

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ROQUE G. GARALDE, APPELLANT.

G.R. NO. 173055. April 13, 2007

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before the Court for review is the Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01387 which affirmed in toto the Decision[2] of the Regional Trial Court (RTC), Branch 95, Quezon City (Special Criminal Court) in Criminal Case No. Q-94-58657-58 convicting appellant Roque G. Garalde[3] of kidnapping for ransom and serious illegal detention.

On September 9, 1994, Roque G. Garalde and Alma Tan Garalde were charged with Violation of Section 1 of Presidential Decree No. 1866 (Illegal Possession of Firearms and Ammunition), as amended, before the RTC of Quezon City, Branch 79.[4] The case was docketed as Crim. Case No. Q-94-58657. The accusatory portion of the Information reads:

That on or about the 20[th] day of August 1994, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and feloniously have in their possession and under their custody and control the following, to wit: 1) two (2) M16 rifles, one of which bearing serial no. RP146697 and the other has a defaced serial number; 2) two (2) rifle grenades; and 3) one hundred twenty five (125) rounds of ammunitions of M16 rifle, without first having obtained the proper license therefor.

CONTRARY TO LAW.[5]

They were also charged with kidnapping and serious illegal detention together with Kil Patrick Ibero and several unidentified persons before the same court, docketed as Crim. Case No. Q-94-58658. The accusatory portion of the Information reads:

That on or about August 9, 1994 in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together, confederating and mutually helping one another, did then and there by means of force, violence against and intimidation of person and at gunpoint, willfully, unlawfully and feloniously kidnap, carry away and detain Paolo Bellosillo (13 years old), John Bellosillo (8 years old), and Niño Bellosillo (11 years old), who are minors, and Dianita Bebita, Janidy Dumagpi and Antonio Paquera against their will and consent, thus depriving them of their liberty, for the purpose of extorting ransom for their release, which, after payment thereof in the amount of P410,000.00 and two sets of jewelry, the kidnapped victims were released, and the accused divided the ransom money among themselves, to the damage and prejudice of the afore-named victims.

CONTRARY TO LAW.[6]

Alma Tan Garalde and Kil Patrick Ibero were tried before Branch 79 and were subsequently convicted. Their conviction was affirmed in toto by this Court on December 14, 2000 in G.R. No. 128622.[7]

Appellant Garalde was tried separately, inasmuch as when he was arrested, the trial of the case against his co-accused was almost finished. He pleaded "not guilty" when arraigned, and the prosecution presented its evidence. However, in view of the subsequent conviction of accused Alma Tan Garalde and Kil Patrick Ibero on December 27, 1996, Roque Garalde moved for the inhibition^[8] of Judge Godofredo Legaspi on the ground that he had already pre-judged the case. The presiding judge thus voluntarily inhibited^[9] himself. The case was then re-raffled to Branch 95 of the Quezon City RTC. The presentation of the prosecution's evidence resumed.

The Case for the Prosecution

The prosecution presented the following witnesses: Dianita Bebita, Kathryn Bellosillo, Paolo Bellosillo, Supt. Michael Ray Aquino and SPO1 Berlin Cayabat. The evidence for the People is summed up as follows:

At around 6:30 a.m. on August 9, 1994, Paolo (13 years old), Niiꝰ½o (11 years old) and John (8 years old), all surnamed Bellosillo, together with their yayas Dianita Bebita and Janilyn Dumagpi, and driver Antonio Paquera, left the Bellosillo residence at No. 45 Scout Limbaga Street, Quezon City on board a Toyota Lite Ace Van.^[10] The children were on their way to school at the Ateneo de Manila University.^[11] Not far from the Bellosillo residence, a taxicab hit the right front portion of the van.^[12] Three men alighted from the taxi and approached the van.^[13] As Dianita opened the door, the men immediately went inside.^[14] The appellant took the wheel and ordered Paquera to go to the middle seat, uttering "Pasensya na kayo kailangan namin ang pera. Kaya ba ng amo ninyo ang 10 million?"^[15] The appellant instructed Kil Patrick to blindfold the victims with masking tapes. Somebody said, "Patahimikin mo nga iyan at bigyan mo ng spray." All the victims felt dizzy afterwards.^[16] After three hours of travel, the group arrived at a "safehouse".^[17] The captives were asked to get off the van and were led to a room inside the house.

Meantime, that same day (August 9, 1994), Kathryn Bellosillo, the mother of Paul and John and Niño's aunt, was taking care of her daughter Mary Grace who was confined at a hospital. Between 6:45 and 7:00 a.m., she received a phone call from her brother-in-law Sonny Boy. He told her that a man had called the house and said something like, "Hawak namin ang anak ninyo." Sonny Boy instructed her to call the principal of Ateneo.

