

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DOMINGO REYES Y PAJE, ALVIN ARNALDO Y AVENA AND JOSELITO FLORES Y VICTORIO, ACCUSED-APPELLANTS.

G.R. No. 178300. March 17, 2009

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

For review is the Decision,[1] dated 14 August 2006, and Resolution,[2] dated 18 October 2006, of the Court of Appeals in CA-G.R. CR-H.C. No. 02301 affirming with modifications the Decision,[3] dated 26 February 2002, of the Regional Trial Court (RTC), Branch 12, Malolos, Bulacan, in Criminal Case No. 1611-M-99 finding herein accused-appellants Domingo Reyes y Paje (Reyes), Alvin Arnaldo y Avena (Arnaldo) and Joselito Flores y Victorio (Flores) guilty of the special complex crime of kidnapping for ransom with homicide and imposing upon each of them the capital punishment of death.

The facts culled from the records are as follows:

On 11 August 1999, an Information[4] was filed before the RTC charging appellants with the special complex crime of kidnapping for ransom with homicide. The accusatory portion of the information reads:

The undersigned State Prosecutor of the Department of Justice hereby accuses Domingo Reyes y Paje, Alvin Arnaldo y Avena and Joselito Flores y Victorio of the crime of kidnapping for ransom with homicide defined and penalized under Article 267 of the Revised Penal Code, as amended, committed as follows:

That on or about 11:00 p.m. on July 16, 1999, at Sitio Lambakin, barangay Sto. Cristo, San Jose del Monte, Bulacan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping one another and grouping themselves together with Juanito Pataray y Cayaban, Federico Pataray y Cabayan and Rommel Libarnes y Acejo, who are still at large, did then and there willfully, unlawfully and feloniously, by means of force and intimidation and with use of firearms, carry away and deprive Robert Yao, Yao San, Chua Ong Ping Sim, Raymond Yao, Ronald Matthew Yao, Lennie Yao, Charlene Yao, Jona Abagatnan ang Josephine Ortea against their will and consent on board their Mazda MVP van for the purpose of extorting money in the amount of Five Million Pesos (P5,000,000.00), that during the detention of Chua Ong Ping Sim and Raymong Yao, said accused with intent to kill, willfully and unlawfully strangled Chua Ong Ping Sim and Raymond Yao to death to the damage and prejudice of their heirs in such amount as may be awarded to them by this Honorable Court.

During their arraignment,[5] appellants, assisted by a counsel de oficio, pleaded "Not guilty" to the charge. Trial on the merits thereafter followed.

The prosecution presented as witnesses Jona Abagatnan (Abagatnan), Robert Yao (Robert), Yao San, Police Officer 3 (PO3) Alex Alberto, PO3 Roberto Jabien, Atty. Florimond Rous (Atty. Rous) and Atty. Carlo Uminga (Atty. Uminga). Their testimonies, taken together, attest to the following:

The Yao family is composed of Yao San (father), Chua Ong Ping Sim (mother), Robert and Raymond (children),

Lenny (daughter-in-law, wife of Robert), Matthew and Charlene (grandchildren), and Jona Abagatnan and Josephine Ortea (housemaids). The Yao family owns and operates a poultry farm in Barangay Santo Cristo, San Jose del Monte, Bulacan.

On 16 July 1999, at about 11:00 p.m., the Yao family, on board a Mazda MVP van, arrived at the their poultry farm in Barangay Sto. Cristo, San Jose del Monte, Bulacan. Yao San alighted from the van to open the gate of the farm. At this juncture, appellant Reyes and a certain Juanito Pataray (Pataray) approached, poked their guns at Yao San, and dragged him inside the van. Appellant Reyes and Pataray also boarded the van. Thereupon, appellants Arnaldo and Flores, with two male companions, all armed with guns, arrived and immediately boarded the van. Appellant Flores took the driver's seat and drove the van. Appellants Reyes and Arnaldo and their cohorts then blindfolded each member of the Yao family inside the van with packaging tape.[6]

After about 30 minutes of traveling on the road, the van stopped. Per order of appellants and their cohorts, Chua Ong Ping Sim, Robert, Raymond and Jona Abagatnan (Abagatnan) stepped out of the van with appellants Reyes and Arnaldo, Pataray and one of their male companions.[7] Appellant Flores, with the other male companion, drove the van with the remaining members of the Yao family inside the vehicle.[8]

Later, the van stopped again. Appellant Flores and his male companion told Yao San to produce the amount of five million pesos (P5,000,000.00) as ransom in exchange for the release of Chua Ong Ping Sim, Robert, Raymond and Abagatnan. Thereafter, appellant Flores and his male companion left the van and fled; while Yao San, Lenny, Matthew, Charlene and Josephine remained inside the van. Upon sensing that the kidnappers had already left, Yao San drove the van towards the poultry farm and sought the help of relatives.[9]

Meanwhile, Chua Ong Ping Sim, Robert, Raymond and Abagatnan were taken on foot by appellants Reyes and Arnaldo, Pataray and one male companion to a safe-house situated in the mountainous part of San Jose Del Monte, Bulacan where they spent the whole night.[10]

On the morning of the following day, at around 4:00 a.m., appellants and their cohorts tried to contact Yao San regarding the ransom demanded, but the latter could not be reached. Thus, appellants instructed Abagatnan to look for Yao San in the poultry farm. Appellants Reyes and Arnaldo and one male companion escorted Abagatnan in proceeding to the poultry farm. Upon arriving therein, Abagatnan searched for Yao San, but the latter could not be found. Appellants Reyes and Arnaldo told Abagatnan to remind Yao San about the ransom demanded. Thereafter, appellants Reyes and Arnaldo and their male companion left Abagatnan in the poultry farm and went back to the safe-house.[11]

In the safe-house, appellants told Robert that they would release him so he could help Abagatnan in locating Yao San. Robert and appellants left the safe-house, and after 30 minutes of trekking, appellants abandoned Robert. Robert then ran towards the poultry farm. Upon arriving at the poultry farm, Robert found Yao San and informed him about the ransom demanded by the appellants. Robert also told Yao San that Chua Ong Ping Sim and Raymond were still held by appellants and their cohorts.[12]

On 18 July 1999, appellants called Yao San through a cellular phone and demanded the ransom of P5 million for Chua Ong Ping Sim and Raymond. Yao San acceded to appellants' demand. Appellants allowed Yao San to talk with Chua Ong Ping Sim.[13]

On the morning of 19 July 1999, appellants again called Yao San via a cellular phone and threatened to kill Chua Ong Ping Sim and Raymond because of newspaper and radio reports regarding the incident. Yao San clarified to appellants that he did not report the incident to the police and also pleaded with them to spare the life of Chua Ong Ping Sim and Raymond. Appellants then instructed Yao San to appear and bring with him the ransom of P5

million at 3:00 p.m. in the Usan dumpsite, Litex Road, Fairview, Quezon City. Yao San arrived at the designated place of the pay-off at 4:00 p.m., but none of the appellants or their cohorts showed up. Yao San waited for appellant's call, but none came. Thus, Yao San left.[14]

On 23 July 1999, the corpses of Chua Ong Ping Sim and Raymond were found at the La Mesa Dam, Novaliches, Quezon City.[15] Both died of asphyxia by strangulation.[16]

On 26 July 1999, appellant Arnaldo surrendered to the Presidential Anti-Organized Crime Task Force (PAOCTF) at Camp Crame, Quezon City. Thereupon, appellant Arnaldo, with the assistance of Atty. Uminga, executed a written extra-judicial confession narrating his participation in the incident. Appellant Arnaldo identified appellants Reyes and Flores, Pataray and a certain Tata and Akey as his co-participants in the incident. Appellant Arnaldo also described the physical features of his cohorts and revealed their whereabouts.[17]

