

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DIMA MONTANIR, RONALD NORVA AND EDUARDO CHUA, ACCUSED-APPELLANTS.

G.R. No. 187534. April 04, 2011

Ponente: PERALTA, J.

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PERALTA, J.:

For consideration of this Court is the Decision[1] dated April 22, 2008 of the Court Appeals (CA) in CA- G.R. CR-HC No. 00499, affirming with modification the Decision[2] dated October 28, 2004 of the Regional Trial Court (RTC) of Valenzuela City, Branch 171, finding Appellants Dima Montanir, Ronald Norva and Eduardo Chua, guilty beyond reasonable doubt of the crime of Kidnapping under Article 267 of the Revised Penal Code, as amended.

The records bear the following factual antecedents:

Josie Herrera, Robert Uy, Alicia "a.k.a. Alice" Buenaflor, together with appellants Ronald Norva and Eduardo Chua, on December 17, 1997, concocted a plan to kidnap Rafael Mendoza, and after several days of conducting surveillance on their intended victim, on January 5, 1998, they decided to kidnap Rafael in Ali Mall, Cubao, Quezon City. However, the intended kidnapping failed, because Rafael did not show up at the said place. On February 5, 1998, a second attempt was made, but they encountered an accident before they could even execute their original plan.

Around 5:30 a.m. of February 17, 1998, Alicia called up Rosalina Reyes, a partner of Rafael, to tell her that she wanted to meet her and Rafael at Jollibee, BBB, Valenzuela City to settle the former's loan of P350,000.00. She requested Rosalina to bring the land title which she was given as collateral for the said loan.

Rosalina and Rafael arrived at Jollibee ahead of Alicia. Eventually, around 9:15 a.m. of the same date, Alicia showed up outside the store aboard a car. She was with appellant Ronald Norva. Alicia motioned Rosalina and Rafael to approach the car, which the two did as requested. While inside the vehicle, Alicia introduced appellant Ronald as her cousin. Later on, Alicia informed Rosalina and Rafael that she would pay them at her place.

When the car passed by the street where Alicia's house was located, Rosalina asked the former where they were going. Alicia answered that they had to drop by the house of her financier who agreed to redeem her title and substitute as her creditor. Trusting Alicia, Rosalina and Rafael did not protest. They finally reached a house in Ciudad Grande, Valenzuela City.

Thereafter, appellant Ronald alighted from the vehicle and talked to a man inside a store, later identified as Jonard Mangelin. The gate of the house was then opened by appellant Dima. The car proceeded to the garage and Rosalina and Rafael were asked to go inside the house. Rosalina followed Alicia, while Rafael trailed Rosalina as they entered through a kitchen door. They passed by a man (Jessie Doe) who was washing his hands in the sink. While Rosalina was walking behind Alicia, she suddenly heard a dull moan coupled with the sound of stomping

feet. She looked back at the direction where the sounds came from and saw Rafael being forcibly dragged inside a room. She decided to look for Rafael and on her way, she saw "Jessie Doe" place his hand on Rafael's mouth and poke a gun at him. Rafael struggled to get free. Rosalina pleaded with "Jessie Doe" to have pity on Rafael because of his existing heart ailment. Appellant Ronald rushed towards her, poked a gun at her mouth, tied her to a bed and warned her not to make any noise. He told her that all they want is her money, upon which, Rosalina said that if they really wanted money, they should untie Rafael, who then appeared to be on the verge of having a heart attack. Rosalina was untied and she immediately rushed to Rafael and began pumping his chest. She asked Jonard, who had just entered the room, to help her pump Rafael's chest while she applied CPR on the latter. Jonard did as told. While CPR was being administered, appellant Dima started removing all of Rafael's personal belongings, which include his ring, wallet, watch and other items inside his pocket, and passed them on to appellant Ronald.

Afterwards, appellant Ronald instructed Jonard to take Rosalina to another room. While inside the room where she was brought, Rosalina begged Jonard to help her escape. Jonard was moved by Rosalina's plea and agreed to help her. During their conversation, Jonard told Rosalina that two women had tipped them off as the kidnap victims. When asked who they were, Jonard refused to reveal their identities.

Rosalina was transferred to the master's bedroom around 12:00 noon because certain female visitors arrived. After the visitors left, Rosalina was returned to the room where she was previously taken. Rosalina asked Jonard about Rafael's condition, to which he replied that Rafael would be brought to the hospital. A little later, at around 1 p.m., Jonard went to check on Rafael and confirmed that he was still alive.

Around 2:00 p.m., Rosalina heard the sound of someone being pummelled. Feeling nervous, she asked Jonard the whereabouts of Rafael and was told that he was brought to the hospital. But unknown to Rosalina, Rafael had just died and his body was placed inside the trunk of a car.

Around 6:30 p.m., Rosalina was informed that she will be brought to another safe house. She was taken to a car and placed at the back seat, together with Jonard and three other men, later identified as Larry, Jack and Boy. The driver of the car was appellant Ronald. Appellant Ronald instructed Jonard to cover Rosalina's head with a jacket which Jonard did. As they were about to leave, the man seated beside Ronald started to talk. Rosalina recognized the voice of Robert. She then lifted the jacket covering her head and was able to confirm that the one talking was Robert. Rosalina cried, "Robert, Robert, why did you do this, we did not do anything to you" and Robert responded, "Pasensiyahan na lang tayo."

