

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE VS. CARINIO LUMIWAN (P), MARCOS GADDAWAN (P), MANAO BAWAGAN (P) AND MANUEL BAWISAL (AT LARGE), ACCUSED. CARINIO LUMIWAN (P), MARCOS...**

*G.R. Nos. 122753-56. September 07, 1998*

Ponente: BELLOSILLO, J.

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**BELLOSILLO, J.:**

This is a joint decision in four (4) separate crimes: two (2) crimes of kidnapping[1] and two (2) crimes of robbery in band.[2] They were consolidated by RTC-Br. 16, Ilagan, Isabela,[3] involving as they did common witnesses for the prosecution testifying against the same accused.[4] Except for one accused who escaped from detention before he could be arraigned and has remained at large since 28 November 1992,[5] all the others were tried and convicted as charged.

In this petition, accused-appellants Carinio Lumiwan, Marcos Gaddawan and Manao Bawagan, maintaining their innocence, seek a review of the Decision of the court a quo dated 27 July 1995 convicting them of the crimes charged and imposing upon each of them a penalty of reclusion perpetua for each kidnapping, and to an indeterminate prison term ranging from six (6) years of prision correccional as minimum to ten (10) years of prision mayor as maximum for each robbery. They were also ordered to indemnify jointly and severally the victims Maria Asuncion (Crim. Case Nos. 375 and 378) and Jonathan Carig (Crim. Case Nos. 376 and 377) P500,000.00 each by way of moral damages, and P200,000.00 each as exemplary damages to serve as deterrent to the commission of such detestable offenses.[6]

The prosecution evidence establishes these facts: In the morning of 16 September 1992, while 17-year old Jonathan Carig, private complainant in Crim. Cases Nos. 376 and 377,[7] was on his way to school, four (4) men armed with garands and a hand grenade accosted him as he was standing by the gate of his house at Dam Site, Simimbaan, Roxas, Isabela. The four (4) were later identified by Carig as the three (3) accused Carinio Lumiwan, Marcos Gaddawan, Manao Bawagan and escapee Manuel Bawisal. They asked Carig to produce his residence certificate. While he was getting it from his wallet, appellant Bawagan saw the amount of P150.00 and took it. Obviously not satisfied with the amount taken, they proceeded to the grocery store of the Carigs by the riverside and through appellant Lumiwan demanded at gunpoint the amount of P5,000.00 from Imelda Carig, mother of Jonathan. Since Imelda could not produce the cash, they took some grocery items instead which Imelda valued at P2,000.00.

After raiding the grocery store, the accused ordered Jonathan who was now with three (3) companions, Mateo Lascota, Bondying Lacer and Celso Manipon, to go with them to Mt. Simacbot. On the way, they also directed one Luis Bentillon who happened to pass by to join Carig and his companions. But before reaching Mt. Simacbot Lacer was able to escape. Once at the mountain, the accused dispatched Lascota to inform the families of his companions that they should immediately raise the amount of P100,000.00 for the boys' release. Lascota never

returned.

On 17 September 1992 Enriqueta Acosta and Marcelina Miranda, Carig's grandmother and grandaunt, respectively, brought some food, clothing and P5,000.00 to Mt. Simacbot in a futile attempt to ransom Carig. While the kidnappers took the money and sent Acosta and Miranda home, they kept Carig and Bentillon.

On 18 September 1992 Bawagan and Bawisal were told by Lumiwan and Gaddawan that they would stand guard at the foot of the mountain, only to find out later that they were nowhere to be found, thus prompting Bawagan and Bawisal to take their victims to a lower plane. There, after three (3) days of captivity, Carig and his companions were joined by Maria Asuncion and her two helpers.