Subsequently, appellant Reyes was arrested in Sto. Cristo, San Jose del Monte, Bulacan. Thereafter, appellants Arnaldo and Reyes were identified in a police line-up by Yao San, Robert and Abagatnan as their kidnappers.[18]

On 10 August 1999, agents of the PAOCTF arrested appellant Flores in Balayan, Batangas. Afterwards, appellant Flores, with the assistance of Atty. Rous, executed a written extra-judicial confession detailing his participation in the incident. Appellant Flores identified appellants Reyes and Arnaldo, Pataray and a certain Tata and Akey as his co-participants in the incident. Appellant Flores was subsequently identified in a police line-up by Yao San, Robert and Abagatnan as one of their kidnappers.[19]

The prosecution adduced documentary evidence to bolster the aforesaid allegations, to wit: (1) Sinumpaang Salaysay of Abagatnan (Exhibit A);[20] (2) Karagdagang Sinumpaang Salaysay of Abagatnan, Robert and Yao San (Exhibit B);[21] (3) sketch made by Abagatnan (Exhibit C);[22] (4) death certificates of Chua Ong Ping Sim and Raymond (Exhibits D & E);[23] (5) Sinumpaang Salaysay of Robert (Exhibit F);[24] (6) Sinumpaang Salaysay of Yao San (Exhibit H);[25] (7) joint affidavit of Police Senior Inspector Loreto P. Delelis and PO3 Roberto Jabien (Exhibit I);[26] (8) joint affidavit of PO3 Alex Alberto and PO3 Leonito Fermin (Exhibit J);[27] (9) written extra-judicial confession of appellant Flores (Exhibit K);[28] (10) written extra-judicial confession of appellant Arnaldo (Exhibit L);[29] and (11) sketch made by appellant Arnaldo (Exhibit M).[30]

For its part, the defense presented the testimonies of appellants, Marina Reyes, Irene Flores Celestino, Wilfredo Celestino, Jr., Rachel C. Ramos, and Isidro Arnaldo. Appellants denied any liability and interposed alibis and the defense of frame-up. Their testimonies, as corroborated by their witnesses, are as follows:

Appellant Arnaldo testified that he was an "asset" of the PAOCTF. He narrated that on 25 July 1999, while he was at the tricycle terminal of Brgy. Sto. Cristo, San Jose del Monte, Bulacan, a police officer named Liwanag of the PAOCTF approached and invited him to go to Camp Crame to shed light on a kidnapping case allegedly committed by a certain Brgy. Captain Ramos and by members of the Aguirre and Bautista families. He accepted the invitation. Subsequently, he proceeded to Camp Crame and met therein Colonel Cesar Mancao III (Colonel Mancao) of the PAOCTF. Colonel Mancao told him that the PAOCTF would arrest Brgy. Capt. Ramos and certain persons named Gerry Bautista and Dadie Bautista. Colonel Mancao instructed him to identify said persons as responsible for the kidnapping of the Yao family. He refused to do so because he feared Brgy. Capt. Ramos. The day after, Colonel Mancao called appellant Arnaldo to his office. Upon arriving thereat, the latter saw Yao San. Yao San promised him that if their kidnappers would be apprehended through his cooperation, he would give him P500,000.00. He accepted Yao San's offer under the condition that he would identify a different set of suspects. Later, Colonel Mancao gave him P30,000.00.[31]

Subsequently, he pointed to appellants Reyes and Flores as his cohorts in kidnapping the Yao family. He

implicated appellants Reyes and Flores to get even with them, since the two had previously mauled him after he sold their fighting cocks and failed to give them the proceeds of the sale.[32]

He denied having met with Atty. Uminga. He was not assisted by the latter when he was forced by the PAOCTF to make a written extra-judicial confession on the kidnapping of the Yao family. Further, he claimed that while he was under the custody of PAOCTF, a certain Major Paulino utilized him as a drug pusher. Upon failing to remit the proceeds of the drug sale, he was beaten up by PAOCTF agents and thereafter included as accused with appellants Reyes and Flores for the kidnapping of the Yao family.[33]

On the other hand, appellant Reyes testified that he slept in his house with his family from 6:00 p.m. of 16 July 1999 until the morning of the next day; that on the early morning of 26 July 1999, five policemen barged into his house and arrested him; that the policemen told him that he was a suspect in the kidnapping of the Yao family; that he was mauled by the policemen outside his house; that the policemen forcibly brought him to Camp Crame, where he was subsequently tortured; that he knew the Yao family because he worked as a carpenter in the family's poultry farm at Brgy. Sto. Cristo, San Jose del Monte, Bulacan; that he had no involvement in the kidnapping of the family; and that appellant Arnaldo implicated him in the kidnapping of the family because appellant Arnaldo held a grudge against him.[34]

For his part, appellant Flores testified that he stayed in his sister's house at Antipolo City from 12 July 1999 up to 30 July 1999; that he went to her house on 12 July 1999 because it was the birthday of her child; that he worked as a construction worker during his stay in his sister's house; that he was arrested in Batangas and thereafter brought to Camp Crame, where he was beaten up by policemen for refusing to admit involvement in the kidnapping of the Yao family; that after three days of beating, he was forced to sign a document which he later found out to be a written extra-judicial confession; that he never met nor did he know Atty. Rous; that he knew the Yao family because he lived near the family's poultry farm, and he used to work therein as a welder; that he had no participation in the kidnapping of the family; and that appellant Arnaldo implicated him in the kidnapping of the family because he and appellant Reyes had mauled appellant Arnaldo several years ago.[35]

The defense proffered documentary and object evidence to buttress their foregoing claims, to wit: (1) prayer booklet of appellant Arnaldo (Exhibit 1 for appellant Arnaldo);[36] (2) calling card of Colonel Mancao (Exhibit 2 for appellant Arnaldo);[37] and (3) pictures allegedly showing appellant Flores working as a carpenter in Antipolo City (Exhibits 1 & 2 for appellant Flores).[38]

After trial, the RTC rendered a Decision dated 26 February 2002 convicting appellants of the special complex crime of kidnapping for ransom with homicide and sentencing each of them to suffer the supreme penalty of death. Appellants were also ordered to pay jointly and severally the Yao family P150,000.00 as civil indemnity, P500,000.00 as moral damages and the costs of the proceedings. The dispositive portion of the RTC Decision reads:

WHEREFORE, finding herein three (3) accused DOMINGO REYES y PAJE, ALVIN ARNALDO y AVENA, and JOSELITO FLORES y VICTORIO guilty as principals beyond reasonable doubt of the crime of KIDNAPPING FOR RANSOM WITH (DOUBLE) HOMICIDE as charged, they are hereby sentenced each to suffer the supreme penalty of DEATH as mandated by law, to jointly and severally indemnify the heirs of deceased Chua Ong Ping Sim and Raymond Yao in the amount of One Hundred Fifty Thousand Pesos (P150,000.00), and all the private offended parties or victims, including the heirs of the deceased, in the amount of Five Hundred Thousand Pesos (P500,000.00) as moral damages, subject to the corresponding filing fee as a first lien, and to pay the costs of the proceedings.[39]

By reason of the death penalty imposed on each of the appellants, the instant case was elevated to us for automatic review. However, pursuant to our ruling in *People v. Mateo*,[40] we remanded the instant case to the Court of

Appeals for proper disposition.

On 14 August 2006, the Court of Appeals promulgated its Decision affirming with modifications the RTC Decision. The appellate court reduced the penalty imposed by the RTC on each of the appellants from death penalty to reclusion perpetua without the possibility of parole. It also decreased the amount of civil indemnity from P150,000.00 to P100,000.00. Further, it directed appellants to pay jointly and severally the Yao family P100,000.00 as exemplary damages. The fallo of the Court of Appeals' decision states:

WHEREFORE, premises considered, the Decision of the Regional Trial Court of Malolos, Bulacan, Branch 12, dated February 26, 2002, in Criminal Case No. 1611-M-99 convicting accused-appellants of the crime of Kidnapping For Ransom with (Double) Homicide, is hereby AFFIRMED with MODIFICATIONS in that:

- 1) accused-appellants are instead sentenced to suffer the penalty of reclusion perpetua;
- 2) the award of civil indemnity ex delicto is hereby reduced to P100,000; and
- 3) accused-appellants are further ordered to pay private complainants the amount of P100,000.00 as exemplary damages.[41]

Appellants filed a motion for reconsideration of the Court of Appeals' Decision but this was denied. Hence, appellants filed their Notice of Appeal on 25 August 2006.

