

## PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JOSE OBESO, APPELLANT.

*G.R. No. 152285. October 24, 2003*

Ponente: PANGANIBAN, J.

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### PANGANIBAN, J.:

The prosecution bears the burden of proving beyond reasonable doubt the guilt of the accused. Every conviction must rest on the strength of the people's evidence, never on the weakness of that for the defense.

#### The Case

Before us is an appeal from the June 19, 2001 Decision[1] of the Regional Trial Court (RTC) of Cebu City (Branch 18) in Criminal Case No. CBU-49812, convicting Jose Obeso of kidnapping and serious illegal detention. The decretal portion of the Decision reads as follows:

"WHEREFORE, in view of the foregoing facts and circumstances, accused Jose Obeso is found guilty beyond reasonable doubt of the crime of kidnapping and serious illegal detention under Article 267 of the Revised Penal Code and he is hereby imposed the penalty of RECLUSION PERPETUA, with the accessory penalties of the law; to indemnify the victim with damages in the sum of P50,000.00 and to pay the costs."[2]

In an Information[3] dated February 23, 1999, appellant was charged as follows:

"That on or about the 9[th] day of December 1998 at around 3:00 o'clock in the afternoon, more or less, at Sitio Ilang-Ilang, Barangay Lagtang, Municipality of Talisay, Province of Cebu, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, a private individual, without lawful authority and for the purpose of detaining the victim, or depriving her liberty, a minor, three (3) years old at the time of the commission of the offense and female, without the consent of the victim or her parent or guardian did then and there willfully, unlawfully and feloniously kidnap, detain, or deprive the liberty of one Lilibeth Cabriana, the victim, to the damage and prejudice of the latter."[4]

During his arraignment on April 12, 1999, appellant, assisted by his counsel,[5] pleaded not guilty after the Information had been read and translated to him in a language that he fully understood.[6] After pretrial and trial, the lower court promulgated its assailed Decision. The Public Attorney's Office then filed a Notice of Appeal on August 7, 2001.[7]

#### The Facts

##### Version of the Prosecution

In its Brief,[8] the Office of the Solicitor General (OSG) narrates the factual antecedents of the case as follows:

"Around four (4) o'clock in the afternoon of December 9, 1998, Elizabeth Cabriana, an unwed mother, together with her three (3) year old daughter Lilibeth Cabriana, went to the Talisay Public Market located at Tabuno[k], Talisay, Cebu, to do some caroling to augment their day to day expenses. As it would be too burdensome for

Elizabeth to bring Lilibeth along with her, she (Elizabeth) took her child to the store of Lucy Nacasio. Thereupon, Elizabeth instructed Lucy's daughter, Wowie, to look after her child after which, Elizabeth left.

"After finishing her caroling around five (5) o'clock in the afternoon of the same day, Elizabeth proceeded to Lucy's place to fetch Lilibeth. To her surprise, Elizabeth was informed by both Lucy and Wowie that a certain Jose Obeso took her child.

"Frantic, Elizabeth proceeded to the reservoir located at Ilang-Ilang, Lagtang, Talisay, Cebu, to seek the assistance of Gemelito Abendan, a 'barangay tanod,' in retrieving her child.

"Upon her arrival, Elizabeth requested Gemelito to look for Lilibeth. A short while thereafter, one of Gemelito's neighbors informed the latter that accused-appellant was last seen headed towards the back portion of Gemelito's house. Acting on the information, Gemelito followed the route supposedly taken by appellant.

"A few moments thereafter, Gemelito chanced upon the appellant and Lilibeth. Per Gemelito's recollection, Lilibeth was [seated] on the lap of the appellant. Immediately, Gemelito took possession of the child and inquired from the appellant why the latter brought the child there. In response, appellant answered that Lilibeth wanted to go 'up there' pointing to the hilly portion beyond the road. At this point, Gemelito noticed that appellant was drunk. Having gained custody of the child, Gemelito took the lat[t]er to her mother. Thereafter, Gemelito brought the appellant to the police station at Tabunok, Talisay, Cebu.

"Lilibeth Cabriana, the victim in this case, testified that she knows the appellant as in fact, she pointed to the appellant when instructed to do so. When asked why she knew the appellant, Lilibeth pressed her left hand on her private part. Subsequently, the court asked Lilibeth what had the appellant done to her. Again, in response to the question propounded by the court, Lilibeth placed her left hand on her front. When asked by the court what Lilibeth meant by placing her left hand near her private part, Lilibeth uttered the word 'Jose.'