It turned out that on the day they were supposed to guard the foothills, Lumiwan and Gaddawan went instead to Dam Site, San Placido, Roxas, Isabela, at about 10:00 o'clock in the morning, and espied on Maria Asuncion, private complainant in Crim. Cases Nos. 375 and 378,[8] while she was buying corn grains along with her helpers Rodolfo Diaz and Rodolfo dela Cruz. The two armed men whom Asuncion later identified as accused Lumiwan and Gaddawan approached her and at gunpoint took her cash of P6,800.00. This amount was all that was left of her P30,000.00 after buying grains. Asuncion and her helpers were ordered to hike to the mountains with Lumiwan and Gaddawan. Her pleas to be left behind after they had taken her money fell on deaf ears.

After reaching the place where Bawagan and Bawisal took Carig, Asuncion's abductors asked her to write her husband a ransom letter for P200,000.00. Diaz, one of her helpers, was sent to deliver it. Diaz returned with the reply that the husband could not afford the ransom. Again, Diaz was instructed to give a written note prepared by Lumiwan's group to Asuncion's husband. This time, Diaz did not come back. So, Asuncion was made to write her husband anew to relate to him that her kidnappers were willing to accept a reduced amount of P150,000.00. It was the other helper, Dela Cruz, who was commissioned to personally give the letter to the husband. But Dela Cruz likewise did not return. Hence, Asuncion had to spend the night in the mountains with the kidnappers.

The following morning, 19 September 1992, PNP soldiers from the 118th Mobile Task Force of Roxas, Isabela, surrounded the kidnappers' lair and conducted rescue operations. In the ensuing gunfight all the victims escaped from their abductors who in turn evaded arrest by the rescuers. Thereafter, Lumiwan, Gaddawan, Bawagan and Bawisal were arrested on separate dates at Bontoc and Paracelis, Mt. Province. They were all eventually detained at the Municipal Jail of Roxas, Isabela.

On 28 November 1992, Bawagan and Bawisal were having the required haircut when they managed to escape and only Bawigan was recaptured. To this date Bawisal has remained at large.

Upon their arraignment, accused-appellants pleaded not guilty. On the witness stand, each of them set up his own alibi and, denying any participation in the crimes charged, each had a tale to tell regarding police torture while under custodial investigation.

Carinio Lumiwan claimed that on 16 September 1992 he was tending his garden at Bunot, Paracelis, Mt. Province, where he resided, and it was only on 20 September 1992 that he happened to know that a case had been filed against him through the mayor who offered him work. According to Lumiwan, despite his lack of participation in the kidnapping and robbery in band, as he had never seen Asuncion and Carig, he was forced to admit otherwise. His admission was extracted from him by the infliction of fist blows on his head and chest by the police who arrested and detained him at Bontoc, Mt. Province, and later, at the Roxas Municipal Jail where he met the complaining witnesses Asuncion and Carig for the first time. He identified a certain Sgt. Lumines as one of the policemen who boxed him.

Marcos Gaddawan testified that on 16 September 1992 he was with his younger brother and mother at Mabangua,

Paracelis, Mt. Province, harvesting in his farm. He was on his way to buy groceries at around 4:00 o'clock in the afternoon when a policeman apprehended him. He was brought to the Municipal Hall of Paracelis, Mt. Province, where he was tortured and forced to sign a document effecting his two-day detention at the 118th Detachment at Paracelis, Mt. Province. It was at the detachment center that he came to know Carig and Asuncion. Then he was again made to sign another paper after which he was taken to Bontoc, Mt. Province, for detention. After four days, he was transferred to the Municipal Jail of Roxas, Isabela, where he was again tortured even after he was made to admit the criminal charges against him.

Manao Bawagan narrated that on 16 September 1992 he was at the bedside of his ailing grandfather at Pilac, Paracelis, Mt. Province. He stated that he was arrested at the house of the municipal mayor who instructed him not to resist. Thus he was illegally detained at the municipal jail for three (3) days when he was fetched by policemen from Roxas, Isabela, where he was again detained for one (1) month without any investigation. He was forced to admit the crimes imputed to him because of the beatings he received from his co-inmates upon orders of the police. He denied knowing Carig and Asuncion save only in court during the trial. As for his aborted attempt to escape from detention, he declared that he did so only because he could no longer bear the physical blows he was receiving from the other inmates. He did not however report the manhandling for fear he might suffer more if he did.