In their separate briefs,[42] appellants assigned the following errors:

I.

THE TRIAL COURT ERRED IN GIVING WEIGHT AND CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESSES;

II.

THE TRIAL COURT ERRED IN FINDING A CONSPIRACY BETWEEN APPELLANTS;

III.

THE TRIAL COURT ERRED IN GIVING WEIGHT AND CREDENCE TO THE EXTRA-JUDICIAL CONFESSIONS OF APPELLANT ARNALDO AND APPELLANT FLORES;

IV.

THE TRIAL COURT ERRED IN TOTALLY IGNORING THE CORROBORATED EVIDENCE OF THE DEFENSE;

V.

THE TRIAL COURT ERRED IN FINDING THAT THE PROSECUTION HAD PROVEN APPELLANTS' GUILT BEYOND REASONABLE DOUBT.[43]

Anent the first assigned error, appellants assail the credibility of prosecution witnesses Abagatnan, Robert and Yao San.

In resolving issues pertaining to the credibility of the witnesses, this Court is guided by the following well-settled principles: (1) the reviewing court will not disturb the findings of the lower court, unless there is a showing that the latter overlooked, misunderstood or misapplied some fact or circumstance of weight and substance that may affect the result of the case; (2) the findings of the trial court on the credibility of witnesses are entitled to great respect and even finality, as it had the opportunity to examine their demeanor when they testified on the witness stand; and (3) a witness who testifies in a clear, positive and convincing manner is a credible witness.[44]

After carefully reviewing the evidence on record and applying the foregoing guidelines to this case, we found no cogent reason to overturn the RTC's ruling finding the testimonies of the prosecution witnesses credible. Prosecution witnesses Abagatnan, Robert, and Yao San positively identified appellants and their cohorts as their kidnappers during a police line-up and also during trial. Abagatnan specifically testified during the trial that after appellants and their cohorts forcibly entered the van where she and the Yao family were, appellant Flores drove the van away from the poultry farm; that appellants Reyes and Arnaldo were among the kidnappers who guarded her, Robert, Chua Ong Ping Sim and Raymond in the safe-house; and that appellants Reyes and Arnaldo accompanied her in going to the poultry farm to search for Yao San and remind him about the ransom demanded.[45] Robert confirmed that appellants and their cohorts blindfolded them inside the van during the incident. He also recounted that appellants and their cohorts detained him and Chua Ong Ping Sim, Raymond and Abagatnan in a safe-house. He was later instructed by appellants to find Yao San and remind him about the ransom.[46] Yao San declared that during the incident, appellant Reyes and Pataray approached him, poked their guns at him, and dragged him into the van. Appellant Flores took the driver's seat and drove the van. Appellant Flores and his male companion told him to produce P5 million as ransom money in exchange for the release of Chua Ong Ping Sim, Robert, Raymond and Abagatnan.[47]

Abagatnan, Robert and Yao San testified in a clear and candid manner during the trial. Their respective testimonies were consistent with one another. They were steadfast in recounting their ordeal despite the grueling cross examination of the defense. Moreover, their testimonies were in harmony with the documentary evidence adduced by the prosecution. The RTC and the Court of Appeals found their testimonies credible and trustworthy. Both courts also found no ill motive for Abagatnan, Robert and Yao San to testify against appellants.

Appellants, nonetheless, maintain that Abagatnan, Robert and Yao San could not have identified their kidnappers, because (1) the incident occurred in the darkness of the night; (2) they were blindfolded then; and (3) the heads of the kidnappers were covered by T-shirts.

It appears that the crime scene was well-lighted during the incident. At that time, there was a light from a fluorescent bulb hanging above the gate of the poultry farm wherein Yao San was held at gunpoint by appellant Reyes and Pataray.[48] The headlights of the van were also turned on, making it possible for Abagatnan and Robert to see the faces of appellant Reyes and Pataray as the two approached and poked their guns at Yao San.[49] Further, there was a bulb inside the van, which turned on when the door's van was opened. This bulb lighted up when appellants and their cohorts forcibly boarded the van, thus, allowing Abagatnan, Robert and Yao San to glance at the faces of appellants and their cohorts.[50]

Although the Yao family was blindfolded during the incident, it was, nevertheless, shown that it took appellants and their cohorts about 10 minutes before all members of the Yao family were blindfolded.[51] During this considerable length of time, Abagatnan, Robert and Yao San were able to take a good look at the faces of appellants and their cohorts. In addition, Abagatnan and Robert narrated that their respective blindfolds loosened several times, giving them the opportunity to have a glimpse at the faces of appellants and their cohorts.[52]

Abagatnan, Robert and Yao San testified that even though the heads of appellants and their cohorts were covered by T-shirts, their faces were, nonetheless, exposed and uncovered, allowing them to see their faces.[53] Robert and Yao San also declared that they recognized the faces of appellants during the incident because the latter resided near the poultry farm of the Yao family, which used to hire them several times in the farm as carpenters/welders.[54]

Appellants, however, insist that the testimonies of Abagatnan, Robert and Yao San that they were able to recognize the kidnappers -- because although the kidnappers' heads were covered with T-shirts, their faces were

nevertheless exposed or uncovered -- are incredible. Appellants argue that it is against human nature and experience that kidnappers would cover only their heads and not their faces in concealing their identities.

It is not illogical or against human nature for appellants and their cohorts to cover their heads with T-shirts, while leaving their faces exposed and uncovered when they kidnapped the Yao family. Perhaps, appellants and their cohorts thought that putting T-shirts on their heads without covering their faces was sufficient to conceal their identities. Regardless of their reason, the fact remains that Abagatnan, Robert and Yao San positively identified appellants as their kidnappers, and their said identification and testimonies were found by the RTC, the Court of Appeals and by this Court to be credible. In *People v. Barredo*,^[55] the victim testified that he was able to identify the accused as his assailants because the latter took off their masks during the assault. The accused argued that the victim's testimony was incredible because persons who wore masks would not take them off so casually in the presence of their victims, as doing so would reveal their identities. The trial court, nonetheless, ruled that the victim's testimony was credible and truthful. We sustained such ruling of the trial court and ratiocinated:

Appellants dispute the plausibility of Enrico Cebuhano's claim that he was able to identify the assailants because they took off their masks. Persons who wear masks would not take them off so casually in the presence of their victims, as doing so would thereby reveal their identities. x x x.

The above arguments are untenable. In his testimony, Enrico Cebuhano clearly stated that the men who entered his home removed their masks when he was brought downstairs. Why they did so was known only to them. It is possible that they thought that there was no one in the vicinity who could identify them, or that they wanted Enrico to see who they were so as to intimidate him. It is also possible that they felt secure because there were 14 of them who were all armed. In any event, what is important is that the trial court found Enrico Cebuhano's testimony to be both credible and believable, and that he was able to positively identify appellants herein, because the men who entered his home removed their masks, x x x.

It is significant to note that Chua Ong Ping Sim and Raymond were brutally killed as a result of the kidnapping. It is difficult to believe that Robert and Yao San would point to appellants and their cohorts as their kidnappers if such were not true. A witness' relationship to the victim of a crime makes his testimony more credible as it would be unnatural for a relative interested in vindicating a crime done to their family to accuse somebody other than the real culprit.^[56] Relationship with a victim of a crime would deter a witness from indiscriminately implicating anybody in the crime. His natural and usual interest would be to identify the real malefactor and secure his conviction to obtain true justice for the death of a relative.^[57]

Appellants put in issue the failure of Robert and Yao San to immediately report the incident and identify appellants to authorities despite their common claim that they recognized appellants, as the latter used to work in the poultry farm.

