

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ISABELO PUNO Y GUEVARRA, ALIAS “BELOY,” AND ENRIQUE AMURAO Y PUNO, ALIAS “ENRY,” ACCUSED-APPELLANTS.

G.R. No. 97471. February 17, 1993

Ponente: REGALADO, J.

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REGALADO, J.:

The primal issue for resolution in this case is whether accused-appellants committed the felony of kidnapping for ransom under Article 267 of the Revised Penal Code, as charged in the information; or a violation of Presidential Decree No. 532 (Anti-Piracy and Anti-Highway Robbery Law of 1974), as contended by the Solicitor General and found by the trial court; or the offense of simple robbery punished by Paragraph 5, Article 294 of the Revised Penal Code, as claimed by the defense.

In an information dated and filed on May 31, 1989 in the Regional Trial Court of Quezon City, Branch 103, as Criminal Case No. Q-57404 thereof, appellants were charged with kidnapping for ransom allegedly committed in the following manner:

"That on or about the 13th day of January, 1988 in Quezon City, Philippines and within the jurisdiction of this Honorable Court, the said accused, being then private individuals, conspiring together, confederating with and mutually helping each other, did, then and there, wilfully, unlawfully and feloniously kidnap and carry away one MARIA DEL SOCORRO SARMIENTO y MUTUC[*] for the purpose of extorting ransom, to the damage and prejudice of the said offended party in such amount as may be awarded to her under the provisions of the Civil Code." [1]

On a plea of not guilty when arraigned,[2] appellants went to trial which ultimately resulted in a judgment promulgated on September 26, 1990 finding them guilty of robbery with extortion committed on a highway, punishable under Presidential Decree No. 532, with this disposition in the fallo thereof:

"ACCORDINGLY, judgment is hereby rendered finding the accused ISABELO PUNO and ENRIQUE AMURAO GUILTY as principals of robbery with extortion committed on a highway and, in accordance with P.D. 532, they are both sentenced to a jail term of reclusion perpetua.

"The two accused are likewise ordered to pay jointly and severally the offended private victim Ma. Socorro M. Sarmiento the sum of P7,000.00 as actual damages and P3,000.00 as temperate damages." [3]

Before us now in this appeal, appellants contend that the court a quo erred (1) in convicting them under Presidential Decree No. 532 since they were not expressly charged with a crime therein; (2) in applying Sections 4 and 5, Rule 120 of the Rules of Court since the charge under said presidential decree is not the offense proved and cannot rightly be used as the offense proved which is necessarily included in the offense charged.[4]

For the material antecedents of this case, we quote with approval the following counter-statement of facts in the

People's brief[5] which adopted the established findings of the court a quo, documenting the same with page references to the transcripts of the proceedings, and which we note are without any substantial divergence in the version proffered by the defense.

"This is a prosecution for kidnapping for ransom allegedly done on January 13, 1988 by the two accused (tsn, Jan. 8, 1990, p. 7).

"Mrs. Maria Socorro Mutuc-Sarmiento owns a bakeshop in Araneta Avenue, Quezon City called Nika Cakes and Pastries. She has a driver of her own just as her husband does (Ibid., pp. 4-6).

"At around 5:00 in the afternoon of January 13, 1988, the accused Isabelo Puno, who is the personal driver of Mrs. Sarmiento's husband (who was then away in Davao purportedly on account of local election there) arrived at the bakeshop. He told Mrs. Socorro that her own driver Fred had to go to Pampanga on an emergency (something bad befell a child), so Isabelo will temporary (sic) take his place (Id., pp. 8-9).

"Mrs. Socorro's time to go home to Valle Verde in Pasig came and so she got into the Mercedes Benz of her husband with Isabelo on (sic) the wheel. After the car turned right in (sic) a corner of Araneta Avenue, it stopped. A young man, accused Enrique Amurao, boarded the car beside the driver (Id., pp. 9-10).

"Once inside, Enrique clambered on top of the back side of the front seat and went onto where Ma. Socorro was seated at the rear. He poke (sic) a gun at her (Id., p. 10).

