

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE VS., NARITO @ “NARING” DADLES, ACCUSED-APPELLANT.

G.R. Nos. 118620-21. September 01, 1997

Ponente: FRANCISCO, J.

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FRANCISCO, J.:

This case involves the alleged kidnapping of two farmers, Alipio Tehidor and Salvador Alipan and their respective sons, Dionisio and Antonio from their homes in Barangay Amontay, Binalbagan, Negros Occidental on May 24, 1989. For the said kidnapping, appellant Narito alias “Naring” Dadles was charged in two separate informations, to wit:

That on or about the 24th day of May, 1989, in the Municipality of Binalbagan, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the first above-named accused, in company of his five (5) other co-accused, whose true names are still unknown and herein designated only as “Ka Morito”, “Ka Willy”, “Ka Dindo”, “Ka Mike” and “Ka Juanito”, who are all still at large, armed with assorted firearms of unknown calibers, conspiring, confederating and mutually helping one another, by means of force, violence and intimidation, did then and there, wilfully, unlawfully and feloniously take, kidnap, detain, and keep ALIPIO TEHIDOR and DIONISIO TEHIDOR under guard, from their residence at Brgy. Amontay of the above-named municipality, and bring them somewhere in the hinterlands of said municipality, under restraint and against their will, without proper authority thereof, thereby depriving said victims of their civil liberties since then up to the present.”[1]and

“That on or about the 24th day of May, 1989, in the Municipality of Binalbagan, Province of Negros Occidental, Philippines and within the jurisdiction of this Honorable Court, the first abovenamed accused, in company of his nine (9) other co-accused, whose true names are still unknown and herein designated only as “Ka Dindo”, “Ka Morito”, “Ka Tiwi”, “Ka Amay”, “Ka Bobby”, “Ka Pedro”, “Ka Juanito”, “Ka Bernardo” and “Ka Mike” who are all still at large, armed with assorted firearms of unknown caliber, conspiring, confederating and mutually helping one another, by means of force, violence and intimidation, did then and there, wilfully, unlawfully and feloniously take, kidnap, detain, and keep Salvador Alipan alias “Bado” and Antonio Alipan under guard, from their residence at Barangay Amontay of the above-named municipality, and bring them somewhere in the hinterlands of said municipality, under restraint and against their will, without proper authority thereof, thereby depriving said victims of their civil liberties since then up to the present.”[2]

Of the several accused named in the aforequoted informations, only appellant was arraigned while the cases against the other accused who remain at large up to the present have been temporarily archived until their apprehension. At the arraignment, the appellant pleaded not guilty to both counts of kidnapping. Upon joint manifestation of the Public Prosecutor and the defense counsel, both cases were ordered consolidated and were jointly tried. [3]

On the abduction of victims Alipio and Dionisio Tehidor, prosecution witnesses Francisca Tehidor and Danilo Tehidor testified as follows:

On May 24, 1989 at around 11:00 o'clock in the evening, the appellant Narito alias "Naring" Dadles together with five (5) others, namely Dindo, Mike, Willy, Morito, and Juanito arrived at the residence of one of the victims, Alipio Tehidor, in Barangay Amontay, Binalbagan, Negros Occidental. Alipio, his wife, Francisca, and their two sons Dionisio and Danilo were awakened from their sleep when the appellant and his companions called Alipio from downstairs. The group which was known to the Tehidor family because they used to visit the latter's house to ask for rice was allowed to enter by Francisca. Once inside, they told Francisca that they wanted to talk to Alipio downstairs. Francisca asked them not to bring Alipio outside and to just talk to him upstairs but her request went unheeded. Then Morito, assisted by the appellant, tied the hands of Alipio and Dionisio. When Francisca protested, the appellant's group told her that they would free Alipio and Dionisio if they surrender the firearms of their two other sons, Logenio and Jenny, both of whom were members of the Civilian Armed Forces Geographical Units (CAFGU). Unable to surrender the said firearms which were not in the possession of the spouses Tehidor, the appellant's group forced Alipio and Dionisio to walk with them to an unknown place. Since then and up to the present, Francisca has not heard from either her husband or her son.[4]

