

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GONZALO BALDOGO, ACCUSED-APPELLANT.

G.R. Nos. 128106-07. January 24, 2003

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is an automatic review of the Joint Judgment,[1] dated October 18, 1996, of the Regional Trial Court, Branch 52, Puerto Princesa City, finding accused-appellant Gonzalo Baldogo alias “Baguio” guilty beyond reasonable doubt of the crime of Murder in Criminal Case No. 12900 and Kidnapping in Criminal Case No. 12903. The trial court imposed on accused-appellant the supreme penalty of death in Criminal Case No. 12900 and reclusion perpetua in Criminal Case No. 12903.

I. The Indictments

Two Informations were filed against accused-appellant and Edgar Bermas alias “Bunso” which read:

“That on or about the 22[nd] day of February, 1996 in the evening at the residence of Mr. Julio Camacho of Iwahig Prison and Penal Farm, Puerto Princesa City, Philippines and within the jurisdiction of this Honorable Court, the said accused who were both convicted by final judgment of the offense of Homicide and while already serving sentence, committed the above name offense by conspiring and confederating together and mutually helping one another, with intent to kill, with treachery and evident premeditation and while armed with a bolo, did then and there wilfully, unlawfully and feloniously assault, attack and hack one JORGE CAMACHO, hitting him and inflicting upon him mortal wounds at the different parts of his body, which was the direct and immediate cause of his death shortly thereafter.

CONTRARY TO LAW, with the aggravating circumstances of treachery, evident[,] premeditation and recidivism. Puerto Princesa City, Philippines, March 5, 1996.”[2]

x x x

“That on Thursday, February 22, 1996 at more or less 8:15 in the evening at the Victim’s residence, Iwahig Prison and Penal Farm, Puerto Princesa City, Philippines and within the jurisdiction of this Honorable Court, the said accused while serving sentence at the Central Sub-Colony both for the offense of Homicide, conspiring and confederating together and mutually helping one another, commits (sic) another offense, kidnapping one JULIE E. CAMACHO, a girl 12 years of age, and brought her to the mountains, where said Julie E. Camacho was detained and deprived of her liberty fro [sic] more than five days.

CONTRARY TO LAW and attended by the aggravating circumstance of recidivism.”[3]

Accused-appellant was arraigned on June 28, 1996 and entered a plea of not guilty to both charges.[4] Edgardo Bermas died before he could be arraigned.[5] The two cases were ordered consolidated and a joint trial thereafter ensued.

The prosecution presented four witnesses, namely, Julie Camacho, Dr. Edilberto Joaquin, Esteban Mamites and

Julio Camacho, Sr., and offered documentary and object evidence on its evidence-in-chief.

II. The Antecedent Facts

Julio Camacho, Sr. and his wife, Heather Esteban, had four children, namely: Julio, Jr., a student of the Palawan State University in Puerto Princesa City and who stayed in Guaygo, Puerto Princesa City; Jorge, who was fourteen years old;^[6] Julie, who was 12 years old and a grade six elementary pupil at the Iwahig Elementary School and Jasper, who was eight years old. Julio Sr. was employed as a security guard in the Iwahig Prison and Penal Colony. He and his family lived in a compound inside the sub-colony. Edgardo Bermas alias “Bunso,” an inmate of the penal colony, was assigned as a domestic helper of the Camacho spouses. Accused-appellant alias “Baguio,” also an inmate of the colony, was assigned in January 1996 as a domestic helper of the Camacho family. Both helpers resided in a hut located about ten meters away from the house of the Camacho family.

In the evening of February 22, 1996, accused-appellant and Bermas served dinner to Julio Sr., Jorge and Julie in the house of the Camachos. At about 7:30 p.m., Julio Sr. left the house to attend a bible study at the dormitory in the Agronomy Section of the Penal Farm. Heather and her son, Jasper, were in Aborlan town. Only Jorge and his sister Julie were left in the house.

