

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FERNANDO A. MALAPAYON, A.K.A. DANIEL S. MARTINEZ, ARNULFO M. CINCO, A.K.A. NOLIE, TEODORO M. CINCO, A.K.A. TEDDY, REMIGIO R. G...

G.R. Nos. 111734-35. June 16, 2000

Ponente: PARDO, J.

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PARDO, J.:

Before the Court are separate appeals of accused Macario U. Castillo, Mercedita Padilla-Castillo, Remigio R. Gonzales and Rafael B. Abello from the decision of the Regional Trial Court, Quezon City[1] convicting them of kidnapping for ransom[2] and Remigio R. Gonzales for the added offense of illegal possession of firearms and ammunition.[3]

The court acquitted Rafael B. Abello, Teodoro M. Cinco and Arnulfo M. Cinco of the charge of illegal possession of fire- arms and convicted Fernando A. Malapayon and Remigio R. Gonzales. In the case of kidnapping for ransom, the court convicted Fernando A. Malapayon, Arnulfo M. Cinco, Teodoro M. Cinco, Remigio R. Gonzales, Rafael B. Abello, Macario U. Castillo and Mercedita Padilla-Castillo as principals and sentenced them to each suffer the penalty of reclusion perpetua. They were ordered to indemnify the victim, Wilhelmina Andrada, in the amount of Five Hundred Thousand (P500,000.00) Pesos, and to pay proportional costs. The firearms and ammunition found in the possession of the accused were confiscated in favor of the government.[4]

On February 9, 1993, State Prosecutor II of the Department of Justice Reynold Q. Yaneza filed with the Regional Trial Court, Quezon City an information[5] charging accused Fernando A. Malapayon, Arnulfo M. Cinco, Teodoro M. Cinco, Remigio R. Gonzales and Rafael B. Abello with illegal possession of firearms and ammunition, as follows:

"That on or about 27 November 1992 and within the jurisdiction of this Honorable Court, the above-named accused, in concert with each other, did then and there willfully, unlawfully, feloniously, and without authority of law possessed the following unlicensed firearms and ammunition which were recovered and seized by police authorities from their safe house at No. 52 Scout Santiago Street, Quezon City, to wit:

"1. One (1) Cal. 5.56 (M-16) Baby Armalite with Serial No. RP 054118;

"2. One (1) Short magazine for Cal. 5.56 (M-16) Rifle;

"3. Nineteen (19) rounds of live ammunition for Cal. 5.56 (M-16) rifle;

"4. One (1) Cal. .38 revolver without Serial Number ("paltik");

"5. One (1) Cal. .38 revolver snub-nosed without Serial Number ("paltik"); and

"6. Sixteen (16) rounds of live ammunition for cal. .38 revolver.

"CONTRARY TO LAW."

On the same day, February 9, 1993, State Prosecutor Yaneza filed another information[6] charging all of the above-named accused[7] together with Macario U. Castillo and Mercedita Padilla-Castillo with kidnapping for ransom, as follows:

"That on or about 26 November 1992 and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating, and in confabulation with one another, did then and there willfully, unlawfully and feloniously abducted (sic) WILHELMINA VILLANUEVA ANDRADA along Lantana Street, Quezon City, and detained her against her will in their safe house situated at No. 52 Scout Santiago, Quezon City, with their demand for payment of ransom for her release which was not paid due to her timely rescue on 27 November 1992 by police authorities.

"CONTRARY TO LAW."

On March 8, 1993, at the arraignment of the accused for the two cases, they pleaded "not guilty".[8] The court ordered the consolidation of the two cases.[9] Trial ensued.[10]

The relevant facts are:

Wilhelmina Andrada was engaged in the real estate business. She was Vice President and Treasurer of her own agency. Prosecution witness Nancy Millo was her secretary for ten years. Accused-appellants, spouses Macario and Mercedita Castillo were both her sales agents on commission basis.

In November 1992, her agency had a house for sale.[11] Two weeks before, an alleged buyer called. He identified himself as "Albert Gutierrez"[12] who turned out to be accused Arnulfo M. Cinco.[13]

On November 25, 1992, "Albert Gutierrez" called Wilhelmina and asked for a discount on the property. He asked if they could meet the next day at the Bank of the Philippine Islands Branch along Kamuning in Quezon City.