On the other hand, prosecution witnesses Luzviminda Alipan and Vicente Alipan narrated the alleged kidnapping of Salvador and Antonio Alipan in this wise:

On May 24, 1989 at around 11:30 in the evening while Salvador, his wife, Luzviminda and their sons, Vicente and Antonio were in their house in Barangay Amontay, Binalbagan, Negros Occidental, they heard somebody calling them from outside. Luzviminda lighted a lamp and opened the door. She saw the appellant and his nine (9) companions namely, Dindo, Morito, Amay, Pedro, Juanito, Bernardo, Tiwi, Mike and Bobby who were all armed. The appellant and Dindo went upstairs and told Salvador to go with them downstairs as they have something to talk about Salvador who was apparently acquainted with the group acceded and followed the appellant and Dindo downstairs. Then the appellant told Luzviminda, "Nay, we will borrow Tatay, we will return him tomorrow". When Luzviminda refused, the appellant assured her saying, "Nay, don't worry, just let Tatay go with us together with your son because they will be returned tomorrow." Thereafter, Salvador and Antonio left with the group to an unknown destination. And like Francisca, Luzviminda never saw her husband and son again after that night.[5]

Appellant denied the charges against him and interposed an alibi. The defense attempted to prove that on the said date and time of the alleged kidnapping of the victims, the appellant was in the house of defense witness Rogelio Ariola sleeping soundly after a round of beer with the latter and his other guests.

The appellant who was engaged in the business of selling fruits claimed that he delivered fruits to one of his usual customers, Rogelio, on May 23, 1989 in Barangay San Pedro, Binalbagan, Negros Occidental. As Rogelio was not able to pay appellant on the said date, the former allowed the appellant to sleep over in his house until the following morning. However, Rogelio was able to pay the appellant only at around 6:00 o'clock in the evening of the next day. Thus, upon the advice of Rogelio, the appellant decided to stay and sleep in the former's house for another night. He went home to Barangay Amontay at around 7:00 o'clock the following morning.[6]

Rogelio Ariola who is a Minister of the Apostolic Church and a resident of Barangay San Pedro, Binalbagan, Negros Occidental testified that on May 24, 1989, there was an occasion in their church and he went home at around 6:00 o'clock in the evening to attend to his guests, some of whom were members of his church. The appellant was also in his house as he had delivered fruits to Rogelio the previous day and was waiting to be paid therefor. It was customary for the appellant to sleep in Rogelio's house whenever the latter could not immediately pay him for the fruits delivered. Since Rogelio paid the appellant only at around 6:00 o'clock in the evening of May 24, the latter was no longer able to go home to Barangay Amontay. Rogelio invited the appellant to sleep in his house again that night and the latter accepted.[7]

In the meantime, Rogelio entertained his guests by buying Gold Eagle Beer for them to drink. Their drinking session lasted until 10:00 o'clock in the evening, after which, his visitors went home leaving behind the appellant who then slept in one of the rooms in Rogelio's house.[8]

Finding the alibi of the appellant insufficient to controvert his positive identification by the prosecution witnesses, Branch 55 of the Regional Trial Court (RTC) of Himamaylan, Negros Occidental rendered a decision convicting the appellant of two (2) counts of kidnapping and serious illegal detention. He was sentenced to suffer the penalty of "double life imprisonment" and to indemnify the families of the victims in the amount of one hundred thousand pesos (P100, 000.00) each without subsidiary imprisonment in case of insolvency.[9]

Hence the present appeal before this Court where the appellant raises the following assignment of errors:

I

THE TRIAL COURT ERRED IN GIVING MUCH WEIGHT AND CREDENCE ON (sic) THE EVIDENCE FOR THE PROSECUTION AND IN DISREGARDING THE EVIDENCE FOR THE DEFENSE.