Notably all the accused-appellants insisted that they were total strangers to one another prior to their confinement at the Municipal Jail of Roxas, Isabela, and later at the Provincial Jail of Ilagan, Isabela, to where they were transferred.

The trial court rejected the denials and protestations of innocence by accused-appellants and considered overwhelming the evidence in support of their conviction beyond reasonable doubt. However, it no longer ordered the restitution of the money unlawfully taken from the two victims because during the preliminary investigation, two separate Orders dated 19 November 1992 were issued effecting the release of P5,200.00 in favor of Carig and P6,800.00 in favor of Asuncion from the cash recovered by the rescue team. Proper receipt of these amounts was evident in the Resolutions of 27 November 1992 finding probable cause to file the subject criminal cases against accused-appellants.[9]

Accused-appellants raise two issues in praying for the reversal of their conviction, namely, whether the evidence is sufficient to identify them as the perpetrators of the crimes charged, and whether they were manhandled by their arresting officers to vitiate and nullify their admissions.

The first issue is best addressed to the trial judge who had the opportunity and advantage of observing the demeanor of the witnesses while testifying in court. In this regard, we find no reversible error in his assessment and evaluation as regards the credibility of the prosecution witnesses. Clearly, the uncorroborated denial and alibi of accused-appellants cannot outweigh their positive identification by the victims themselves pointing to them as their abductors and the ones who forcibly took their money at gunpoint.

Indeed, our Constitution guarantees a veritable array of rights available to the accused in his defense. Foremost is the right to be presumed innocent until the contrary is proved.[10] On this rests the duty of the prosecution to prove that the crime charged was committed and that the accused is responsible therefor. Once this duty is properly complied with, the right of the accused to be presumed innocent ceases.

Thus, for the crime of kidnapping the prosecution must prove the following elements as provided in Art. 267 of the Revised Penal Code: (a) a person has been deprived of his liberty, (b) the offender is a private individual, and (c) the detention is unlawful.[11]

The essence of the crime of kidnapping is the actual deprivation of the liberty of the victim coupled with the intent on the part of the accused to effect it.[12] The prosecution presented testimonial evidence to prove that on 16 September 1992 Jonathan Carig was taken by force from his residence by four (4) armed men[13] and that two (2) days after, Maria Asuncion was similarly taken from a public place by two (2) armed men.[14] Although both Carig and Asuncion were allowed to move about in the mountains where they were brought by accused-appellants, this circumstance did not in any way negate the presence of the first element considering that they were in constant surveillance by their armed abductors so they could not escape.[15]

Significantly, Carig being then a minor and Asuncion a female, their detention falls squarely under Art. 267, par. 4, of the Revised Penal Code,[16] punishing kidnapping then with reclusion perpetua in view of the proscription of the death penalty in the 1987 Constitution.[17] Moreover, the record discloses that the intent of accused-appellants was to detain their victims for the purpose of extorting ransom as can be gleaned easily from the ransom letter sent to Asuncion's husband[18] and the ransom emissary sent to Carig's relatives that prompted Carig's grandmother to deliver the sum of P5,000.00 to accused-appellants.[19]

Having established all the elements of the crime of kidnapping, the remaining issue to be resolved is whether accused-appellants were positively identified as the authors thereof. As the trial court observed, both Carig and Asuncion were able to point an accusing finger spontaneously at Lumiwan, Gaddawan and Bawagan inside a jam-packed courtroom without any qualms or reluctance. Considering that both victims were kidnapped in broad daylight and ordered to trek to the mountains where they were brought without any blindfolds on, there can be no doubt that they could positively identify the malefactors as the accused-appellants, more especially when we keep in mind that Carig spent three (3) days and three (3) nights with them, and Asuncion, one (1) day and one (1) night.[20]

In the face of their positive identification, the mere denials and alibis of accused-appellants can hardly have any probative value. Such defenses are basically self-serving evidence and do not deserve as much weight in law as the positive and affirmative testimonies of prosecution eyewitnesses.[21] For the same reason, we do not accord appreciable weight to their denial and alibi in the cases of robbery in band.

