

THE PEOPLE OF THE PHILIPPINES PLAINTIFF AND APPELLEE, VS. LILIA GUTIERREZ Y FRANCO, DEFENDANT AND APPELLANT.

G.R. No. 81020. May 28, 1991

Ponente: FELICIANO, J.

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FELICIANO, J.:

The accused Lilia Gutierrez y Franco is before us on appeal from the decision of the Regional Trial Court, Branch 27, Manila, convicting her of the crime of kidnapping and failure to return a minor and sentencing her to reclusion perpetua.

Appellant was charged under an information which read as follows:

"The undersigned accuses LILIA GUTIERREZ Y FRANCO of a violation of Article 270 of the Revised Penal Code (Kidnapping and Failure to Return a Minor) committed as follows:

That on or about the 13th day of July, 1984, in the City of Manila, Philippines, the said accused, having been entrusted the custody of one Hazel Elpedes, a boy, two and a half years of age, and therefore, a minor, did then and there wilfully, unlawfully, feloniously and deliberately fail and refuse to restore the said child to his parents, Frank Elpedes y Sumayod and Lourdes Elpedes, and instead sell the said child for P250.00.

CONTRARY TO LAW."[1]

Appellant entered a plea of not guilty. After trial, the lower court rendered a decision dated 14 September 1987 finding the accused guilty of the crime charged. The dispositive portion of the decision states:

"WHEREFORE, the Court finds the accused, Lilia Gutierrez y Franco, guilty beyond a reasonable doubt of the crime as charged and hereby sentences her to suffer the penalty of life imprisonment (sic) and is hereby ordered to pay the sum of P2,000.00 to the parents of the minor, Frank Elpedes and Lourdes Elpedes, for moral damages and to pay the costs.

.....

SO ORDERED."[2]

Appellant in her Brief, assigns a single error, asserting that the trial court erred in convicting her because her guilt has not been proven beyond reasonable doubt.

The facts of the case as found by the trial court may be summarized as follows:

On the morning of 13 July 1984, appellant went to the residence of her sister-in-law, Lourdes Elpedes, at the Nichols Airbase, Pasay City, and obtained permission from the latter to take her youngest son Hazel, 2 1/2 years old for the day because appellant's husband, Maximiano Mariano, wanted to spend some time with his nephew at their residence in Paco, Manila. Both women agreed that the child would be brought back at 4:00 P.M. that same day. When appellant arrived at her residence, she discovered that her husband, and their belongings, were gone. For a while, appellant just sat there and cried. She then proceeded to the residence of her former employers, Mr.

and Mrs. Abraham Felipe, in Intramuros. They executed an "Agreement" under which appellant surrendered custody of Hazel Elpedes, purportedly her own fatherless son, in favor of the couple. Appellant received P250.00 from the couple which was evidenced by a receipt.[3]

Meanwhile, Lourdes Elpedes went to appellant's residence after the latter had failed to return with her son. Encountering no one there, she and her husband, Frank Elpedes, spent the next two days looking for appellant along Herran St. (now Pedro Gil St.). On 15 July 1984, Frank Elpedes spotted appellant in a telephone booth along said street and accosted her. The Elpedes spouses brought her to the Western Police District Station along United Nations Avenue, Manila. Appellant then led Frank Elpedes and at least one policeman, Patrolman Diosdado Deotoy, to the Felipe residence in Intramuros. But the group found neither the Felipe spouses nor the child there. Receiving information from the Barangay Chairman of the place that the child was in Cogeo, Antipolo, Rizal the group returned to the police station and then proceeded to Antipolo. There they recovered Hazel from the residence of the Felipe spouses. During this time, appellant admitted to the group that she had "sold" the child in order to avenge herself on her husband, Lourdes Elpedes' brother, who had abandoned her. On the evening of 15 July 1984, the group returned to the police station where appellant was investigated and placed under arrest. She has been under detention ever since.[4]

Lourdes Elpedes testified in court regarding the circumstances under which appellant obtained temporary custody of Hazel, the initial efforts by her and her husband to locate appellant, and the efforts of her husband and the police to recover Hazel in Intramuros and in Antipolo.[5]

Patrolman Diosdado Deotoy also testified in court regarding the efforts to recover Hazel Elpedes. He recounted how they were able to locate the house of the Felipe spouses in Cogeo and how the Felipe spouses readily surrendered the child upon being informed of his true parentage. He added that the Felipe spouses likewise surrendered the documents which came to be offered and admitted as exhibits D and E for the prosecution.[6]

