

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARCADIO FIEL, JR., ANTONIO ALZATE AND JERRY CAMPO, DEFENDANTS-APPELLANTS.

G.R. No. 56405. December 15, 1982

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From the decision of the Court of First Instance of Bohol, Branch III, Tagbilaran City, convicting Arcadio Fiel, Jr., Antonio Alzate and Jerry Campo of the crime of kidnapping, as defined and penalized under Article 267 of the Revised Penal Code and sentencing them to reclusion perpetua, together with all the accessories of the law, to pay the offended parties the amount of P12,000.00, as moral damages, without subsidiary imprisonment but with costs, aforementioned accused interposed the present appeal.

The facts upon which their conviction was made to rest, are as follows, quoting from the People's brief:

"Around 7:00 o'clock in the morning of March 6, 1979, as complainants Conchita Laruga, married, and her brother-in-law, Rosendo Laruga, were getting ready to leave their house in Barangay Lawis, Inabanga, Bohol, for Cebu City on board their pumpboat to sell shrimps which Conchita had bought earlier, appellant Antonio Alzate and an unidentified person arrived. The two men asked complainants if they and three other companions who were waiting at Bo. Sto. Nino, Inabanga, Bohol, could ride with them for a fee of P50.00. Conchita and Rosendo Laruga consented. With Rosendo manning the pumpboat, they passed by barrio Sto. Nino to pick up the three companions of Alzate. The five passengers were carrying with them two travelling bags, a carton, a plastic bag and two plastic containers, (t.s.n., pp. 3-6, March 12, 1980)

"While the boat was cruising between Cuaming and Kahoykahoyan islands, the five passengers brought out weapons which they pointed at Conchita and Rosendo Laruga. Alzate was armed with a hunting knife, while the rest were carrying short firearms. Three of Alzate's companions were later identified as appellants Arcadio Fiel, Jr. and Jerry Campo and co-accused Romeo Mansinatao. The identity of the fourth was unknown.

"Appellant Fiel, Jr. told complainants, 'Do not move and do not offer any resistance. Do not talk because we are rebels. We are against the law because of the high prices of commodities.' (t.s.n., pp. 7-9, March 12, 1980). He also ordered Rosendo to sail for Leyte. When Rosendo informed Fiel, Jr. that the gasoline would not be enough for them to reach Leyte, the latter told Rosendo to proceed to the nearby island of Pandanon, situated in Jetafe, Bohol, where they stopped to buy some gasoline. Fiel, Jr. demanded money from Conchita for gasoline.

When she told him that she did not bring along any money, Fiel said to her, "If you cannot give us money I would strip off your clothes in order that you appear to be naked." Fiel, Jr. did not, however, carry out his threat as Conchita gave him the shrimps which she intended to sell in Cebu City. At Pandanon Island, two of the men left the boat to buy gasoline, while the others were left inside the pumpboat guarding Conchita and Rosendo. With the proceeds of the sale of Conchita's shrimps, valued at P550.00, the malefactors were able to buy two big containers of gasoline, (t.s.n., pp. 10-14, March 12, 1980)

"From Pandanon Island, Rosendo was directed to sail to a place known as Ubay. As they were nearing the sea waters of Ubay, Fiel, Jr. ordered Rosendo to stop the boat. Appellant Jerry Campo and their unidentified companion went ashore to buy more gasoline, while the rest remained in the boat with their weapons pointed at

the complainants. The time was about 1:00 o'clock in the afternoon of March 6, 1979. After buying gasoline, Rosendo was ordered to proceed to Leyte. But, as they were approaching the island of Leyte, Fiel, Jr. took over the operation of the pumpboat from Rosendo and sailed towards the island of Samar. Complainants pleaded to their captors to drop them off in Leyte and take their pumpboat wherever they wish to go. The men did not heed their plea for fear that complainants might inform the authorities in Leyte about the incident. It was then 5:00 o'clock in the afternoon of the same day. (t.s.n., pp. 14-19, March 12, 1980). Throughout the night, the pumpboat continue to travel with Fiel, Jr. operating the vessel. Cold and wet, Conchita saw that her captors had a map, a compass and a flashlight with them, (t.s.n., pp. 19-20, March 12, 1980).

