

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. PAMPING PAINGIN, GITONG MALDUMAN, AND THREE (3) JOHN DOES, ACCUSED.

G.R. No. 148228. December 04, 2003

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is an appeal from the Decision[1] of the Regional Trial Court, Branch 40, Calapan City, Oriental Mindoro ("trial court") in Criminal Case No. C-4970, finding appellant Pamping Paingin ("appellant") guilty beyond reasonable doubt of kidnapping and sentencing him to reclusion perpetua.

The Charge

On 23 May 1996, an Information[2] for kidnapping was filed with the trial court against appellant, Gitong Malduman and three John Does. The accusatory portion of the Information reads:

That on or about the 3[rd] of May, 1995 at around 1:00 o'clock in the afternoon, in Barangay Paitan, Municipality of Naujan, Province of Oriental Mindoro, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then private individuals, conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and feloniously kidnap one PATI PANINDIGAN, 18 years old depriving the latter of his liberty and inflicting upon him physical injuries, and up to the present, said PATI PANINDIGAN has not returned.

CONTRARY TO LAW.

Assisted by counsel de officio, appellant on 27 January 1997 pleaded not guilty to the charge.[3] Gitong Malduman and the three John Does remained at large.

After trial, Judge Tomas C. Leynes rendered a decision on 17 April 2001 finding appellant guilty as charged. The dispositive portion of the decision reads:

ACCORDINGLY, the Court finds herein accused Pamping Paingin y Alisia guilty beyond reasonable doubt as principal of the crime of Kidnapping punishable under Art. 267 of the Revised Penal Code. There being no mitigating and aggravating circumstances present in the instant case, said accused is hereby sentenced to suffer the penalty of Reclusion Perpetua and to pay the costs. The accused is hereby ordered to pay the mother of the victim Pati Panindigan, the amount of P100,000.00 by way of moral damages caused by anxiety of being emotionally drained coupled by the fact that up to this date, they cannot determine the whereabouts of her son, Pati Panindigan.

The said accused shall be credited with the full time during which he had undergone preventive imprisonment provided that said accused agreed voluntarily in writing to abide with the disciplinary rules imposed upon convicted prisoners, otherwise, he shall be credited in the service of his sentence with four-fifths (4/5) of the time during which he had undergone preventive imprisonment.

Considering that accused Gitong Malduman is still at large, the case against said accused still stands. Let alias warrant of arrest be issued against said accused Gitong Malduman.

SO ORDERED.

Insisting on his innocence, appellant filed this appeal.

The Facts

Version of the Prosecution

The prosecution presented four witnesses, namely: Elena Panindigan, Talya Bunilya, Macoy Panindigan and Narding Aguniag.

The Office of the Solicitor General ("OSG") culled the prosecution's version of the incident from the testimonies of its witnesses, as follows:

Around 1:00 o'clock in the afternoon of May 3, 1995, Elena Panindigan (testified that she) saw appellant while she was in front of their house at Sitio Loog, Barangay Paitan, Naujan, Oriental Mindoro, taking care of her three (3) children, namely: Marcelina, Umlak and Dino. (p. 7, TSN, August 25, 1997)

Momentarily, Pati Panindigan, Elena's eighteen-year old son, arrived and requested that the sweet potatoes he brought be roasted. (p. 8, *ibid.*)

While Elena was roasting the sweet potatoes, she heard the shout of Pati which prompted her to rush out of their house. She saw appellant, with Gitong Malduman and three (3) other persons who she did not know, standing behind Pati at a distance of about ten (10) meters from where she stood. (p. 13, *ibid.*) Suddenly, appellant hit Pati on his neck with a piece of wood measuring around one-half (1/2) inch[4] long and three (3) inches in diameter while Gitong Malduman stood in front of Pati. This caused Pati to fall to the ground. (pp. 8-9, *ibid.*)

Thereafter, appellant, with the help of Gitong, carried Pati on his shoulder and together with their companions, proceeded towards the direction of Sitio Balyaso through the cogonal area. (p. 11, *ibid.*)