Robert and Yao San cannot be blamed for not immediately reporting the incident to the authorities. Chua Ong Ping Sim and Raymond were still held by appellants and their cohorts when the ransom was demanded for their release. Appellants and their cohorts were armed and dangerous. Appellants and their cohorts also threatened to kill Chua Ong Ping Sim and Raymond if Yao San and Robert would report the incident to the authorities.^[58] Understandably, Yao San and Robert were extremely fearful for the safety of their loved ones, and this caused them to refrain from reporting the incident. Robert and Yao San cannot also be blamed for not reporting the incident to the police even after the corpses of Chua Ong Ping Sim and Raymond had already been found, and appellants and their cohorts had cut their communication with them. Certainly, the killings of Chua Ong Ping Sim and Raymond had a chilling/paralyzing effect on Robert and Yao San. Also, appellants and their cohorts were still at large then, and the possibility that they would harm the remaining members of the Yao family was not remote, considering that appellants and their cohorts were familiar with the whereabouts of the Yao family. At any rate,

we have held that failure to immediately report the kidnapping incident does not diminish the credibility of the witnesses.[59] The lapse of a considerable length of time before a witness comes forward to reveal the identities of the perpetrators of the crime does not taint the credibility of the witness and his testimony where such delay is satisfactorily explained.[60]

Apropos the second assigned error, appellants contend that the prosecution failed to prove that they conspired in kidnapping the Yao family.

Under Article 8 of the Revised Penal Code, there is conspiracy when two or more persons agree to commit a felony and decide to commit it. Conspiracy presupposes unity of purpose and unity in the execution of the unlawful objective among the accused.[61] When the accused by their acts aimed at the same object, one performing one part and the other performing another part as to complete the crime, with a view to the attainment of the same object, conspiracy exists.[62]

As can be gleaned from the credible testimonies and sworn statements of Abagatnan, Robert and Yao, appellant Reyes and Pataray[63] approached and poked their guns at Yao San, and thereafter dragged the latter into the van. Appellant Flores then took the driver's seat and drove the van, while each member of the Yao family was blindfolded by appellants Reyes and Arnaldo and their cohorts inside the van. Thereafter, appellant Flores instructed Yao San to produce the amount of P5 million as ransom money in exchange for the release of Chua Ong Ping Sim, Robert, Raymond and Abagatnan. Appellant Reyes and appellant Arnaldo were among the kidnappers who guarded Abagatnan, Robert, Chua Ong Ping Sim and Raymond in the safe-house. They also accompanied Abagatnan and Robert in going to the poultry farm to search for and remind Yao San about the ransom demanded. Further, appellants Arnaldo and Flores narrated in their respective extra-judicial confessions[64] how they planned and executed the kidnapping of the Yao family. Their extra-judicial confessions also detailed the particular role/participation played by each of appellants and their cohorts in the kidnapping of the family. Clearly, the foregoing individual acts of appellants and their cohorts demonstrated their unity of purpose and design in kidnapping the Yao family for the purpose of extorting ransom.

Appellants, however, challenge the legality and admissibility of the written extra-judicial confessions.

Appellant Reyes claims that his alleged participation in the kidnapping of the Yao family was based solely on the written extra-judicial confessions of appellants Arnaldo and Flores. He maintains, however, that said extra-judicial confessions are inadmissible in evidence, because they were obtained in violation of his co-appellants' constitutional right to have an independent counsel of their own choice during custodial investigation. Appellant Reyes alleges that the agents of the PAOCTF did not ask his co-appellants during the custodial investigation whether they had a lawyer of their own choice, and whether they could afford to hire a lawyer; that the agents of the PAOCTF suggested the availability of Atty. Uminga and Atty. Rous to his co-appellants; and that Atty. Uminga and Atty. Rous were associates of the PAOCTF. Appellant Reyes also asseverates that the extra-judicial confessions of appellants Arnaldo and Flores cannot be utilized against him.

Appellant Flores argues that his written extra-judicial confession is inadmissible in evidence, because it was obtained in violation of his constitutional right to have an independent counsel of his own choice during custodial investigation. He insists that his written extra-judicial confession was elicited through force, torture and without the assistance of a lawyer. He avers that he was not assisted by any lawyer from the time he was arrested until he was coerced to sign the purported confession; that he was forced to sign it because he could not anymore endure the beatings he suffered at the hands of the PAOCTF agents; and that he never met or knew Atty. Rous who, according to the PAOCTF, had assisted him during the custodial investigation.

Appellant Arnaldo contends that his written extra-judicial confession should be excluded as evidence, as it was

procured in violation of his constitutional right to have an independent counsel of his own choice during custodial investigation. He claims that he was not given freedom to choose his counsel; that the agents of the PAOCTF did not ask him during the custodial investigation whether he had a lawyer of his own choice, and whether he could afford to hire a lawyer; and that the agents of the PAOCTF suggested the availability of Atty. Uminga to him.

An extra-judicial confession is a declaration made voluntarily and without compulsion or inducement by a person under custodial investigation, stating or acknowledging that he had committed or participated in the commission of a crime.[65] In order that an extra-judicial confession may be admitted in evidence, Article III, Section 12 of the 1987 Constitution mandates that the following safeguards be observed[66]:

Section 12. (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

(2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado, or other forms of detention are prohibited.

(3) Any confession or admission obtained in violation of this or Section 17 shall be inadmissible in evidence against him.

Thus, we have held that an extra-judicial confession is admissible in evidence if the following requisites have been satisfied: (1) it must be voluntary; (2) it must be made with the assistance of competent and independent counsel; (3) it must be express; and (4) it must be in writing.[67]

The mantle of protection afforded by the above-quoted constitutional provision covers the period from the time a person is taken into custody for the investigation of his possible participation in the commission of a crime or from the time he is singled out as a suspect in the commission of the offense although not yet in custody.[68]

The right of an accused to be informed of the right to remain silent and to counsel contemplates the transmission of meaningful information rather than just the ceremonial and perfunctory recitation of an abstract constitutional principle.[69] Such right contemplates effective communication which results in the subject understanding what is conveyed.[70]

The right to counsel is a fundamental right and is intended to preclude the slightest coercion as would lead the accused to admit something false.[71] The right to counsel attaches upon the start of the investigation, i.e., when the investigating officer starts to ask questions to elicit information and/or confessions or admissions from the accused.[72] The lawyer called to be present during such investigation should be, as far as reasonably possible, the choice of the accused. If the lawyer is one furnished in behalf of accused, he should be competent and independent; that is, he must be willing to fully safeguard the constitutional rights of the accused.[73] A competent and independent counsel is logically required to be present and able to advise and assist his client from the time the latter answers the first question asked by the investigator until the signing of the confession. Moreover, the lawyer should ascertain that the confession was made voluntarily, and that the person under investigation fully understood the nature and the consequence of his extra-judicial confession vis-a-vis his constitutional rights. [74]

However, the foregoing rule is not intended to deter the accused from confessing guilt if he voluntarily and intelligently so desires, but to protect him from admitting what he is being coerced to admit although untrue. To be an effective counsel, a lawyer need not challenge all the questions being propounded to his client. The presence of a lawyer is not intended to stop an accused from saying anything which might incriminate him; but, rather, it

was adopted in our Constitution to preclude the slightest coercion on the accused to admit something false. The counsel should never prevent an accused from freely and voluntarily telling the truth.[75]

We have gone over the records and found that the PAOCTF investigators have duly apprised appellants Arnaldo and Flores of their constitutional rights to remain silent and to have competent and independent counsel of their own choice during their respective custodial investigations.

