PEOPLE OF THE PHILIPPINES, APPELLEE, VS. RAUL CENAHONON, APPELLANT.

G.R. NO. 169962 (FORMERLY G.R. NO. 157022). July 12, 2007

Ponente: NACHURA, J.

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NACHURA, J.:

Before us is the Decision[1] dated June 3, 2005 of the Court of Appeals (CA) and the Decision[2] dated October 20, 2001 of the Regional Trial Court (RTC) of Parañaque City, Branch 259, in Criminal Case No. 99-248, both finding accused Raul Cenahonon (Cenahonon) and Ranilo Erdaje (Erdaje) guilty of kidnapping for ransom and imposing upon them the death penalty.

The case arose from the Information[3] dated November 29, 1999, the accusatory portion of which reads:

> That on or about November 25, 1999 in Parañaque City and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, did then and there, by force and intimidation, and with the use of a gun, willfully, unlawfully and feloniously take, carry away and deprive KENNETH MEDINA of his liberty against his will for the purpose of extorting money as in fact a demand for money was made as a condition for his release.
>
> CONTRARY TO LAW.

Upon arraignment, both accused pled "not guilty." Thereafter, Erdaje escaped from detention and, thus, was tried in absentia.

The facts, as established by the prosecution evidence, are as follows:

On November 25, 1999, around 9:00 a.m., Jometh Magaway (Magaway), the driver of spouses Fortunato and Daisy Medina, was driving a red Honda CRV (CRV) bearing plate number WPP 502 out of the Medina residence in BF Homes, Parañaque City, to bring the couple's four-year-old son, Kenneth, to school. A man, later identified as Erdaje, suddenly approached, poked a gun at Magaway, opened the vehicle door, and told Magaway to move over from the driver's seat. Magaway followed and sat with Kenneth at the front passenger seat. Erdaje's companion, later identified as Cenahonon, occupied the back seat. Erdaje handed the gun to Cenahonon, who poked it at Magaway from behind. Erdaje then drove the car away.[4]

The maid of the Medinas, who saw the incident, immediately reported to Fortunato, then descending from the house, what happened. Fortunato tried to intercept the CRV at the village gate, but failed. He returned home and called Daisy at their office in Alabang, Muntinlupa City. He told her about the incident and instructed her to call the Presidential Anti-Organized Crime Task Force (PAOCTF). He, in turn, called the Parañaque City Police Department.[5]

Meanwhile, inside the CRV, both accused informed Magaway that they would call the Medina family to demand a P5 million ransom. Upon reaching Las Piñas City, the former ordered Magaway to alight.[6]

Magaway proceeded to Medina's office in Alabang and related to Daisy how Kenneth was abducted.[7] Daisy instructed Magaway to return to the Medina residence where the Parañaque Police and the PAOCTF men were waiting.[8]

Around 1:00 p.m. that day, somebody called the Medina residence and talked to Fortunato. A speaker phone was used so everyone in the house heard the telephone conversation. The caller demanded P5,000,000.00 for Kenneth's release. A PAOCTF member instructed Fortunato to negotiate. The caller made several calls that same afternoon to negotiate for the ransom.

At about 6:00 p.m., the caller agreed to reduce the ransom to P100,000.00. He instructed Fortunato to put the money in a black plastic bag and give it to Magaway who would then turn it over at Mon-El Village along Sucat Avenue near the Baliwag Lechon Manok stall, in exchange for the keys of the CRV, with Kenneth inside the car.[9]

Sr. Inspector Edgar Allan Okubo (Okubo) of the PAOCTF and his team placed the boodle money inside a black plastic bag and gave it to Magaway. Magaway proceeded to the appointed place aboard a Tamaraw FX vehicle (Tamaraw FX) of the Medinas, driven by a PAOCTF operative. Two teams were dispatched to follow the Tamaraw FX. Okubo led one team while Sr. Inspector Loreto Delelis (Delelis) led the other.[10] Both teams parked their unmarked vehicles in front of the McDonald's restaurant beside Mon-El Village. The Tamaraw FX was parked in front of the Baliwag Lechon Manok stall.[11]