Elena got scared and could not do anything but cry. After the group left, Elena reported the incident to their Chieftain, Talya Bunilya. To date, Pati has not been found. (pp. 13-14, *ibid.*)

Narding Aguniag testified that on May 3, 1995, he saw appellant dragging Pati with both his hands at Sitio Loog, Paitan. (p. 8, TSN, May 4, 2000) Narding was merely twenty five (25) meters away when he saw appellant with Gitong Malduman and their three (3) companions. (p. 9, *ibid.*)

Version of the Defense

For its part, the defense presented three witnesses, namely: appellant himself, Aquilino Maldoman and Pinoy Uskado.

The Public Attorney's Office summarized the defense's version of the incident as follows:

When he took the witness stand, accused PAMPING PAINGIN, 53 years old, married, farmer, and a resident of Sitio Baracan, Brgy. Tagumpay, Baco, Oriental Mindoro, denied having committed the offense imputed to him and invoked the defense of alibi. He testified among others, that: he has been residing in Sitio Baracan, Brgy. Tagumpay, Baco, Oriental Mindoro since childhood and he has not gone to Paitan, Naujan, Oriental Mindoro. He does not know the victim and he only came to know the victim's mother during the hearing of this case. He does not also know his co-accused Gitong Malduman.

According to him, on 03 May 1995, he and 15 other Mangyans harvested palay on 3 rice paddies at Sitio Baracan, Brgy. Tagumpay, Baco, Oriental Mindoro from 7:00 o'clock in the morning up to 1:30 in the

afternoon. At about 3:30 in the afternoon, they left the land and proceeded to their homes. He arrived at his residence at about 4:00 o'clock in the afternoon. The following day or on 04 May 1995, they brought their palay to the Progressive Rice Mill in Calapan City. On 27 May 1995, he was apprehended by a certain Biste, Romer Carubay and their companions in Sitio Baracan. The group tied him up thereafter. When he asked Biste why they did so, the latter told him that Elena Panindigan filed a case against him regarding the loss of the victim. He was tied to a bangkal tree near Biste's residence for about 30 days. His hands were tied with a plastic rope while his chest was tied with the rope used in tying a carabao. After said period, policemen arrived and ordered Biste to untie and release him. He then went to Mamburao because Biste and Maerlan filed a case against him in the municipal court. When the case did not prosper, he proceeded to the house of his granddaughter. He returned to Sitio Baracan in the month of August 1995. (TSN, pp. 2-14, 3 February 1995; pp. 2-11, 31 February 1999)

AQUILINO MALDOMAN corroborated Paingin's testimony to the effect that the accused and several other persons harvested palay in Bacungan, Baco, Oriental Mindoro from 7:00 o'clock in the morning up to 1:00 o'clock in the afternoon of 3 May 1995. The following day, he and the accused planted bananas on the land owned by Tinay Maliglig, the accused's landlord. From 03 May 1995 up to the time that accused was arrested and detained at the Provincial Jail Center, he never left Sitio Baracan, Baco, Oriental Mindoro. (TSN, pp. 2-24, 3 November 1999)

Accused's testimony was further corroborated by PINOY USKADO, Barangay Captain of Dulangan III, Baco, Oriental Mindoro who declared that on 03 May 1995, the accused and 30 other members of the farmers' cooperative harvested palay on a total of 22 hectares of land. He averred that in the month of May 1995, they harvested from morning until afternoon for a period of two (2) weeks. Being the president of the farmers' cooperative, he monitored the attendance of the members at noontime and in the afternoon; he knew the victim and came to learn from the latter's children that the victim was allegedly abducted by soldiers in Sitio Baracan sometime in December 1995. Said victim was allegedly brought to Naujan, Oriental Mindoro but he did not report the incident to the authorities. He further testified that it will take 3 days on foot to negotiate the distance from Sitio Baracan, Baco, Oriental Mindoro to Sitio Loog in Paitan, Naujan, Oriental Mindoro. (TSN, pp. 2-23, 24 November 1998)

The Trial Court's Ruling

The prosecution and the defense presented conflicting versions of what happened on 3 May 1995 in Sitio Loog, Barangay Paitan, Naujan, Oriental Mindoro ("Loog, Paitan"). Accordingly, the trial court declared that the resolution of the case hinges on the credibility, probability and truthfulness of the testimonies of the prosecution and the defense witnesses.

