

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. CHERRY BONDOC Y LIWANAG, ACCUSED-APPELLANT.

G.R. No. 98400. May 23, 1994

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

CHERRY BONDOC Y LIWANAG appeals from the judgment[1] of the court a quo finding her guilty of kidnapping and failure to return a minor penalized under Art. 270 of The Revised Penal Code and imposing upon her a prison term of reclusion perpetua.

The evidence for the government tends to establish that on 6 October 1989, at about four-thirty in the afternoon, complaining witness Lucita Romero Corpuz went to the Manila City Jail to visit her husband, Antonio Corpuz, who was detained therein. She brought along with her Carla May, her daughter who was then only 1 year and 4 months old, because no one could take care of her at home. In her previous visits, she was able to bring her inside but this time she was not allowed to do so. Appellant Cherry Bondoc who was then standing in front of the gate of the jail approached her and volunteered to take care of Carla May while she was visiting her husband. She asked appellant her name and why she was offering to help as that was the first time they met. Appellant explained that she just pitied her. To convince Lucita, appellant even narrated that she was there accompanying a friend who was also visiting someone, and in fact had already watched over some six (6) children that morning whose parents had to leave them in her custody so they could go inside the jail.

Apparently convinced that appellant had good intentions, Lucita entrusted Carla May to her while she visited her husband. But when she came out after fifteen minutes, her daughter and appellant were nowhere to be found. A woman who was also waiting in front of the jail told her that appellant had left with Carla May. Fearing that her daughter was kidnapped, Lucita complained to the Warden of the Manila City Jail and proceeded to the General Assignment Section of the Western Police District (WPD) to report the kidnapping. Her complaint was accordingly recorded in the police blotter and then published in the People's Journal.

On 13 October 1989, the Barangay Chairman of Herbosa, Tondo, went to the house of Lucita and informed the latter that the policemen of Herbosa Detachment received a report that a woman had taken Carla May to Dagat-dagatan, Navotas, and was now selling her in Herbosa, Tondo. The Barangay Chairman also reported that the woman was in fact arrested by Pat. Flormata and Pat. Mauricio of the same detachment.

Accompanied by the Barangay Chairman, Lucita went to the Herbosa Detachment and saw appellant. Then Pat. Willy Capati arrived with Carla May who was then reunited with her mother.

On 15 October 1989, Lucita gave her sworn statement to Pat. Efraim Tumaning of the General Assignment Section, WPD. Patrolman Tumaning prepared and signed a Booking Sheet and Arrest Report which was signed by appellant who was then placed under arrest for kidnapping.

On 16 October 1989, Pat. Tumaning prepared and signed a Crime Report concerning his investigation. On the

same day, Capt. Crescencio Cabasal endorsed the case to the City Prosecutor of Manila for appropriate action.

On 19 January 1990, an information for kidnapping for the purpose of selling minor Carla May Corpuz was filed against appellant Cherry Bondoc y Liwanag.

Appellant denied the charge. She alleged that on 6 October 1989, her aunt requested her to bring some things to a cousin, Rolando Bondoc, who was detained at the Manila City Jail for vagrancy. Since she had no identification card, she was not allowed to enter the jail. However, she was able to hand over the things to her cousin when the latter was called to the gate upon her request.

At around three o'clock in the afternoon, a certain Nerrie approached her and asked her if she could take care of a young girl while she went inside the jail to visit somebody. Appellant agreed but did not ask Nerrie about the child's name. She waited for Nerrie outside but since the latter failed to return, she went to a nearby store for a brief thirty-minute snack, after which she went back to the gate to look for Nerrie.

After waiting up to five o'clock in the afternoon, appellant decided to leave taking the child with her as the security guards refused to keep her, and brought her to the house of appellant's sister, Melissa Bondoc, in Dagat-dagatan and asked her to take care of the child in the meantime. While appellant actually resided in Velasquez St., Tondo, she had not thought of bringing Carla May to the police station in Herbosa.