Kathryn did as instructed and inquired if the boys (Bellosillo children) were in school, and she was told that they did not hear the early morning mass. She then requested the principal to keep the matter to himself, and to personally check if the boys were in their respective classrooms. After she was told that the boys were not there, Kathryn immediately went home, called her husband and told him what happened. Her husband told her not to panic, and that he would call General Panfilo Lacson, then the head of Presidential Anti-Crime Commission (PACC). A surveillance team was formed to assist the Bellosillos.^[18]

In the evening of August 9, 1994, a man called up the Bellosillo residence and looked for Sonny Boy. Since he was not home, Kathryn volunteered to talk to the kidnappers. The caller told her that all they needed was money. When Kathryn said that they did not have that amount, the caller replied, "Pag hindi n'yo binigay ang pera, sasampulan namin kayo. Papatayin namin yoong driver, tapos yoong dalawang yaya, tapos yoong mga bata." A certain Mang Ernesto further made two or three calls a day.^[19] Kathryn told the kidnappers that the family could only raise P410,000.00 cash, plus jewelry valued at P80,000.00.^[20]

On August 11, 1994,^[21] Janilyn Dumagpi was released to give a voice tape, where the Bellosillo children were heard pleading that money be given to their kidnappers so that they could be released.^[22] Most of the victims were detained from August 9-18, 1994.^[23]

Dianita was released in the early morning of August 16, 1994. She blindfolded herself and boarded a car together with other companions (which included the appellant). She was dropped off at the Labor Hospital in Katipunan

Avenue, Quezon City. She removed her blindfold, and took a cab to the Bellosillo residence.[24] Dianita recalled that the men who were guarding them were armed with short and long firearms.[25] Food was brought in during the late afternoons, and the victims' blindfolds were removed only after five days.[26] She testified that she saw the appellant several times during their captivity.[27]

At around 7:00 a.m. that day, "Mang Ernesto" had called the Bellosillo residence and instructed Kathryn to have Yaya Dianita deliver the ransom money to the East Avenue Hospital using their Lite Ace van.[28] The money and jewelry were placed in an envelope, which was then given to Dianita.[29]

As instructed, Dianita drove the van to the East Avenue Medical Center. She parked inside the compound and left the engine running, moved to the backseat, put on a blindfold, and covered herself with a sweater.[30] After a while, Dianita heard the door of the van being opened, and she asked "Kayo na ba iyan?" The kidnappers answered in the affirmative.[31] The group asked if the money was inside the van, and when they heard the positive response, the men boarded the van. As the van started to move, the appellant took the envelope.[32] The group continued to travel until they reached a "quiet place." Three men alighted, then the van moved again and eventually stopped at Novaliches. The rest of the group left, and instructed Dianita to wait as they would bring the children. Dianita stayed inside the van and waited, but the children were not brought to her. She then called the Bellosillo residence, and she was told to wait for their driver.[33] One of the kidnappers called the Bellosillos to say, "Hindi pa namin pwedeng isoli ang mga bata kasi kailangang siguraduhin namin na hindi kayo nag-report sa mga pulis." [34]

The children, together with Paquera, were finally released on August 18, 1994, two days after the ransom money was given. The captives were dropped off at the highway in Novaliches; they took a cab and reached the Bellosillo residence at about 4:30 a.m.[35] The children told Kathryn, "Mommy, don't report the incident to the police because they know where we go to school. And they said that "Pag nahuli kami ay pasasabugin namin ang bahay n'yo." [36]

Paolo Bellosillo testified that he saw the appellant on the following occasions: on the day they were kidnapped before he took the driver's seat and before they were blindfolded; [37] when the appellant interviewed him about his family, their jobs and the amount they were earning; [38] when he was awakened by someone who was pulling his right foot; [39] when his tummy was aching; [40] and one afternoon, while he was lying down and he was able to see through his blindfold. [41]

Meantime, PACC operatives led by Supt. Michael Ray Aquino had been conducting surveillance operations. His group saw the actual pay-off, but since the children were not released at the time, the culprits could not be immediately arrested. The PACC agents were later able to apprehend Nelson Lopez, Kil Patrick Ibero and Alma Tan Garalde, whom the victims positively identified as the culprits. The three were subsequently charged. The appellant, however, was apprehended only on April 26, 1996. [42]

The Case for the Appellant

The appellant opted not to testify. He instead presented Police Major Wilfredo Reyes, then the Chief for Intelligence of Task Force Habagat, and was likewise one of the team leaders in the surveillance operations conducted during the negotiation phase and the payoff. [43] Reyes testified that he did not encounter the name of the appellant during the surveillance operation. [44] The witness also testified that he was informed through radio that the actual payoff was made inside the UP Diliman Compound. [45]

The Ruling of the RTC

In its Decision [46] dated September 22, 1998, the trial court acquitted the appellant in Crim. Case No.

Q-94-58657 for illegal possession of firearms and ammunitions, but convicted him of kidnapping and serious illegal detention in Crim. Case No. Q- 94-58658. The fallo reads:

WHEREFORE, judgment is hereby rendered in the following:

- In Crim. Case No. Q-94-58657, for failure of the prosecution to prove the guilt of the accused on the ground that the firearms and ammunitions (Exhs. "F" to "J-2") are inadmissible in evidence, the Court finds the accused Roque Garalde y Gadbilao, NOT GUILTY of the offense of Violation of PD 1866, as amended by RA 8294 or for illegal possession of firearms and ammunitions and hereby ACQUITS him; and

- In Crim. Case No. Q-94-58658, the Court finds the accused, Roque Garalde y Gadbilao, GUILTY beyond reasonable doubt of the crime of kidnapping and serious illegal detention for the purpose of extorting ransom (kidnapping for ransom) defined in and penalized by Art. 267 of the Revised Penal Code, as amended by RA 7659, and is hereby sentenced to suffer the penalty of DEATH. He is hereby ordered to return to Mrs. Kathryn Bellosillo the amount of P490,000.00 with legal rate of interest computed from the filing of the Information until fully paid and to indemnify the parents of the three (3) Bellosillo children the amounts of P500,000.00, as exemplary damages; and P500,000.00 as moral damages; and Dianita Bebita the amounts of P100,000.00, as exemplary damages; and P100,000.00, as moral damages; and to pay the amount of P50,000.00, as attorney's fees.

