 million ransom that we have given. So that if in case they were convicted instead of death, they will get a

lower penalty.

ATTY. CRESCINI:

Q- Did you accept the offer to re-imburse the 1.5 million pesos they received from your family?

WITNESS:

A- I did not say no. I did not say yes. I just remained quiet.

ATTY. CRESCINI:

Q-

Apart from that conversation during which they made this admission and the proposal to refund the ransom money, do you know if there was any document that was ever executed in connection with that conversation?

WITNESS:

A- Yes, sir.

Because the confrontation was so short, we were very emotional. We were crying. After a while, one person approached me and told me that Nelson Ancheta has a lot of things to say to me. And he was requesting that he will talk to me but I did not agree anymore. And I told the person if he really wants to say something he write it down and I promised I will read it.

COURT:

Q- You said they were crying, who were crying?

WITNESS:

A- The two (2) Nelson Ancheta and Benley Pua and I was also shed a (sic) tears.

ATTY. CRESCINI:

Q- You mentioned you became emotional, to what extend (sic) did you became (sic) emotional?

WITNESS:

A-

So I felt my experienced (sic) came back to me and I was really saying these people I know, are the one who made harm to me and my family.

ATTY. CRESCINI:

Q- Do you expect them to do that to you?

WITNESS:

A- No, sir.

ATTY. CRESCINI:

Q- This person who approached you with the request that Nelson would like to talk to you, would you recognize him?

WITNESS:

A- I could not recognize him.

ATTY. CRESCINI:

Q- Is he a man or a woman?

WITNESS:

A- A man, sir.

ATTY. CRESCINI:

Q- When you suggested that if there was anything else he wanted to tell to you or write a letter, do you know if he did?

WITNESS:

A- Yes, he did.

ATTY. CRESCINI:

Q- Do you have a copy of that letter?

WITNESS:

A- I have, sir.

ATTY. CRESCINI:

Q-

I am showing to you a letter dated January 17, 1999 consisting of one page already marked as Exhibit F, please go over this and tell if you can recognize it?

WITNESS:

A- Yes, sir.

ATTY. CRESCINI:

Q- The letter sent to you by Nelson Ancheta the letter is addressed to Joy, who is this Joy?

WITNESS:

A- That is my nickname, sir.

ATTY. CRESCINI:

Q- The letter sender wrote his name Nelson Bong Pua, who is this Nelson Bong Pua?

WITNESS:

A- That is Nelson Ancheta Pua, Bong is his nickname.[79]

Appellant Nelson Ancheta Pua's contention that his letter to Jocelyn[80] is inadmissible in evidence because he was illegally arrested is barren of merit.

We agree with the appellant's submission that he was arrested without any subsisting and valid warrant of arrest. Although the MTC of Cauayan, Isabela had issued warrants of arrest in Criminal Cases Nos. 98-243 to 98-245, the accused therein was Nelson Laddit Pua and not the appellant Nelson Ancheta Pua. However, the appellant did not question the validity of his arrest before he was arraigned. By entering a plea of not guilty, he submitted himself to the jurisdiction of the trial court, thereby curing any defect in his arrest.[81] Moreover, the appellant participated in the proceedings before the trial court and even adduced evidence in his behalf. The appellant is thus precluded from questioning his arrest and the procedure therefor.[82]

However, the waiver by the appellant of his right to question the legality of his arrest does not necessarily carry with it his waiver of the right to question the admissibility of any evidence procured by the PAOCTF agents on the occasion of or incidental to his illegal arrest or thereafter.[83] The plea and actual participation of the appellant in the trial would not cure the illegality of the search and transform the inadmissible evidence into objects of proof.[84] In this case, appellant Nelson Ancheta Pua did not object to the admission of the letter[85] in evidence on the ground that it was secured by the PAOCTF agents incidental to and in the aftermath of his illegal arrest. The appellant objected to the admission of the letter in evidence solely on the following grounds: (a) he was coerced into writing the letter; (b) the contents of the letter were dictated by Major Alexander Rafael; and (c) he was not assisted by counsel. The appellant was not under custodial investigation when he wrote the letter. The letter was written of the appellant's own volition, as another attempt to convince the kidnap victim to forgive him and his brother, and for Jocelyn to have mercy on them. Moreover, the counsel of the appellant incisively cross-examined Jocelyn on the letter, thus:

ATTY. MARAMBA:

Madam witness, you also mentioned in your direct examination that no physical harm happened to you during the period of captivity?

WITNESS:

No physical harm was made on me, sir.

ATTY. MARAMBA:

In other words, you were treated nicely, madam witness?

WITNESS:

No physical harm was done. I was really terrified emotionally, sir.

