

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ERNESTO CRUZ, JR. Y CONCEPCION AND REYNALDO AGUSTIN Y RAMOS, APPELLANTS.*G.R. No. 168446 (formerly G.R. Nos. 144174-75). September 18, 2009*

Ponente: PERALTA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-168446/>**PERALTA, J.:**

The present appeal is from a Decision[1] dated April 8, 2005 of the Court of Appeals (CA) in CA-G.R. CR No. 00264, affirming in toto the Joint Decision[2] dated May 25, 2000 of the Regional Trial Court (RTC), Branch 78, Malolos, Bulacan, finding appellants Ernesto Cruz, Jr. and Reynaldo Agustin guilty beyond reasonable doubt of the crimes of Kidnapping and Serious Illegal Detention (Article 267, Revised Penal Code [RPC] as amended by Republic Act [R.A.] No. 7659) and Robbery (Article 294, RPC, as amended by R.A. No. 7659).

The antecedent facts, as culled from the records, are the following:

On August 23, 1998, on or about 6:30 in the evening, Atty. Danilo Soriano, a Legal Officer of Del Monte Philippines, had just ended his usual Sunday visit to his farm in Masuso, Pandi, Bulacan.[3] Wanting to go home to his residence in Malabon, Metro Manila, Atty. Soriano requested his caretaker, appellant Reynaldo Agustin, to have the latter's son drive the former in a motorcycle to the jeepney stop, so that he could board a jeepney going to the Pandi-Balagtas terminal. Appellant Agustin volunteered to take Atty. Soriano to his destination using the former's motorbike, to which Atty. Soriano accepted.[4] It was raining then and barely 30 to 50 meters away from the jeepney stop, appellant Agustin stopped his motorbike beside a parked stainless owner-type jeep.[5] Three men were inside the said vehicle, while another one was standing beside it. Appellant Agustin spoke with the men and said, "Ano ba? Si Attorney!" After which, appellant Agustin told Atty. Soriano to board the said jeep. Atty. Soriano boarded after appellant Agustin told him that one of the men inside the jeep, appellant Ernesto Cruz, Jr., was his compadre and they were all bound for Balagtas, Bulacan. Thereafter, appellant Agustin left them.[6]

While the vehicle was on the road, appellant Cruz put his left arm around the neck of Atty. Soriano, poked a gun at the latter and announced a hold-up. Narciso Buluran (now deceased), held Atty. Soriano's hands, while accused Totchie Kulot grabbed Atty. Soriano's eyeglasses and used his umbrella to shield them from approaching vehicles. The men then got Atty. Soriano's bag and took his wristwatch, P2,500.00 cash, Totes umbrella worth P880.00, pager worth P3,000.00, a Swiss knife worth P1,500.00 and tools worth P1,500.00, totaling P12,000.00.[7] Then they brought Atty. Soriano to a dimly-lighted hut, but was later transferred to another hut. Atty. Soriano remained there for a week, closely guarded by Narciso Buluran, who was armed with an armalite rifle, and Tochie Kulot, who was armed with a revolver. Appellant Cruz visited him most of the time, while accused Allen Francisco prepared the food.[8]

A day after the abduction, or on a Monday, appellant Cruz demanded ransom from Atty. Soriano; otherwise, they would kill the latter. Atty. Soriano was allowed to write two letters[9] to his wife Iluminada (Luming) and a note[10] on which he was told to write as follows:

OFFER OF COMPROMISE

- P100,000 cash payable today

- US \$20,000, telegraphic transfer to PNB-Makati Ave. payable upon credit to local account or by express delivery to me or representative.

(Sgd. Illegible)

8-25-98

The letters were eventually sent to his wife, while appellant Cruz kept the short note in his wallet.[11] Appellant Cruz also called the victim's family from the cellular phone using the telephone number found on Soriano's diary.[12] That Friday or on August 28[th], appellant Cruz arrived in the hut late in the evening appearing to be drunk and told Atty. Soriano that the ransom money had been raised and that the latter would be released the following day.[13]

That Saturday, August 29[th], at 11:30 a.m., appellant Cruz went with accused Enrique Avendaño to the agreed place of pay-off at I. S. Pavilion, a mall located at Meycauayan, Bulacan, to collect the ransom money from Atty. Soriano's daughter, Clarissa. After receiving the parcel containing the ransom money, appellant Cruz and Avendaño left on board a tricycle. Unknown to them, some Presidential Anti-Organized Crime Task Force (PAOCTF) operatives had been monitoring the pay-off and accosted appellant Cruz and accused Avendaño near the Meycauayan Public Market, while they were still carrying the parcel containing the ransom money and the Nokia cellular phone used to contact Atty. Soriano's family. The PAOCTF operatives were able to learn from appellant Cruz the whereabouts of Atty. Soriano.[14]