By 10:00 p.m., they arrived at a certain house in Pandi, Bulacan where there was no electricity. Thus, they lit candles for illumination. Rosalina found the house familiar and concluded that it was Alicia's. Rosalina was brought to a room on the second floor and while inside the room, she was told by one of the men guarding her that one of the leaders wanted to talk to her. Per the leader's instruction, the guard put out the candle light. The man then seated himself beside Rosalina and warned her against escaping as they were a large and armed group. Rosalina recognized the voice as that of Robert's. Before he left the room, Robert gave instructions to Jonard and the other men inside. Meanwhile, the group started digging a pit at the back of the same house near the swimming pool.

Around 3:00 a.m. of the following day (February 18), the group buried Rafael's body in the pit. Thereafter, Robert instructed appellant Ronald to tell Jonard that the latter should kill Rosalina, which Jonard refused to do. Nonetheless, Robert instructed Jonard and the others to guard Rosalina well, as he himself would deal with her upon his return.

Rosalina heard the car leave around 5:00 a.m. of the same day. Sensing that Jonard was sympathetic to her, Rosalina begged him again to help her escape for the sake of her children.

When electricity was restored around 8 p.m., one of the men guarding Rosalina turned off the light inside the room. The room was only illuminated by a light coming from the hallway. Rosalina saw a person wearing a wig and sunglasses enter the room. Rosalina recognized him as Robert. Trying to mimic a woman by modulating his voice, Robert told her that Rafael was in the hospital and that he could still sign a check. He asked Rosalina the whereabouts of the other land titles and the identities of the other financiers whom she knew. Rosalina replied in the negative. Robert angrily poked a gun at her and shouted, "That's impossible," and then left the room. He gave instructions to his members and left.

At 9:00 p.m., Jonard went to Rosalina and told her about Robert's order to kill her, which caused the latter to panic and cry. She then implored the help of Jonard for her escape. Afterwards, Jonard went to his companions Larry, Jack and Boy and told them that he would help Rosalina escape. His companions immediately cocked their guns and an argument ensued. Rosalina talked to them and begged them all to spare her life. One of Jonard's companions told Rosalina that if they would allow her to escape, they too would get into trouble. Taking advantage of the situation, Rosalina suggested that all of them should escape. They all agreed to escape in the early morning.

Around 5:00 a.m., Rosalina, Jonard, Larry, Jack and Boy left the safe house. They walked through a rice field for about 30 minutes and then boarded a jeepney bound for Balagtas, Bulacan. From Balagtas, they took a bus going to Cubao and arrived at 7:30 a.m. Rosalina pawned her pieces of jewelry for P1,500.00 and gave the P1,000.00 to Larry, Jack and Boy. The three told Jonard to stay with Rosalina so that she would have a witness and, in case Rosalina would further need their help, left their address with Jonard.

When the three left, Rosalina immediately called Rafael's brother Tito, and related what happened to her and his brother. When Tito asked Jonard which hospital Rafael was brought to, Jonard revealed to Rosalina that Rafael died at the safe house in Ciudad Grande, Valenzuela City. Rosalina called her lawyer, Atty. Teresita Agbi and asked her to meet them at Farmer's, Cubao. When Atty. Agbi arrived, she accompanied them to the Department of Interior and Local Government (DILG) where an investigation was conducted.

The following day, at 4:00 a.m., two groups from the DILG were formed to arrest Alicia, Josie, the appellants, and Robert. Alicia and Josie were not at their homes, while appellants Ronald and Dima were arrested at the residence of Robert. While at the DILG office, Rosalina positively identified appellants Ronald and Dima as her kidnappers. Meanwhile, Jonard accompanied the police authorities to the safe house in Pandi, Bulacan and showed them where the body of Rafael was buried. The remains of Rafael was later on exhumed.

Thereafter, two Informations were filed with the RTC of Valenzuela City (Branch 171), with the following allegations:

Criminal Case No. 123-V-98

That on or about the 17[th] day of February 1998 in Valenzuela, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually helping one another, being then private person, did then and there wilfully, unlawfully and feloniously kidnap one ROSALINA REYES against her will and detained her, thereby depriving her of her liberty for a period of two days.

CONTRARY TO LAW.

Criminal Case No. 124-V-98

That on or about the 17[th] day of February 1998 in Valenzuela, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually helping one another, being then a private person, did then and there wilfully, unlawfully and feloniously kidnap one RAFAEL

MENDOZA against his will and detained him, thereby depriving him of his liberty and on the occasion thereof, the death of the victim resulted.

CONTRARY TO LAW.

Upon arraignment, with the assistance of counsel, Jonard and appellants Ronald, Dima and Eduardo, pleaded "not guilty" to the crime charged. Robert Uy, Alice Buenaflor and Jessie Doe remained at-large during the trial of the case. Jonard was later on discharged as a state witness. Afterwards, the trial on the merits ensued.

On October 28, 2004, the trial court rendered judgment against the appellants for the crime of kidnapping, the dispositive portion of which, reads:

WHEREFORE, in view of the foregoing, accused DIMA MONTANIR, RONALD NORVA, and EDUARDO CHUA are hereby found GUILTY beyond reasonable doubt of the crime of kidnapping and in accordance with Article 267 of the Revised Penal Code, as amended, this Court hereby imposes the penalty of DEATH on accused NORVA and MONTANIR. As regards accused CHUA, this Court hereby imposes the penalty of reclusion perpetua.

