

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FRANCO DARMO DE GUZMAN Y YANZON, A.K.A. DARMO YAZON Y CORTEZ, A.K.A. FRANCO DE GUZMAN Y CORTEZ, ACCUSED-APPELLANT.

G.R. No. 214502. November 25, 2015

Ponente: VILLARAMA, JR., J.

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VILLARAMA, JR., J.:

Before us is an appeal[1] from the January 21, 2014 Decision[2] of the Court of Appeals (CA) in CA-G.R. CR HC No. 05794 affirming the September 4, 2012 Decision[3] of the Regional Trial Court (RTC), Branch 140, Makati City, finding appellant Franco Darmo de Guzman (appellant) guilty beyond reasonable doubt of the crime of kidnapping and serious illegal detention as defined under Article 267[4] of the Revised Penal Code.

On October 28, 2010, an Information[5] was filed against appellant for the crime of kidnapping or serious illegal detention which reads:

On the 6[th] day of October 2010, in the [C]ity of Makati, the Philippines, accused by means of machination, did then and there willfully, unlawfully, and feloniously kidnap [AAA][6], 17 years of age, a minor, and detained him for eight days, thereby depriving said complainant of his liberty.

CONTRARY TO LAW.[7]

On arraignment, appellant pleaded not guilty.[8] Trial on the merits ensued after pre-trial.

PROSECUTION'S VERSION

The prosecution presented the victim AAA, his father, BBB, and his brother, CCC as witnesses. It also presented arresting officers Rufino B. Almodiel, Jr. and PO1 Ger Aaron Sembrano along with various documentary evidence.

Based on the testimony of the prosecution's witnesses, on October 1, 2010, appellant, while in Isetann Mall, Recto, Manila, sought help from complainant AAA, then a 17-year-old minor[9] because his personal belongings were stolen. Appellant requested that AAA accompany him to the bank so that he may be able to withdraw funds. AAA assented. When they got to the bank, however, appellant was unable to withdraw money since he did not have with him suitable identification cards. Appellant asked AAA if he could stay at his house. With AAA's mother's permission, appellant stayed at AAA's house.[10]

On October 6, 2010, appellant, at around 2:30 p.m. and accompanied by AAA, CCC, and their friend Vincent went to Citibank, Paseo de Roxas, Makati, to withdraw P500,000.00. AAA and CCC were each promised a reward. Appellant went inside the bank while the other three waited for him at a fast food restaurant across the street. After 15 minutes, appellant arrived at the restaurant with a piece of paper which needed to be filled up by AAA and CCC to obtain an ATM card. Having no ball pen with them, appellant said they would have to go to the bank with him one at a time. AAA went with appellant first to the bank ostensibly to fill out the forms. CCC and

Vincent waited at the fast food restaurant. However, neither AAA nor the appellant returned to the restaurant where the other two waited until 7:00 p.m.[11]

CCC and Vincent went to the bank and tried to ascertain if AAA and appellant were there but the bank was empty. They then decided to go home thinking that AAA and appellant already did so. When they arrived they were informed that AAA and appellant were not there.[12]

Based on AAA's testimony, appellant enticed him to accompany him to Cogeo, Antipolo under the guise that he had to open a vault. Appellant told AAA that his bodyguards told CCC and Vincent that they were going to Antipolo. They left the bank at 3:00 p.m. and rode the MRT to Antipolo to an old decrepit house. It was there that AAA was detained from October 6 to October 14, 2010. Appellant threatened him not to go out of the house because his bodyguards were watching him. Appellant also told AAA that he was a sultan and that before he could adopt him he had to complete "missions" two of which were to provide him with sustenance and perform sexual acts. Out of fear, AAA sold his cell phone in the market so that he would have money to provide for food and he allowed appellant sexual liberties on his person. Appellant continuously threatened AAA with his bodyguards.[13]

In the evening of October 14, 2010, a neighbor knocked on the door and demanded that appellant surrender AAA. The neighbor had seen the evening news which featured AAA as a missing person. Appellant told AAA to hide in the bathroom. A policeman knocked at the bathroom door and told AAA to come out. Both AAA and appellant were brought to the police station where AAA's statement was taken.[14]