II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT NARITO DADLES OF TWO (2) COUNTS OF KIDNAPPING AND SERIOUS ILLEGAL DETENTION.[10]

In assailing the credibility of the prosecution witnesses, the appellant asseverates that their failure to confront him about the disappearance of the victims despite several opportunities to do so after the alleged incident casts a doubt on the truthfulness of their accusation. The appellant brands as incredulous the testimonies of the prosecution witnesses that although they would see the appellant during Sundays which is the market day in Barangay Amontay, they did not ask him about their missing relatives.[11] According to the appellant, likewise puzzling is the failure of the prosecution witnesses to report the incident to the authorities immediately when their respective husbands and sons failed to return the following morning as promised by the appellant and his companions.[12]

This court finds neither of the aforementioned circumstances sufficient to detract from the credibility of the prosecution witnesses. It has been held in a large number of cases that the lapse of a considerable length of time before a witness comes forward to reveal the identity of the perpetrators of the crime does not taint the credibility of the witness and his testimony where such delay is satisfactorily explained.[13] Also, this court has had occasion to observe that delay in reporting the occurrence of a crime or other unusual events in rural areas is well known and should thus, not be taken against the witness.[14]

In the instant case, the testimonies of the prosecution witnesses reveal that it was their overriding fear of reprisal from the appellant's group that prevented them from seeking the aid of the authorities. Thus, Vicente Alipan testified as follows:

QUESTION:

Now, after the alleged incident, did you ever report this matter to the police authority or any military personnel in your area, if any?

ANSWER:

I was not able to report this matter to the authorities.

x x x x x x x x

QUESTION:

And you did not likewise report the incident to any of the military personnel who were patrolling at your area, is that correct?

ANSWER:

We were not able to report the matter to the military authority because we were warned by these people not to report because if we will report they will kill us all.”[15] (Underscoring supplied.)

Danilo Tehidor likewise testified that the appellant and his companions threatened their family with execution should they report the matter to the authorities:

QUESTION:

Immediately after that incident when your father and your brother were forcibly taken by Naring and his group, why did you not immediately report the matter to the police?

ANSWER:

Because at that time we were warned not to report, they were guarding us.

QUESTION:

Who were guarding you?

ANSWER:

The companions of the accused.

QUESTION:

Why after the incident were there occasions that this Narito Dadles and his companions visited you in your house or have seen you elsewhere, were there instances?

ANSWER:

Yes, sir.

QUESTION:

Do (sic) they visit your house after that incident?

ANSWER:

Not in the house, only in a certain market place.

QUESTION:

Who among your (sic) members of the family being (sic) warned by Narito Dadles or his group not to report the matter to the police.

ATTY. LABIS:

No basis. There was no answer that this witness was warned not to report to the police.

COURT:

Guarded only.

PROSECUTOR AREVALO:

QUESTION:

How do(sic) you know that you and any members (sic) of your family is (sic) being guarded from the moment you tried to go out from your place?

ANSWER:

They sent us a letter warning us that if ever we report the matter to the authorities they will kill all of us.

QUESTION:

Who sent the letter to your family?

ANSWER:

Dindo.

QUESTION:

Whom (sic) did Dindo send the letter?

ANSWER:

The letter was sent to my mother through a child courier.”[16] (Underscoring supplied.)

It is evident that the prosecution witnesses were overcome by fear that the appellant and his companions would make good their threat the moment they report the incident to the police. This is undoubtedly the same fear which deterred them from confronting the appellant despite their many opportunities to do so. The prosecution witnesses were well aware that the appellant did not act alone but was aided by several other men and that they all possessed firearms. Furthermore, the appellant lived in the same barangay as the witnesses and had easy access to them. Under the circumstances, the witnesses could not be blamed for reporting the incident only after they were already able to transfer residence to another barangay. Contrary to appellant’s allegation, such a reaction is natural, spontaneous and logical in view of the witnesses’ first impulse for self-preservation. It is of common human experience that people overcome by great fear, not only for their lives but also of those of their loved ones, will choose to remain tight-lipped about an incident and suffer in silence rather than expose to risk their own safety and of those for whom they care.[17]