"Isabelo, who had earlier told her that Enrique is his nephew announced, 'ma'm, you know, I want to get money from you.' She said she has money inside her bag and they may get it just so they will let her go. The bag contained P7,000.00 and was taken (Id., pp. 11-14).

"Further on, the two told her they wanted P100,000.00 more. Ma. Socorro agreed to give them that but would they drop her at her gas station in Kamagong St., Makati where the money is? The car went about the Sta. Mesa area. Meanwhile, Ma. Socorro clutched her Rosary and prayed. Enrique's gun was menacingly storing (sic) at her soft bread (sic) brown, perfumed neck. He said he is an NPA and threatened her (Id., p. 15).

"The car sped off north towards the North superhighway. There Isabelo, Beloy as he is called, asked Ma. Socorro to issue a check for P100,000.00. Ma. Socorro complied. She drafted 3 checks in denominations of two for P30 thousand and one for P40 thousand. Enrique ordered her to swallow a pill but she refused (Id., pp. 17-23).

"Beloy turned the car around towards Metro Manila. Later, he changed his mind and turned the car again towards Pampanga. Ma. Socorro, according to her, jumped out of the car then, crossed to the other side of the superhighway and, after some vehicles ignored her, she was finally able to flag down a fish vendor's van. Her dress had blood because, according to Ma. Socorro, she fell down on the ground and was injured when she jumped out of the car. Her dress was torn too (Id., pp. 23-26).

"On reaching Balintawak, Ma. Socorro reported the matter to CAPCOM (Id., p. 27).

"Both accused were, day after, arrested. Enrique was arrested trying to encash Ma. Socorro's P40,000.00 check at PCI Bank, Makati. (tsn, Oct. 18, 1989, pp. 10-13)"[6]

As observed by the court below, the defense does not dispute said narrative of complainant, except that, according to appellant Puno, he stopped the car at North Diversion and freely allowed complainant to step out of the car. He even slowed the car down as he drove away, until he saw that his employer had gotten a ride, and he claimed that she fell down when she stubbed her toe while running across the highway. [7]

Appellants further testified that they brought the Mercedes Benz car to Dolores, San Fernando, Pampanga and parked it near a barangay or police outpost. They there-after ate at a restaurant and divided their loot.[8]Much

later, when he took the stand at the trial of this case, appellant Puno tried to mitigate his liability by explaining that he was in dire need of money for the medication of his ulcers.[9]

On these relatively simple facts, and as noted at the start of this opinion, three theories have been advanced as to what crime was committed by appellants. The trial court cohered with the submission of the defense that the crime could not be kidnapping for ransom as charged in the information. We likewise agree.

Prefatorily, it is worth recalling an accepted tenet in criminal law that in the determination of the crime for which the accused should be held liable in those instances where his acts partake of the nature of variant offenses, and the same holds true with regard to the modifying or qualifying circumstances thereof, his motive and specific intent in perpetrating the acts complained of are invaluable aids in arriving at a correct appreciation and accurate conclusion thereon.

Thus, to illustrate, the motive of the accused has been held to be relevant or essential to determine the specific nature of the crime as, for instance, whether a murder was committed in the furtherance of rebellion in which case the latter absorbs the former, or whether the accused had his own personal motives for committing the murder independent of his membership in the rebellious movement in which case rebellion and murder would constitute separate offenses.[10] Also, where injuries were inflicted on a person in authority who was not then in the actual performance of his official duties, the motive of the offender assumes importance because if the attack was by reason of the previous performance of official duties by the person in authority, the crime would be direct assault; otherwise, it would only be physical injuries.[11]

In the case at bar, there is no showing whatsoever that appellants had any motive, nurtured prior to or at the time they committed the wrongful acts against complainant, other than the extortion of money from her under the compulsion of threats or intimidation. This much is admitted by both appellants, without any other esoteric qualification or dubious justification. Appellant Puno, as already stated, candidly laid the blame for his predicament on his need for funds for, in his own testimony, "(w)hile we were along the way Mam (sic) Corina was telling me `Beloy, I know your family very well and I know that your (sic) not (a) bad person, why are you doing this?' I told her 'Mam (sic), because I need money and I had an ulcer and that I have been getting an (sic) advances from our office but they refused to give me any bale (sic). x x x.'" [12]

