

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PABLITO DOMASIAN AND DR. SAMSON TAN, ACCUSED-APPELLANT.

G.R. No. 95322. March 01, 1993

Ponente: CRUZ, J.

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CRUZ, J.:

The boy was detained for only about three hours and was released even before his parents received the ransom note. But it spawned a protracted trial spanning all of 8 years and led to the conviction of the two accused.[1]

The victim was Enrico Paulo Agra, who was 8 years old at the time of the incident in question. The accused were Pablito Domasian and Samson Tan, the latter then a resident physician in the hospital owned by Enrico's parents. They were represented by separate lawyers at the trial and filed separate briefs in this appeal.

The evidence of the prosecution showed that in the morning of March 11, 1982, while Enrico was walking with a classmate along Roque street in the poblacion of Lopez, Quezon, he was approached by a man who requested his assistance in getting his father's signature on a medical certificate. Enrico agreed to help and rode with the man in a tricycle to Calantipayan, where he waited outside while the man went into a building to get the certificate. Enrico became apprehensive and started to cry when, instead of taking him to the hospital, the man flagged a minibus and forced him inside, holding him firmly all the while. The man told him to stop crying or he would not be returned to his father. When they alighted at Gumaca, they took another tricycle, this time bound for the municipal building from where they walked to the market. Here the man talked to a jeepney driver and handed him an envelope addressed to Dr. Enrique Agra, the boy's father. The two then boarded a tricycle headed for San Vicente, with the man still firmly holding Enrico, who continued crying. This aroused the suspicion of the driver, Alexander Grate, who asked the man about his relationship with the boy. The man said he and the boy were brothers, making Grate doubly suspicious because of the physical differences between the two and the wide gap between their ages. Grate immediately reported the matter to two barangay tanods when his passengers alighted from the tricycle. Grate and the tanods went after the two and saw the man dragging the boy. Noticing that they were being pursued, the man told Enrico to run fast as their pursuers might behead them. Somehow, the man managed to escape, leaving Enrico behind. Enrico was on his way home in a passenger jeep when he met his parents, who were riding in the hospital ambulance and already looking for him.[2]

At about 1:45 in the afternoon of the same day, after Enrico's return, Agra received an envelope containing a ransom note. The note demanded P1 million for the release of Enrico and warned that otherwise the boy would be killed. Agra thought the handwriting in the note was familiar. After comparing it with some records in the hospital, he gave the note to the police, which referred it to the NBI for examination.[3]

The test showed that it had been written by Dr. Samson Tan.[4] On the other hand, Enrico was shown a folder of pictures in the police station so he could identify the man who had detained him, and he pointed to the picture of Pablito Domasian.[5] Domasian and Tan were subsequently charged with the crime of kidnaping with serious illegal detention in the Regional Trial Court of Quezon.[6]

The defense of both accused was denial and alibi. Domasian claimed that at the time of the incident he was watching a mahjong game in a friend's house and later went to an optical clinic with his wife for the refraction of his eyeglasses.[7] Dr. Tan for his part said he was in Manila.[8]

After trial, Judge Enrico A. Lanzas found both accused guilty as charged and sentenced them to suffer the penalty of reclusion perpetua and all accessory penalties. They were also required to pay P200,000.00 to Dr. and Mrs. Enrique Agra as actual and moral damages and attorney's fees.

In the present appeal, the accused-appellants reiterate their denial of any participation in the incident in question. They belittle the credibility of the prosecution witnesses and submit that their own witnesses are more believable. Tan specifically challenges the findings of the NBI and offers anew the opposite findings of the PC/INP showing that he was not the writer of the ransom note. He maintains that in any case, the crime alleged is not kidnapping with serious illegal detention as no detention in an enclosure was involved. If at all, it should be denominated and punished only as grave coercion. Finally, both Domasian and Tan insist that there is no basis for the finding of a conspiracy between them to make them criminally liable in equal degree.

First, on the credibility of the witnesses. This is assessed in the first instance by the trial judge, whose finding in this regard is received with much respect by the appellate court because of his opportunity to directly observe the demeanor of the witnesses on the stand.

