

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MICHAEL NUNEZ Y SEVILLA, ACCUSED. RODOLFO CAYETANO Y
PANGILINAN, ACCUSED-APPELLANT.**

G.R. Nos. 112429-30. July 23, 1997

Ponente: ROMERO, J.

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ROMERO, J.:

Stealing with intent to gain, from being a simple, uncomplicated act in times past, albeit unlawful, has evolved into more elaborate schemes guaranteed to filch money from a person with the least risk of being caught on the part of the felon.

Those with grandiose designs of victimizing the wealthy have, with alarming frequency, resorted to kidnapping, snatching not only their intended victims, but the families of the latter, as well. Within the past few years, so steep has been the incidence in the crime of kidnapping for ransom that on December 31, 1993, Republic Act No. 7659 went into effect, categorizing the same as a heinous crime punishable by death.[1]

In the instant case which occurred before said law was passed, two high school lads were duped by the accused into going with him. One was to be used for purposes of extricating ransom from his businessman father. But the other, the son of impecunious parents, was subsequently bound hands and feet, gagged and drowned in a river like a rat, with absolutely no chance of survival.

The facts of this shocking case are as follows:

Accused-appellant Rodolfo Cayetano, together with his co-accused Michael Nunez (Nunez) and Ismael Santos alias "Ka Tony," were charged with the crimes of Kidnapping for Ransom (Criminal Case No. 12778-MN)[2] and Kidnapping with Murder (Criminal Case No. 12779-MN).[3] Only accused-appellant and Nunez were convicted and accordingly sentenced to reclusion perpetua and to pay damages. Accused Santos remains at large.

The prosecution was able to establish that at around 1:15 in the afternoon of January 21, 1993 inside the compound of Immaculate Concepcion Parochial School, accused Nunez persuaded the victim, fourteen-year old high school student Joseph Rivera, to go with him on the pretext that he would turn over the proceeds of the sale of a gun to the latter's father. He was likewise able to persuade Joseph Rivera to bring along the latter's classmate, another fourteen year-old student Neil Patrick Quillosa on the pretext that Neil would be Joseph's companion in going home later.

The two boys were brought to a nipa hut in the middle of a fishpond in Dampalit, Malabon to await a certain "Ka Tony." As the two boys attempted to go home, they were told to go back as "Ka Tony" was coming. When they were asked in jest about their preference if they were to be killed either with a knife or with a gun, Neil answered that he would prefer a gun pointed at his head.

Thereafter, accused Nunez told them that "Ka Tony" would not enter the hut unless they were blindfolded and tied. They protested but were assured by accused Nunez that they would not be harmed. Both victims' hands and

feet were tied with wire and rope.

Accused-appellant came and checked if the two victims were tied securely, after which, accused Nunez played a tape demanding three million pesos in five hundred and one thousand peso bills from the parents of Rivera in exchange for his release. Rivera was likewise made to record his own voice pleading to his parents to pay the ransom demanded. Thereafter, accused Nunez, who was then in possession of a gun, fired the same towards the window, hitting the cassette recorder.

The victims were then brought to the river by accused and accused-appellant. Accused Nunez dragged Neil by the neck towards the middle of the river and left him there to drown while accused-appellant stood guard over Rivera. Quilloso's cries for help and Rivera's pleas for their captors to save Quilloso went unheeded.

In the nipa hut, Rivera was made to record his own voice saying, "Mommy, Daddy, para makilala ninyo na sanay silang pumatay, pinatay na nila si Neil." Thereafter, he managed to untie his feet and asked accused-appellant to remove the wire around his hands on the assurance that he would not escape. The following morning, accused Nunez went to deliver the tape to Rivera's house.

While accused-appellant was busy cutting grass near the river, Rivera escaped and proceeded to the house of accused Nunez where he called up his grandmother. Thereupon, he was fetched by his grandmother and with his father, they proceeded to the Malabon Police Station and reported the kidnapping. The policemen who responded recovered the cassette recorder from the nipa hut but failed to find both accused and accused-appellant.

Neil Patrick Quilloso's body was recovered on January 23, 1993 at Chungkang River, Malabon with both hands and feet still bound with wires and his mouth gagged. Dr. Juanito Sacdalan testified that the cause of death was asphyxia due to strangulation and that the wire tied around the hands of the victim was the same wire tied around the neck.