Around 5:30 p.m. of the same day, the PAOCTF operatives and local barangay officials of Camachilhan, Bustos, Bulacan entered the premises of appellant Cruz's fishpond in Camachilhan, Bustos, Bulacan, where they heard a gunshot, prompting the team to return fire. They were able to rescue Atty. Soriano and in the process, killing Narciso Buluran. They arrested appellant Agustin and accused Francisco within the vicinity of the fishpond, while Tochie Kulot was able to escape. They were able to recover a gun, an icepick, an M-16 rifle, one (1) magazine, three (3) empty shells of M-16, two (2) shells of .45 caliber and one (1) wallet while searching the premises.[15] Then PAOCTF Chief Superintendent (now Senator) Panfilo Lacson later handed to Atty. Soriano a bag containing the ransom money recovered, consisting of 10 bundles of P1,000.00 bills.[16]

As a consequence thereof, an Information[17] dated September 22, 1998 was filed against Ernesto Cruz, Jr, Enrique Avendaño, Allen Francisco, Reynaldo Agustin, John Doe a.k.a. Tochie Kulot, and Richard Does charging them with the crime of Kidnapping and Serious Illegal Detention, as amended by R.A. 7659, which reads as follows:

Criminal Case No. 1489-M-98

That on or about 6:30 o'clock in the evening of August 23, 1998 at the intersection of Pasong Kalabaw and J. Bernardino Streets, Poblacion Pandi, Bulacan and within the jurisdiction of this Honorable Court, the said accused, conspiring, confederating and mutually aiding one another, did then and there wilfully, unlawfully and feloniously kidnap ATTY. DANILO SORIANO for the purpose of demanding ransom for the latter's release, and in fact, accused collected and received the ransom money in the amount of ONE MILLION (P1,000,000.00) PESOS, detaining and depriving Atty. Danilo Soriano of his personal liberty until his rescue by police officers on August 29, 1998.

CONTRARY TO LAW, particularly Article 267 of the Revised Penal Code, as amended by Republic Act No. 7659.

Another Information[18] was also filed against Ernesto Cruz, Jr., John Doe a.k.a. Tochie Kulot, and two

unidentified men with violation of Article 294 of the Revised Penal Code, reading:

Criminal Case No. 1490-M-98

That on or about 6:30 o'clock in the evening of August 23, 1998 at the intersection of Pasong Kalabaw and J. Bernardino Streets, Poblacion, Pandi, Bulacan and within the jurisdiction of this Honorable Court, the said accused conspiring, confederating and mutually aiding one another, did then and there wilfully, unlawfully and feloniously, with intent to gain and by means of force, violence and intimidation and with the use of a firearm, robbed and took the following articles from Atty. Danilo Soriano, to wit:

- Cash Money P2,500.00
- Eyeglasses 1,500.00
- Pager 3,000.00
- 4. Casio calculator 800.00
- Totes Umbrella 800.00
- Imported Swiss knife 1,500.00
- Folding pliers, screw driver
and other handy tools 2,000.00
- Other personal belongings
of nominal value _____
P12,180.00

To the damage and prejudice of ATTY. DANILO SORIANO in the aforesaid amount.

CONTRARY TO LAW.

Upon arraignment[19] on October 16, 1998, appellant Ernesto Cruz, appellant Reynaldo Agustin and Enrique Avendaño, assisted by counsel de parte, and Allen Francisco, assisted by counsel de officio, all pleaded Not Guilty of the crime/s charged.

After Pre-trial on November 12, 1998, trial on the merits ensued.

The prosecution presented as witnesses, Atty. Soriano, SMART Telecommunications Supervisor, Daisy Sazon, Senior Police Inspector (SPO)1 Ricardo Valencia, SPO4 Willy Nuas and SPO4 Romano Desumala whose testimonies were earlier mentioned.

On the other hand, the defense presented the testimonies of accused Allen Francisco, appellant Agustin, appellant Cruz, Lilibeth Francisco, Danilo Agustin, Isabelita Agustin and Bonifacio Moramion.

According to accused Allen Francisco, he was merely a helper and caretaker of the fishpond of appellant Cruz and knew nothing about the kidnapping.[20] This was corroborated by his wife, Lilibeth, who stated that she prepared food for Atty. Soriano, a visitor who stayed in the hut from August 25 to 29, 1998, and wondered why the visitor was not allowed to leave the hut.[21]

Appellant Agustin, the caretaker of Atty. Soriano's farm, testified that he only drove Atty. Soriano to the jeepney stop on August 23, 1998 as his son, Gerardo Agustin, met an accident earlier that day. When he and Atty. Soriano were already near the town, it began to rain and fearing that they would both get wet, and seeing appellant Cruz's jeepney parked at the intersection of Pasong Kalabaw and Bernardino Streets, appellant Agustin requested