The crime of robbery under Art. 293 of the Revised Penal Code has the following elements: (a) intent to gain, (b) unlawful taking, (c) personal property belonging to another, and (d) violence against or intimidation of person or force upon things.[22] Under Art. 296 of the same Code, "when more than three armed malefactors take part in the commission of robbery, it shall be deemed to have been committed by a band." It further provides that "[A]ny member of a band who is present at the commission of a robbery by the band, shall be punished as principal of any of the assaults committed by the band, unless it be shown that he attempted to prevent the same."

Carig was straightforward in his account of the robbery in band. He testified that Lumiwan, Gaddawan, Bawagan and Bawisal, who were all armed with garands and a hand grenade, approached him, demanded to be shown his residence certificate, and seeing his allowance of P150.00, took it. Thereafter, the felons succeeded in taking by force grocery items worth P2,000.00 from the Carigs' store. Assayed against the elements of the crime of robbery in band, the prosecution has successfully established that four (4) armed malefactors, with intent to gain and with the use of intimidation, had conspired to take the property of another.

With regard to Asuncion, the crime committed against her cannot be robbery in band but only simple robbery. Only two (2) armed men, Lumiwan and Gaddawan, accosted her and took her money amounting to P6,800.00. The element of "more than three armed malefactors" to qualify robbery to robbery in band is lacking. To presume that Bawagan and Bawisal knew of the plan of Lumiwan and Gaddawan to rob Asuncion, or ratified it on belated knowledge as both had done in the kidnapping of the same victim, is at most merely speculative for want of

sufficient evidence. Carig's statements as he responded to the clarificatory questions of the court a quo create a reasonable doubt as to the participation of Bawagan -

COURT:

Q:

Now, if you were taken by these 4 persons and according to you the same 4 persons were the ones who kidnapped Maria Asuncion when you reached the mountains, you mean to say that Maria Asuncion was unguarded because her captors were the very persons who kidnapped you?

A:

The two of the kidnappers asked permission from the (other) two that they are going to guard at the foot of the mountain but after a while, they could not wait for the two, so we followed at the foot of the mountain but we could not see them, sir.

Q:

You mean to say that when you arrived in the mountains where you were brought by the kidnappers, you did not yet see Maria Asuncion, is that correct?

A:

Not yet, sir.

Q:

You mean to say that you saw her later?

A:

Two of the kidnappers left and stayed down below but when they failed to come back where we were, we were the ones who went down and we did not see the 2 kidnappers in the lower plane. However, moments later, we saw the 2 kidnappers approaching with Maria Asuncion already held in captivity, sir.

Q:

Who were those two persons who were with Maria Asuncion as they were coming to your place?

A:

Carinio Lumiwan and Marcos Gaddawan, sir.[23]

Consequently, the acquittal of accused-appellant Bawigan of the crime of robbery in band against Asuncion is warranted and accused-appellants Lumiwan and Gaddawan should be convicted of simple robbery only. In the kidnapping cases, however, the finding of conspiracy among accused-appellants by the trial court is well established. Both Bawagan and Bawisal, upon seeing Lumiwan and Gaddawan with their captive, Asuncion, did not indicate any disagreement therewith much less lift a finger to prevent it. As we explained in *People v. Roberto Gungon y Santiago*[24]-

x x x x A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. The proof of the agreement need not rest on direct evidence; the agreement itself may be inferred from the conduct of the parties disclosing a common understanding among them relative to the commission of the offense. Jurisprudential account tells us consistently that the conduct of the accused

before, during, and after the commission of the crime may be considered to show an extant conspiracy (all cited cases omitted).