Further, accused Montanir, Norva and Chua are hereby held jointly and severally liable to pay the heirs of Mendoza the amount of Php 71,000.00 in actual damages and Php 50,000.00 as moral damages.

As for accused JOSIE HERRERA, the Court hereby ACQUITS her on reasonable doubt of the charge of kidnapping. Consequently, The Jail Warden of Valenzuela City Jail is hereby ordered to cause the immediate release of the said accused from detention unless she is otherwise being detained for some other legal and lawful cause.

With regard to accused ALICE BUENAFLO, ROBERT UY and one JESSIE DOE, let the cases against them be ARCHIVED pending their apprehension. Meantime, let an alias warrant issue for their apprehension.

Considering the penalty imposed on accused MONTANIR, NORVA and CHUA, let the entire records of these cases be elevated to the Court of Appeals for appropriate review of the judgment herein rendered.

SO ORDERED.

On automatic review, the CA affirmed the conviction with modification on the penalty imposed, thus:

WHEREFORE, in the light of the foregoing, the impugned Decision is AFFIRMED with MODIFICATION that the penalty of death imposed on accused Montanir and Norva is hereby modified to reclusion perpetua to conform to and in accordance with Republic Act No. 9346. Appellants Montanir, Norva and Chua are ordered to pay jointly and severally the amount of P50,000.00 as civil indemnity to the heirs of the victims.

Costs against appellants.

SO ORDERED.

Hence, the present appeal.

In their respective Briefs, appellants raised the following assignment of errors:

DIMA MONTANIR:

I.

THE TRIAL COURT GRAVELY ERRED IN GIVING CREDENCE TO THE INCONSISTENT AND INCREDIBLE TESTIMONIES OF THE PROSECUTION WITNESSES.

II.

THE TRIAL COURT GRAVELY ERRED IN FINDING ACCUSED-APPELLANT DIMA MONTANIR GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED DESPITE THE PATENT WEAKNESS OF THE PROSECUTION'S EVIDENCE.

EDUARDO CHUA:

I.

THE DECISION IS NOT IN ACCORD WITH LAW AND THE EVIDENCE.

II.

THE TRIAL COURT GRAVELY ERRED IN FINDING APPELLANT CHUA A CONSPIRATOR TO THE COMMISSION OF KIDNAPPING.

RONALD NORVA:

I.

THE TRIAL COURT GRAVELY ERRED IN GIVING CREDENCE TO THE INCONSISTENT AND INCREDIBLE TESTIMONIES OF THE PROSECUTION WITNESSES.

II.

THE TRIAL COURT GRAVELY ERRED IN FINDING ACCUSED-APPELLANT RONALD NORVA GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED DESPITE THE PATENT WEAKNESS OF THE PROSECUTION'S EVIDENCE.

First of all, it must be emphasized that the crime committed by the appellants, as ruled by the trial court and affirmed by the CA, is the special complex crime of Kidnapping with Homicide. After the amendment of the Revised Penal Code on December 31, 1993 by Republic Act No. 7659, Article 267 of the Revised Penal Code, now provides:

Kidnapping and serious illegal detention. - Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of reclusion perpetua to death:

1. If the kidnapping or detention shall have lasted 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 kidnapped or detained shall be a minor, except when the accused is any of the parents, female or a public officer;

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

When the victim is killed or dies as a consequence of the detention or is raped, or is subjected to torture or dehumanizing acts, the maximum penalty shall be imposed.

As expounded in *People v. Mercado*:^[3]

In *People v. Ramos*,^[4] the accused was found guilty of two separate heinous crimes of kidnapping for ransom and murder committed on July 13, 1994 and sentenced to death. On appeal, this Court modified the ruling and

found the accused guilty of the "special complex crime" of kidnapping for ransom with murder under the last paragraph of Article 267, as amended by Republic Act No. 7659. This Court said:

x x x This amendment introduced in our criminal statutes the concept of 'special complex crime' of kidnapping with murder or homicide. It effectively eliminated the distinction drawn by the courts between those cases where the killing of the kidnapped victim was purposely sought by the accused, and those where the killing of the victim was not deliberately resorted to but was merely an afterthought. Consequently, the rule now is: Where the person kidnapped is killed in the course of the detention, regardless of whether the killing was purposely sought or was merely an afterthought, the kidnapping and murder or homicide can no longer be complexed under Art. 48, nor be treated as separate crimes, but shall be punished as a special complex crime under the last paragraph of Art. 267, as amended by RA No. 7659.