appellant Cruz to allow Atty. Soriano to ride with him to the town proper. At about 2 p.m. of the following day, Atty. Soriano's brother-in-law, Dan Roding, arrived at appellant Agustin's house and broke the news that Atty. Soriano failed to go home.[22] Agustin then told Dan Roding that he had asked his friend, appellant Cruz to drive Atty. Soriano up to the Pandi-Balagtas terminal. Dan Roding then requested permission to go to appellant Cruz's house in Bagbagin, Pandi, Bulacan to inquire about the matter. He arrived there at 3:30 p.m.. Appellant Cruz told him that he had dropped Atty. Soriano off at the terminal. Appellant Agustin then went home and told Dan Roding, who was still there, about appellant Cruz's answer. On August 25, 1998, appellant Agustin and his wife went to Atty. Soriano's house in Malabon, where Dan Roding and his wife, Atty. Soriano's sister, Atty. Soriano's wife Luming, and daughter Clarissa were there crying. Luming told him that she had received a telephone call asking for money. Appellant Agustin told Clarissa, "Huwag kang mag-alala, makakauwi din yon." They stayed in Atty. Soriano's house for two hours. Afterwards, he asked his son and wife to call up the Sorianos and inquire after Atty. Soriano. When asked why he was at appellant Cruz's farm in Camachilihan, Bustos, Bulacan at the time of the arrest on August 29, appellant Agustin said that he was there to request appellant Cruz to catch fingerlings of hito for them.[23]

However, accused Ernesto Cruz gave a version completely different from the earlier testimonies. He claimed that Atty. Soriano had staged the kidnapping. According to him, Atty. Soriano devised the kidnapping plan after the former's teasing remark of "Atty., magpakidnap ka na lang," said during one of Atty. Soriano's frequent visits to appellant Cruz's nearby farm/fishpond. The said teasing remark was uttered after Atty. Soriano told appellant Cruz of the former's problems in dealing with bank installments for the on-going construction of his building in Santa Ana, Manila. Appellant Cruz added that Atty. Soriano set the kidnapping on August 23, 1998 at Pasing Kalabaw, Pandi, Bulacan for a ransom money of One Million Pesos (P1,000,000.00), as it was the only amount available in the family coffers. Finally, he said that Atty. Soriano promised them 10% of the ransom money.[24]

On May 25, 2000, the RTC, rendered its Decision finding appellants Cruz and Agustin guilty beyond reasonable doubt of violation of Article 267 of the Revised Penal Code, as amended by R.A. No. 7659 and appellant Cruz of violation of Article 294 of the Revised Penal Code, as amended by R.A. No. 7659. However, Allen Francisco was acquitted of the crime charged. The dispositive portion of the said Decision reads:

WHEREFORE, premises considered, this Court hereby finds accused Ernesto Cruz, Jr. y Concepcion and Reynaldo Agustin y Ramos GUILTY beyond reasonable doubt of Violation of Article 267 of the Revised Penal Code, as amended by R.A. 7659, and hereby sentences them to suffer the penalty of DEATH and to pay private complainant Atty. Danilo Soriano the amount of P50,000 as moral damages.

Accused Allen Francisco y Buensaleda is hereby ACQUITTED of the charge.

This Court likewise finds accused Ernesto Cruz, Jr. y Concepcion GUILTY beyond reasonable doubt of Violation of Article 294 of the Revised Penal Code, as amended by R.A. 7659, and hereby sentences him to suffer the indeterminate penalty of 6 months of Arresto Mayor Maximum, as minimum, to 8 years of Prison Mayor Medium, as maximum, and to pay herein private complainant the amount of P12,000 as actual damages. With costs.

SO ORDERED.

The cases were appealed to this Court due to the imposition of the death penalty. However, on September, 14, 2004, in conformity with the decision promulgated on July 7, 2004 in G.R. Nos. 147678-87, entitled *The People of the Philippines v. Efren Mateo y Garcia*, modifying the pertinent provisions of the Revised Rules of Criminal Procedure, more particularly Sections 3 and of Rule 125 and any other rule insofar as they provide for direct appeals from the RTCs to this Court in cases where the penalty imposed is death, reclusion perpetua or life imprisonment, as well as the resolution of this Court en banc, dated September 19, 1995, in "Internal Rules of the

Supreme Court" in cases similarly involving the death penalty, pursuant to the Court's power to promulgate rules of procedure in all courts under Article VII, Section 5 of the Constitution, and allowing an intermediate review by the CA before such cases are elevated to this Court, this Court transferred the case to the CA for appropriate action and disposition.

On April 8, 2005, the CA affirmed in toto the Decision of the RTC, with the dispositive portion reading:

WHEREFORE, all the foregoing considered, this Court renders judgment AFFIRMING the appealed decision in toto. However, instead of rendering judgment, We hereby certify and elevate the entire records of this case to the Supreme Court for its final review and disposition, consonant with the ruling in the case of *People v. Mateo*, supra and its Resolution in A.M. No. 00-5-03-SC dated September 28, 2004

SO ORDERED.

Hence, the present appeal.

Appellant Reynaldo Agustin filed his Supplemental Brief[25] dated October 7, 2005, while appellant Ernesto Cruz, Jr. filed a Manifestation dated October 12, 2005 stating that he is adopting in toto his Appellant's Brief, as well as his Supplemental Brief required in the Resolution dated July 19, 1995 of this Court. In compliance with the Court's Resolution dated July 19, 2005, the Office of the Solicitor General (OSG) also filed its Supplemental Brief dated January 5, 2006.

