

THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ROSALINDA TRAPAGO TAN A.K.A. KAYE SUAREZ PALINO, MARIA EL FELASOL FLORES, A.K.A. MAE FELASOL FLORES, ARMANDO PANAGUITON DE LUNA, BEN...

G.R. No. 177566 [Formerly G.R. No. 164433]. March 26, 2008

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TINGA, J.:

On appeal by way of automatic review is the Decision[1] of the Court of Appeals in CA-G.R. CR HC No. 01988, affirming with modification the Judgment[2] of the Regional Trial Court (RTC), convicting appellants Rosalinda Trapago Tan (Rosalinda), Mae Felasol Flores (Mae), Armando Panaguiton De Luna (Armando), Benito Feolog Felazol (Benito), Eduardo Frondozo Felazol (Eduardo), Angelito Ang Diego (Angelito), and Roberto Tolentino (Roberto) for the crime of Kidnapping for Ransom.

The facts as narrated by prosecution witnesses follow.

At about 8:30 p.m. of 8 September 1997, Ruiz Saez Co (Ruiz) was taking his meal in a store located just outside his company's premises in Barrio Mamatid, Cabuyao, Laguna. He noticed three vehicles parked in front of the store - a green Nissan Sentra car, a black Honda Civic car and a red L-300 van. Suddenly, a man alighted from the Nissan Sentra car and aimed a gun at him. He tried to escape and started running towards the company plant when two (2) armed men alighted from the L-300 van and blocked his way. Ruiz was then forcibly boarded into the black Honda Civic car. Inside the car, he was handcuffed and made to stoop down. After driving for about an hour, Ruiz was led out of the car, brought inside a house, and locked into a room. A certain Ka Rudy told him that he had just been kidnapped in exchange for P40 Million for his freedom.[3]

Meanwhile, at around 9:00 p.m. of the same day, Mrs. Sonia Co (Sonia) received a call from the vice mayor of Cabuyao, Laguna that her son had been kidnapped. She immediately called then Vice-President Joseph Estrada to seek assistance. The latter referred the matter to General Panfilo Lacson (Lacson) who in turn instructed Police Officer Senior Superintendent Cesar Mancao (Mancao) to dispatch teams to monitor the alleged kidnappers.[4]

At 2:30 a.m. of the following day, Sonia finally received a call from the alleged kidnapper who identified himself as Ka Rudy. The latter confirmed that Ruiz was in his custody. On his second call, Ka Rudy asked for a P40 Million ransom, which amount was lowered to P1.2 Million after negotiations.[5]

During Ruiz's captivity, he was also blindfolded and handcuffed but was allowed to go to the bathroom accompanied by his kidnappers. On 14 September 1997, Mancao received a tip from an anonymous female caller that the persons responsible for the kidnapping of Ruiz were the caller's husband and the latter's girlfriend; and that Ruiz was being kept in a house somewhere in Palmera Homes Subdivision, Taytay, Rizal.

A team was dispatched to said area the following morning and surveillance was thereafter conducted.[6] In the morning of his eighth day in captivity, Ruiz heard shouts and rapid gunshots outside the room. He quickly removed his blindfold. After a while, a man forced open the door and introduced himself as a member of the

SWAT. Ruiz was then secured and taken out of the house. On his way towards the police van, Ruiz saw two (2) persons lying on their back, another two (2) squatting with their hands tied at the back of their heads, and two (2) women embracing each other. Ruiz later identified the women as Mae and Rosalinda, and one of the men with hands tied at the back as Eduardo.[7]

Mancao recounted that seven (7) persons were arrested - five (5) males and two (2) females. In addition to those already identified by Ruiz, the other persons were identified by Mancao as Roberto, Benito and Armando. Several high-powered firearms were recovered from the house.[8] At 7:00 a.m. of 16 September 1997, Sonia received a call from Lacson who related that Ruiz son had already been rescued.[9]

Appellants, who came from various locations in Metro Manila,[10] testified for the defense and presented their respective alibis.