The trial court found the testimonies of prosecution witnesses Elena Panindigan ("Elena") and Narding Aguniag ("Narding") clear, convincing and credible. The trial court stressed that these witnesses testified "with the deepest sincerity and candor to the court." On the other hand, the trial court found the testimonies of appellant and the other defense witnesses unbelievable and unworthy of credence. Compared to Elena and Narding's testimonies, the trial court observed that appellant and his witnesses were simply "not telling the truth."

The trial court further held that appellant's alibi is weak and cannot stand against Elena and Narding's positive identification of the appellant. The trial court pointed out that the testimonies of appellant and his corroborating witness Aquilino Maldoman ("Aquilino") suffered from serious and glaring inconsistencies. For one, appellant testified that after harvesting rice stalks or palay, appellant and his companions including Aquilino left the field at 3:30 in the afternoon and proceeded to their respective houses. Appellant arrived at his house at around 4:00 in the afternoon. However, Aquilino testified that after harvesting palay, they proceeded to Aquilino's house and engaged in story telling up to 7:00 in the evening. Next, appellant testified that the following day, on 4 May 1995, he brought his harvest to Progressive Rice Mill in Calapan City. On the other hand, Aquilino testified that the

following day, he and appellant planted bananas on the land owned by appellant's landlord Tinay Maliglig. Moreover, the trial court ruled that appellant failed to demonstrate that it was physically impossible for him to be at the scene of the crime or in its immediate vicinity at the time of its commission. The trial court considered that Loog, Paitan where the crime allegedly happened can be reached by foot from Baracan, Tagumpay (where appellant claimed to be) within 2 hours only.

The Issue

In his brief, appellant assigns as lone error that -

THE TRIAL COURT ERRED IN CONVICTING APPELLANT OF THE CRIME CHARGED WHEN HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.[5]

Appellant contends that (1) the prosecution failed to prove the elements constituting the crime of kidnapping or serious illegal detention; (2) the trial court should have given credence to his alibi as two of his witnesses corroborated his alibi; and (3) it was physically impossible for him to be at the scene of the crime.

For the State, the OSG maintains that the prosecution has proven beyond reasonable doubt appellant's guilt for kidnapping and that the trial court correctly imposed on appellant the penalty of reclusion perpetua.

The Court's Ruling

The appeal is without merit.

To sustain a conviction for Kidnapping and Serious Illegal Detention under Article 267 of the Revised Penal Code,[6] the prosecution must establish these elements: (1) the offender is a private individual; (2) he kidnaps or detains another or in any other manner deprives the victim of his liberty; (3) the act of kidnapping or detention is 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) serious physical injuries are inflicted on the victim or threats to kill are made; or (d) the person kidnapped or detained is a minor, female or a public officer.[7]

Actual Restraint of the Victim

Appellant argues that the prosecution failed to establish the element of actual restraint or detention of the victim. Appellant points out that although the victim's mother allegedly saw appellant hit and then carry the victim away, it is not clear whether appellant intended to kidnap the victim. This uncertainty is compounded by the prosecution's failure to present any motive on the part of appellant. The disappearance as well as the failure of the victim to return to his family is subject to many speculations and conjectures. The victim may have opted not to return to his family for reasons only known to him. Appellant contends he may be guilty of a lesser crime but certainly not as charged in the information.

These arguments fail to persuade.