BBB corroborated his son's testimony. He met appellant on October 1, 2010 and appellant stayed at their house until October 6, 2010. He knew that appellant would take both his sons to Citibank in Makati. However, AAA failed to come home on October 6, 2010. He reported the incident to the police on October 12, 2010 and at the same time to the news program "24 Oras." On October 14, 2010, he received a call from the barangay chairperson of Cogeo, Antipolo who informed him that they recovered his son. He immediately went to the police station in Cogeo, Antipolo where he found his son thin and dirty. His son told him that he had been detained and locked inside a house in the vicinity.[15]

Rufmo Almodiel, Jr., chief tanod of Barangay Nayon, Antipolo City, testified that he came to know of the situation when his kumpare called the barangay hall and apprised him of the abduction of a minor shown on the evening news program. He went to his kumpare's house to watch the program and ascertain the identity of the abductor. He then coordinated with the police and appellant's relatives. Together with three policemen and two barangay tanods, Almodiel and appellant's sister proceeded to the house where appellant was allegedly holding AAA. When their knocks were unanswered, they entered the house where they heard moans coming from the direction of the bathroom. It was there that they found appellant and AAA. Almodiel spoke with the appellant and invited him to the police station.[16]

Defense's Version

Appellant denied the charge against him. He claimed that he is an unlicensed physical therapist from Baguio City. He stated that contrary to AAA's claim, he met AAA, a minor, in 2009 at Isetann Mall, Recto, Manila, when AAA approached him and invited him to eat. It was while they were eating that AAA told him about his problems and solicited money from appellant. From then on, they became friends who were in constant communication with one another. They had agreed to meet at Isetann Mall, Recto on October 1, 2010 to discuss AAA's problems. He took the bus from Baguio to Manila. Upon arriving at the Manila bus station, appellant's wallet and bag got stolen. He nevertheless went to Isetann Mall and met with AAA. He told AAA about the loss of his belongings. Appellant then requested AAA to accompany him to the bank to complain about his lost credit cards. They then

proceeded to Citibank Binondo but appellant's complaint was not acted upon for lack of identification. He then decided to go back to Baguio but was stopped by AAA who was very insistent that appellant stay with him and his family. Appellant was surprised but went with AAA.[17]

During the time that appellant stayed at AAA's house, he would help with the cleaning, watch television in the afternoons, and drink in the evening with AAA, CCC and another friend. He stayed there until October 6, 2010. It was on that day that he, accompanied by AAA, CCC and friend, first went to Citibank, Binondo. He was referred to Citibank, Makati where he was not allowed to withdraw funds. Appellant allegedly told AAA to go home, since he had to go to Antipolo to get money and his identification card. AAA insisted on going with him claiming that he already had his parents' consent.[18]

Appellant insists that he did not detain AAA. Since all the locks in the house were broken, appellant could not have locked AAA in. Appellant stated that AAA could freely leave the house which he in fact did when he went out to play computer and returned drunk to the house. Appellant denied performing sexual acts and maintained that AAA was like a son to him. The policemen and barangay tanods came to the house upon his behest because he saw his face on the evening news as a suspect for kidnapping. When the police found AAA in the bathroom taking a shower while appellant was brushing his teeth, the door was broken so they could be readily seen.[19]

In its September 4, 2012 Decision, the RTC found appellant guilty beyond reasonable doubt of the crime of kidnapping and serious illegal detention. It gave credence to the minor victim's testimony of deprivation of liberty. It stated that AAA's testimony was corroborated by the testimonies of his brother, his father, and the two arresting officers. In light of the positive identification and corroborated testimony of AAA, appellant's bare defense of denial must thus fail. The RTC also stated that while the crime of sexual abuse was present, appellant was only charged with kidnapping. The RTC ruled:

WHEREFORE, the court hereby renders judgment as follows:

1. The Court finds accused Franco Darmon De Guzman y Yazon a.k.a. Darmon Yazon y Cortez, a.k.a. Franco De Guzman y Cortez, Guilty beyond reasonable doubt of the crime of Kidnapping and serious illegal detention defined and penalized under Article 267 of the Revised Penal Code as amended. The Court hereby sentences [the] accused to suffer the penalty of reclusion perpetua without eligibility for parole pursuant to R.A. 9346.
2. The Accused is ordered to pay the private offended party P200,000.00, for moral damages and P100,000.00 as exemplary damages.

SO ORDERED.[20]

On appeal, the CA in its January 21, 2014 Decision affirmed in toto appellant's conviction for the crime of kidnapping and serious illegal detention. It ruled:

WHEREFORE, the appeal is DENIED. The appealed Decision dated September 4, 2012 of the RTC, Branch 140, Makati City, in Criminal Case No. 10-2077 is AFFIRMED.