Benito claimed that on 15 September 1997, he, together with Roberto, went to a house owned by a certain Sgt. Salazar, located at 421 Thatch Palm Street, Palmera Hills, Taytay, Rizal, to repair a motor vehicle. They were met by Nympha Salazar (Nympha), the wife of Sgt. Salazar. At around 4:00 p.m., Eduardo, Benito's cousin, arrived. They finished the repair work at 6:00 p.m. While waiting for Sgt. Salazar to come home for their pay, Nympha brought them one case of beer. They then started drinking together with two guests of the Salazar whom they only knew to be "Toto" and "Ariston." By 10:00 p.m., Benito stopped drinking and fell asleep in the sala. He was awakened in the morning by a fire. He was shot in the inner thigh and was taken in by the police.[11] Roberto and Eduardo corroborated his testimony.

Armando explained that he was renting the extension house of the Salazars with his live-in partner, Mae. At around 7:30 p.m. on 15 September 1997, he came home to find several persons drinking under the mango tree. A few minutes later, Angelito came knocking at his door looking for Mae so he could give his payment for the perfume he purchased from her. Armando then invited Angelito for dinner. At 10:30 p.m., Armando accompanied Angelito to the gate and were invited to join the drinking spree. The following morning, they were awakened by gunshots.[12]

Mae related that upon hearing the gunshots, she and Armando also heard someone shouting at them to stand up. They embraced each other. Some armed men then entered their house and told them to get out. Mae denied knowing Eduardo, Benito, Rosalinda and Roberto.[13] She averred that she only came to know Angelito through the latter's wife.

Rosalinda, for her part, alleged that Sgt. Salazar was a regular customer of the establishment where she used to work. Nympha, the wife of Sgt. Salazar, called her through cellphone and asked her to meet with her. At around 11:00 p.m. on 15 September 1997, they met at Grand Central Mall in Monumento. They boarded a taxi and proceeded to 421 Thatch Palm Street, Taytay, Rizal at 12:00 midnight. Upon arrival at said address, Rosalinda was informed by Nympha that Sgt. Salazar was already dead. Nympha then went out and did not come back. Rosalinda decided to sleep in the room of Mae.[14]

On 17 September 1997, appellants were charged with the crime of kidnapping for ransom in an Information the accusatory portion of which reads:

That on or about September 8, 1997 in the evening of Barangay Mamatid, Cabuyao, Laguna and within the jurisdiction of this Honorable Court, the above named accused conspiring, confederating, mutually helping one another and grouping themselves together, did then and there, by force and intimidation, and use of high powered firearms, wiffully, unlawfully, feloniously take, carry away, and deprive Ruiz Saez-Co y Lim of his liberty against his will for purposes of extorting money as in fact a demand for money was made as a condition for his release but before any ransom can be paid, the victim was rescued after eight (8) days in captivity.

CONTRARY TO LAW.[15]

On arraignment, appellants entered their plea of not guilty. Trial ensued.

On 5 April 2002, the trial court rendered judgment finding appellants guilty beyond reasonable doubt of the crime of kidnapping for ransom and sentenced each of them to suffer the penalty of death.[16]

The records of this case were originally elevated to this Court for automatic review. Conformably with our ruling in *People v. Mateo*[17] however, the case was referred to the Court of Appeals for intermediate review.

Appellants maintained that among the circumstances allegedly established by the prosecution's evidence, the only link to the accused is that they were all arrested at the place where the kidnap victim was rescued. Appellants argued that the circumstantial evidence presented by the prosecution failed to prove that they conspired and actually participated in the kidnapping of the victim. Furthermore, appellants contended that mere presence at the crime scene cannot be considered as proof of conspiracy. All told, appellants proffered that their guilt was not established beyond reasonable doubt; hence, they must be acquitted.[18]

The Office of the Solicitor General (OSG) for its part recommended that appellants be held guilty of serious illegal detention instead of kidnapping for failure of the prosecution to prove that appellants were the ones who abducted Ruiz on 8 September 1997, forced him to board the black Honda Civic, and brought him to the place where he was rescued eight days later. Likewise, the prosecution failed to prove that demands for ransom had been made by any, some or all of the appellants.[19]

In a Decision dated 27 November 2006, the Court of Appeals affirmed the ruling of the trial court with the following modification:

WHEREFORE, premises considered, the April 5, 2002 Decision of the Regional Trial Court of Biñan, Laguna, Branch 24, in Criminal Case No. 9984-B, is hereby AFFIRMED with MODIFICATION that in view of the passage of R.A. No. 9346, the accused-appellants are suffered to serve the penalty of Reclusion Perpetua with the accessory penalties prescribed under Article 40 of the Revised Penal Code in lieu of the Death Penalty.[20]

The appellate court rejected appellants' defense of denial and held that it cannot prevail over the ample amount of circumstantial evidence proffered by the prosecution which tends to prove their involvement in the crime.