On the second issue relating to accused-appellants' allegations of torture and illegal arrests, the record is bereft of any proof thereof. There is no evidence in support of their claim that they signed their sworn statements under duress. Again, whether they were subjected to torture or any maltreatment during their arrest and custodial interrogation is a factual question primarily within the competence of the trial court, the findings of which on the matter are generally binding on this Court. Our ruling in *People v. Lopez, Jr.*[25] bears reiteration -

Finally, it is much too late for appellant to raise the question of his arrest without a warrant. When accused-appellant was arrested and a case was filed against him, he pleaded guilty upon arraignment, participated in the trial and presented his evidence. Appellant is thus estopped from questioning the legality of his arrest. It is well-settled that any objection involving a warrant of arrest or procedure in the acquisition by the court of jurisdiction over the person of an accused must be made before he enters his plea, otherwise the objection is deemed waived. Besides, this issue is being raised for the first time by appellant. He did not move for the quashal of the information before the trial court on this ground. Consequently, any irregularity attendant to his arrest, if any, was cured when he voluntarily submitted himself to the jurisdiction of the trial court by entering a plea of not guilty and by participating in the trial x x x x (all cited cases omitted; emphasis supplied).

Accordingly, all three (3) accused-appellants, Carino Lumiwan, Marcos Gaddawan and Manao Bawagan, are found guilty of two (2) counts of kidnapping each and one (1) count of robbery in band each. Lumiwan and Gaddawan are also guilty of simple robbery.

For the crime of kidnapping, Art. 267 of the Revised Penal Code prescribes the penalty of death when committed for the purpose of extorting ransom. However, the kidnapping of Carig and Asuncion transpired in September 1992 when the death penalty was proscribed and before its reimposition on 31 December 1993 under RA No. 7659. Hence, the penalty of reclusion perpetua meted on each accused-appellant for each kidnapping case was proper, hence, is affirmed.

For the crime of robbery in band, Art. 295 of the same Code prescribes the maximum period of the proper penalty provided in Art. 294, par. 5, of said Code, which is prision correccional in its maximum period to prision mayor in its medium period. Thus, the imposable penalty is prision mayor in its medium period. Applying the Indeterminate Sentence Law, in the absence of any mitigating or aggravating circumstances, the maximum of the penalty to be imposed shall be taken from the medium period of prision mayor medium, the range of which is eight (8) years eight (8) months and one (1) day to nine (9) years and four (4) months, while the minimum shall be taken from the penalty next lower in degree, which is prision mayor minimum the range of which is from six (6) years and one (1) day to eight (8) years.

For the crime of simple robbery, the aforecited Art. 294, par. 5, prescribes the penalty of prision correccional in its maximum period to prision mayor in its medium period. Applying the Indeterminate Sentence Law, again in the absence of any mitigating or aggravating circumstances, the maximum of the penalty to be imposed shall be taken from the medium of the imposable penalty which is prision mayor minimum, the range of which is six (6) years and one (1) day to eight (8) years, while the minimum shall be taken from the penalty next lower in degree which is arresto mayor in its maximum period to prision correccional in its medium period the range of which is from four (4) months and one (1) day to four (4) years and two (2) months.

The absence of aggravating circumstances in the commission of the crime precludes any award of exemplary damages as provided under Art. 2230 of the Civil Code, hence, we delete such award granted by the trial court. With respect to moral damages, care must attend its award in order to avoid any excessive expression of sympathy on the victims lest we forget that the real purpose of moral damages is essentially indemnity or reparation, not

punishment or correction.[26] Thus, we reduce the award of moral damages made by the trial court from P500,000.00 to the moderate amount of P50,000.00 for each victim, in line with current jurisprudence.

