

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JERRY R. PEPINO AND DAISY M. BALAAAN, APPELLANTS.

G.R. No. 183479. June 29, 2010

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

By Amended Information of February 9, 1998, appellants Jerry R. Pepino (Pepino) and Daisy M. Balaan (Daisy), along with Alfredo R. Pelenio (Pelenio),^[1] were indicted before the Quezon City Regional Trial Court (RTC) for Kidnapping for Ransom with Serious Illegal Detention, as amended by Republic Act (RA) No. 7659,^[2] allegedly committed as follows:

That on or about October 18, 1997 in Quezon City, Metro Manila and within the jurisdiction of this Honorable Court, the said accused conspiring and confederating together and mutually helping each other, did then and there willfully, unlawfully and feloniously kidnap ANITA D. CHING, a businesswoman, and brought her to a safehouse for the purpose of demanding ransom in the amount of P500,000.00 thereby detaining her and depriving her of personal liberty from October 18 to November 6, 1997, until the said amount was paid.

CONTRARY TO LAW.^[3]

Culled from the evidence is the following version of the prosecution:

At 10:00 p.m. of October 18, 1997, Anita Ching (the victim) left her Goldline Tours office in Quezon City on board her car driven by Alejandro Soriano, together with her other employees Policarpio Guinto (Guinto) and Eva Guinto. The victim and company had barely left the office when they were blocked by a vehicle from which alighted four armed men who poked their firearms at them.^[4]

The armed men, two of whom “Pepino and Pelenio” were recognized by the victim and Guinto, forcibly took the victim and boarded her on their vehicle. The victim was 30 minutes later transferred to another vehicle and taken to a safehouse where she was to be detained for 19 days.^[5]

During the victim's captivity, ten persons alternately guarded her. Daisy, one of two female cohorts of the group, warned her not to escape, otherwise, she would be hanged.^[6] The group initially asked for a P30 million ransom but the amount was eventually negotiated down to P500,000.00 which was paid to the group.

The victim was on November 6, 1997 released and dropped near a drugstore along Bonifacio Avenue in Quezon City by Pelenio and Daisy.^[7]

Pelenio escaped from detention.^[8] He was eventually recaptured in Cebu City but was killed in a shootout with the police on February 3, 2000.^[9] Before his death, however, Pelenio sent a letter to the presiding judge of the trial court asking for forgiveness for his escape and admitting his complicity with Pepino in the crime.^[10]

Sr./Insp. Vicente Arnado, who was called as a hostile witness for the defense, identified Pepino as the leader of a notorious kidnap-for-ransom group.^[11]

Without presenting evidence, Pepino merely challenged his warrantless arrest for kidnapping as illegal, insisting that he was arrested not for said crime but as an incident of his arrest for illegal possession of firearms.

As for Daisy who claimed to have been arrested on December 6, 1997 with her uncle Pelenio, she denied having met the victim at the safehouse, alleging that it was only on December 18, 1997 when she was presented at the Department of Justice that she met the victim for the first time.[12]

Branch 86 of the Quezon City RTC, by Decision of October 9, 2000,[13] found Pepino and Daisy guilty beyond reasonable doubt as principal and accomplice, respectively, of the crime charged, disposing as follows:

WHEREFORE, PREMISES CONSIDERED, JUDGMENT is hereby rendered finding the accused Jerry Pepino guilty beyond reasonable doubt of the crime of kidnapping for ransom with serious illegal detention and hereby sentences him to suffer the supreme penalty of death and to indemnify the private complainant actual damages in the amount of P500,000.00 and moral damages in the amount of P50,000.00, plus costs.

Accused Daisy Balaan is hereby found guilty as an accomplice in the crime of kidnapping for ransom with serious illegal detention and the Court hereby sentences her to suffer the indeterminate penalty of six years and one day of prision mayor to twelve years and one day of reclusion temporal, and to indemnify the private complainant, jointly and severally, with Jerry Pepino to the extent of one-third, the amounts mentioned above.

The case against Alfredo Pelinio, who appears to have died during the pendency of this case, is hereby considered closed.