On 7 October 1989, at about seven o'clock in the morning, appellant left for Angeles City where she worked as a cook. Three or four days later she read in the People's Journal that the child in her custody had been kidnapped by a "dark-complexioned woman with short-cut hair." Consequently, she went to Police Station No. 1, WPD, and reported that the child was in her custody. She then accompanied the policemen to her sister's house in Dagat-dagatan and after taking Carla May they all returned to the police station where Lucita pointed to her as the woman to whom she entrusted Carla May at the Manila City Jail. Her sister Melissa, who was also present at the station when Carla May was returned to her mother, did not give any statement or explanation to the police authorities as to how and why Carla May happened to be in her house in Dagat-dagatan.

The trial court believed the story of the prosecution and convicted appellant Cherry Bondoc of kidnapping defined and penalized under Art. 270 of The Revised Penal Code on the basis of the testimony of witness Lucita Romero Corpuz, mother of Carla May, that she entrusted the custody of her daughter to appellant who took Carla May away without her (Lucita) consent and deliberately failed to return her.

Appellant assails the trial court in this appeal (a) for giving credence to incriminating evidence obtained while she was under custodial interrogation without the benefit of counsel; and, (b) for convicting her of the offense of kidnapping on the basis of insufficient evidence, thereby denying her due process and equal protection of the law.

Appellant contends that the trial court gave weight to the theory of the prosecution based on documentary and testimonial evidence obtained from her while she was under custodial interrogation in violation of her constitutional rights. She argues that while she was under custodial investigation she was asked questions designed to elicit incriminating evidence, i.e., the Crime Report[2] and the Booking Sheet and Arrest Report,[3] "without having been informed of her rights and without benefit of counsel." She also argues that the documentary evidence presented by the prosecution does not prove her guilt, and that there was no evidence of selling the child which would have established criminal intent.

The police reports contain a statement that "when investigated after being informed of her constitutional rights, she (appellant) verbally admitted that she took herein victim but she refused to reduce her statements into writing without the presence of her own counsel."

A person under custodial investigation is entitled to the following rights: (a) right to remain silent; (b) right to counsel; and, (c) right to be informed of these rights.[4] The accused should be assisted by counsel the moment there is a move or even an urge of said investigators to elicit admissions or confessions or even plain information which may appear innocent or innocuous at the time.[5]

We agree with appellant. The verbal admission she made without the assistance of counsel is inadmissible in evidence. However, even without her admission, the evidence for the prosecution is sufficient to support the finding of guilt against her.

The rule is settled that the testimony of a single credible witness is sufficient to convict.[6] Even in the absence of documentary evidence, the clear and positive identification of the accused by a witness regarding the former's active participation in the crime is enough to establish her guilt beyond reasonable doubt.

Thus testified Lucita, mother of Carla May who was kidnapped by appellant -

Q Madam witness, where were you on October 6, 1989 at around 4:30 o'clock in the afternoon?

A I was at the City Jail visiting my husband, sir x x x I was with my child, Carla May, sir,

x x x

Q What did you do with your child when she was not allowed to see your husband?

A I was told by Cherry Bondoc that she would take care of my child because that day she had already took (sic) care of six children and Carla was the 7th child, sir x x x I was asking who was she, (sic) and why she was interested in taking care of my child, and she answered that she pitied me. sir x x x She told me to trust her because according to her she had already took (sic) care of many children and that those children did not get lost, sir.

Q What happened after telling you that?

A I had her watch over my child for a short time, sir x x x Only fifteen minutes, sir.

Q After talking with your husband for fifteen minutes, what did you do next?

A I immediately went back (to) get my child but I was told by a woman that my child was brought away by Cherry Bondoc, sir, together with Baby Tipuz.[7]

The trial court observed that Lucita, testifying before the court in a spontaneous, straightforward and candid manner, pointed to and identified appellant as the person to whom she entrusted Carla May and who later absconded with her child; that prior to Lucita's identification in court she had immediately pointed to the appellant as the kidnapper of her child on the day she saw appellant at the Herbosa police station when Carla May was presented.

We find no cogent reason to disturb the findings of the trial court. The issue involved in this appeal is one of credibility, and this Court has invariably ruled that the matter of assigning values to the testimony of witnesses is best performed by the trial courts because they, unlike appellate courts, can weigh the testimony of witnesses in the light of the demeanor, conduct and attitude of the witnesses at the trial, except when circumstances of weight or influence were ignored or disregarded by them which does not obtain in the present case.[8]

Unless there is a showing that the trial court had overlooked, misunderstood or misapplied some fact or circumstance of weight that would have affected the result of the case, this Court will not disturb factual findings of the lower court. Having had the opportunity of observing the demeanor and behavior of witnesses while testifying, the trial court more than this Court is in a better position to gauge their credibility and properly

appreciate the relative weight of the often conflicting evidence for both parties.[9] When the issue is one of credibility, the trial court's findings are given great weight on appeal.