WHEREFORE, in view of the foregoing, the appealed Decision of RTC-Br. 16, Ilagan, Isabela, is AFFIRMED with certain MODIFICATIONS: (1) For each crime of kidnapping in Crim. Cases Nos. 375 and 377, each of the accused-appellants CARINIO LUMIWAN, MARCOS GADDAWAN and MANAO BAWAGAN is sentenced to suffer the penalty of reclusion perpetua; (2) For the crime of robbery in band in Crim. Case No. 376, each of the accused-appellants CARINIO LUMIWAN, MARCOS GADDAWAN and MANAO BAWAGAN is sentenced to suffer the indeterminate penalty of six (6) years four (4) months and one (1) day of prision mayor minimum as minimum, to eight (8) years ten (10) months and one (1) day of prision mayor medium as maximum; and, (3) In Crim. Case No. 378 for robbery in band, accused-appellants CARINIO LUMIWAN and MARCOS GADDAWAN are found guilty beyond reasonable doubt of simple robbery, instead of robbery in band, and each is sentenced to suffer the indeterminate penalty of four (4) months and ten (10) days of arresto mayor maximum as minimum, to six (6) years four (4) months and twenty (20) days of prision mayor minimum as maximum, to be served successively in accordance with Art. 70 of the Revised Penal Code. Accused-appellant MANAO BAWAGAN is ACQUITTED on reasonable doubt.

All three (3) accused-appellants are further ORDERED to pay jointly and severally the amount of P50,000.00 as moral damages to each of the offended parties Jonathan Carig and Maria Asuncion;

The award of P200,000.00 for exemplary damages granted to the offended parties is DELETED for want of factual and legal bases. Costs against accused-appellants.

**SO ORDERED.**

Davide, Jr., (Chairman), Vitug, Panganiban, and Quisumbing, JJ., concur.

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[1] Docketed as Crim. Case Nos. 375 and 377.

[2] Docketed as Crim. Case Nos. 376 and 378.

[3] Presided by Judge Teodulo E. Mirasol.

[4] See Order dated 14 April 1993; Records, Crim. Case No. 375, p. 34.

[5] Manuel Bawisal; Records, Crim. Case No. 376, pp. 3-4.

[6] RTC Decision, pp. 10-11; Rollo, pp. 29-30.

[7] See Notes 1 and 2.

[8] Ibid.

[9] Orders and Resolutions issued by Judge Pedro C. Antonio, 10th Municipal Circuit Trial Court of Roxas-Quirino, Isabela, Records, Crim. Case No. 376, pp. 44-45 and Crim. Case No. 378, pp. 14-15.

[10] Art. III, Sec. 14, 1987 Constitution.

[11] Gregorio, Fundamentals of Criminal Law Review, 8th Ed., 1988, p. 491.

[12] People v. Villanueva, G.R. No. 116311, 1 February 1996, 253 SCRA 155, 159.

[13] TSN, 21 April 1994, pp. 6-9.

[14] TSN, 11 April 1994, pp. 5-7.

[15] Id., pp. 22-25; see Note 12, pp. 30-31.

[16] Art. 267. Kidnapping and serious illegal detention. - Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of reclusion perpetua to death x x x 4. If the person kidnapped or detained shall be a minor, female, or a public officer.

[17] Art. III, Sec. 19 (I).

[18] See Note 14.

[19] See Note 12, pp. 13-15.

[20] Id., pp. 16-18.

[21] See *People v. Bernal*, G.R. No. 101332, 13 March 1996, 254 SCRA 659, 670.

[22] See Note 10, p. 518.

[23] See Note 12, pp. 25-26.

[24] G.R. No. 119574, promulgated 19 March 1998 (per curiam), p. 16.

[25] G.R. No. 104662, 16 June 1995, 245 SCRA 95, 105-106.

[26] *Pangasinan Transportation Co., Inc. v. Legaspi*, Nos. L-20916-17, 23 December 1964, 12 SCRA 592, 598.

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