After Julio Sr. had left the house, Julie went to the sala to study her assignment. Momentarily, Bermas called Julie from the kitchen saying: “Jul, tawag ka ng kuya mo.” Julie ignored him. After five minutes, Bermas called her again but Julie again ignored him. Julie was perturbed when she heard a loud sound, akin to a yell, “Aahh! Ahh!” coming from the kitchen located ten meters from the house. This prompted Julie to stand up and run to the kitchen. She was appalled to see Jorge sprawled on the ground near the kitchen, face down and bloodied. The vicinity was lighted by a fluorescent lamp. Standing over Jorge were accused-appellant and Bermas, each armed with a bolo.^[7] The shirt of Bermas was bloodied.^[8] Julie was horrified and so petrified that although she wanted to shout, she could not. She ran back to the sala with accused-appellant and Bermas in pursuit. Accused-appellant overtook Julie, tied her hands at her back with a torn t-shirt and placed a piece of cloth in her mouth to prevent her from shouting for help from their neighbors. Bermas went to the room of Julie’s brothers. Accused-appellant dragged Julie outside the house and towards the mountain. Bermas tarried in the house.

With the aid of a flashlight, accused-appellant, with Julie in tow, walked for hours towards the direction of the mountain. About a kilometer away from the house of the Camachos, accused-appellant and Julie stopped under a big tamarind tree at the foot of the mountain. After about thirty minutes, Bermas arrived with a kettle and raw rice. Accused-appellant and Bermas retrieved a bag containing their clothing and belongings from the trunk of the tamarind tree. They untied Julie and removed the gag from her mouth. The three then proceeded to climb the mountain and after walking for six hours or so, stopped under a big tree where they spent the night. When the three woke up in the morning of the following day, February 23, 1996, they continued their ascent of the mountain. Seven hours thereafter, they started to follow a descending route. Accused-appellant and Bermas told Julie that they would later release her. At about 3:00 p.m., Bermas left accused-appellant and Julie. However, accused-appellant did not let go of Julie. The two survived on sugar and rice cooked by accused-appellant. Once, they saw uniformed men looking for Julie. However, accused-appellant hid Julie behind the tree. She wanted to shout but he covered her mouth.

In the early morning of February 28, 1996, accused-appellant told Julie that he was leaving her as he was going to Puerto Princesa City. He told her to fend for herself and return to the lowland the next day. After their breakfast, accused-appellant left Julie alone to fend for herself. A few hours after accused-appellant had left, Julie decided to return to the lowlands. She found a river and followed its course toward Balsaham until she saw a hut. She called upon its occupant who introduced himself as Nicodemus. Julie sought help from him. When asked by Nicodemus

if she was the girl whom the police authorities were looking for, she replied in the affirmative. Nicodemus brought Julie to Balsaham where they met some personnel of the penal colony and police officers, and Nicodemus turned Julie over for custody to them.

Meanwhile, Julio, Sr. arrived home after his bible study at about 9:00 p.m. on February 22, 1996. He noticed that the television set was switched on but no one was watching it. He looked for his children but they were nowhere to be found. He then proceeded to the hut occupied by accused-appellant and Bermas but he also failed to find them. Julio Sr. then rushed to the house of his older brother, Augusto Camacho, to look for his children, but Augusto told him that Jorge and Julie were not there. Julio Sr. then sought the help of Romualdo Esparagoza, a trustee of the penal farm. The two rushed back to the Camacho residence and proceeded to the kitchen where they noticed blood on the floor. The two proceeded to the dirty kitchen and saw the bloodied body of Jorge dumped about three meters away from the dirty kitchen. Julio Sr. and Esparagoza then brought Jorge to the Iwahig Hospital where he was pronounced dead on arrival at 12:40 a.m. of February 23, 1996. Dr. Edilberto Joaquin examined the cadaver and found that the victim was stabbed on the breast once and at the back seven times. He sustained a lacerated wound on the neck. The layers of the neck, trachea and esophagus of Jorge had been cut. Jorge did not sustain any defensive wound. Dr. Joaquin performed an autopsy of the cadaver and signed a medical certificate with his findings, thus:

“MEDICAL CERTIFICATE

GENERAL DATA:

JORGE CAMACHO y ESTEBAN, 14 years old, student, resident of Iwahig Prison and Penal Farm, approximately 5'3 inches in-height, was brought to the hospital, (DOA) dead on arrival at 12:40 AM, 23 February 1996, approximate time of death 8:00 P.M. February 22, 1996.