On November 26, 1992, at 10:00 a. m., "Albert Gutierrez" called and asked if they could meet instead at De los Santos Hospital in Quezon City. Wilhelmina agreed. She and her secretary, Nancy, proceeded to De los Santos Hospital in Wilhelmina's white Toyota Corolla.[14]

The accused Fernando A. Malapayon and Arnulfo M. Cinco met them. Nancy recognized Arnulfo M. Cinco as the man who introduced himself as "Albert Gutierrez".

With Wilhelmina driving, they proceeded in Wilhelmina's car to Lantana St. as Fernando A. Malapayon supposedly needed to fetch his wife.[15] They reached a house with a brown gate. Fernando A. Malapayon instructed Wilhelmina to stop. She heard Nancy shout. She turned and found Fernando A. Malapayon pointing a .45 caliber pistol at Nancy, instructing her not to move ("huwag kang kikilos"). Wilhelmina tried to get out of the car. Arnulfo M. Cinco grabbed her by the neck and locked her in his grip. They struggled for about three minutes. She wrestled herself from him and got out of the car. She saw a man in a blue shirt and asked him for help. Instead of helping, the man, one of the accused, Teodoro M. Cinco, dragged her back into the car.[16]

Nancy was able to escape.[17]

The three accused tied Wilhelmina's hands with a cord. They covered her mouth and blindfolded her with pieces of cloth. They took her to an apartment along Sgt. Santiago St., Quezon City.[18] The apartment[19] used as a safe house was rented by accused Fernando A. Malapayon at the time.[20]

Wilhelmina was brought to the second floor of the safe house. She saw three other men inside. The blindfold was apparently not tight enough and not properly placed. She identified the three other men as accused Macario U. Castillo, Rafael B. Abello and Remigio R. Gonzales.[21] While held captive, Wilhelmina heard and sensed several persons, including two women talking in whispers.[22]

On November 26, 1992, the victim's brother, Dr. Villanueva got a call from one of the kidnappers. The caller demanded a ransom of eight million pesos (P8M). After further negotiations, the demand was lowered to four million pesos (P4M).[23]

Fernando Malapayon instructed Remigio Gonzales to guard Wilhelmina Andrada at all times.[24]

On November 26, 1992, the Intelligence Command of the Philippine National Police[25] ("IC-PNP") received information about Wilhelmina's kidnapping. Immediately, they mobilized fifteen (15) teams for her rescue.[26]

As it happened, in the first two weeks of November 1992, the IC-PNP was already suspicious of Fernando A. Malapayon. In the second week of November, the IC-PNP conducted surveillance operations on the safe house. The surveillance was done in connection with the IC-PNP's "Oplan 2-Timer", where Fernando A. Malapayon was identified as one of their target personalities.[27] Apparently, the authorities had reason to believe that Fernando A. Malapayon masterminded a series of previous kidnappings.[28] Video cameras and still cameras were used to take photographs of the area. There were video tapes showing accused Mercedita Padilla-Castillo, Remigio R. Gonzales and a certain Norma Gatlabayan near the safe house, chatting by the gate and walking around. The tape was recorded during the second week of November 1992. Another tape showed that accused Macario U. Castillo had a key to the safe house's gate which he used to enter.[29]

On November 26, 1992, a breakthrough came when Wilhelmina's car was sighted in the safe house's garage.[30]

On November 27, 1992, a group of policemen headed by Col. Jewel Canson arrived at the safe house and proceeded to the second floor.[31] Wilhelmina heard men shouting, "mga pulis kami". She took off her blindfold.

When the police entered the room, Remigio Gonzales threw the firearm he was pointing at Wilhelmina towards one of the room's corners.[32] More unlicensed firearms and ammunition were found in the safehouse.[33] The accused were arrested[34] and Wilhelmina was brought to Camp Crame.[35] The ransom was never paid as Wilhelmina was timely rescued.[36]

On June 21, 1993, after trial, the trial court rendered a decision, the dispositive portion of which reads:

"WHEREFORE, accused Rafael B. Abello, Teodoro M. Cinco and Arnulfo M. Cinco, who are charged in Criminal Case No. Q-93-41431 for Illegal Possession of Firearms and Ammunition, are ACQUITTED, for failure of the prosecution to prove their guilt beyond reasonable doubt. Accused Fernando Malapayon and Remigio Gonzales, are found guilty beyond reasonable doubt as principals for the crime of Illegal Possession of Firearms and Ammunition in Violation of P. D. No. 1866, and are sentenced to suffer imprisonment of Eight (8) Years and One (1) Day, as minimum, to Ten (10) Years, as maximum, of Prison Mayor.[37]

"In Criminal Case No. Q-93-41432, fortunately for the accused the death penalty had been abolished and reduced to life imprisonment in accordance with Article III, Sec. 19 (1) of the 1987 Constitution. Accused Fernando Malapayon, also known as Daniel S. Martinez, Arnulfo M. Cinco, Teodoro M. Cinco, Remigio Gonzales, Rafael B. Abello, Macario U. Castillo and Mercedita Padilla-Castillo are found guilty beyond reasonable doubt as principals for the crime of Kidnapping for Ransom in violation of Article 267, of the Revised Penal Code, and are sentenced to suffer the penalty of RECLUSION PERPETUA. They are ordered to indemnify jointly and severally the victim Wilhelmina Villanueva-Andrada in the amount of Five Hundred Thousand (P500,000.00) Pesos, and to pay proportional costs.

"The firearms and ammunition offered by the prosecution as exhibits and admitted by the Court are confiscated in favor of the government, to wit:

"1. One (1) Cal. 5.56 (M-16) Baby Armalite with Serial No. RP 054118;

"2. One (1) Short magazine for Cal. 5.56 (M-16) Rifle;

"3. Nineteen (19) rounds of live ammunition for Cal. 5.56 (M-16) rifle;

"4. One (1) Cal. .38 revolver without Serial Number (paltik);

"5. One (1) Cal. .38 revolver snub-nosed without Serial Number (paltik); and

"6. Sixteen (16) rounds of live ammunition for cal. .38 revolver.

"SO ORDERED." [38]

Of the seven (7) accused, only Mercedita Padilla-Castillo, Macario U. Castillo, Rafael B. Abello and Remigio R. Gonzales appealed. [39]

The issue is whether the accused-appellants participated as conspirators in the kidnapping of Wilhelmina.

Conspiracy need not be proved by direct evidence. It may be inferred from the conduct of all accused before, during and after the commission of the crime. [40] The conduct should point to a joint purpose and design, concerted action and community of interest. Conspiracy may be proven by circumstantial evidence or deduced from the mode and manner in which the offense was perpetrated. [41]

We shall discuss the individual appeals of the accused.

First, the appeal of Mercedita Castillo.

Mercedita was convicted based on the following circumstances:

First, Mercedita referred the accused, Fernando A. Malapayon to Wilhelmina. [42] She and her spouse, accused-appellant, Macario Castillo are the links that introduced Fernando A. Malapayon to victim, Wilhelmina.

Second, when "Albert Gutierrez" called Wilhelmina to inquire about the house for sale, he never mentioned that he was referred by either of the Castillos. [43] This is suspicious. Common practice is for a buyer to inform the seller who referred him. Likewise, agents working on commission basis will not normally pass up a commission by not informing their principal of a referred buyer.

Third, while Wilhelmina was held captive, Mercedita freely entered and exited the safe house. She was seen and photographed coming out of the safe house on November 27, 1993. We do not believe that she did not see or know that Wilhelmina was held against her will on the second floor of the small apartment. The excuse that she was there to decorate the apartment was too flimsy to believe.

To justify conviction upon circumstantial evidence, the combination of circumstantial evidence must leave no reasonable doubt as to the guilt of the accused. [44] From the aforementioned circumstances, a fair and logical conclusion--that Mercedita participated in the crime of kidnapping Wilhelmina for ransom can be reached.

The exculpation of Norma Gatlabayan during preliminary investigation cannot be made the basis for Mercedita's acquittal. Public prosecutors during preliminary investigation do not decide whether there is evidence beyond reasonable doubt of the guilt of the person charged. A finding of probable cause does not require an inquiry as to whether there is sufficient evidence to secure a conviction. This is precisely what trial on the merits is for. [45] If Mercedita found any irregularity in Norma Gatlabayan's being dropped from the information, Mercedita should have either (1) compelled Norma's prosecution or (2) sought for the dropping of the charges against her with the same agency that conducted the preliminary investigation. The conduct of a preliminary investigation is executive in nature, while trial is a judicial function. [46] Besides, when Mercedita entered her plea, she is deemed to have waived any irregularity in the information and in the preliminary investigation. [47]

Consequently, we affirm Mercedita Castillo's conviction for kidnapping for ransom.