With respect to the specific intent of appellants vis-a-vis the charge that they had kidnapped the victim, we can rely on the proverbial rule of ancient respectability that for this crime to exist, there must be indubitable proof that the actual intent of the malefactors was to deprive the offended party of her liberty,[13] and not where such restraint of her freedom of action was merely an incident in the commission of another offense primarily intended by the offenders. Hence, as early as *United States vs. Ancheta*, [14] and consistently reiterated thereafter, [15] it has been held that the detention and/or forcible taking away of the victims by the accused, even for an appreciable period of time but for the primary and ultimate purpose of killing them, holds the offenders liable for taking their lives or such other offenses they committed in relation thereto, but the incidental deprivation of the victims' liberty does not constitute kidnapping or serious illegal detention.

That appellants in this case had no intention whatsoever to kidnap or deprive the complainant of her personal liberty is clearly demonstrated in the veritably confessional testimony of appellant Puno:

"Q -

At what point did Mrs. Sarmiento handed (sic) the bag containing the P7,000.00 to your nephew?

A -

Santo Domingo Exit.

Q -

And how about the checks, where were you already when the checks was (sic) being handed to you?

A -

Also at the Sto. Domingo exit when she signed the checks.

Q -

If your intention was just to robbed (sic) her, why is it that you still did not allow her to stay at Sto. Domingo, after all you already received the money and the checks?

A -

Because we had an agreement with her that when she signed the checks we will take her to her house at Villa (sic) Verde.

Q -

And why did you not bring her back to her house at Valle Verde when she is (sic) already given you the checks?

A -

Because while we were on the way back I (sic) came to my mind that if we reach Balintawak or some other place along the way we might be apprehended by the police. So when we reached Santa Rita exit I told her 'Mam (sic) we will already stop and allow you to get out of the car.'"[16]

Neither can we consider the amounts given to appellants as equivalent to or in the nature of ransom, considering the immediacy of their obtention thereof from the complainant personally. Ransom, in municipal criminal law, is the money, price or consideration paid or demanded for redemption of a captured person or persons, a payment that releases from captivity.[17] It can hardly be assumed that when complainant readily gave the cash and checks demanded from her at gunpoint, what she gave under the circumstances of this case can be equated with or was in the concept of ransom in the law of kidnapping. These were merely amounts involuntarily surrendered by the victim upon the occasion of a robbery or of which she was summarily divested by appellants. Accordingly, while we hold that the crime committed is robbery as defined in Article 293 of the Code, we, however, reject the theory of the trial court that the same constitutes the highway robbery contemplated in and punished by Presidential Decree No. 532.

The lower court, in support of its theory, offers this ratiocination:

"The court agrees that the crime is robbery. But it is also clear from the allegation in the information that the victim was carried away and extorted for more money. The accused admitted that the robbery was carried on from Araneta Avenue up to the North Superhighway. They likewise admitted that along the way they intimidated Ma. Socorro to produce more money that she had with her at the time for which reason Ma. Socorro, not having more cash, drew out three checks. x x x

"In view of the foregoing the court is of the opinion that the crimes committed is that punishable under P.D. 532 (Anti-Piracy and Anti-Highway Robbery Law of 1974) under which where robbery on the highway is accompanied by extortion the penalty is reclusion perpetua."[18]

The Solicitor General concurs, with the observation that pursuant to the repealing clause in Section 5 of said decree, "P.D. No. 532 is a modification of the provisions of the Revised Penal Code, particularly Article 267 which are inconsistent with it."[19] Such opinion and complementary submission consequently necessitate an

evaluation of the correct interplay between and the legal effects of Presidential Decree No. 532 on the pertinent provisions of the Revised Penal Code, on which matter we are not aware that any definitive pronouncement has as yet been made.