The accused is ordered to pay the costs.

The firearms and ammunitions (Exhs "F" to "J-2") are hereby forfeited in favor of the government. The Branch Clerk of Court is hereby ordered to safely deliver or cause the safe delivery of the firearms and ammunitions to the Philippine National Police for proper disposition.

IT IS SO ORDERED.[47]

The RTC gave credence to the testimony of Paolo, who positively identified the appellant as one of the abductors. According to the trial court, "minors do not usually fabricate stories." The trial court also relied on Dianita's testimony. On Major Reyes' testimony that the appellant's name never came up during the operations, the trial court held that this was not sufficient to belie the prosecution's evidence. It pointed out that the witness could not remember all the facts of the case; he was not involved in the actual operation; and he had been detained at the Quezon City jail on drug-related charges. The court further found that since the testimony of Janilyn Dumagpi would be "merely corroborative and that the decisions of the courts are based not on the number of witnesses presented but on the quality of [their] testimonies," the fact that she was not presented did not affect the case for the prosecution.

On the charge of violating Section 1, P.D. No. 1866 as amended by Rep. Act No. 8294, the trial court opined that one of the witnesses for the application of the search warrant had no personal knowledge that firearms and ammunitions were stored in the house where they were found. Even if the accused did not file any motion to quash the search warrant, the court was not precluded from determining its validity. Thus, on the ground that the requirements for the issuance of the search warrant were not strictly complied with, the trial court ruled that the firearms and ammunitions seized were inadmissible in evidence.

The Case on Appeal

On appeal before the CA, appellant raised the following errors:

THE TRAIL (SIC) COURT ERRED IN FINDING ACCUSED GUILTY BEYOND REASONABLE DOUBT RELYING PRIMARILY ON THE TESTIMONIES OF TWO PROSECUTION WITNESSES WHOSE TESTIMONIES ARE INCONSISTENT, INCREDULOUS AND REplete WITH INFIRMITIES.

THE ACCUSED WAS DEPRIVED OF COMPETENT REPRESENTATION DURING THE TRIAL PROPER AND HENCE, WAS NOT ABLE TO PUT UP A PROPER AND VIABLE DEFENSE WHICH IS TANTAMOUNT TO A VIOLATION OF HIS RIGHT TO DUE PROCESS.[48]

On November 29, 2005, the CA affirmed in toto the trial court's decision.[49] The CA found the testimonies of Paolo Bellosillo and Dianita Bebita categorical, credible and straightforward. The inconsistencies pointed out by appellant were inconsequential, and did not affect the basic elements of the crime charged. The fact that the deciding judge was only a substitute one did not affect the conclusion of the trial court; a substitute judge can examine and evaluate the evidence already presented by the simple expedient of going over the transcripts of the testimonies of witnesses.

The appellate court likewise found unmeritorious the appellant's allegation that he was deprived of his right to due process upon the judge's failure to issue compulsory processes to guarantee the availability of the witnesses; the records show that subpoenas were issued as prayed for by the appellant.[50] Lastly, the appellate court concluded that the appellant was duly accorded the opportunity to testify on his behalf, but opted not to do so.[51]

The Ruling of the Court

We affirm the appellant's conviction for kidnapping for ransom and serious illegal detention under Article 267 of the Revised Penal Code, as amended.

It is an established rule that factual findings of the trial court, including its assessment of the credibility of the witnesses and the probative weight thereof, as well as the conclusions of the trial court based on its factual findings, are accorded high respect, if not conclusive effect, especially if affirmed by the CA. Unless it is shown that the trial court has overlooked, misunderstood or misappreciated certain facts and circumstances which if considered would have altered the outcome of the case, appellate courts are bound by the findings of facts of the trial court.[52]

Prosecution witnesses Paolo Bellosillo and Dianita Bebita positively identified the appellant as one of the perpetrators of the crime. Their testimonies are categorical, credible and straightforward.

Dianita testified on the circumstances when she saw the appellant:

Atty. Cruz:

Q:

Were you able to see the faces of these three males or these three persons who alighted from the taxi?

A:

Yes, sir.

Q:

When you first testified before this Honorable Court you had the occasion to identify one of these three persons namely the accused Kil Patrick Ibero, if you were to see again the other two of these three persons who alighted from the taxicab that morning would you be able to identify them, Miss Witness?

A:

Yes, sir.