Next, the appeal of Macario Castillo.

Wilhelmina testified that when she was brought to the safe house, she saw three men, among them, accused-appellant Macario. Macario saw Wilhelmina, his employer, bound and blindfolded. She was clearly held against her will. Yet, he did not do anything to help her. The reasons which sufficed to convict Mercedita apply also to Macario. We note that Macario and Fernando Malapayon were together when they were both arrested at Saint Luke's Hospital on November 27, 1992.[48] Macario and Fernando Malapayon were together from the time of the abduction to the time of rescue. Verily, Macario cannot claim ignorance of the kidnapping. Here we find a closeness of personal association and a concurrence of sentiment towards a common unlawful purpose. This indicates participation in a conspiracy.[49]

Even in the face of accusations against him, Macario never testified in his defense. This goes against the principle that "the first impulse of an innocent man when accused of wrongdoing is to express his innocence at the first opportune time." [50] In the recent case of *People v. Damaso Job*, [51] appellant's conviction for kidnapping for ransom was affirmed since he did not give any plausible reason for his presence in the safe house. As we did in that case, we do so here.

Hence, we affirm Macario Castillo's conviction of the charge of kidnapping for ransom. In conspiracy, the act of one is the act of all.[52]

We come to the appeal of Rafael Abello. Rafael reasons that he was at the safe house because he was hired to do a painting job.[53] Fernando Malapayon confirmed that at about that time, he hired helpers to paint the apartment.[54]

Unlike Macario, Rafael sufficiently explained his presence at the safe house. His justification was not rebutted by the prosecution. Failure of the prosecution to overcome the constitutional presumption of innocence entitles the accused-appellant to an acquittal.[55] Conspiracy must be established, not by conjectures, but by positive and conclusive evidence.[56] Mere companionship does not establish conspiracy.[57] When a circumstance is capable of two interpretations, one consistent with the accused's guilt, and one with his innocence, the latter must prevail.[58]

We resolve to acquit Rafael Abello of the charge against him.

Lastly, we discuss Remigio Gonzales' appeal. Remigio also explains that he was at the safehouse because he was hired to do a painting job. However, unlike Rafael, Remigio cannot be acquitted. Remigio kept watch over Wilhelmina at gun point. True, he claimed that he did it "against his will" and because he wanted "to please his would-be employer".[59] Still, we do not believe his claim; we cannot acquit.

There is sufficient evidence of Remigio's participation in the conspiracy to kidnap the victim. By guarding Wilhelmina at gun point, Remigio concurred with the criminal design of the principals and performed an act indispensable to the crime's commission.

The law imposes the penalty of reclusion perpetua to death on those guilty as principals in the crime of kidnapping and serious illegal detention when the person kidnapped or detained shall be a minor, female or public officer. The penalty imposed shall be death if the purpose was to extort ransom from the victim.[60] However, since the crime was committed when the death penalty was abolished, we affirm the penalty of reclusion perpetua imposed on accused-appellants, Macario and Mercedita Castillo and Remigio Gonzales.

The trial court erred when it awarded the exorbitant amount of Five Hundred Thousand (P500,000.00) as damages, without designating the purpose and basis for the award. We, therefore, delete the "general" award of

damages.

However, an award of moral damages is in order. Wilhelmina testified that the kidnapping had an adverse effect on her, making her constantly fearful.[61] In *People v. Jeanette Yanson- Dumancas*, [62] also a case of kidnapping for ransom, the principals were ordered to pay moral damages in the amount of fifty thousand pesos (P50,000.00). We do the same here.