FINDINGS

- Stab wound, deep, penetrating, approximately 1 inch in length, at the level of the xyphoid process, anteriorly.
- Stab wound, chest, back, approximately 1 inch length, right midclavicular line, level of the 3rd rib.
- Stab wound, back, right midclavicular line, level of the 5th rib.
- Stab wound, back, approximately 1 inch length level of the 5th rib, left midclavicular line.
- Stab wound, back, approximately 1 inch length, right midclavicular line, 6th rib.
- Stab wound, back, approximately 1 inch length, right midclavicular line, level of the 4th lumbar region.
- Stab wound, back, approximately 1 inch in length, right third lumbar region, deep, penetrating involving the liver.
- Stab wound, back, approximately 3/4 inch, at the level of the 2nd lumbar region.
- Lacerated wound, neck, anteriorly, deep, penetrating, cutting the layers of the neck and the trachea and esophagus.

CAUSE OF DEATH

Hypovolemia due to severe hemorrhage secondary to multiple stab wounds and laceration of the neck.”[9]

Wounds numbers 7 and 9 were fatal. It was possible that two sharp-edged and sharp pointed weapons were used in stabbing Jorge and that two assailants stabbed the victim.[10]

On February 29, 1996, Julie gave her sworn statement and a supplemental sworn statement to the police investigators.[11] Julio Sr. suffered mental anguish and sleepless nights because of the death of Jorge.

The prosecution adduced in evidence excerpts of the personal file of accused-appellant kept in the penal colony showing that he had been convicted of homicide by the Regional Trial Court of Baguio City and that he commenced serving sentence on November 19, 1992 and that the minimum term of his penalty was to expire on August 16, 1997.[12]

III. The Defenses and Evidence of Accused-Appellant

Accused-appellant denied killing Jorge and kidnapping Julie. Accused-appellant asserted that Julie implicated him because she was coached and rehearsed. He testified that he was assigned as a helper in the house of Augusto Camacho, the Chief of the Industrial Section of the colony and the older brother of Julio Sr. Augusto told accused-appellant that his brother, Julio Sr., wanted to have accused-appellant transferred as his domestic helper. However, accused-appellant balked because he had heard from Edgardo Bermas, the helper of Julio Sr., that the latter was cruel and had been maltreating Bermas. Nonetheless, in December 1995, accused-appellant was transferred as a domestic helper of Julio Sr. Accused-appellant confirmed that indeed Julio Sr. was cruel because whenever the latter was angry, he maltreated accused-appellant by spanking and boxing him. These would occur about two times a week.

On February 22, 1996, at about 6:30 p.m., accused-appellant took his dinner in the kitchen. At about 7:00 p.m., while he was already in his quarters and preparing to sleep, Bermas arrived, armed with a bloodied bolo measuring about 1½ feet long and told accused-appellant that he (Bermas) had just killed Jorge to avenge the maltreatment he received from Julio Sr. Bermas warned accused-appellant not to shout, otherwise he will also kill him. Petrified, accused-appellant kept silent. Bermas then brought accused-appellant to the kitchen in the house of the Camachos where accused-appellant saw the bloodied body of Jorge sprawled near the kitchen. Bermas called Julie three times, telling her that her brother was calling for her but Julie at first ignored Bermas. Julie later relented and went to the kitchen where Bermas grabbed her and threatened to kill her if she shouted. Bermas tied the hands of Julie with a piece of cloth and placed a piece of cloth around her face to prevent her from shouting.

Bermas, still armed with his bolo tucked on his waist and a knife on his hand, brought accused-appellant and Julie outside the house. The three then trekked towards the mountain. On the way, Bermas picked a bag containing food provisions and his and accused-appellant's clothings. Accused-appellant thought of escaping but could not because Bermas was watching him. With the help of a flashlight brought by Bermas, the three walked towards the mountain, with Julie walking ahead of accused-appellant and Bermas. After walking for hours, they stopped by a tree to which Bermas tied Julie. At one time, while Bermas and accused-appellant were scouring for water, Bermas kicked accused-appellant and pushed him into a ten feet deep ravine. The right hand and foot of accused-appellant sustained bruises. He likewise sustained a sprain on his foot. Bermas left accused-appellant and Julie after 1½ days.

In the meantime, accused-appellant managed to climb out of the ravine and heard Julie calling his name. Julie later told accused-appellant that before Bermas left, the latter told her that he was going to kill accused-appellant.

Accused-appellant and Julie remained in the mountain after Bermas had left. At one time, accused-appellant and Julie saw soldiers who were looking for her. Accused-appellant did not reveal his and Julie's location to the soldiers because he was afraid that he might be killed. On February 25, 1996, accused-appellant untied Julie. He told her that he will set her free as soon as his foot shall have healed.