Q:

Now, will you please carefully look at the people or among the audience in this courtroom this afternoon and tell the Court whether or not the two persons other than Kil Patrick Ibero who were among those who alighted from the taxicab that morning are here in this courtroom this afternoon?

A:

Yes, sir, one.

Q:

Will you please point to that person whom you recall as having been one of those who alighted from the taxicab that morning?

A:

That one, sir.

INTERPRETER:

Witness pointed to a person wearing eyeglasses who identified himself as Roque Garalde.

Atty. Perez:

May we just make a manifestation, Your Honor, that before this witness testified before this Honorable Court during the arraignment Roque Garalde was arraigned and at that time witness Dianita Bebita was inside the courtroom.

COURT:

Just cross-examine her.

Atty. Cruz:

Q: Are you certain Miss witness, considering that August 9, 1994 was almost two years ago, even the length of time that elapsed are you absolutely certain that the person you identified this afternoon is among those who alighted from the taxicab on August 9, 1994 prior to your kidnapping?

A: Yes, sir, I cannot forget his face.

x x x

Q: Do you recall Miss Witness at that point exactly what Mr. Roque Garalde was doing?

A: Yes, sir.

Q: Will you tell the Court please exactly what you recall the accused Roque Garalde did at that particular time?

A: He was the one who went to the driver side, sir.

Q: Where was your driver situated or seated at that time, Miss Witness?

A: Left side, sir.

Q: And did he enter the van on that side, Miss Witness?

A: Yes, sir, he was the one who drove the van.

x x x

Q: At that point Miss Witness, will you please tell the Honorable Court if you remember where you were

seated inside the van?

A: On the front right side, sir.

Q: So you are saying Miss Witness, that prior to the entry of these men you were actually seated in front beside the driver Antonio Paquera?

Atty. Perez:

Objection, Your Honor, that would be leading.

Atty. Cruz:

No, Your Honor, I am only clarifying.

Atty. Perez:

But there is no testimony, Your Honor, because she said seated beside the driver so I was just asking her to clarify.

COURT:

Answer.

WITNESS:

A: Yes, sir.

x x x

Q: Will you tell the Court if you remember what he was doing?

A: He was saying something, sir.

Q: Do you recall what words he uttered or what statements he made?

A: He said that they were going to ask 10 million from our employer if they can afford. He also said that they needed money and said that they needed money for their companions who were injured, sir.

Atty. Cruz:

Q: In the meantime Miss Witness if you know, will you tell the Honorable Court what the two other men aside from Galalde were doing inside your van while all of this was happening?

A: One of them came to the middle row where we were and was instructed by Galalde to blindfold us, sir.[53]

x x x

Q: Apart from your meeting with Roque Galalde on August 9, when were the other times that you saw him again, if you remember Miss Witness?

A: In the morning of August 9, 1994 when we were asked to alight the van and we were brought inside the house and on the fifth day when he saw me praying, sir, because I can peep through the bottom portion of the blindfold and in the late afternoons when he brought us food he removed my blindfold.

x x x

Q: Now, you mentioned that after five (5) days your blindfold was removed. Do you recall who exactly removed your blindfold?

A: Roque Garalde, sir.[54]

x x x

Atty. Cruz:

Q What other reason, was there, Ms. Witness?

A: He threatened me, sir, and he also told me that if the parents of the children will not give money then he will kill all of us.

Q: Who is this "he" that you are referring to, Ms. Witness?

A: Roque Garalde, sir.

Q: Why do you know, Ms. Witness, that it was Roque Garalde who threatened to kill you?

A: I know him because I have seen him several times, sir.

x x x

Q: Will you please tell the Court what these persons told you to relay to the parents of the children?

A: To give the money they were demanding, sir, because if not they will kill the children.

Q: Do you remember, Ms. Witness, who among the persons who kept you in captivity personally gave you this instruction?

A: Yes, sir.

Q: Will you please tell the Court who this person was who gave you this instruction?

A: Roque Garalde, sir.[55]

Dianita's testimony was further strengthened by Paolo's testimony:

Q:

Did you get to see the faces of these three (3) men who alighted from the taxicab and forced themselves into your van?

A:

Yes, sir.

Atty. Cruz:

Q:

If you were to get to see again these three (3) men, today, would you be able to recognize them, Mr. Witness?

A:

Yes, sir.

Q:

Please look around about (sic) you in the courtroom and please tell the Hon. Court whether or not the three (3) men that you saw that morning of August 9 or any of those three men is present here in the courtroom this afternoon?

A:

Sir, one of them is present here.

Q:

Will you please point to the Hon. Court this person in the courtroom who was among the three men who forced themselves into your van that morning?

A:

Sir that man at the second row wearing a yellow shirt.

(Witness pointing to a man who gave his name as Roque Galalde)

x x x

Q: Mr. Witness, do you recall what the participation is of this man that you pointed to, the accused Roque Galalde, after having forcibly entered your van for purposes of taking you?

A: He was the one who drove the van and when he drove the van, he was also the one who kept on shouting and made mura "putang ina." He was the one who said, "Papatayin namin kayo kapag hindi nagbayad ang parents ninyo."

x x x

Q: How long, Mr. Witness, if you remember did it take between the time that the three men entered your van and the time that you were blindfolded by one of these three men?

