

THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. DARIUS RODRIGO Y FAJARDO,(ACQUITTED), FELICIANO FAJARDO, JR., AND REY PLATA, APPELLANTS.*G.R. NO. 173022. January 23, 2007*

Ponente: TINGA, J.

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Before us on automatic review is the Decision[1] rendered by the Court of Appeals, affirming with modification the Decision[2] of the Regional Trial Court (RTC) in Criminal Case No. 383-M-97, convicting Rey Plata, alias “Jeffrey” (Plata), Darius Rodrigo, alias “Jun” (Rodrigo), and Feliciano Fajardo, Jr., alias “Gerry” (Fajardo) of the crime of Kidnapping for Ransom, penalized under Republic Act No. 7659[3] with Death. Co-accused Rodrigo was acquitted on reasonable doubt.

On 10 September 1996, Oliver Caparas (Oliver), then 13 years of age, was waiting for a ride to school in a corner near his house in Matimbo, Malolos, Bulacan, when four (4) men forcibly seized and boarded him into a car. While inside the car, he was blindfolded. He was later transferred to a van.[4] The van, tailed by a car, traveled to Baguio. While there, they slept overnight inside the van in a parking lot.[5]

The following day, Eleazar Caparas (Eleazar), the father of Oliver, received a call from the kidnappers initially asking for P10 million ransom in exchange for the release of Oliver.[6] In the meantime, the kidnappers proceeded to Bonita’s Resort in Pangasinan.[7] Oliver was then brought to a room and his blindfold removed. He stayed inside the room for one (1) week. During his stay, a woman, later identified as Lanie dela Cruz (dela Cruz), took care of him by feeding him three (3) times a day.[8]

After three (3) days of negotiation, the kidnappers agreed to lower the ransom to P1.7 million.[9] On 17 September 1996, Pedro Navarro (Pedro), an uncle of Oliver, was instructed by Eleazar Caparas to deliver the ransom money. After receiving a call from the kidnappers, he proceeded to follow the instructions on the drop-off. He eventually gave the money to a man whom he would later describe as “mestizo, 5’5 or 5’6 feet tall and wearing sunglasses.”[10]

Later that night, Oliver was made to board the same van and brought to the Petron Gas Station in Meycauayan Highway. Upon alighting from the van, he was given P500.00 and was told that he would be fetched by his uncle inside a canteen in the gas station.[11] At around 1:00 a.m. of 18 September 1997, the kidnappers called Eleazar again and asked them to go to the Petron Gas Station located between Meycauayan and Marilao along the Expressway. Upon arriving at the Petron Station at 3:00 a.m, Pedro Navarro saw Oliver eating inside the canteen and brought him home where he was reunited with his father.[12]

After the kidnapping incident, an investigation was conducted by the Intelligence Section of the Philippine National Police (PNP) in Malolos, Bulacan, through SPO2 Epafrodito Aliling and SPO2 Antonio Chungtuyco. It appears that one of the suspects was a member of an NPA rebel returnee group headed by Armando Rodrigo, Jr.[13] Upon the killing of Bert Liwanag, his girlfriend, dela Cruz, who was a suspected member of the group,

was invited for questioning. On that occasion, she admitted her participation in the kidnapping of Oliver Caparas and implicated appellants.[14]

An Information was filed on 11 March 1997 against appellants Plata, Fajardo and Rodrigo, together with dela Cruz, Armando Rodrigo, Helen Joven, Boyong Catindig, Jun Parubrob, and a John Doe. It reads:

That on or about the 10[th] day of September 1996, in the municipality of Malolos, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with force, violence and intimidation, conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and feloniously kidnap and take away one Oliver Caparas y Navarro, a 13-year old boy for the purpose of extorting ransom and detain and deprive him of his liberty for a period of seven (7) days, more or less and later released after ransom money in the sum of P1.7M was paid by the victim's father to the accused.