SO ORDERED.[21]

Hence, this appeal.

In our January 12, 2015 Resolution,[22] the parties were notified that they may file their supplemental briefs. Both parties[23] decided to forego the filing of such pleadings and opted to adopt the briefs they had submitted before the CA.

Essentially the issue for our consideration is whether appellant is guilty beyond reasonable doubt of the crime of kidnapping and serious illegal detention.

Appellant claims that AAA's testimony was not credible since it contained facts which were not proven such as his claim that he was hypnotized by appellant into going with him to Antipolo, the existence of bodyguards, and the missions that he supposedly undertook. As such, the prosecution was not able to prove beyond reasonable doubt that appellant is guilty of the crime charged.

We dismiss the appeal and affirm the CA's January 21, 2014 Decision.

Appellate courts will not disturb the trial court's assessment of the credibility of witnesses in the absence of proof that some fact or circumstance of substance has been overlooked, or its significance misinterpreted which, if properly appreciated, would affect the disposition of the case.[24] For having heard the witnesses and observed their deportment on the stand, the trial judge is in a better position to resolve such question.[25]

Here, appellant does not present to us any justifiable reason to overturn the lower court's finding of credibility of the witnesses presented. In any event, while there might have been inconsistencies in the testimony of AAA, by and large his testimony was corroborated not only by his brother and father but also by the arresting officers. Appellant, on the other hand, raised as defense a mere denial uncorroborated by testimony or other evidence.

Appellant was charged with the crime of kidnapping and serious illegal detention as defined in Article 267 of the Revised Penal Code which provides:

ART. 267. 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:

- If the kidnapping or detention shall have lasted more than three days.
- If it shall have been committed simulating public authority.
- 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.
- 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. (Emphasis provided)

The essence of the crime of kidnapping is the actual deprivation of the victim's liberty, coupled with indubitable proof of the intent of the accused to effect the same.[26] The crime of serious illegal detention consists not only of placing a person in an enclosure, but also of detaining him or depriving him in any manner of his liberty.[27] When deprivation of liberty occurs under any of the circumstances listed under Article 267, paragraph 4 is present, the crime of kidnapping and serious illegal detention is consummated.

Here, after a review of the records of the case, it was established that AAA was held by an overwhelming fear that he might be harmed should he not follow the dictates of appellant. He testified:

Q

What happened the next day?

A

I just stayed inside the house Sir.

Q

Why did you not go out?

A

I was detained (nakakulong) Sir.

Q

How so?

A

I just stayed inside the house, I was instructed not to go out, Sir.

Q

What was the reason he gave you?

A

He said that the muslin might see me because he represented himself as sultan, Sir.

Q

Will you describe to us the main door of this house where the accused brought you?

A

It has a lock Sir.

Q

What about windows?

A

They are covered, Sir.

Q

How many days did you stay there?

A

Nine days, Sir.

Q

Why did you not go home?

A

I wanted to escape but I do not have money, Sir.

Q

Could you not ask help from the neighborhood?

A

The people around are silent Sir, he prohibits me to go out.

Q

How did he prevent you from leaving?

A

He threatened me not to go out because somebody might see me, Sir.

Q

What did you feel when he threatened you not to go out?

A

I was worried Sir, I missed my family.

Q

Why did you not call your family?

A

I sold my cellphone Sir so we could have something to buy food because he said that it is my mission to feed him, Sir.

Q

To whom did you sell your cellphone?

A

I sold it in the market at Cogeo, Sir. x x x x

Q

Why did you not escape during that time when you sold your cellphone in the market?

A

No because I gave him the money as part of my mission, Sir.

Q

You said that you went to the market to sell your cellphone, why did you not ask for help while in the market when that is a public place?

A

He told me that his bodyguards are around watching me Sir, and that if I try to escape they will get me.

Q

Why did you not try to escape when he was sleeping?

A

Everytime I would peep thru the window he would tell me that there is a guardian watching me, Sir.[28]

The foregoing clearly showed that AAA was deprived of his liberty when he yielded to the dictates of appellant and did not leave the house out of fear. Appellant instilled such fear into AAA making him believe that he is a Sultan who has bodyguards constantly watching AAA's every move. The minor AAA thus realized he was already being detained ("nakakulong") being under the control of his captor, appellant, who will prevent him from leaving should he attempt to do so.