At around 8:00 p.m., Erdaje arrived and approached the Tamaraw FX. Magaway got down and gave the bag of boodle money to him. Upon receipt, Erdaje left without turning over the keys of the CRV.[12] Okubo and the PAOCTF operatives saw Erdaje board a dark gray Gemini sedan (Gemini) parked in front of McDonald's. The PAOCTF operatives then followed the Gemini towards the Sucat Airport road. Meanwhile, Magaway and his companion returned to the Medina residence.[13]

The PAOCTF operatives pursued the Gemini to a house in Barangay Molino, Bacoor, Cavite. Erdaje alighted from the car and went inside the house. After a few minutes, he left and drove away. Okubo ordered Delelis' team to tail Erdaje while his team stayed and knocked at the door of the house. Elizabeth Alamag (Alamag) answered. The team introduced themselves and asked for the identity of the man who just left. Alamag replied that the man is her uncle, Ranilo Erdaje, who was looking for Cenahonon and a child. She informed the operatives that she told Erdaje that both were in Trece Martires, Cavite.[14]

Okubo informed Alamag that they were searching for kidnap victim Kenneth Medina who probably was the same child Erdaje was looking for. Okubo asked Alamag to cooperate and tell them what she knew.[15] Alamag acceded and narrated that that morning, Erdaje requested her to allow the boy to stay for some time because his friend Cenahonon, allegedly the child's father, and the latter's wife were fighting over the boy's custody. She refused but advised Erdaje to bring the boy to her mother's house in Trece Martires. When Erdaje asked her to accompany him, she obliged. On their way to Cavite, she met the boy and Cenahonon inside the car. The boy was crying and looking for his mother. At Trece Martires, Alamag sought the permission of her stepfather to allow Cenahonon and the child to stay in their house. The stepfather agreed. Thereafter, Erdaje left. Alamag went home a little later.[16]

Alamag volunteered to accompany the PAOCTF team to her mother's house.[17] When they arrived there, Delelis' team had already surrounded the area.[18] The Gemini was parked alongside the carnapped CRV nearby. The operatives then raided the house, safely rescued Kenneth, and arrested Erdaje and Cenahonon. The team took them to their office in Camp Crame, Quezon City. At about 10:30 p.m. that evening, Okubo phoned his superior, Col. Agustin, then at the Medina residence, and informed him that they had already rescued Kenneth.[19]

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The next day, November 26, 1999, Magaway and Kenneth identified Erdaje and Cenahonon as their abductors in a police line-up.[20]

As sole witness for the defense, Cenahonon testified that, around 9:00 a.m. of November 25, 1999, he reported for work as a carpenter in Indang, Trece Martires, Cavite. Later, at around 11:00 a.m., he excused himself from his employer to go to the market and buy something. As he was about to leave the market, somebody tapped his shoulder, poked a gun at him, and blindfolded him. He was forced inside a vehicle and taken to an unknown place. When they arrived at their destination, the blindfold was removed and Cenahonon saw three armed men in fatigue pants. The armed men brought him to a small house. There, the men took his short pants and wallet and ordered him to take care of a child. That night, he was arrested without a warrant by the PAOCTF. The three armed men who earlier took him were nowhere at the time of the arrest. The PAOCTF brought him to Camp Crame and there he met for the first time his co-accused Erdaje.[21]

In its Decision[22] dated October 20, 2001, the trial court found Cenahonon and Erdaje guilty of kidnapping for ransom and meted to them the penalty of death by lethal injection. The dispositive portion of the decision reads:

> WHEREFORE, PREMISES CONSIDERED, finding Raul Cenahonon and Ranilo Erdaje GUILTY beyond reasonable doubt of the crime of Kidnapping for Ransom as defined and penalized under Art. 267 of the Revised Penal Code as amended by RA 7659 particularly the penultimate paragraph thereof, with reference to Kidnapping committed for the purpose of extorting money from the victim or any other person, both accused are hereby sentenced to the supreme penalty of death by lethal injection and to suffer the accessory penalties provided by law specifically Art. 40 of the Revised Penal Code.
>
> The Clerk of Court is directed to prepare the Mittimus for the immediate transfer of Raul Cenahonon to the New Bilibid Prisons, Muntinlupa City from [the] Parañaque City Jail and to prepare an alias Warrant of Arrest for Ranilo Erdaje who is now considered a fugitive from justice. The Clerk of Court is also directed to forward all the records to the Supreme Court for automatic review in accordance with Section 9, Rule 122 of the Revised Rules of Court and Art. 47 of the Revised Penal Code as amended by Section 22 of RA 7659.
>
> SO ORDERED.[23]

This case was elevated for automatic review to this Court and originally docketed as G.R. No. 157022. The Public Attorney's Office (PAO) filed an appellants' brief for both Cenahonon and Erdaje.[24] The Office of the Solicitor General (OSG), representing the People of the Philippines, filed the corresponding appellee's brief.[25] Accused-appellants, thru the PAO, filed their reply brief.[26]

In a Resolution[27] dated October 12, 2004, this Court transferred the records of the case to the CA for appropriate action and disposition pursuant to People of the Philippines v. Efren Mateo[28] which modified Sections 3 and 10 of Rule 122, Section 13 of Rule 124, and Section 3 of Rule 125, all of the Revised Rules on Criminal Procedure, and allowed intermediate review by the Court of Appeals.

Upon review, the CA rendered its Decision[29] dated June 3, 2005, affirming in toto the decision of the trial court, the dispositive portion of which reads:

> WHEREFORE, the Decision dated October 20, 2001 of the Regional Trial Court of the City of Parañaque, Branch 259, in Criminal Case No. 99-248, finding accused-appellants Raul Cenahonon and Ranilo Erdaje guilty beyond reasonable doubt of the crime of kidnapping for ransom and imposing upon them the death penalty is AFFIRMED.
>
> SO ORDERED.[30]

Upon elevation of this case back to this Court, now docketed as G.R. No. 169962, the parties were directed to file

their respective supplemental briefs within thirty (30) days from notice, if they so desired.[31] The People, thru the OSG, moved that its brief already filed be adopted as its supplemental brief.[32] However, only Cenahonon, thru the PAO, prayed that appellants' brief filed earlier be adopted as his supplemental brief.[33]

It must be remembered that Erdaje escaped from jail after his arraignment. The trial court tried him in absentia, found him guilty of the crime charged together with Cenahonon, and likewise sentenced him to death. While it appears that Cenahonon is the lone appellant in this case, this Court, in line with its ruling in People v. Esparas[34] and in subsequent similar cases,[35] is mandated by law to automatically review the conviction and the death sentence imposed on both Cenahonon and Erdaje, and promulgate the appropriate judgment. As the brief drafted by the PAO was initially filed for both accused, the Court will also consider the same with respect to Erdaje. Further, as the entire case is thrown open for scrutiny, it is the duty of this Court to correct any error, if any, that may be found in the judgment under review, whether or not an appeal brief is filed, and if there is, whether or not such error is assigned.

Thus, for review is the following assignment of errors:

> I.
>
> THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANTS OF THE CRIME CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE THEIR GUILT BEYOND REASONABLE DOUBT.
>
> II.
>
> THE COURT A QUO GRAVELY ERRED IN FINDING THAT THERE WAS CONSPIRACY IN THE CASE AT BAR.

Cenahonon assails the credibility of prosecution witnesses Jometh Magaway and Elizabeth Alamag. He points to certain inconsistencies which, according to him, discredit their testimony.

Firstly, Cenahonon claims that Magaway, on direct examination pointed to him as the person who approached him, poked a gun at him, demanded that he transfer to the front passenger seat, and drove the CRV away from the Medina residence; but, on cross-examination, testified that it was Erdaje, the person who collected the money from him, who poked the gun at him, demanded his transfer, and drove the vehicle with the boy.

