

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANGELINA MENDOZA Y RAMOS, ACCUSED-APPELLANT.*G.R. No. 67610. July 31, 1989*

Ponente: FERNAN, C.J.

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To a parent, the anguish of losing a child under any circumstance is indescribable. If death, or any other disastrous event which a parent cannot foresee or control be the cause of such loss, the pain may be assuaged by the thought that fate's overpowering hand intervened.

But if such loss be brought about by anyone with the sinister intent of taking away the child from his or her parents against the latter's will to derive personal gain by selling the child like a commodity in callous disregard of the child's well-being, it is not the parents alone but society as a whole that bears the anguish and the outrage caused by such evil deed. The perpetration of this evil deserves severe punishment.

Angelina Mendoza y Ramos alias "Rosalinda Quintos" was convicted of the crime of kidnapping a minor as defined in Article 270 of the Revised Penal Code, and meted the penalty of reclusion perpetua by the Regional Trial Court of Manila, Branch XVI.[1] She now appeals from said conviction on a lone assignment of error, to wit:

THE COURT A QUO ERRED IN CONVICTING THE ACCUSED-APPELLANT OF KIDNAPPING AND FAILURE TO RETURN A MINOR UNDER ARTICLE 270 OF THE REVISED PENAL CODE.[2]

The Information dated October 19, 1982 charged Angelina Mendoza y Ramos with the crime of Kidnapping and Failure to Return a Minor allegedly committed as follows:

"That on or about September 28, 1982, in the City of Manila, Philippines, the said accused: being a private individual and without authority of law did then and there wilfully, unlawfully, feloniously and illegally kidnap and carry away EDWARD POLICARPIO, a one year and three months old baby boy, for the purpose of selling him and separating him from his mother, Mrs. EUGENIA T. POLICARPIO, by then and there, befriending the said child and his parents at the Luneta Park, this City, carrying him away without the knowledge and consent of his said parents, and deliberately failing to return him to said Eugenia T. Policarpio, his mother.[3]

A plea of "not guilty" having been entered by accused-appellant on arraignment,[4] trial ensued.

The prosecution version is summarized in the appealed decision, thus:

"x x x At 8:00 o'clock in the morning of September 28, 1982 spouses Ernesto and Eugenia Policarpio along with their two children, Ferdinand and Edward, seven years old and one year and three months old respectively, were at the Luneta Park near the Rizal Monument in Manila. Having just arrived from Nueva Ecija, the family was resting at the park. Then and there, a woman who turned out to be accused Angelina Mendoza, but who had introduced herself as 'Rosalinda Quintos' accosted them. She struck a conversation with the spouses and even offered them food particularly to Edward. Mr. Policarpio, a Pampango, recognized

the accused. He recalled having seen her at a club in Angeles City. During their conversation, the accused gave the spouses her address at 2526 Dallas Street, Makati, Metro Manila. At one point, she even half-seriously asked the spouses to give the boy Edward to her. They of course did not take the request seriously. Then while Mr. Policarpio had apparently gone somewhere away from the group and while Mrs. Policarpio was not looking, the accused began playing with Edward and, offering him food, lured him away from his mother. Shortly, the accused carried Edward and took him away with her.

"The spouses lost no time in reporting the incident to the police at the station in Luneta Park. The police officers there showed them photographs from among which they were able to identify the accused. Police records also disclose that the accused had been arrested a number of times for vagrancy and that her occupation appeared to be that of a hooker.

