

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
BIENVENIDO SALVILLA, REYNALDO CANASARES, RONALDO
CANASARES, AND SIMPLICIO CANASARES, BIENVENIDO SALVILLA,
DEFENDANT-APPELLANT.**

G.R. No. 86163. April 26, 1990

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

Accused Bienvenido Salvilla alone appeals from the Decision of the Regional Trial Court, Branch 28, Iloilo City,* dated 29 August 1988, in Criminal Case No. 20092, finding him and his co-accused Reynaldo, Ronaldo and Simplicio, all surnamed Canasares, guilty beyond reasonable doubt of the crime of "Robbery with Serious Physical Injuries and Serious Illegal Detention" and sentencing them to suffer the penalty of reclusion perpetua.

The Information filed against them reads:

"The undersigned City Fiscal accuses BIENVENIDO SALVILLA, REYNALDO CANASARES, RONALDO CANASARES, and SIMPLICIO CANASARES, whose maternal surnames, dated and places of birth cannot be ascertained of the crime of ROBBERY WITH SERIOUS PHYSICAL INJURIES AND SERIOUS ILLEGAL DETENTION (Art. 294, paragraph 3, in conjunction with Article 267 of the Revised Penal Code), committed as follows:

That on or about the 12th day of April, 1986, in the City of Iloilo, Philippines and within the jurisdiction of this Court, said accused, conspiring and confederating among themselves, working together and helping one another, armed with guns and handgrenade and with the use of violence or intimidation employed on the person of Severino Choco, Mary Choco, Mimia Choco and Rodita Hablero, did then and there wilfully, unlawfully and criminally take and carry away, with intent of gain, cash in the amount of P20,000.00, two (2) Men's wrist watches, one (1) Lady's Seiko quartz wrist watch and one (1) Lady's Citizen wrist watch and assorted jewelries, all valued at P50,000.00; that on the occasion and by reason of said robbery, Mary Choco suffered serious physical injuries under paragraph 2 of Article 263, Bienvenido Salvilla likewise suffered serious physical injuries and Reynaldo Canasares also suffered physical injuries; that the said accused also illegally detained, at the compound of the New Iloilo Lumber Company, Iznart Street, Iloilo City. Severino Choco, owner/proprietor of said Lumber Company, Mary Choco, Mimie Choco, who is a minor, being 15 years of age, and Rodita Hablero, who is a salesgirl at said Company; that likewise on the occasion of the robbery, the accused also asked and were given a ransom money of P50,000.00; that the said crime was attended by aggravating circumstances of band, and illegal possession of firearms and explosives; that the amount of P20,000.00, the ransom money of P50,000.00, two (2) Men's wrist watches, two (2) Lady's wrist watches, one (1) .38 caliber revolver and one (1) live granade were recovered from the accused; to the damage and prejudice of the New Iloilo Lumber Company in the amount of P120,000.00."

The evidence for the prosecution may be re-stated as follows:

On 12 April 1986, a robbery was staged by the four accused at the New Iloilo Lumber Yard at about noon time.

The plan was hatched about two days before. The accused were armed with homemade guns and a hand grenade. When they entered the establishment, they met Rodita Habiero, an employee thereat who was on her way out for her meal break and announced to her that it was a hold-up. She was made to go back to the office and there Appellant Salvilla pointed his gun at the owner, Severino Choco, and his two daughters, Mary and Mimie, the latter being a minor 15 years of age, and told the former that all they needed was money. Hearing this, Severino told his daughter, Mary, to get a paper bag wherein he placed P20,000.00 cash (P5,000.00, according to the defense) and handed it to Appellant. Thereafter, Severino pleaded with the four accused to leave the premises as they already had the money but they paid no heed. Instead, accused Simplicio Canasares took the wallet and wristwatch of Severino after which the latter, his two daughters, and Rodita, were herded to the office and kept there as hostages.

At about 2:00 o'clock of the same day, the hostages were allowed to eat. The four accused also took turns eating while the others stood guard. Then, Appellant told Severino to produce P100,000.00 so he and the other hostages could be released. Severino answered that he could not do so because it was a Saturday and the banks were closed.

In the meantime, police and military authorities had surrounded the premises of the lumber yard. Major Melquiades B. Sequio, Station Commander of the INP of Iloilo City, negotiated with the accused using a loud speaker and appealed to them to surrender with the assurance that no harm would befall them as he would accompany them personally to the police station. The accused refused to surrender or to release the hostages.