In his earlier Brief[26] dated April 30, 2002, appellant Agustin argued that the trial court overlooked and seriously failed to weigh accurately all the material facts and circumstances of the case presented to it for reconsideration. According to him, the prosecution failed to substantiate his participation in the conspiracy to commit the crime of kidnapping for ransom. He added that, at most, he was implicated in the commission of the crime charged based solely on circumstantial evidence, however, the circumstances presented by the prosecution were clearly inadequate to demonstrate convincingly and persuasively that he had conspired with appellant Cruz to commit the crime charged. Finally, he claims that the trial court failed to consider his defense that he never participated in kidnapping and detaining Atty. Soriano, as he had no knowledge whatsoever in the commission of the said offense.

In refutation of the Brief of appellant Agustin, the OSG filed its Brief[27] dated August 28, 2002 averring that appellant Agustin's guilt for the crime of Kidnapping for Ransom as a principal by indispensable cooperation has been sufficiently established.

As a reply to the brief filed by the OSG, appellant Agustin filed his Appellant's Reply Brief[28] dated November 27, 2002 insisting that his guilt as principal by indispensable cooperation in the crime charged has not been proven beyond reasonable doubt.

Appellant Cruz, on the other hand, filed his Brief[29] dated December 8, 2002 and argued that the trial court erred in not giving any credence or weight to his evidence that the kidnapping of Atty. Soriano was the idea of the latter and in not considering said circumstance that had removed or cast doubt on the element of illegal restraint upon the supposed victim, even only as a mitigating circumstance. He further stated that the trial court erred in finding that the crime allegedly committed by him is Kidnapping with Serious Illegal Detention, punishable by death, whereas, there was actually no forcible taking of the person of Atty. Soriano, who appeared to have voluntarily cooperated with appellant Agustin and his companions to make Atty. Soriano's plan appear to be real. The brief does not mention about any contention as to his being found guilty beyond reasonable doubt of the crime of robbery.

To refute the contentions of appellant Cruz in his brief, the OSG, in its Brief[30] dated April 3, 2003 stated that

the former's guilt for Kidnapping for Ransom and Robbery with Intimidation has been sufficiently established.

In his Reply Brief[31] dated February 19, 2004, appellant Ernesto Cruz, Jr. contended that he was only able to disclose the defense that Atty. Soriano planned the kidnapping during the trial because it was his first time to testify and that he told the said fact to his lawyers long before the said trial.

The appeal lacks merit.

Before tackling the respective contentions of the appellants, this Court finds it apt to discuss the nature of the crime of kidnapping for ransom. The corresponding provisions and ruling[32] of this Court are as follows:

Article 267 of the Revised Penal Code, as amended by Republic Act No. 7659, reads:

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

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. (As amended by RA No. 7659).

For the accused to be convicted of kidnapping, the prosecution is burdened to prove beyond reasonable doubt all the elements of the crime, namely: (a) the offender is a private individual; (b) he kidnaps or detains another, or in any manner deprives the latter of his liberty; (c) the act of detention or kidnapping must be illegal; and (d) in the commission of the offense any of the following circumstances is present: (1) the kidnapping or detention lasts for more than three days; (2) it is committed by simulating public authority; (3) any serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made; or (4) the person kidnapped or detained is a minor, female, or a public officer.[33] If the victim of kidnapping and serious illegal detention is a minor, the duration of his detention is immaterial. Likewise, if the victim is kidnapped and illegally detained for the purpose of extorting ransom, the duration of his detention is immaterial.

The essential elements for this crime is the deprivation of liberty of the victim under any of the above-mentioned circumstances coupled with indubitable proof of intent of the accused to effect the same.[34] There must be a purposeful or knowing action by the accused to forcibly restrain the victim coupled with intent.[35]

Central to the issues raised in the respective briefs of appellants Cruz and Agustin is a question of the factual findings of the RTC. However, this Court, in numerous cases, has ruled that, [W]ell-entrenched is the doctrine that the factual findings of the trial court, especially on the assessment or appreciation of the testimonies of witnesses, are accorded great weight and respect. The trial court has the singular opportunity to observe the witnesses "through the different indicators of truthfulness or falsehood, such as the angry flush of an insisted

assertion or the sudden pallor of a discovered lie or the tremulous mutter of a reluctant answer or the forthright tone of a ready reply; or the furtive glance, the blush of conscious shame, the hesitation, the sincere or the flippant or sneering tone, the heat, the calmness, the yawn, the sigh, the candor or lack of it, the scant or full realization of the solemnity of an oath, the carriage and mien".[36]

Appellant Agustin claims that the RTC erred in disregarding his defense that he did not conspire with appellant Cruz and that he had no knowledge of the kidnapping. He then proceeded to explain that the RTC based its conviction on circumstantial evidence. According to him, his only involvement was in accompanying Atty. Soriano to the town proper of Pandi, Bulacan. As such, he claims to be neither a principal by indispensable cooperation nor an accomplice. Circumstantial evidence, as held[37] by this Court, consists of the following:

x x x Circumstantial evidence consists of proof of collateral facts and circumstances from which the existence of the main fact may be inferred according to reason and common experience.[38] What was once a rule of account respectability is now entombed in Section 4, Rule 133 of the Revised Rules of Evidence which states that circumstantial evidence, sometimes referred to as indirect or presumptive evidence, is sufficient as anchor for a judgment of conviction if the following requisites concur:

x x x if (a) there is more than one circumstance; (b) the facts from which the inferences are derived have been established; and (c) the combination of all the circumstances is such as to warrant a finding of guilt beyond reasonable doubt.[39]