SO ORDERED. (emphasis and underscoring supplied)

Daisy having failed to attend the promulgation of judgment, a warrant for her arrest was issued.[14] It appears that she has remained at-large.[15] Despite her flight, she moved for reconsideration of the decision which the trial court, by Order of January 9, 2001,[16] denied. She thereafter filed a notice of appeal which was given due course by the trial court.[17]

In view of the imposition of the death penalty on Pepino, the case was brought to the Court for automatic review.[18] By Resolution of February 1, 2005,[19] the Court referred the case to the Court of Appeals for action and disposition pursuant to *People v. Mateo*. [20] It appears that Pepino's appeal was consolidated with that of Daisy's.

By Decision of May 29, 2006,[21] the Court of Appeals affirmed the trial court's decision, noting that

Pepino did not testify, and for that matter presented no evidence to defeat or attenuate the charge or evidence brought against him. All he did in his defense was to raise the constitutional presumption of innocence, and to present his kins Renato Pepino, Larex Pepino [and] Zeny Pepino to testify that they and Pepino were illegally arrested in the latter's house in Lahug, Cebu City on December 7, 1997.

x x x x

Just like Pepino, [Daisy] claims that the evidence against her did not prove her guilt and overcome the constitutional presumption of innocence. But as said, the prosecution evidence was ample and clear and established her guilt beyond reasonable doubt. Clearly Anita [Ching] was cited out of context. The kidnapping covered a period of nineteen (19) days and what she said obviously referred to Day One when she was abducted by four (4) armed men. The testimony of a witness must be considered and calibrated in its entirety and not by truncated portions thereof or isolated passages therein (citation omitted). Thus it must be considered too that Anita [Ching] said [Daisy] was among the persons she had seen in her place of captivity and had even warned her that she would be hanged if she tried to escape. She said too that after ransom was paid, [Daisy] was one of two who brought her to a place and released her. These proved that [Daisy] was one of those in

conspiracy to commit the felony, and hers was not a mere passive and innocuous hovering presence while Anita [Ching] was in captivity.

x x x x (emphasis and underscoring supplied)

The appellate court having denied the motions for reconsideration of Pepino and Daisy by Resolution of October 9, 2006,[22] their cases were brought to the Court.

Pepino assails his conviction on, in the main, the following grounds: lack of positive proof that he actually participated in the crime; error in appreciating against him the alleged confession-letter of the now deceased Pelinio; and the illegality of his arrest.[23]

Daisy, for her part, contends, in the main, that the prosecution failed to prove her guilt beyond reasonable doubt.[24]

Appellants' separate appeals fail.

Since Daisy, without proffering any justifiable cause, failed to attend the promulgation of judgment and continues to be a fugitive from justice to date, her appeal must be dismissed. So Section 6 of Rule 120 of the Revised Rules of Court instructs:

SEC. 6. Promulgation of judgment.--The judgment is promulgated by reading it in the presence of the accused and any judge of the court in which it was rendered. However, if the conviction is for a light offense, the judgment may be pronounced in the presence of his counsel or representative. When the judge is absent or outside the province or city, the judgment may be promulgated by the clerk of court.

x x x x.

If the judgment is for conviction and the failure of the accused to appear was without justifiable cause, he shall lose the remedies available in these Rules against the judgment and the court shall order his arrest. Within fifteen (15) days from promulgation of judgment, however, the accused may surrender and file a motion for leave of court to avail of these remedies. He shall state the reasons for his absence at the scheduled promulgation and if he proves that his absence was for a justifiable cause, he shall be allowed to avail of said remedies within fifteen (15) days from notice. (emphasis and underscoring supplied)

On to the appeal of Pepino. That he was positively identified by the victim is clear.

Q

After they blocked your car, what happened?

A

Four armed men alighted.

Q

What did this [sic] armed men do?

A

They opened our car and they were forcing me to alight.

Q

Kindly look around this courtroom and can you tell us if you can identify any of the men that blocked your car?

A

Jerry Pepino (Witness pointing to accused Jerry Pepino)

Q

Who was carrying the armalite?

A

(Witness pointing to accused Jerry Pepino)

Q

There is another accused here. I am showing to you a picture of another person, can you tell us what is the relationship of this male person in the list of the accused?

A

This is Pelenio, Alfredo, he was the one who took me and he was there on the car.

Q

May we request that this particular photo of Alfredo Pelenio be marked as Exhibit A. Pelenio escaped while in the custody of the police.

x x x x.

Q

How was [sic] the five of you seated in the car?

A

I was between the two persons who were carrying armalite.

Q

Who was beside the driver?

A

Alfredo Pelenio.

Q

Who was beside you on the right side?