A: One to three minutes, sir.

Q: And during that time did you get to see their faces well?

A: Yes, sir.

Q: So, Mr. Witness, you were taken or kidnapped that morning and before you were blindfolded, you got to see the faces of your kidnappers which included the accused Roque Galalde. Was that the last time that you got to see the accused Roque Galalde during your period of captivity?

A: No, sir.

Q: How long did you stay captive by these persons, Mr. Witness?

A: Nine (9) days, sir.

Atty. Cruz:

Q: In those nine (9) days, how many more times did you get to see the accused Roque Galalde, if you remember?

A: A lot of times, sir.

Q: Will you tell the Hon. Court the events leading to your future meetings with Roque Galalde during these nine (9) days? When was the second time that you saw Mr. Galalde, Mr. Witness?

A: When we were kept in the room at the safehouse, sir. It was nighttime then when he went inside the room, held my hand and interviewed me about my family, among trabaho ng parents mo? How much are they earning? And he also kept making mura and when he spoke to me he had a gun at his waist, a revolver.

Q: This second meeting with Roque Garalde you claim happened at nighttime, was the place where you had this conversation with him lighted, Mr. Witness? Was there a light?

A: There was a light coming from the outside, sir.

Q: And that light enable you to see the face of this person?

A: Yes, sir.

Q: And you are certain that it was Roque Garalde who talked to you that night?

A: Yes, sir.

x x x

Q: You said earlier that you got to see Mr. Roque Garalde in the course of your captivity several other times. When was the third time that you got to see Mr. Garalde?

A: It was also nighttime when I was sleeping and I was waken up (sic) because there was someone who was pulling my right foot. My right foot was being tied and pulled.

x x x

Atty. Cruz: (Cont'd):

Q: Mr. Witness, it was the accused Roque Garalde who actually woke you up that evening by pulling your foot?

A: It was the other kidnapper, sir. Mr. Garalde was also there at that time. That kidnapper did not stop pulling my foot so I faced him and asked him to tell the other man to stop.

x x x

Q: Mr. Witness, when you first saw Mr. Garalde on August 9 when you were actually taken, how far were you from Mr. Garalde at that time?

A: In the Lite Ace van, sir, I was at the middle part of the Lite Ace.

Q: Around how many feet away was he from you?

A: It was close, sir.

x x x

Q: Mr. Witness, during the second time when you got to meet with Mr. Garalde, when you had this conversation about your parents, how far away was Garalde from you?

A: He was right in front of me, sir, and I was sitting in the middle.

Atty. Cruz:

Q: And you could clearly see his face?

A: Yes, sir.

Q: This third time that you got to see Mr. Garalde, this foot-pulling incident, Mr. Witness, how far was Mr. Garalde away from you when that happened?

A: I was on the bed, sir, and he was just at the other bed.

Q: And how far are the two beds away from each other?

A: It's just the other bed; ½ about this far.

Atty. Cruz: Witness making motions showing just a few feet, Your Honor.

x x x

Q: After that foot-pulling incident, was there ever a time that you got to see Mr. Roque Garalde in the place where you were kept captive again?

A: Yes, sir.

Q: Will you tell the Court when this happened if you remember?

A: It was the time when my tummy was really aching and I couldn't take it anymore. I told my yaya and he heard it.

Q: When you say, "he heard it," who are you referring to?

A: Mr. Garalde, sir.

Atty. Cruz:

Q: And what did he do, Mr. Witness, when he heard you complain about your tummy?

A: He said that "sisikmuraan kita kapag hindi tumigil ang sakit ng tummy mo."

Q: And what was your reaction then, Mr. Witness?

A: I just kept quiet, sir, and I just made tiis na lang the pain of my tummy.

Q: And when that incident occurred, Mr. Witness, how far away was Mr. Garalde from you?

A: It was just near, sir, because we were in the room.

Q: Mr. Witness, so you have testified before the Hon. Court that during your period of captivity you got to see face-to-face the accused Roque Garalde at least four times. Were there other times that you got to see Mr. Garalde again while you were kept in captivity?

A: When I was lying down, it was around afternoon, sir. "Yong blindfold po namin nakalagay lang pero merong tissue paper so nakakakita ako sa ilalim. "Yong driver po naming si Antonio Paquero nakahiga siya sa may cabinet. I saw him holding the plastic, white na upuan at ginanon sa driver. After seeing that, I just closed my eyes.

Q: What do you mean, Mr. Witness, when you said that plastic, white was "ginanon sa driver?"

A: By using the white plastic, he hit the driver, sir.

Atty. Cruz:

Q: Who is this "he" who hit the driver.

A: Mr. Garalde, sir.

Q: You were present when this happened?

A: Yes, sir.

Q: How far away was Mr. Garalde from you?