The prosecution is burdened to prove the essential events which constitute a compact mass of circumstantial evidence, and the proof of each being confirmed by the proof of the other, and all without exception leading by mutual support to but one conclusion: the guilt of accused for the offense charged.[40] For circumstantial evidence to be sufficient to support a conviction, all the circumstances must be consistent with each other, consistent with the hypothesis that accused is guilty and at the same time inconsistent with the hypothesis that he is innocent, and with every other rational hypothesis except that of guilt.[41] If the prosecution adduced the requisite circumstantial evidence to prove the guilt of accused beyond reasonable doubt, the burden of evidence shifts to the accused to controvert the evidence of the prosecution.

A careful perusal of the records and the transcript of stenographic notes clearly shows that the prosecution was able to adduce the requisite circumstantial evidence to prove the guilt of appellant Agustin beyond reasonable doubt.

Atty. Soriano testified as to the participation of appellant Agustin, thus:

Q:

What happened next?

A:

My caretaker Reynaldo Agustin was insistent that he personally drive the motorcycle, although his son was presenting himself which was the usual practice. His wife also asked if it was possible to allow his son to drive the motorcycle because there was a drinking spree in some corner and his wife did not want him to drive the motorcycle but he insisted.

x x x x

Q:

What happened next?

A:

We were still some distance away from the waiting shed. There was a parked private owner-type jeepney along the road. Without being told, Reynaldo Agustin stopped in front of that jeepney.

Q:

And then what happened?

A:

He gave some kind of signal to the four (4) men who were wearing black jacket. Three were boarded inside the jeepney and one was on the road. He gave the signal, Ano ba? Si Attorney! So I wondered what it was all about. Then he told me to board the jeepney and I asked why.

Q:

What else happened?

A:

When asked why I would have to take the jeep, he said, pointing to Ernesto Cruz, He is my compadre.[42]

The above testimony, coupled with the fact that appellant Agustin was arrested in the late afternoon of August 29, 1998 while he acted as a guard outside the hut where Atty. Soriano was kept, are consistent with each other, thereby warranting the conclusion that the former indeed had an indispensable part in the crime charged. His defense that his presence outside the hut where Atty. Soriano during the rescue operation, which eventually led to his arrest, does not make him criminally liable, deserves scant consideration. It was merely a statement which is not corroborated by any other evidence; thus, it is not enough to debunk the earlier mentioned circumstantial evidence.

With the above consideration, the evidence, therefore, is sufficient to show that appellant Agustin cooperated with the other appellant in the commission of the offense. Conspiracy, as ruled by this Court in *People v. Pagalasan*[43] means the following:

Judge Learned Hand once called conspiracy "the darling of the modern prosecutor's nursery." [44] There is conspiracy when two or more persons agree to commit a felony and decide to commit it. [45] Conspiracy as a mode of incurring criminal liability must be proven separately from and with the same quantum of proof as the crime itself. Conspiracy need not be proven by direct evidence. After all, secrecy and concealment are essential features of a successful conspiracy. Conspiracies are clandestine in nature. It may be inferred from the conduct of the accused before, during and after the commission of the crime, showing that they had acted with a common purpose and design. [46] Paraphrasing the decision of the English Court in *Regina v. Murphy*, [47] conspiracy may be implied if it is proved that two or more persons aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their combined acts, though apparently independent of each other, were, in fact, connected and cooperative, indicating a closeness of personal association and a concurrence of sentiment. [48] To hold an accused guilty as a co-principal by reason of conspiracy, he must be shown to have performed an overt act in pursuance or furtherance of the complicity. [49] There must be intentional participation in the transaction with a view to the furtherance of the common design and purpose. [50]

The United States Supreme Court in *Braverman v. United States*, [51] held that the precise nature and extent of the conspiracy must be determined by reference to the agreement which embraces and defines its objects. For one thing, the temporal dimension of the conspiracy is of particular importance. Settled as a rule of law is that the conspiracy continues until the object is attained, unless in the meantime the conspirator abandons the conspiracy or is arrested. There is authority to the effect that the conspiracy ends at the moment of any conspirator's arrest, on the presumption, albeit rebuttable, that at the moment the conspiracy has been thwarted,

no other overt act contributing to the conspiracy can possibly take place, at least as far as the arrested conspirator is concerned.[52] The longer a conspiracy is deemed to continue, the greater the chances that additional persons will be found to have joined it. There is also the possibility that as the conspiracy continues, there may occur new overt acts. If the conspiracy has not yet ended, then the hearsay acts and declarations of one conspirator will be admissible against the other conspirators and one conspirator may be held liable for substantive crimes committed by the others.[53]