Patrolman Ernesto Callos' testimony dealt with the circumstances under which he investigated the appellant. He mentioned that appellant repeated to him in the investigation room her admission regarding the "sale" of the child and her motive for "selling" him. He added that the admission was made voluntarily after appellant had intelligently waived the assistance of counsel. Furthermore, he did not insist, in deference to her constitutional rights, when she declined to reduce this admission into writing.[7]

Appellant testified on her own behalf as the sole witness for the defense. She stated that she had fetched Hazel Elpedes from his parents upon instructions of her husband. After discovering that her husband had abandoned her, she entrusted the child to the Felipe spouses merely for temporary safekeeping while she tried to locate her husband in his homeplace in Cabanatuan City. She believed that the Felipe spouses, her former employers, could be relied upon to look after the child responsibly. She misrepresented the child as her own because the Felipes were aware of her married status. Returning to the Felipe residence the following day, she received P180.00 from them, never considering for a moment that the amount represented payment for the child. She admitted affixing her thumbmarks on Exhibit E but repudiated her purported signatures on Exhibits D and E because she is illiterate. She added that she did not know why the Felipe spouses presented these documents to her. Appellant testified that it had never occurred to her to immediately return Hazel to his parents because she was in a confused state of mind upon realizing she had been abandoned by her husband.[8]

Appellant contends that the prosecution's evidence did not establish that she had deliberately failed to restore the boy Hazel to his parents by "selling" the child to the Felipe spouses. Elaborating, she argues that Lourdes Elpedes was an incompetent witness as far as her account of the recovery of Hazel in Antipolo was concerned, because she was not present when this event took place. Lourdes' account of appellant's alleged admission of the "sale" on that

occasion then constituted hearsay. Furthermore, she contends, Pat. Callos' testimony that appellant had admitted giving away the young boy to him during her investigation was likewise hearsay. Considering this alleged gap in the prosecution's evidence, appellant claims the prosecution should have presented either or both of the Felipe spouses to testify that appellant had indeed "sold" the child. Finally, appellant argues that the prosecution had not successfully rebutted her exculpatory testimony regarding her inadvertent failure to return Hazel to his parents.[9]

The offense of kidnapping and failure to return a minor defined and penalized under Article 270 of the Revised Penal Code consists of two elements: 1.) the offender has been entrusted with the custody of a minor person, and 2.) the offender deliberately fails to restore said minor to his parents or guardians.

It is clear that appellant admitted the existence of the first element for she had not disputed the testimony on circumstances under which she obtained custody for the day of Hazel Elpedes on the morning of 13 July 1984. Furthermore, as pointed out by the trial court, it was perfectly in consonance with human experience that Lourdes Elpedes should have readily allowed appellant to take Hazel temporarily because she is a relative by affinity who, until then, had not exhibited any conduct which might impair the trust normally reposed on a sister-in-law.[10]

We believe that the second element of the offense charged has been established by the prosecution's evidence. In the first place, appellant's own conduct in leading Frank Elpedes and Pat. Deotoy to the Felipe residence in Intramuros, in an initial unsuccessful effort to recover the child, indicated her awareness of the probable whereabouts of the child. The logical conclusion is that she must have been the person responsible for originally leaving the child with the Felipe spouses.[11] In the second place, the precise motive that appellant might have had for bringing Hazel Elpedes to the Felipe spouses and leaving him with them, apparently for an indefinite period, is not an indispensable element of the offense charged. All that was necessary for the prosecution to prove was that she had deliberately failed to return the minor to his parents. But appellant herself had testified that she had indeed left the child with the Felipe spouses in Intramuros. We find it very difficult to understand how appellant, even in her claimed disconsolate state, could have inadvertently left the child with the Felipe spouses in the latter's home in Intramuros (starting from Herran St., in the opposite direction from the Nichols Airbase, where the child's parents live). Moreover, appellant did not pretend to have tried to return Hazel to his parents by retrieving him from the Felipe spouses in Intramuros.