The Pasubali[76] of appellants Arnaldo and Flores's written extra-judicial confessions clearly shows that before they made their respective confessions, the PAOCTF investigators had informed them that the interrogation about to be conducted on them referred to the kidnapping of the Yao family. Thereafter, the PAOCTF agents explained to them that they had a constitutional right to remain silent, and that anything they would say may be used against them in a court of law. They were also told that they were entitled to a counsel of their own choice, and that they would be provided with one if they had none. When asked if they had a lawyer of their own, appellant Arnaldo replied that he would be assisted by Atty. Uminga, while appellant Flores agreed to be represented by Atty. Rous. Thereafter, when asked if they understood their said rights, they replied in the affirmative. The appraisal of their constitutional rights was done in the presence of their respective lawyers and in the Tagalog dialect, the language spoken and understood by them. Appellants Arnaldo and Flores and their respective counsels, Atty. Uminga and Atty. Rous, also signed and thumbmarked the extra-judicial confessions. Atty. Uminga and Atty. Rous attested to the veracity of the afore-cited facts in their respective court testimonies.[77] Indeed, the appraisal of appellants' constitutional rights was not merely perfunctory, because it appeared certain that appellants had understood and, in fact, exercised their fundamental rights after being informed thereof.

Records reflect that appellants Arnaldo and Reyes were likewise accorded their right to competent and independent counsel during their respective custodial investigations.

As regards appellant Arnaldo, Atty. Uminga testified that prior to the questioning of appellant Arnaldo about the incident, Atty. Uminga told the PAOCTF investigators and agents to give him and appellant Arnaldo space and privacy, so that they could freely converse. After the PAOCTF investigators and agents left them, he and appellant Arnaldo went to a cubicle where only the two of them were present. He interviewed appellant Arnaldo in the Tagalog language regarding the latter's personal circumstances and asked him why he was in the PAOCTF office and why he wanted a lawyer. Appellant Arnaldo replied that he wanted to make a confession about his participation in the kidnapping of the Yao family. Thereupon, he asked appellant Arnaldo if the latter would accept his assistance as his lawyer for purposes of his confession. Appellant Arnaldo agreed. He warned appellant Arnaldo that he might be sentenced to death if he confessed involvement in the incident. Appellant Arnaldo answered that he would face the consequences because he was bothered by his conscience. He inquired from appellant Arnaldo if he was harmed or intimidated into giving self-incriminating statements to the PAOCTF investigators. Appellant Arnaldo answered in the negative. He requested appellant Arnaldo to remove his shirt for him to check if there were torture marks on his body, but he found none. He also observed that appellant Arnaldo's appearance and movements were normal. His conference with appellant Arnaldo lasted for 15 minutes or more. Thereafter, he allowed the PAOCTF investigators to question appellant Arnaldo.[78]

Further, Atty. Uminga sat beside appellant Arnaldo during the inquiry and listened to the latter's entire confession. After the taking of appellant Arnaldo's confession, Atty. Uminga requested the PAOCTF investigators to give him a copy of appellant Arnaldo's confession. Upon obtaining such copy, he read it entirely and thereafter gave it to appellant Arnaldo. He instructed appellant Arnaldo to read and comprehend the same carefully. He told appellant Arnaldo to ask him for clarification and comment if he did not agree or understand any part of his written confession. Appellant Arnaldo read his entire written confession and handed it to him. Atty. Uminga asked him if he had objections to it. Appellant Arnaldo replied in the negative. He then reminded appellant Arnaldo that the

latter could still change his mind, and that he was not being forced to sign. Appellant Arnaldo manifested that he would sign his written confession. Later, he and appellant Arnaldo affixed their signatures to the written confession.[79]

With respect to appellant Flores, Atty. Rous declared that before the PAOCTF investigators began questioning appellant, Atty. Rous interviewed him in Tagalog inside a room, where only the two of them were present. He asked appellant Flores about his personal circumstances. Appellant Flores replied that he was a suspect in the kidnapping of the Yao family, and he wanted to give a confession regarding his involvement in the said incident. He asked appellant Flores whether he would accept his assistance as his lawyer. Appellant Flores affirmed that he would. He asked appellant Flores why he wanted to give such confession. Appellant Flores answered that he was bothered by his conscience. Atty. Rous warned appellant Flores that his confession would be used against him in a court of law, and that the death penalty might be imposed on him. Appellant Flores told him that he wanted to tell the truth and unload the burden on his mind. He requested appellant Flores to lift his shirt for the former to verify if there were torture marks or bruises on his body, but found none. Again, he cautioned appellant Flores about the serious consequences of his confession, but the latter maintained that he wanted to tell the truth. Thereafter, he permitted the PAOCTF investigators to question appellant Flores.[80]

Additionally, Atty. Rous stayed with appellant Flores while the latter was giving statements to the PAOCTF investigators. After the taking of appellant Flores' statements, he instructed appellant Flores to read and check his written confession. Appellant Flores read the same and made some minor corrections. He also read appellant Flores' written confession. Afterwards, he and appellant Flores signed the latter's written confession.[81]

It is true that it was the PAOCTF which contacted and suggested the availability of Atty. Uminga and Atty. Rous to appellants Arnaldo and Flores, respectively. Nonetheless, this does not automatically imply that their right to counsel was violated. What the Constitution requires is the presence of competent and independent counsel, one who will effectively undertake his client's defense without any intervening conflict of interest.[82] There was no conflict of interest with regard to the legal assistance rendered by Atty. Uminga and Atty. Rous. Both counsels had no interest adverse to appellants Arnaldo and Flores. Although Atty. Uminga testified that he was a former National Bureau of Investigation (NBI) agent, he, nevertheless, clarified that he had been separated therefrom since 1994[83] when he went into private practice. Atty. Uminga declared under oath that he was a private practitioner when he assisted appellant Arnaldo during the custodial investigation.[84] It appears that Atty. Uminga was called by the PAOCTF to assist appellant Arnaldo, because Atty. Uminga's telephone number was listed on the directory of his former NBI officemates detailed at the PAOCTF. Atty. Rous, on the other hand, was a member of the Free Legal Aid Committee of the Integrated Bar of the Philippines, Quezon City at the time he rendered legal assistance to appellant Flores.[85] Part of Atty. Rous' duty as member of the said group was to render legal assistance to the indigents including suspects under custodial investigation. There was no evidence showing that Atty. Rous had organizational or personal links to the PAOCTF. In fact, he proceeded to the PAOCTF office to assist appellant Flores, because he happened to be the lawyer manning the office when the PAOCTF called.[86] In *People v. Fabro*,[87] we stated:

The Constitution further requires that the counsel be independent; thus, he cannot be a special counsel, public or private prosecutor, counsel of the police, or a municipal attorney whose interest is admittedly adverse to that of the accused. Atty. Jungco does not fall under any of said enumeration. Nor is there any evidence that he had any interest adverse to that of the accused. The indelible fact is that he was president of the Zambales Chapter of the Integrated Bar of the Philippines, and not a lackey of the lawmen.

Further, as earlier stated, under Section 12(1), Article III of the 1987 Constitution, an accused is entitled to have competent and independent counsel preferably of his own choice. The phrase "preferably of his own choice" does

not convey the message that the choice of a lawyer by a person under investigation is exclusive as to preclude other equally competent and independent attorneys from handling the defense. Otherwise, the tempo of custodial investigation would be solely in the hands of the accused who can impede, nay, obstruct, the progress of the interrogation by simply selecting a lawyer who, for one reason or another, is not available to protect his interest.[88] While the choice of a lawyer in cases where the person under custodial interrogation cannot afford the services of counsel - or where the preferred lawyer is not available - is naturally lodged in the police investigators, the suspect has the final choice, as he may reject the counsel chosen for him and ask for another one. A lawyer provided by the investigators is deemed engaged by the accused when he does not raise any objection to the counsel's appointment during the course of the investigation, and the accused thereafter subscribes to the veracity of the statement before the swearing officer.[89] Appellants Arnaldo and Flores did not object to the appointment of Atty. Uminga and Atty. Rous as their lawyers, respectively, during their custodial investigation. Prior to their questioning, appellants Arnaldo and Flores conferred with Atty. Uminga and Atty. Rous. Appellant Arnaldo manifested that he would be assisted by Atty. Uminga, while appellant Flores agreed to be counseled by Atty. Rous. Atty. Uminga and Atty. Rous countersigned the written extra-judicial confessions of appellants Arnaldo and Flores, respectively. Hence, appellants Arnaldo and Flores are deemed to have engaged the services of Atty. Uminga and Atty. Rous, respectively.