The primary element of the crime of kidnapping is actual confinement, detention and restraint of the victim.[8] There must be a showing of actual confinement or restriction of the victim, and that such deprivation was the intention of the malefactor. An accused is liable for kidnapping when the evidence adequately proves that he forcefully transported, locked up or restrained the victim.[9] There must exist indubitable proof that the actual intent of the malefactor was to deprive the victim of his liberty. The restraint of liberty must not arise merely as an incident to the commission of another offense that the offender primarily intended to commit.[10]

The prosecution's evidence clearly established that the accused actually restrained and forcefully transported the

victim to an unknown place. Elena Panindigan testified that she saw appellant hit the victim Pati Panindigan ("Pati") on the neck with a piece of wood which caused him to fall. Thereafter, appellant with his co-accused Gitong Malduman's help carried Pati on his shoulder. Elena saw appellant's group proceed towards the direction of Sitio Balyaso passing through the cogonal area. Equally important is Narding's testimony corroborating Elena's. Narding testified that he actually saw appellant together with his companions dragging Pati away.

In this case, actual restraint of the victim's liberty was evident from the moment appellant clubbed the victim on the neck. Appellant not only restricted Pati's freedom of movement, but appellant's blow also disabled the victim from resisting appellant's criminal design. This facilitated accused's capacity to carry physically Pati to an unknown place. Obviously, this constitutes forcible taking. The circumstances surrounding Pati's disappearance are indubitable proof of a purposeful or knowing action by appellant to forcibly take the victim. The actual taking indicated an intention to deprive the victim of his liberty.[11] In this case, appellant and his companions actually took Pati away. For kidnapping to exist, it is not necessary to place the victim in an enclosed place. It is sufficient to detain or deprive him in any manner of his liberty.[12]

Pati's failure to resurface after the forcible taking does not bar conviction for the crime of kidnapping. In *People v. Bernal*,[13] where the victim also disappeared after the forcible taking, the Court held:

The Court notes that up to this day, neither the victim nor his body has been found. This, however, does not preclude the Court from ruling on the merits of the case. In kidnapping, what is important is to determine and prove the fact of seizure, and the subsequent disappearance of the victim will not exonerate an accused from prosecution therefor. Otherwise, kidnappers can easily avoid punishment by the simple expedient of disposing of their victims' bodies. (Emphasis supplied)

At the time the trial court decided this case, the victim was still missing. Indeed, his kidnapping had far exceeded three days. Considering the circumstances, it is safe to assume that Pati Panindigan is already dead since he has disappeared for more than eight years.[14] Appellant's motive is not even relevant. Motive is not an element of the crime of kidnapping.[15]

In sum, we find that the prosecution has proven all the elements of kidnapping: (1) appellant is a private individual; (2) he kidnapped Pati; (3) the act of kidnapping was illegal; and (4) the kidnapping had exceeded three days.

Denial and Alibi of Appellant

We do not find appellant's alibi sufficiently believable although corroborated by Aquilino and Pinoy Uskado ("Pinoy"). Appellant's alibi that he was with 15 other Mangyans harvesting palay from 7:00 in the morning up to 1:30 in the afternoon in Sitio Baracan, Barangay Tagumpay, Baco, Oriental Mindoro ("Baracan, Tagumpay") at the time of the alleged kidnapping is not only inherently weak but also evidently unreliable. Appellant's claim that he has never been to Loog, Paitan where the kidnapping took place does not inspire belief.

Pinoy declared that he was sure of appellant's presence in Baracan, Tagumpay on the day of the kidnapping because as President of the Farmer's Cooperative he monitored the attendance of the member farmers at noon and later in the afternoon. To show physical impossibility of being at the scene of the crime, Pinoy further testified that it ordinarily takes three days to travel by foot the distance between the two towns, Loog, Paitan and Baracan, Tagumpay. The defense asserted that appellant could not have made it back to the field in time for the checking of attendance in the afternoon.

The trial court correctly rejected appellant's alibi. First, the inconsistencies between the testimonies of appellant and Aquilino, extensively discussed in the trial court's decision, cast doubt on the veracity of the alibi. Second,

appellant unwittingly admitted during cross-examination that Loog, Paitan may be reached by public transportation from Baracan, Tagumpay and that he prefers to ride rather than walk. Appellant testified:

Q:

How far is sitio Baracan from barangay Paitan?