"Lilibeth likewise admitted having been carried by the appellant towards the latter's house. At this juncture, the court asked Lilibeth what appellant did to her when she was brought to appellant's house, to which Lilibeth answered by pressing her hand against her private part. Lilibeth likewise testified that she was crying when the appellant brought her to his house.

"When called to the witness stand, appellant presented an entirely different version of the incident. According to him, on December 9, 1998, he was in the vicinity of the Tabunok Public Market when he saw the victim, Lilibeth Cabriana. Allegedly, the child was looking for her mother. Appellant knew Lilibeth because he frequently saw that latter with Elizabeth in the public market.

"Basically, appellant averred that he merely guided the child towards the side of the road to avoid being hit by the oncoming vehicles. Not too long thereafter, a barangay tanod apprehended him. Appellant was informed that Lilibeth's mother was looking for her."[9]

## Version of the Defense

On the other hand, appellant relates his version of the facts thus:

"JOSE OBESO averred that on December 9, 1998 at around 4:00 o'clock in the afternoon, after buying rice and viand, and while he was walking towards his house passing through the highway, he saw a child at the Tabunok Public Market whom he knew by the name of Lilibeth Cabriana. He happened to know the child because she used to go with her mother [to] the public market where her mother sold vegetables. At the time he saw the child, the latter was crying and was looking for her mother. Thinking of the safety of the child, he guided her and placed her beside him so that she would not be hit by the passing vehicles. After guiding and placing her in a safe place outside the Tabunok Public Market, he was apprehended by a barangay tanod at around 5:00 o'clock in the afternoon. He was in the company of the child for about ten (10) minutes. He did not take the child to any other place. He was with the child as she was crying. He held the child by the hand when

he guided her towards the side of the road because there were many passing vehicles. He had no other purpose other than that.

"After the barangay tanod apprehended him, he was detained and a complaint for kidnapping was filed against him. Asked if he knows what is meant by kidnapping, he replied that he knows that kidnapping is to bring a person somewhere in order to be paid for her release.

"Upon further examination by the defense counsel, he declared that he accompanied the child Lilibeth Cabriana [to] Ilang-Ilang, Lagtang, Talisay, while she was waiting for her mother. It was about five (5) minutes that he was with the child when a barangay tanod arrived and arrested him. The barangay tanod told him that the mother of the child was looking for her. He turned over the child to her mother. Prior to his arrest, he already intended to bring the child to the barangay hall." [10]

### Ruling of the Trial Court

The RTC ruled that the prosecution had established beyond reasonable doubt all the elements of the crime of kidnapping and serious illegal detention. The lower court construed deprivation of liberty as actual confinement or restriction of the person of the offended party. The RTC perfunctorily rejected the defense of denial, holding that "greater weight must be given to positive testimony than to the denial of the defendant."

Hence, this appeal. [11] The Issues

In his Brief, appellant submits this lone error for our consideration:

"The court a quo gravely erred in finding accused-appellant guilty beyond reasonable doubt of kidnapping and serious illegal detention." [12]

### The Court's Ruling

The appeal is meritorious.

Sole Issue:

Guilt Beyond Reasonable Doubt

Appellant anchors his defense on the alleged failure of the prosecution to overcome his right to be presumed innocent. In particular, he questions the finding of the court a quo that he "illegally kidnapped, detained or in any manner deprived the alleged victim of her liberty." [13]

Kidnapping and serious illegal detention are defined and punished under Article 267 of the Revised Penal Code (RPC), which 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;

"1. If the kidnapping or detention shall have lasted more than three 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."

The elements of the crime are as follows:

- The offender is a private individual.
- That individual kidnaps or detains another or in any other manner deprives the latter of liberty.
- The act of detention or kidnapping is illegal.
- In the commission of the offense, any of the following circumstances is present:
  - The kidnapping or detention lasts for more than three days.
  - It is committed by one who simulates public authority.
  - Any serious physical injury is inflicted upon the person kidnapped or detained, or any threat to kill that person is made.
  - The person kidnapped or detained is a minor, a female or a public officer.[14]

The crux of the controversy in this case is the second element relating to detention or deprivation of liberty. Appellant firmly asserts that nowhere in the testimonies of the prosecution witnesses was it established that he had illegally deprived the child of her liberty. In fact, he points to the prosecution's failure to ask her directly whether she was forcibly taken against her will.

