

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. NARCISO SALDAÑA (AT LARGE), ELMER ESGUERRA (AT LARGE), FERNANDO MORALES, AND ARTURO MALIT, ACCUSED, FERNANDO MORALES AND ARTURO MALIT, A...*G.R. No. 148518. April 15, 2004*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-148518/>**PER CURIAM:**

On automatic review is the decision[1] dated February 2, 1999 of the Regional Trial Court of San Fernando, Pampanga, Branch 47, in Criminal Case No. 8371, finding appellants Fernando Morales and Arturo Malit, and their co-accused Narciso Saldaña and Elmer Esguerra guilty of the crime of kidnapping for ransom and imposing on them the penalty of death.

The crime was allegedly committed as follows:

That on or about the 9th day of November, 1994, in the municipality of Bacolor, province of Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, did then and there wilfully, unlawfully and feloniously, abduct and kidnap Jefferson C. Tan, Joanna C. Tan, Jessie Anthony C. Tan, Malou Ocampo and Cesar Quiroz, while the latter were on board a L-300 van with Plate No. CKW-785 at San Vicente, Bacolor, Pampanga, for the purpose of extorting ransom money from the parents of the said victims with threat to kill the said victims if their parents failed to deliver the ransom money, that said victims were brought and detained in Bataan until the father of victims, Feliciano Tan, paid and delivered to the aforesaid accused the amount of P92,000.00, Philippine Currency.

All contrary to law.[2]

Upon arraignment, all four accused pleaded not guilty to the offense charged. On October 9, 1995, three (3) of the accused, namely, Narciso Saldaña, Elmer Esguerra and appellant Fernando Morales, escaped from the Provincial Jail of Pampanga. However, appellant Morales appeared a month later and was arrested. Narciso Saldaña and Elmer Esguerra remained at large. As to both, the trial proceeded in absentia.[3]

The prosecution presented four witnesses, namely, Jefferson Tan, Feliciano Tan, Senior Police Officer Antonio Dizon, Assistant Provincial Prosecutor Roman Razon, and Atty. Eligio Mallari.

JEFFERSON TAN, one of the victims, testified that the kidnapping happened on November 9, 1994, around 6:30 a.m. He was then on his way to Don Bosco Academy in Bacolor, Pampanga, on board their family L-300 van with plate no. CKW-785.[4] With him were his brother, Jessie Anthony, his sister, Joanna, his cousin, Malou Ocampo, and their driver, Cesar Quiroz.[5] Jefferson narrated that along the highway in San Vicente, Bacolor, Pampanga, the vehicle slowed down to steer clear of a damaged portion of the road. Suddenly a man—later identified as appellant Arturo Malit—poked a gun at their driver.[6] Simultaneously, three other men entered the van. These three were later identified as appellant Fernando Morales, Elmer Esguerra, and Narciso Saldaña.[7]

While appellant Arturo Malit trained his gun at the driver, Elmer Esguerra took the driver's seat. The other two malefactors blindfolded the five victims.[8] The vehicle then sped off and later stopped for fuel at a gasoline station.[9] At that point, one Romeo[10] Bautista joined the group.[11] After one hour and thirty minutes of driving, they arrived at their destination. The blindfolds of the victims were removed, and Narciso Saldaña ushered them into a small house located in a hilly area.[12]

Sensing that their kidnappers would talk to his father, Jefferson Tan decided to write a note to his father.[13] Romeo Bautista and Narciso Saldaña then left to see his father. An hour later, three of their kidnappers—appellant Arturo Malit, appellant Fernando Morales, and Elmer Esguerra—ushered the five of them back into the vehicle.[14] They proceeded to a beach littered with big rocks. Subsequently, two women came and fed them lunch.[15]

At 7:30 p.m., Saldaña and Bautista arrived at the beach and took the victims to a small house in Orani, Bataan, where they spent the night.[16] They left Orani around 4:00 a.m. the following day and proceeded to an uninhabited place full of trees and grass.[17]

Jefferson further testified that he requested Bautista to allow him to speak with his father and so later that morning, Bautista and Saldaña escorted him to Balanga, Bataan, to a PLDT office.[18] He told his father that their abductors planned to send him home to get the P2 million ransom.[19] His father then negotiated with Romeo Bautista who agreed to reduce the ransom to P 1.5 million.[20] Subsequently, Bautista and Saldaña took Jefferson to Guagua, Pampanga, aboard a minibus.[21] Bautista alighted at Cleluz, Lubao, while Saldaña remained with him until they reached Sta. Cruz, Lubao. At Sta. Cruz, Saldaña transferred him onto a jeepney going to the town proper of Guagua.[22] Before disembarking at San Pablo in Guagua, Saldaña instructed Jefferson to bring the ransom to the St. Peter and Paul Snack Center at 1:00 p.m. later that day.[23]

According to Jefferson, he arrived home about 10:30 a.m. and lost no time relaying to his father, Feliciano Tan, and the police the directives the kidnappers gave him.[24] Upon the advice of the police, however, his father no longer allowed him leave to deliver the ransom money.[25] Later, around 3:00 p.m., the kidnappers called and demanded an explanation from Feliciano Tan why the money was not delivered.[26] He heard his father request for a lower ransom. The amount finally agreed upon was only P92,000.[27]

