

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PETRUS YAU A.K.A. “JOHN” AND “RICKY” AND SUSANA YAU Y SUMOGBA A.K.A. “SUSAN”, ACCUSED-APPELLANTS.

G.R. No. 208170. August 20, 2014

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the September 7, 2012 Decision[1] of the Court of Appeals (CA), in CA-G.R. CR-HC No. 03446, which affirmed the December 14, 2007 Decision[2] of the Regional Trial Court, Branch 214, Mandaluyong City (RTC), in Criminal Case No. MC-04-7923.

The RTC found accused-appellant Petrus Yau (Petrus) guilty beyond reasonable doubt as principal of the crime of kidnapping for ransom and serious illegal detention, as defined and penalized in Article 267 of the Revised Penal Code (RPC), as amended by Republic Act No. 7659, (R.A. No. 7659), and convicted accused-appellant Susana Yau y Sumogba (Susana) as an accomplice to the commission of the same crime.

The Facts

Petrus and Susana were charged with the crime of Kidnapping For Ransom in the Information,[3] dated February 13, 2004, the accusatory portion of which reads:

That on or about January 20, 2004, at around 2:00 P.M. in the vicinity of Shoemart Mega Mall, Mandaluyong City, the above-named accused, conspiring, confederating and mutually helping one another, with the use of a sleeping substance, did then and there, willfully, unlawfully and feloniously kidnap and take away ALASTAIR JOSEPH ONGLINGSWAM in the following manner, to wit: while said ALASTAIR JOSEPH ONGLINGSWAM was on board a white Toyota taxi cab with plate number PVD-115 being driven by the above-named accused Petrus Yau a.k.a. “John” and “Ricky” and the taxi cab was travelling along Epifanio Delos Santos (EDSA) Avenue, he suddenly fell unconscious and upon regaining consciousness he was already handcuffed and in chains inside a house located at B23, L2, Ponsettia St., Camilla Sorrento Homes, Panapaan IV, Bacoor, Cavite, where he was kept for twenty two (22) days, which house is owned by accused Susana Yau y Sumogba and while therein he was maltreated; that ransom in the amount of SIX HUNDRED THOUSAND DOLLARS (US\$600,000.00) and TWENTY THOUSAND PESOS (Php20,000.00) for each day of detention was demanded in exchange for his safe release until he was finally rescued on February 11, 2004, by PACER operatives of the Philippine National Police.

CONTRARY TO LAW.

Version of the Prosecution

In the Appellee’s Brief,[4] the Office of the Solicitor General (OSG) presented the following narration of the kidnapping:

On January 20, 2004, at around 1:30 in the afternoon, private complainant Alastair Onglingswam, who is a

practicing lawyer and businessman from the United States, went out of Makati Shangrila Hotel, where he was billeted, and hailed a white Toyota taxi cab with plate number PVD-115 to take him from the said hotel to Virra Mall Shopping Center in San Juan, Metro Manila. While the said taxicab was plying along EDSA, and within the vicinity of SM Megamall, private complainant received a phone call from his associate Kelly Wei in Hong Kong. He noted that while he was on the phone conversing with his associate, appellant Petrus Yau, whom he noted to have short black hair, a moustache and gold framed eyeglasses, would from time to time turn to him and talk as if he was also being spoken to. Thereafter, he felt groggy and decided to hang-up his phone. He no longer knew what transpired except that when he woke up lying down, his head was already covered with a plastic bag and he was handcuffed and chained.

When private complainant complained that the handcuffs were too tight, a man who was wearing a red mask and introduced himself as “John” approached him and removed the plastic bag from his head and loosened his handcuff. John informed him that he was being kidnapped for ransom and that he will be allowed to make phone calls to his family and friends. Hours later, John returned with telephony equipment, tape recorder, phone and a special antennae cap for the cellphone. With these equipment, private complainant was allowed to call his girlfriend and father and asked them for the PIN of his ATM cards and for money, however, with instructions not to inform them that he was kidnapped. A day after, he was told by his captor to call his girlfriend and father to tell them that he was still alive as well as to reveal to them that he was kidnapped for ransom and his kidnappers were demanding Six Hundred Thousand Dollars (US\$600,000.00) as ransom and Twenty Thousand Pesos (Php20,000.00) a day as room and board fee.

The private complainant’s family, girlfriend (Iris Chau) and friends received a text message purportedly from the former informing them that he was kidnapped and ransom for his liberty was demanded.