A: Around one (1) meter, sir.[56]

Appellant nevertheless insists that the trial court should not have found him guilty of the crime charged, since the testimonies of Dianita Bebita and Paolo Bellosillo are incredible, inconsistent and replete with infirmities. He points out the following flaws on the identification made by Dianita and Paolo: (1) the PACC did not take pictures of him during the alleged surveillance operations; [57] (2) the investigators did not ask Dianita and Paolo for a description of the culprits before his (appellant's) picture was shown to them;[58] (3) his arrest made the headlines in the tabloid, and the witnesses surely saw his picture and "influenced" their identification;[59] (4) Dianita was present during his arraignment;[60] and (5) Paolo could have been coached because appellant was the only one wearing a yellow shirt at the time.[61]

Appellant likewise points out that the testimonies of Dianita and Paolo are inconsistent, specifically when the captors sprayed something which made the victims dizzy; when they were blindfolded; and the times when Paolo allegedly saw him.[62] Appellant insists that Paolo's testimony is flawed for being incredible: (1) he could not have seen through his blindfold because the material used was brown packaging tape;[63] (2) he could not have heard any conversation between him and Dianita considering his distance from them;[64] and (3) he could not have seen appellant since it was nighttime, and the windows of the room were covered.[65] Appellant also insists that contrary to Paolo's testimony, he (appellant) could not have interviewed the witness without his blindfold.

We agree with the trial court and the CA that these inconsistencies refer to minor details that do not affect the credibility of witnesses or the probative weight of their testimonies. On the contrary, minor inconsistencies may even serve to strengthen the credibility of witnesses as they negate any suspicion that their testimonies are fabricated or rehearsed. Even the most candid of witnesses commit mistakes and make confused and inconsistent statements.[66] As held in *People v. Alolod*,[67] cited in *People v. Bulan*: [68]

x x x Not all persons who witness an incident are impressed in the same manner and it is but natural that in relating their impressions, they disagree on the minor details and that there be contradictions in their testimonies. Witnesses cannot be expected to recollect with exactitude every minute detail of an event. This is especially true when the witnesses testify as to facts which transpired in rapid succession, attended by flurry and excitement. The testimony of each witness should not be expected to be identical to and coinciding with each other. It is enough that the principal points covered by their testimonies are established although they do not dovetail in all details — which would even prove well-rehearsed and studied declarations ...

Appellant further points out that the deciding judge was only a substitute judge; by the time the case was re-raffled to the deciding judge, Paolo and Dianita had already finished their testimonies, hence, the deciding judge was not able to observe their demeanor and deportment in court to be able to sufficiently gauge their credibility.[69]

This, too, is bereft of merit. The fact that the judge who penned the decision was not the judge who heard the testimonies of the witnesses is not enough reason to overturn the findings of fact of the trial court on their credibility. Though ideally a judge should hear all the testimonies personally, at times the reality is that a different judge might pen the decision because the predecessor judge has retired, died or has been reassigned. In this situation, it cannot be assumed that the findings of fact of the judge who took over the case are not reliable and do not deserve the respect of the appellate courts. Besides, the judge who did not hear the testimonies personally can always rely on the transcripts of stenographic notes taken during the trial. Such dependence does not violate substantive and procedural due process. Indeed, the correctness of the decision is not impaired by the fact alone that the writer only took over from a colleague who had earlier presided at trial, unless there is a showing of grave abuse of discretion in the appreciation of factual findings reached by him.[70]

Lastly, appellant claims that he was deprived of the opportunity to present a proper defense which is tantamount

to a violation of his right to due process, as shown by the following: (1) he was deprived of effective and competent legal representation;[71] (2) he was denied of his right to have compulsory processes to guarantee the availability of witnesses and the production of evidence on his behalf;[72] and (3) he was not sufficiently apprised of the consequences of his refusal to testify.[73]

We reiterate the following findings of the appellate court: the trial court judge issued two subpoenas to Nelson Lopez but the latter refused to sign; hence, a warrant for his arrest was issued; another subpoena was issued against Serapio Moresca but the same could not be served, thus, a bench warrant was issued against him; as to the subpoenas issued to Janidy Dumagpi and Antonio Paquero, the same remained unserved because they could not be located. In view of the foregoing, the trial court indeed well performed its duties to issue the corresponding compulsory processes to compel appellant's witnesses to attend the hearing.[74]

Moreover, the appellant was duly accorded the opportunity to testify on his behalf. The appellant was informed (by the judge and his own counsel) that in view of his refusal to testify on his behalf, the case would be decided based on the evidence submitted by the prosecution.[75] Yet, appellant still refused to testify. Although the appellant's silence and refusal to testify cannot be construed as evidence of guilt, this Court has consistently held that the fact that an accused never testified in his defense even in the face of accusations against him goes against the principle that "the first impulse of an innocent man when accused of wrongdoing is to express his innocence at the first opportune time." [76]

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:

- If the kidnapping or detention shall have lasted 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 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.