In turn, appellee argues that the mere fact that the girl was found with appellant in the mountainous area of Ilang-Ilang, Lagtang, Cebu, undeniably demonstrated his intention to restrain and deprive her of her liberty. Appellee cites jurisprudence in support of its position that in the crime of kidnapping and serious illegal detention, the victim need not be kept within an enclosure to restrict freedom of movement.

We agree with appellant. It is true that for kidnapping to take place, it is not necessary that the victim be placed in an enclosure;[15] neither is it necessary that the detention be prolonged.[16] However, the essence of kidnapping is the actual deprivation of the victim's liberty coupled with indubitable proof of the intent of the accused to effect such deprivation.[17]

A review of the narration of events by the prosecution itself shows that it was not able to establish actual confinement, detention or restraint of the child. The testimonies of its witnesses did not adequately prove that she had been forcefully transported, locked up or restrained.

Likewise, the prosecution failed to establish that appellant had intended to deprive the girl of her liberty. Neither the testimony of her mother nor that of the barangay tanod showed what his intent was. Even less helpful was the testimony of the child herself. Certainly, we take note of her tender age, but this consideration cannot be used to supply her testimony with the details that would make appellant liable for the serious crime he was charged with. Absent any indubitable proof of his purposeful or knowing action to restrain her forcibly, there can be no taking coupled with intent to complete the commission of the offense.[18]

Moreover, if the person detained is a child, there is a further question that needs to be addressed: did the accused intend to deprive the parents of custody of their child?[19] We find this matter insufficiently proven.

The girl's mother testified as to the circumstances of this case in the following manner:

"ATTY. DEBALUCOS:

Q

Did I get you right that while caroling you left your child somewhere in Tabuno[k]?

A

Yes, I left the child with Lucy.

Q

You just left your child there at Lucy's Place but you did not leave it to her care, is it not?

A

I just left the child at Lucy's Place without her knowledge. In fact, she saw Jose brought the child.

Q

You did not bother to tell Lucy that you are leaving the child at her place because Lucy at that time was very busy is that it?

A

Yes, Lucy was busy at that time [but] she noticed that [J]ose bro[ugh]t the child.

[Q]

In fact, considering that you did not tell Lucy that you were leaving your child at that time Lucy does not even know where you were going at that time?

WITNESS:

A

Lucy knew that I was going to Tabunoc Market.

ATTY. DEBALUCOS:

Q

But you did not tell her that you are going to somewhere at Tabuno[k] Public Market?

A

Lucy told me that the child was brought by Jose.

ATTY. DEBALUCOS:

Q

My question Miss Cabrana that you did not bother to tell Lucy that you are going somewhere else particularly at Tabuno[k] Market?

A

I told the daughter of Lucy to watch over my child.

Q

How old is that child of Lucy, if you know?

A

13 years old.

Q

Now, you left your child there at Lucy's Place because you consider her as a burden in conducting caroling at that time?

A

Yes.

Q

It did not even occur to your mind to bring the child with you considering that [s]he was only 3 years old at that time?

A

I was in the belief that nobody would take my child. I went on caroling in order to earn something to feed my child.

Q

Meaning to say it did not occur to your mind to just bring the child with you while caroling?

A

No, sir because I did not think somebody will get my child.

Q

In fact, even if you left the child at Lucy's Place even you know that nobody was taking [care] of your child who was just 3 years old at that time you just proceeded in caroling at Tabuno[k], Public Market?

A

Yes, I was compelled to do so because I have no money to buy food [for] my child and my child even cried.

COURT:

Proceed.

ATTY. DEBALUCOS:

Q

About what time did you come back to Lucy's Place where you [left] your child?

A

5:00 o'clock.

COURT:

Q

5:00 o'clock, morning or afternoon.

A

Afternoon.

ATTY. DEBALUCOS:

Q

And that daughter of Lucy was not around at that time when you went back?

A

Lucy and her daughter [were] around when I [came back. T]hey told me that my daughter was brought by Jose Obeso.

Q

Did you not bother to ask that daughter of tha[t] certain Lucy why did she allow that certain Jose Obeso to bring this child?

A

The daughter of Lucy [already saw] Jose bringing the child to the buzzes [sic]. I asked the daughter of Lucy why she allowed the child to be brought by Jose but she said [J]ose insisted in bringing the child with him.

Q

Now, considering that you were not around because you said you were caroling when your child was allegedly taken by Jose Obeso that story of the taking of your child was only related to you, is that it?