Contrary to law.[15]

Four of the accused were apprehended, namely: Plata, Rodrigo, Fajardo and dela Cruz. The rest remained at large. The trial court, upon motion of the prosecution, discharged Dela Cruz to serve as state witness.[16]

On arraignment, appellants pleaded not guilty. Thereafter, trial proceeded. The prosecution presented the following witnesses: the kidnap victim, Oliver Caparas, his father Eleazar Caparas, his uncle Pedro Navarro, SPO2 Antonio Chungtuyco, SPO2 Epafrodito Aliling, and accused turned witness dela Cruz. The defense presented their evidence, which consists of the testimonies of appellants and other witnesses supporting their alibi.

On 31 May 2000, the RTC rendered its decision finding all appellants guilty beyond reasonable doubt. Appellants elevated the case to the Court of Appeals. The appellate court affirmed the trial court's decision except that it acquitted Rodrigo.

Appellants Plata and Fajardo submitted their individual appeal briefs. Essentially, the main issue for resolution is whether the prosecution has proven beyond reasonable doubt the guilt of appellants.

The guilt of the appellants was established beyond reasonable doubt by the testimonies of the victim, the man who paid the ransom, and a fellow participant to the crime, who had turned state witness for the prosecution.

Fajardo questions dela Cruz's discharge as a state witness on the ground that she was a co-conspirator. He contends that the testimony of Pedro, Oliver and Eleazar Caparas would already suffice as direct evidence available for the proper prosecution of the offense committed.[17]

Section 17, Rule 119 of the Rules of Court provides:

When two or more persons are jointly charged with the commission of any offense, upon motion of the prosecution before resting its case, the court may direct one or more of the accused to be discharged with their consent so that they may be witnesses for the state when, after requiring the prosecution to present evidence and the sworn statement of each proposed state witness at a hearing in support of the discharge, the court is satisfied that:

- (a) There is absolute necessity for the testimony of the accused whose discharge is requested;
- (b) There is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of said accused;
- (c) The testimony of said accused can be substantially corroborated in its material points;
- (d) Said accused does not appear to be the most guilty; and
- (e) Said accused has not at any time been convicted of any offense involving moral turpitude.

Evidence adduced in support of the discharge shall automatically form part of the trial. If the court denies the motion for discharge of the accused as state witness, his sworn statement shall be inadmissible in evidence.

The power to prosecute includes the initial discretion to determine who should be utilized by the government as a state witness. The prosecution has gathered the evidence against the accused and is in a better position to decide the testimonial evidence needed by the State to press its prosecution to a successful conclusion. Under our Rules, however, it is the courts that will finally determine whether the requirements have been satisfied to justify the discharge of an accused to become a witness for the government.[18]

We affirm the finding of the trial court that the testimony of dela Cruz was an absolute necessity. The trial court observed:

x x x x Without the testimony of dela Cruz, the prosecution is bound to falter in bringing all the culprits before the bars of justice, the ominous prospect of leaving many of them not fully identified and their respective role in the crime unraveled loom large for the prosecution to ignore. True, the prosecution has direct evidence in the person of Pedro Navarro and Oliver Caparas, but, apparently, in view of the complex situation the two have found themselves in their testimonies have taken a limited thrust, hence, it becomes the bounden duty of the prosecution to fill in the void with all the resources under its command. From the prosecution's standpoint, therefore, insofar, as the other accused are concerned, no direct evidence is at its disposal at this stage to establish their complicity in the abduction of Caparas. Only dela Cruz, according to them, could supply the much needed information to pin down the whole bunch that took Caparas forcibly for ransom. Following their line of reasoning, without dela Cruz's testimony, the whole truth would never be known. Along these considerations, the reality of de la Cruz' testimony being an absolute necessity in the trial of this case stands indisputable, and given the absence of any evidence against some of the accused, as pointed out above, de la Cruz' testimony shall, in legal contemplation, constitute the only direct evidence as against them..[19]

Neither does dela Cruz appear to be the most guilty of the accused. The trial court held that dela Cruz was not privy to the kidnap plan and was merely taken in later by the group because they suspected that she already knew too much.

Did the lower courts properly consider the testimony of dela Cruz? It is a jurisprudential rule that the testimony of a self-confessed accomplice or co-conspirator imputing the blame to or implicating his co-accused cannot, by itself and without corroboration, be regarded as proof with a moral certainty that the latter committed or participated in the commission of the crime. The testimony must be substantially corroborated in its material points by unimpeachable testimony and strong circumstances and must be to such an extent that its trustworthiness becomes manifest.[20] The testimony of dela Cruz was substantially corroborated by no less than the victim himself, Oliver, as well as Pedro.

