

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ELPIDIO ENRIQUEZ, JR. AND EMILIANO ENRIQUEZ, APPELLANTS.*G.R. No. 158797. July 29, 2005*

Ponente: PUNO, J.

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Elpidio Enriquez, Jr. and Emiliano Enriquez were convicted of kidnapping by the Regional Trial Court (RTC) of Cavite City, Branch 16, and each was sentenced to suffer an indeterminate prison term of seventeen (17) years, four (4) months and one (1) day of reclusion temporal as minimum to reclusion perpetua as maximum.[1] They appealed to the Court of Appeals which not only affirmed their convictions but imposed upon each of the appellants the penalty of reclusion perpetua.[2] The Court of Appeals refrained from entering judgment and certified the case to us pursuant to the second paragraph of Sec. 13 of the Revised Rules of Criminal Procedure.[3]

On July 8, 1985, Elpidio Enriquez, Jr. and Emiliano Enriquez were charged with kidnapping in the Regional Trial Court of Cavite City, Branch 16. The Information reads:

That on or about the 24[th] day of January 1985, in the Municipality of Rosario, Province of Cavite, Philippines, and within the jurisdiction of this Honorable Court, the abovenamed accused, conspiring, confederating and mutually helping one another, with the use of firearm (nickel plated revolver), motor vehicle (tricycle) and by simulating public authority, did then and there, willfully, unlawfully and feloniously, forcibly kidnapped Alexander Pureza y Mendoza by the point of [a] gun (revolver) and forcibly loaded said Alexander M. Pureza to (sic) a yellow colored tricycle (Hazel) with Plate No. MTC H8242 and brought somewhere else and detained in an undisclosed place for more than five (5) days since the kidnapping took place and up to the present time could not be located, with the aggravating circumstances of the use of a firearm, force, motor vehicle and simulation of public authority.

CONTRARY TO LAW.[4]

Both pleaded "not guilty" to the charge during arraignment. Trial ensued.

The prosecution evidence shows that at about 6:50 p.m. of January 24, 1985, Rogelio Andico, Edwin Pugay, Esmi Saquilayan, and twenty-one-year old Alexander Pureza were conversing in front of the Barangay Hall of Silangan, Rosario, Cavite. Appellant Elpidio Enriquez, Jr., alias "Bonggo," who was dressed in military fatigue pants, camouflage jacket, brown hat, and wearing dark glasses, arrived on board a tricycle driven by appellant Emiliano Enriquez, alias "Emil Tate." After Bonggo alighted, Emil parked the tricycle about ten (10) meters away from the group. Bonggo then pulled out a .38 caliber revolver from his jacket and warned the group, "Huwag kayong tatakbo, awtoridad ako." He singled out Alexander Pureza, poked his gun at him and ordered him, "Sama ka sa 'kin." He dragged Alexander to the tricycle, and forced him to board the same. The tricycle sped off. Alexander Pureza was never seen again or heard from since then.

Rogelio Andico, who was left behind after his companions scampered away, hurried to Alexander's house and

informed his parents about the incident. At about midnight of the same day, Rogelio gave his statement[5] to the police upon the advice of his uncle, Atty. Ernesto Andico, the Vice-Mayor of Rosario, Cavite. Rogelio executed two other statements on January 25 and 29, 1985.[6]

Feliciano Castro, a resident of Rosario, Cavite, corroborated Rogelio's testimony. He testified that at about 6:30 to 7:00 p.m. of January 24, 1985, he was waiting for a ride when he saw Alexander Pureza being pushed by appellant Elpidio Enriquez, Jr. into a waiting tricycle driven by appellant Emiliano Enriquez.[7] Alexander was struggling to free himself. Feliciano did not do anything to help or tell anyone what he witnessed. He feared for his life because Bonggo was the grandson of then Mayor Calixto Enriquez of Rosario, Cavite. At that time, many people just disappear or get killed in Rosario. It was only in July 1987 when Mayor Calixto Enriquez was no longer mayor that he revealed the above information to P/Lt. Col. Rogelio Pureza, the victim's father.

The two appellants had a different story to tell. They denied any involvement in the kidnapping and interposed the defense of alibi. Appellant Elpidio Enriquez, Jr. testified that he was in Bulan, Sorsogon from January 21 to 24, 1985 with his live-in partner visiting her sick father. He left Sorsogon in the morning of January 24 and arrived at Rosario, Cavite at about 11:00 p.m. to midnight of the same day. He went to sleep immediately upon arrival, and was awakened at 1:00 a.m. when the police picked him up for investigation.

Appellant Emiliano Enriquez claimed that he did not leave his house during the night in question as he was taking care of his child. He also alleged that his tricycle had a broken shock absorber.