The appellate court likewise sustained the trial court's finding that demands for ransom had been actually made by appellants.

On 22 August 2007, this Court required the parties to simultaneously file their respective supplemental briefs.[21] However, on 10 and 15 October 2007, the OSG and appellants respectively manifested that they were adopting their brief earlier filed before the Court of Appeals.[22]

The fundamental issue to be resolved is whether the guilt of the appellants has been proven beyond reasonable doubt.

For the accused to be convicted of kidnapping and serious illegal detention under Article 267 of the Revised Penal Code, the prosecution is burdened to prove beyond reasonable doubt all the elements of the crime, namely: (1) the offender is a private individual; (2) he kidnaps or detains another, or in any manner deprives the latter of his liberty; (3) the act of detention or kidnapping must be illegal; and (4) in the commission of the offense any of the following circumstances is present: (a) the kidnapping or detention lasts for more than three days; (b) it is committed by simulating public authority; (c) serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made; or (d) the person kidnapped and kept in detained 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.[23]

Based on the victim's account, the ordeal he had gone through can be divided into three distinct segments, namely: (1) the forcible taking, (2) the asportation, and (3) the protracted detention. The first segment was the Mamatid (in Cabuyao, Laguna) episode where he was held by armed men at gunpoint and forcibly boarded in a car. The second segment covered the entire forced journey of the victim from Mamatid to the detention house in Taytay, Rizal. And the third segment was the Taytay episode. It covered the full length of the victim's involuntary confinement spanning eight (8) days until his stirring rescue. There is no doubt that the victim was deprived of his liberty throughout all the episodes. But the question is: was the criminal liability of the appellants in each and every episode established beyond reasonable doubt?

We agree with the OSG that the participation of the appellants in the forcible taking and journey of the victim was not clearly established. There were no eyewitnesses who testified on the abduction. While the victim testified on the three episodes, he failed to see and identify any of his captors until he was rescued as he was blindfolded most of the time during his captivity. He did not see the face of the persons who abducted him in Mamatid and those who formed the entourage which brought him to Taytay. To conclude that those who were captured during the rescue operation were also participants in the forcible taking and asportation is to lower the level of evidence required for conviction.

Parenthetically, the public prosecutor was not allowed by the trial court judge to question the victim although he asked for leave to ask additional questions after the private prosecutor was done with his questions on direct examination. Instead of granting the requested leave outright, the trial judge consulted the defense counsel and the private prosecutor who both manifested that whatever questions the public prosecutor had in mind should be couched through and asked by the private prosecutor. Thus, the trial judge directed the private prosecutor to propound whatever questions the public prosecutor would suggest.[24] At this juncture, we find it necessary to remind trial court judges that under Section 5, Rule 110 of the Rules of Criminal Procedure, all criminal actions are prosecuted under the direction and control of the public prosecutor. The public prosecutor may turn over the actual prosecution of the criminal case to the private prosecutor, in the exercise of his discretion, but he may, at any time, take over the actual conduct of the trial.[25]

The third episode, however, is different. The criminal participation of the appellants therein was proven beyond reasonable doubt. The OSG correctly recommended that they should be held liable therefor.

A surveillance operation was conducted before the rescue of the victim, resulting in the determination that the victim was locked in a small room of a house in Palmera Hills, Taytay, Rizal. The victim's description of the house where he was kept "as small because the door of the room was adjacent to the comfort room"[26] corresponds to the description given at the subject house by the members of the Presidential Anti-Organized Crime Task Force.