"The following morning, March 7, 1979, they were still at sea. Later, as the boat was nearing shore, Fiel, Jr. told his companions: "Let us break the mast and the camarote so that when we will land at Butuan City, the pumpboat cannot be identified by the coastguard." After destroying the mast of the pumpboat and its compartment known as "camarote", they drove the boat along the Butuan River. While cruising along the river, Conchita thought of jumping out but was warned not to, otherwise, she would be killed. As they neared Butuan City, the boat was running short of gasoline and they decided to land at a place known as Maginda to buy gasoline. After Maginda, the boat proceeded on its way until it reached a place called Esperanza in Agusan del Sur. It was 4:00 o'clock in the afternoon of March 7, 1979, or approximately thirty-three (33) hours after the pumpboat left Lawis, Inabanga, Bohoi. (t.s.n., pp. 20-23, March 12, 1980)

"The pumpboat had to dock at Esperanza because an Integrated Civilian Home Defense Force (ICHDF) soldier signalled and beckoned them to stop. At that time, Fiel, Jr. was manning the pumpboat. As the boat stopped, Jerry Campo and the unidentified companion of the group went down to buy gasoline, while Antonio Alzate and Romeo Mansinatao approached the soldier and showed him their IDs.

Arcadio Fiel, Jr. remained in the boat guarding Conchita and Rosendo. Conchita, with the use of her hands, was able to convey a signal to the soldier that the man guarding her is a rebel. The soldier, later identified as Prudencio Empistan of the Integrated Civilian Home Defense Force, together with another ICHDF soldier by the name of Gaudencio Campos, approached the boat, drew out their revolvers and pointed it at Fiel, Jr. Whereupon, Conchita and Rosendo jumped out of the boat and started shouting that they were being held captives by rebels, at the same time pointing to the five men. The peace officers ran after the men and were able to arrest four of them. One was able to escape, (t.s.n., pp. 24-27, March 12, 1980). Found in their possession were a compass (Exh. C), a map (Exh. E), a revolver (Exh. F) and a small firearm (Exh. G).

"The four suspects, together with Conchita and Rosendo, were taken to the police headquarters for interrogation. Pictures of the pumpboat, together with the suspects and the ICHDF Commander and members of his outfit were taken (Exhs. I, 1-1 and 1-2). The three accused-appellants, namely, Arcadio Fiel, Jr., Jerry Campo and Antonio Alzate, were brought to Bohol where they were charged in court with the crime of double kidnapping. Accused Romeo Mansinatao was left in Esperanza, Agusan del Sur, where he was facing a criminal charge.(t.s.n., pp. 4-16, Dec. 12, 1979).[1]

Appellants deny having deprived the offended parties of their liberty at any time while they were in the pumpboat navigating on the seas in the Visayan area. Their version, also as stated in the People's brief, is as follows:

"According to appellants, they came to Bohol to join a new religious sect known as the Iglesia Catolica Filipina whose leader was Papa Teodorico Melecio. They were housed by Papa Melecio inside the compound of Rowena Village in Lawis, Inabanga, Bohol. Upon learning that their new religion was engaged in underground activities against the government, they planned to escape from the place and report the matter to the authorities. However, they were afraid of Papa Melecio who threatened to kill them if he would try to escape from the place. On March 6, 1979, the group managed to escape because Papa Melecio had left for Cebu on March 4, 1979. Antonio Alzate and a certain Alan Santos started looking for a pumpboat which would bring them out of Bohol. They found one at Sto. Nino, Inabanga, Bohol. They negotiated for the pumpboat with the owner's mother but the latter did not agree. Overhearing the conversation, complainant Conchita

Laruga offered her pumpboat for a fare of F10.00 per person. So, at about 7:00 o'clock in the morning of March 6, 1979, they left Inabanga bound for Cebu. They were seven in all in the pumpboat, including Conchita and Rosendo Laruga.