The bare denial of appellant that Lucita was not the one who entrusted Carla May to her constitutes self-serving negative evidence which is not sufficient to overcome the positive testimony of Lucita. As the denial of appellant was weak, uncorroborated and inherently improbable, the clear and straightforward testimony of the prosecution witnesses should prevail. Even if there is no evidence to show appellant's intention to sell the young girl for profit, the two elements of kidnapping and failure to return a minor under Art. 270 of The Revised Penal Code are already present, namely: (a) The offender has been entrusted with the custody of a minor person, and (b) The offender deliberately fails to restore said minor to his parents or guardian.[10]

With the positive testimony of Lucita, the prosecution has proved the presence of the above elements to establish the criminal liability of appellant. Moreover, appellant has admitted the existence of the two elements by testifying that after having been given custody of the child, she kept the latter in her sister's house for three (3) or four (4) days without seeking any assistance from the police authorities so that the child could be immediately returned to her mother. This admission shows the falsity of her claim of innocence. Instead, it affirms her deliberate refusal to return the child to her mother.

We also take note of the failure of appellant to present as defense witnesses the guards at the city jail whom she allegedly requested to take Carla May in their custody when that Nerrie did not return to get the child. If indeed this claim of appellant is true, its confirmation by those guards could have probably helped establish her innocence. But there was not even any effort to produce them.

The records do not also show any known motive why the prosecution witnesses would testify against appellant. In the absence thereof, it is hardly incredible that they would pervert the truth, testify to a falsehood and cause the punishment of one who had neither brought them harm nor injury.[11] In fact, upon discovery that her daughter was missing, Lucita immediately reported the incident to the Warden of the Manila City Jail as well as to the local police authorities. In the absence of delay in reporting the crime to the authorities, the testimony of the complaining witness should be credible.[12]

For kidnapping and failure to return minor Carla May to her mother from whom the former was taken by appellant, the trial court correctly sentenced her to reclusion perpetua conformably with Art. 270 of The Revised Penal Code. This Court also finds appropriate to award moral damages to complaining witness Lucita Romero Corpuz and the amount of P10,000.00 is considered reasonable as reparation for the mental anguish and serious anxiety she suffered before Carla May was returned to her.

WHEREFORE, the decision of the court a quo finding the accused-appellant CHERRY BONDOC Y LIWANAG guilty beyond reasonable doubt of kidnapping and failure to return a minor penalized under Art. 270 of The Revised Penal Code and imposing upon her the penalty of reclusion perpetua is AFFIRMED with the modification that the amount of P10,000.00 in moral damages is also awarded to Lucita Romero Corpuz.

Costs against accused-appellant.

SO ORDERED.

Cruz, (Chairman), Davide, Jr., Quason, and Kapunan, JJ., concur.

[1] Penned by Judge Romeo J. Callejo, Regional Trial Court of Manila, Br. 49.

[2] Exh. "B," p. 1.

[3] Exh. "C," p. 1.

[4] *People v. Hernandez*, G.R. No. 73603, 22 June 1988, 162 SCRA 422.

[5] *Gamboa v. Cruz*, G.R. No. 56291, 27 June 1988, 162 SCRA 642.

[6] *People v. Tan*, G.R. No. 53834, 24 November 1986, 145 SCRA 614.

[7] TSN, 17 May 1990, pp. 2-4.

[8] *People v. Mendoza*, No. L-39335, 25 March 1983, 121 SCRA 149; See also *People v. Bernal*, No. L-30483, 31 July 1984, 131 SCRA 1.

[9] *People v. Bernal*, *supra*.

[10] *People v. Gutierrez*, G.R. No. 81020, 28 May 1991, 197 SCRA 569.

[11] See Note 8.

[12] *People v. Maala*, No. L-37792, 24 June 1983, 122 SCRA 812.

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