This Court further discussed the nature of the special complex crime of Kidnapping with Homicide in *People v. Larrañaga*,^[5] thus:

A discussion on the nature of special complex crime is imperative. Where the law provides a single penalty for two or more component offenses, the resulting crime is called a special complex crime. Some of the special complex crimes under the Revised Penal Code are (1) robbery with homicide,^[6] (2) robbery with rape,^[7] (3) kidnapping with serious physical injuries,^[8] (4) kidnapping with murder or homicide,^[9] and (5) rape with homicide.^[10] In a special complex crime, the prosecution must necessarily prove each of the component offenses with the same precision that would be necessary if they were made the subject of separate complaints. As earlier mentioned, R.A. No. 7659 amended Article 267 of the Revised Penal Code by adding thereto this provision: "When the victim is killed or dies as a consequence of the detention, or is raped, or is subjected to torture or dehumanizing acts, the maximum penalty shall be imposed; and that this provision gives rise to a special complex crime. In the cases at bar, particularly Criminal Case No. CBU-45303, the Information specifically alleges that the victim Marijoy was raped "on the occasion and in connection" with her detention and was killed "subsequent thereto and on the occasion thereof." Considering that the prosecution was able to prove each of the component offenses, appellants should be convicted of the special complex crime of kidnapping and serious illegal detention with homicide and rape. It appearing from the overwhelming evidence of the prosecution that there is a "direct relation, and intimate connection"^[11] between the kidnapping, killing and raping of Marijoy, rape cannot be considered merely as an aggravating circumstance but as a component offense forming part of the herein special complex crime. It bears reiterating that in *People vs. Ramos*,^[12] and *People vs. Mercado*,^[13] interpreting Article 267, we ruled that "where the person killed in the course of the detention, regardless of whether the killing was purposely sought or was merely an afterthought, the kidnapping and murder or homicide can no longer be complexed under Article 48, nor be treated as separate crimes, but shall be punished as a special complex crime under the last paragraph of Article 267." The same principle applies here. The kidnapping and serious illegal detention can no longer be complexed under Article 48, nor be treated as separate crime but shall be punished as a special complex crime. At any rate, the technical designation of the crime is of no consequence in the imposition of the penalty considering that kidnapping and serious illegal detention if complexed with either homicide or rape, still, the maximum penalty of death shall be imposed.

In this particular case, the Information specifically alleges that the appellants wilfully, unlawfully and feloniously kidnapped Rafael Mendoza against his will and detained him, thereby depriving him of his liberty and on the occasion thereof, the death of the victim resulted. The trial court, in its decision, particularly in the dispositive portion, merely stated that the appellants were found guilty beyond reasonable doubt of the crime of kidnapping, however, its mention of the phrase, in accordance with Article 267 of the Revised Penal Code, as amended, this Court hereby imposes the penalty of DEATH on accused Norva and Montanir, clearly refers to the crime committed as that of the special complex crime of Kidnapping with Homicide. The appellants, therefore, were correctly punished under the last paragraph of Article 267 as the evidence presented during the trial, in its entirety,

undoubtedly proves that the death of Rafael Mendoza, although of natural causes, occurred on the occasion of the kidnapping.

Delving on the arguments presented by the appellants in this Court, their corresponding briefs pose a single common argument - the prosecution did not present sufficient evidence to prove beyond reasonable doubt that they committed the crime charged against them. In particular, they questioned the inconsistent testimonies of the witnesses for the prosecution. According to them, the said inconsistent statements from the witnesses, tarnish their credibility.

This Court finds otherwise.

The question of credibility of witnesses is primarily for the trial court to determine.[14] For this reason, its observations and conclusions are accorded great respect on appeal.[15] This rule is variously stated thus: The trial court's assessment of the credibility of a witness is entitled to great weight. It is conclusive and binding unless shown to be tainted with arbitrariness or unless, through oversight, some fact or circumstance of weight and influence has not been considered.[16] Absent any showing that the trial judge overlooked, misunderstood, or misapplied some facts or circumstances of weight which would affect the result of the case, or that the judge acted arbitrarily, his assessment of the credibility of witnesses deserves high respect by appellate courts.[17]

Appellants claim that Jonard, a witness for the prosecution, stated in his Sinumpaang Salaysay that he was the one who whispered to appellant Ronald to transfer Rosalina to another room so that the latter would have no idea that Rafael was in a critical condition, but during trial, Jonard testified that it was Ronald who instructed him to transfer Rosalina to a different room. Appellants also point out that in the same sworn statement, Jonard averred that he resided in Taguig since October, 1987, which is contrary to what he testified in court that he resided in that same place since 1997. In addition, appellants further argue that in her testimony, Rosalina declared that she was with four men seated at the back of the car when she was brought to Pandi, Bulacan, however, Jonard, in his own testimony, stated that there were four of them including Rosalina seated at the back of the car.

A close reading of the above inconsistencies asserted by the appellants show that the same refer only to minor details and collateral matters and do not affect the veracity and weight of the testimonies of the witnesses for the prosecution. What really prevails is the consistency of the testimonies of the witnesses in relating the principal occurrence and positive identification of the appellants. Slight contradictions in fact even serve to strengthen the credibility of the witnesses and prove that their testimonies are not rehearsed.[18] They are thus safeguards against memorized perjury.[19]

Anent the inconsistencies of the contents of the affidavits and that of the testimonies in court, this Court has already ruled that testimonies in court are given more weight than affidavits, thus:

x x x x Affidavits are not entirely reliable evidence in court due to their incompleteness and the inaccuracies that may have attended their formulation.[20] In general, such affidavits are not prepared by the affiants themselves but by another person (i.e., investigator) who may have used his own language in writing the statement or misunderstood the affiant or omitted material facts in the hurry and impatience that usually attend the preparation of such affidavits. As this Court has often said:

An affidavit, "being taken ex-parte, is almost always incomplete and often inaccurate, sometimes from partial suggestion, and sometimes from want of suggestion and inquiries, without the aid of which the witness may be unable to recall the connected collateral circumstances necessary for the correction of the first suggestion of his memory and for his accurate recollection of all that belongs to the subject." [21]

We have too much experience of the great infirmity of affidavit evidence. When the witness is illiterate and ignorant, the language presented to the court is not his; it is; and must be, the language of the person who

prepares the affidavit; and it may be, and too often is, the expression of that person's erroneous inference as to the meaning of the language used by the witness himself; and however carefully the affidavit may be read over to the witness, he may not understand what is said in a language so different from that which he is accustomed to use. Having expressed his meaning in his own language, and finding it translated by a person on whom he relies, into language not his own, and which he does not perfectly understand, he is too apt to acquiesce; and testimony not intended by him is brought before the court as his.' (2 Moore on Facts, sec. 952, p. 1105; People v. Timbang, 74 Phil. 295, 299).[22]

For this reason, affidavits have generally been considered inferior to testimony given in open court.[23]

Incidentally, the CA was correct in stating that Jonard was able to explain and reconcile the minor discrepancies in his testimony by saying that he whispered to appellant Ronald that Rafael was in a bad condition and afterwards, it was appellant Ronald who instructed him to transfer Rosalina to another room, thus:

Atty. Basco:

Referring to the same statement, Mr. Witness, on page 20 of the TSN dated February 24, 1999 referring to the same statement, Mr. Witness, in your statement here when asked:

Q.

Then what happened, Mr. Witness, when you answered in the manner? And your answer was:

A

Ronald Norva told me, "Pare, the old man is in bad condition, you better transfer Mrs. Reyes to another room so that she could not see the condition of the old man."

Q

So which is which Mr. Witness? It was you who gave order or instruction to Mr. Ronald Norva or it was he who gave instruction?

Atty. Gabi:

Can we have the translation of that statement?

Atty. Basco:

That is a very inconsistent statement of the witness?

A:

This is like this, ma'am.

Atty. Basco:

Just answer my question. Which is which, Mr. Witness? Which is the truth, your salaysay or your testimony on February 24 in open court?

A:

The two are true, ma'am, because when I whispered to him that the old man was in a bad condition he gave me instruction to transfer Mrs. Reyes to another room.[24]

The same is true with his inconsistent statements regarding his time of residence in Taguig, thus:

Q

Mr. Witness, you said in your Sinumpaang Salaysay of February 19, 1998 that you were residing in Taguig at Maharlika Village sometime in October 1987? Do you confirm that?

Atty. Mendoza:

May we ask for the translations, Your Honor.

A

No, sir, the actual year is 1997, not 1987.

Q

So you are correcting your answer in your salaysay of February 19, 1998 under paragraph No. 13 wherein you answered: "Ako po ay nakikitira sa kaibigan kong si Ting sa Muslim Area, Maharlika Village, Taguig, Metro Manila nuong buwan ng Oktubre, 1987." You are changing the 1987 to 1997?

A

The truth is 1997, sir.[25]

Appellant Dima, in his Brief, insists that the prosecution was not able to establish his participation in the commission of the crime because he was merely the house helper of the safe house in Ciudad Grande, Valenzuela, when the kidnappers and the victims arrived. In the same vein, appellant Ronald asserts that there was no convincing evidence presented by the prosecution that will point to his clear participation in the crime because he was just the driver of the car that brought the victims to the place where the latter were kept. Appellant Eduardo also insists that he was not a participant in the offense charged in the Information. Basically, the appellants deny any participation in the kidnapping.

In convicting the appellants, the trial court, based on the evidence presented, naturally found the existence of conspiracy among the perpetrators. Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[26] Verily, when conspiracy is established, the responsibility of the conspirators is collective, not individual, that render all of them equally liable regardless of the extent of their respective participations, the act of one being deemed to be the act of the other or the others, in the commission of the felony.[27] Each conspirator is responsible for everything done by his confederates which follows incidentally in the execution of a common design as one of its probable and natural consequences even though it was not intended as part of the original design. Responsibility of a conspirator is not confined to the accomplishment of a particular purpose of conspiracy but extends to collateral acts and offenses incident to and growing out of the purpose intended.[28] Conspirators are held to have intended the consequences of their acts and by purposely engaging in conspiracy which necessarily and directly produces a prohibited result, they are, in contemplation of law, chargeable with intending that result.[29] Conspirators are necessarily liable for the acts of another conspirator unless such act differs radically and substantively from that which they intended to commit.[30] As Judge Learned Hand put it in *United States v. Andolscheck*,[31] "when a conspirator embarks upon a criminal venture of indefinite outline, he takes his chances as to its content and membership, so be it that they fall within the common purposes as he understands them."

A scrutiny of the records show that the trial court did not err in finding conspiracy among the appellants, as they each played a role in the commission of the crime. The trial court correctly found the denial of appellant Dima that he had knowledge of the kidnapping, unbelievable. The appellant's bare denial is a weak defense that becomes even weaker in the face of the prosecution witnesses' positive identification of him. Jurisprudence gives greater weight to the positive narration of prosecution witnesses than to the negative testimonies of the

defense.[32] The trial court ruled:

As for accused Montanir, again, this Court finds the testimonies of prosecution witnesses more credible than his testimony applying the same principle that evidence to be believed must not only proceed from a mouth of a credible witness but must be credible in itself, such that the common experience and observation of mankind can show it as probable under the circumstances.