Since the prosecution has sufficiently established that the respective extra-judicial confessions of appellant Arnaldo and appellant Flores were obtained in accordance with the constitutional guarantees, these confessions are admissible. They are evidence of a high order because of the strong presumption that no person of normal mind would deliberately and knowingly confess to a crime, unless prompted by truth and conscience.[90] Consequently, the burden of proving that undue pressure or duress was used to procure the confessions rests on appellants Arnaldo and Flores.[91]

In the case at bar, appellants Arnaldo and Flores failed to discharge their burden of proving that they were forced or coerced to make their respective confessions. Other than their self-serving statements that they were maltreated by the PAOCTF officers/agents, they did not present any plausible proof to substantiate their claims. They did not submit any medical report showing that their bodies were subjected to violence or torture. Neither did they file complaints against the persons who had allegedly beaten or forced them to execute their respective confessions despite several opportunities to do so. Appellants Arnaldo and Flores averred that they informed their family members/relatives of the alleged maltreatment, but the latter did not report such allegations to proper authorities. On the contrary, appellants Arnaldo and Flores declared in their respective confessions that they were not forced or harmed in giving their sworn statements, and that they were not promised or given any award in consideration of the same. Records also bear out that they were physically examined by doctors before they made their confessions.[92] Their physical examination reports certify that no external signs of physical injury or any form of trauma were noted during their examination.[93] In *People v. Pia*, [94] we held that the following factors indicate voluntariness of an extra-judicial confession: (1) where the accused failed to present credible evidence of compulsion or duress or violence on their persons; (2) where they failed to complain to the officers who administered the oaths; (3) where they did not institute any criminal or administrative action against their alleged intimidators for maltreatment; (4) where there appeared to be no marks of violence on their bodies; and (5) where they did not have themselves examined by a reputable physician to buttress their claim.

It should also be noted that the extra-judicial confessions of appellants Arnaldo and Flores are replete with details on the manner in which the kidnapping was committed, thereby ruling out the possibility that these were involuntarily made. Their extra-judicial confessions clearly state how appellants and their cohorts planned the kidnapping as well as the sequence of events before, during and after its occurrence. The voluntariness of a confession may be inferred from its language if, upon its face, the confession exhibits no suspicious circumstances

tending to cast doubt upon its integrity, it being replete with details which could only be supplied by the accused.[95]

With respect to appellant Reyes's claim that the extra-judicial confessions of appellants Arnaldo and Flores cannot be used in evidence against him, we have ruled that although an extra-judicial confession is admissible only against the confessant, jurisprudence makes it admissible as corroborative evidence of other facts that tend to establish the guilt of his co-accused.[96] In *People v. Alvarez*,[97] we ruled that where the confession is used as circumstantial evidence to show the probability of participation by the co-conspirator, that confession is receivable as evidence against a co-accused. In *People v. Encipido*[98] we elucidated as follows:

It is also to be noted that APPELLANTS' extrajudicial confessions were independently made without collusion, are identical with each other in their material respects and confirmatory of the other. They are, therefore, also admissible as circumstantial evidence against their co-accused implicated therein to show the probability of the latter's actual participation in the commission of the crime. They are also admissible as corroborative evidence against the others, it being clear from other facts and circumstances presented that persons other than the declarants themselves participated in the commission of the crime charged and proved. They are what is commonly known as interlocking confession and constitute an exception to the general rule that extrajudicial confessions/admissions are admissible in evidence only against the declarants thereof.

Appellants Arnaldo and Flores stated in their respective confessions that appellant Reyes participated in their kidnapping of the Yao family. These statements are, therefore, admissible as corroborative and circumstantial evidence to prove appellant Reyes' guilt.

Nevertheless, even without the extra-judicial confessions of appellants Arnaldo and Flores, evidence on record is sufficient to sustain a finding of culpability of appellant Reyes. As earlier found, Abagatnan, Robert and Yao positively identified appellant Reyes as one of their kidnappers. They specifically testified that during the incident, appellant Reyes (1) approached and pointed a gun at Yao San and dragged the latter inside the van; and (2) accompanied Abagatnan and Robert in going to the poultry farm to search for and remind Yao San about the ransom demanded. The RTC, Court of Appeals and this Court found such testimonies credible.

Appellants argue that their alibis cast reasonable doubt on their alleged guilt. Appellant Reyes avers that he could not have been one of those who kidnapped the Yao family on the night of 16 July 1999 at around 11:00 p.m., because he was sleeping with his family in their residence during such time and date. Likewise, appellant Flores asseverates that he could not have been present at the crime scene on such date and time, as he was already sleeping in his sister's house at Antipolo City. For his part, appellant Arnaldo asserts that he is a victim of a police frame-up. He alleges that he was an asset of the PAOCTF, but was later utilized as a drug pusher by the said agency. Upon failing to remit the proceeds of a shabu sale to the PAOCTF officers, he was beaten up and included as accused in the kidnapping of the Yao family.

Alibi is the weakest of all defenses, for it is easy to contrive and difficult to prove. Alibi must be proved by the accused with clear and convincing evidence; otherwise it cannot prevail over the positive testimonies of credible witnesses who testify on affirmative matters. For alibi to prosper, it is not enough for the accused to prove that he was somewhere else when the crime was committed. He must likewise prove that it was physically impossible for him to be present at the crime scene or its immediate vicinity at the time of its commission.[99]

The defense of frame-up, like alibi, has been invariably viewed by this Court with disfavor, for it can easily be concocted but is difficult to prove. In order to prosper, the defense of frame-up must be proved by the accused with clear and convincing evidence.[100]

It should be observed that the family residence/house of appellant Reyes where he claimed to have slept when the

incident occurred is located within Brgy. Sto. Cristo, San Jose del Monte, Bulacan.[101] This is the same barangay where the Yao family's poultry farm is situated. Appellant Reyes, in fact, admitted that the poultry farm is near his residence.[102] There is a huge possibility that appellant Reyes slept for a while, woke up before 11:00 p.m., and thereafter proceeded to the Yao family's poultry farm to participate in the kidnapping of the family. The same is true with appellant Flores. Wilfredo, appellant Flores' nephew, testified that he and appellant went to bed and slept together in the house of appellant's sister in Antipolo City at about 8:00 p.m. of 16 July 1999.[103] It is greatly possible that Wilfredo did not notice when appellant Flores woke up later at 9:00 p.m. and immediately proceeded to the Yao family's poultry farm to participate in the kidnapping of the family, arriving therein at about 11:00 p.m. It is a fact that a person coming from Antipolo City may reach San Jose del Monte, Bulacan in two hours via a motor vehicle, considering that there was no more heavy traffic at that late evening. Obviously, appellants Reyes and Flores failed to prove convincingly that it was physically impossible for them to be at the crime scene during the incident.

Appellant Flores submitted two pictures which, according to him, show that he worked as a construction worker from 12 July 1999 up to 30 July 1999 while staying in his sister's house at Antipolo City. These pictures, however, do not clearly and convincingly support such claim, because (1) the pictures were undated; (2) the shots were taken from a far distance; and (3) the face of the man in the pictures which appellant Flores claims as his is blurred, unrecognizable and almost hidden, as such person is wearing a cap and is in a position where only the right and back portions of his head and body are visible.