Thereafter, OIC Mayor, Rosa Caram, of Iloilo City arrived and joined the negotiations. In her dialogue with the accused, which lasted for about four hours, Appellant demanded P100,000.00, a coaster, and some raincoats. She offered them P50,000.00 instead, explaining the difficulty of raising more as it was a Saturday. Later, the accused agreed to receive the same and to release Rodita to be accompanied by Mary Choco in going out of the office. When they were already out of the door, one of the accused whose face was covered by a handkerchief, gave a key to Mayor Caram. With this, Mayor Caram unlocked the padlocked door and handed to Rodita the P50,000.00, which the latter, in turn, gave to one of the accused. Rodita was later set free but Mary was herded back to the office.

Mayor Caram, Major Sequio, and even volunteer radio newscasters continued to appeal to the accused to surrender peacefully but they refused. Ultimatums were given but the accused did not budge. Finally, the police and military authorities decided to launch an offensive and assault the place. This resulted in injuries to the girls, Mimie and Mary Choco as well as to the accused Ronaldo and Reynaldo Canasares. Mary suffered a "macerated right lower extremity just below the knee" so that her right leg had to be amputated. The medical certificate described her condition as "in a state of hemorrhagic shock when she was brought in to the hospital and had to undergo several major operations during the course of her confinement from April 13, 1986 to May 30, 1986."

For his part, Appellant Salvilla confirmed that at about noon time of 12 April 1986 he and his co-accused entered the lumber yard and demanded money from the owner Severino Choco. He demanded P100,000.00 but was given only P5,000.00, which he placed on the counter of the office of the lumber yard. He admitted that he and his co-accused kept Severino, his daughters, and Rodita inside the office. He maintained, however, that he stopped his co-accused from getting the wallet and wristwatch of Severino and, like the P5,000.00, were all left on the counter, and were never touched by them. He claimed further that they had never fired on the military because they intended to surrender. Appellant's version also was that during the gunfire, Severino's daughter stood up and went outside; he wanted to stop her but he himself was hit by a bullet and could not prevent her. Appellant also admitted the appeals directed to them to surrender but that they gave themselves up only much later.

After trial, the Court a quo meted out a judgment of conviction and sentenced each of the accused "to suffer the penalty of reclusion perpetua, with the accessory penalties provided by law and to pay the costs."

Appellant Salvilla's present appeal is predicated on the following Assignments of Error:

"1. The lower court erred in holding that the crime charged was consummated and in not holding that the same was merely attempted.

"2. The lower court erred in not appreciating the mitigating circumstance of voluntary surrender."

Upon the facts and the evidence, we affirm.

The defense contends that "The complete crime of larceny (theft/robbery) as distinguished from an attempt requires asportation or carrying away, in addition to the taking. In other words, the crime of robbery/theft has three consecutive stages: 1) the giving 2) the taking and 3) the carrying away or asportation. And without asportation the crime committed is only attempted" (Memorandum for Appellant Salvilla, Records, p. 317).

There is no question that in robbery, it is required that there be a taking of personal property belonging to another. This is known as the element of asportation, the essence of which is the taking of a thing out of the possession of the owner without his privity and consent and without the animus revertendi (Aquino, Revised Penal Code, p. 97, citing 5 C.J. 607). In fact, if there is no actual taking, there can be no robbery. Unlawful taking of personal property of another is an essential part of the crime of robbery.

Appellant insists that while the "giving" has been proven, the "taking" has not. And this is because neither he nor his three co-accused touched the P5,000.00 given by Severino nor the latter's wallet or watch during the entire incident; proof of which is that none of those items were recovered from their persons.

Those factual allegations are contradicted by the evidence. Rodita, the lumberyard employee, testified that upon demand by Appellant, Severino put P20,000.00 inside a paper bag and subsequently handed it to Appellant. In turn, accused Simplicio Canasares took the wallet and wristwatch of Severino. In respect of the P50,000.00 from Mayor Caram, Rodita declared that the Mayor handed the amount to her after she (the Mayor) had opened the padlocked door and that she thereafter gave the amount to one of the holduppers. The "taking" was, therefore, sufficiently proved (TSN, July 1, 1987, pp. 12-13, 15-16, 27-31). The money demanded, and the wallet and wrist watch were within the dominion and control of the Appellant and his co-accused and completed the taking.

"The State established a 'taking' sufficient to support a conviction of robbery even though the perpetrators were interrupted by police and so did not pick up the money offered by the victim, where the defendant and an accomplice, armed with a knife and a club respectively, had demanded the money from the female clerk of a convenience store, and the clerk had complied with their instructions and placed money from the register in a paper bag and then placed the bag on the counter in front of the two men; these actions brought the money within the dominion and control of defendant and completed the taking." (Johnson vs. State, 432 So 2d 758).