Certainly, this Court is not convinced by accused Montanir's claim that he was at Ciudad Grande because he was a house boy of accused Chua after he admitted the circumstances under which he has to live there a few days before the victims were brought there.

To begin with, this Court does not buy accused Montanir's explanation that he transferred to Chua because he was looking for a permanent job is hardly credible because he himself admitted that when he was brought by accused Uy to the residence of accused Chua at Ciudad Grande, it was the understanding that it would be accused Uy who would be paying his salary. Why would accused Uy pay the salary of accused Montanir if he was to work as a house boy of accused Chua? Evidently, the only plausible reason why accused Uy would pay the salary of accused Montanir is because he was actually working for the former and only posted in the house of accused Chua at Ciudad Grande to play his part in the execution of the planned kidnapping. This conclusion is bolstered by accused Montanir's admission that he never even spoke with accused Chua during all those times that he stayed at accused Chua's residence as in fact, he took orders from accused Uy.

Moreover, this Court finds it rather perplexing that accused Montanir would suddenly go back to the house of accused Uy on 19 February 1998 on the shallow reason that he had no companion at Ciudad Grande when precisely he said he was hired as a caretaker thereat while the regular boy was on vacation.[33]

The above conclusion was bolstered by the positive identification of the same appellant and his exact participation in the execution of the crime, by the witnesses for the prosecution, thus:

WITNESS JONARD

Q

Could you tell this Honorable Court what happened, Mr. Witness?

A

When the four (4) entered after ten (10) minutes I heard like a commotion inside the house.

Q

Then when you heard the commotion, Mr. Witness, what did you do?

A

What I did was I went out of the store to peep thru the window near the lavatory.

Q

And what did you see, Mr. Witness?

A

I saw Jess and Dems poking a gun to (sic) Mr. Mendoza.

Q

Then what happened, Mr. Witness, when they poked a gun?

A

When they poked a gun and placed the hands of Mr. Mendoza at his back they forcibly entered the room.[34]

WITNESS ROSALINA

Q

And then what happened, Ms. Witness?

A

And suddenly Jonard Mangelin entered.

Q

And what happened?

A

I pleaded to him to help me in pumping.

Q

What did he do?

A

And he helped me.

Q

After helping you pumping Mr. Mendoza (sic), what happened to Mr. Mendoza?

A

While we were pumping Mr. Mendoza's chest, Dima Montanir was busy removing the things of Mr. Mendoza.

Q

When you said things to which are you referring to?

A

His wallet, watch, ring and all the things in his pocket and gave it to Ronald Norva.[35]

x x x x

A

When we returned to the DILG, the persons arrested were already there and when I saw them I recognized them that they were the ones.

Q

Could you tell us the people whom you said were there?

A

Dima Montanir.

Q

Can you point to him?

(Witness pointing to a man inside the Courtroom, whom when asked his name, answered: Dima Montanir).

Q

And who else, Ms. Witness?

A

Ronald Norva.

Q

Can you point to him also?

(Witness pointing to a man inside the Courtroom whom when asked his name, answered: Ronald Norva).

Q

Then what happened, Ms. Witness, after you were able to recognize them?

A

I told that they were the ones.[36]

In like manner, appellant Eduardo's denial that he participated in the offense charged does not outweigh the testimonies of the witnesses positively identifying him as one of the culprits, thus:

WITNESS JONARD

Q

Did you follow the instruction, Mr. Witness?

A

Yes, ma'am.

Q

Why did you follow the instruction?

A

Because they are my Boss.

Q

When you said they are my Boss, to whom, Mr. Witness, are you referring to?

A

Ronald Norva, Robert Uy, Eduardo Chua, Alice Buenaflor and Josie Herrera.

Q

You mentioned the name of Josie Herrera, was she there at the vicinity?

A

She was not there when the incident happened on February 17, 1998.

Q

Why did you include the name of Josie Herrera as one of your bosses, Mr. Witness?

A

Because, ma'am. On December 19, 1997 at the middle of that month, Josie Herrera tipped to the group that Mr. Rafael Mendoza is a good victim because he has lots of money and engaged in a lending business.

Q

Were you there when she tipped the person of Mr. Mendoza?

A

Yes, ma'am.

Q

Where was this, Mr. Witness?

A

At the house of Robert Uy.

Q

Where was the house of Mr. Robert Uy, Mr. Witness?

A

Candido Homes Subdivision, West Fairview, Quezon City.

Q

That was on (sic) the middle of December, 1997?

A

Yes, ma'am.

Q

Mr. Witness, if this Josie Herrera whom you have referred as one of your Bosses is around this courtroom, could you please point to her?

(Witness pointing to a lady inside the Courtroom whom when asked her name, answered: Josie Herrera).

Q

You also mentioned the name of Eduardo Chua as one of your bosses, why do you say so that he was one of your bosses?

A

Because they were the ones planning how they could get Mr. Mendoza.

Q

And who were these people planning, Mr. Witness?

A

The five (5) of them, ma'am.

Q

Who are these five (5), Mr. Witness?

A

Robert Uy, Ronald, Alice, Josie Herrera and Eduardo Chua.