We have held that the following elements must be established by the prosecution to obtain a conviction for kidnapping, viz.: (a) the offender is a private individual; (b) he kidnaps or detains another, or in any manner deprives the latter of his liberty; (c) the act of detention or kidnapping must be illegal; and (d) in the commission of the offense, any of the following circumstances is present: (1) the kidnapping or detention lasts for more than three days; (2) it is committed by simulating public authority; (3) any serious physical injuries are inflicted upon the person kidnapped or detained, or threats to kill him are made; or (4) the person kidnapped or detained, is a minor, a female, or a public officer. If the victim is a minor, or is kidnapped or detained for the purpose of extorting ransom, the duration of detention becomes immaterial.[29] The essence of kidnapping is the actual deprivation of the victim's liberty, coupled with indubitable proof of the intent of the accused to effect such deprivation.[30]

The fact that AAA voluntarily went with appellant to Antipolo, upon appellant's pretension that he had to open the vault of his house, is immaterial. What is controlling is the act of the accused in detaining the victim against his or her will after the offender is able to take the victim in his custody. In short, the carrying away of the victim in the crime of kidnapping and serious illegal detention can either be made forcibly or, as in the instant case, fraudulently.[31]

WHEREFORE, the appeal is DISMISSED for lack of merit. Appellant FRANCO DARMO DE GUZMAN is hereby found GUILTY of the crime of kidnapping and serious illegal detention as defined under Article 267 of the Revised Penal Code. As stated by the Regional Trial Court, he is sentenced to suffer the penalty of reclusion perpetua without eligibility for parole and ordered to pay the private offended party P200,000.00 and P100,000.00 for moral and exemplary damages, respectively.

With costs against the appellant.

SO ORDERED.

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

December 18, 2015

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on ____November 25, 2015____ a Decision, copy attached hereto, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on December 18, 2015 at 10:20 a.m.

Very truly yours,

(SGD)

WILFREDO V. LAPITAN

Division Clerk of Court

[*] Designated additional Member per Raffle dated October 27, 2014.

[1] Rollo, pp. 14-15.

[2] Id. at 2-13. Penned by Associate Justice Hakim S. Abdulwahid with Associate Justices Romeo F. Barza and Ramon A. Cruz concurring.

[3] CA rollo, pp. 19-29. Penned by Judge Cristina F. Javalera-Sulit.

[4] REVISED PENAL CODE, Article 267 provides:

ART. 267. 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.

x x x x

[5] Records, pp. 1-2. Signed by Assistant City Prosecutor Wilhelmina B. Go-Macaraeg.

[6] The victim's real name and personal circumstances or any other information tending to establish or compromise her identity as well as those of her immediate family, are withheld per *People v. Cabalquinto*, 533 Phil. 703, 709 (2006).

[7] Id. at 1.

[8] Id. at 25.

[9] Based on the Certificate of Live Birth presented. Id. at 88.

[10] Rollo, p. 4.

[11] Id.

[12] Id. at 4-5.

[13] Id. at 5.

[14] Id.

[15] Id. at 6.

[16] Id. at 6-7.

[17] Id. at 7.

[18] Id.

[19] Id. at 8.

[20] CA rollo, pp. 28-29.

[21] Rollo, pp. 12-13.

[22] Id. at 20-21.

[23] Id. at 22-24 and 29-31.

[24] *People v. Ramos*, 369 Phil. 84, 99-100 (1999).

[25] Id. at 100.

[26] *People v. Mostrales*, 667 Phil. 395, 409 (2011).

[27] *People v. Madsali*, 625 Phil. 431, 453 (2010).

[28] TSN, March 22, 2011, pp. 8-12.

[29] *People v. Bringas*, 633 Phil. 486, 515-516 (2010).

[30] *People v. Siongco*, 637 Phil. 488, 499 (2010), citing *People v. Borromeo*, 380 Phil. 523 (2000); *People v. Soberano*, 346 Phil. 449 (1997).

[31] Id. at 500, citing *People v. Cruz, Jr.*, 616 Phil. 424, 446 (2009) further citing *People v. Dednyo*, 460 Phil. 266, 285-286 (2003) and Florenz D. Regalado, *CRIMINAL LAW CONSPECTUS* 488 (2000).

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