Secondly, Cenahonon points out that Alamag testified that she voluntarily accompanied him and the boy to her mother's house and was not threatened by her uncle, Erdaje, but she also affirmed the contents of her affidavit wherein she stated that her uncle threatened her.

The argument does not persuade.

As correctly observed by the OSG and as found by the CA, the alleged inconsistencies in the testimony of Magaway are more apparent than real. Indeed, Magaway committed a mistake in identifying the person who poked the gun at him and drove the CRV away with the child. Noteworthy is that, on re-direct examination, he was able to explain the apparent inconsistency, and correct the mistake in this wise:

> Q: Mr. witness, in your answer in this transcript of stenographic notes dated June 8, 2000 on page 8 thereof, you said that the one who directed you to transfer to the right portion of the car, in the front side, and also the one who drove the car was one of the accused named Raul Cenahonon. In the transcript, you said that. Now when you were asked by the defense counsel who directed you to transfer to the right portion of the front seat of the car and the one who drove the car, your answer was the person who is not present here in court, or that it was not Raul Cenahonon. My question is, why did you say in your statement here made on June 8, 2000 that it

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was Raul Cenahonon who drove the car and the one who also ordered you to transfer to the right portion of the car?

A: Because Fiscal Macapagal mentioned the name, sir. I only knew them by their faces kaya nalilito po ako.

Q: And you said also that the one who is not present here in court was the one who poked a gun at you and the one who drove the car. Now, while that person was driving the car, did you come to know where he placed the gun that was poked on you?

A: He handed it to his other companion, sir.

Q: And that companion or that person is not present in court, is he present in this office?

ATTY. OCTAVA:

Your Honor please, matters that have to be taken by during re-direct examination are matters that have been taken up during the cross-examination. And these matters were not taken up during the cross-examination, your Honor.

STATE PROS. MACAPAGAL:

It is material, your Honor, because there was a mistake committed by the witness on identifying who poked the gun and drove the car because I mentioned, this representation happened to mention the name of the accused which he did not know. Now, I'm clarifying the matter by making the witness point to that person who was then the companion of the one who is not present in court, for the clarification of the Honorable Court.

ATTY. OCTAVA:

By the way, your Honor, I have vividly asked the witness a while ago that if that statement he made before was not true and he affirmed, your Honor. He affirmed that he was lying.

STATE PROS. MACAPAGAL:

No. There was no affirmation that he was lying. It is just that he committed a mistake because this representation mentioned the name which he did not know.

COURT:

May answer.

A: Yes, ma'am. He is here.

STATE PROS. MACAPAGAL:

Q: Will you please point to him?

A: Siya po. (Witness pointed to a person who, when asked his name, answered Raul Cenahonon).

Q: And what did that person whom you pointed do to the gun?

A: He poked the gun at the left portion of my waist, sir.

Q: So the one who poked the gun on you while you were already on board the car and that the one who is not present was driving the car away is the person whom you just identified here in court?

A: Yes, ma'am.[36]

What Magaway made was an honest mistake that does not destroy his credibility as a witness. Even the most truthful witness can commit errors, but such innocent lapses do not necessarily affect his credibility. The

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testimonies of witnesses must be calibrated in their entirety, not merely by their truncated portions or isolated passages.[37]

Similarly, the truthfulness of Alamag's testimony is not affected by the alleged inconsistency as to whether she was threatened or not by her uncle (Erdaje). The discrepancy is of such a minor nature that it does not belie the occurrence of the abduction of Kenneth Medina by Cenahonon and Erdaje. In fact, such trivial inconsistencies even serve to strengthen the case of the prosecution as they erase suspicion of a rehearsed or perjured testimony.[38]

In this case, both Magaway and Alamag proved to be credible witnesses as there was nothing to show that they were actuated by any ill motive to testify against Cenahonon and Erdaje. Hence, the presumption that these witnesses were not moved by improper motive or bias, and thus, entitled to full faith and credit, holds.[39]

On the other hand, Cenahonon interposed the defenses of alibi and denial, stating that he was merely coerced to take care of Kenneth and that he met Erdaje for the first time at Camp Crame. Ranged against this lame excuse is the positive identification of both accused by Magaway and by Kenneth himself.