On January 21, 2004, the family of the victim informed the United States Embassy in Manila about the situation and a meeting with the representatives of the Philippine National Police was arranged.

Subsequently, Chau received an email from the purported kidnapper demanding US\$2,000.00. Chau then wired US\$1,000.00, upon instructions, to Ong Kwai Ping thru Metro Bank and Trust Company. Likewise, private complainant’s brother Aaron Onglingswam made eight (8) deposits to Ong Kwai Ping’s account in Metro Bank, amounting to Two Hundred Thousand Pesos (Php200,000.00), to ensure his brother’s safety and eventual release.

During private complainant’s twenty-two (22) days of captivity, while he was allowed to communicate with his family almost daily to prove that he was still alive and was served with meals almost five times a day either by John or the other accused Susan Yau, he was also maltreated i.e. beaten with sticks, made to lay-down biting a piece of wood which was made as target for a rifle.

On February 10, 2004, the PACER received information that a taxi with plate number PVD 115 plying along Bacoor was victimizing passengers. Upon instructions of P/Supt. Isagani Nerez, members of the Police Anti-Crime and Emergency Response Task Force (PACER) were ordered to proceed to Bacoor, Cavite to look for Toyota Corolla White Taxicab with Plate No. PVD 115.

On February 11, 2004, at around 4:00 o’clock in the morning, the PACER group proceeded to Bacoor and positioned themselves along Aguinaldo Highway under the overpass fronting SM Bacoor. Not having caught sight of the taxi, after three hours, the group moved to a different location along the Aguinaldo Highway where they were able to chance upon the said vehicle. Thus, they followed it, then flagged it down and approached the driver. The driver was asked to scroll down his window and was told that the vehicle was being used to victimize foreign nationals. Appellant did not offer to make any comment. Hence, this prompted the officers to ask for his name and since he answered that he was Petrus Yau, a British national, they asked him for his driver’s license and car registration but appellant was not able to produce any. Since he could not produce any driver’s license and car registration, they were supposed to bring him to the police station for investigation, however, when shown a picture of private complainant and asked if he knew him, he answered that the man is

being kept in his house. He was immediately informed that he was being placed under arrest for kidnapping private complainant Alastair Onglingswam after being informed of his constitutional rights. Thereafter, appellant's cellphones, a QTEK Palmtop and Sony Erickson were confiscated. Upon instructions of P/Supt. Nerez, [appellant] was brought to the parking lot of SM City Bacoar for a possible rescue operations of the victim.

Appellant led the team to his house and after opening the gate of his residence, he was led back to the police car. The rest of the members of PACER proceeded inside the house and found a man sitting on the floor chained and handcuffed. The man later identified himself as Alastair Onglingswam.

During the trial of the case, private complainant positively identified Petrus Yau as his captor and the taxi driver. Test conducted by the United States Federal Bureau of Investigation reveals that the DNA found in the mask used by private complainant's captor matched that of appellant Petrus Yau.[5]

Version of the Defense

Petrus and Susana denied the accusation, and stated the following in their Brief[6] to substantiate their claim of innocence:

Accused Petrus Yau denied having committed the crime. He averred that the supposed kidnap victim coordinated with the police to set up the subject case against him and his family. He is a British national. He had been in the Philippines for many times since he was 14 years old. He came to the country in July 2001 for a vacation and had not left since then. On September 2001, he got married to Susana Yau. Prior thereto, he was in Singapore running some businesses.

On January 20, 2004, at around 2:00 o'clock in the afternoon (the date and time the victim was kidnapped), Petrus Yau was at home sleeping.

On February 11, 2004 (the date the victim was allegedly rescued) at around 8:30 – 9:00 o'clock in the morning, he went to his wife Susana in her shop and got money to be deposited to the Asia Trust Bank. He parked his car outside the bank. After he alighted from his car, three (3) men bigger than him held his hands: one (1) of them held his neck. They pushed him inside their van. They tied his hands with packing tape, covered his eyes with the same tape, and his head with a plastic bag. They kicked and beat him until he became unconscious.

When he regained consciousness, he was inside an air-conditioned room. His hands were handcuffed and he felt very cold because his body was wet. His head was still being covered. He shouted asking where he was. People came in and he heard them talking in Tagalog. They kicked him for about twenty (20) seconds. Later, he was made to sit, as he was lying on the floor. He said that he could not see anything, thus, someone removed the cover of his head. They accused him of being a kidnapper, to which he replied that he was not. He pleaded to them to allow him to make a call to the British Embassy, his friends and his wife, but to no avail.