FELICIANO TAN, the father of the victims Jessie, Joanna, and Jefferson, testified that on November 9, 1994 while he was tending to their grocery store at Sto. Niño, Guagua, Pampanga, an unknown person handed to him a handwritten letter from Jefferson.[28] The letter informed him that his children had been kidnapped. He immediately called his wife, Nenita Co-Tan, and a family friend, Dr. Ernesto Santos, and all three of them went to Camp Crame to report the incident.[29] Colonel Asel Tor was assigned by the Presidential Anti-Crime Commission (PACC) to handle the case. Col. Tor then dispatched a unit headed by Maj. Rey Aquino to investigate.[30]

At 8:05 the next morning, Feliciano received a long distance call from Jefferson in Bataan.[31] Jefferson said that the kidnappers planned to use him to get the ransom money.[32] Feliciano added that he talked with one of the kidnappers to negotiate a lower ransom.[33] At 10:00 a.m. of November 10, 1994, Jefferson arrived and narrated their ordeal.[34]

Since Feliciano could not afford the ransom demanded, he did not let Jefferson go anymore.[35] At 3:00 p.m. on November 10, 1994, the kidnappers called asking for an explanation why Jefferson was not at the pickup site. He explained that Jefferson was in shock and could not return. When asked about the ransom money, he told the caller that he could only give P92,000. The caller agreed.[36] He was then instructed to bring the ransom to Cleluz, Sta. Cruz, Lubao, Pampanga, at 7:00 p.m. of the same day.[37]

Later, their driver, Cesar Quiroz, arrived and relayed new instructions from the kidnappers that the meeting was no longer going to be at Cleluz but at the bridge of Sta. Cruz, Lubao.[38] According to Feliciano, they proceeded to Sta. Cruz as instructed, arriving thirty minutes early.[39] He asked Cesar to look for the kidnappers. A few minutes later, Cesar returned to tell him to proceed to Gumi, Lubao, which was on the other side of the bridge.[40] There, appellant Malit boarded the vehicle followed by appellant Morales.[41] The two told him that his children were in Gumi, about a kilometer away. When they reached Gumi, Malit asked for the money. Before showing the money, however, Feliciano asked about the whereabouts of his children. Appellant Malit replied they were inside the L-300 van parked in front of them.[42]

The exchange took place and Elmer Esguerra handed him the keys to the L-300 van.[43] When Feliciano got home, he called Maj. Rey Aquino of the PACC and told him that the children were already safe.[44] After that, he reported the incident to the police authorities in Guagua who took his sworn statement.[45]

SPO4 ANTONIO DIZON, PNP Provincial Command, Brgy. Sto. Niño, San Fernando, Pampanga, testified that at 10:00 a.m. of November 18, 1994, he investigated the kidnapping for ransom of Jefferson C. Tan, Joanna C. Tan, Jessie Anthony C. Tan, Malou Ocampo, and Cesar Quiroz.[46] During said investigation, Narciso Saldaña, one of the suspects in the case, admitted participation in the kidnapping and revealed the identities of his cohorts.[47] SPO4 Dizon averred that because there was no available lawyer from the Public Attorney's Office at the time, he requested a certain Atty. Eligio Mallari, who was then following up on a case at the office, to assist Narciso Saldaña.[48] Saldaña's sister-in-law was also present.[49] After Saldaña signed the sworn statement, it was sworn and subscribed to before Asst. Provincial Prosecutor Roman Razon.[50]

ASST. PROVINCIAL PROSECUTOR ROMAN S. RAZON testified that he was with SPO4 Dizon when Narciso Saldaña's confession was taken and that he apprised Saldaña of the consequences of his confession.[51] After Saldaña admitted the signature in the confession as his own and that it was signed with the assistance of Atty. Eligio Mallari, he administered the oath and affixed his signature thereon as administering officer.[52]

ATTY. ELIGIO P. MALLARI, a practicing lawyer who later became a Commissioner of Human Rights, testified that in the morning of November 18, 1994, while he was in the PNP Investigation Unit office located at Capitol Compound, San Fernando, Pampanga, following up a personal case, Sgt. Antonio Dizon approached him and informed him that Narciso Saldaña, a suspect in a kidnapping case, wanted the assistance of counsel.[53] He requested an opportunity to confer with Saldaña, and after hearing that Saldaña wanted his assistance during the investigation, he advised Saldaña of his constitutional rights in the Tagalog dialect.[54] He also testified that after he signed under the notation "Kaantabay ni" or "Assisted by," they went to the office of Assistant Provincial Prosecutor Roman Razon.[55]

Appellant FERNANDO MORALES testified for the defense. He denied under oath that he willingly participated in the kidnapping. He interposed the defense of having acted under the impulse of an uncontrollable fear. He averred that a day before the incident, his brother-in-law, Elmer Esguerra, offered to help him secure a construction job at Floridablanca with a daily wage of P150.00.[56] He and Elmer Esguerra planned to go together to ask permission from the contractor to start working. They agreed to meet at 6:00 a.m. on November 9, 1994, at Plaza Guagua, Pampanga.[57]

At the appointed time and place, Elmer Esguerra arrived with another person, whom appellant Morales later came to know as Arturo Malit, now his co-appellant.[58] They waited some more until two (2) more persons arrived. Appellant Morales identified these two as Narciso Saldaña and Romeo Bautista.[59] Shortly afterwards, they all took a jeepney to San Vicente, Bacolor, Pampanga. When they got there, Saldaña ordered the driver to stop. Esguerra then told appellants Morales and Malit to alight and wait at the corner of the street for the contractor.[60]