The seven (7) appellants were all apprehended in the house or in the premises where the victim was detained. Ruiz identified three (3) of them as present and alive during the raid resulting to his rescue, including the two (2) women - Mae and Rosalinda. [27] Two (2) other accused were caught hiding in the ceiling, upon the tip given by Ruiz.[28] Angelito was the last to be apprehended as he hid among the grass outside the house for seven (7) hours, only to be caught later by police officers from Antipolo.[29]

The unexplained presence of appellants in the house where the victim was held captive leads to no other conclusion than that they participated in his illegal detention. Not a single appellant could convincingly explain his presence at the crime scene. As aptly observed by the trial court:

Accused Benito and Eduardo both surnamed Felazol and Robert Tolentino claimed that they were at the place

where Co was rescued because their group repaired the car of Sgt. Salazar. However, the Court cannot give much weight and credit to the defense of these three (3) accused considering that if it is true that Sgt. Salazar's car has to be repaired, he should have brought his car to an auto repair shop. Sgt. Salazar has no reason to request accused Benito Felazol to repair his car, it appearing that the latter is a driver and not a mechanic, hence, he has no technical know-how to repair a car. Furthermore, it is unbelievable that Nympha Salazar, the wife of Sgt. Salazar would allow these persons to sleep in their house considering that these persons are not personally known to their family, because as testified to by Benito Felazol, he came to know Sgt. Salazar only when he sidesw[iped] the car of the latter.

As regards the defense of accused Angelito Ang Diego, the Court sees no reason to believe his testimony that he was at the crime scene because he remitted collection for some merchandise his wife obtained from Mae Felasol Flores and thereafter, he drank with the three (3) persons whom he does not know under the mango tree. The Court is not inclined to believe his story as it is against human experience for a person to drink with some individuals unknown to him until the wee hours of the morning.

Furthermore, accused Ang Diego testified that during the raid, at around 5:00 a.m., he jumped over the fence and hides himself in the grasses outside the compound. However, when he gets out from the grasses at around 12:00 noontime, the policemen from Antipolo apprehended him. At this juncture, the Court could not see any reason why accused Ang Diego has to hide himself in the grasses outside the compound for almost seven (7) hours if it is really true that he has nothing to do with the kidnapping of Ruiz Saez-Co for an innocent person is bold as a lion.

As to the defense of accused Armando Panaguiton de Luna and Mae Felasol Flores that they were in the safe house because they were live-in partners and that they were renting an extension house in the compound, the Court believes and so holds that such contention is unworthy of belief and credit because of some inconsistencies in their testimonies. Accused Armando Panaguiton de Luna when asked on direct examination stated that her live-in partner, Mae Flores was a saleslady at Manuela Crossing.

x x x

However, when Mae Flores was asked on direct examination, she stated that she was a vendor at Edsa Central Crossing. x x x

Such inconsistencies in the testimonies of de Luna and Flores created a serious doubt in the mind of the Court as to the truthfulness of their statements considering that if it is really true that they have been living together, each of them know the place of work of one another and for how many years they have been living together as husband and wife.

With respect to the claim of accused Rosalinda Trapago Tan that she was at the said place because Nympha Estoquia fetched her at Monumento, such defense is unworthy of belief and credit.

It is implausible that accused Tan would go with a person whom she does not know personally, as she admitted that she only knew Nympha thru the telephone. Moreover, it is unbelievable that a woman would go with a stranger for an undisclosed reason at an undisclosed place in that late hour of the night (11:00 p.m.).

Likewise, the Court is not inclined to believe the story of accused Tan that she will agree to be left by Nympha in the house owned by the latter when she is not even personally known to Nympha and without any sufficient justification.

x x x

All the accused admitted that they were at the safe house when Ruiz Saez-Co was rescued on September 16, 1997, although all of them deny having involvement in the kidnapping of the victim. Their being present together in a questionable place, during a questionable hour of the night, only for simple reasons given by each

of them, gave doubt to the mind of the Court, that they are telling the truth.[30]

Under the circumstances, the fact that appellants came from different parts of Metro Manila and offered no plausible reason for their presence at the enclosed estate where the victim was rescued speaks tomes of their culpability.

Unfortunately, the owners of the house, Sgt. Salazar and Nympha, who could have corroborated appellants' alibis, were not presented in court. Sgt. Salazar was already dead on 15 September 1997. Strangely, only Rosalinda knew of this fact when she was allegedly told by Nympha. The other appellants, who admitted their presence in Salazars' house, were not aware or even had the slightest knowledge of Sgt. Salazar's death. Nympha, whose presence in the house was affirmed by all of the appellants, was not presented as a witness by the defense.