When he was taken into custody, he had his wedding ring, watch and a waist bag containing his British passport, alien certificate, driver's license, Asia Trust bankbook in the name of Susana Yau, ATM Cards (in his name) of Metrobank, PCI Equitable Bank and Banco de Oro, VISA Card, and some cash given to him by his wife. He lost those personal properties.

After four (4) to five (5) hours, he was transferred to another room without a window. The following day, he was brought to and detained at the PACER Custodial Center.

Petrus Yau can speak English but he is better in the Chinese language, both Mandarin and Cantonese. He bought the taxi he was driving in August 2003 for Eighty Five Thousand Pesos (Php85,000.00) for personal use and/or for resale. It had a defective engine (usually overheats), without an aircon and cannot travel for long journey. He does not drive a taxi to earn a living. He had police friends who told him that he cannot drive a

taxi as an occupation since his driver's license is non-professional.

Sometime on June 2003, he and his wife Susana had a heated argument over his womanizing. Hence, she decided to live separately from him (though she was pregnant at that time) and moved to another house (Block 5, Lot 4, Tulip Street, Andrea Village, Bacoor, Cavite). Sometimes, she would visit him.

Petrus claimed that his house does not have a basement, contrary to the victim's testimony that he was placed in the basement. He was not in his house when the police officers allegedly rescued the kidnapped victim. He left his house in good condition in the morning before his arrest. The white Toyota Corolla taxi he was driving had markings of faded grey, not black, as claimed by Alastair.

During the inquest proceedings, Petrus Yau was not assisted by a counsel and was not informed of his constitutional rights.

Susana Sumogba Yau denied the accusation that she was in the company of the kidnapper every time the latter served Alastair's food (lunch and dinner). She is legally married to Petrus Yau. They have two (2) children named Charlie and Vivian. On February 11, 2004, she lived at Block 5, Lot 4, Tulips Street, Andrea Village, Bacoor, Cavite, while Petrus Yau lived at Block 23, Lot 2, Ponsettia Street, Sorrento Town Homes, Bacoor, Cavite, with his girlfriend. Susana and Petrus were separated since June 2003.

On February 11, 2004, she called him to pick up the amount of Php7,000.00 (earnings of her sari-sari store) and to deposit it in her account at Asia Trust Bank. She would request Petrus to do such errand for her as she does not trust her househelp. Petrus came to her at around 7:00 o'clock in the morning. At around 11:00 o'clock a.m. of the same day, four (4) to five (5) policemen arrived at her residence and told her to come with them to the hospital where Petrus was brought because he met a vehicular accident along Aguinaldo Highway.

Susana, together with her children and helpers, went with them, and rode in their van. They, however, were not brought to the hospital but to an office. Thereat, Susana saw her husband (almost dead) inside a small room with a one-way mirror. She was not able to talk to him. She, together with her children and helpers, were detained for three (3) days inside a small room. After three (3) days, her children and helpers were released and they went home. At that time, she was not provided with the assistance of a counsel.

Susana stated that her husband's name is Petrus Yau. He is not known either as John or Ong Kwai Ping. He is engaged in the business of buying cars for resale. They owned three (3) houses and lots, all registered in her name. At the time she was taken into custody by the police, she had with her Five Thousand Pesos cash, Allied Bank passbook and ATM Cards (Allied Bank and Asia Trust Bank), VISA card, passport, wedding ring, necklace and cellphone, which were taken away by persons whom she does not know.[7]

The Ruling of the RTC

In its judgment, dated December 14, 2007, the RTC convicted Petrus Yau, as principal, of the crime of kidnapping for ransom and serious illegal detention, and Susana Yau, as an accomplice to the commission thereof. The RTC found the testimonies of the prosecution witnesses credible and sufficient, with their versions of the incident dovetailing with each other even on minor details. It observed that Petrus failed to rebut his positive identification by the victim, Alastair and his brother Aaron John Onglingswam (Aaron John), with whom he talked for several times over the phone. It stated that the circumstantial evidence proffered by the prosecution had adequately reinforced its theory that Petrus was the perpetrator of the heinous act.

With respect to Susana, the RTC wrote that she was positively identified by Alastair as the Filipino woman who fed him or accompanied Petrus in bringing him food during his 22 days of captivity and, for said reason, should be held liable as an accomplice.