A few minutes later, Narciso Saldaña flagged an L-300 van and poked a gun at its driver.[61] He and appellant Malit got scared so they tried to walk away but they didn't get very far because Elmer Esguerra, Romeo Bautista, and Narciso Saldaña, after taking over said vehicle, chased them.[62] Bautista threatened to shoot them both if they didn't board the vehicle, so they did.[63]

On the way to Mariveles, Bataan, according to Morales, they pleaded to be released because they did not want any involvement with the crime. However, Narciso Saldaña and his companions responded with more threats.[64]

They stayed in Mariveles for an hour and a half before proceeding to Orani, Bataan, where they spent the night in a house belonging to Saldaña's brother.[65] According to appellant Morales, both he and appellant Malit were allowed to sleep in the same room as the children and the driver.[66] He added that he and Malit cooked food for and attended to the needs of the children.[67] The next morning, they left for Lubao, Pampanga. In the afternoon of November 10, 1994, he and Malit alighted at Lubao because Narciso Saldaña and Romeo Bautista told them to go home.[68]

Appellant Morales stated that prior to November 8, 1994, he did not know his co-accused Arturo Malit, Narciso Saldaña, and Romeo Bautista.[69] Neither did he know Feliciano Tan or any of his children before the incident.[70] He testified to knowing Elmer Esguerra since the latter is his brother-in-law.[71]

On cross-examination, appellant Morales declared that on November 22, 1994, he surrendered to the police after his parents came to inform him that the police were looking for him.[72] Later, he learned that Romeo Bautista was killed in an encounter with PACC agents.

Appellant ARTURO MALIT testified also for the defense. He interposed the defense of uncontrollable fear of an equal or greater injury. He testified that on November 8, 1994, Romeo Bautista went to his house and invited him to work in a construction job the next day in Floridablanca, Pampanga. Having known Romeo Bautista for almost a month since they had occasion to work together on a construction job at his sister's house in Sta. Cruz, Lubao, Pampanga, he accepted the offer. At 5:00 a.m. the next day, both of them went to Guagua, Pampanga, to fetch some more companions.[73]

At Guagua, they met three persons whom he came to know as Elmer Esguerra, Narciso Saldaña, and appellant Fernando Morales.[74] They proceeded to a waiting shed near Cabalantian supposedly to wait for their additional companions.[75] Thirty (30) minutes had barely gone by when Narciso Saldaña then flagged down a passing L-300 van and poked a gun at its driver.[76] That caused him and Morales to get so scared that they started walking away. Hardly reaching a distance of twenty (20) meters, they were noticed by Saldaña, Esguerra and Bautista. The three chased them by using the van. Bautista then forced both of them into the van at gunpoint.[77]

According to appellant Malit, when he saw that the children were scared, he talked to them and asked them to pray.[78] He did not try to stop or tell his companions not to pursue their nefarious plan because he could not overcome his fear brought by the threats earlier made on him by Esguerra, Saldaña, and Bautista.[79]

Appellant Malit further testified that they were transported to Mariveles, Bataan, where they had lunch in a small house.[80] Later, they were taken to Orani, Bataan, to a house owned by Saldaña's in-laws arriving there early in the evening of that same day.[81] He tried to escape, but he saw Saldaña and Bautista posted at the door.[82] He did not talk to any of the three who abducted them because he was mad at them.[83] He also did nothing to tell Saldaña's in-laws that he was not a willing participant in the kidnapping.[84] But when he heard Saldaña say something about killing the driver and one of the children, he interceded and pleaded with Bautista not to proceed with the killing.[85]

Appellant Malit also testified that in the afternoon of the following day, Saldaña and Bautista brought him and

appellant Morales back to Lubao, Pampanga, where they were allowed to alight at Sta. Cruz and go home.[86] Then, Saldaña threatened to kill him if he reported the incident to the police.[87] Since then, he had seen neither appellant Morales nor Romeo Bautista.

Appellant Malit asserted that he was not with the group that went back to Lubao to receive the ransom money from Mr. Tan.[88] He denied that he knew Jefferson or his father, Feliciano Tan, before November 9, 1994.[89] He claimed that the only reason he and Morales were implicated in the kidnapping was because Bautista brought him along.[90] He also denied poking a gun at Cesar Quiroz, insisting that it was Saldaña who did.[91]

On cross-examination, appellant Malit reiterated that prior to November 9, 1994 he did not know Elmer Esguerra, Fernando Morales, or Narciso Saldaña.[92]

On February 2, 1999, the trial court rendered its decision, disposing as follows:

WHEREFORE, and in the light of all the foregoing discussions, the Court renders judgment finding the accused Narciso Saldaña, Elmer Esguerra, Arturo Malit and Fernando Morales guilty beyond reasonable doubt of the crime charged and imposes upon the aforementioned accused the penalty of DEATH. The said accused are likewise ordered to indemnify the complainant the amount of P92,000.00, which represents the ransom money the latter parted with. No other civil indemnification may be made as no other evidence on this aspect was adduced.

SO ORDERED.[93]

On February 17, 1999, appellant Malit filed a motion for reconsideration and new trial.[94] Appellant Malit contended that the trial court's decision did not clearly and distinctly state the facts and the law upon which it is based, and that the trial court overlooked facts and circumstances which if considered would alter the result. In his supplemental motion for new trial, appellant Malit further sought to introduce Cesar Quiroz's testimony.