A

Jerry Pepino.

x x x x[25] (emphasis and underscoring supplied)

Pepino was identified too by Guinto as one of the armed men who abducted the victim.

Fiscal:

While you were driving on at Manotok, was there any unusual incident that happened?

A

Yes, sir. We were blocked by a car.

Q

What kind of a car?

A

Toyota, Corolla.

Q

After that what happened?

A

The four doors were forcibly opened and four men went out of a car. And then two men approached us. One of the men poked a gun at us and the other man also poked a gun at the driver.

x x x x

Q

If you see this [sic] people or this [sic] men who approached you and who poked their firearm[s] at you and the driver, will you be able to identify them.

A

Yes, sir.

Fiscal:

Kindly look around and step down and tap the shoulder of those two people[.]

Witness:

(Witness pointing to the accused Alfredo Pelenio and Jerry Pepino)

Q

What did the other two persons do?

A

They just stand [sic] at their vehicle, near their vehicle.

Q

How far is that vehicle from your vehicle?

A

It was near, about 3 meters.

x x x x.[26] (emphasis and underscoring supplied)

That Guinto did not err in identifying Pepino as one of the malefactors, there is no doubt.

Q.

And this place is well lighted?

A.

There was light.

x x x x

Q.

When these kidnappers tried to kidnap Mrs. Anita Ching[,] were they not wearing bonnet or mask?

A.

No, sir.

Q.

So you could really identify them because they were not wearing masks?

A.

Yes, sir.[27] (emphasis and underscoring supplied)

The damaging evidence against him notwithstanding, Pepino did not at all offer any controverting evidence. He merely relied on the alleged illegality of his arrest to escape criminal liability.

Pepino now belatedly harps on the victim's alleged failure to immediately identify him in a line-up at the National Bureau of Investigation. He draws attention to the victim's Sinumpaang Salaysay[28] reflecting that she only pointed to Pelenio and Daisy in the line-up.

Pepino's position fails to persuade. The victim's in-court identification was more than sufficient to establish his identity as one of the malefactors.[29] The victim's Sinumpaang Salaysay is generally considered inferior to that she gave in open court.[30] Anyway, she satisfactorily explained why she failed to point to Pepino in the 30-person line-up, viz:

Atty. Chua:

We noticed that under par. 17 of this particular affidavit[,] you only identified Alfredo Pelenio and Daisy Balaan, and in the courtroom, you identified Jerry Pepino[.] [C]an you tell us why you didn't identify Jerry Pepino at the time you executed this affidavit?

Witness:

While I was at the NBI, they showed me about thirty (30) persons there, and thru that mirror, I was not able to see Jerry Pepino.

Q:

When were you able to point to Jerry Pepino?

A:

When we saw each other at the Department of Justice (DOJ).[31] (emphasis and underscoring supplied)

Pepino's assertion that the trial court credited the confession-letter of Pelenio in convicting him is misleading. The trial court merely noted the contents of Pelenio's letter which letter did not even form part of the evidence for the prosecution. Nowhere in the decision of the trial court is it reflected that the letter was used as basis in convicting him. What is clear is that the trial court relied on the testimonies of the prosecution witnesses.

As to the alleged illegality of Pepino's arrest, it is settled that any irregularity attending the arrest of an accused should be timely raised in a motion to quash the Information at any time before arraignment, failing which he is deemed to have waived.[32] Since Pepino did not raise such alleged irregularity early on, he is now estopped.

The elements of kidnapping for ransom under Article 267[33] of the Revised Penal Code (RPC), as amended, are as follows: (a) intent on the part of the accused to deprive the victim of his liberty; (b) actual deprivation of the victim of his liberty; and (c) motive of the accused, which is extorting ransom for the release of the victim.[34] The prosecution established all these elements. Consider the following testimony of the victim:

Q

You said that you were kidnapped on October 18, 1997, up to when were you kidnapped?

A

Up to November 6, 1997.

[Q]

How long was that?

[A]

Nineteen days.

Q

During the duration of your detention, in that house, were you able to use the telephone?

A

Yes, sir.

Q

How many times?

A

Three.

x x x x

Q

Whom are you talking to during those three times or three occasions that you used the telephone?

A

I was calling my husband.

Q

What did you talk about with your husband during those occasions?

A

About the ransom money to be given.

Q

How many [sic] ransom money were they initially asking?