The RTC rejected the twin defenses of alibi and frame-up submitted by Petrus and Susana because the same were

unsubstantiated by clear and convincing evidence. The dispositive portion of the said decision states:

WHEREFORE, this court renders judgment finding the accused Petrus Yau GUILTY BEYOND REASONABLE DOUBT as principal of the crime of kidnapping for ransom and serious illegal detention and pursuant to Republic Act No. 9346, he is hereby sentenced to suffer the prison term of RECLUSION PERPETUA. The court also finds the accused Susana Yau GUILTY BEYOND REASONABLE DOUBT as accomplice to the commission of the crime of kidnapping for ransom and serious illegal detention and applying to her the benefit of the Indeterminate Sentence Law wherein her minimum penalty shall be taken from the penalty next lower in degree of the imposable penalty of RECLUSION TEMPORAL which is prison mayor, she is hereby therefore sentenced to suffer the prison term of EIGHT (8) YEARS and ONE (1) DAY of PRISION MAYOR MINIMUM AS MINIMUM to TWELVE (12) YEARS and TEN (10) MONTHS of RECLUSION TEMPORAL MINIMUM AS MAXIMUM. Accused are credited in full of the preventive imprisonment they have already served in confinement.

Further, both accused are sentenced to pay, jointly and severally, the victim ALASTAIR JOSEPH ONGLINGSWAM actual damages of Two Hundred Seventy Three Thousand and One Hundred Thirty Two Pesos (P273, 132.00) plus interest from the filing of the information until full payment, moral damages of One Million Pesos (P1,000,000.00), and exemplary damages of Two Hundred Thousand Pesos (P200,000.00).

SO ORDERED.[8]

Unfazed, Petrus and Susana appealed the RTC judgment of conviction before the CA.

The Ruling of the CA

The CA affirmed the conviction of Petrus and Susana. [9] The appellate court likewise lent credence to the testimonies of the prosecution witnesses, who were able to establish with certitude the commission of the crime and the identities of the culprits thereof.

Hence, this appeal.

ASSIGNED ERRORS:

I

THE TRIAL COURT GRAVELY ERRED IN NOT FINDING THAT THE ACCUSED-APPELLANT WAS ILLEGALLY ARRESTED AND AS SUCH, THE PIECES OF OBJECT EVIDENCE ALLEGEDLY SEIZED ARE INADMISSIBLE.

II

THE TRIAL COURT GRAVELY ERRED IN FINDING THAT THERE WAS POSITIVE IDENTIFICATION OF THE ACCUSED-APPELLANT AS THE ALLEGED KIDNAPPER.

III

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.[10]

Susana insisted that the trial court erred: 1] in not giving credence to her claim that she was living separately with her husband, Petrus Yau; 2] in not considering that she was not mentioned in the sworn statement executed by Alastair, dated February 12, 2004, even when said victim was asked if there was another person assisting Petrus in the perpetration of the crime; 3] in not considering the Resolution of the Department of Justice, dated February 13, 2004, finding probable cause against her because she is the registered owner of the house where Alastair was held captive and not because she served food on the victim; and 4] in convicting her as an accomplice.[11]

On September 11, 2013, the Court issued a resolution[12] notifying the parties that they could file their respective supplemental briefs if they so desire. The People of the Philippines, represented by the OSG, opted not to file any

supplemental brief, maintaining its positions and arguments in its brief earlier filed in CA-G.R. CR-H.C. No. 03446.[13] Petrus filed his Supplemental Brief[14] on December 27, 2013 in amplification of his arguments raised in his brief filed before the CA.

The Court's Ruling

The appeal is bereft of merit.

Encapsulated, the issues herein focus on: (a) the credibility of the prosecution witnesses; (b) the sufficiency of the prosecution evidence to prove the commission of kidnapping for ransom and the identity of the culprits thereof; and (c) the degree of responsibility of each accused-appellant for the crime of kidnapping for ransom.

Worth reiterating on the issue of the credibility of the witnesses is the ruling of the Court in *People v. Maxion*[15] that:

The issue raised by accused-appellant involves the credibility of witness, which is best addressed by the trial court, it being in a better position to decide such question, having heard the witness and observed his demeanor, conduct, and attitude under grueling examination. These are the most significant factors in evaluating the sincerity of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. Through its observations during the entire proceedings, the trial court can be expected to determine, with reasonable discretion, whose testimony to accept and which witness to believe. Verily, findings of the trial court on such matters will not be disturbed on appeal unless some facts or circumstances of weight have been overlooked, misapprehended or misinterpreted so as to materially affect the disposition of the case.[16]

It has been an established rule in appellate review that the trial court's factual findings, such as its assessment of the credibility of the witnesses, the probative weight of their testimonies, and the conclusions drawn from the factual findings, are accorded great respect and have even conclusive effect. Such factual findings and conclusions assume even greater weight when they are affirmed by the CA.[17]

In the case at bench, the RTC gave more weight and credence to the testimonies of the prosecution witnesses compared to those of the accused-appellants. After a judicious review of the evidence on record, the Court finds no cogent reason to deviate from the factual findings of the RTC and the CA, and their respective assessment and calibration of the credibility of the prosecution witnesses.