"Severance of the goods from the possession of the owner and absolute control of the property by the taker, even for an instant, constitutes asportation." (Adams vs. Commonwealth, 154 SW 381; State vs. Murray 280 SW 2d 809; Mason vs. Commonwealth, 105 SE 2d 149) [underlining supplied].

It is no defense either that Appellant and his co-accused had no opportunity to dispose of the personalities taken. That fact does not affect the nature of the crime. From the moment the offender gained possession of the thing, even if the culprit had no opportunity to dispose of the same, the unlawful taking is complete (Reyes, Revised Penal Code Annotated, Book II, 1981 ed., p. 594).

"The crime is consummated when the robber acquires possession of the property, even if for a short time, and it is not necessary that the property be taken into the hands of the robber, or that he should have actually carried the property away, out of the physical presence of the lawful possessor, or that he should have made his escape with it" (People vs. Quinn, 176 P 2d 404; Woods vs. State, 220 SW 2d 644; People vs. Beal, 39 P 2d 504; People vs. Clark, 160 P 2d 553).

Contrary to Appellant's submission, therefore, a conviction for consummated and not merely attempted Robbery is in order.

It is the contention of Appellant that Rodita could not have seen the taking because the place was dark since the doors were closed and there were no windows. It will be recalled, however, that Rodita was one of the hostages herself and could observe the unfolding of events. Her failure to mention the taking in her sworn statement would not militate against her credibility, it being settled that an affidavit is almost always incomplete and inaccurate and does not disclose the complete facts for want of inquiries or suggestions (People vs. Andaya, G. R. No. L-63862, 31 July 1987, 152 SCRA 570; People vs. Tan, et al., 89 Phil. 337 [1951]).

The fact, too, that Rodita was an employee of Severino would not lessen her credibility. The defense has not proven that she was actuated by any improper motive in testifying against the accused.

In the last analysis, the basic consideration centers around the credibility of witnesses in respect of which the findings of the Trial Court are entitled to great weight as it was in a superior position to assess the same in the course of the trial (see People vs. Ormosa, G.R. No. L56283, 30 June 1987, 151 SCRA 495; People vs. Alcantara, G. R. No. L-38042, 30 June 1987, 151 SCRA 326).

Anent the second assignment of error, the "surrender" of the Appellant and his co-accused cannot be considered in their favor to mitigate their liability. To be mitigating, a surrender must have the following requisites: (a) that the offender had not been actually arrested; (b) that the offender surrendered himself to a person in authority or to his agent; and (c) that the surrender was voluntary (People vs. Ganamo, G. R. No. L 62043, 13 August 1985, 138 SCRA 141).

The "surrender" by the Appellant and his co-accused hardly meets these requirements. They were, indeed, asked to surrender by the police and military authorities but they refused until only much later when they could no longer do otherwise by force of circumstances when they knew they were completely surrounded and there was no chance of escape. The surrender of the accused was held not to be mitigating as when he gave up only after he was surrounded by the constabulary and police forces (People vs. Sigayan, et al., G. R. No. L-18523-26, 30 April 1966, 16 SCRA 839; People vs. Mationg, G. R. No. L 33488, 29 March 1982, 113 SCRA 167). Their surrender was not spontaneous as it was motivated more by an intent to insure their safety. And while it is claimed that they intended to surrender, the fact is that they did not despite several opportunities to do so. There is no voluntary surrender to speak of (People vs. Dimdiman, 106 Phil. 391 [1959]).

All told, the assigned errors remain unsubstantiated and we find the guilt of the accused-appellant, Bienvenido Salvilla, established beyond reasonable doubt.

Although unassigned as an error, we deem it necessary to turn now to the nature of the linked offenses involved and the penalty imposed by the Trial Court.

Appellant and his co-accused were charged in the Information with "Robbery with Serious Physical Injuries and Serious Illegal Detention" ("Art. 295, par. 3, in conjunction with Art. 267, RPC"), and sentenced to reclusion perpetua. We agree with the Trial Court that a complex crime under Article 48 of the Revised Penal Code has been committed such that the penalty for the more serious offense of Serious Illegal Detention (Art. 267, Revised

Penal Code), or "reclusion perpetua to death," is to be imposed instead of the penalty prescribed for Robbery with Serious Physical Injuries (Art. 294 (3), which is reclusion temporal.