On July 20, 1999, the trial court denied the motion.[95] The trial court ruled that appellant Malit's motion was simply asking the trial court to give a second look on the evidence it has passed upon and clearly contained in its decision. It further found that the grounds invoked do not justify a new trial as it did not require the presentation of newly discovered evidence.

Before this Court for automatic review of the death sentence imposed on each of them, appellants Arturo Malit and Fernando Morales filed separate briefs.

Appellant Malit submits the following assignment of errors:

I.

THE HONORABLE COURT A QUO ABUSED ITS POWER AND DISCRETION WHEN IT TOTALLY DISREGARDED THE TESTIMONY OF ARTURO MALIT WHICH WAS NOT REBUTTED BY THE PROSECUTION.

II.

THE HONORABLE COURT A QUO ABUSED ITS POWER AND DISCRETION WHEN IT DEPRIVED ACCUSED ARTURO MALIT THE RIGHT TO A NEW TRIAL.

III.

THE HONORABLE COURT A QUO SHOULD NOT HAVE GIVEN WEIGHT TO THE EXTRAJUDICIAL CONFESSION OF NARCISO SALDAÑA SINCE IT VIOLATED THE BASIC CONSTITUTIONAL REQUIREMENT OF THE RIGHT TO COUNSEL OF CHOICE.

IV.

THE PROSECUTION DID NOT PERFORM ITS DUTY FAIRLY AND IMPARTIALLY BY SUPPRESSING IMPORTANT AND VITAL EVIDENCE AND TESTIMONY OF WITNESSES IN ORDER TO ATTAIN A FAIR TRIAL AND DISPENSATION OF JUSTICE.[96]

Appellant Fernando Morales assigns two errors, contending that the trial court erred—

I.

...IN FAILING TO APPRECIATE THE EXEMPTING CIRCUMSTANCES OF IRRESISTIBLE FORCE AND/OR UNCONTROLLABLE FEAR OF AN EQUAL OR GREATER INJURY.

II.

...IN CONVICTING THE ACCUSED-APPELLANTS WHEN CONSPIRACY WAS NOT PROVEN BEYOND REASONABLE DOUBT.[97]

Briefly put, in our view, the main issues for resolution are (1) whether the trial court erred in not appreciating in appellants' favor the defense of uncontrollable fear of an equal or greater injury; (2) whether conspiracy was adequately proven; and (3) whether appellants' guilt has been established beyond reasonable doubt.

Appellant Arturo Malit contends that the trial court erred in giving weight and value to the testimonies of prosecution witnesses particularly Jefferson Tan and his father, Feliciano Tan. He insists that the evidence sufficiently proves that he was merely forced to join the group at gunpoint.

He also contends that the trial court committed a grave error in relying on the extrajudicial confession of Narciso Saldaña to prove conspiracy. According to him, the testimonies of Atty. Eligio Mallari, the counsel who assisted Saldaña, and Asst. Provincial Prosecutor Roman Razon, before whom the extrajudicial confession was acknowledged, reveal that at no time was Narciso Saldaña informed of his constitutional right to counsel of choice. Therefore, the confession was inadmissible in evidence.

Appellant Fernando Morales similarly maintains that he acted due to an uncontrollable fear of an equal or greater injury. He argues that Romeo Bautista's threat against him and appellant Malit constituted a clear and imminent danger to their lives and instilled fear in them which made them incapable of acting with deliberate or criminal intent. This fear existed even at the time they received the ransom from Feliciano Tan because at that time, accused Narciso Saldaña, Elmer Esguerra, and Romeo Bautista were only one (1) kilometer away. Had he not joined the group that met Feliciano Tan to get the ransom money as instructed, or had anything gone wrong at that time, their lives or the lives of their families would have been endangered.

In addition, appellant Morales submits that conspiracy has not been adequately proven. Narciso Saldaña's confession, not having been identified in open court, is inadmissible in evidence. The testimonies of Jefferson Tan and his father, Feliciano Tan, likewise do not prove conspiracy. These two prosecution witnesses did not know that he and appellant Malit were subjected to uncontrollable fear by Saldaña, Esguerra and Bautista.

Appellants' pleas are without sufficient merit. We find no reason to reverse the trial court's judgment of conviction. A thorough review of the evidence presented in this case leads to no other conclusion than that the crime of kidnapping for ransom as defined and penalized in Article 267[98] of the Revised Penal Code has been committed beyond reasonable doubt against the victims Jefferson C. Tan, Jessie C. Tan, Joanna C. Tan, Malou Ocampo, and Cesar Quiroz.

To begin with, we are not persuaded to overturn the sworn statement of accused Narciso Saldaña, who admitted his participation in the kidnapping of the victims. Extrajudicial confessions are presumed to be voluntary, and, in

the absence of conclusive evidence showing that the declarant's consent in executing the same has been vitiated, the confession will be sustained.[99] The fact that it was the investigating officer, SPO4 Antonio Dizon, who requested Atty. Eligio Mallari to assist Saldaña does not cast doubt on Atty. Mallari's impartiality during the custodial investigation. Since there was no available lawyer from the Public Attorney's Office and Saldaña had expressed his inability to procure the services of a lawyer, it was incumbent upon the government, particularly the investigating officer, to provide Saldaña with a lawyer. Moreover, appellants do not cite bias or incompetence on the part of Atty. Mallari to assist as counsel for the accused Saldaña. In fact, it clearly appears that Atty. Mallari duly performed his duty to advise Saldaña on his constitutional rights to silence and to counsel. But Saldaña insisted on making the extrajudicial confession in the presence of his sister-in-law, voluntarily. His conviction is in order.