In every criminal case, the task of the prosecution is always two-fold, that is, (1) to prove beyond reasonable doubt the commission of the crime charged; and (2) to establish with the same quantum of proof the identity of the person or persons responsible therefor, because, even if the commission of the crime is a given, there can be no conviction without the identity of the malefactor being likewise clearly ascertained.[18] Here, the prosecution was able to satisfactorily discharge this burden.

Victim Alastair positively identified Petrus as the driver of the white Toyota Corolla taxicab with Plate No. PVD 115 which he boarded before he lost consciousness on the afternoon of January 20, 2004. He claimed that while he was conversing with his business associate Kelly Wei over his phone inside the taxicab, Petrus would turn his face towards him, from time to time, and would talk as if he was being spoken to. Alastair claimed that he had a good look and an ample opportunity to remember the facial features of the driver as to be able to recognize and identify him in court. It is the most natural reaction for victims of crimes to strive to remember the faces of their accosters and the manner in which the craven acts are committed.[19]

Alastair also recognized the voice behind the red mask used by his kidnapper as belonging to Petrus. It was established that from the first to the twentieth day of Alastair's captivity, his kidnapper would meet him five

times a day and would talk to him for an hour, thus, enabling him to remember the culprit's voice which had a unique tone and noticeable Chinese accent. Alastair declared with certainty that it was the voice of Petrus. Witness Aaron John insisted that the person who introduced himself as Ong Kwai Ping and with whom he had talked over the phone for three weeks, demanding necessity money and ransom for the release of his brother Alastair, was Petrus because of the distinct tone of his voice with Chinese accent. There was no showing that Alastair and Aaron John had any ill motive to falsely testify against Petrus. As a rule, absent any evidence showing any reason or motive for prosecution witnesses to perjure, the logical conclusion is that no such improper motive exists, and their testimonies are, thus, worthy of full faith and credit.[20]

Further, the prosecution presented credible and sufficient pieces of circumstantial evidence that led to the inescapable and reasonable conclusion that Petrus committed the crime charged. The settled rule is that a judgment of conviction based on circumstantial evidence can be upheld only if the following requisites concur: (1) there is more than one circumstance; (2) the facts from which the inferences are derived are proven; and (3) the combination of all the circumstances is such as to produce conviction beyond reasonable doubt.[21] The corollary rule is that the circumstances proven must constitute an unbroken chain which leads to one fair and reasonable conclusion pointing to the accused, to the exclusion of all others, as the guilty person.[22]

The combination of the following established facts and circumstances affirm the findings of guilt by the RTC and the CA:

- 1] The victim was rescued by the police inside the house owned by Petrus and Susana, located at Block 23, Lot 2, Ponsettia St., Camella Sorrento Homes, Bacoor, Cavite;
- 2] The Toyota Corolla white taxicab bearing Plate No. PVD 115, which the victim recalled boarding in going to Virra Mall Greenhills Shopping Center on the afternoon of January 20, 2004 and where he lost consciousness, was found in the possession of the accused-appellant Petrus on February 11, 2004;
- 3] The driver's license of Petrus and an ATM card in the name of Ong Kwai Ping were recovered inside the Toyota Corolla taxicab of Petrus Yau;
- 4] In the house where the victim was rescued, the following evidence were found: one (1) chain with padlock; handcuffs; short broken chain; checkered pajama; black blazer; one (1) Onesimus black coat; two (2) video camera cartridges, one showing the victim in lying down position and family footages, and the other one labeled "sex scandal"; eight (8) pieces of cellphones; notebook; two (2) Talk n Tex SIM cards; Globe SIM card; two (2) Transfer Certificates of Title for two pieces of land in Bacoor, Cavite, under the name of Susana Sumogba; original copy of the Official Receipts and Certificate of Registration of a Suzuki 1993 motorcycle bearing Plate No. 2M9748; business license and mayor's permit issued to Susana Yau; marriage contract of Petrus Yau and Susana Yau; birth certificate of Susana Sumogba; birth certificates of their children; ACR of Petrus Yau; Meralco bills; Asia Trust deposit slips; five ATM deposit slips; and PLDT bills;
- 5] Two (2) cellphones, a QTEK Palmtop and a Sony Erickson were found in the possession of Petrus. Incidentally, it was reported that the owner of the QTEK Palmtop cellphone was a certain Jasper Beltran, also a kidnapped victim whose whereabouts had not been known yet; and
- 6] The DNA examination on the red mask worn by the kidnapper that was recovered inside the house and on the buccal swab taken from Petrus showed that both DNA profiles matched.[23]