Magaway and Kenneth identified both Cenahonon and Erdaje as the kidnappers in a police line-up the day following the kidnapping.[40] Following the "totality test rule" laid down in People of the Philippines v. Teehankee,[41] this out-of-court identification is admissible and reliable. Indeed, Magaway had sufficient time to familiarize himself with Cenahonon and Erdaje when he and Kenneth were taken on board the CRV, and more so with Erdaje when the latter collected the boodle money from him. There was a short interval of time between the abduction on November 25, 1999 and the police line-up identification on November 26, 1999. Kenneth Medina, the kidnap victim himself, and at his young age, reinforced Magaway's identification of Cenahonon and Erdaje as the abductors. It is natural for victims to strive to recall the faces of the culprits and how the crime was committed against them.[42]

During trial, however, only Cenahonon was positively identified by Magaway, as Erdaje had already escaped from prison.

An affirmative testimony merits greater weight than a negative one, especially when the former comes from a credible witness. Categorical and positive identification of an accused, without any showing of ill motive on the part of the witness testifying on the matter, prevails over alibi and denial, which are negative and self-serving evidence undeserving of real weight in law unless substantiated by clear and convincing evidence.[43]

In this case, Cenahonon's version that he was forced to take care of the kidnap victim is simply unbelievable. For testimony to be believed, it should not only come from a credible witness but must also be credible in itself.[44] It would be inconceivable that kidnappers would entrust the performance of an essential and sensitive phase of their well-planned scheme to people not in collaboration with them, and who had no knowledge whatsoever of the details of their reprehensible plan.[45] Cenahonon's narrative even strengthens the prosecution's case, as it partakes of an admission that he participated in depriving the child of his liberty.

Cenahonon also points out in the reply brief that it was incredulous for him and Erdaje to release Magaway after the latter had seen their faces. According to him, it is unnatural for criminals to risk their identification.[46]

The contention lacks merit. Following this line, if they were careful not to risk identification, then they should have worn masks in the first place. What occurred, and as was proven during trial, was not improbable or unnatural.

It should also be remembered that Erdaje escaped from prison after he was duly arraigned. His flight can only be

indicative of his guilt. Flight means the act of evading the natural course of justice by voluntarily withdrawing oneself to avoid arrest, detention, or the institution or continuance of criminal proceedings. In jurisprudence, it has always been a strong indication of guilt betraying a desire to evade responsibility.[47] It is hardly consistent with a claim of innocence.[48]

In fine, there is no showing that the lower court has overlooked, misunderstood, or misapplied any fact or circumstance of weight and substance that would warrant the reversal of the conviction. Further, the assessment of the credibility of witnesses by the trial court is binding and conclusive on appeal because the trial court had the opportunity to evaluate conflicting testimonies and observe the demeanor of witnesses while on the stand.[49]

As regards the issue of conspiracy, the prosecution has proffered sufficient evidence that Cenahonon and Erdaje had unity of purpose in the perpetration of the kidnapping for ransom of Kenneth Medina. Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[50] While it is mandatory to prove it by competent evidence, direct proof is not essential to show conspiracy – it may be deduced from the mode, method, and manner by which the offense was perpetrated, or inferred from the acts of the accused themselves when such acts point to a joint purpose and design, concerted action and community of interest.[51]

Cenahonon and Erdaje were shown to have clearly acted towards a common goal – to abduct Kenneth Medina and to extort ransom from his family. It was Erdaje who drove the CRV while Cenahonon poked a gun at Magaway from the back seat. They took Kenneth to Alamag in Molino, Bacoor, Cavite, where Cenahonon posed as the father of the boy, and then proceeded to the house Alamag's mother in Trece Martires, Cavite. Erdaje left Cenahonon and Kenneth to collect the ransom from the Medina spouses and later returned to that house in Trece Martires.