Each conspirator is responsible for everything done by his confederates which follows incidentally in the execution of a common design as one of its probable and natural consequences even though it was not intended as part of the original design.[54] Responsibility of a conspirator is not confined to the accomplishment of a particular purpose of conspiracy but extends to collateral acts and offenses incident to and growing out of the purpose intended.[55] Conspirators are held to have intended the consequences of their acts and by purposely engaging in conspiracy which necessarily and directly produces a prohibited result that they are in contemplation of law, charged with intending the result.[56] Conspirators are necessarily liable for the acts of another conspirator even though such act differs radically and substantively from that which they intended to commit.[57] The Court agrees with the ruling of the Circuit Court of Appeals (Second District) per Judge Learned Hand in *United States v. Peoni*[58] "that nobody is liable in conspiracy except for the fair import of the concerted purpose or agreement as he understood it; if later comers change that, he is not liable for the change; his liability is limited to the common purpose while he remains in it." Earlier, the Appellate Court of Kentucky in *Gabbard v. Commonwealth*[59] held that:

The act must be the ordinary and probable effect of the wrongful acts specifically agreed on, so that the connection between them may be reasonably apparent, and not a fresh and independent project of the mind of one of the confederates, outside of or foreign to the common design, and growing out of the individual malice of the perpetrator.

Equally persuasive is the pronouncement of the Circuit Court of Appeals (Second District) in *United States v. Crimms*,[60] that it is never permissible to enlarge the scope of the conspiracy itself by proving that some of the conspirators, unknown to the rest, have done what was beyond the reasonable intendment of the common understanding. This is equally true when the crime which the conspirators agreed upon is one of which they severally might be guilty though they were ignorant of the existence of some of its constitutive facts. Also, while conspirators are responsible for consequent acts growing out of the common design they are not for independent acts growing out of the particular acts of individuals.[61]

It is immaterial whether appellant Agustin acted as a principal or an accomplice. What really matters is that the conspiracy was proven and he took part in it. As lucidly shown in the evidence, without the participation of appellant Agustin, the commission of the offense would not have come to fruition, and as clearly presented by the prosecution, he was the one who paved the way for Atty. Soriano to board the vehicle and his closeness with the victim led the latter to trust the former, thus, accomplishing the appellants' devious plan. Consequently, the conspirators shall be held equally liable for the crime, because in a conspiracy the act of one is the act of all.[62]

For his part, appellant Cruz claims that his guilt for the crime of kidnapping for ransom has not been sufficiently established. He alleged that Atty. Soriano was not deprived of his liberty as he was free to move about, nor was the latter at any time threatened or intimidated. However, the testimony of the victim proved otherwise, thus,

Q:

Going back to the place in Bustos where you claimed to have been in detention. You said you were being guarded by Narciso Buluran and Totchie Kulot round the clock?

A:

When I said I was being guarded from the first kubo, there were times

I could sense they were taking turns. There were times when both of them were not there and I could only see Allen Francisco going around.

Q:

You could only sense that there were two of them guarding you on the second hut because you were in fact locked inside. It was bolted from the outside?

A:

Yes, sir.

Q:

And as you describe the place, it was 3 x 3 in measurement, no windows, only one door?

A:

Yes, sir.

Q:

And you were made to sleep on a bamboo sofa?

A:

Sofa, actually.

Q:

But there was an opening through which you could see outside the kubo?

A:

Yes, sir.

Q:

That is where you saw two persons guarding you round the clock?

A:

Not only 2, sometimes 3.

Q:

Who might be the third?

A:

Especially when fed by Allen Francisco because he was the one delivering the food.

Q:

You stated in your August 29 statement and during your testimony last time that Allen was the one preparing the food for you?

A:

Not exactly preparing. He was the one bringing food.

Q:

Your statement that it was Francisco who prepares the food is not accurate?

A:

It was possible he is. It was possible somebody else because I knew he has a wife in the first kubo.

Q:

How did you know?

A:

I saw her.

Q:

When?

A:

Early morning, Monday, August 24 when she transferred to the second kubo from the first kubo.

Q:

So the wife of Francisco was in the second kubo when you were left in the early morning of August 25 by the group?

A:

Yes, sir.

Q:

And the wife of Francisco had to transfer to the second kubo to take her place?

A:

That is correct.[63]

From the above testimony of Atty. Soriano, it was obvious that there was actual confinement and that he was deprived of his liberty. The primary element of the crime of kidnapping is actual confinement, detention and restraint of the victim.[64] 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.[65] 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.[66]

As to the contention of appellant Cruz that there was no force or intimidation involved in the taking, this Court held in the case of *People v. Santos*,[67] that the fact that the victim voluntarily went with the accused did not remove the element of deprivation of liberty, because the victim went with the accused on a false inducement without which the victim would not have done so. In the present case, although Atty. Soriano boarded the vehicle without any protestation, he was under the impression that the said persons inside the same vehicle were to be

trusted as he was assured by appellant Agustin about that matter. Without such assurance, the victim would not have boarded the said vehicle. Moreover, it is important to emphasize that, in kidnapping, the victim need not be taken by the accused forcibly or against his will. What is controlling is the act of the accused in detaining the victim against his or her will after the offender is able to take the victim in his custody. In short, the carrying away of the victim in the crime of kidnapping and serious illegal detention can either be made forcibly or fraudulently.[68]