Anent the appellant’s defense, suffice it to state that his alibi even if supported by the testimonies of his friends, deserves the barest consideration.[18] This court has held time and again that the defense of alibi cannot prevail over the positive identification of the accused by the prosecution witnesses who had no untoward motive to falsely testify against him.[19] Relevant is the fact that there appears to be no motive on the part of the prosecution witnesses to fabricate a criminal charge against the appellant who is admittedly an acquaintance and whom they have welcomed in their respective households several times in the past. It must be noted that the prosecution witnesses in this case are immediate relatives of the victims whose natural interest in obtaining justice and redress by securing the conviction of the parties responsible for the crime would deter them from implicating persons other than the real culprits.[20]

Just as oft-repeated is the rule that for alibi to offset the evidence of the prosecution demonstrating the guilt of the accused, he must establish not only that he was somewhere else when the crime was committed but also that it was physically impossible for him to have been at the scene of the crime at the time that it was committed.[21] The defense has failed to meet the requisites of time and place. Nowhere from the testimonies of the defense

witnesses nor from the circumstances of the case may we infer that it was physically impossible for the appellant to be at the scene of the crime at the alleged time of its commission.

Rogelio's testimony succeeds only in establishing that the appellant slept in his house on the night of May 24, 1989. Rogelio who slept in another room could not have known if appellant left his house sometime during the night after everyone else had fallen asleep. Furthermore, from the appellant's own admission, Barangay Amontay is only 30 kilometers away from Barangay San Pedro.[22] The defense's theory that as there was no longer any public transportation available after six o'clock in the evening, it was impossible for the appellant to have been able to reach Barangay Amontay fails to persuade. The absence of public transportation does not negate the possibility that the appellant availed of other modes of transportation present at that hour. Thus, it was not totally improbable for the appellant to have hitched a ride in one of the many trucks plying that route.

As the core issue in the appellant's first assignment of error is ultimately the credibility of the prosecution vis-a-vis the defense witnesses, it may not be amiss to state herein the well-settled doctrine that the opinion of the trial court as to who of them should be believed is entitled to great respect, the latter having had the unequalled opportunity to directly observe the witnesses and to determine by their demeanor on the stand the probative value of their testimonies. And none of the recognized exceptions to the rule, that is, where the record shows that facts and circumstances of weight and influence have been overlooked, misunderstood or misapplied by the trial court which, if considered, would have affected the result of the case, and when such findings are arbitrary, exist in the case at bench.[23]

We now go to the appellant's second assignment of error where he posits that the testimonies of the prosecution witnesses fail to make out a case of kidnapping. It is argued that the prosecution was unable to indubitably prove that the purpose of the appellant and his companions in taking the victims was to deprive them of their liberty.[24] We disagree.

Nothing else is clearer from the testimony of Francisca than that her husband, Alipio and son, Dionisio were taken by the appellant's group by force and against their will. Thus:

QUESTION:

After that what happened?

ANSWER:

My husband was hogtied downstairs.

QUESTION:

Personally, who hogtied your husband?

ANSWER:

Morito.

QUESTION:

Was he assisted by any of his companions?

ANSWER:

Yes, sir.

QUESTION:

Who among his companions?

ANSWER:

Narito and Mike, only the two of them.

QUESTION:

While these persons you mentioned were hogtying your husband, what did you do?

ANSWER:

I did not do anything. I asked them why they hogtied their “tatay”. They answered, “we will free ‘tatay’ if he will surrender the firearm because we knew (sic) that the firearm of your son is with you.”

QUESTION:

In spite of your plea, these persons, who tied your husband, did not hear (sic) to your request?

ANSWER:

No, sir, they did not.

QUESTION:

While hogtying your husband, what happened?

ANSWER:

They said that if my husband will surrender to them the firearm, they will free my husband and my son.

QUESTION:

Why, you said awhile ago that it was only your husband Alipio Tehidor, why what happened to your son?