On February 27, 1996, accused-appellant told Julie that she can go home already. He ordered her to go down the

mountain and proceed to Balsaham on her way back home. Although his foot was still aching, accused-appellant went down from the mountain ahead of Julie and proceeded to Balsaham. He then walked to Irawan where he took a tricycle to the public market in the poblacion in Puerto Princesa City. He then took a passenger jeepney and alighted at Brooke's Point where he was arrested after one week for the killing of Jorge and the kidnapping of Julie.

Accused-appellant maintained that he did not intend to hurt Julie or deprive her of her liberty. He averred that during the entire period that he and Julie were in the mountain before Bermas left him, he tried to protect her from Bermas. Accused-appellant asserted that he wanted to bring Julie back to her parents after Bermas had left them and to surrender but accused-appellant was afraid that Julio Sr. might kill him.

IV. The Verdict of the Trial Court

After due proceedings, the trial court rendered its decision, the decretal portion of which reads:

“WHEREFORE, foregoing premises considered, a Joint Judgment is hereby rendered in:

- CRIMINAL CASE NO. 12900 – finding the accused Gonzalo Baldogo, alias Baguio, guilty beyond reasonable doubt as principal of the crime of murder as defined and penalized in Article 248 of the Revised Penal Code, as amended by Section 6 of Republic Act No. 7659, and appreciating against him the specific aggravating circumstance of taking advantage and use of superior strength, without any mitigating circumstance to offset the same, and pursuant to the provisions of the second paragraph, No. 1, of Article 63 of the Revised Penal Code, he is hereby sentenced to death in the manner prescribed by law; to pay the heirs of the deceased Jorge Camacho;

1.

Actual and compensatory damages: For expenses incurred for funeral and other expenses incident to his death
--- P45,000.00

2. Moral damages ----- 100,000.00

3. Civil indemnity for the death of the victim, Jorge Camacho ----- 50,000.00

or the aggregate amount of ----- 195,000.00

- CRIMINAL CASE NO. 12903 – finding the accused GONZALO BALDOGO, alias, ‘Baguio,’ guilty beyond reasonable doubt as principal of the crime of kidnapping and serious illegal detention as defined and penalized in Article 267 of the Revised Penal Code, as amended by Section 8 of Republic Act No. 7659, and there being no modifying circumstance appreciated and pursuant to the provisions of the second paragraph, No. 2, of Article 63 of the Revised Penal Code, and not being entitled to the benefits of the Indeterminate Sentence Law, he is hereby sentenced to reclusion perpetua, with the accessory penalties of civil interdiction for life, and of perpetual absolute disqualification; to pay the offended party, Julie Camacho for physical suffering, mental anguish, fright, serious anxiety and moral shock, moral damages of P100,000; and to pay the costs.

The case as against co-accused Edgar Bermas is ordered dismissed by reason of extinction of criminal liability occasioned by his death pending conclusion of the proceedings as against him.

SO ORDERED.”[13]

V. Assignment of Error

In his appeal brief, accused-appellant avers that:

“I

THE TRIAL COURT ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER AND KIDNAPPING.

II

THE TRIAL COURT ERRED IN REJECTING ACCUSED-APPELLANT’S DEFENSE OF DENIAL.

III

THE TRIAL COURT ERRED IN APPRECIATING THE QUALIFYING AGGRAVATING CIRCUMSTANCE OF EVIDENT PREMEDITATION AND GENERIC AGGRAVATING CIRCUMSTANCE OF TAKING ADVANTAGE OF SUPERIOR STRENGTH DESPITE THE FAILURE OF THE PROSECUTION TO PROVE THE SAME.

IV

THE TRIAL COURT ERRED IN IMPOSING THE DEATH PENALTY UPON THE ACCUSED-APPELLANT IN THE (SIC) CRIMINAL CASE #12900.”[14]

VI. Resolution of this Court

The first two assignments of errors being interrelated, the Court will delve into and resolve the same simultaneously.

Accused-appellant avers that he had nothing to do with, and hence should not be claimed for, the death of Jorge and the kidnapping and detention of Julie. Accused-appellant claims that he was acting under duress because he was threatened by Bermas with death unless he did what Bermas ordered him to do. Accused-appellant was even protective of Julie. He insists that the latter was not a credible witness and her testimony is not entitled to probative weight because she was merely coached into implicating him for the death of Jorge and her kidnapping and detention by Bermas.