Remigio also appeals his conviction for illegal possession of firearms and ammunition. His appeal must be denied. The requisites for the crime are present. The subject firearms exist. Accused-appellant Remigio possessed it without license.[63]

However, the penalty imposed on him by the trial court exceeded that prescribed by law. Under Republic Act No. 8294, amending P. D. No. 1866, the penalty for illegal possession of firearm classified as high powered is prision mayor minimum or six (6) years and one (1) day to eight (8) years and a fine of thirty thousand (P30,000.00) pesos.[64] Here, the offense was committed on November 27, 1992. Since the amendatory law is favorable to the accused, it shall be given retroactive application.[65] And the Indeterminate Sentence Law shall be applicable.[66]

In the absence of any modifying circumstance, the penalty shall be imposed in its medium period.[67] Applying the Indeterminate Sentence Law, the Court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of said Code[68] and the minimum shall be within the range of the penalty next lower to that prescribed by the Code for the offense.[69]

WHEREFORE, the appeals of Mercedita Padilla Castillo and Macario Castillo and Remigio Gonzales in Criminal Case No. Q-93-41432 are DENIED. The decision of the Regional Trial Court, Quezon City, dated June 21, 1993, convicting Mercedita and Macario Castillo and Remigio Gonzales as principals of kidnapping for ransom and sentencing each of them to reclusion perpetua is AFFIRMED.

Likewise, Remigio Gonzales' appeal in Criminal Case No. Q-93-4431 for illegal possession of firearms and ammunition is DENIED and the trial court's decision convicting him as principal of illegal possession of firearms under P. D. No. 1866, as amended, is AFFIRMED, with the modification that accused Remigio Gonzales is sentenced to four (4) years, two (2) months and one (1) day of prision correccional, as minimum to six (6) years, eight (8) months and one ((1) day of prision mayor, as maximum, and to pay a fine of P10,000.00.

However, the trial court's award of damages in the amount of five hundred thousand pesos (P500,000.00) is DELETED. Accused-appellants Mercedita Castillo, Macario Castillo and Remigio Gonzales are each ORDERED to pay, jointly and severally, the victim Wilhelmina Andrada moral damages in the amount of fifty thousand pesos (P50,000.00).

Accused-appellant Rafael B. Abello is ACQUITTED on reasonable doubt. The Director of the Bureau of Corrections is directed to RELEASE him immediately, unless he is lawfully held for another cause and to inform the Court of the date of his release, or the reasons for his continued confinement, within ten (10) days from notice. Costs de oficio.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Kapunan, and Ynares-Santiago, JJ., concur.

Puno, J., no part due to relationship to a counsel.

[1] Decision dated June 21, 1993, Branch 78, Judge Percival Mandap Lopez, presiding.

[2] In Crim. Case No. Q-93-41432.

[3] In Crim. Case No. Q-93-41431.

[4] Rollo, p. 315.

[5] Ibid., pp. 11-13.

[6] Rollo, pp. 16-17.

[7] Fernando A. Malapayon, Arnulfo M. Cinco, Teodoro M. Cinco, Remigio R. Gonzales and Rafael B. Abello.

[8] Regional Trial Court Records, p. 118.

[9] Ibid., p. 119.

[10] On March 3, 1993, Judge Percival Mandap Lopez issued an order, to wit:

"After discussing lengthily, and all counsel for the accused have conferred with each other on the procedure to be taken in the trial of these cases, the prosecution and the defense agreed, to wit:

1. That the direct examination of all witnesses for the prosecution will be in the form of affidavits wherein the defense will be furnished at least three (3) days, a copy of said affidavit before a witness is put on a witness stand. No affidavit of the witness can be utilized for purposes of cross-examination unless the defense is given the 3-day period of receiving a copy thereof from the prosecution; and

2. The same procedure will be utilized in the presentation of evidence for the defense, and as far as practicable, the cross-examination of a witness either on the part of the prosecution or on the part of the defense will be terminated on the day said witness is presented.

SO ORDERED."

[11] The house was located at 149 Pajo St., Project 2, Quezon City.

[12] TSN, March 22, 1993, pp. 10-12.

[13] TSN, March 23, 1993, p. 33.

[14] TSN, March 22, 1993, p. 13.

[15] Ibid., p. 14.

[16] TSN, March 22, 1993, pp. 15-16.

[17] TSN, March 25, 1993, p. 59.

[18] TSN, March 22, 1993, p. 17.

[19] No. 52 Sct. Santiago St., Quezon City.

[20] Regional Trial Court Records, p. 137.