Contrary to the postulation of the Solicitor General, Presidential Decree No. 532 is not a modification of Article 267 of the Revised Penal Code on kidnapping and serious illegal detention, but of Articles 306 and 307 on brigandage. This is evident from the fact that the relevant portion thereof which treats of "highway robbery" invariably uses this term in the alternative and synonymously with brigandage, that is, as "highway robbery/brigandage." This is but in line with our previous ruling, and which still holds sway in criminal law, that highway robbers (*ladrones*) and brigands are synonymous.[20]

Harking back to the origin of our law on brigandage (*bandolerismo*) in order to put our discussion thereon in the proper context and perspective, we find that a band of brigands, also known as highwaymen or freebooters, is more than a gang of ordinary robbers. Jurisprudence on the matter reveals that during the early part of the American occupation of our country, roving bands were organized for robbery and pillage and since the then existing law against robbery was inadequate to cope with such moving bands of outlaws, the Brigandage Law was passed. [21]

The following salient distinctions between brigandage and robbery are succinctly explained in a treatise on the subject and are of continuing validity:

"The main object of the Brigandage Law is to prevent the formation of bands of robbers. The heart of the offense consists in the formation of a band by more than three armed persons for the purpose indicated in art. 306. Such formation is sufficient to constitute a violation of art. 306. It would not be necessary to show, in a prosecution under it, that a member or members of the band actually committed robbery or kidnapping or any other purpose attainable by violent means. The crime is proven when the organization and purpose of the band are shown to be such as are contemplated by art. 306. On the other hand, if robbery is committed by a band, whose members were not primarily organized for the purpose of committing robbery or kidnapping, etc., the crime would not be brigandage, but only robbery. Simply because robbery was committed by a band of more than three armed persons, it would not follow that it was committed by a band of brigands. In the Spanish text of art. 306, it is required that the band '*sala a los campos para dedicarse a robar.*'"[22] (Underscoring ours.)

In fine, the purpose of brigandage is, *inter alia*, indiscriminate highway robbery. If the purpose is only a particular robbery, the crime is only robbery, or robbery in band if there are at least four armed participants.[23] The martial law legislator, in creating and promulgating Presidential Decree No. 532 for the objectives announced therein, could not have been unaware of that distinction and is presumed to have adopted the same, there being no indication to the contrary. This conclusion is buttressed by the rule on contemporaneous construction, since it is one drawn from the time when and the circumstances under which the decree to be construed originated. Contemporaneous exposition or construction is the best and strongest in the law. [24]

Further, that Presidential Decree No. 532 punishes as highway robbery or brigandage only acts of robbery perpetrated by outlaws indiscriminately against any person or persons on Philippine highways as defined therein, and not acts of robbery committed against only a predetermined or particular victim, is evident from the preambular clauses thereof, to wit:

"WHEREAS, reports from law-enforcement agencies reveal that lawless elements are still committing acts of depredation upon the persons and properties of innocent and defenseless inhabitants who travel from one place to another, thereby disturbing the peace, order and tranquility of the nation and stunting the economic and social progress of the people:

"WHEREAS, such acts of depredations constitute x x x highway robbery/brigandage which are among the

highest forms of lawlessness condemned by the penal statutes of all countries;

"WHEREAS, it is imperative that said lawless elements be discouraged from perpetrating such acts of depredations by imposing heavy penalty on the offenders, with the end in view of eliminating all obstacles to the economic, social, educational and community progress of the people:" (Emphasis supplied.)

Indeed, it is hard to conceive of how a single act of robbery against a particular person chosen by the accused as their specific victim could be considered as committed on the "innocent and defenseless inhabitants who travel from one place to another," and which single act of depredation would be capable of "stunting the economic and social progress of the people" as to be considered "among the highest forms of lawlessness condemned by the penal statutes of all countries," and would accordingly constitute an obstacle "to the economic, social, educational and community progress of the people," such that said isolated act would constitute the highway robbery or brigandage contemplated and punished in said decree. This would be an exaggeration bordering on the ridiculous.