We find the contention of accused-appellant farcical. At the heart of the submission of accused-appellant is the credibility of Julie, the 12-year old principal witness of the prosecution and the probative weight of her testimony.

This Court has held in a catena of cases that the findings of facts of the trial court, its calibration of the testimonial evidence of the parties, its assessment of the probative weight of the collective evidence of the parties and its conclusions anchored on its findings are accorded by the appellate court great respect, if not conclusive effect. The *raison d’etre* of this principle is that this Court has to contend itself with the mute pages of the original records in resolving the issues posed by the parties:

“x x x The record will not reveal those tell-tale signs that will affirm the truth or expose the contrivance, like the angry flush of an insistent assertion or the sudden pallor of a discovered lie or the tremulous mutter of a reluctant answer or the forthright tone of a ready reply. The record will not show if the eyes have darted in evasion or looked down in confession or gazed steadily with a serenity that has nothing to distort or conceal. The record will not show if tears were shed in anger, or in shame, or in remembered pain, or in feigned innocence. Only the judge trying the case can see all these and on the basis of his observations arrive at an informed and reasoned verdict.”[15]

In contrast, the trial court has the unique advantage of monitoring and observing at close range the attitude, conduct and deportment of witnesses as they narrate their respective testimonies before said court. Echoing a foreign court’s observation, this Court declared:

“Truth does not always stalk boldly forth naked, but modest withal, in a printed abstract in a court of last resort. She oft hides in nooks and crannies visible only to the mind’s eye of the judge who tries the case. To him appears the furtive glance, the blush of conscious shame, the hesitation, the sincere or the flippant or sneering tone, the heat, the calmness, the yawn, the sigh, the candor or lack of it, the scant or full realization of the solemnity of an oath, the carriage and mien. The brazen face of the liar, the glibness of the schooled witness in reciting a lesson, or the itching overeagerness of the swift witness, as well as the honest face of the truthful one, are alone seen by him.”[16]

The rule, however, is not iron clad. This Court has enumerated exceptions thereto, namely: (a) when patent inconsistencies in the statements of witnesses are ignored by the trial court; (b) when the conclusions arrived at are clearly unsupported by the evidence; (c) when the trial court ignored, misunderstood, misinterpreted and/or misconstrued facts and circumstances of substance which, if considered, will alter the outcome of the case.[17] In this case, the trial court found the youthful Julie credible and her testimony entitled to full probative weight. Accused-appellant has not sufficiently demonstrated to this Court the application of any of the aforesaid exceptions.

The Court agrees with accused-appellant that the prosecution was burdened to prove his guilt beyond reasonable doubt of the felonies for which he is charged. This Court has held that accusation is not synonymous with guilt. It is incumbent on the prosecution to prove the corpus delicti, more specifically, that the crimes charged had been committed and that accused-appellant precisely committed the same. The prosecution must rely on the strength of its own evidence and not on the weakness of the evidence of the accused.[18] The reasonable standard rule which was adopted by the United States way back in 1978 is a requirement and a safeguard, in the words of Mr. Justice Felix Frankfurter of the United States Supreme Court, “of due process of law in the historic, procedural content of due process.” The United States Supreme Court emphasized in *Re: Winship*[19] that in a criminal prosecution, the accused has at stake interests of immense importance, both because of the possibility that he may lose his liberty or even his life upon conviction and because of the certainty that he would be stigmatized by the conviction.

In the cases at bar, the prosecution failed to adduce direct evidence to prove that accused-appellant killed Jorge. However, the prosecution adduced indubitable proof that accused-appellant conspired with Bermas not only in killing Jorge but also in kidnapping and detaining Julie.

Article 8 of the Revised Penal Code provides that there is conspiracy if two or more persons agree to commit a felony and decide to commit it. Conspiracy may be proved by direct evidence or circumstantial evidence. Conspiracy may be inferred from the acts of the accused, before, during and after the commission of a felony pointing to a joint purpose and design and community of intent.[20] It is not required that there be an agreement for an appreciable period prior to the commission of a felony; rather, it is sufficient that at the time of the commission of the offense, all the conspirators had the same purpose and were united in its execution.[21] In a conspiracy, the act of one is the act of all.[22] All the accused are criminally liable as co-principals regardless of the degree of their participation.[23] For a conspirator to be criminally liable of murder or homicide, it is not necessary that he actually attacks or kills the victim. As long as all the conspirators performed specific acts with such closeness and coordination as to unmistakably indicate a common purpose or design in bringing about the death of the victim, all the conspirators are criminally liable for the death of said victim.[24]