As for accused Elmer Esguerra, we find that the testimonies of prosecution witnesses Jefferson Tan and Feliciano Tan on his criminal participation in the kidnapping were fully corroborated by the testimonies of appellants Malit and Morales. There is no doubt, in our mind, as to his culpability for the crime charged.

As to herein appellants Morales and Malit, we find here a fit occasion to reiterate our ruling in the case of *People v. Del Rosario*.^[100] Under Article 12 of the Revised Penal Code, ^[101] a person is exempt from criminal liability if he acts under the compulsion of an irresistible force, or under the impulse of an uncontrollable fear of equal or greater injury, because such person does not act with freedom.^[102] In *Del Rosario*,^[103] however, we held that for such defense to prosper the duress, force, fear or intimidation must be present, imminent and impending, and of such nature as to induce a well-grounded apprehension of death or serious bodily harm if the act be done. A threat of future injury is not enough.^[104]

In this case, the evidence on record shows that at the time the ransom money was to be delivered, appellants Arturo Malit and Fernando Morales, unaccompanied by any of the other accused, entered the van wherein Feliciano Tan was. At that time Narciso Saldaña, Elmer Esguerra and Romeo Bautista were waiting for both appellants from a distance of about one (1) kilometer.^[105] By not availing of this chance to escape, appellants' allegation of fear or duress becomes untenable.^[106] We have held that in order that the circumstance of uncontrollable fear may apply, it is necessary that the compulsion be of such a character as to leave no opportunity to escape or self-defense in equal combat.^[107] Moreover, the reason for their entry to the van, where the father of the victims was, could be taken as their way of keeping Feliciano Tan under further surveillance at a most critical time.

Appellant Morales' contention that their families were similarly threatened finds no support in the evidence. The records are bereft of any showing that such threats to appellants' families were made at all. We have held in *People v. Borja*^[108] that duress as a valid defense should not be speculative or remote. Even granting *arguendo* that Saldaña, Bautista, and Esguerra threatened to harm appellants' families to coerce appellants to receive the ransom money at Gumi, Lubao, such threats were not of such imminence as to preclude any chance of escape. In fact, as already discussed, appellants had a real chance to escape when they went to Feliciano's van. Under the circumstances, even if true, the fear that appellants allegedly suffered would not suffice to exempt them from incurring criminal liability.

Moreover, kidnap victim Jefferson Tan categorically testified that each of the kidnappers acted of his own accord and that nobody commanded anyone.^[109] According to Jefferson, while appellant Malit trained the gun on driver Cesar Quiroz, appellant Morales opened the right-side front door of the van at the same time that accused Elmer Esguerra took the wheel.^[110] The trial court found Jefferson's testimony worthy of credence. It disbelieved appellants' attempts, while on the witness stand, to put all the blame on co-accused Narciso Saldaña and Elmer Esguerra who, up to now, remain at large.

Based on the evidence at hand, we find no sufficient reason to disturb the trial court's assessment of the defense presented by appellants. The crime of kidnapping is not committed on impulse. It requires meticulous planning to determine who would be the prospective victim or victims. Its execution needs precise timing and coordination among the malefactors. It is improbable that a group of kidnappers would risk the success of their well-planned criminal scheme by involving unwilling persons, much less strangers, who could abort the kidnapping by refusing to cooperate in its execution.[111] Worse, such unwilling companions could easily expose their plan to the authorities and subsequently even testify against them in court. Thus, we find the defense claimed by appellants neither logical nor satisfactory, much less consistent with human experience and knowledge. For this reason, we also agree that appellants' version of the facts is unworthy of credence, in the light of candid testimonies given by prosecution witnesses.

Moreover, the assessment of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court, who had a unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct and attitude.[112] Findings of the trial court on such matters are binding and conclusive on the appellate court, unless some facts or circumstances of weight and substance have been overlooked, misapprehended, or misinterpreted.[113] As reiterated in numerous cases, a witness who testifies in a clear, positive, and convincing manner and remains consistent on cross-examination is a credible witness.[114] This is especially so in this case, since prosecution witnesses Jefferson Tan and Feliciano Tan were not shown to have any ill motive to testify against either appellant. When there is no evidence to indicate that the witness for the prosecution was moved by improper motive, the presumption is that such motive was absent, and that his testimony is entitled to full faith and credit.[115]

Appellant Arturo Malit's insistence that the trial court's appreciation of the testimonies by prosecution witnesses was faulty deserves scant consideration. He failed to specify any reason why the testimonies of prosecution witnesses are not entitled to full faith and credit. Neither was it shown that their testimonies materially contradict each other, or that their testimonies were unbelievable and would not conform to human experience. Against appellant Malit's bare assertions, we find Jefferson Tan's testimony on the kidnapping straightforward and consistent even on cross-examination. In contrast, appellants' testimonies are conflicting. Thus, on one hand, appellant Malit testified that their alleged captors, their own co-accused, had released him and appellant Morales in Lubao, Pampanga. On the other hand, appellant Morales declared in his brief that both of them were present in the van with Feliciano Tan to receive the ransom. Considering the manner by which the offense was executed and the ransom collected, we entertain no doubt that appellants were willing participants in the kidnapping of Florencio Tan's children.