Q

And where did this happen, Mr. Witness?

A

When Josie Herrera tipped to the group on that December, the group made a surveillance to be familiarized with the face of Mr. Mendoza and Mrs. Reyes.

Q

And all the time, Mr. Witness, where was (sic) this happened when you said they were planning?

A

At the house of Robert Uy.

Q

Did the surveillance took (sic) place, Mr. Witness?

A

Yes, ma'am.[37]

x x x x

Q

And where did you count the surveillance, Mr. Witness?

A

Ali Mall, at Cubao, Quezon City.

Q

And what was the result of your surveillance, Mr. Witness?

A

They saw the victims Mr. Mendoza and Mrs. Reyes. Robert Uy pointed to the two (2) as our victims.

Q

Aside from the planning and the surveillance, Mr. Witness, what else took place?

A

On January 3, 1998 the first stage of the kidnapping will took (sic) place on January 5, 1998 because they want to make it quick.

Q

Was (sic) the kidnapping take place at that time, Mr. Witness?

A

Yes, ma'am.

Q

On January 5, 1998?

A

No, ma'am, January 5, that was the first try to kidnap them when we went to Ali Mall but we were not able to see them.

Q

You said that there was a first try, was there another try, Mr. Witness?

A

Yes, ma'am.

Q

When was that, Mr. Witness?

A

On February 5, 1998.

Q

What happened? Was that agreed upon by the group, Mr. Witness?

A

Yes, ma'am.

Q

Who were these people in the group, Mr. Witness?

A

Alice Buenaflor, Robert Uy, Ronald Norva, Eduardo Chua and Josie Herrera.

Q

And did the kidnapping take place on the second try, Mr. Witness?

A

We were not able to take them, ma'am.

Q

Then what happened, Mr. Witness?

A

On February 5, 1998, on our second try to kidnap them, we were not able to get them because in Ali Mall the car of Alice Buenaflor was bumped by a taxi.

Q

Was there another try after the February 5 try, Mr. Witness?

A

On that February 5, when we were not able to take them; they changed the plan.

Q

And who participated in the plan, Mr. Witness?

A

Eduardo Chua, Robert Uy, Ronald, Alice Buenaflor and Josie Herrera.

Q

Is she the same Josie Herrera whom you identified earlier, Mr. Witness?

A

Yes, ma'am.

Q

Then what happened, Witness?

A

After the second try, we were not able to take them, so the plan was changed.

Q

What was the plan that was changed? What was the new plan?

A

They were the ones who knew it. They were the ones planning and I was only being utilized by the syndicate.[38]

It must always be remembered that between positive and categorical testimony which has a ring of truth to it on the one hand, and a bare denial on the other, the former generally prevails.[39]

It is also not disputed that the safe house in Ciudad Grande, Valenzuela, where the victims were brought was owned by appellant Eduardo. The trial court was also correct in dismissing the claim of appellant Eduardo that he merely lent his car to Robert and allowed the latter to occupy his house because Robert had been so accommodating to him and had facilitated his loan, thus:

Regarding the criminal liability of accused Chua, while it is conceded that the said accused was nowhere in the actual scene of the incident, this Court nonetheless finds the said accused guilty of kidnapping as one of the conspirators to the commission of the felony who participated by furnishing the vehicle used in abducting the

victims and the house where they were held captive and where Mendoza died.

Again, this Court applied the time-honored principle that evidence to be believed must come from the mouth of a credible witness which accused Chua is not. Indeed, this Court finds no iota of truth on the protestation of accused Chua that he knew nothing of accused Uy's plans. It is simply too good to be true that he allowed Mangelin and accused Montanir to stay at his house to guard it and attend to his store while his caretakers were having a vacation. Neither could this Court find cogent reason why accused Chua would allow accused Uy to use his vehicle and house totally oblivious of any plan/design or purpose of accused Uy. Nor is it credible that accused Chua would allow accused Uy to use his vehicle just to follow up his loan application and then after the same had been released he (accused Chua) did not come home either to Santa Maria, Bulacan or to Ciudad Grande, instead, he went straight to the residence of accused Uy, waited for him until the wee hours of the morning of the following day, 18 February 1998, only to tell accused Uy he was going home.

It is also bewildering to this Court why immediately after receiving the money he borrowed, he would spend it in going to Davao with his daughter on 18 February 1988, without any previous plan whatsoever and suspiciously, upon invitation of accused Uy who had known by then that one of the victims, Mendoza, had died in the course of the kidnapping.

Truly, all of the foregoing facts when taken together with the testimonies of Mangelin and Montanir unequivocally indicate accused Chua's complicity with the criminal design of accused Uy and dissolves the said accused's plea of innocence.[40]

Each conspirator is responsible for everything done by his confederates which follows incidentally in the execution of a common design as one of its probable and natural consequences even though it was not intended as part of the original design.[41] Responsibility of a conspirator is not confined to the accomplishment of a particular purpose of conspiracy but extends to collateral acts and offenses incident to and growing out of the purpose intended.[42] Conspirators are held to have intended the consequences of their acts and by purposely engaging in conspiracy which necessarily and directly produces a prohibited result that they are in contemplation of law, charged with intending the result.[43] Conspirators are necessarily liable for the acts of another conspirator even though such act differs radically and substantively from that which they intended to commit.[44]

Considering the above disquisitions, there is no doubt that conspiracy existed in the perpetration of the crime. Thus, all of the appellants, having been proven that they each took part in the accomplishment of the original design, are all equally liable for the crime of Kidnapping with Homicide.