In these cases, the prosecution adduced conclusive proof that accused-appellant indeed conspired with Bermas to kill Jorge and kidnap Julie as shown by the following cogent facts and circumstances:

- When Julie responded to the repeated calls of Bermas for her to go to the kitchen on his pretext that Jorge wanted to talk to her, Julie saw accused-appellant and Bermas, each armed with a bolo, about half a meter from Jorge who was sprawled on the ground, bloodied all over.[25]

- Even as Julie fled from the kitchen for dear life to the sala of their house, accused-appellant and Bermas ran after her. Accused-appellant tied the hands of Julie with a piece of cloth and inserted a piece of cloth into her mouth to prevent her from shouting for help from their neighbors.[26]
- With a flashlight on hand, accused-appellant then exited from the house, dragged Julie towards the direction of the mountain while Bermas remained in the house to rummage through the things in the bedroom of her brothers. Accused-appellant stopped for a while for Bermas to join him.[27]
- Before the killing of Jorge, accused-appellant and Bermas placed their clothing and personal belongings in a bag and buried the bag under a tree, and when accused-appellant and Bermas were on their way to the mountain after killing Jorge, they excavated and retrieved the bag from under the tree.[28]
- Accused-appellant and Bermas brought with them to the mountain a kettle filled with raw rice which they cooked in the forest.[29]
- When Julie saw uniformed men who were looking for her and wanted to shout for help, accused-appellant covered her mouth to prevent her from shouting for help.[30]
- Even after Bermas had left accused-appellant and Julie in the forest in the afternoon of February 23, 1991, accused-appellant continued detaining Julie in the forest until February 27, 1996, when he abandoned Julie in the forest to fend for herself.

The evidence of the prosecution was even buttressed by the judicial admissions of accused-appellant, thus:

- After releasing Julie on February 27, 1996, accused-appellant proceeded to Puerto Princesa City and on to Brooke's Point where he was arrested a week after said date.[31]
- Both accused-appellant and Bermas had a motive to kill Jorge and kidnap Julie, that is, to avenge the repeated maltreatment and physical abuse on them by Julio Sr., the father of Jorge and Julie.[32]

The flight of both accused-appellant and Bermas from the house of Julio Sr. to the mountain where they found refuge after killing Jorge, and their motive to kill Jorge Jr. and kidnap and detain Julie in conjunto constitute potent evidence of their confabulation and of their guilt for the death of Jorge and kidnapping and detention of Julie.[33]

The bare denial by accused-appellant of criminal liability for the crimes charged is inherently weak. Accused-appellant's claims that he even protected Julie from harm and that he was forced by Bermas to kidnap Julie are of the same genre.[34] The bare denial by accused-appellant of the crimes charged constitutes self-serving negative evidence which cannot prevail over the categorical and positive testimony of Julie and her unequivocal identification of accused-appellant as one of the perpetrators of the crimes charged.[35]

Accused-appellant's insistence that he was forced by Bermas, under pain of death, to cooperate with him in killing Jorge and kidnapping and detaining Julie is merely an afterthought. For duress to exempt accused-appellant of the crimes charged, "the fear must be well-founded, and immediate and actual damages 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 interpose self-defense in equal combat." [36] Accused-appellant is burdened to prove by clear and convincing evidence his defense of duress. He should not be shielded from prosecution for crime by merely setting up a fear from, or because of, a threat of a third person." [37] As Lord Dennen declared in *Reg. Vs. Tyler*, [38] "No man from fear of circumstances to himself has the right to make himself a party to committing mischief on mankind." In these cases, in light of the testimony of Julie and the inculpatory acts of accused-appellant no less, there is no doubt that the latter acted in concert with Bermas and is himself a principal

by direct participation. That accused-appellant abandoned Julie after six days of captivity does not lessen his criminal culpability much less exempt him from criminal liability for the killing of Jorge and the kidnapping and detention of Julie.

Accused-appellant failed to prove his claim that Julie was coached on how and what to testify on. Indeed, when asked to identify the person or persons who coached Julie, accused-appellant failed to mention any person:

“Q

You heard the testimony of Julie Camacho that she is pointing to you to have kidnapped her and participated in the killing of her brother Jorge, what can you say to that?