"It developed that from the Luneta the accused brought the child to Tramo Street, Pasay City where she claimed before some residents that the child was that of a hostess friend of hers who being gravely ill of leprosy was in dire need of money, and that she was asked to sell the child for P250.00. This unusual sales offer happened to take place in front of the house of Mrs. Delia Navarette, a barangay councilwoman whose attention was attracted by the number of people who had gathered outside her house. The accused offered to sell the child to Mrs. Navarette. The latter felt the proposition distasteful, saying that it was not right that a child should be sold and that what accused was doing was illegal. Nonetheless, the accused insisted on momentarily leaving the child with Mrs. Navarette. Intending to have the child returned to his mother, Mrs. Navarette asked her sister to go with the accused to the National Orthopedic Hospital where according to the accused the boy's mother was confined. But when Mrs. Navarette's sister and the accused were on their way to the hospital, the latter changed her story. She said that the boy's mother was at the Philippine General Hospital instead. So they proceeded to the PGH and went up to the third floor where the accused said the boy's mother was. But it turned out that all the patients on that floor were males. To make the long story short, the accused had given Mrs. Navarette's sister the run around. And when the latter finally got fed up she phoned Mrs. Navarette to report what had happened. Mrs. Navarette instructed her sister to bring the accused to her as she had now decided to report the matter to the police. While the accused and Mrs. Navarette's sister were waiting for a taxi at PGH, the former disappeared. Since the child had been left with her, Mrs. Navarette felt obliged to take care of him. She also made it a point to report the incident to the police to alert them in case there should be reports of a missing child.

"Sometime later, the accused reappeared at the Luneta Police Station ostensibly to visit a detainee thereat. It was then that the police officer on duty recognized her. She was questioned regarding the whereabouts of the boy. Threatened with arrest, she revealed that she had left the boy with Mrs. Navarette in Pasay City. That led to the recovery of Edward Policarpio and his eventual return to his parents twenty days after the accused took him away." [5]

The defense version, on the other hand, is capsulized in the Brief for the Accused-Appellant as follows:

"The defense presented the accused, ANGELINA MENDOZA, 36 years old, single, store keeper, and residing at 2526 Dalin, Makati, Metro-Manila, who testified that she did not kidnap a minor named Edward and failed to return (sic) to his parents. After arriving from Angeles City, she went to Luneta to eat and rest. She was approached by the couple and asked if they could share in her food. She asked them where they come from and the couple replied that they slept there at Luneta because they have been robbed. She also gave P54.00 to the husband who told her that he was hungry. Subsequently, she was told by the man to take care of the child considering that said child is sickly and it is drizzling. She then went to her aunt's place in Pulang Lupa. Finding no persons, she went to the place of a friend in Tramo and left the child. She told her friend that she will come back after her operation. Later she found herself confined at San Lazaro Hospital for at least two months. While in the hospital she was informed by a friend who visited her that she is wanted by the police. She escaped from the hospital and went to Precinct 5 and two policemen arrested her. She was informed of having kidnapped a child but she denied (sic). She informed Pat. Bacobo where to get the child and the latter

said that she will be charged only for vagrancy. When the child was recovered, she was instead jailed. (TSN, pp. 1 to 8, August 17, 1983, TSN, pp. 2 to 4, September 7, 1983)."[6]

Giving full credence to the prosecution version and rejecting as incredible and unacceptable the defense of accused-appellant that the minor child Edward was voluntarily given to her by his parents to take care of, the trial court, as earlier stated, convicted accused-appellant of the crime of Kidnapping of a Minor in violation of Article 270 of the Revised Penal Code. The dispositive portion of the decision reads thus:

"WHEREFORE, judgment is hereby rendered finding that the prosecution has established the guilt of the accused beyond reasonable doubt of the offense of kidnapping of a minor in violation of Article 270 of the Revised Penal Code. Accordingly, she is hereby sentenced to suffer the penalty of reclusion perpetua as well as to pay the costs.

SO ORDERED."[7]

Hence, this appeal.