A:

If you are going to ride a passenger jeep you will be charged P35.00 as transportation fee, sir.

Q:

But you can go to barangay Paitan by not passing Calapan?

A:

We cannot avoid to pass Calapan, sir.

Q:

Is it not a fact that Mangyans like to negotiate from Baracan to Paitan routes by the mountain?

A:

I am not used to walking, I ride passenger vehicles, sir.[16]

This portion of appellant's testimony demolishes his earlier claim that he is not familiar with and has never gone to Loog, Paitan. This also demolishes Pinoy's testimony that the distance between Loog, Paitan and Baracan, Tagumpay may be negotiated only by foot. Since appellant is knowledgeable about the exact transportation fare for a jeepney ride between these two (2) towns, his claim that he has never gone beyond Baracan, Tagumpay and that he is not familiar with Loog, Paitan, truly taxes one's credulity. Third, in the face of the clear and positive identification made by Elena and Narding, appellant's alibi hardly assumes probative value. Appellant's alibi goes even farther down the drain in the absence of any evidence of ill motive on the part of Elena and Narding to impute so grave a wrong to appellant.[17]

A conviction must stand on the strength of the evidence presented by the prosecution, and not on the weakness of the defense presented by the accused. Here, we find that the prosecution evidence sufficiently proves the appellant's guilt beyond reasonable doubt. Appellant does not even attempt to assail the credibility of the prosecution witnesses. Rightfully so, as this would be an exercise in futility. We find no reason to deviate from the trial court's assessment of the credibility of the prosecution witnesses.

The trial court correctly imposed on appellant the penalty of reclusion perpetua in accordance with Article 267 of the Revised Penal Code. We likewise affirm the award of P100,000 as moral damages. Undoubtedly, the victim's family has suffered serious anxiety and great distress in the uncertainty of seeing Pati again.[18]

WHEREFORE, the appealed Decision dated 17 April 2001 of the Regional Trial Court, Branch 40, Calapan City, Oriental Mindoro, in Criminal Case No. C-4790, finding appellant Pamping Paingin guilty beyond reasonable doubt of the crime of Kidnapping and Serious Illegal Detention, sentencing him to reclusion perpetua, and ordering him to pay the victim's mother P100,000 in moral damages, is **AFFIRMED** in toto.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Panganiban, Ynares-Santiago, and Azcuna, JJ., concur.

[1] Penned by Judge Tomas C. Leynes.

[2] Records, pp. 1-2.

[3] Ibid., p. 17.

[4] This should be meter. TSN dated 25 August 1997, p. 9.

[5] Rollo, p. 40.

[6] Art. 267, The Revised Penal Code, as amended by Republic Act No. 7659, reads: Kidnapping and serious illegal detention. - Any private individual who shall kidnap or detain another, or in any manner deprive him of his liberty, shall suffer the penalty of reclusion perpetua to death: (1) If the kidnapping or detention shall have lasted more than three (3) days; (2) If it shall have been committed simulating public authority; (3) 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; (4) 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.

[7] People v. Villamar, 358 Phil. 886 (1998).

[8] People v. Ubongen, G.R. No. 126024, 20 April 2001, 357 SCRA 142.

[9] Ibid.

[10] People v. De la Cruz, 342 Phil. 854 (1997); People v. Sinoc, 341 Phil. 355 (1997).

[11] People v. Acbangin, G.R. No. 117216, 9 August 2000, 337 SCRA 454.

[12] Ibid.

[13] G.R. No. 113685, 19 June 1997, 274 SCRA 197.

[14] Article 390 and 391(3) of the Civil Code of the Philippines.

[15] People v. Acbangin, supra, see note 11; People v. Bernal, supra, see note 13.

[16] TSN dated 31 May 1999, pp. 3-5.

[17] People v. Ramos, 358 Phil. 261 (1998).

[18] People v. Silongan, G.R. No. 137182, 24 April 2003; People v. Baldogo, G.R. No. 128106-07, 24 January 2003.

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