The Court agrees with the findings of the RTC and the CA that the foregoing pieces of circumstantial evidence, when analyzed and taken together, definitely lead to no other conclusion than that Petrus was the author of the kidnapping for ransom. When viewed as a whole, the prosecution evidence effectively established his guilt beyond reasonable doubt.

The elements of Kidnapping For Ransom under Article 267 of the RPC, as amended by R.A. No. 7659, 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.[24]

All of the foregoing elements were duly established by the testimonial and documentary evidences for the prosecution in the case at bench. First, Petrus is a private individual. Second, Petrus kidnapped Alastair by using sleeping substance which rendered the latter unconscious while inside a taxicab driven by the said accused-appellant. Third, Petrus took and detained Alastair inside the house owned by him and Susana Yau in Bacoor, Cavite, where said victim was handcuffed and chained, and hence, deprived of his liberty. Fourth, Alastair was taken against his will. And fifth, Petrus made demands for the delivery of a ransom in the amount of US\$600,000.00 for the release of the victim.

Anent the criminal liability of each accused-appellant, there is no doubt that Petrus is liable as principal of the crime of kidnapping for ransom. Susana, on the other hand, is liable only as an accomplice to the crime as correctly found by the lower courts. It must be emphasized that there was no evidence indubitably proving that Susana participated in the decision to commit the criminal act. The only evidence the prosecution had against her was the testimony of Alastair to the effect that he remembered her as the woman who gave food to him or who accompanied his kidnapper whenever he would bring food to him every breakfast, lunch and dinner.

Jurisprudence[25] is instructive of the elements required, in accordance with Article 18 of the RPC, in order that a person may be considered an accomplice, namely, (1) that there be a community of design; that is, knowing the criminal design of the principal by direct participation, he concurs with the latter in his purpose; (2) that he cooperates in the execution by previous or simultaneous act, with the intention of supplying material or moral aid in the execution of the crime in an efficacious way; and (3) that there be a relation between the acts done by the principal and those attributed to the person charged as accomplice.

In the case at bench, Susana knew of the criminal design of her husband, Petrus, but she kept quiet and never reported the incident to the police authorities. Instead, she stayed with Petrus inside the house and gave food to the victim or accompanied her husband when he brought food to the victim. Susana not only countenanced Petrus' illegal act, but also supplied him with material and moral aid. It has been held that being present and giving moral support when a crime is being committed make a person responsible as an accomplice in the crime committed.[26] As keenly observed by the RTC, the act of giving food by Susana to the victim was not essential and indispensable for the perpetration of the crime of kidnapping for ransom but merely an expression of sympathy or feeling of support to her husband.[27] Moreover, this Court is guided by the ruling in *People v. De Vera*,[28] where it was stressed that in case of doubt, the participation of the offender will be considered as that of an accomplice rather than that of a principal.

Alastair's positive identification of Susana is not in any bit prejudiced by his failure to mention her name in his sworn statement, dated February 12, 2004. It is well-settled that affidavits, being *ex parte*, are almost always incomplete and often inaccurate, but do not really detract from the credibility of witnesses.[29] Oftentimes, the allegations contained in affidavits involved mere passive mention of details anchored entirely on the investigator's questions. The discrepancies between a sworn statement and a testimony in court do not outrightly justify the acquittal of an accused, as testimonial evidence carries more weight than an affidavit.[30] Testimonies given during the trial are more exact and elaborate. Besides, sworn statements are often executed when an affiant's mental faculties are not in such a state as to afford the affiant a fair opportunity of narrating in full the incident which transpired.[31]

Given the overwhelming picture of their complicity in the crime, this Court cannot accept the defenses of alibi

and frame-up interposed by the accused-appellants. Alibi is the weakest of all defenses, for it is easy to contrive and difficult to prove. Alibi must be proven by the accused with clear and convincing evidence; otherwise it cannot prevail over the positive testimonies of credible witnesses who testify on affirmative matters. [32] 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 proven by the accused with clear and convincing evidence.[33] Apart from their bare allegations, no competent and independent evidence was adduced by the accused-appellants to substantiate their twin defenses of alibi and frame-up and, thus, remain self-serving and do not merit any evidentiary value. More importantly, nowhere in the records does it show of any dubious reasons or improper motive that could have impelled the prosecution witnesses, particularly victim Alastair Onglingswam, to falsely testify and fabricate documentary or object evidence just to implicate accused-appellants in such a heinous crime as kidnapping for ransom. Their only motive was to see to it that the kidnapper be brought to justice and sentenced with the appropriate penalty.