In the case at bar, Judge Lanzas relied heavily on the testimony of the victim himself, who positively identified Domasian as the person who detained him for three hours. The trial court observed that the boy was "straight-forward, natural and consistent" in the narration of his detention. The boy's naiveté made him even more believable. Tirso Ferreras, Enrico's classmate and also his age, pointed to Domasian with equal certainty, as the man who approached Enrico when they were walking together that morning of March 11, 1982. Grate, the tricycle driver who suspected Enrico's companion and later chased him, was also positive in identifying Domasian. All these three witnesses did not know Domasian until that same morning and could have no ill motive in testifying against him. By contrast, Eugenia Agtay, who testified for the defense, can hardly be considered a disinterested witness because she admitted she had known Domasian for 3 years.

The defense asks why Domasian openly took Enrico to several public places if the intention was to kidnap and detain him. That is for Domasian himself to answer. We do not have to probe the reasons for the irrational conduct of an accused. The more important question, as we see it, is why Domasian detained Enrico in the first place after pretending he needed the boy's help. That is also for Domasian to explain. As for Enrico's alleged willingness to go with Domasian, this was manifested only at the beginning, when he believed the man sincerely needed his assistance. But he was soon disabused. His initial confidence gave way to fear when Domasian, after taking him so far away from the hospital where he was going, restrained and threatened him if he did not stop crying.

Domasian's alibi cannot stand against his positive identification by Enrico, Grate and Ferreras, let alone the contradictions made by his corroborating witness, Dr. Irene Argosino, regarding the time he was in the optical clinic and the manner of his payment for the refraction.[9] Tan's alibi is not convincing either. The circumstance that he may have been in Manila at the time of the incident does not prove that he could not have written the ransom note except at that time.

Concerning the note, Rule 132, Section 22, of the Rules of Court provides as follows:

The handwriting of a person may be proved by any witness who believes it to be the handwriting of such person and has seen the person write, or has seen writing purporting to be his upon which the witness has acted or been charged and has thus acquired knowledge of the handwriting of such person. Evidence respecting the

handwriting may also be given by a comparison, made by the witness or the court, with writings admitted or treated as genuine by the party against whom the evidence is offered or proved to be genuine to the satisfaction of the judge.

Two expert witnesses were presented in the case at bar, one from the NBI,[10] who opined that the ransom note and the standard documents were written by one and the same person, and another from the PC/INP[11] who expressed a contrary conclusion. The trial court chose to believe the NBI expert because his examination and analysis "was more comprehensive than the one conducted by the PC/INP handwriting expert, who virtually limited his reliance on the perceived similarities and dissimilarities in the pattern and style of the writing, thereby disregarding the basic principle in handwriting identification that it is not the form alone nor anyone feature but rather a combination of all the qualities that identify."

We have held that the value of the opinion of a handwriting expert depends not upon his mere statements of whether a writing is genuine or false, but upon the assistance he may afford in pointing out distinguishing marks, characteristics and discrepancies in and between genuine and false specimens of writing which would ordinarily escape notice or detection from an unpracticed observer.[12] The test of genuineness ought to be the resemblance, not the formation of letters in some other specimens but to the general character of writing, which is impressed on it as the involuntary and unconscious result of constitution, habit or other permanent course, and is, therefore itself permanent.[13]

Presented with the conflicting opinions of the witnesses in the case at bar, the Court feels that the scales should tilt in favor of the prosecution. Significantly, the NBI opinion was bolstered by the testimony of Agra, who believed that the ransom note was written by Tan, with whose handwriting he was familiar because they had been working in the hospital for four years and he had seen that handwriting every day in Tan's prescriptions and daily reports.[14]

Cesar v. Sandiganbayan[15] is not applicable because that case involved a forgery or the deliberate imitation of another person's signature. In the case before us, there was in fact an effort to disguise the ransom note writer's penmanship to prevent his discovery.

As for the nature of the crime committed, Article 267 of the Revised Penal Code provides as follows:

Art. 267. Kidnapping and serious illegal detention. - Any private individual who shall kidnap or detain another, or in any 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 five 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, 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.

Contrary to Tan's submission, this crime may consist not only in placing a person in an enclosure but also in detaining him or depriving him in any manner of his liberty.[16] In the case at bar, it is noted that although the victim was not confined in an enclosure, he was deprived of his liberty when Domasian restrained him from going home and dragged him first into the minibus that took them to the municipal building in Gumaca, thence to the

market and then into the tricycle bound for San Vicente. The detention was committed by Domasian, who was a private individual, and Enrico was a minor at that time. The crime clearly comes under Par. 4 of the above-quoted article.