The trial court's decision rested mainly on the harmony in the testimonies of Oliver and dela Cruz. During the direct examination, Oliver gave an account of how he was seized by four (4) armed men:

Fiscal:

Q- Mr. Witness, on September 10, 1996, about 12:00 at noon, do you remember where you were?

A- I was at the corner waiting for a ride, ma'am.

Q- What corner?

A- Corner near our house in Matimbo, Malolos, Bulacan, ma'am.

x x x x

Q- While you were there on [that] particular date and time, do you remember of any unusual incident that took place?

A- I was taken by four (4) men, ma'am.

x x x x

Q- How about these four (4) men whom, according to you, took you or snatched you, what were they doing?

A- I was boarded on a car, ma'am.

x x x x

A- Two of the men held my hand and boarded me at the back seat where there's a man seating and that man held my head, ma'am.

x x x x

Q- After your head was held by that man who was seating at the back, what happened?

A- I was pulled and they blindfolded me, ma'am.

x x x x

Q- What happened after that?

A- The car left, ma'am.

Q- And do you know as to where the car proceeded?

A- I was transferred to another vehicle, ma'am.

x x x x

Q- That vehicle that you were transferred to, do you know what type of vehicle was it?

A- It was a van, ma'am.

Q- How did you know it was a van?

A- Because the door was a sliding, ma'am.[21]

x x x x

A- I saw then brought down Oliver from the car blindfolded, ma'am.

Q- Who brought him down from the car?

A- I cannot remember, ma'am.

Q- From the car where was Oliver brought or transferred?

A- Into the van, ma'am.

Q- Are you referring to the van that you are riding on?

A- Yes, ma'am.[22]

On direct examination, state witness dela Cruz corroborated Oliver's statement. She recounted that she was riding in the van, together with the other suspects. Their other cohorts were in a car, which trailed the van. She witnessed how appellants Plata and Fajardo, Armando Rodrigo and Darius Rodrigo alighted from the said car and grabbed Oliver from the street corner at around 12:00 p.m. of 10 September 1996.[23]

The testimonies of Oliver Caparas and dela Cruz likewise jibed on a couple of material points, the place and the duration of the victim's detention. In his testimony, Oliver surmised that he was brought to Pangasinan and detained for a week, thus:

Q- After you were transferred to the van, what happened?

A- We slept inside the van, ma'am.

Q- You said you slept, can you calculate for how long have you slept?

A- No, because I was blindfolded, ma'am.

Q- At the time that you slept, was the van still traveling or was it parked at the time you slept?

A- It was parked, ma'am.

Q- After you slept, what happened?

A- We left, ma'am.

Q- And do you know where did [sic] you proceed?

A- We went to a house, ma'am.

Q- At the time that you went to a house, how was your blindfolded [sic] ?

A- When I was taken inside the room, they already removed my blindfold, ma'am.

x x x x

Q- For how long did you stay on that room?

A- For one (1) week, ma'am.

Q- How were you able to count the days?

A- Because of the lapse of time, I counted the days, ma'am.

x x x x

Q- How many times in a day were you given something to eat?

A- Three times, ma'am.

Q- And did you come to know as to what place was that where that house was, wherein you were taken?

A- I came to conclude that it was in Pangasinan because of the bread wrapper, ma'am.[24]

Dela Cruz confirmed this fact in her testimony, as follows:

Q- After Oliver Caparas was transferred to the van where you were riding at, what happened next?

A- The van left going to Baguio followed by the car, ma'am.

x x x x

Q- You said that the van left from Baguio[,] did you reach Baguio?

A- Yes, ma'am.

Q- Do you know what place in Baguio[,] you went to?

A- They went to an apartment but it was already occupied so we proceeded to a [p] arking lot, ma'am.

Q- What did you do with the [sic] parking lot?

A- We stayed and slept there inside the van, ma'am.

Q- Up to what time did you stay in the van in the [p] arking lot?

A- Overnight, ma'am.

Q- What happened after that?

A- The following day we went to Pangasinan, ma'am.