As a last-ditch effort to exculpate themselves from any criminal culpability, the accused-appellants questioned the legality of their warrantless arrests. This too must fail.

Any objection to the procedure followed in the matter of the acquisition by a court of jurisdiction over the person of the accused must be opportunely raised before he enters his plea; otherwise, the objection is deemed waived.[34] The accused-appellants never objected to or questioned the legality of their warrantless arrests or the acquisition of jurisdiction by the RTC over their persons before they entered their respective pleas to the kidnapping for ransom charge. Considering this lapse and coupled with their full and active participation in the trial of the case, accused-appellants were deemed to have waived any objection to their warrantless arrests. The accused-appellants voluntarily submitted to the jurisdiction of the RTC thereby curing whatever defects that might have attended their arrest. It bears stressing that the legality of the arrest affects only the jurisdiction of the court over their persons.[35] Their warrantless arrests cannot, by themselves, be the bases of their acquittal.

Even assuming arguendo that the accused-appellants made a timely objection to their warrantless arrests, jurisprudence is replete with rulings that support the view that their conviction was proper despite being illegally arrested without a warrant. In *People v. Manlulu*, [36] the Court ruled that the illegality of the warrantless arrest cannot deprive the State of its right to prosecute the guilty when all other facts on record point to their culpability. Indeed, the illegal arrest of an accused is not a sufficient cause for setting aside a valid judgment rendered upon a sufficient complaint after a trial free from error.[37]

With respect to the penalty, the Court finds that the RTC was correct in imposing the penalty of reclusion perpetua without eligibility of parole against Petrus as principal in the charge of kidnapping for ransom in view of R.A. No. 9346, prohibiting the death penalty. Also, the Court finds that the penalty of eight (8) years and one (1) day of prision mayor, as minimum, to twelve (12) years and ten (10) months of reclusion temporal, as maximum, meted out against Susana, an accomplice, to be proper.

The Court also sustains the RTC in awarding actual damages in the amount of P273,132.00 plus interest committed from the filing of the information until fully paid. As regards the moral damages against the accused-appellants, the Court finds the award of P1,000,000.00 to be exorbitant. Hence, the same is being reduced to P200,000.00, as the reasonable compensation for the ignominy and sufferings that Alastair and his family endured because of the accused-appellants' inhumane acts of detaining him in handcuffs and chains, and mentally torturing him and his family to raise the ransom money. The fact that they suffered the trauma from mental, physical and psychological ordeal which constitutes the basis for moral damages under Article 2219 of the Civil Code is too obvious to still require its recital at the trial through the superfluity of a testimonial charade. The Court also finds the award of exemplary damages to be in order in view of the presence of the qualifying

circumstance of demand for ransom, and to serve as an example and deterrence for the public good. The Court, however, reduces the amount from P200,000.00 to P100,000.00 in line with prevailing jurisprudence.[38]

The RTC, however, erred in ruling that Susana was solidarily liable with Petrus for the payment of damages. This is an erroneous apportionment of the damages awarded because it does not take into account the difference in the nature and degree of participation between the principal, Petrus, and the accomplice, Susana. The ruling of this Court in *People v. Montesclaros*[39] is instructive on the apportionment of civil liabilities among all the accused-appellants. The entire amount of the civil liabilities should be apportioned among all those who cooperated in the commission of the crime according to the degrees of their liability, respective responsibilities and actual participation. Accordingly, Petrus should shoulder a greater share in the total amount of damages than Susana who was adjudged only as an accomplice.