[21] TSN, March 22, 1993, pp. 21-23.

[22] Ibid., pp. 22-23.

[23] TSN, March 23, 1993, pp. 7-13.

[24] Regional Trial Court Records, p. 78.

[25] The Director of which at that time was Col. Jewel Canson.

[26] TSN, March 26, 1993, pp.4-11.

[27] TSN, April 15, 1993, p. 21.

[28] TSN, April 16, 1993, p. 11.

[29] TSN, April 15, 1993, pp. 8-18.

[30] Ibid., p. 37.

[31] TSN, April 27, 1993, p. 32.

[32] Ibid., p. 33.

[33] Ibid., pp. 38-39.

[34] At different times on the same day, November 27, 1993, the accused were arrested as follows: accused Arnulfo Cinco and Teodoro Cinco were arrested at the gate of the safehouse; Rafael Abello was arrested at a nearby sari-sari store; Remigio Gonzales was arrested in the safehouse itself during the rescue; Fernando Malapayon and Macario Castillo were arrested in St. Luke's Hospital; and Mercedita Castillo and Norma Gatlabayan were "invited" by the police for questioning when they found them in Norma's house in 84-K 2nd Street, Kamuning.

[35] TSN, March 22, 1993, pp. 27-28.

[36] TSN, March 23, 1993, pp. 15, 32.

[37] Rollo, p. 315.

[38] Ibid.

[39] Notice of Appeal was filed by accused-appellants Mercedita and Macario Castillo on July 1, 1993, Remigio Gonzales filed is notice of appeal on July 5, 1993 and Rafael Abello filed his notice of appeal on July 8, 1993.

[40] People of the Philippines v. Romencio Ricafranca, G. R. Nos. 124384-86, January 28, 2000, p. 10.

[41] People v. Pepito Orbita, G. R. No. 122104, January 19, 2000.

[42] TSN, May 21, 1993, pp. 45, 64, TSN, May 24, 1993, p. 15.

[43] TSN, May 27, 1993, pp. 30-31.

[44] People v. Raul Acosta, G. R. No. 126351, February 18, 2000.

[45] Amor Deloso v. Hon. Aniano Desierto, G. R. No. 129939, September 9, 1999.

[46] Sangguniang Bayan of Batac Ilocos Norte v. Albano, 260 SCRA 561, 568 (1996).

[47] People v. Lapura, 255 SCRA 85, 98 (1996).

[48] TSN, April 20, 1993, p. 4.

[49] People v. Joselito del Rosario, G. R. No. 127755, April 14, 1999.

- [50] *People v. Jeanette Yanson-Dumancas*, G. R. Nos. 133527-28, December 13, 1999.
- [51] G. R. No. 116084-85, March 9, 2000.
- [52] *People v. Hipolito Bermudez*, G. R. No. 129033, June 25, 1999.
- [53] Rollo, Rafael Abello's Appellant's Brief, p. 12.
- [54] TSN, May 21, 1993, p. 65.
- [55] *Julius Froilan v. Sandiganbayan*, G. R. No. 115221, March 17, 2000.
- [56] *People v. Joselito Del Rosario*, G. R. No. 127755, April 14, 1999.
- [57] *Ibid.*, p. 15.
- [58] *People v. Jose Lomboy*, G. R. No. 129691, June 29, 1999.
- [59] Rollo, Remigio Gonzales' Appellant's Brief, pp. 12, 15.
- [60] Article 267, Revised Penal Code.
- [61] TSN, March 22, 1993, p. 29.
- [62] G. R. Nos. 133527-28, December 13, 1999.
- [63] *People v. Bergante*, 286 SCRA 629 (1998).
- [64] P. D. No. 1866, Section 1, 2nd par., as amended by Rep. Act No. 8292, effective July 6, 1997.
- [65] *People vs. Valdez*, 304 SCRA 611, 630 (1999).
- [66] *People vs. Simon*, 234 SCRA 555 (1994).
- [67] Article 64, Revised Penal Code; *People vs. Simon*, *supra*.
- [68] Although the offense of illegal possession of firearms is provided for in a special law it is now in effect punished under the Revised Penal Code (cf. *People vs. Simon*, *supra*).
- [69] *People vs. Simon*, *supra*.

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