Accused-appellant contends that the trial court erred in convicting her of the crime of Kidnapping and Failure to Return a Minor as defined and penalized under Article 270 of the Revised Penal Code, as it was not proven that the custody of the minor victim Edward Policarpio had been entrusted to her and that she deliberately failed to return or restore said minor to his parents or guardians.[8] She alleges that on the contrary, based on the Information, sworn statement and testimony of the complainant-witness, Mrs. Eugenia Policarpio, the crime committed was Kidnapping and Serious Illegal Detention under par. 4 of Article 267 of the Revised Penal Code. She, however, argued that she cannot be convicted of Kidnapping and Serious Illegal Detention under Article 267 because said crime is not included in the crime charged (Art. 270). She cites Sections 4 and 5 of Rule 120 of the Rules of Court in support of her contention, to wit:

"Sec. 4. Judgment in case of variance between allegation and proof. - When there is variance between the offense charged in the complaint or information, and that proved or established by the evidence, and the offense as charged is included in or necessarily includes the offense proved, the defendant shall be convicted of the offense proved included in that which is charged, or of the offense charged included in that which is proved.

"Sec. 5. When an offense includes or is included in another. - An offense charged necessarily includes that which is proved, when some of the essential element or ingredients of the former, as this is alleged in the complaint or information, constitute the latter. And an offense charged is necessarily included in the offense proved, when the essential ingredients of the former constitute or form a part of those constituting the latter."

She further invokes Section 19, Article IV[9] of the 1973 Constitution which gives an accused the right to be informed of the nature and cause of the accusation against him as barring her conviction under Article 267 of the Revised Penal Code. Accused-appellant would likewise insist on her innocence, arguing that it was highly improbable that she could have taken the child without the knowledge and consent of the father, Ernesto Policarpio, who was then taking care of the child.

After a careful review of the evidence on record, we are convinced beyond reasonable doubt that accused-appellant is guilty of Kidnapping and Serious Illegal Detention as defined and penalized under Article 267 of the Revised Penal Code. It has been established by the clear, strong and positive evidence of the prosecution that the taking of the minor child Edward was without the the knowledge and consent of his parents. Said criminal act was perpetrated while Mrs. Policarpio had her back turned to the child and accused-appellant and while Mr. Policarpio was temporarily away from the group. The contention of the defense that the child was taken with the consent of the father is unworthy of belief for the same is inconsistent with the immediate reaction

of Mr. and Mrs. Policarpio of reporting the incident to the police as soon as they realized that Edward was missing. Furthermore, it is incredible that a parent would entrust his child to a person not very well known to him and with no visible means of livelihood. The seeming lack of protest from Mr. Policarpio did not signify consent to the taking of the child but was due to the lack of opportunity to do so. As testified to by Mrs. Policarpio:

Q When you first noticed that you -- when you were informed by your other son that Edward was no longer there did you notice where your husband was at that time?

A I did not notice my husband suddenly disappeared and afterwards I asked him where my son was.

Q And what did he say?

A My husband informed me that he saw the woman took (sic) my son and that he said also that the woman rode in a jeepney going towards Mabini. I asked him why he was not able to ran after her, he said the woman boarded the jeepney already.[10]

Indeed, the factual findings of the trial court is that "(T)hen while Mr. Policarpio had apparently gone somewhere away from the group and while Mrs. Policarpio was not looking, the accused began playing with Edward and, offering him food, lured him away from his mother. Shortly, the accused carried Edward and took him away with her." [11]

Finally, the trial court concluded that whatever doubt as to the culpability of the accused is dissipated by her sworn statement, Exhibit "D", wherein she confessed having taken Edward away from his parents without their knowledge and consent.[12]

We see no cogent reason to deviate from the well-settled rule that appellate courts will generally not disturb the factual findings of the trial court considering that it is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial.[13]

Counsel for accused-appellant laid stress on the fact that the latter cannot be convicted of "Kidnapping and Failure to Return a Minor" under Article 270 of the Revised Penal Code, there being no allegations to that effect in the information much less evidence to support the conclusion that the elements of said crime are present.