A

That is not true.

Q

You donot (sic) know the reason why? In fact you treated her well, why she pointed you as one of the authors of the crime?

A

Maybe somebody coached her.

Q

Who do you think coached her?

A

I cannot mention the name but I am sure that somebody coached her.”[39]

It bears stressing that when she testified, Julie was merely 12 years old. The Court has repeatedly held that the testimony of a minor of tender age and of sound mind is likewise to be more correct and truthful than that of an older person so that once it is established that they have fully understood the character and nature of an oath, their testimony should be given full credence and probative weight.[40] Julie had no ill motive to tergiversate the truth and falsely testify against accused-appellant. Hence, her testimony must be accorded full probative weight.[41]

VII. Crimes Committed by Accused-Appellant

The Court shall now delve into and resolve the issue of what crime or crimes accused-appellant is guilty of. The trial court convicted accused-appellant of two separate crimes and not the special complex crime of kidnapping with murder or homicide under the last paragraph of Article 267 of the Revised Penal Code as amended by Republic Act 7659.[42] The trial court is correct. There is no evidence that Jorge was kidnapped or detained first by accused-appellant and Bermas before he was killed. The last paragraph of Article 267 of the Code is applicable only if kidnapping or serious illegal detention is committed and the victim is killed or dies as a consequence of the kidnapping or serious illegal detention.

Re: Criminal Case No. 12900
(For Murder)

The trial court convicted accused-appellant of murder with the qualifying aggravating circumstance of evident premeditation, based on the following findings and ratiocination:

“The slaying of Jorge Camacho took place about 8:30 o’clock in the evening of February 22, 1996. It was carried out after the accused have been through tidying-up the kitchen, the dining room and the kitchen wares the family of the Camachos used in their early dinner before 7:00 o’clock that evening. But even before dinner, the accused have already made preparations for their flight, shown by the fact that they already had their clothes, other personal belongings and food provisions stacked in their respective travelling bags then placed in a spot where they can just pick them up as they take to flight.”[43]

The trial court also appreciated against accused-appellant the qualifying aggravating circumstance of abuse of superior strength with the following disquisition:

“The victim, Jorge Camacho, is a lad only 14 years of age and unarmed when brutally slain. On the contrary, both accused are of age and confirmed convicted felons. Any one of them would already be superior in strength and disposition to their hapless and innocent victim. How much more with the combined strength and force of the two of them.

Their choice of the object of their brutality is indicative of their unmistakable intent of taking advantage of their superior strength. The likely object of their resentment, for purported cruelty to them, is Prison Guard Julio Camacho, father of the victim. They could have directed their criminal intent on Julio Camacho himself. But Julio Camacho could be a match in strength and agility to any of them or even to the combined force of both of them. So, to insure execution of their criminal intent without risk to them for the defense which the offended party might put up, they directed their criminal acts against the deceased who is very much inferior in physical combat even only to any one of them.”[44]

While the Court agrees that accused-appellant is guilty of murder, it does not agree with the rulings of the trial court that the crime was qualified by evident premeditation and abuse of superior strength. To warrant a finding of evident premeditation, the prosecution must establish the confluence of the following requisites:

“x x x (a) the time when the offender determined to commit the crime; (b) an act manifestly indicating that the offender clung to his determination; and (c) a sufficient interval of time between the determination and the execution of the crime to allow him to reflect upon the consequences of his act. x x x”[45]

The qualifying aggravating circumstance of evident premeditation, like any other qualifying circumstance, must be proved with certainty as the crime itself. A finding of evident premeditation cannot be based solely on mere lapse of time from the time the malefactor has decided to commit a felony up to the time that he actually commits it.[46] The prosecution must adduce clear and convincing evidence as to when and how the felony was planned and prepared before it was effected.[47] The prosecution is burdened to prove overt acts that after deciding to commit the felony, the felon clung to his determination to commit the crime. The law does not prescribe a time frame that must elapse from the time the felon has decided to commit a felony up to the time that he commits it. Each case must be resolved on the basis of the extant factual milieu.