In addition, appellant Elpidio Enriquez, Jr. ascribed improper motive on the part of prosecution witnesses Andico and Castro. He alleged that Rogelio Andico testified against him because he caused the arrest of Rogelio's uncle, Antonio Andico, known as the "king pusher" of Rosario, Cavite. He also charged that Feliciano Castro testified against him because Castro is a trusted employee and bodyguard of Jose Abutan, the uncle of Col. Pureza. He further alleged that Col. Pureza filed the case at bar against him in retaliation for having been implicated in the case involving the killing of his (Elpidio's) father.

After trial, appellants were found guilty as charged and meted indeterminate prison terms, to wit:

WHEREFORE, premises considered, the Court finds the accused Elpidio Enriquez, Jr. alias Bonggo and Emiliano Enriquez alias Tate GUILTY beyond reasonable doubt of the crime of kidnapping as defined and penalized under Article 267 of the Revised Penal Code and hereby sentences them to suffer the indeterminate penalty of imprisonment consisting of seventeen (17) years, four (4) months and one (1) day of reclusion temporal, as minimum, to reclusion perpetua, as maximum, and to indemnify the heirs of the victim P50,000.00. (underlining supplied)[8]

Appellants elevated the case to the Court of Appeals which affirmed with modification the decision of the trial court. As aforesaid, the appellate court did not apply the Indeterminate Sentence Law but imposed upon the appellants the penalty of reclusion perpetua. The dispositive portion of the Decision of the appellate court reads:

WHEREFORE, the instant Appeal is DENIED. The assailed decision dated May 28, 1999 of the Regional Trial Court of Cavite City, Branch 16 finding herein accused-appellants Elpidio Enriquez, Jr. and Emiliano Enriquez guilty beyond reasonable doubt of the crime of kidnapping is hereby AFFIRMED with modification in that We hereby sentence them to suffer the penalty of reclusion perpetua.

Accordingly, let this case be certified and the entire records hereof elevated to the Supreme Court for review pursuant to Sec. 13 (2), Rule 124 of the Revised Rules on Criminal Procedure.[9] (emphasis supplied)

Appellants state a lone assignment of error in their Appellant's Brief, viz: that the lower court gravely erred in finding them guilty beyond reasonable doubt of the crime of kidnapping despite the insufficiency of the evidence.

More specifically, appellants assail the credibility of prosecution witness Rogelio Andico because he did not give his eyewitness account of the alleged kidnapping in one sworn statement only but executed two supplemental statements as well. They allege that the execution of three statements to the police shows that Andico was a coached witness. They argue that Andico's excuse for the piecemeal testimony, i.e., he was nervous and confused at the time he gave his first statement to the police, is not worthy of belief considering that he gave his statement to Col. Pureza's men. Appellants likewise contend that prosecution witness Feliciano Castro does not deserve credence because it took him two (2) years to report the incident which is counter to the natural tendency of a person who witnessed a crime to report the same at the earliest possible opportunity.

We affirm the decision of the Court of Appeals.

We hold that the execution of not one but three statements to the police does not necessarily render prosecution witness Andico incredible. Andico testified in court and was cross-examined by counsel for appellants. Andico testified in a clear and straightforward manner detailing how Alexander Pureza was taken at gunpoint and spirited away by appellants on the night of January 24, 1985, never to be seen or heard from again. His testimony was given credence both by the trial court and the Court of Appeals. We find no reason to disturb their calibration of the credibility of Andico's testimony.

To be sure, the first statement, by itself, executed by Andico at midnight of January 24, 1985 sufficiently proved the elements of the crime of kidnapping charged against the appellants. In this statement,[10] Andico categorically narrated how his friend Alexander Pureza, a private citizen, was taken at gunpoint by appellant Elpidio Enriquez, Jr., who did not have authority to do so, with the connivance and participation of a tricycle driver. The victim was never seen or heard from again. In his second statement executed on January 25, 1985,[11] Andico merely added that appellant Elpidio Enriquez, Jr., aside from being dressed in military-like clothes, likewise introduced himself to them as someone in authority. This addition is a superfluity for the purpose of proving the crime of kidnapping against the appellant. It is undisputed that at the time the Information was filed on July 8, 1985,[12] the victim had been missing for more than five (5) months, more than the five (5) days' deprivation of liberty required under the former Art. 267[13] of the Revised Penal Code. Alexander Pureza has not been seen again or heard from since his abduction on January 24, 1985. The former Art. 267 mentioned four circumstances for the crime of kidnapping to be committed,[14] but they need not be present simultaneously as the presence of just one circumstance is enough to establish the crime.[15] Hence, the added circumstance of simulation of public authority alleged in Andico's second sworn statement was unnecessary. Examining the third supplemental sworn statement,[16] Andico merely supplied the name of the tricycle driver whom he saw but did not immediately recognize. This is not fatal as there is the testimony of Feliciano Castro who identified appellant Emiliano Enriquez as the tricycle driver to corroborate Andico's account. Although Castro reported the incident only two (2) years after the incident, his reason for not reporting the same immediately, i.e., fear for his life, is reasonable considering that one of the appellants is the grandson of the incumbent mayor. His initial reluctance is not unusual and is a matter of judicial notice.[17]