ANSWER:

They were two, my husband and my son were hogtied.

QUESTION:

The two of them were hogtied?

ANSWER:

Yes, sir.”[25] (Underscoring supplied.)

The foregoing was corroborated by another eyewitness to the crime, Danilo who testified as follows:

QUESTION:

At around that time on that date, May 24, 1989 at around 11:00 o’clock in the evening, could you recall if there was any untoward incident that happened?

ANSWER:

Yes, sir.

QUESTION:

What was that unusual incident that happened?

ANSWER:

My father and brother were taken by them on that evening.

QUESTION:

When you said, “taken by them”, whom (sic) are you referring, who took your brother and father?

ANSWER:

Narito Dadles.

QUESTION:

When you said they took your brother and father was Narito Dadles accompanied by other members of his group?

ATTY. LABIS:

The question is leading.

PROSECUTOR AREVALO:

I was just confronting the witness. That was the statement of the witness.

COURT:

Witness may answer.

ANSWER:

Yes, sir, his companions were Dindo, Mike, Narito (sic), Willy and Juanito.

PROSECUTOR AREVALO:

QUESTION:

There were five of them?

ANSWER:

Yes, sir.

QUESTION:

How did they take your brother and father?

ANSWER:

Their hands were tied at the back.

QUESTION:

The two of them, your father and your brother?

ANSWER:

Yes, sir.”[26] (Underscoring supplied.)

As regards the victims Salvador and Antonio Alipan, the appellant points out that the testimony of Luzviminda who witnessed the alleged kidnapping demonstrate that the victims were not deprived of their liberty because they

went with the appellant and his companions peacefully without being subjected to threats and coercion.[27] The court is not convinced. That the victims' hands were not tied nor guns poked at their sides when they were taken by the appellant's group do not conclusively preclude the deprivation of their liberty. The circumstances surrounding the taking of Salvador and Antonio, particularly the appellant and his companions' previous conduct in kidnapping victims Alipio and Dionisio, plainly demonstrate their intent to likewise deprive Salvador and Antonio of their liberty.

True it is that "evidence that one did or did not do a certain thing at one time is not admissible to prove that he did or did not do the same or similar thing at another time." [28] However, "it may be received to prove a specific intent or knowledge, identity, plan, system, scheme, habit, custom or usage, and the like." [29] Thus we have held that:

The general rule is that evidence is not admissible which shows or tends to show, that the accused in a criminal case has committed a crime wholly independent of the offense for which he is on trial. It is not competent to prove that he committed other crimes of a like nature for the purpose of showing that he would be likely to commit the crime charged in the indictment. A man may be a notorious criminal, but this fact may not be shown to influence a jury in passing upon the question of his guilt or innocence of the particular offense for which he is on trial. A man may have committed many crimes and still be innocent of the crime charged in the case on trial. To permit proof of other crimes would naturally predispose the minds of the jurors against the defendant. One who commits one crime may be more likely to commit another; yet logically, one crime does not prove another, nor tend to prove another, unless there is such a relation between them that proof of one tends to prove the other." [30]

In the early case of *United States v. Evangelista*, [31] the accused was convicted of arson after the trial court admitted evidence that he had earlier attempted to set fire to the same premises. Ruling on the admissibility of the said evidence, we said that:

x x x While it was not the fire charged in the information, and does not by any means amount to direct evidence against the accused, it was competent to prove the intent of the accused in setting the fire which was charged in the information.

"x x x x x x x x x x"

"x x x: 'Where a person is charged with the commission of a specific crime, testimony may be received of other similar acts, committed about the same time, for the purpose only of establishing the criminal intent of the accused.'" [32] (Underscoring supplied.)