Accused-appellant, however, denied the accusation against him claiming that on the day he arrived at the nipa hut, accused Nunez poked a gun at him and threatened to kill him if he squeals. He also claimed that accused Nunez recorded something on a cassette and he saw two children with him whose hands and feet were tied with wires. Thereafter, accused Nunez instructed one of the children, whom he came to know during the trial of this case to be Joseph Rivera, to record something which he did not hear as accused Nunez ordered him to keep his distance. He averred that when Nunez brought the children to the river, he was just watching and following them; that from his position atop the paddy, he saw accused Nunez in the middle of the river release one of the children, whom he came to know during the trial to be Neil Patrick Quilloso, as a result of which the latter drowned.

The following morning, accused Nunez told him to guard Rivera after which the former left. However, he claimed that he left Rivera inside the nipa hut to cut grass around the fishpond. When accused Nunez returned and learned from him that Rivera had left, the former likewise disappeared. Moments later, accused Nunez' father arrived and told him that he would get the cassette. He was likewise told to leave as policemen will be coming. As a result, he left and went to his grandmother's place, after which he was surrendered by his uncle to Vice President Joseph Estrada. He likewise claims that he does not know how to read and that he can write only his name and count up to fifty only. He claims to know Michael Nunez as he usually sees him when he buys "kakanin" from the latter's family.

The lower court in a joint decision^[4] convicted both accused and accused-appellant with Kidnapping for Ransom and accordingly sentenced both to reclusion perpetua. Both were also found to have committed the complex crime of Kidnapping with Murder and sentenced each of them to suffer the penalty of reclusion perpetua. They were also ordered to indemnify the heirs of the victims in the amount of P50,000.00, to pay actual damages in the

amount of P41,700.00 and the sum of P50,000.00 as moral damages, as well as the costs of the suit.

Hence, this appeal. Accused-appellant claims that the lower court erred:

1. In not finding that accused-appellant's low level of intelligence/state of imbecility exempts him from any criminal liability.
2. In not finding that the records of the case are not sufficient to hold a finding of conspiracy against the accused-appellant.
3. In not acquitting the accused by reason of an exempting circumstance of uncontrollable fear of an equal or greater injury.

In the first submission of error, accused-appellant claims that he possesses a very low level of intelligence as revealed in his direct testimony and cross-examination, indicating a mental age of between six (6) to ten (10) years of age. To prove his imbecility, he cited his act of cutting grass when he should be guarding his victim. As such, he should be exempted from criminal liability under the Revised Penal Code. Even assuming that he is liable, the lower court should have proceeded against him pursuant to the Child and Youth Welfare Code.

In his second submission, accused-appellant declares that he could not have conspired with accused Nunez for the following reasons: (1) accused-appellant would rather cut grass than guard his victim, as indicative of his low mental age; (2) the act of kidnapping itself was already executed and perfected by accused Nunez when the accused-appellant arrived in the nipa hut several hours after the kidnapping; (3) the testimonies of private complainant Joseph Rivera and the accused-appellant were consistent with the fact that accused-appellant was nowhere near accused Nunez when he was recording the alleged demand for payment.

In his third submission, accused-appellant testified that accused Nunez poked a gun at him and threatened him with death; so he had no alternative but to follow the orders of accused Nunez, specially considering his mental capacity.

The Court is not persuaded by such remonstrations. The defense counsel's attribution of imbecility is not supported by evidence. Imbecility, one of the exempting circumstances under Article 12 of the Revised Penal Code, is defined as feeble-mindedness or a mental condition approaching that of one who is insane. It is analogous to childishness and dotage. An imbecile, within the meaning of Article 12, is one who must be deprived completely of reason or discernment and freedom of will at the time of committing the crime.[5] He is one who, while advanced in age, has a mental development comparable to that of children between two and seven years of age.[6]

Accused-appellant's act of cutting grass rather than guarding his victim could hardly be indicative of imbecility. Rather, it may be considered as negligence but definitely not childishness or even that of one completely deprived of reason or discernment and freedom of the will. In fact, accused-appellant admitted on cross-examination that he can tell what is right and what is wrong.[7] Assuming *arguendo* that accused-appellant is an imbecile or a feeble-minded person, in the case of *People v. Formigones*,[8] it was held that feeble-mindedness is not exempting, because the offender could distinguish right from wrong. An imbecile or an insane cannot. In any case, Article 800 of the Civil Code provides that "the law presumes that every person is of sound mind, in the absence of proof to the contrary." The allegation of insanity or imbecility must be clearly proved. Moreover, the law presumes all acts to be voluntary. It is improper to presume that acts were executed unconsciously."[9]