It is true that Lourdes Elpedes' account of Hazel's recovery in Antipolo was hearsay, because Lourdes was not then physically present in Antipolo. But Pat. Deotoy had participated in that operation and he testified accordingly. Pat. Deotoy had also stated that appellant had admitted taking the child and leaving him with the Felipe spouses. His testimony on this particular point was not disputed by appellant; appellant herself testified to that effect. Pat. Callos' statement that appellant had reiterated while she was under investigation, that she had "sold" the child to the Felipe spouses was not hearsay in so far as the simple fact that appellant had made certain oral statements to Pat. Callos was concerned. The trial court had observed the demeanor of Pats. Deotoy and Callos while testifying in open court and had pronounced them to be credible witnesses.[12] We find no basis for disregarding their testimony as to what appellant had uttered in their presence.[13] The two peace officers became involved in this case in the course of performing their duty to assist the aggrieved parents in recovering their missing child. Appellant did not show any evil motive on their part to falsify the truth and falsely impute to her, whom they met for the first time on this case, the commission of a grave offense.[14] Finally, appellant's affixing her thumbmark on Exhibit E (the Agreement with the Felipe spouses) and receiving money from Mr. and Mrs. Felipe ("for her child"; Exhibit D) are particulars which corroborated the testimony of the two police officers as to what appellant had stated in their presence, and which render her claim that she had merely inadvertently failed to return Hazel to his parents, impossible to accept.

Appellant concluded her Brief with a plea that should her conviction be affirmed, the imposition of the penalty of

reclusion perpetua upon her would be too harsh because her illicit act was really the result of the bitterness she felt over the betrayal and humiliation inflicted on her by her husband, the brother of Lourdes Elpedes.[15] The Solicitor General, in his own Brief, concurs with this view:

"The record, however, shows that appellant had no intention to commit so grave a crime. After she was found, she voluntarily surrendered and accompanied the police and the minor's parents to intramuros, Manila and later to Cogeo, Antipolo, Rizal, where the minor was later recovered. Although she was alleged to have received P250.00 from the Felipes when she left the minor with them, still appellant's previous admissions and cooperation with the police show that she did not have a criminal mind or intent to commit so grave an offense. These mitigating circumstances can not, however, be considered in her favor under Article 63 of the Revised Penal Code. The imposition of a life sentence on appellant under these circumstances would indeed be too harsh, considering further that she can not read and write, and had no educational background whatsoever.

It is therefore recommended that after partial service of sentence, appellant be recommended for an early pardon, if so entitled under the law." [16]

We agree that in this particular case, the penalty normally imposed for kidnapping and similar offenses appears too harsh. The record does not indicate that Hazel Elpedes has been injured emotionally or physically by his experience. We believe the trial court's award of moral damages in favor of Hazel's parents was proper as reparation for the three days of anxiety and mental anguish which they suffered before the recovery of their child; the amount, however, should be increased from P2,000.00 to P5,000.00. We believe the degree of malice exhibited by the appellant, an unlettered woman, in committing the offense here involved does not warrant the penalty of reclusion perpetua, particularly because to date, she has already spent seven years in prison.

WHEREFORE, the Decision of the trial court dated 14 September 1987 imposing the penalty of life imprisonment (should be reclusion perpetua) upon the appellant, is hereby **AFFIRMED**, except that the award of moral damages in favor of Frank and Lourdes Elpedes is hereby increased to P5,000.00. Pursuant to the authority granted to it under Article 5 of the Revised Penal Code, the Court recommends, through the Secretary of Justice, to the President of the Philippines that executive clemency be extended to appellant Lilia Gutierrez as a means of mitigating the undue harshness of the criminal law in this particular case.

SO ORDERED.

Fernan, C.J., (Chairman), Gutierrez, Jr., Bidin, and Davide, Jr., concur.

[1] Record, p. 1.

[2] Decision, Rollo, p. 20.

[3] Decision, Rollo, pp. 18, 19-20; Exhibit E, Record, p. 71; Exhibit D, Record, p. 70.

[4] Decision, Rollo, pp. 15-18; TSN, 28 September 1984, p. 5; Crime Report, Record, p. 68; Booking Sheet and Arrest Report, Record, p. 69.

[5] TSN, 14 January 1985, pp. 5-7.

[6] TSN, 6 March 1985, pp. 4-6.

[7] TSN, 28 September 1984, pp. 3-4, 7.

[8] TSN, 29 May 1985, pp. 4, 6-7.

- [9] Appellant's Brief, Rollo, pp. 55-56.
- [10] Decision, Rollo, pp. 18-19.
- [11] People v. Rama, G.R. No. 89988, 10 December 1990, pp. 3-4.
- [12] Decision, Rollo, p. 18.
- [13] People v. Francisco 182 SCRA 305 (1990).
- [14] People v. Socorro 182 SCRA 359 (1990).
- [15] Appellant's Brief, Rollo, p. 57.
- [16] Appellee's Brief, Rollo, p. 93.

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