In fine, the accused-appellants are ordered to pay the victim, Alastair Onglingswam actual damages in the amount of P273,132.00; moral damages in the amount of P200,000.00; and exemplary damages in the amount of P100,000.00, or a total amount of P573,132.00. Taking into consideration the degree of their participation, the principal, Petrus, should be liable for two-thirds (2/3) of the total amount of the damages (P573,132.00 x 2/3) or P382,088.00; and the accomplice, Susana, should be ordered to pay the remaining one-third (1/3) or P191,044.00. Specifically, Petrus shall be liable for actual damages in the amount of P182,088.00; moral damages in the amount of P133,333.33; and exemplary damages in the amount of P66,666.67; and Susana for the amount of P91,044.00 as actual damages; P66,666.67 as moral damages; and P33,333.33 as exemplary damages.

WHEREFORE, the September 7, 2012 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 03446 is AFFIRMED with MODIFICATION in that accused-appellants Petrus Yau and Susana Yau y Sumogba are ordered to pay the victim Alastair Joseph Onglingswam moral damages in the amount of P200,000.00 and exemplary damages in the amount of P100,000.00. The award of actual damages in the amount of P273,132.00 is maintained. The civil liabilities of the accused-appellants shall be apportioned as follows:

1] Petrus Yau is directed to pay actual damages in the amount of P182,088.00; moral damages in the amount of P133,333.33; and exemplary damages in the amount of P66,666.67; and

2] Susana Yau y Sumogba is directed to pay actual damages in the amount of P91,044.00, moral damages in the amount of P66,666.67 and exemplary damages in the amount of P33,333.33.

SO ORDERED.

Carpio,[*] Velasco, Jr., (Chairperson), Peralta, and Leonen, JJ., concur.

September 8, 2014

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on ___August 20, 2014___ a Decision, copy attached herewith, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on September 8, 2014 at 2:15 p.m.

Very truly yours,

(SGD)

WILFREDO V. LAPITAN

Division Clerk of Court

[*] Designated Additional Member, per Special Order No. 1756, dated August 20, 2014.

[1] Penned by Associate Justice Amy C. Lazaro-Javier with Associate Justice Mariflor P. Punzalan Castillo and Associate Justice Leoncia R. Dimagiba, concurring; rollo pp. 2-32.

[2] Penned by Judge Edwin D. Sorongon; CA rollo, pp. 35-49.

[3] Id. at 19-20.

[4] Id. at 325-342.

[5] Id. at 327-333.

[6] Id. at 270-302.

[7] Id. at 287-290.

[8] Id. at 49.

[9] Rollo, pp. 30-31.

[10] CA rollo, pp. 272-273.

[11] Id. at 184.

[12] Rollo p. 33.

[13] Id. at 43-44.

[14] Id. at 48-55.

[15] 413 Phil. 740 (2001).

[16] Id. at 747-748.

[17] *People v. Algarme*, 598 Phil. 423, 438-439 (2009).

[18] *People v. Bacalso*, 395 Phil. 192, 199 (2000).

[19] *People v. Garcia*, G.R. Nos. 133489 & 143970, January 15, 2002, 424 Phil. 158, 183 (2002).

[20] *People v. Bringas*, G.R. No. 189093, April 23, 2010, 619 SCRA 481, 502-503.

[21] Section 4, Rule 133 of the Rules of Court, *People v. Canlas*, 423 Phil. 665, 677 (2001).

[22] *People v. Flores*, 389 Phil. 532, 541 (2000).

[23] CA rollo, pp. 45-46.

[24] *People v. Cenahonon*, 554 Phil. 415, 432-433 (2007).

[25] *People v. Fabros*, 429 Phil. 701, 724 (2002).

[26] *People v. Toling*, 180 Phil. 305, 322-323 (1979).

[27] CA rollo, p. 48.

- [28] 371 Phil. 563, 588 (1999).
- [29] *People v. Silvano*, 403 Phil. 598, 609 (2001).
- [30] *Lumanog v. People*, G.R. No. 182555, September 7, 2010, 630 SCRA 42, 122-123.
- [31] *People v. Tamsi*, 437 Phil. 424, 445(2002).
- [32] *People v. Reyes*, 600 Phil. 738, 782 (2009).
- [33] *People v. Li*, 467 Phil. 582, 595 (2004).
- [34] *De Asis v. Hon. Romero*, 148-B Phil. 710, 716-717 (1971).
- [35] *People v. Lagarto*, 383 Phil. 591, 652-653 (2000).
- [36] G.R. No. 102140, April 22, 1994, 231SCRA 701, 710.
- [37] *People v. Calimlim*, 416 Phil. 403, 420 (2001).
- [38] *People v. Gambao*, G.R. No. 172707, October 1, 2013, 706 SCRA 508, 533.
- [39] 607 Phil. 296, 329 (2009).

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