A

Yes, it was told.

COURT:

Q

And who in particular told you?

A

It was Wowie the daughter of Lucy.

Q

What is the real name of Wowie?

A

They just called her Wowie.

ATTY. DEBALUCOS:

Q

In short, Mrs. Cabrana you have no personal knowledge about the taking of your child by Jose Obeso, is that it?

A

I did not see." [20]

On the other hand, the barangay tanod who was able to retrieve the child testified as follows:

"FISCAL MANALAC:

Q

What did you notice, if any, about the body of the child?

A

I don't know about it.

Q

Now, when you took possession of the child from Jose Obeso, as barangay tanod, did you inquire from him why he was in possession of the child?

A

I asked him and he told me that the child wanted to be there up.

COURT:

Witness extending left hand with finger pointing to the upper portion of the courtroom.

ATTY. DEBALUCOS:

As if, Your Honor, that witness is indicating that the place is uphill.

COURT:

Q

What was there that was referred to as 'up there'?

A

It was Jose who said to me.

Q

Have you noticed anything there up which was pointed by him?

A

To a hilly portion beyond the road.

Q

After you recovered the child, did you turn over Jose Obeso to the Police Station in Talisay?

A

Yes.

x x x x x x x x

Q

What was the child doing at the time the child was in the possession of Jose Obeso?

A

I don't know, sir.

x x x x x x x x

COURT:

Q

Was the child harmed as you saw [her]?

A

I don't know, Your Honor, because he was just holding the child."[21]

x x x x x x x x

ATTY. DEBALUCOS:

Q

Mr. Abendan, you told the Court that while you were in your house on December 10, 1998, your assistance was sought by Elizabeth Gabriela to help her in looking for her child. Did I get you right?

A

Yes, sir.

Q

And according to Gabriela, her child was allegedly brought by the accused in this case?

A

Yes.

Q

In other words, you were not present during the actual, during the alleged actual taking of the child by herein accused?

A

No, sir. I was in our house.

Q

In fact, you were also further told by this Elizabeth Gabriela that she was also not present. When accused allegedly brought her child with him?

A

I don't know, sir, because she just appeared in our house?

Q

And you just brought herein accused to the police station because somebody just advised you to turn him over to the police?

A

Yes.

Q

Even if you did not know the circumstances surrounding why he allegedly brought the child with him?

FISCAL MANALAC:

I object to the question, Your Honor. It is immaterial and misleading and irrelevant, because it contradicts verified knowledge that the barangay tanod personally received the report of the commission of crime from the mother. And after such information, he went to recover the child. That is the doctrine in ....

COURT:

And what is the core of the question?

FISCAL MANALAC:

Objection was it is immaterial and misleading and irrelevant. I invoke the case of Padilla versus Court of Appeals, which says that police, upon receipt of a report from eye witness, complainant may subject the report and that is considered verified knowledge, from which the police can act or conduct the arrest of a person.

COURT (to Atty. Debalucos):

What do you say Panero?

ATTY. DEBALUCOS:

I am not misleading. I'm riding on the testimony of witness.

COURT:

That was touched?

ATTY. DEBALUCOS:

Yes, Your Honor.

COURT:

Ruling--Witness may answer.

WITNESS:

A I have no knowledge, sir.

ATTY. DEBALUCOS:

Q

Are you referring to the police station at Tabunok, Talisay, Cebu, where you brought Jose Obeso?

A

Tabunok, Talisay, sir.

Q

Isn't it a fact that at Tabunok, Talisay, you were told by the policeman there that [the] child who was allegedly

brought by the accused in this case, just kept roaming in Tabunok and was a neglected child?

A

Yes, I was told by the police."<sup>[22]</sup>

Far from clearly establishing the elements of the crime, these testimonies give rise to more questions: Why did appellant take the victim? Was she left by her mother? Most important of all, did he indeed kidnap and restrain her or deprive her of her liberty in any manner whatsoever?

Appellee argues that the alleged deprivation of liberty consisted of bringing the girl near the reservoir of Ilang-Ilang. We cannot see how this act alone could establish either deprivation of liberty or intent to commit that crime. While it does not take much to scare the wits out of a small child, we cannot say with certainty that, under the attendant circumstances in the present case, the girl was deprived of her liberty. Without any further act or evidence reinforcing appellee's inference, the Court<sup>[23]</sup> -- while taking cognizance of the child's minority -- hesitates to find that appellant indeed kidnapped her.