Lastly, this Court finds no error in the CA's modification of the penalty imposed by the trial court. The penalty imposed by the trial court, which is Death is now reduced to reclusion perpetua in accordance with Republic Act No. 9346.[45]

WHEREFORE, the Decision dated April 22, 2008 of the Court Appeals, affirming with modification the Decision dated October 28, 2004 of the Regional Trial Court (RTC) of Valenzuela City, Branch 171 is hereby AFFIRMED, with further MODIFICATION that all the appellants herein are equally found GUILTY of the special complex crime of Kidnapping with Homicide.

SO ORDERED.

Carpio, (Chairperson), Abad, Mendoza, and Sereno,[*] JJ., concur.

[*] Designated as an additional member in lieu of Associate Justice Eduardo Antonio B. Nachura, per Special Order No. 978, dated March 30, 2011.

- [1] Penned by Associate Justice Agustin S. Dizon, with Associate Justices Regalado E. Maambong and Celia C. Librea-Leagogo, concurring; rollo pp. 2-23.
- [2] CA rollo, pp. 64-88.
- [3] 400 Phil. 37, 82-83 (2000). (Emphasis supplied.)
- [4] G.R. No. 118570, October 12, 1998, 297 SCRA 618.
- [5] G.R. Nos. 138874-75, February 3, 2004, 421 SCRA 530, 580-581. (Emphasis supplied.)
- [6] Art. 294, par. 1.
- [7] Art. 294, par. 2.
- [8] Art. 267, par. 3.
- [9] Art. 267, last par.
- [10] Art. 335.
- [11] *People v. Adriano*, G.R. Nos. L-25975-77, January 22, 1980.
- [12] *Supra* note 4.
- [13] *Supra* note 3.
- [14] *People v. Mercado*, *supra* note 13, at 71, citing *People v. Dianos*, 297 SCRA 191 (1998).
- [15] *Id.*, citing *People v. Manuel*, 298 SCRA 184 (1998).
- [16] *Id.*, citing *People v. Lozano*, 296 SCRA 403 (1998).
- [17] *Id.*, citing *People v. Abangin*, 297 SCRA 655 (1998).
- [18] *Id.* at 73-74.
- [19] *Id.*, citing *People v. Cleopas*, 384 Phil. 286 (2000).
- [20] *Id.* at 75, citing *People v. Rivera*, 295 SCRA 99, 109 (1998).
- [21] *Id.*, citing *People v. Resagaya*, 153 Phil. 634, 643 (1973) and *People v. Alcantara*, 144 Phil. 623, 633 (1970). (Emphasis supplied.)
- [22] *Id.* at 74, citing *People v. Geguirra*, 384 SCRA 540 (2000).
- [23] *Id.* at 75-76, citing *People v. Agbayani*, 348 Phil. 341, 367 (1998), citing *People v. Marcelo*, 223 SCRA 24, 36 (1993) and *People v. Enciso*, 223 SCRA 675, 686 (1993).
- [24] TSN, June 22, 1999, p. 37. (Emphasis supplied.)
- [25] TSN, June 30, 1999, pp. 3-4. (Emphasis supplied.)
- [26] *People v. Castro*, 434 Phil. 206, 221 (2002).
- [27] *Id.*
- [28] *People v. Bisda*, 454 Phil. 194, 218 (2003).
- [29] *Id.*, citing *Ingram v. United States*, 259 F. 2d. 886 (1958).

[30] Id., citing *Pring v. Court of Appeals*, 138 SCRA 185 (1985).

[31] Id., citing 142 F. 2d. 503 (1944).

[32] *People v. Kulais, et al.*, 354 Phil. 565 592 (1998), citing *People v. Angeles*, 218 SCRA 352, (1993); *People v. Guibao*, 217 SCRA 64, (1993); *People v. Mendoza*, 210 SCRA 517, (1992); *People v. Bausing*, 199 SCRA 355, (1991); *People v. Bacatcat*, 188 SCRA 175, (1990).

[33] CA rollo, pp. 130-131.

[34] TSN, February 24, 1999, pp. 12-13. (Emphasis supplied.)

[35] TSN, July 7, 1998, pp. 21-22. (Emphasis supplied.)

[36] TSN dated July 20, 1998, pp. 19-20. (Emphasis supplied.)

[37] TSN, February 24, 1999, pp. 35-38. (Emphasis supplied.)

[38][] Id. at 38-41. (Emphasis supplied.)

[39] *People v. Waggay*, G.R. No. 98154, February 9, 1993, 218 SCRA 742, 749; *People v. Andasa*, G.R. No. 101022, February 27, 1992, 206 SCRA 636.

[40] CA rollo, p. 195.

[41] *People v. Pagalasan*, 452 Phil. 341, 364 (2003), citing 15A *Corpus Juris Secundum*, Conspiracy, p. 828.

[42] Id.

[43] Id. at 364-365, citing *Ingram v. United States*, supra note 29.

[44] Id. at 365, citing *Pring v. Court of Appeals*, supra note 30.

[45] AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES.

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