ATTY. MARAMBA:

Madam witness, you made mentioned (sic) of the fact that during the interrogation at Camp Crame, the Pua brothers, Nelson and Benley knelt down before you, madam witness?

WITNESS:

They were very apologetic, sir, they were even crying in front of me and my father and my other relatives, they were expressing their apology, sir.

ATTY. MARAMBA:

Where (sic) they remorseful, madam witness?

WITNESS:

Based on what I saw, I saw them crying, we saw them willing, asking forgiveness they were expressing their intention to return the money, sir.

ATTY. MARAMBA:

Madam witness, aside apologising (sic), as well as the physical appearance during that time at Camp Crame, was there anything they do (sic) in order to ask for your forgiveness, madam witness?

WITNESS:

They gave me a letter your honor which we present last Monday and the same thing, they were expressing apologies, sir.

ATTY. MARAMBA:

No further question, your honor.[86]

The appellants' contention that on January 16, 1999, Simplicio and a male named "Marvin" were allowed to see the appellants, to familiarize themselves with their physical appearance, and thereafter brief Jocelyn thereon before the formation of the police line-up on January 17, 1999 is flimsy. If it were the intention of the PAOCTF agents to apprise Jocelyn of the physical appearance of the appellants before the latter were identified in the police line-up, the agents could have easily allowed Jocelyn herself to view the appellants in their detention cell. This could have been done even without the appellants' knowledge. Significantly, the prosecution did not present any witness by the name of "Marvin."

We agree with appellant Nelson Ancheta Pua that he was not a party to the rental agreement.[87] This notwithstanding, his conviction for the crime charged is in order, considering the copious evidence of the prosecution that by his overt acts, he conspired with his brother, appellant Benley and his cousin, accused Nelson Laddit Pua, in kidnapping Jocelyn for ransom.

The appellants failed to adduce evidence independently of their allegations that they were tortured by the PAOCTF agents while detained at Camp Crame, Quezon City. The appellants could have presented any of the doctors who attended to and treated them for their injuries, but the appellants did not do so. If it were true that they were indeed tortured by the PAOCTF agents, the appellants should have filed the appropriate charges against the malefactors. The appellants failed to do so.

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.

In this case, the prosecution adduced proof beyond reasonable doubt that the appellants conspired to kidnap Jocelyn for ransom, and kidnapped and illegally detained her from November 23, 1998 until November 29, 1998, when she was released by the appellants after the latter received the P1,500,000 ransom. The trial court correctly sentenced the appellants to suffer the penalty of death as provided for in the second paragraph of Article 267 of the Revised Penal Code.

The crime committed by the appellants was aggravated by the use of a motor vehicle. Jocelyn was transported by the appellants from San Jose to Pangasinan and on to Baguio City with the use of a motor vehicle.[88] However, this aggravating circumstance cannot affect the imposable penalty, because under Article 63 of the Revised Penal Code, the Court is mandated to impose the death penalty, a single and indivisible penalty, prescinding from the presence of any generic modifying circumstances.

Civil Liabilities of the Appellants

The trial court ordered the appellants to restitute the P1,500,000 ransom to Simplicio Caleon and to pay to Jocelyn P300,000 as moral damages. However, the trial court erred in ordering the appellants to return to Jocelyn only the amount of P8,000 as actual damages. The evidence on record shows that the appellants divested Jocelyn of P9,000 in San Jose Nueva Ecija; hence, the appellants are obliged to return the same amount to their victim. Jocelyn is likewise entitled to exemplary damages in the amount of P25,000.[89]

IN LIGHT OF ALL THE FOREGOING, the Decision dated July 19, 2000 of the Regional Trial Court of Quezon City, Branch 103, in Criminal Case No. Q-99-80570, is AFFIRMED WITH MODIFICATION. Appellants Nelson Ancheta Pua and Benley Ancheta Pua are found guilty of kidnapping for ransom under Article 267 of the Revised Penal Code and are sentenced to suffer the death penalty. The appellants are directed to pay, jointly and severally, to Simplicio Caleon the amount of P1,500,000 as actual damages; to Jocelyn Caleon the amount of P300,000 as moral damages; P9,000 as actual damages; and P25,000 as exemplary damages. Costs de oficio.

Three Justices of the Court maintain their position that Republic 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. No costs.

SO ORDERED.

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

[1] Penned by Judge Jaime N. Salazar.

[2] Records, pp. 1-2.

[3] Id., at 46.

[4] The prosecution presented Jocelyn L. Caleon, Simplicio Caleon, PO3 Edwin Pastor, Major Alexander Rafael, PO3 Rodolfo Mahor, Emiliano Agaton, Adrian Layag, Marcelo Opiana, Manuelito Orperia.

[5] Sometimes referred to as "Joy."