Appellant Arnaldo also failed to prove with convincing evidence his defense of frame-up. Aside from his self-serving testimony that he was a former PAOCTF agent and that he was beaten and included as accused in the kidnapping of the Yao family by the PAOCTF agents because he failed to remit to the PAOCTF officers the proceeds of his sale of shabu, he did not present convincing proof to support said allegations. He submitted the calling card of Colonel Mancao, which appears to have been signed by the latter at the back portion, but there is nothing on it which indicates or verifies that appellant Arnaldo was indeed a former PAOCTF agent. He also submitted a prayer book containing his handwritten narration of torture he allegedly experienced at the hands of the PAOCTF agents, but this does not conclusively show that he was beaten by the PAOCTF agents. As we earlier found, appellant Arnaldo did not produce any medical records/certificates or file any complaint against the PAOCTF agents to bolster his claim of maltreatment.

It is true that the alibis of appellants Reyes and Flores and the defense of frame-up of appellant Arnaldo were corroborated on some points by the testimonies of some of their relatives/friends. We have, however, held that alibi and the defense of frame-up become less plausible when they are corroborated only by relatives and friends because of perceived partiality.[104]

Indeed, the positive and credible testimonies of Abagatnan, Robert and Yao San prevail over the alibis and defense of frame-up of appellants.[105]

We shall now determine the propriety of appellants' conviction for the special complex crime of kidnapping for ransom with homicide and the corresponding penalties imposed.

Under Article 267 of the Revised Penal Code, the crime of kidnapping is committed with the concurrence of the following elements: (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 is 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 or detained is a minor, female,

or a public officer.[106] All of the foregoing elements were duly establish by the testimonial and documentary evidences for the prosecution in the case at bar. First, appellants and their cohorts are private individuals. Second, appellants and their cohorts kidnapped the Yao family by taking control of their van and detaining them in a secluded place. Third, the Yao family was taken against their will. And fourth, threats to kill were made and the kidnap victims include females.

Republic Act No. 7659 provides that the death penalty shall be imposed if any of the two qualifying circumstances is present in the commission of the kidnapping: (1) the motive of the kidnappers is to extort ransom for the release of the kidnap victims, although none of the circumstances mentioned under paragraph four of the elements of kidnapping were present. Ransom means money, price or consideration paid or demanded for the redemption of a captured person that would release him from captivity.[107] Whether or not the ransom is actually paid to or received by the perpetrators is of no moment.[108] It is sufficient that the kidnapping was committed for the purpose of exacting ransom;[109] and (2) the kidnap victims were killed or died as a consequence of the kidnapping or was raped, or subjected to torture or dehumanizing acts. Both of these qualifying circumstances are alleged in the information and proven during trial.

As testified to by Abagatnan, Robert and Yao San, appellants and their cohorts demanded the amount of P5 million for the release of Chua Ong Pong Sim and Raymond. In fact, Yao San went to the Usan dumpsite, Litex Road, Fairview, Quezon City, to hand over the ransom money to appellants and their cohorts, but the latter did not show up. It was also apparent that Chua Ong Ping Sim and Raymond were killed or died during their captivity. Yao San declared that appellants and their cohorts called up and told him that they would kill Chua Ong Ping Sim and Raymond who were still under their custody, because they heard the radio report that the incident was already known to the police. True to their threats, the corpses of Chua Ong Ping Sim and Raymond were later found dumped in La Mesa Dam. Their respective death certificates show that they died of asphyxia by strangulation.

Withal, the death penalty cannot be imposed on the appellants in view of the passage of Republic Act No. 9346 on 24 June 2006 prohibiting the imposition of death penalty in the Philippines. In accordance with Sections 2 and 3 thereof, the penalty that should be meted out to the appellants is reclusion perpetua without the possibility of parole. The Court of Appeals, therefore, acted accordingly in imposing the penalty of reclusion perpetua without the possibility of parole on each of the appellants.

The Court of Appeals was also correct in ordering appellants to jointly and severally pay civil indemnity and exemplary damages to the Yao family. Nonetheless, their corresponding amounts should be modified. In *People v. Quiachon*,^[110] we explained that even if the death penalty was not to be imposed on accused because of the prohibition in Republic Act No. 9346, the civil indemnity of P75,000.00 was still proper, as the said award was not dependent on the actual imposition of the death penalty but on the fact that qualifying circumstances warranting the imposition of the death penalty attended the commission of the offense. As earlier stated, both the qualifying circumstances of demand for ransom and the double killing or death of two of the kidnap victims were alleged in the information and proven during trial. Thus, for the twin deaths of Chua Ong Ping Sim and Raymond, their heirs (Yao San, Robert, Lenny, Matthew and Charlene) are entitled to a total amount of P150,000.00 as civil indemnity. Exemplary damages are imposed by way of example or correction for the public good.^[111] In criminal offenses, exemplary damages may be recovered when the crime was committed with one or more aggravating circumstances, whether ordinary or qualifying.^[112] Since both the qualifying circumstances of demand for ransom and the killing or death of two of the kidnap victims (Chua Ong Ping Sim and Raymond) while in captivity were alleged in the information and proven during trial, and in order to deter others from committing the same despicable acts, the award of exemplary damages is proper. The total amount of P100,000.00 as exemplary damages should be modified. In several cases,^[113] we awarded an amount of

P100,000.00 to each of the kidnap victims. As in this case, the amount of P100,000.00 as exemplary damages should be awarded each to Yao San, Robert, Lenny, Matthew, Charlene, Abagatnan and Ortea. This makes the total amount of exemplary damages add up to P700,000.00.

The appellate court aptly held that the award of moral damages is warranted. Under Article 2217 of the New Civil Code, moral damages include physical suffering, mental anguish, fright, serious anxiety, wounded feelings, moral shock and similar injury. Article 2219 of the same Code provides that moral damages may be recovered in cases of illegal detention. There is no doubt that each member of the Yao family suffered physical and/or psychological trauma because of the ordeal, especially because two of the family members were ruthlessly killed during their captivity. Pursuant to prevailing jurisprudence,[114] Yao San, Robert, Lenny, Matthew, Charlene, Abagatnan and Ortea should each receive the amount of P100,000.00 as moral damages. Per computation, the total amount of moral damages is P700,000.00 and not P500,000.00 as fixed by the RTC and the Court of Appeals.

Finally, we observed that the RTC and the Court of Appeals denominated the crime committed by appellants in the present case as the special complex crime of kidnapping for ransom with double homicide since two of the kidnap victims were killed or died during the kidnapping. The word "double" should be deleted therein. Regardless of the number of killings or deaths that occurred as a consequence of the kidnapping, the appropriate denomination of the crime should be the special complex crime of kidnapping for ransom with homicide.

WHEREFORE, the Decision, dated 14 August 2006, and Resolution, dated 18 October 2006, of the Court of Appeals in CA-G.R. CR-H.C. No. 02301 is hereby AFFIRMED with the following MODIFICATIONS: (1) the total amount of civil indemnity is P150,000.00; (2) the total amount of exemplary damages is P700,000.00; (3) the total amount of moral damages is P700,000.00; and (4) the appropriate denomination of the crime committed by appellants is the special complex crime of kidnapping for ransom with homicide.

SO ORDERED.

Ynares-Santiago, (Chairperson), Carpio[*], Corona[**], and Peralta, JJ., concur.

* Per Special Order No. 568, dated 12 February 2009, signed by Chief Justice Reynato S. Puno, designating Associate Justice Antonio T. Carpio to replace Associate Justice Ma. Alicia Austria-Martinez, who is on official leave under the Court's Wellness Program.

** Associate Justice Renato C. Corona was designated to sit as additional member replacing Associate Justice Antonio Eduardo B. Nachura per Raffle dated 24 September 2007.