Appellants' attempt to discredit Andico by imputing improper motive upon him for testifying in the case, i.e., that Andico testified to avenge his "Uncle" Antonio Andico who was apprehended by Narcom agents at the instigation of appellant Elpidio Enriquez, Jr., cannot succeed. For one, the exact relationship between Rogelio and Antonio Andico was not proved. The uncle-nephew relationship was merely speculated from the fact that Rogelio called Erning Andico, the brother of Antonio, as "mama" or uncle.[18] Appellant Elpidio Enriquez, Jr., admitted that he does not know the exact relationship between Rogelio and Antonio Andico.[19] But even if Antonio was Rogelio's uncle, their relationship is not enough reason for Rogelio to avenge Antonio's apprehension. On the other hand, there is reason to believe that the natural interest of Rogelio, who is a friend of the victim, in securing

the conviction of the guilty would deter him from implicating a person other than the true culprit.[20] Col. Pureza's alleged motive for filing this case against appellant Elpidio Enriquez, Jr., i.e., Col. Pureza filed this case in retaliation for having been implicated in the case involving the killing of Elpidio's father, is equally tenuous. The facts show that Col. Pureza had been cleared of any involvement in the killing of Elpidio's father by the Investigating Panel of the Judge Advocate General's Office.[21] A contrario, it is Elpidio who may have the reason to retaliate at Col. Pureza who walked away from the charge.

We join the lower courts in rejecting appellants' alibi. In the case of Elpidio, we find it incredible that he did not inform the police about his alibi when he was brought in for questioning just hours after he came back from Bulan, Sorsogon. Neither did his mother, who followed him to the police station, nor his live-in partner, who was allegedly his companion in Sorsogon, say anything to the police to defend him. Their silence was deafening. It was almost a month later or only on February 20, 1985 that Elpidio foisted the defense of alibi in his counter-affidavit[22] submitted during the preliminary investigation of the case. We have repeatedly ruled that alibi is an inherently weak defense because it is easy to fabricate and is highly unreliable,[23] more so when corroborated only by relatives and friends.[24] It cannot stand against the positive identification of appellant by a credible witness to the crime.[25] On the other hand, appellant Emiliano alleged that he was in his house taking care of his child when the kidnapping took place, and that his tricycle, which was allegedly used in the crime, had a broken shock absorber. However, he admitted that his house was a mere ten (10) minutes away from the place of the incident.[26] He also conceded that a vehicle can run even without a broken shock absorber, although he qualified that his tricycle's shock absorber was seriously broken.[27] We reiterate the age old rule that for alibi to prosper, it is not enough to prove that the accused was somewhere else when the crime was committed; he must also demonstrate that it was physically impossible for him to have been at the scene of the crime at the time of its commission.[28] In the case at bar, appellant Emiliano failed to show that it was physically impossible for him to have been at the scene of the crime at the time of its commission considering that his house was a mere ten (10) minutes' drive away from the barangay hall where the victim was abducted.

In sum, we find that the guilt of appellants has been proven beyond reasonable doubt by the prosecution. All the elements of the crime of kidnapping, to wit: (1) the accused is a private individual; (2) the accused kidnaps or detains another, or in any manner deprives the latter of his liberty; (3) the act of detention or kidnapping is illegal; and (4) in the commission of the offense, any of the four circumstances mentioned in Art. 267 of the Revised Penal Code are present,[29] have been proven through the eyewitness account of Rogelio Andico, corroborated by Feliciano Castro, who have not been shown to have any improper motive in testifying in this case.