A

Thirty Million.

x x x

[Q]

You said that you were able to talk to any of the ten people while you were in captivity?

A

Yes, sir.

Q

Did this include Daisy Balaan?

A

Yes, sir.

Q

What did Daisy Balaan tell you?

A

She told me that I will be "bibitayin" or to be hanged.

Q

Why did she tell you this?

A

Because I have the intention to escape.

x x x x

COURT:

Were you blindfolded or tied?

A

No, sir.

Atty. Chua:

You said that you were detained for nineteen days and you were released sometime on November 6, 1997, can you tell the Court how you were released?

A

After our family gave the ransom money.

Q

How much ransom was paid by your family?

A

P500,000.00.

x x x x[35] (emphasis and underscoring supplied)

The conviction of Pepino must thus be affirmed.

With the passage of RA No. 9346[36] which amended RA No. 7659, the penalty of reclusion perpetua without eligibility for parole, in lieu of death, should be imposed on Pepino.

While the Court sustains the imposition of moral damages, the victim having undoubtedly suffered serious anxiety and fright when she was kidnapped[37] and detained, the Court sees the need to increase the amount awarded from P50,000.00 to P200,000.00 in light of the circumstances of the case.

While actual damages may be awarded corresponding to the amount of ransom paid,[38] the Court is constrained to delete the amount awarded for failure to prove the same with reasonable degree of certainty, premised upon competent proof and the best evidence available.[39] Aside from the testimony of the victim that a P500,000 pay-off was made, there is no data on who actually handed the ransom, who received it, and under what circumstances the pay-off was made, thus leaving nagging doubts about the tale.

Nonetheless, under Article 2221[40] of the Civil Code, nominal damages may be granted in order that a right of the victim which has been violated may be vindicated. The Court thus awards P200,000.00 as nominal damages to the victim.

The Court additionally awards exemplary damages to the victim in view of the qualifying circumstance of demand for ransom. *People v. Catubig*[41] enlightens:

The term "aggravating circumstances" used by the Civil Code, the law not having specified otherwise, is to be understood in its broad or generic sense. The commission of an offense has a two-pronged effect, one on the public as it breaches the social order and the other upon the private victim as it causes personal sufferings, each of which is addressed by, respectively, the prescription of heavier punishment for the accused and by an award of additional damages to the victim. The increase of the penalty or a shift to a graver felony underscores the exacerbation of the offense by the attendance of aggravating circumstances, whether ordinary or qualifying, in its commission. Unlike the criminal liability which is basically a State concern, the award of damages, however, is likewise, if not primarily, intended for the offended party who suffers thereby. It would make little sense for an award of exemplary damages to be due the private offended party when the aggravating circumstance is ordinary but to be withheld when it is qualifying. Withal, the ordinary or qualifying nature of an aggravating circumstance is a distinction that should only be of consequence to the criminal, rather than to the civil, liability of the offender. In fine, relative to the civil aspect of the case, an aggravating circumstance, whether ordinary or qualifying, should entitle the offended party to an award of exemplary damages within the unbridled meaning of Article 2230 of the Civil Code. (emphasis and underscoring supplied)

The award of exemplary damages is justified, the lowering of the penalty to reclusion perpetua in view of the prohibition of the imposition of the death penalty notwithstanding, it not being dependent on the actual imposition of the death penalty but on the fact that a qualifying circumstance warranting the imposition of the death penalty attended the kidnapping.[42] Based on prevailing jurisprudence,[43] the Court awards P100,000.00 as reasonable for the purpose.

WHEREFORE, the Decision dated May 29, 2006 of the Court of Appeals convicting appellants of the crime charged is **AFFIRMED** with **MODIFICATION** in light of the foregoing disquisitions.

Appellant **JERRY R. PEPINO** is sentenced to suffer the penalty of reclusion perpetua without eligibility for

parole pursuant to RA No. 9346 and to pay the amounts of P200,000.00 as moral damages, P200,000.00 as nominal damages, and P100,000.00 as exemplary damages. The award of actual damages is DELETED for insufficiency of evidence.

The appeal of appellant DAISY M. BALAAN is DENIED in accordance with Section 6, Rule 120 of the Revised Rules of Criminal Procedure.

Costs against appellant Jerry Pepino.

SO ORDERED.