Under Article 48, a complex crime arises "when an offense is a necessary means for committing the other." The term "necessary means" does not connote indispensable means for if it did then the offense as a "necessary means" to commit another would be an indispensable element of the latter and would be an ingredient thereof. The phrase "necessary means" merely signifies that one crime is committed to facilitate and insure the commission of the other (Aquino, Revised Penal Code, Vol. I, 1987 ed., p. 624, citing Dissent, Montemayor, J., Amado Hernandez, 99 Phil. 515). In this case, the crime of Serious Illegal Detention was such a "necessary means" as it was selected by Appellant and his co-accused to facilitate and carry out more effectively their evil design to stage a robbery.

The facts of this case differ from those in *People vs. Astor, et als.* (G. R. Nos. L-71765-66, 29 April 1987, 149 SCRA 325) where the accused were convicted of Robbery but acquitted in the case for Serious Illegal Detention and where it was held that "the detention is absorbed in the crime of robbery." For one, in *Astor*, there were two (2) separate Informations filed, one for Robbery and another for Serious Illegal Detention. In the present case, only one Information was filed charging the complex offense. For another, in *Astor*, the robbery had already been consummated and the detention was merely to forestall the capture of the robbers by the police. Not so in this case, where the detention was availed of as a means of insuring the consummation of the robbery. Further, in *Astor*, the detention was only incidental to the main crime of robbery so that it was held therein:

"x x x were appellants themselves not trapped by the early arrival of the police at the scene of the crime, they would have not anymore detained the people inside since they have already completed their job. Obviously, appellants were left with no choice but to resort to detention of these people as security, until arrangements for their safe passage were made. This is not the crime of illegal detention punishable under the penal laws but an act of restraint in order to delay the pursuit of the criminals by peace officers (*People v. Sol*, 9 Phil. 265; *People v. Uday*, 85 Phil. 167, cited in the Revised Penal Code, Aquino, Vol. 3, 1976 ed., p. 1337). Where the victims in a robbery case were detained in the course of robbery, the detention is absorbed by the crime of robbery (*P v. Baysa*, 92 Phil. 1008, id.). In the case at bar, the detention was only incidental to the main crime of robbery, and although in the course thereof women and children were also held, that threats to kill were made, the act should not be considered as a separate offense. Appellants should only be held guilty of robbery."

In contrast, the detention in the case at bar was not only incidental to the robbery but was a necessary means to commit the same. After the amount of P20,000.00 was handed to Appellant, the latter and his co-accused still refused to leave. The victims were then taken as hostages and the demand to produce an additional P100,000.00 was made as a prerequisite for their release. The detention was not because the accused were trapped by the police nor were the victims held as security against the latter. The detention was not merely a matter of restraint to enable the malefactors to escape, but deliberate as a means of extortion for an additional amount. The police and other authorities arrived only much later after several hours of detention had already passed. And, despite appeals to appellant and his co-accused to surrender, they adamantly refused until the amount of P100,000.00 they demanded could be turned over to them. They even considered P50,000.00, the amount being handed to them, as inadequate.

The foregoing features also distinguish this case from those of *U.S. v. Sol*, 9 Phil. 265 (1907) where the restraint was for no other purpose than to prevent the victims from reporting the crime to the authorities; from *People v. Gamboa*, 92 Phil. 1085 [1953] where the victims were taken to a place one kilometer away and shot in order to liquidate the witnesses to the robbery; from *People v. Baysa*, 92 Phil. 1008 (1953); *People v. Manzanilla*, 43 Phil. 187 (1922), all of which cases were cited in *Astor*, and where the victims were only incidentally detained so that

the detention was deemed absorbed in robbery.

In other words, unlike in the above cases, the elements of the offense of Serious Illegal Detention are present in this case. The victims were illegally deprived of their liberty. Two females (Mary and Minnie), and a minor (Minnie), a specified circumstance in Article 267 (3), were among those detained. The continuing detention was also for the purpose of extorting ransom another listed circumstance in Article 267 (last parag.), not only from the detained persons themselves but even from the authorities who arrived to rescue them.

It follows then that as the detention in this case was not merely incidental to the robbery but a necessary means employed to facilitate it, the penalty imposed by the Trial Court is proper.

WHEREFORE, the judgment appealed from is hereby **AFFIRMED**. Proportionate costs.

SO ORDERED.

Paras, Padilla, Sarmiento, and Regalado, JJ., concur.

* Penned by Judge Edgar D. Gustilo.

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