Neither will this Court subscribe to accused-appellant's third submission that he was prompted to act the way he did due to uncontrollable fear of an equal or greater injury. Accused-appellant's claim that accused Nunez poked a gun at him and threatened him with death is belied by testimonial evidence. Granting that accused-appellant was

forced to do what he did on account of fear, duress or intimidation such that he could not possibly have any opportunity to defend himself in equal combat, testimonial evidence show that he had at least four opportunities to escape. The first was when accused Nunez allegedly brought the two victims to the river while he remained on the rice paddy.[10] The second was when accused Nunez and the victim Joseph Rivera were sleeping in the nipa hut.[11] The third was when accused Nunez asked him to look for the necklace of Neil Patrick Quilloso on the river bank while the former was in the nipa hut together with the victim Joseph Rivera.[12] The fourth was when accused Nunez left him and the victim the following morning to deliver the taped or recorded ransom demand to the victim's family.[13] Accused-appellant could have easily taken advantage of any of these opportunities considering that only accused Nunez threatened him. By not availing of these chances to escape, his allegation of fear or duress becomes incredible under the circumstances.

In *People v. Villanueva*,^[14] this Court stated that:

"Duress, force, fear or intimidation to be available as a defense, must be present, imminent and impending, and of such a nature as to induce a well-grounded apprehension of death or serious bodily harm if the act is not done. A threat of future injury is not enough. (16 C.J., 91).

To be available as a defense, the fear must be well-founded, an immediate and actual danger of death or great bodily harm must be present and the compulsion must be of such a character as to leave no opportunity to accused for escape or self-defense in equal combat. It would be a most dangerous rule if a defendant could shield himself from prosecution for crime by merely setting up a fear from or because of a threat of a third person. (Wharton's Criminal Law, Vol. 1, Sec. 384).

Fear as an excuse for crime has never been received by the law. No man, from fear or circumstances to himself has the right to make himself a party to committing mischief upon mankind. (Lord Denman in *Reg. vs. Tyler*, 8 Car. and P. [Eng.] 616, vs. Duddely, L.R. 14, Q.B. Div. [Eng.] 273)."

Accused-appellant's knowledge of what is right or wrong, as well as his failure to escape bolsters the prosecution's evidence that he conspired with accused Nunez to commit the crimes being charged against them, contrary to the former's second submission. The records show the presence of conspiracy. First, when accused-appellant arrived at the hut where the victims were being held, the first thing he did was to check if the victims were securely tied.[15] Second, accused-appellant carried the victim Neil Patrick Quilloso to the river.[16] Third, accused-appellant kicked the victim Joseph Rivera when the latter was ordered to go to the river.[17] It may be deduced from those acts by accused-appellant that he conspired with accused Nunez to commit the crimes. While it is true that a finding of criminal conspiracy must be supported by evidence constituting proof beyond reasonable doubt, it is equally true that such evidence need not be direct evidence. It may be deduced from the mode and manner in which the offense was perpetrated. The conditions attending its commission and the acts executed may be indicative of the common design to accomplish a criminal purpose and objective. If there is a chain of circumstances to that effect, then, conspiracy has been established.[18]

To exempt himself from criminal liability, the conspirator must have performed an overt act to dissociate or detach himself from the unlawful plan to commit the felony.[19] Nowhere in the records does it show that accused-appellant ever did anything to dissuade accused Nunez from killing Neil Patrick Quilloso or to escape in order to report the crime despite at least four opportunities to do so.

This Court fully agrees with the lower court that Kidnapping for Ransom was committed against Joseph Rivera, as the essential element that the victim must have been restrained or deprived of his liberty was present when both victims were tied and when the gun was brandished and fired to intimidate them.[20] In addition, accused Nunez and accused-appellant recorded a ransom demand with the intention of sending it to Rivera's parents.[21] The records indicate that accused Nunez and accused-appellant intended to detain only Rivera and hold him for

ransom as he was the son of a gasoline owner having a net income of P24,000.00 a month and owning several properties.[22]

The same, however, cannot be said of Neil Patrick Quillosa. The records show that the intent of accused Nunez and that of accused-appellant was to kill Quillosa and not to detain him for ransom. Quillosa was a stranger to them and they merely persuaded Rivera to take him along so he could have a companion in going home.[23] In any case, they could not have possibly intended to detain Quillosa and hold him for ransom as he was only a son of a jeepney driver.[24]

Thus, the crime committed by accused Nunez and accused-appellant with respect to the victim Quillosa should be Homicide and not Kidnapping with Murder since they never intended to hold Quillosa for ransom. Nunez' query as to Quillosa's preference on the manner of his death shows the formers' intention to kill the latter. As treachery was not alleged in the information, then it could not have qualified the crime to murder.