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[116] Where all the accused acted in concert at the time of the commission of the offense, and it is shown by such acts that they had the same purpose or common design and were united in its execution, conspiracy is sufficiently established.[117] It must be shown that all participants performed specific acts with such closeness and coordination as to indicate a common purpose or design to commit the felony.[118]

In the present case, the evidence shows that all the accused waited near a damaged portion of the highway in San Vicente, Bacolor, Pampanga. Said spot was chosen deliberately because the van in which they expected the victims to be would logically slow down to avoid the damaged part of the road. Appellant Arturo Malit poked a gun at the driver to stop the vehicle and enable appellant Fernando Morales and their co-accused, Elmer Esguerra and Narciso Saldaña, to board the vehicle.[119] While appellant Malit had his gun still trained on the driver, Esguerra took over the wheel while the others including appellant Fernando Morales blindfolded the occupants of the van.

When Romeo Bautista and Narciso Saldaña accompanied Jefferson Tan to Balanga, Bataan, to arrange for the delivery of the ransom, appellants Arturo Malit and Fernando Morales with their co-accused Elmer Esguerra, guarded the victims. Appellants attended to the needs of the victims. At the bridge in Sta. Cruz, Lubao, appellants gave Feliciano Tan additional instructions to proceed to Gumi where Elmer Esguerra waited with the children. There, appellant Malit received the ransom and Esguerra handed the keys to the van where the children were. These acts point to a close coordination indicating a common purpose or design to commit the felony of kidnapping for ransom. The circumstances under which appellants Malit and Morales participated in the commission of the kidnapping for ransom would not justify in any way their belated claim that they acted under an uncontrollable fear of being killed by the other kidnappers. Rather, these circumstances establish the fact that appellants consciously concurred with the acts of the other malefactors to kidnap the children of Feliciano Tan.

Appellant Malit stresses that he did not try to escape from jail during the height of the lahar flow in Pampanga on October 9, 1995. This is proof, according to him, that he was innocent of the crime charged.[120] But this argument is untenable, an obvious non-sequitur. It is true that flight has been held to be an admission of guilt yet it is also well settled that non-flight is not proof, much less conclusive proof, of innocence.[121]

Appellant Malit also faults the prosecution for not presenting driver Cesar Quiroz's affidavit, which fails to name him (appellant Malit) as one of the abductors.[122] Similarly, he assails the trial court's order denying his motion for new trial based on newly discovered evidence.

As held by the trial court, however, appellant Malit's contentions are unfounded. The matter of presentation of witnesses by the prosecution is not for appellant or even the trial court to decide.[123] Section 5,[124] Rule 110 of the Rules of Court expressly vests in the prosecutor the direction and control over the prosecution of a case. The determination of which evidence to present rests upon him. As the prosecution had other witnesses who could sufficiently prove the kidnapping for ransom, it could dispense with the evidence to be provided by Cesar Quiroz.

Appellant Malit's insistence that the trial court erroneously denied him his right to new trial to present the testimony of Cesar Quiroz is likewise without merit. A motion for new trial based on newly discovered evidence may only be granted if the following concur: (a) the evidence is discovered after trial; (b) such evidence could not have been discovered and produced at the trial even with the exercise of reasonable diligence; and (c) the evidence is material, not merely cumulative, corroborative, or impeaching and of such weight that, if admitted, could probably change the judgment.[125]

In this case, the records show that even before the trial, the "Sinumpaang Salaysay" of Cesar Quiroz dated November 18, 1994 was already available to appellant Malit. In fact, during the inquest investigation, appellant Malit opted for a preliminary investigation. As early as that stage, Cesar Quiroz as well as his salaysay was already available and by reasonable diligence could have been obtained, discovered, and produced at the trial. The records are bereft of any showing that appellant Malit exerted efforts to secure the attendance of Cesar Quiroz for the purpose of using him as defense witness.

For this Court to allow a motion for new trial on grounds other than those provided in Section 2,[126] Rule 121 of the Rules of Court,[127] the movant must cite peculiar circumstances obtaining in the case sufficient to warrant a new trial, if only to give the accused an opportunity to establish his innocence of the crime charged. Appellant Malit, however, does not cite any exceptional circumstance. In any case, we scrutinized the contents of Quiroz's affidavit, but nowhere does it categorically declare that appellant Malit did not participate in the commission of the crime. Under the circumstances, the trial court properly denied his motion for new trial.

The elements of the crime of kidnapping and serious illegal detention are the following: (a) the accused is a private individual; (b) the accused kidnaps or detains another, or in any manner deprives the latter of his liberty;

(c) the act of detention or kidnapping is illegal; and (d) in the commission of the offense, any of the four circumstances mentioned in Article 267[128] of the Revised Penal Code are present. The imposition of the death penalty is mandatory if the kidnapping was committed for the purpose of extorting ransom. In the instant case, appellants cannot escape the penalty of death, inasmuch as it was sufficiently alleged and indubitably proven that the kidnapping had been committed for the purpose of extorting ransom.[129]

Three (3) members of this Court, although maintaining their adherence to the separate opinion expressed in *People v. Echegaray*, G.R. No. 117472, February 7, 1997, 267 SCRA 682, that R.A. 7659, insofar as it prescribes the penalty of death is unconstitutional, nevertheless submit to the ruling of the majority that the law is constitutional, and that the death penalty should accordingly be imposed.