Anent appellant Cruz contention that the kidnapping was concocted by Atty. Soriano himself to secure money from his relatives, such claim is specious and uncorroborated. As correctly ruled by the CA:

Accused Ernesto Cruz's defense - that the kidnapping was concocted by Atty. Soriano himself to secure money from his relatives and that he was merely inveigled into it - is self-serving and unworthy of belief, as it is neither logical nor satisfactory, much less consistent with human experience and knowledge. Soriano, a lawyer gainfully employed with Del Monte Philippines, with a caring family, cannot be believed to have concocted such a scheme. In *People v. Enriquez*, 132 SCRA 553, the High Tribunal dismissed therein appellant's theory that the kidnapping was a mere scheme concocted by the victim himself, ruling that "No normal human being could be so base and ungrateful as to conceive such scheme for the purpose of securing money from his own (parents)."

Cruz's defense does not hold water; his version is either unsupported by or inconsistent with the evidence. First, Cruz alleged that he knew Soriano prior to the incident as his farm in Bagong Barrio, Pandi, Bulacan abutted that of Soriano's and that the latter often visited him. But Soriano's farm is situated in another barangay, in Brgy. Masuso, Pandi, Bulacan. Agustin's testimony that he introduced Cruz to complainant as his compadre before asking the latter to board Cruz's jeep, also belied Cruz's claim. Hence, we accord credence to private complainant's assertion that, except for appellant Agustin, he knew none of the accused prior to his abduction.

It bears noting that despite Cruz's claim that Soriano confided in him and asked him to participate in the kidnapping scheme, he denied any reference to friendship, stating that he and Soriano merely developed a mutual liking for each other. Assuming this latter statement to be true, We cannot believe that complainant would propose such a delicate scheme to a mere acquaintance.

Second, appellant Cruz's testimony that Attorney Soriano was "Free to move about", "treated like a guest", "like taking a vacation" during his stay at Cruz's hut was belied by his helpers, former co-accused Allen Francisco and Francisco's wife, Lilibeth Mitra, who testified that they never saw complainant leave the hut (because) complainant was closely guarded by Buluran, who was armed with an armalite rifle. Moreover the presence of guns and other weapons in the alleged "kidnap me" charade, eventually resulting in the shooting to death of Narciso Buluran, strongly militates against its credence.

Third, the tearful reaction of complainant's family to his kidnapping was clearly sincere and unorchestrated, belying knowledge of any scheme.

Finally, appellant Cruz's silence for more than a year after his arrest and his failure to report the alleged charade to the authorities despite being in detention for one month and 18 days, or even to his family, is highly unusual and goes against the grain of human nature. It would have been the natural and logical reaction of a person in his predicament to immediately inform the authorities of the alleged scheme instead of revealing it only in court. This omission makes his defense in court of the alleged kidnap-me charade suspect. Empirical data is yet to be found in order to accurately measure the value of testimony of a witness other than its conformity to human behavior and the common experience of mankind. This Court is convinced that appellant's "kidnap me" defense is a mere afterthought in order to stave off his certain conviction.[69]

From the above disquisitions, it is apparent that appellants Cruz and Agustin conspired to commit the crime of

kidnapping for ransom which was proven beyond reasonable doubt by the prosecution.

Finally, the RTC imposed the penalty of Death on both appellants, since it was then the prescribed penalty for violations of Article 267 of the Revised Penal Code, as amended by R.A. 7659. However, the death penalty cannot be imposed on the appellants in view of the passage of R.A. No. 9346 on June 24, 2006, prohibiting the imposition of death penalty in the Philippines. In accordance with Sections 2 and 3 thereof, the penalty that should be meted out to the appellants is reclusion perpetua without the possibility of parole.[70]

WHEREFORE, the Decision dated April 8, 2005 of the Court of Appeals in CA-G.R. CR No. 00264, affirming in toto the Joint Decision dated May 25, 2000 of the Regional Trial Court, Branch 78, Malolos, Bulacan, is hereby **AFFIRMED** with **MODIFICATION**. Appellants Ernesto Cruz, Jr. and Reynaldo Agustin are found **GUILTY** beyond reasonable doubt of the crime of Kidnapping and Serious Illegal Detention (Article 267, RPC), as amended by R.A. No. 7659, the penalty of which, is reclusion perpetua in view of the passage of R.A. No. 9346.

SO ORDERED.

Puno, C.J., Ynares-Santiago, Carpio, Corona, Carpio Morales, Chico-Nazario, Velasco, Jr., Nachura, Leonardo-De Castro, Brion, Bersamin, Del Castillo, and Abad, JJ., concur.
Quisumbing, J., on official leave.

[1] Penned by Associate Justice Portia Aliño-Hormachuelos (Chairperson, Seventh Division), with Associate Justices Juan Q. Enriquez, Jr. and Vicente Q. Roxas, concurring; rollo, pp. 3-34.

[2] Penned by Judge Gregorio S. Sampaga; CA rollo, pp. 30-50.

[3] TSN, November 24, 1998, p. 2.

[4] Id. at 5.

[5] Id. at 7.

[6] Id.

[7] Id. at 9.

[8] Id. at 11-12, 17-19.