The elements of kidnapping for ransom under Article 267[52] of the Revised Penal Code (RPC), as amended by Republic Act (R.A.) 7659 warranting the imposition of the death penalty, are as follows: (a) intent on the part of the accused to deprive the victim of his liberty; (b) actual deprivation of the victim of his liberty; and (c) motive of the accused, which is extorting ransom for the release of the victim.[53] Neither actual demand for nor payment of ransom is necessary for the consummation of the felony. It is sufficient that the deprivation of liberty was for extorting ransom even if none of the four circumstances mentioned in Article 267 were present in its perpetration.[54]

Based on the evidence proven during trial and as above discussed, the elements of the crime were present. Necessarily, the assailed decisions should be affirmed. However, with the advent of R.A. 9346,[55] prohibiting the imposition of the death penalty, Cenahonon and Erdaje should be meted the penalty of reclusion perpetua with all its accessory penalties and without eligibility for parole under Act 4103,[56] as amended.

WHEREFORE, the Decision dated October 20, 2001 in Criminal Case No. 99-248 of the RTC, Branch 259, Parañaque City, finding Raul Cenahonon and Ranilo Erdaje guilty of kidnapping for ransom of Kenneth Medina, and the Decision dated June 3, 2005 of the CA, affirming in toto the Decision of the RTC, are AFFIRMED. On Cenahonon and Erdaje is imposed, in lieu of the death penalty by lethal injection, the penalty of reclusion perpetua with all its appurtenant accessory penalties and without eligibility for parole.

Pursuant to Section 4 of R.A. 9346, in relation to Article 83 of the RPC, let the records of this case be forwarded to the President of the Philippines for the possible grant of executive clemency.[57]

Costs against appellant Cenahonon.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Corona, Carpio-Morales, Azcuna, Tinga, Chico-Nazario, Garcia, and Velasco, Jr., JJ., concur.
Sandoval-Gutierrez, J., on leave.

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[1] Penned by Associate Justice Aurora Santiago-Lagman, with Associate Justices Conrado M. Vasquez, Jr. and Rebecca de Guia-Salvador, concurring; rollo, pp. 3-19.

[2] Rollo (G.R. No. 157022), pp. 15-19.

[3] Records, pp. 1-2.

[4] TSN, June 8, 2000, pp. 4-7, 8-13; TSN, August 23, 2000, pp. 7-16.

[5] TSN, July 11, 2000, p. 7; TSN, August 23, 2000, pp. 31-37.

[6] TSN, June 8, 2000, pp. 14-17.

[7] Id. at 18-24.

[8] TSN, July 11, 2000, p. 3.

[9] Id. at 4-11; TSN, August 23, 2000, pp. 21-23, 37-42.

[10] TSN, October 12, 2000, pp. 15-21.

[11] Id. at 20-21; TSN, December 6, 2000, p. 20.

[12] TSN, July 11, 2000, pp. 13, 17; id. at 21-25.

[13] Id. at 16; TSN, October 12, 2000, pp. 23-25.

[14] TSN, April 18, 2000, p. 16; id. at 26-29.

[15] TSN, October 12, 2000, p. 30.

[16] TSN, April 18, 2001, pp. 6-14.

[17] TSN, October 12, 2000, pp. 21-32.

[18] TSN, April 18, 2001, p. 21.

[19] TSN, October 12, 2000, pp. 33-40.

[20] TSN, August 23, 2000, pp. 47-49.

[21] TSN, July 12, 2001, pp. 4-15.

[22] Rollo (G.R. No. 157022), pp. 15-19.

[23] Id. at 19.

[24] Id. at 38-49.

[25] Id. at 70-107.

[26] Id. at 116-120.

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[27] Rollo (G.R. No. 169962), p. 2.

[28] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[29] Rollo (G.R. No. 169962), pp. 3-19.

[30] Id. at 18-19.

[31] Order dated December 6, 2005, id. at 20.

[32] OSG's Manifestation and Motion for Leave to Adopt Brief as Supplemental Brief, id. at 21-23.