In this case we find that there is such a relation between both incidents of kidnapping charged in the two informations that "proof of one tends to prove the other", and evidence of similar acts committed about the same time establishes the criminal intent of the appellant to deprive Salvador and Alipan of their liberty. First of all, both incidents happened almost simultaneously. The kidnapping of Alipio and Dionisio occurred only some thirty (30) minutes before Salvador and Antonio were taken from their home. The appellant and his companions were apparently well acquainted with the Tehidors and the Alipans who readily allowed them entrance into their respective houses on the fateful night of May 24, 1989. Alipio and Dionisio were taken by the appellant's group on the pretext that they wanted to talk to Alipio. Similarly, the appellant claims that they took Salvador and Antonio only because they wanted to talk to the former. Alipio's wife was warned not to tell the authorities about the incident. The same warning was given to Salvador's wife.

Moreover, as correctly pointed out by the Office of the Solicitor General (OSG), circumstances exist to further warrant the conclusion that it was the appellant's criminal intent to deprive the victims of liberty, to wit:

First. If appellant's group merely wanted to talk to Salvador Alipan, they could just have talked to him then and there at the house of the latter without necessarily taking him together with his son.

"Second. Appellant's group could have elicited the required information from Salvador in just a matter of hours. Hence, they should have returned Salvador and his son the following day as promised. To this date, however, no trace of the two (2) can be found.

"Third. If they did not have any ill-motive against the duo, why did they warn the family of the victims not to report the incident to anybody or they will be killed? Clearly, this behavior betrays the falsity of their alleged intention." [33]

The court therefore finds the appellant guilty beyond reasonable doubt of kidnapping the victims, Salvador Alipan, Antonio Alipan, Alipio Tehidor and Dionisio Tehidor. However, "since none of the circumstances mentioned in Article 267 of the Revised Penal Code (kidnapping with serious illegal detention) was proved and only the fact of kidnapping x x x was established, we find that the crime committed is slight illegal detention under Article 268 of the Revised Penal Code. x x x." [34] Moreover, in the execution of the crime against the first two (2) victims, Salvador and Antonio Alipan, more than three (3) armed malefactors acted together in its commission. [35] Thus, since the generic aggravating circumstance of band [36] attended the commission of the crime and there being no mitigating circumstance present, the penalty is reclusion temporal in its maximum period. For the slight illegal detention of the latter two (2) victims, Alipio and Dionisio Tehidor, the aggravating circumstance that the crime was committed by a band as alleged in the information finds no sufficient factual basis since the testimonies of the prosecution witnesses do not disclose that at least four (4) of the malefactors were armed. [37] Hence there being no aggravating nor mitigating circumstance attendant in the commission of the crime, the penalty of reclusion temporal should be imposed in its medium period.

WHEREFORE, the judgment appealed from is hereby MODIFIED. Appellant Narito Dadles is found guilty of two counts of slight illegal detention and is sentenced to suffer the indeterminate penalty of ten (10) years of prision mayor as minimum to twenty (20) years of reclusion temporal maximum as maximum for the slight illegal detention of Salvador and Antonio Alipan, and the indeterminate penalty of ten (10) years of prision mayor as minimum to seventeen (17) years and four (4) months of reclusion temporal medium as maximum for the slight illegal detention of Alipio and Dionisio Tehidor, both penalties to be served successively according to Article 70 of the Revised Penal Code on successive service of sentences. Appellant is likewise ordered to indemnify the families of the victims in the amount of ONE HUNDRED THOUSAND PESOS (P100,000.00) each without subsidiary imprisonment in case of insolvency.

SO ORDERED.

Narvasa, C.J., (Chairman), Davide, Jr., Melo, and Panganiban, JJ., concur.

[1] INFORMATION in Criminal Case No. 478, November 21, 1991; Records, p. 18.

[2] INFORMATION in Criminal Case No. 479, November 21, 1991; Records, p.19.

[3] DECISION in Criminal Cases Nos. 478 & 479, March 29, 1994, p.3; Rollo, p. 62.

[4] Ibid., pp. 5-7; Rollo, pp. 64-66.

[5] Ibid., pp. 3-5; Rollo, pp. 62-64.

[6] Ibid., pp. 9-10; Rollo, pp. 68-69.