Q- Where in Pangasinan did you go?

A- I do not know the place but we stopped at Bonita's Resort, ma'am.

x x x x

Q- You said that you were ordered to take care of the child Oliver, did you take care of him?

A- Yes, ma'am.

Q- What care did you do?

A- I serve him his meal, ma'am.

Q- For how many times did you serve him in a [sic] meals all in all at Bonita Resort?

A- One (1) week, ma'am.

Q- By the way what date was that when Oliver was brought to Bonita Resort?

A- September 11, 1996, ma'am.

Q- Up to?

A- Up to September 18, ma'am.[25]

Further, Plata was positively identified by Oliver as the one who served as a guard, when the latter was detained in a house in Pangasinan:

Q- In that place wherein [sic] you were taken. I am referring to that house where your blindfold was already removed. Aside from that man who was giving the food, were there other persons there that you have seen?

A- Yes, ma'am.

Q- Who were or who was that person?

A- Rey Plata, ma'am.

Q- What was Rey Plata doing there?

A- He was guarding me, ma'am.

x x x x

Q- How did you know that this Rey Plata was guarding you which according to you he was just on the adjacent room?

A- Because everytime I made a walk, I saw him inside that other room, ma'am.

Fiscal:

Q- This Rey Plata whom you've seen there, is he inside this courtroom?

A- Yes, ma'am.

Q- Point to us this Rey Plata.

Interpreter:

Witness is pointing to a man wearing an orange t-shirt and when asked his name, answered: Reynaldo Plata.[26]

Before the Court, Plata seeks to discredit the credibility of Oliver as a witness. He alleges that the positive identification made by Oliver should not be given weight and credence. He argues that the delay in reporting the crime to the police authorities could be construed as an afterthought to implicate Plata in the crime. Furthermore, he claims that the police authorities literally induced the victim to point to him as one of the kidnappers.[27]

The failure to immediately report the kidnapping incident does not diminish the credibility of the witness. People react differently in particular situations and respond to stimuli in varying ways and degrees. Witnesses of startling occurrences do not react similarly, depending on the situation and their state of mind.[28] The victim and his relatives might have been cowed by fear of reprisal from the kidnappers. The accusation that the police authorities prodded Oliver Caparas to implicate Plata does not appear plausible. The burden of proving this allegation rests on the defense. However, these allegations were left unsubstantiated. There is no showing of any improper motive on the part of the police officers to pin down Plata.

Plata underscores the inconsistencies of dela Cruz's statements made in court, such as (1) the presence and participation of Plata during the planning and commission of the crime; (2) the type of vehicle used in returning the kidnap victim; and (3) the incredulous story regarding the participation of all other accused in the alleged crime.[29]

Well-entrenched is the legal precept that findings of facts of the trial court, its calibration of the testimonies of witnesses, its assessment of the credibility of the said witnesses and its evidence based on the said findings are given high respect if not conclusive effect by the appellate court, unless the trial court overlooked, misconstrued or misinterpreted facts and circumstances of substance which if considered will alter the outcome of the case.[30] The trial court lent credence to the positive identification made by dela Cruz, to wit:

x x x Lanie, in fact, has positively identified the three (3) accused on trial not only by their faces but also by their aliases pointing to Rey Plata as "Jeffrey," Feliciano Fajardo, Jr. as "Gerry" and Darius as "Darius." Thus, the identification made by her as to who actually seized Oliver and took him by car to Tarlac, Tarlac, and the men she rode with in a van from Sta. Maria, Bulacan to Tarlac, Tarlac up to Baguio City and finally to Bonita Resort in Pangasinan is credible and trustworthy. True, Lanie incurred some inconsistencies in the process, but this, to this Court, are brought about by lapses in memory due to the time interval between the abduction and her testimony in court which in no way detracts from the credibility of the witness. Lanie finds corroboration from the victim himself, Oliver Caparas. As established, Lanie took care of Oliver during all the time, from September 11 to September 17, 1996, that the latter was held and kept at the Bonita Resort in Pangasinan. Lanie, while Oliver was under care, appeared to have made no effort to hide her identity much less disguised herself. For Oliver, therefore, to recognize, and identify Lanie, as he did in court, has to be conceded.[31]