However, treachery should be appreciated as a generic aggravating circumstance. Article 14, Paragraph 16 of the Revised Penal Code states that there is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make. In the instant case, treachery was evident when the accused Nunez led the victims to believe that it was necessary for them to be blindfolded and tied first with wires and a rope before a certain Ka Tony would agree to meet them. Having thus placed the victims, particularly Quillosa, in a helpless condition, accused Nunez and accused-appellant were able to carry out with ease their common design to kill Quillosa without any risk to themselves arising from any struggle the boy might make.

Craft should also be appreciated as aggravating the crime of homicide since it was shown that the victims, particularly the unsuspecting Quillosa, were lured by the accused into coming with them on the pretext that the former would only accompany Rivera to accept the proceeds of the sale of a gun.

With respect to accused-appellant, the mitigating circumstance of voluntary surrender should be appreciated in his favor.

WHEREFORE, in Criminal Case No. 12778-MN, the decision of the trial court is AFFIRMED. In Criminal Case No. 12779-MN, the decision of the trial court is MODIFIED in that accused-appellant Rodolfo Cayetano y Pangilinan is CONVICTED of the crime of homicide and IMPOSING upon him the prison term ranging from 10 years and 1 day to 12 years, prision mayor maximum, as minimum up to 18 years, 6 months and 1 day of reclusion temporal maximum, as maximum.

Costs against accused-appellant.

SO ORDERED.

Regalado, (Chairman), Puno, and Mendoza, JJ., concur.

Torres, Jr., J., on leave.

[1] The prefatory paragraph of Republic Act No. 7659 provides:

"WHEREAS, the crimes punishable by death under this Act are heinous for being grievous, odious and hateful offenses and which, by reason of their inherent or manifest wickedness, viciousness, atrocity and perversity are repugnant and outrageous to the common standards and norms of decency and morality in a just, civilized and ordered society."

[2] "That during the period beginning 1:15 o'clock in the afternoon of January 21, 1993 and ending the morning of the following day, in the Municipality of Malabon, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, confederating and conspiring with each other, did then and there wilfully, unlawfully, and feloniously kidnap and detain one Joseph Rivera, a minor, for the purpose of extorting ransom of P3 million from the victim and his father.CONTRARY TO LAW."

[3] "That on or about 1:15 o'clock in the afternoon of the 21st day of January 1993 at Poblacion Malabon, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused confederating and conspiring with each other, did then and there kidnap and detain one Neil Patrick Quillosa, a minor, for the purpose of extorting ransom of P3 million and in connection therewith, tie both his hands and feet with wire, and in the evening of said date and in such defenseless situation, did then and there strangle and drown said Neil Patrick in the river of Dampalit, Malabon, Metro Manila, resulting in the death of said victim, to the damage and prejudice of his heirs in the following amounts:P 50,000.00 - as indemnity for death; 100,000.00 - as actual and compensatory damages; 100,000.00 - as moral damages; 30,000.00 - as exemplary damages.CONTRARY TO LAW."

[4] Rollo, p. 29.

[5] *People v. Formigones*, 87 Phil. 658.

[6] Reyes, I THE REVISED PENAL CODE, 215 (Twelfth Edition, 1981).

[7] TSN, June 17, 1993, p. 328.

[8] *People v. Formigones*, *supra*.

[9] *Supra*.

[10] TSN, June 17, 1993, p. 308.

[11] TSN, May 24, 1993, p. 242 and June 17, 1993, p. 309.

[12] TSN, May 24, 1993, p. 242.

[13] *Supra*.

[14] 104 Phil. 450 (1958).

[15] TSN, May 25, 1993, p. 211.

[16] *Supra*, p. 214.

[17] *Supra*, p. 215.

[18] *People v. Caranzo*, 209 SCRA 232 (1992).

[19] *People v. De los Reyes*, 215 SCRA 63 (1992).

[20] TSN, May 24, 1993, pp. 261-263.

[21] *Supra*, pp. 261-262.

[22] TSN, May 31, 1993, p. 277.

[23] TSN, May 24, 1993, p. 255.

[24] TSN, May 24, 1993, p. 265; June 1, 1993, p. 296.

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