While the Information against accused-appellant is captioned "Kidnapping and Failure to Return a Minor", the allegations in the body thereof properly constitute the crime of Kidnapping and Serious Illegal Detention. Thus, instead of alleging the elements of Kidnapping and Failure to Return a Minor that the offender had been entrusted with the custody of a minor person and that said offender had deliberately failed to restore the latter to his parents or guardians, the text of the Information alleged the elements of the crime of Kidnapping and Serious Illegal Detention under Article 267 of the Revised Penal Code, to wit:

"x x x did then and there wilfully, unlawfully, feloniously and illegally kidnap and carry away EDWARD POLICARPIO, a one year and three months old baby boy, for the purpose of selling him and separating him from his mother, Mrs. EUGENIA T. POLICARPIO, x x x carrying him away without the knowledge and consent of his said parents and deliberately failing to return him x x x".[14] (Underscoring supplied).

It is well-settled that the real nature of the criminal charge is determined not from the caption or preamble of the Information nor from the specification of the provision of law alleged to have been violated, they being conclusions of law, but by the actual recital of facts in the complaint or information.[15] Only recently, this principle was reiterated in *People v. Torres & Salas*, G.R. No. 76711, September 26, 1988, wherein this Court again held that it is not the technical name given by the Fiscal appearing in the title of the Information that determines the character of the crime but the facts alleged in the body of the Information.

Based on the foregoing, it is evident that accused-appellant can be convicted of Kidnapping and Serious Illegal Detention instead of "Kidnapping and Failure to Return a Minor", and that there is no variance between the crime charged and the crime proven, which would fall under Sections 4 and 5 Rule 120 of the Rules of Court. Stated differently, said provisions relied upon by accused-appellant have no application to the case at bar.

Finally, as to the contention of the accused-appellant that she has been deprived of her constitutional right to be informed of the nature and cause of the accusation against her, we re-emphasize the doctrine that where the information clearly sets forth the essential elements of the crime charged as in the instant case, the constitutional right of the accused to be informed of the nature and cause of his accusation is not violated.[16]

WHEREFORE, the accused-appellant Angelina Mendoza is found GUILTY beyond reasonable doubt of the crime of Kidnapping and Serious Illegal Detention under Article 267 of the Revised Penal Code. Accused-Appellant is hereby sentenced to suffer the penalty of reclusion perpetua and to pay the costs.

SO ORDERED.

Gutierrez, Jr., Feliciano, Bidin, and Cortes, JJ., concur.

[1] Presided by then Judge, now CA Justice Alfredo L. Benipayo.

[2] Brief for the Accused-Appellant, p. 1; Rollo, p. 23.

[3] Original Record, p. 1.

[4] Ibid, p. 6.

[5] Ibid, pp. 83-85.

[6] Brief for Accused-Appellant, pp. 5-6; Rollo, p. 23.

[7] Record on Appeal, p. 86.

[8] Article 270, Revised Penal Code reads: "Art. 270. Kidnapping and failure to return a minor. -- The penalty of reclusion perpetua shall be imposed upon any person who, being entrusted with the custody of a minor person, shall deliberately fail to restore the latter to his parents or guardians." (As amended by Republic Act No. 18).

[9] Now Section 14(2), Article III of the 1987 Constitution.

[10] TSN, November 24, 1982, p. 22.

[11] Rollo, p. 6.

[12] Record on Appeal, pp. 85-86.

[13] People v. Avero, G.R. No. 76483, August 30, 1988; People v. Grefiel; 125 SCRA 102; People v. Alison, L-30612, May 3, 1983, 122 SCRA 9; People v. Cabanit, 139 SCRA 94; People v. Legones, 69 SCRA 210.

[14] Supra, footnote 3.

[15] Matilde v. Jabson, 68 SCRA 456; People v. Cosare, 95 Phil. 656; People v. Arnault, 92 Phil. 252; People v. Oliveria, 67 Phil. 427.

[16] Inocencio Tan y Concepcion v. People, L-25460, March 13, 1968, 22 SCRA 1020.

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