Corona, C.J., Carpio, Velasco, Jr., Leonardo-De Castro, Peralta, Bersamin, Del Castillo, Abad, Villarama., Jr., Perez, and Mendoza, JJ., concur.

Nachura, J., no part; signed pleading as Sol Gen

Brion, J., on leave.

[1] Also referred to as PELINIO or PELIX;O as indicated in some parts of the records.

[2] An Act to Impose the Death Penalty on Certain Heinous Crimes, amending for that purpose the Revised Penal Laws and for other Purposes.

[3] Records I, p. 20.

[4] Transcript of Stenographic Notes (TSN), January 15, 1999, pp. 2-3; TSN, May 20, 1998, p. 4.

[5] TSN, January 15, 1999, pp. 3-5.

[6] Id. at 5-6.

[7] Id. at pp. 5-7.

[8] Records I, p. 132.

[9] Per report of the Presidential Anti-Organized Crime Task Force; RTC Records II, p. 298.

[10] Records II, pp. 274-275. The RTC Decision noted Pelenio's letter, viz: x x x x. It may be worth mentioning, however, that he sent a letter dated November 19, 1999 asking the Court for forgiveness for having escaped from his escorts from the Quezon City Jail. He admitted that he and accused Jerry Pepino participated in the kidnapping of Mrs. Ching. He, however, insisted that Daisy Balaan has nothing to do with the crime.

[11] TSN, April 7, 1999, p. 7.

[12] TSN, January 18, 2000, pp. 3-4.

[13] Records II, pp. 342-350; Penned by Judge Teodoro A. Bay.

[14] Id. at 352.

[15] Rollo, pp. 30-31.

[16] Records II, p.378.

[17] Id. at p.381.

[18] CA rollo, p. 33. The instant case was initially docketed as G.R. No. 146589.

[19] Id. at 191.

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

[21] CA rollo, pp. 194-207. Penned by Associate Justice Roberto A. Barrios with Associate Justices Mario L. Guariña III and Santiago Javier Ranada.

[22] Id. at 331-332.

[23] Id. at 79-102.

[24] Id. at 42.

[25] TSN, January 15, 1999, pp. 3-4.

[26] TSN, May 20, 1998, pp. 4-5.

[27] TSN, June 22, 1998, p.7.

[28] Records I, pp. 8-9.

[29] Vide: People v. Jalosjos, G.R. No. 132875-76, 421 Phil. 43, 74 (2001).

[30] People v. Lenantud, G.R. No. 128629, 405 Phil. 189, 203 (2001).

[31] TSN, January 15, 1999, pp. 7-8.

[32] Eugenio v. People, G.R. No. 168163, March 26, 2008, 549 SCRA 433.

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

1. If the kidnapping or detention shall have lasted for more than three days;
2. If it shall have been committed simulating public authority;
3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained; or if threats to kill him shall have been made;
4. If the person detained or kidnapped shall be a minor, except when the accused is any of the parents, female, or public officer.

The penalty of death where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances above-mentioned were present in the commission of the offense. x x x x

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

[35] TSN, January 15, 1999, pp. 4-6.

[36] An Act Prohibiting the Imposition of the Death Penalty in the Philippines.

[37] People v. Baldogo G.R. No. 128106-07, 444 Phil. 35, 66 (2003) citing Article 2219 of the Civil Code and People v. Garcia, G.R. No. 133489, 424 Phil. 158 (2002).

[38] People v. Ejandra, G.R. No. 134203, 429 SCRA 364, 383 (2004).

[39] People v. Silongan, G.R. No. 137182, 449 Phil. 478, 498 (2003).

[40] Art. 2221. Nominal damages are adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him.

[41] G.R. No. 137842, 416 Phil. 102, 119-120 (2001).

[42] Cf. *People v. Quiachon*, G.R. No. 170236, 500 SCRA 704, 719 (2006) In this qualified rape case, the Court ruled that even if the death penalty was not imposed pursuant to R.A. No. 9346, the imposition of civil indemnity and exemplary damages was still proper since such awards are dependent on the qualifying circumstances that attended the commission of the offense, and not on the actual imposition of the death penalty.

[43] *People v. Mamantak*, G.R. No. 174659, 560 SCRA 298, 310 citing *People v. Solangon*, G.R. No. 172693, 537 SCRA 746 (2007); *People v. Baldogo*, 444 Phil. 35, 66 (2003); *People v. Garcia*, 424 Phil. 158, 194 (2002).

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