Conspiracy exists when two or more persons come to an agreement concerning the commission of a crime and decide to commit it. It may be proved by direct or circumstantial evidence consisting of acts, words or conduct of the alleged conspirators before, during and after the commission of the felony to achieve a common design or purpose.[31] That the appellants conspired to detain Ruiz was evident in their collective and concerted acts before, during and after the illegal detention. In the instant case, the following circumstances prove the existence of conspiracy among appellants: (1) the nine (9) persons present in the house during the captivity of Ruiz were all accounted for after the raid; (2) the recovery of high-powered firearms signified that appellants were united in their design to restrain the victim of his liberty; and (3) the exchange of gunfire resulting in the death of two kidnapers and wounding of one of the appellants demonstrated their resistance to the arresting team.

The primary element of the crime of kidnapping is actual confinement, detention and restraint of the victim. There must be a showing of actual confinement or restriction of the victim, and that such deprivation was the intention of the malefactor.[32] Hence, having proven that detention was perpetrated by appellants, it is sufficient to convict them of the crimes of kidnapping and serious illegal detention.

However, the demand for ransom was not clearly attributed to any of the appellants. Ruiz divulged that the demand for ransom was intimated to him by a certain Ka Rudy. Sonia, in her testimony, corroborated this fact, when she declared that they were able to negotiate the amount of ransom from P40 Million to P1.2 Million in a series of calls made by Ka Rudy and a female caller.[33] But the duo was never ascertained to be any of the appellants. Thus, we are constrained to reverse the judgment of the trial court and appellate court judgment in convicting appellants of kidnapping for ransom.

WHEREFORE, the appealed decision is MODIFIED in that appellants Rosalinda Trapago Tan a.k.a. Kaye Suarez Palino, Maria El Felasol Flores a.k.a. Mae Felasol Flores, Armando Panaguiton De Luna, Benito Feolog Felazol, Eduardo Frondoza Felazol, Angelito Ang Diego, and Roberto Tolentino are found guilty beyond reasonable doubt of kidnapping and serious illegal detention. By virtue of this modification, and not Republic Act No. 9346, the imposition of the penalty of reclusion perpetua on each of the appellants in the appealed decision is AFFIRMED.

SO ORDERED.

Quisumbing, (Chairperson), Carpio-Morales, Chico-Nazario, and Velasco, Jr., JJ., concur.

[1] Penned by Associate Justice Vicente Q. Roxas, and concurred in by Associate Justices Josefina Guevara-Salonga and Apolinario D. Bruselas, Jr.

[2] Presided by Judge Damaso A. Herrera.

[3] TSN, 4 August 1998, pp. 9-20.

[4] TSN, 13 May 1999, pp. 46-48.

[5] TSN, 2 July 1998, pp. 7-14.

[6] TSN, 13 May 1999, pp. 51-55.

[7] TSN, 4 August 1998, pp. 21-39.

[8] TSN, 13 May 1999, pp. 59-65.

[9] TSN, 2 July 1998, p. 15.

[10] Benito and Angelito both live in Valenzuela, Eduardo comes from Pasay, Roberto is from Caloocan, Rosalinda lives in Sta. Mesa, while Armando and Mae reside in Taytay, Rizal.

[11] TSN, 23 May 2000, pp. 6-18.

[12] TSN, 24 October 2000, pp. 6-11.

[13] TSN, 19 April 2001, pp. 8-12, 18.

[14] TSN, 28 June 2001, pp. 5-12.

[15] Records, pp. 3-4.

[16] CA rollo, p. 32.

[17] G.R. Nos. 147678-87, 4 July 2004, 433 SCRA 640.

[18] CA rollo, pp. 144-148.

[19] Id. at 185-186.

[20] Rollo, p. 16.

[21] Id. at 21.

[22] Id. at 24, 27.

[23] People v. Ejandra, G.R. No. 134203, 27 May 2004, 429 SCRA 364.

[24] Id. at 39-42.

[25] Mobilia Products, Inc. v. Umezawa, G.R. No. 149357, 4 March 2005, 452 SCRA 736.

[26] TSN, 4 August 1998, p. 23.

[27] Id. at 35-39.

[28] Id. at 28.

[29] Rollo, p. 111.

[30] CA rollo, pp. 27-30.

[31] People v. Baldogo. G.R. Nos. 128106-07, 24 January 2003, 396 SCRA 31.

[32] People v. Paingin, G.R. No. 148228, 4 December 2003, 417 SCRA 95, citing People v. Ubongen, G.R. No.

126024, 20 April 2001, 357 SCRA 142.

[33] TSN, 2 July 1998, p. 14.

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