[33] Manifestation (In Lieu of Supplemental Brief), id. at 25-27.

[34] 329 Phil. 339, 347 (1996) (Resolution); 354 Phil. 342 (1998) (Decision). Citing U.S. v. Laguna, et al. (17 Phil. 533 [1910]), the Court held that the power to review a decision imposing the death penalty remains automatic and mandatory and cannot be waived either by the accused or by the courts. In this case, the accused has absconded.

[35] Please see People v. Latayada, 467 Phil. 682 (2004); People v. Abes, 465 Phil. 165, 180 (2004); People v. Ferrer, 454 Phil. 431, 451 (2003); People v. Oranza, 434 Phil. 417, 424 (2002); People v. Palabrica, 409 Phil. 618, 627 (2001); People v. Aquino, 385 Phil. 887, 899 (2000); People v. Raquiño, 374 Phil. 283, 292 (1999); and People v. Prades, 355 Phil. 150, 160 (1998).

[36] TSN, August 23, 2000, pp. 24-30.

[37] Yuchengco v. Sandiganbayan, G.R. Nos. 149802, 150320, 150367, 153207 & 153459, January 20, 2006, 479 SCRA 1, 39; People v. Castillano, Sr., 448 Phil. 482, 506-507 (2003).

[38] People v. Salimbago, 373 Phil. 56, 65 (1999).

[39] People v. Mamarion, 459 Phil. 51, 87 (2003).

[40] TSN, August 23, 2000, pp. 47-49.

[41] 319 Phil. 128, 180 (1995). See also People v. Arellano, 397 Phil. 307, 322 (2000). "In resolving the admissibility of and relying on out-of-court identification of suspects, courts have adopted the totality of circumstances test where they consider the following factors, viz.: (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at that time; (3) the accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and (6) the suggestiveness of the identification procedure."

[42] People v. Bacungay, 428 Phil. 798, 811 (2002).

[43] People v. Suarez, G.R. Nos. 153573-76, April 15, 2005, 456 SCRA 333, 349.

[44] People v. Garin, G.R. No. 139069, June 17, 2004, 432 SCRA 394, 407; People v. Giganto, Sr., 391 Phil. 169, 183 (2000).

[45] People v. Bacungay, supra note 42, at 814-815.

[46] Rollo (G.R. No. 157022), pp. 116-117.

[47] People v. Otayde, 462 Phil. 309, 323 (2003); People v. Cueto, 443 Phil. 425, 436 (2003); People v. Prades, supra note 35, at 164-165.

[48] People v. Raquiño, supra note 35, at 298.

[49] People v. Andales, 466 Phil. 873, 887 (2004).

[50] Revised Penal Code, Article 8, 2nd paragraph.

[51] Philippine Airlines, Inc. v. Court of Appeals, G.R. No. 159556, May 26, 2005, 459 SCRA 236, 258; People v. Felipe, 463 Phil. 518, 553-554 (2003); People v. Pangilinan, 443 Phil. 198, 238 (2003).

[52] Art. 267. Kidnapping and Serious Illegal Detention – Any private individual who shall kidnap or detain another or in any manner deprive him of his liberty shall suffer the penalty of reclusion perpetua to death;

- If the kidnapping or detention shall have lasted for 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 detained or kidnapped shall be a minor, except when the accused is any of the parents, female, or public officer.

The penalty of 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. x x x

[53] People v. Bisda, 454 Phil. 194, 234 (2003).

[54] People v. Salimbago, supra note 38, at 75.

[55] An Act Prohibiting Death Penalty in the Philippines.

[56] Indeterminate Sentence Law.

[57] Sec. 4. The Board of Pardons and Parole shall cause the publication of at least once a week, for three consecutive weeks, in a newspaper of general circulation of the names of persons convicted of offenses punished with reclusion perpetua or life imprisonment by reason of this Act who are being considered or recommended for communication or pardon: Provided, however, That nothing herein shall limit the power of the President to grant executive clemency under Section 19, Article VII of the Constitution. (emphasis supplied)

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