Sustaining the testimony of dela Cruz, the appellate court held:

In evaluating Lanie's testimony, we note that she indeed made inconsistent statements about the roles of the various particeps criminis. Whether these are memory lapses or intentional misdeclarations are not easy to tell with absolute certainty. While we have to consider her whole testimony, our evaluation[,] however[,] necessarily has to focus on the aspects relating to the accused-appellants. Thus, other inconsistencies (such as those relating to the role of the deceased Bert) do not need to unduly concern us. The more important test too in determining whether to generally accept or reject her testimony lies in its degree of corroboration with the testimonies of witnesses whose credibility we have accepted, namely, those of Oliver and Pedro.

We find in this examination that Oliver's story dovetails with those of Lanie on the details of the actual kidnapping, the travel to Baguio and from thence to Bonita's Resort, the detention of Oliver, and his release. x x x [32]

As noted by the trial court, there may have been inconsistencies in the narration of dela Cruz. These, however, were minor details and simply could be attributed to the frailty of human memory. It cannot be expected that her testimony would be entirely flawless. Inconsistencies as to minor details and collateral matters do not affect the credibility of the witnesses nor the veracity or weight of their testimonies. Such minor inconsistencies may even serve to strengthen their credibility as they negate any suspicion that the testimonies have been rehearsed.[33] Moreover, the testimony of dela Cruz coincides with that of Oliver and Pedro relating to the principal occurrence and the positive identification of appellants.

Plata insists that dela Cruz harbored a grudge against him because he was apparently a member of the Armando Rodrigo group, the lone suspect in the murder of Bert Liwanag, dela Cruz's boyfriend.

Plata's effort to impute ill-motive on the part of de la Cruz to falsely testify against him does not hold water. Even granting that De la Cruz may have an axe to grind is of no moment. Plata was positively identified by Oliver. His statement was corroborated by dela Cruz. Motive becomes essential only when the identity of the culprit is in

doubt[34] and not when he is positively identified by a credible witness.

The guilt of Fajardo was further established by the testimony of Pedro, who paid the ransom. Fajardo questions the manner by which he was identified by Pedro. He avers that he was arrested on the basis of the sworn statement of Lanie dela Cruz and brought before Mayor Domingo where Pedro Navarro identified him.[35]

Yet, in his testimony, Pedro categorically identified Fajardo as the person who received the ransom money, viz:

Q- When you were already at the highway by the camachile tree, what happened?

A- After two minutes, two persons riding in a motorcycle approached, one of them alighted, sir.

Q- And when that man got off from the motorcycle, how far is he from you?

A- One lengt[h] , sir.

x x x x

Q- At that distance[,] what did the person you described tell [sic] you if any?

A- He uttered the word Pedro.

Q- What did you do when you heard Pedro?

A- I asked him “Ano[?] ”

Q- And when he uttered the man Pedro, what did you do?

A- I handed to him the money and [sic] I am carrying, sir.

Q- And it was placed in what?

A- It was wrapped in an El Shaddai handkerchief and placed inside the guess plastic bag, sir.

Q- At that time when you handed the money, how far was he in relation to you?

A- ½ arm lengt[h] more or less, sir.

Q- At that distance[,] could you describe that said [sic] uttered Pedro and who received the money from you?

A- Mestiso looking wearing shades, sir.

COURT:

Q- How tall was he?

A- 5’6 or 5’5 tall, Your Honor. Wearing maong pants and white t-shirt.

Q- How about the built?

A- Medium, sir.

Q- How about the age?

A- Around 25 to 30, sir.

Q- How about the hair cut?

A- He is wearing a cap, sir.

Q- If that man will be shown to you again[,] would you identify him.

A- Yes, sir.

Q- Will you look around in this Court?

A- Not here, sir.

Q- Do you know where he is now?

A- Confined at the mental hospital, sir.

Q- Why did you know that the person was confined in the mental hospital?

A- Because when was[sic] were summoned by Mayor Domingo to get our statement[,] I pointed to him as the man to whom I handed over the money, sir.

COURT:

Q- How did you know that he was confined in the mental hospital.

A- I heard it inside this Courtroom that Gerry Fajardo is presently confined in Mental Hospital, sir.