[1] Penned by Associate Justice Martin S. Villarama, Jr. with Associate Justices Lucas P. Bersamin and Celia C. Librea-Leagogo concurring; rollo, pp. 3-34.

[2] CA rollo, p. 445.

[3] Id. at 48-61.

[4] Records, pp. 42-43.

[5] Id. at 72-78 & 94-96.

[6] TSN, 26 October 1999, pp. 3-14; TSN, 11 August 2000, pp. 3-7; TSN, 21 September 2000, pp. 2- 8.

[7] TSN, 26 October 1999, pp. 16-17; TSN, 11 August 2000, p. 7.

[8] Records, p. 34.

- [9] Id.
- [10] TSN, 26 October 1999, pp. 16-23; TSN, 7 December 1999, pp. 2-5; TSN, 11 August 2000, pp. 8- 9.
- [11] TSN, 7 December 1999, pp. 4-7.
- [12] Id. at 7-8; TSN, 11 August 2000, pp. 10-12.
- [13] Records, p. 35.
- [14] Id; TSN, 11 August 2000, pp. 12-14.
- [15] TSN, 7 December 1999, pp. 8-9; TSN, 11 August 2000, pp. 14-15; Records, p. 35.
- [16] Records, pp. 15-17.
- [17] Id. at 5, 8, 12, & 24-28.
- [18] Id. at 13-14 & 33, 35, & 38.
- [19] Id. at 46-48, 63-64 & 302-306.
- [20] Id. at 220-222.
- [21] Id. at 223.
- [22] Id. at 224.
- [23] Id. at 225-228.
- [24] Id. at 229-231.
- [25] Id. at 233-235.
- [26] Id. at 236-237.
- [27] Id. at 238.
- [28] Id. at 302-306.
- [29] Id. at 312-316.
- [30] Id. at 317-318.
- [31] TSN, 7 June 2001, pp. 3-21.
- [32] TSN, 10 July 2001, pp. 3-6.
- [33] Id. at 10-16; TSN, 21 August 2001, pp. 3-14.
- [34] TSN, 6 March 2001, pp. 3-10.
- [35] TSN, 24 May 2001, pp. 2-9.
- [36] Records, Volume VI, Index of Exhibits.
- [37] Id.
- [38] Records, p. 357.
- [39] CA rollo, p. 61.

- [40] G.R. Nos. 147678-87, 7 July 2004, 433 SCRA 640.
- [41] Rollo, p. 34.
- [42] CA rollo, pp. 85-132, 148-164 & 198-219.
- [43] Id. at 94-95, 150-151 & 200-201.
- [44] People v. Guevarra, G.R. No. 182192, 29 October 2008.
- [45] TSN, 26 October 1999, pp. 14 & 22.
- [46] TSN, 11 August 2001, pp. 6, 9, 10, 18 & 19.
- [47] TSN, 21 September 2000, pp. 6, 7, 8, 10, 14, 15, 19,
- [48] TSN, 7 December 1999, p. 51; TSN, 8 February 2000, p. 11; TSN, 19 September 2000, p. 3.
- [49] TSN, 19 September 2000, p. 3.
- [50] TSN, 8 February 2000, p. 8; TSN, 21 September 2000, p. 14.
- [51] TSN, 14 January 2000, p. 38.
- [52] TSN, 7 December 1999, p. 26; TSN, 14 January 2000, p. 32; TSN, 19 September 2000, p. 19.
- [53] TSN, 26 October 1999, p. 14; TSN, 19 September 2000, p. 5; TSN 21 September 2000, p. 10.
- [54] TSN, 19 September 2000, p. 14; TSN 21 September 2000, p. 7.
- [55] 357 Phil. 924, 933-934 (1998).
- [56] People v. Aguila, G.R. No. 171017, 6 December 2006, 510 SCRA 642, 658.
- [57] People v. Ubaldo, 396 Phil. 509, 520 (2000).
- [58] TSN, 26 September 2000, p. 14.
- [59] People v. Fajardo, Jr., G.R. No. 173022, 23 January 2007, 512 SCRA 360, 373.
- [60] People v. Dadles, 343 Phil. 916, 924 (1997).
- [61] People v. Dorico, 153 Phil. 458, 475 (1973).
- [62] People v. Geronimo, 153 Phil. 1, 10 (1973).
- [63] At large.
- [64] Records, pp. 312-318.
- [65] People v. Fabro, 342 Phil. 708, 721 (1997).
- [66] Id.
- [67] People v. Base, 385 Phil. 803, 815 (2000).
- [68] Id.
- [69] People v. Sayaboc, 464 Phil. 824, 839 (2004).
- [70] People v. Agustin, 310 Phil. 594, 612 (1995).

- [71] *People v. Olermo*, 454 Phil. 147, 165 (2003).
- [72] *Gamboa v. Cruz*, G.R. No. L-56291, 27 June 1988, 162 SCRA 642, 653.
- [73] *People v. Deniega*, G.R. No. 103499, 29 December 1995, 251 SCRA 626, 637.
- [74] *People v. Velarde*, 434 Phil. 102, 119 (2002).
- [75] *People v. Base*, supra note 67.
- [76] *Records*, pp. 312-318.
- [77] TSN, 25 September 2001 and 27 September 2001.
- [78] TSN, 27 September 2001, pp. 5-9.
- [79] *Id.* at 9-15.
- [80] TSN, 25 September 2001, pp. 2-14.
- [81] *Id.* at 14-19.
- [82] *People v. Velarde*, supra note 74.
- [83] TSN, 27 September 2001, p. 5.
- [84] *Id.*
- [85] TSN, 25 September 2001, pp. 4-5.
- [86] *Id.* at 6.
- [87] Supra note 65 at 726.
- [88] *People v. Mojello*, 468 Phil. 944, 954 (2004).
- [89] *People v. Base*, supra note 67.
- [90] *People v. Bagnate*, G.R. Nos. 133685-86, 20 May 2004, 428 SCRA 633, 651.
- [91] *People v. Fabro*, supra note 65.
- [92] *Records*, p. 18.
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- [94] 229 Phil. 577, 582 (1986).
- [95] *People v. Bagnate*, supra note 90.
- [96] *Santos v. Sandiganbayan*, 400 Phil. 1175, 1206 (2000).
- [97] G.R. No. 88451, 5 September 1991, 201 SCRA 364, 377.
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- [99] *People v. Guevarra*, supra note 44.
- [100] *People v. Montesa*, G.R. No. 181899, 27 November 2008.
- [101] TSN, 6 March 2001, p. 3.

[102] *Id.* at 11-12.

[103] TSN, 22 May 2001, p. 6.

[104] *People v. Guevarra*, *supra* note 44; *People v. Larranaga*, G.R. Nos. 138874-75, 21 July 2005, 463 SCRA 652, 662; *People v. Calumpang*, G.R. No. 158203, 31 March 2005, 454 SCRA 719, 736; *People v. Datingginoo*, G.R. No. 95539, 14 June 1993, 223 SCRA 331, 335.

[105] *People v. Fajardo, Jr.*, *supra* note 59.

[106] *People v. Jatulan*, G.R. No. 171653, 24 April 2007, 522 SCRA 174, 183.

[107] *Id.* at 187.

[108] *Id.*

[109] *Id.*

[110] G.R. No. 170236, 31 August 2006, 500 SCRA 704, 719.

[111] New Civil Code, Article 2229.

[112] New Civil Code, Article 2223.

[113] *People v. Garalde*, G.R. No. 173055, 13 April 2007, 521 SCRA 327, 355; *People v. Martinez*, 469 Phil. 558, 578 (2004); *People v. Bisda*, 454 Phil. 194, 239 (2003).

[114] *People v. Garalde*, *id.*; *People v. Borromeo*, 380 Phil. 523, 531 (2000); *People v. Reyes*, 329 Phil. 1043, 1049 (1996).

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