As to the award of damages, aside from the P92,000 in actual damages which represent the amount of the ransom money Feliciano Tan paid to appellants and their cohorts, exemplary damages in the amount of P25,000 should be paid by the appellants and their co-accused to the victims, by way of public example and to serve as a deterrent against malefactors who prey on children and other defenseless victims.

WHEREFORE, the Decision dated February 2, 1999, of the Regional Trial Court of San Fernando, Pampanga, Branch 47, in Criminal Case No. 8371, finding accused NARCISO SALDAÑA and ELMER ESGUERRA and appellants FERNANDO MORALES and ARTURO MALIT GUILTY beyond reasonable doubt of the crime of kidnapping for ransom and sentencing each of them to death is hereby AFFIRMED. They are likewise ordered to pay, jointly and severally, actual damages in the amount of P92,000.00 representing the amount of ransom paid by the victims' father, as well as the sum of P25,000.00 as exemplary damages.

Let alias warrants issue for the immediate arrest by the NBI and the PNP of accused Narciso Saldaña and Elmer Esguerra, now at large.

In accordance with Section 25 of Republic 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 the possible exercise of the pardoning power.

SO ORDERED.

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

[1] Records, pp. 183-208.

[2] Id. at 183.

[3] Id. at 203.

[4] TSN, 17 February 1995, pp. 5-6.

[5] Ibid.

[6] Id. at 7; TSN, 13 March 1995, p. 24.

[7] TSN, 17 February 1995, pp. 9-10.

[8] Id. at 10-11.

[9] Id. at 14.

[10] Sometimes referred to as “Romy” or “Ramon” in the Records.

[11] TSN, 17 February 1995, pp. 15 & 18.

[12] Id. at 15-16.

[13] Id. at 17.

[14] Id. at 21-22.

[15] TSN, 1 March 1995, p. 5.

[16] Id. at 7-9.

[17] Id. at 16.

[18] Id. at 16-18.

[19] Id. at 19-20.

[20] Id. at 20-21.

[21] Id. at 21.

[22] Id. at 23.

[23] Id. at 22-24, 26-27.

[24] Id. at 24-25.

[25] Id. at 24.

[26] Id. at 25-26.

[27] Id. at 26.

[28] Exhibit “B,” “ B-2,” Records, pp. 82, 84; TSN, 28 March 1995, pp. 4, 7-8.

[29] TSN, 24 August 1995, pp. 8-9.

[30] Id. at 9.

[31] Id. at 11.

[32] Id. at 11-12.

[33] Id. at 13.

[34] Id. at 14-15.

[35] Id. at 15.

[36] Id. at 16-17.

[37] Id. at 17.

[38] Id. at 18.

[39] TSN, 16 January 1997, p. 7.

- [40] Id. at 13-14.
- [41] Id. at 15-17, 19-21.
- [42] Id. at 23, 28-30.
- [43] Id. at 30-35.
- [44] Id. at 36-38.
- [45] Id. at 38-44.
- [46] TSN, 3 February 1995, pp. 4-5, 12.
- [47] Id. at 11-12.
- [48] Id. at 6-7, 10-11.
- [49] Id. at 5.
- [50] Id. at 18-19.
- [51] Id. at 37.
- [52] Id. at 38; TSN, 21 March 1995, p. 17.
- [53] TSN, 21 March 1995, p. 5.
- [54] Id. at 5-7.
- [55] Id. at 8; Exhibit "A," "A-5," Records, p. 78.
- [56] TSN, 21 October 1997, pp. 7-10, 12.
- [57] Id. at 14.
- [58] Id. at 17, 20.
- [59] Id. at 18-20.
- [60] TSN, 6 November 1997, pp. 10-12.
- [61] Id. at 13-15.
- [62] Id. at 45-47.
- [63] Id. at 14-18.
- [64] Id. at 19.
- [65] Id. at 20-22.
- [66] Id. at 23.
- [67] Id. at 24.
- [68] Id. at 24-26.
- [69] TSN, 21 October 1997, pp. 5-6.
- [70] TSN, 6 November 1997, pp. 27, 55-57.

[71] Supra, note 69.

[72] TSN, 9 December 1997, pp. 17-19.

[73] TSN, 22 May 1997, pp. 9-15; TSN, 3 July 1997, pp. 3-5.

[74] TSN, 22 May 1997, pp. 14-16.

[75] Id. at 17-18.

[76] Id. at 19.

[77] Id. at 20-23; TSN, 3 July 1997, pp. 16-17.

[78] TSN, 3 July 1997, p. 22.

[79] TSN, 22 May 1997, p. 25; TSN, 3 July 1997, pp. 32-34.

[80] TSN, 3 July 1997, pp. 28, 30.

[81] Id. at 31, 35, 43.

[82] Id. at 44.

[83] Ibid.

[84] Id. at 44-45.

[85] TSN, 22 May 1997, pp. 30-31.

[86] Id. at 32-33; TSN, 7 August 1997, pp. 13-14.

[87] TSN, 7 August 1997, p. 24.

[88] TSN, 22 May 1997, pp. 34-35.

[89] Id. at 42.