Tan claims that the lower court erred in not finding that the sending of the ransom note was an impossible crime which he says is not punishable. His reason is that the second paragraph of Article 4 of the Revised Penal Code provides that criminal liability shall be incurred "by any person performing an act which would be an offense against persons or property, were it not for the inherent impossibility of its accomplishment or on account of the employment of inadequate or ineffectual means." As the crime alleged is not against persons or property but against liberty, he argues that it is not covered by the said provision.

Tan conveniently forgets the first paragraph of the same article, which clearly applies to him, thus:

Art. 4. Criminal liability. - Criminal liability shall be incurred:

1. By any person committing a felony (delito) although the wrongful act done be different from that which he intended.

x x x

Even before the ransom note was received, the crime of kidnaping with serious illegal detention had already been committed. The act cannot be considered an impossible crime because there was no inherent improbability of its accomplishment or the employment of inadequate or ineffective means. The delivery of the ransom note after the rescue of the victim did not extinguish the offense, which had already been consummated when Domasian deprived Enrico of his liberty. The sending of the ransom note would have had the effect only of increasing the penalty to death under the last paragraph of Article 267 although this too would not have been possible under the new Constitution.

On the issue of conspiracy, we note first that it exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it, whether they act through physical volition of one or all, proceeding severally or collectively.[17]

It is settled that conspiracy can be inferred from and proven by the acts of the accused themselves when said acts point to a joint purpose and design, concerted action and community of interests.[18] In the instant case, the trial court correctly held that conspiracy was proved by the act of Domasian in detaining Enrico; the writing of the ransom note by Tan; and its delivery by Domasian to Agra. These acts were complementary to each other and geared toward the attainment of the common ultimate objective, viz. to extort the ransom of P1 million in exchange for Enrico's life.

The motive for the offense is not difficult to discover. According to Agra, Tan approached him six days before the incident happened and requested a loan of at least P15,000.00. Agra said he had no funds at that moment and Tan did not believe him, angrily saying that Agra could even raise a million pesos if he really wanted to help.[19] The refusal obviously triggered the plan to kidnap Enrico and demand P1 million for his release.

The constitutional issues raised by Domasian do not affect the decision in this case. His claim that he was arrested without warrant and then tortured and held incommunicado to extort a confession from him does not vitiate his conviction. He never gave any confession. As for the allegation that the seizure of the documents used for comparison with the ransom note was made without a search warrant, it suffices to say that such documents were taken by Agra himself and not by the NBI agents or other police authorities. We held in the case of *People vs. Andre Marti*, [20] that the Bill of Rights cannot be invoked against acts of private individuals, being directed only against the government and its law-enforcement agencies as a limitation on official action.

We are satisfied that Tan and Domasian, in conspiracy with each other, committed the crime of kidnaping as defined and penalized under Article 267 of the Revised Penal Code and so deserve the penalty imposed upon them by the trial court.

WHEREFORE, the appealed decision is **AFFIRMED**, with costs against the accused-appellants.

Let a copy of this decision be sent to the Commission on Human Rights for investigation of the alleged violation of the constitutional rights of Pablito Domasian.

SO ORDERED.

Griño-Aquino, Bellosillo, and Quiason, JJ., concur.

[1] Records, p. 1; Rollo, p. 119.

[2] TSN, December 20, 1983, pp. 38-39.

[3] TSN, November 14, 1984, pp. 17-28; 36-37.

[4] TSN, September 28, 1982, pp. 35-36.

[5] TSN, November 14, 1984, p. 33.

[6] Records, p. 122.

[7] TSN, January 29, 1987, pp. 4-9.

[8] TSN, June 22, 1989, p. 4.

[9] TSN, November 13, 1986, pp. 7-9; pp. 22-23.

[10] TSN, September 28, 1982, pp. 35-36.

[11] TSN, July 19, 1989, p. 35.

[12] *Alcos v. IAC*, 162 SCRA 823.

[13] *Alcos v. IAC*, 162 SCRA 823, citing *Moran*, Comments on Rules of Court, 434 [Nolasco ed., 1980; also see *People v. Bustos*, 45 Phil. 9 (1983)].

[14] TSN, November 14, 1984, pp. 19-21.

[15] 134 SCRA 105.

[16] *People v. Crisostomo*, 46 Phil. 775.

[17] *People v. Maranion*, 199 SCRA 421.

[18] *People v. Bausing*, 199 SCRA 355.

[19] TSN, November 14, 1984, pp. 44-47.

[20] 193 SCRA 57.

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