[7] Ibid., pp. 8-9; Rollo, pp. 67-68.

[8] Ibid.

[9] Ibid., p. 14; Rollo, p. 73.

[10] BRIEF FOR THE ACCUSED APPELLANT, p.1; Rollo, p.27.

[11] Ibid., pp. 22-23; Rollo, pp. 48-49.

[12] Ibid., p.23; Rollo, p. 49.

[13] People vs. Reoveros, 247 SCRA 628, 633 [1995]; People vs. Dominguez, et al., 217 SCRA 170 [1993]; People vs. Villanueva, 242 SCRA 47 [1995]; People vs. Vallena, 244 SCRA 685 [1995].

[14] People vs. Carizo, 233 SCRA 687, 700 [1994]; People vs. Belen, 194 SCRA 447 [1991].

[15] TSN, Vicente Alipan, August 20, 1992, p.14.

[16] TSN, Danilo Tehidor, March 25, 1993, pp. 12-13.

[17] People vs. Reoveros, supra.

[18] People vs. Gamiao, 240 SCRA 254, 262 [1995].

[19] People vs. Morales, 241 SCRA 267, 275 [1995]; People vs. Daquipil, 240 SCRA 314 [1995]; People vs. Rivera, 242 SCRA 26; People vs. Bracamonte, et al., G.R. No. 95939, June 17, 1996.

[20] People vs. Danilo Layno, et al., G.R. No. 110833, November 21, 1996.

[21] People vs. Paredes, G.R. No. 115217, November 21, 1996; People vs. Benitez, G.R. No. 116618, November 21, 1996; People vs. Umali, 241 SCRA 17 [1995]; People vs. De Roxas, 241 SCRA 369 [1995].

[22] Supra, p. 31; Rollo, p.57.

[23] People vs. Paredes, supra; People vs. Danilo Balamban, et al., G.R. No. 119591, November 21, 1996; People vs. Nuestro, 240 SCRA 221 [1995]; People vs. Flores, 243 SCRA 374 [1995].

[24] Supra, p. 28; Rollo, p.54.

[25] TSN, Francisca Tehidor, July 22, 1992, pp. 8-9.

[26] TSN, Danilo Tehidor, March 25, 1993, pp. 4-5.

[27] “ QUESTION:

And while they were there they requested your husband just to come down and talk, is that correct?

ANSWER:

When they first called us that was what they told us.

QUESTION:

So, upon the request of these persons, you have mentioned, your husband was already obliged to go with them downstairs?

ANSWER:

They went downstairs.

QUESTION:

And a few moments later these alleged persons, whom you have just mentioned, and your husband and son left your house peacefully?

ANSWER:

Yes, sir, because they took them.

QUESTION:

But they left peacefully without any trouble?

ANSWER:

Yes, sir, nothing happened but they told me not to inform anybody.

x x x x x x x x

COURT:

When they were taken by the ten men as alleged, were their hands tied?

ANSWER:

No, sir.

COURT:

Were firearm poked at them?

ANSWER:

No, sir, they were just walking.” (TSN, Luzviminda Alipan, February 12, 1992, pp. 21-24.)

[28] Section 3, Rule 130 of the Rules of Court.

[29] Ibid.

[30] People vs. Asinas, 53 Phil. 59, pp. 67-68 [1929].

[31] 24 Phil. 453 [1913].

[32] Ibid., p.457.

[33] Supra, p. 30; Rollo, p. 121.

[34] People vs. Roluna, 231 SCRA 446, 454 [1994].

[35] Prosecution witness Vicente Alipan testified that the appellant and his nine (9) companions were all armed.

[36] Article 14 (6), Revised Penal Code.

[37] The prosecution failed to establish the aggravating circumstance of band, as alleged in the information, in the kidnapping of Alipio and Dionisio Tehidor. Prosecution witness Danilo Tehidor testified that only the appellant

and two (2) of his companions were armed; *People v. Pelones*, 230 SCRA 379, 390 [1994].

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