Thus, for the accused to be convicted of kidnapping, the prosecution is burdened to prove beyond reasonable doubt all the elements of the crime: (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. 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.[77]

All of the above elements are attendant in the instant case: appellant is a private individual who, along with his cohorts, kidnapped the three Bellosillos, the driver and the yayas on August 9, 1994 by taking control of their vehicle and detaining them in a secluded place; three of the five kidnap victims were minors; ransom was demanded from the family of the Bellosillo children; and the victims were detained for nine (9) days.[78]

To warrant the imposition of the death penalty for the crime of kidnapping and serious illegal detention for ransom, the prosecution must prove the following beyond reasonable doubt: (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 ransom for the victim or other person for the release of the victim. The purpose of the offender in extorting ransom is a qualifying circumstance which may be proven by his words and overt acts before, during and after the kidnapping and detention of the victim.[79]

Clearly, appellant demanded ransom in exchange for the liberty of the victims, and, in fact received the same. The CA did not therefore err in affirming the trial court's imposition of the penalty of death. However, in view of the enactment of Republic Act (RA) No. 9346 on June 24, 2006 prohibiting the imposition of the death penalty, the penalty of reclusion perpetua without eligibility for parole should instead be imposed.[80]

In a criminal case, an appeal to the Supreme Court throws the whole case open for review, and it becomes the duty of the Court to correct such errors as may be found in the appealed judgment, whether they are made the subject of assignment of error or not.[81] Hence, a review of the civil liabilities of the appellant, as found by the trial court and affirmed by the CA, is proper.

Appellant initially demanded P10,000,000.00 as ransom, but the Bellosillos were able to raise only P410,000.00 cash and P80,000.00 worth of jewelries. This ransom was actually received by the kidnappers. The trial court thus properly awarded P490,000.00 as actual damages, plus legal interest from the filing of the information until full payment.

Under Article 2219 (5) of the New Civil Code, moral damages may be recovered in cases of illegal or arbitrary detention or arrest. It has been established that the appellant and his cohorts intentionally bumped the victims' vehicle; they forcibly entered the van; brought the victims to a safehouse; blindfolded them with packaging tapes; threatened them; and demanded ransom in exchange for the victims' freedom. The victims therefore suffered physical and psychological trauma because of their ordeal. There is thus sufficient basis for the award of moral damages.[82] Considering that the Bellosillo children were minors at the time of the commission of the offense, moral damages amounting to P600,000.00 instead of P500,000.00 is proper, and another P100,000.00 for Dianita Bebita.

It is an established rule that an aggravating circumstance, whether ordinary or qualifying, entitles the offended party to exemplary damages within the meaning of Article 2230 of the New Civil Code. There being a demand for ransom in this case, and by way of example or correction, the three (3) Bellosillo children and Dianita Bebita shall receive P100,000.00 each as award for exemplary damages.[83]

In view of the previous conviction[84] of Kil Patrick Ibero as principal and Alma Tan Garalde as accomplice, they shall be held jointly and severally liable with appellant, with respect to the actual, moral and exemplary damages awarded in accordance with the provisions of the Revised Penal Code.[85] However, as accomplice, Alma Tan Garalde shall be solidarily liable only with respect to one-half of the total amount of damages.[86]

We, however, deem it proper to delete the P50,000.00 awarded by the trial court as and by way of attorney's fees, in view of its failure to state in the body of the decision the legal basis therefor. The power of courts to grant damages and attorney's fees demands factual, legal and equitable justification, and cannot be left to speculation or

conjecture.[87]

IN LIGHT OF ALL THE FOREGOING, the Decision dated November 29, 2005 of the Court of Appeals finding appellant Roque G. Garalde guilty beyond reasonable doubt of the crime of kidnapping for ransom and serious illegal detention is AFFIRMED with MODIFICATIONS.

Pursuant to Republic Act No. 9346, the appellant is sentenced to reclusion perpetua. The appellant and Kil Patrick Ibero are sentenced to pay, jointly and severally, actual damages of P490,000.00 plus legal rate of interest from the filing of information until full payment; moral damages of P200,000.00 each for Paolo, John and Niño, all surnamed Bellosillo, and P100,000.00 for Dianita Bebita; and exemplary damages of P100,000.00 for each of the Bellosillo children and Dianita Bebita. Alma Tan Garalde is held solidarily liable only with respect to one-half of the foregoing awards. The award of attorney's fees is hereby DELETED.

SO ORDERED.

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

Nachura, J., no part. Signed pleading as Sol Gen.

[1] Penned by Associate Justice Conrado M. Vasquez, Jr., with Associate Justices Juan Q. Enriquez, Jr. and Vicente Q. Roxas, concurring; rollo, pp. 3-20.

[2] Penned by Judge Diosdado Madarang Peralta; CA rollo, pp.25-41.

[3] Also referred to in the records as "Roque Galarde," "Roque Gallarde," and "Roque Geralde."

[4] Records, pp. 3-5.

[5] Id. at 3-4.

[6] Id. at 6-7.

[7] People v. Garalde, 401 Phil. 174 (2000). The fallo of the decision reads:

WHEREFORE, the Decision of the Regional Trial Court, Branch 79 of Quezon City in Criminal Case No. Q-94-58658 finding accused-appellants Kil Patrick Ibero and Alma Tan Garalde guilty of kidnapping for ransom and serious illegal detention as principal and accomplice, respectively, and imposing upon accused-appellant Ibero the maximum penalty of DEATH and upon accused-appellant Garalde the penalty of reclusion perpetua is AFFIRMED in toto.

In Accordance with Article 83 of the Revised Penal Code, as amended by Section 25 of RA No. 7659, upon the finality of this decision let the records of this case be forthwith forwarded to his Excellency, the President, for the possible exercise of his pardoning power.

SO ORDERED.