Q- When you pointed that man in front of Mayor Domingo were you able to know his name?

A- Yes, sir.

Q- Who told you his name?

A- Mayor himself, sir.

Q- And after you were just to identify that man, what happened next?

A- No more, sir.[36]

In his sworn affidavit taken before the Office of the Mayor of Malolos, Pedro Navarro also made the following declaration:

T. Sinabi mo na ikaw ang nag-abot ng ransom money na P1,700,000.00 sa mga kidnapper nuong ika-17 Setyembre 1996 at ang oras ay ika-10:30 ng umaga sa Super Highway pagitan ng Meycauayan at Marilao, Bulacan, itong umabot [sic] ng pera sa iyo, makikilala mo ba ito, kung iyong makikita?

S- Opo.

T- Ipinaalam naming sa iyo mayroon kaming nahuling suspek sa kidnapping na kasalukuyang nakakulong ditto sa Malolos, Bulacan, ipapakita namin it sa iyo. (Ipinakita ng imbestigador ang suspek na si Gerry Fajardo na kasalukuyang nakakulong sa kulungan ng Malolos, Bulacan).

S- Opo, iyan po. (Itinuro ni Pedro Navarro ang suspek na si Gerry Fajardo at kinilala niya na siyang umabot at kumuha ng pera sa kanywa, nuong ika-17 ng Setyembre 1996.)[37]

During his cross-examination, Pedro Navarro insisted on the certainty of his identification as to Fajardo. He explained:

Q- Right after going [sic] the ransom money, have you bothered by reason of your own initiative to note down the description of the person to whom you gave the money in order to guide you in making the statements which are already contained in this Exhibit A?

A- After I handled [sic] the ransom money I committed to my memory the physical features of the kidnappers and from here.

COURT:

Witness pointing to the portion of his face from the nose up to ears.

Witness:

And every night even his movement[,] I memorize his movement[,] and at night I am always recall [sic] the feature that I have seen on his person, sir.

x x x x

A- I observe how he walks when I handed him the money, I saw his hands and his forearm and I even observed the way he uttered the word "Pedro," I saw his lips move, sir.

x x x x

A- From the time that they arrived on board the motorcycle and from where he came from I already observed his movements up to the time that he called me “Pedro” and then I asked him again to mention the name “Pedro” just to make sure that he is the man to whom I will give the ransom money as directed by the leader of the kidnap gang, sir.

Q- Now, and that Pedro was uttered by this man while he was facing you and standing, correct?[38]

Pedro Navarro’s identification of Fajardo was positive and unequivocal. The record is devoid of any showing that Pedro was impelled by ill motive to impute the commission of a grave crime to Fajardo.

Even dela Cruz confirmed the presence of Fajardo in the kidnapping incident:

A- I saw Amang, Gerry, Roger and Jeffrey pulled Oliver into the car, ma’am.[39]

x x x x

Q- What transpired while you were at Bonita Resort?

A- They were able to get a room and they alighted Oliver from the van, ma’am.

Q- What happened after that?

A- Oliver was brought upstairs to a room, ma’am.

Q- What happened next?

A- When they were able to bring Oliver inside the room only Roger and Jeffrey was left at the resort, ma’am.

x x x x

Q- Why were Roger, Jeffrey and you left behind?

A- I was ordered to care of [sic] the child and while Roger and Jeffrey were took to stand guard outside the room, ma’am.

Q- Do you know where Roger and Jeffrey stayed as you said they guarded?

A- Outside the room, ma’am.

Q- The room occupied by whom?

A- Oliver Caparas was inside the room while Roger and Jeffrey were staying outside because there is an ante room, ma’am.[40]

x x x x

Q- You are mentioning John-John, Amang, Jeffrey, Darius, and Gerry, are there any of those persons here inside the court room?

A- Yes, ma’am.