Finally, we come to the correctness of the penalty. The 1987 Constitution prohibits the imposition of the death penalty unless for compelling reasons involving heinous crimes, Congress provides for it.[30] Republic Act No. 7659[31] which classified kidnapping as a heinous crime punishable by death took effect on December 31, 1993. The crime at bar was committed in 1985. We have ruled that R.A. No. 7659 cannot be applied to a crime that transpired prior to its effectivity under the principle of non-retroactivity of penal laws which are unfavorable to the accused.[32] Consequently, reclusion perpetua is the only penalty that can be imposed against the appellants. As correctly argued by the Solicitor General, Act No. 4103, otherwise known as the Indeterminate Sentence Law, cannot be applied in the case of appellants considering the proscription in Sec. 2 thereof, viz:

This Act shall not apply to persons convicted of offenses punished with death penalty or life-imprisonment x x
x x

Indeed, in *People v. Asturias*,[33] *Serrano v. Court of Appeals*,[34] *People v. Lampaza*[35] and *People v. Tan*,[36] to name a few cases, we in effect equated the penalty of reclusion perpetua as synonymous to life-imprisonment for purposes of the Indeterminate Sentence Law, and ruled that the latter law does not apply to persons convicted

of offenses punishable with the said penalty. Consequently, we affirm the Court of Appeals in not applying the Indeterminate Sentence Law, and in imposing upon appellants the penalty of reclusion perpetua instead.

IN VIEW WHEREOF, we AFFIRM the decision of the Court of Appeals in CA-G.R. CR No. 23589 convicting Elpidio Enriquez, Jr. and Emiliano Enriquez of the crime of kidnapping.

SO ORDERED.

Austria-Martinez, Callejo, Sr., Tinga, and Chico-Nazario, JJ., concur.

[1] Decision dated May 28, 1999 in Criminal Case No. 150-85.

[2] Decision dated June 12, 2003 in CA-G.R. CR No. 23589.

[3] Whenever the Court of Appeals finds that the penalty of death, reclusion perpetua, or life imprisonment should be imposed in a case, the court, after discussion of the evidence and the law involved, shall render judgment imposing the penalty of death, reclusion perpetua, or life imprisonment as the circumstances warrant. However, it shall refrain from entering the judgment and forthwith certify the case and elevate the entire record thereof to the Supreme Court for review.

[4] Original Records, p. 1; Rollo, p. 26.

[5] Exh. "A," Original Records, p. 15.

[6] Exhs. "B" and "C," Id., pp. 24 and 36.

[7] TSN, October 2, 1987, pp. 3-9; TSN, November 25, 1987, p. 10.

[8] Supra at Note 1.

[9] Supra at Note 2.

[10] Supra at Note 5.

[11] Supra at Note 6.

[12] Original Records, p. 1.

[13] Under the present Art. 267, the period of deprivation of liberty for kidnapping to be committed is reduced to three (3) days only.

[14] Namely: (1) If the kidnapping or detention shall have lasted more than five 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; and (4) If the person kidnapped or detained shall be a minor, female, or a public officer.

The present Art. 267 bears minor differences from the former Art. 267. The period mentioned in the first circumstance was reduced from five (5) to three (3) days; and an exception in the fourth circumstance was made if the accused is any of the parents of the minor kidnapped or detained.

[15] People v. Saldaña, G.R. No. 148518, April 15, 2004.

[16] Supra at Note 6.

[17] People v. Ramos, 309 SCRA 643 (1999); People v. Batidor, 303 SCRA 335 (1999); People v. Realin, 301 SCRA 495 (1999).

[18] TSN, March 7, 1988, p. 14.

[19] Id.

[20] See *People v. Bagcal*, 350 SCRA 402 (2001).

[21] See *Elpidio Enriquez Jr.'s Counter-Affidavit* dated February 20, 1985, Original Records, pp. 69-70.

[22] Id., pp. 310-310A.

[23] *People v. Ejandra*, 429 SCRA 364 (2004); *People v. Guarin*, 317 SCRA 234 (1999); *People v. Limon*, 306 SCRA 367 (1999); *People v. Lapay*, 298 SCRA 62 (1998); *People v. Galapin*, 293 SCRA 474 (1998); *People v. Devaras*, 205 SCRA 676 (1992).

[24] *People v. Jerez*, 285 SCRA 393 (1998).

[25] *People v. Dichoson*, 352 SCRA 56 (2001); *People v. Pabillano*, 351 SCRA 237 (2001); *People v. Ronas*, 350 SCRA 663 (2001).

[26] TSN, May 23, 1988, pp. 15-16.

[27] Id., p. 9.

[28] *People v. Consejero*, 352 SCRA 276 (2001).

[29] *People v. Mercado*, 131 SCRA 501 (1984).

[30] Sec. 19 (1), Article III, 1987 Constitution, which provides: "Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to reclusion perpetua."

[31] An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Code, and for Other Purposes.

[32] *People v. Salimbago*, 314 SCRA 282 (1999).

[33] 134 SCRA 405 (1985).

[34] 247 SCRA 203 (1995).

[35] 319 SCRA 112 (1999).

[36] 359 SCRA 283 (2001).

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