True, Presidential Decree No. 532 did introduce amendments to Articles 306 and 307 of the Revised Penal Code by increasing the penalties, albeit limiting its applicability to the offenses stated therein when committed on the highways and without prejudice to the liability for such acts if committed. Furthermore, the decree does not require that there be at least four armed persons forming a band of robbers; and the presumption in the Code that said accused are brigands if they use unlicensed firearms no longer obtains under the decree. But, and this we broadly underline, the essence of brigandage under the Code as a crime of depredation wherein the unlawful acts are directed not only against specific, intended or preconceived victims, but against any and all prospective victims anywhere on the highway and whosoever they may potentially be, is the same as the concept of brigandage which is maintained in Presidential Decree No. 532, in the same manner as it was under its aforementioned precursor in the Code and, for that matter, under the old Brigandage Law. [25]

Erroneous advertence is nevertheless made by the court below to the fact that the crime of robbery committed by appellants should be covered by the said amendatory decree just because it was committed on a highway. Aside from what has already been stressed regarding the absence of the requisite elements which thereby necessarily puts the offense charged outside the purview and intendment of that presidential issuance, it would be absurd to adopt a literal interpretation that any unlawful taking of property committed on our highways would be covered thereby. It is an elementary rule of statutory construction that the spirit or intent of the law should not be subordinated to the letter thereof. Trite as it may appear, we have perforce to stress the elementary caveat that he who considers merely the letter of an instrument goes but skin deep into its meaning,[26] and the fundamental rule that criminal justice inclines in favor of the milder form of liability in case of doubt.

If the mere fact that the offense charged was committed on a highway would be the determinant for the application of Presidential Decree No. 532, it would not be far-fetched to expect mischievous, if not absurd, effects on the corpus of our substantive criminal law. While we eschew resort to a *reductio ad absurdum* line of reasoning, we apprehend that the aforestated theory adopted by the trial court falls far short of the desideratum in the interpretation of laws, that is, to avoid absurdities and conflicts. For, if a motor vehicle, either stationary or moving on a highway, is forcibly taken at gunpoint by the accused who happened to take a fancy thereto, would the location of the vehicle at the time of the unlawful taking necessarily put the offense within the ambit of Presidential Decree No. 532, thus rendering nugatory the categorical provisions of the Anti-Carnapping Act of 1972?[27] And, if the scenario is one where the subject matter of the unlawful asportation is large cattle which are incidentally being herded along and traversing the same highway and are impulsively set upon by the accused, should we apply Presidential Decree No. 532 and completely disregard the explicit prescriptions in the Anti-Cattle Rustling Law of 1974?[28]

We do not entertain any doubt, therefore, that the coincidental fact that the robbery in the present case was

committed inside a car which, in the natural course of things, was casually operating on a highway, is not within the situation envisaged by Section 2(e) of the decree in its definition of terms. Besides, that particular provision precisely defines "highway robbery/brigandage" and, as we have amply demonstrated, the single act of robbery conceived and committed by appellants in this case does not constitute highway robbery or brigandage.

Accordingly, we hold that the offense committed by appellants is simple robbery defined in Article 293 and punished under Paragraph 5 of Article 294 of the Revised Penal Code with prision correccional in its maximum period to prision mayor in its medium period. Appellants have indisputably acted in conspiracy as shown by their concerted acts evidentiary of a unity of thought and community of purpose. In the determination of their respective liabilities, the aggravating circumstances of craft^[29] shall be appreciated against both appellants and that of abuse of confidence shall be further applied against appellant Puno, with no mitigating circumstance in favor of either of them. At any rate, the intimidation having been made with the use of a firearm, the penalty shall be imposed in the maximum period as decreed by Article 295 of the Code.

We further hold that there is no procedural obstacle to the conviction of appellants of the crime of simple robbery upon an information charging them with kidnapping for ransom, since the former offense which has been proved is necessarily included in the latter offense with which they are charged.^[30] For the former offense, it is sufficient that the elements of unlawful taking, with intent to gain, of personal property through intimidation of the owner or possessor thereof shall be, as it has been, proved in the case at bar. Intent to gain (*animus lucrandi*) is presumed to be alleged in an information where it is charged that there was unlawful taking (*apoderamiento*) and appropriation by the offender of the things subject of the robbery. ^[31]

These foregoing elements are necessarily included in the information filed against appellants which, as formulated, allege that they wilfully, unlawfully and feloniously kidnapped and extorted ransom from the complainant. Such allegations, if not expressly but at the very least by necessary implication, clearly convey that the taking of complainant's money and checks (inaccurately termed as ransom) was unlawful, with intent to gain, and through intimidation. It cannot be logically argued that such a charge of kidnapping for ransom does not include but could negate the presence of any of the elements of robbery through intimidation of persons.^[32]