[8] Records, pp. 144-145.

[9] Embodied in an Order dated April 22, 1997, records, pp. 146-147.

[10] TSN, November 13, 1996, p. 146.

- [11]TSN, May 30, 1996, pp. 13-14.
- [12] Id. at 14.
- [13] Id. at 15-17.
- [14]TSN, July 23, 1996, p. 102.
- [15]TSN, May 30, 1996, pp. 17-18.
- [16]Id. at 23.
- [17] Id. at 27.
- [18] TSN, November 13, 1996, pp. 146-151.
- [19]Id. at 154-155.
- [20] TSN, November 13, 1996, p. 156.
- [21] TSN, July 3, 1996, p. 57.
- [22] TSN, November 13, 1996, pp. 175-176.
- [23] Id. at 152.
- [24]TSN, July 3, 1996, pp. 58-68.
- [25] Id. at 52-53.
- [26]TSN, May 30, 1996, pp. 36-37.
- [27] Id. at 54.
- [28] TSN, November 13, 1996, pp. 157-158.
- [29] TSN, July 3, 1996, p. 69.
- [30] Id. at 70-71.
- [31] Id. at 71.
- [32] Id. at 75.
- [33] Id. at 76-79.
- [34] TSN, November 13, 1996, p. 160.
- [35] Id. at 160-161.
- [36] Id. at 161.
- [37] TSN, December 4, 1996, p. 199.
- [38] Id. at 200.
- [39] Id. at 201.
- [40] Id. at 205.
- [41] Id. at 206.

[42] Rollo, p. 7, citing Decision [of the RTC], pp. 5-6.

[43] TSN, July 7, 1998, p. 387.

[44] Id. at 387-388.

[45] Id. at 388-389.

[46] Supra note 2.

[47] CA rollo, pp. 40-41.

[48] Id. at 144.

[49] The fallo reads:

IN VIEW OF ALL THE FOREGOING, the appealed decision of the trial court finding accused-appellant guilty beyond reasonable doubt of the crime of kidnapping for ransom and sentencing him to suffer the supreme penalty of death is AFFIRMED in toto.

SO ORDERED (Rollo, p. 20).

[50] Rollo, p. 18.

[51] Id. at 19-20.

[52] People v. Sades, G.R. No. 171087, July 12, 2006, 494 SCRA 716,724; People v. Bulan, G.R. No. 143404, June 8, 2005, 459 SCRA 550, 262; People v. Mittu, 388 Phil. 779, 789 (2000).

[53] TSN, May 30, 1996, pp. 15-23.

[54] Id. at 35-37.

[55] TSN, July 3, 1996, pp. 54-58.

[56] TSN, December 4, 1996, pp. 196-207.

[57] CA rollo, p. 152.

[58] Id. at 153.

[59] Id. at 154.

[60] Id. at 154.

[61] Id. at 154-155.

[62] Id. at 156-159.

[63] Id. at 159.

[64] Id. at 157.

[65] Id. at 157.

[66] People v. Sades, supra note 52, at 725-726; People v. Bulan, supra note 52, at 563-564.

[67] G.R. Nos. 117506-07, January 7, 1977, 266 SCRA 154, 161.

[68] Supra note 52, at 564.

[69] CA rollo, p. 162.

[70] *People v. Tumulak*, 448 Phil. 57, 67 (2003); *Hugo v. Court of Appeals*, 437 Phil. 260, 269-270 (2002).

[71] CA rollo, p. 163.

[72] *Id.* at 172.

[73] *Id.* at 172.

[74] Rollo, p. 18.

[75] *Id.* at 19.

[76] *People v. Tonog, Jr.*, G.R. No. 144497, June 29, 2004, 433 SCRA 139, 161-162; *People v. Mamarion*, 459 Phil. 51, 90 (2003).

[77] *People v. Ejandra*, G.R. No. 134203, May 27, 2004, 429 SCRA 364, 381-382; *People v. Pagalasan*, 452 Phil. 341, 362 (2003).

[78] Rollo, pp. 16-17.

[79] *People v. Ejandra*, *supra*. at 382.

[80] *People v. Mangitngit*, *supra*; *People v. Quiachon*, G.R. No. 170236, August 31, 2006.

[81] *People v. Abulencia*, 415 Phil. 731, 747 (2001).

[82] *People v. Martinez*, G.R. No. 137519, March 16, 2004, 425 SCRA 528, 542; *People v. Bisda*, 454 Phil. 194, 239 (2003); *People v. Pangilinan*, 443 Phil. 198, 245 (2003).

[83] *People v. Martinez*, *supra* at 542; *People v. Bisda*, *supra*; *People v. Pangilinan*, *supra* at 245.

[84] G.R. No. 128622, *supra* note 7.

[85] Specifically Art. 110 thereof which provides that:

Notwithstanding the provisions of the next preceding article, the principals, accomplices, and accessories, each within their respective class, shall be liable severally in solidum among themselves for their quotas, and subsidiarily for those of the other persons liable.

x x x.

[86] *People v. Bato*, 401 Phil. 415, 430 (2000).

[87] *People v. Agsalog*, G.R. No. 141087, March 31, 2004, 426 SCRA 624, 640.

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