Q- Will you please point to them?

x x x x

Interpreter:

Witness pointing to a man wearing an inmate uniform and when asked his name answered Feliciano Fajardo, Jr.[41]

Plata insisted he was not a member of the kidnap for ransom gang. Instead, he interposed the defense of alibi. He alleged that he was driving his tricycle and servicing school children between Tibig to San Jose, Bulacan at the

time of the incident.[42] Plata's alibi was supported by the testimony of his wife, Gemma Plata, and that of Esther Guevarra, whose children were brought and fetched by Plata to and from school everyday at around 6:30 a.m. and 11:30 a.m.[43]

Plata's alibi is patently weak, considering that the alibi is corroborated by his wife, and a wife is generally perceived to be partial to her husband. Likewise, the testimony of Esther Guevarra is unavailing. To establish alibi, the accused must not only show that he was in a place other than the situs of the crime at the time it was committed, such that it was physically impossible for him to have committed the same.[44] Granting that Plata had religiously fetched the children of Ester at 11:30 a.m. every weekday, still it is highly probable for him to have been physically present at the scene of the crime at the time of the abduction. The distance between Malolos and Bulacan, Bulacan can be negotiated with a 15-minute ride.[45] At all events, appellant's alibi cannot prevail over the positive identification of the kidnap victim himself, who has no motive to falsely testify.[46]

Under Article 267 of the Revised Penal Code, the crime of kidnapping is committed with the concurrence of the following elements, namely: (1) that the offender is a private individual; (2) that he kidnaps or detains another, or in any manner deprives the latter of his liberty; (3) that the act of detention or kidnapping must be illegal; and (4) that in the commission of the offense, any of the following circumstances is present: (a) that the kidnapping or detention lasts for more than five (5) days; or (b) that it is committed simulating public authority; or (c) that any serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made; or (d) that the person kidnapped or detained is a minor, female, or a public officer.[47] It is evident from the testimonies of the witnesses that the essential elements of kidnapping were present. First, appellants are private individuals. Second, Oliver was abducted by four (4) armed men. Third, he was detained in a house in Pangasinan against his will. Fourth, the detention lasted for seven (7) days. Fifth, Oliver Caparas was a minor at the time of the kidnapping incident.

Under Republic Act No. (R.A.) 7659, the imposition of the death penalty is warranted if the motive of the accused is to exact ransom for the release of the kidnap victim. We find that the prosecution has sufficiently established this qualifying circumstance. As testified to by Eleazar, the kidnappers asked for P1.7 million in exchange for Oliver's freedom. In fact, the said amount was handed by Pedro to Fajardo. However, the death penalty cannot be imposed in view of the passage of R.A. No. 9346, entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines," which was signed into law on 24 June 2006. Accordingly, the penalty imposed upon appellants is reduced from death to reclusion perpetua without eligibility for parole.[48]

We affirm the award of actual damages amounting to P1,700,000.00 representing the amount of ransom money, as well as that of moral damages of P100,000.00, conformably with jurisprudence.[49]

WHEREFORE, the Decision of the Court of Appeals is hereby **AFFIRMED WITH MODIFICATION**. The penalties on appellants Rey Plata and Feliciano Fajardo, Jr. are both reduced to reclusion perpetua, to which they are accordingly sentenced, without eligibility for parole.

SO ORDERED.

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

[1] Rollo, pp. 3-35. Penned by Associate Justice Arturo D. Brion and concurred in by Associate Justices Bienvenido L. Reyes and Mariflor P. Punzalan Castillo.

[2] CA rollo, pp. 52-57.

[3] Entitled “An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending For that Purpose the Revised Penal Code as Amended, Other Special Penal Laws, and For Other Purposes” and approved on 13 December 1993.

[4] TSN, 14 November 1997, pp. 5-8.

[5] TSN, 11 November 1998, pp. 16-17.

[6] TSN, 14 October 1998, p. 6.

[7] TSN, 11 November 1998, pp. 17-18.

[8] TSN, 14 November 1997, pp. 9-11.

[9] TSN, 14 October 1998, pp. 7-8.

[10] *Infra* note 34.

[11] TSN, 14 November 1997, pp. 16-18.

[12] TSN, 18 June 1997, p. 12.

[13] TSN, 25 February 1998, p. 8.

[14] *Id.* at 101-102.

[15] CA rollo, pp. 25-26.

[16] *Id.* at 58-59.

[17] *Id.* at 295.

[18] *Santos v. Sandiganbayan*, 400 Phil. 1175 (2000); *People v. Cordero*, G.R. No. 108919, 11 October 1996, 263 SCRA 122.