Time and time again we have said that a conviction must stand on the strength of the prosecution evidence, not on the weakness of that for the defense.<sup>[24]</sup> Here, we find the evidence presented by the prosecution to be too weak and too insufficient to convict appellant of the serious crime with which he was charged.

It bears stressing that the Court is making its judgment on the basis of the evidence presented by the prosecution. We are not concluding that the child was not a victim in this case, or that no wrong was actually committed against her. But given the insufficiency of evidence, it is clear that the prosecution has failed to overcome the presumption of appellant's innocence.

WHEREFORE, the appealed Decision is hereby REVERSED and SET ASIDE. Appellant Jose Obeso is ACQUITTED on reasonable doubt and is ordered immediately RELEASED from custody, unless he is being held for some other lawful cause.

The Director of the Bureau of Corrections is ORDERED to implement this Decision forthwith and to INFORM this Court, within five (5) days from receipt hereof, of the date appellant was actually released from confinement. Costs de oficio.

### **SO ORDERED.**

Puno, (Chairman), Sandoval-Gutierrez, Corona, and Carpio-Morales, JJ., concur.

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[1] Rollo, pp. 19-24; penned by Judge Galicano C. Arriesgado.

[2] Assailed Decision, p. 6; rollo, p. 24.

[3] Signed by 3<sup>rd</sup> Asst. Provincial Prosecutor Adolfo S. Alcoseba; rollo, pp. 8-9; records, pp. 1-2.

[4] *Id.*, pp. 8 & 1.

[5] Atty. Anacleto Debalucos of the Public Attorney's Office.

[6] Order dated April 12, 1999; records, p. 21. See also Certificate of Arraignment; records, p. 23.

[7] Rollo, p. 25; records, p. 143.

[8] Rollo, pp. 72-92. Signed by Assistant Solicitor General Roman G. del Rosario and Associate Solicitor

Napoleon F. Segundera Jr.

[9] Appellee's Brief, pp. 3-6; *id.*, pp. 76-79. Citations omitted.

[10] Appellant's Brief, pp. 5-6; *id.*, pp. 46-47. It was signed by Attys. Amelia C. Garchitorena, Elpidio C. Bacuyag and Pastor Archimedes P. Morales of the Public Attorney's Office.

[11] This case was deemed submitted for resolution on July 30, 2003, upon receipt by this Court of appellee's Brief. We received appellant's Brief on March 5, 2003. The filing of a Reply Brief was deemed waived, as none was submitted within the reglementary period.

[12] Appellant's Brief, p. 1; rollo, p. 42. Original in upper case.

[13] *Id.*, pp. 7 & 48.

[14] Reyes, *The Revised Penal Code*, Vol. II (rev. ed., 1998), p. 542; See also *People v. Oliva*, 368 SCRA 210, October 25, 2001; *People v. Flores*, 358 SCRA 319, May 31, 2001; *People v. Gonzales*, 337 SCRA 590, August 11, 2000.

[15] *People v. Acbangin*, 337 SCRA 454, August 9, 2000; *People v. Pavillare*, 386 Phil. 126, April 5, 2000.

[16] *People v. Acbangin*, *supra*; *People v. Pavillare*, *supra*.

[17] *People v. Bacungay*, 379 SCRA 22, March 12, 2002; *People v. Oliva*, *supra*; *People v. Ubongen*, 357 SCRA 142, April 20, 2001; *People v. Borromeo*, 380 Phil. 523, January 27, 2000; *People v. Ramos*, 358 Phil. 261, October 12, 1998; *People v. Astorga*, 347 Phil. 701, December 22, 1997; *People v. De la Cruz*, 342 Phil. 854, August 11, 1997.

[18] *People v. Oliva*, *supra*; *People v. Ubongen*, *supra*.

[19] *People v. Acbangin*, *supra*; *People v. Borromeo*, *supra*; *People v. Villanueva*, 323 Phil. 189, February 1, 1996.

[20] TSN, September 28, 1999, pp. 6-9.

[21] *Id.*, November 11, 1999, pp. 7-9.

[22] *Id.*, pp. 9-11.

[23] *People v. Astorga*, *supra*; *People v. De la Cruz*, *supra*.

[24] *People v. Ramos*, 417 Phil. 807, September 20, 2001; *People v. Flores*, *supra*; *People v. Ubongen*, *supra*.

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