[90] TSN, 7 August 1997, p. 17.

[91] TSN, 22 May 1997, p. 40.

[92] Id. at 45-46.

[93] Rollo, p. 56.

[94] Records, pp. 216-226.

[95] Id. at 281-288.

[96] Rollo, pp. 77-78.

[97] Id. at 121.

[98] ART. 267. Kidnapping and serious illegal detention. – Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of reclusion perpetua to death:

- If the kidnapping or detention shall have lasted more than three days.

- If it shall have been committed simulating public authority.

- If any serious physical injuries shall have been inflicted upon the person kidnapped or detained, or if threats to kill him shall have been made.

- If the person kidnapped or detained shall be a minor, except when the accused is any of the parents, female or a public officer.

The penalty shall be death where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances above-mentioned were present in the commission of the offense.

When the victim is killed or dies as a consequence of the detention or is raped, or is subjected to torture or dehumanizing acts, the maximum penalty shall be imposed. (As amended by R.A. No. 7659.)

[99] People v. Vallejo, G.R. No. 144656, 9 May 2002, 382 SCRA 192, 217-218.

[100] People v. Del Rosario, 365 Phil. 292 (1999).

[101] ART. 12. Circumstances which exempt from criminal liability.—The following are exempt from criminal liability:

- An imbecile or an insane person, unless the latter has acted during a lucid interval.

When the imbecile or an insane person has committed an act which the law defines as a felony (delito), the court shall order his confinement in one of the hospitals or asylums established for persons thus afflicted, which he shall not be permitted to leave without first obtaining the permission of the same court.

- A person under nine years of age.

- A person over nine years of age and under fifteen, unless he has acted with discernment, in which case, such minor shall be proceeded against in accordance with the provisions of Article 80 of this Code.

When such minor is adjudged to be criminally irresponsible, the court, in conformity with the provisions of this and the preceding paragraph, shall commit him to the care and custody of his family who shall be charged with his surveillance and education; otherwise, he shall be committed to the care of some institution or person mentioned in said Article 80.

- Any person who, while performing a lawful act with due care, causes an injury by mere accident without fault or intention of causing it.

- Any person who acts under the compulsion of an irresistible force.

- Any person who acts under the impulse of an uncontrollable fear of an equal or greater injury.

- Any person who fails to perform an act required by law, when prevented by some lawful or insuperable cause.

[102] People v. Silva, G.R. No. 140871, 8 August 2002, 387 SCRA 77, 99.

[103] Supra, note 100 at 300.

[104] Ibid.

[105] Rollo, p. 138.

[106] See People v. Serrano, No. L-45382, 13 May 1985, 136 SCRA 399, 404-405.

[107] People v. Loreno, 215 Phil. 276, 287 (1984).

[108] No. L-22947, 12 July 1979, 91 SCRA 340, 355.

[109] TSN, 13 March 1995, p. 16.

[110] *Id.* at 23-24.

[111] See *People v. Hamton*, G.R. Nos. 134823-25, 14 January 2003, 395 SCRA 156, 190.

[112] *People v. Pidoy*, G.R. No. 146696, 3 July 2003, p. 4; *People v. Daramay*, G.R. Nos. 140235 & 142748, 9 May 2002, 382 SCRA 119, 129.

[113] *People v. Santos*, G.R. No. 125352, 17 December 2002, 394 SCRA 113, 120 citing *People v. Penaso*, G.R. No. 121980, 23 February 2000, 326 SCRA 311, 318.

[114] *Ibid.*; *id.* at 319.

[115] *People v. Pidoy*, *supra*, note 112 at 6.

[116] *People v. Garcia*, G.R. Nos. 133489 & 143970, 15 January 2002, 373 SCRA 134, 153. See also Article 8 of the Revised Penal Code.

[117] *People v. Tejero*, G.R. No. 135050, 19 April 2002, 381 SCRA 382, 390.

[118] *People v. Dy*, G.R. Nos. 115236-37, 29 January 2002, 375 SCRA 15, 47.

[119] TSN, 17 February 1995, pp. 8-10.

[120] *Rollo*, p. 92.

[121] See *People v. Ortaleza*, 327 Phil. 827, 836 (1996).

[122] *Rollo*, p. 105.

[123] *People v. Requiz*, 376 Phil. 750, 760 (1999).

[124] SEC. 5. Who must prosecute criminal actions.— All criminal actions commenced by a complaint or information shall be prosecuted under the direction and control of the prosecutor. However, in Municipal Trial Courts or Municipal Circuit Trial Courts when the prosecutor assigned thereto or to the case is not available, the offended party, any peace officer, or public officer charged with the enforcement of the law violated may prosecute the case. This authority shall cease upon actual intervention of the prosecutor or upon elevation of the case to the Regional Trial Court.

...

[125] *People v. Bongalon*, G.R. No. 125025, 23 January 2002, 374 SCRA 289, 310.

[126] SEC. 2. Grounds for a new trial.— The court shall grant a new trial on any of the following grounds:

(a) That errors of law or irregularities prejudicial to the substantial rights of the accused have been committed during the trial;

(b) That new and material evidence has been discovered which the accused could not with reasonable diligence have discovered and produced at the trial and which if introduced and admitted would probably change the judgment.

[127] See *Jose v. Court of Appeals*, 162 Phil. 364, 374 (1976).

[128] Supra, note 98.

[129] Supra, note 111 at 191.

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