WHEREFORE, the assailed judgment of the trial court is hereby SET ASIDE and another one is rendered CONVICTING accused-appellants Isabelo Puno y Guevarra and Enrique Amurao y Puno of robbery as punished in Paragraph 5 of Article 294, in relation to Article 295, of the Revised Penal Code and IMPOSING on each of them an indeterminate sentence of four (4) years and two (2) months of prision correccional, as minimum, to ten (10) years of prision mayor, as maximum, and to jointly and severally pay the offended party, Maria del Socorro M. Sarmiento, the amounts of P7,000.00 as actual damages and P20,000.00 as moral damages, with costs. SO ORDERED.

Narvasa, C.J., (Chairman), Feliciano, Nocon, and Campos, Jr., JJ., concur.

[*] Complainant testified under the name of "Corina Mutuc Sarmiento" but made the clarification that her baptismal name is "Maria del Socorro Mutuc Sarmiento" (TSN, January 8, 1990, 4).

[1] Original Record, 1.

[2] Ibid, 72.

[3] Ibid., 137; per Judge Jaime N. Salazar, Jr.

[4] Appellant's Brief, 5; Rollo, 47.

- [5] Brief for the Plaintiff-Appellee; Rollo, 68-84.
- [6] Ibid., 73-75.
- [7] TSN, August 13, 1990, 14-15.
- [8] Ibid., id., 16; September 5, 1990, 18, 25-26.
- [9] Ibid., id., 11.
- [10] *People vs. Geronimo*, 100 Phil. 90 (1956).
- [11] *People vs. Cadag, et al.*, 2 SCRA 388 (1961).
- [12] TSN, August 30, 1990, 11.
- [13] For this reason, kidnapping and serious illegal detention are jointly provided for in Article 267 under Chapter One, Title Nine, Book Two of the Revised Penal Code on Crimes Against Liberty.
- [14] 1 Phil. 165 (1902); see also *U.S. vs. De Leon*, 1 Phil. 163 (1902).
- [15] *People vs. Remalante*, 92 Phil. 48 (1952); *People vs. Guerrero*, 103 Phil. 1136 (1958); *People vs. Ong, et al.*, 62 SCRA 174 (1975); *People vs. Ty Sui Wong, et al.*, 83 SCRA 125 (1978); *People vs. Jimenez, et al.*, 105 SCRA 721 (1981).
- [16] TSN, August 13, 1990, 21-22.
- [17] *Keith vs. State*, 120 Fla. 847, 163 So. 136; *People vs. Akiran, et al.*, 18 SCRA 239, 246 (1966).
- [18] Original Record, 136.
- [19] Rollo, 79.
- [20] *U.S. vs. Ibañez*, 19 Phil. 463 (1911). Art. 306 of the Code also specifically refers to them as "highway robbers or brigands."
- [21] *U.S. vs. Carlos*, 15 Phil. 47 (1910).
- [22] Aquino, R.C., *The Revised Penal Code*, Volume Three, 1989 ed., p. 174, citing *U.S. vs. Decusin*, 2 Phil. 536 (1903) and *U.S. vs. Maaño*, 2 Phil. 718 (1903).
- [23] *U.S. vs. Feliciano*, 3 Phil. 422(1904).
- [24] *Contemporanea expositio est optima et fortissima in lege* (2 Inst. 11; *Black's Law Dictionary*, Fourth Edition, 390).
- [25] Act 518, as amended by Act 2036.
- [26] *Qui haeret in litera haeret in cortice* (Co. Litt. 289; *Broom, Max.* 685; *Black's Law Dictionary*, Fourth Edition, 1413).
- [27] Republic Act No. 6539.
- [28] Presidential Decree No. 533.
- [29] *People vs. San Pedro*, 95 SCRA 306 (1980); *People vs. Masilang*, 142 SCRA 673 (1986).
- [30] Section 4, Rule 120, 1985 Rules of Criminal Procedure.

[31] U.S. vs. San Pedro, 4 Phil. 405 (1905); U.S. vs. Alabot, 38 Phil. 698 (1918).

[32] See Section 5, Rule 120, 1985 Rules of Criminal Procedure.

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