[6] Exhibit "T," Folder of Exhibits, p. 52.

[7] TSN, 24 May 1999, pp. 8-11.

[8] Exhibits "G" and "G-1," Folder of Exhibits, p. 30.

[9] Exhibit "J," id. at 43.

[10] TSN, 19 July 1999, p. 23.

[11] Exhibit "L," id. at 44.

[12] Exhibit "S," id. at 51.

[13] Exhibit "H-6," id. at 37.

[14] Exhibits "H" to "H-5," id. at 31-36.

[15] TSN, 14 June 1999, p. 34.

[16] Exhibit "Q," Folder of Exhibits, p. 49.

[17] Ibid.

[18] Exhibit "L," supra.

[19] TSN, 24 May 1999, pp. 16-23.

[20] Exhibits "I" and "I-1," Folder of Exhibits, pp. 41-42.

[21] TSN, 24 May 1999, pp. 26-31.

[22] Id. at 137-138.

[23] TSN, 24 May 1999, pp. 140-147.

[24] Id. at 35-36, 143-144.

[25] Id. at 38-39.

- [26] Exhibit "H-6," Folder of Exhibits, p. 37.
- [27] TSN, 24 May 1999, pp. 40-42.
- [28] Exhibit "H-4," Folder of Exhibits, p. 35.
- [29] Exhibits "H-2" and "H-3," id. at 33-34.
- [30] Exhibit "A," id. at 18-21.
- [31] Exhibit "B," id. at 22-24.
- [32] Exhibit "M," id. at 45.
- [33] TSN, 24 May 1999, pp. 156-158.
- [34] Exhibit "H-3," Folder of Exhibits, p. 34.
- [35] TSN, 24 May 1999, pp. 69-73.
- [36] Exhibit "B," supra.
- [37] TSN, 24 May 1999, pp. 158-163.
- [38] TSN, 7 June 1999, pp. 29-36.
- [39] TSN, 24 May 1999, pp. 163-165.
- [40] TSN, 7 June 1999, pp. 37-42.
- [41] TSN, 24 May 1999, pp. 166-171.
- [42] Id. at 171-172.
- [43] Exhibits "R" to "R-2," Folder of Exhibits, p. 50.
- [44] Exhibit "H-5," id. at 36.
- [45] Exhibits "K" to "K-2," id. at 9-10.
- [46] Exhibits "H-8" and "H-9," id. at 39-40.
- [47] TSN, 24 May 1999, pp. 77-88.
- [48] Id. at 89-95.
- [49] Exhibit "A," supra.
- [50] Exhibit "S," id. at 51.
- [51] Exhibits "O" and "P," id. at 47-48.
- [52] Exhibit "D," id. at 26.
- [53] Records, p. 232.
- [54] TSN, 24 May 1999, pp. 107-112.
- [55] Id. at 112-115.
- [56] Exhibit "F," Folder of Exhibits, p. 29.

[57] Exhibit "A," supra.

[58] Exhibit "B," supra.

[59] Exhibit "C," id. at 25.

[60] Exhibit "D," id. at 26-27.

[61] Exhibit "E," id. at 28.

[62] Exhibits "H" and "I," id. and their submarkings.

[63] The appellants testified in their behalf. They also presented Prospero Guillermo, Emiliano dela Cruz, Dr. Jonathan Serallo, SPO1 Edwin Pastor and PO3 Rodolfo Mahor.

[64] Exhibit "F," supra.

[65] Records, p. 233.

[66] Id. at 368-369.

[67] Exhibit "F," supra.

[68] Exhibit "L," supra.

[69] Exhibits "S-2" and "5," id. at 51.

[70] Exhibit "F," supra.

[71] Exhibits "L," "M" and "S," supra.

[72] People v. Delim, G.R. 142773, January 28, 2003.

[73] Rollo, p. 38.

[74] Exhibits "L," "M" and "S," supra.

[75] Rollo, pp. 40-41.

[76] People v. Dela Piedra, 350 SCRA 163 (2001).

[77] Exhibit "F," supra.

[78] Records, p. 366.

[79] TSN, 24 May 1999, pp. 107-115.

[80] Exhibit "F," supra.

[81] People v. Gamer, 326 SCRA 693 (2000).

[82] People v. Palijon, 343 SCRA 486 (2000); People v. Madraga, 344 SCRA 628 (2000).

[83] People v. Barros, 231 SCRA 557 (1994).

[84] People v. Aruta, 288 SCRA 626 (1998).

[85] Exhibit "F," supra.

[86] TSN, 31 May 1999, pp. 10-13.

[87] Exhibits "L" and "M," supra.

[88] Article 2014, paragraph 20, Revised Penal Code.

[89] *People v. Catubig*, 363 SCRA 621 (2001).

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