[9] Exhibits "A" and "H," records, vol. II, pp. 268 and 282, respectively.

[10] Exhibit "B," records, vol. II, pp. 271, 272.

[11] TSN, November 19, 1998, pp. 14-16, Exhibit "B," supra.

[12] Id. at 9.

[13] Id. at 19; record, vol. III, p. 745.

[14] TSN, January 14, 1999, pp. 9-19, 40.

[15] Id. at 12-13; TSN, January 11, 1999, pp. 1-7; Affidavit of Arrest, Exhibit "M," records, vol. II, p. 286; PAOCTF Report, Exhibit "S," records, vol. II, p. 293.

[16] Exhibits "E" to "E-9," records, vol. II, pp. 298-495; Exhibit "F," p. 280.

[17] CA rollo, pp. 8-10.

- [18] Id. at 11.
- [19] Records, Vol. 1, pp. 110-113.
- [20] TSN, September 2, 1999, pp. 2-3, 22.
- [21] TSN, October 14, 1999, p. 7.
- [22] TSN, September 30, 2000, p. 11.
- [23] Id. at 15-22.
- [24] TSN, December 2, 1999, pp. 3-21.
- [25] Rollo, p. 45.
- [26] Id. at 90.
- [27] Id. at 142.
- [28] Id. at 164.
- [29] Id. at 172.
- [30] Id. at 207.
- [31] Id. at 238.
- [32] *People v. Pagalasan*, 452 Phil. 341, 361-362 (2003).
- [33] *People v. Salimbago*, G.R. No. 121365, September 14, 1999, 314 SCRA 282.
- [34] *People v. Borromeo*, G.R. No. 130843, January 27, 2000, 323 SCRA 547.
- [35] *People v. Soberano*, G.R. No. 116234, November 6, 1997, 281 SCRA 438.
- [36] *People v. Yambot, et al.*, G.R. No. 120350, October 13, 2000, 343 SCRA 20, citing *People v. Quijada*, 259 SCRA 191, 212-213; citing: *People v. De Guzman*, 188 SCRA 407 (1990); *People v. De Leon*, 245 SCRA 538 (1995); *People v. Delovino*, 247 SCRA 637 (1995).
- [37] *People v. Delim*, 444 Phil. 430, 451-452 (2003).
- [38] Francisco, *The Revised Rules of Court of the Philippines*, Part II, Vol. VII, 1991 ed.
- [39] *Supra*.
- [40] *People v. Elizaga*, G.R. No. L-23202, April 30, 1968, 23 SCRA 449.
- [41] *People v. Casingal*, G.R. No. 87163, March 29, 1995, 243 SCRA 37.
- [42] TSN, November 19, 1998, pp. 5-6.
- [43] *Supra* note 32, at 363-365.
- [44] *Harrison v. United States*, 7 F.2d. 259 (1925).
- [45] Revised Penal Code, Art. 8.
- [46] *People v. Quilaton*, G.R. No. 131835, February 3, 2000, 324 SCRA 670.

- [47] 172 Eng. Rep. 502 (1837).
- [48] *People v. Del Rosario*, G.R. No. 127755, April 14, 1999, 305 SCRA 740.
- [49] *People v. Elijorde*, G.R. No. 126531, April 21, 1999, 306 SCRA 188.
- [50] *People v. Del Rosario*, supra note 48.
- [51] 87 L.ed. 23 (1942).
- [52] 22A Corpus Juris Secundum, Conspiracy, p. 1150; *U.S. v. Eng*, 241 F.2d. 157 (1957).
- [53] Revised Rules of Evidence, Rule 130, Sec. 30.
- [54] 15A Corpus Juris Secundum, Conspiracy, p. 828.
- [55] *Id.*
- [56] *Ingram v. United States*, 259 F.2d. 886 (1958).
- [57] *Pring v. Court of Appeals*, G.R. No. L-41605, August 19, 1985, 138 SCRA 185.
- [58] 100 F.2d. 401 (1938).

[59] 236 SW 942 (1922).

- [60] 123 F.2d. 271 (1941).
- [61] *Martin v. State*, 8 So. 23 (1890).
- [62] *People v. Pangilinan*, 443 Phil. 198, 239 (2003), citing *People v. Boller*, 429 Phil. 754 (2002); *People v. Bacungan*, 428 Phil. 798 (2002); *People v. Manlansing*, 428 Phil. 743 (2002).
- [63] TSN, November 24, 1998, pp. 16-17.
- [64] *People v. Ubongen*, G.R. No. 126024, April 20, 2001, 357 SCRA 142.
- [65] *Id.*
- [66] *People v. De la Cruz*, 342 Phil. 854 (1997); *People v. Sinoc*, 341 Phil. 355 (1997).
- [67] G.R. No. 117833, December 22, 1997, 283 SCRA 443.
- [68] *People v. Deduyo*, G.R. No. 138456, October 23, 2003, 414 SCRA 160, citing FLORENZ D. REGALADO, CRIMINAL LAW CONSPECTUS 488 [2000].
- [69] Rollo, pp. 21-24.
- [70] *People v. Domingo Reyes y Paje, et al.*, G.R. No. 178300, March 17, 2009.

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