[19] CA rollo, pp. 58-59.

[20] *People v. Sunga*, 447 Phil. 776, 801 (2003).

[21] TSN, 14 November 1997, pp. 4-8.

[22] TSN, 11 November 1997, pp. 9-15.

[23] *Id.*

[24] TSN, 14 November 1997, pp. 8-11.

[25] TSN, 11 November 1998, pp. 16-19.

[26] TSN, 14 November 1997, pp. 11-13.

[27] CA rollo, pp. 151-153.

[28] *People v. Patalinghug*, 438 Phil. 315, 330 (2002).

[29] CA rollo, p. 150.

[30] *People v. Ocampo*, G.R. No. 171731, 11 August 2006; *People v. Candaza*, G.R. No. 170474, 16 June 2006, 491 SCRA 280, 297, citing *People v. Gonzales, Jr.*, 424 Phil. 336, 352-353 (2002); *Llave v. People*, G.R. No.

166040, 26 April 2006, 488 SCRA 376.

[31] CA rollo, p. 111.

[32] Rollo, pp. 24-25.

[33] Amarillo, Jr. v. People, G.R. No. 153650, 31 August 2006; Rabanal v. People, G.R. No. 160858, 28 February 2006, 483 SCRA 601, 615, citing People v. Bulan, G.R. No. 143404, 8 June 2005, 459 SCRA 550, citing People v. Tamayo, G.R. No. 138608, 24 September 2002, 389 SCRA 540 and People v. Amazan, G.R. Nos. 136251, 138606 & 138607, 16 January 2001, 349 SCRA 218; Magno v. People, G.R. No. 133896, 27 January 2006, 480 SCRA 276, 287, citing People v. Excote, 431 SCRA 345 (2004).

[34] Velasco v. People, G.R. No. 166479, 28 February 2006, 483 SCRA 649, 667, citing People v. Diaz, 443 Phil. 67, 88 (2003); People v. Yatar, G.R. No. 150224, 19 May 2004, 428 SCRA 504; People v. Ceniza, 458 Phil. 150 (2003).

[35] CA rollo, p. 293.

[36] TSN, 18 June 1997, pp. 7-8.

[37] Records, p. 24.

[38] TSN, 2 September 1997, pp. 13-18.

[39] TSN, 11 November 1998, p. 14.

[40] Id. at 17-18.

[41] Id at 25-26. Emphasis supplied.

[42] TSN, 11 April 1999, p. 6.

[43] TSN, 2 March 1999, p. 8.

[44] People v. Mangitngit, G.R. No. 171270, 20 September 2006; People v. Suyu, G.R. No. 170191, 16 August 2006; People v. Canuto, G.R. No. 169083, 7 August 2006, citing People v. Seguis, 402 Phil. 584, 603 (2001); People v. Malejana, G.R. No. 145002, 24 January 2006, 479 SCRA 610; People v. Enriquez, G.R. No. 158797, 29 July 2005, 465 SCRA 407, 417, citing People v. Consejero, 352 SCRA 276 (2001).

[45] TSN, 11 May 1999, p. 11.

[46] Tadeja v. People, G.R. No. 145336, 21 July 2006; People v. Sades, G.R. No. 171087, 12 July 2006, citing People v. Loterono, 440 Phil. 268, 280 (2002); People v. Corpuz, G.R. No. 168101, 13 February 2006, 482 SCRA 435, 449, citing People v. Intong, G.R. Nos. 145034-35, 05 February 2004, 422 SCRA 134, 139.

[47] People v. Ejandra, G.R. No. 134203, 27 May 2004, 429 SCRA 364; People v. Saldaña, G.R. No. 148518, 15 April 2004; People v. Larrañaga, G.R. Nos. 138874-75, 3 February 2004, 421 SCRA 530.

[48] SEC. 3. Persons convicted of offenses punished with reclusion perpetua, or whose sentences will be reduced to reclusion perpetua, by reason of this Act, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.

[49] People v. Castillo, G.R. No. 132895, 12 March 2004, 425 SCRA 136, 167, citing People v. Borromeo, 380 Phil. 523 (2000).

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