The latter operated the pumpboat. As it was sailing for Cebu, they encountered another pumpboat at a distance. Fearing that said boat might belong to Papa Melecio who was looking for them, Arcadio Fiel, Jr. suggested to Conchita to divert the direction of the pumpboat to San Luis and proposed an increased fare of P250.00, which Conchita agreed. The pumpboat then sailed towards Pandanon Island where they stopped to buy gasoline. Fiel, Jr. also suggested to Conchita to sell all the shrimps she was bringing with her to prevent their spoilage. Thereafter, they proceeded to an island near Ubay to buy more gasoline and some food for Conchita who was hungry. Afterwards, they sailed passed Leyte island on their way to San Luis, as agreed. Arriving the following morning in Agusan, they sailed along the Agusan River, but had to dock at Esperanza, Agusan del Sur, because some ICHDF soldiers beckoned them to stop. While Fiel, Jr. and his companions were conversing with the soldiers, Conchita jumped out of the pumpboat and shouted that she was being held captives by rebels. They were all arrested and brought to the Office of the ICHDF and investigated."^[2]

What at once strikes attention is why did the offended parties whose destination was Cebu to sell shrimps when they sailed from their barrio Lawis, Inabanga, Bohol find themselves in Esperanza, Agusan del Sur, about thirty three hours after leaving their barrio.

Could they have willingly consented to the wide and dangerous deviation of their trip as directed by appellants? To answer this question is to unavoidably discard appellant's story as pure fiction. For why should the offended parties allow their relatively short trip to Cebu with an important mission there, to be deviated perilously on the wide sea, at such dangerous hours of the night, thereby considerably increasing the distance and time of travel with the ever present perils of the sea lurking around them in the company of unknown persons? They did not, but under the threats against their lives, they had no choice. They cannot jump into the sea and possibly, if not certainly perish into a watery grave.

The foregoing circumstances lend complete credibility to the testimony of the offended parties that they were captives in their own vessel, deprived of their liberty until by sheer luck, they were rescued by government soldiers. Most significant is the act of the offended parties jumping off the boat, on sight of the soldiers, and Conchita's spontaneous statement to them that they were being held captives by rebels. This declaration is part of the *res gestae* and of considerable weight as evidence, sufficient to discredit the obviously futile pretense of appellants, particularly of their supposed escaping from a subversive group in Bohol, for they showed all the trappings of being the rebels themselves. They had arms, including guns which they pointed to offended parties. They had a map, a compass and knives.

There can therefore, be no denying the fact that the offended parties, one of whom is a woman, Conchita, were deprived of their liberty. They need not be kept within an enclosure to restrict their freedom of locomotion as appellants claim to be an element of the crime charged. It is enough that they were in any manner, deprived of their liberty, unable to move as they pleased, not even to leave their craft to appellants, as they would have preferred to being held captives under threats of death, uncertain of their fate in the hands of their armed captors.

Unquestionably, the issue is one of credibility with the opposing sides proffering diametrically conflicting testimonies. The trial court clearly appears to have given more credence to the witnesses for the prosecution. We find no reason to disturb the finding of said court, in line with well-settled doctrine on the matter, applied in cases so numerous to make citation of specific ones clearly needless although a few cases may be cited.^[3]

Under the facts as clearly proven, the element of the crime of kidnapping as charged, under Article 267 of the Revised Penal Code are all present. A woman being one of the offended parties this qualifying circumstances as

mentioned in the law justified the imposition of the penalty of reclusion perpetua also as provided therein.

WHEREFORE, the judgment appealed from being in accordance with law and the evidence, is affirmed, with costs.

SO ORDERED.,

Makasiar (Chairman), Concepcion Jr., Guerrero, Abad Santos and Escolin, JJ., concur.

Aquino, J., I concur but I just want to state that if the kidnapping of the two victims should not be regarded as a complex crime, then a separate penalty should be imposed for the kidnapping of Rosendo Laruga, as to whom the crime of slight illegal detention was committed. For last offense, the penalty of ten years of prision mayor as minimum to fifteen years of reclusion temporal as maximum should be imposed.

[1] pp. 3-7, Appellee's Brief, p. 74, Rollo.

[2] pp.7-8, Id.

[3] People vs. Mendoza, 105 SCRA 459; People vs. Lacson, 102 SCRA 457; People vs De la Cruz, 97 SCRA 385; People vs. Laguisona, 98; People vs. Balili, 92 SCRA 552.

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