In this case, the prosecution failed to prove evident premeditation. The barefaced fact that accused-appellant and Bermas hid the bag containing their clothing under a tree located about a kilometer or so from the house of Julio Sr. does not constitute clear evidence that they decided to kill Jorge and kidnap Julie. It is possible that they hid their clothing therein preparatory to escaping from the colony. There is no evidence establishing when accused-appellant and Bermas hid the bag under the tree. The prosecution even failed to adduce any evidence of overt acts on the part of accused-appellant, nor did it present evidence as to when and how he and Bermas planned and prepared to kill Jorge and kidnap Julie and to prove that the two felons since then clung to their determination to commit the said crimes. Although accused-appellant and Bermas were armed with bolos, there is no evidence that they took advantage of their numerical superiority and weapons to kill Jorge. Hence, abuse of superior strength cannot be deemed to have attended the killing of Jorge.[48] Nighttime cannot likewise be appreciated as

an aggravating circumstance because there is no evidence that accused-appellant and Bermas purposely sought nighttime to facilitate the killing or to insure its execution or accomplishment or to evade their arrest.[49] Neither is dwelling aggravating because there is no evidence that Jorge was killed in their house or taken from their house and killed outside the said house.

In light of the evidence on record, it is clear that the killing of Jorge was qualified by treachery. When Jorge was killed by accused-appellant and Bermas, he was barely 14 years old. The Court has previously held that the killing of minor children who by reason of their tender years could not be expected to put up a defense is attended by treachery.[50] Since treachery attended the killing, abuse of superior strength is absorbed by said circumstance.[51]

The penalty for murder under Article 248 of the Revised Penal Code as amended by Republic Act 7659 is reclusion perpetua to death. There being no aggravating or mitigating circumstances in the commission of the crime, accused-appellant should be meted the penalty of reclusion perpetua.[52] Conformably with current jurisprudence, accused-appellant is hereby ordered to pay to the heirs of the victim civil indemnity in the amount of P50,000.00 and the amount of P50,000.00 by way of moral damages. Although Julio Sr. testified that he spent P45,000.00 during the wake and burial of the victim, the prosecution failed to adduce any receipts to prove the same. Hence, the award of P45,000.00 by way of actual damages has no factual basis and should thus be deleted.

Re: Criminal Case No. 12903
(For Kidnapping)

The trial court convicted accused-appellant of kidnapping under Article 267 of the Revised Penal Code, as amended, punishable by reclusion perpetua to death. The trial court is correct.

Article 267 of the Revised Penal Code was taken from Article 267 of the Spanish Penal Code, which reads:

“Art. 267—Detención ilegal grave.—Será castigado con la pena de reclusión temporal el particular que secuestrare o encerrare a otro o en cualquier forma le privare de libertad.”

“Secuestrare” means sequestration.[53] To sequester is to separate for a special purpose, remove or set apart, withdraw from circulation.[54] It also means to lock-up or imprison. “Encerrare” is a broader concept than secuestrare.[55] Encerrare includes not only the imprisonment of a person but also the deprivation of his liberty in whatever form and for whatever length of time. As explained by Groizard, “encerrar” es meter á una persona ó cosa en parte de donde no pueda salir”; detener o arrestar, poner en prisión, privar de la libertad á alguno.” He continued that “la detención, la prisión, la privación de la libertad de una persona, en cualquier forma y por cualquier medio ó por cualquier tiempo en virtud de la cual resulte interrumpido el libre ejercicio de su actividad.”[56] On his commentary on the Spanish Penal Code, Cuello Calón says that the law “preve dos modalidades de privación de libertad, el encierro y la detención. Encerrar significa recluir a una persona en un lugar de donde no puede salir, detener a una persona equivale a impedirle o restringirle la libertad de movimiento. Para que el sujeto pasivo no quiera permanecer en el sitio donde esta recluso, pues no es posible llamar encierro ni detención a la estancia de una persona en lugar del que no quiere salir.”[57]

In this case, Julie, a minor, was not locked up. However, she was seized and taken from her house through force and dragged to the mountain. Since then, she was restrained of her liberty by and kept under the control of accused-appellant and Bermas. She was prevented from going back home for a period of about six days. Patently then, accused-appellant is guilty of kidnapping and illegally detaining Julie. The crime was aggravated by dwelling because Julie was taken from their house by accused-appellant and Bermas. However, dwelling was not alleged in the Information as an aggravating circumstance as required by Section 9, Rule 110 of the Revised Rules on Criminal Procedure which reads:

“SEC. 9. Designation of the offense. – The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.”[58]

Even if dwelling is proven but is not alleged in the Information as an aggravating circumstance, the same will not serve to aggravate the penalty.[59]

Quasi-recidivism as defined in Article 160 of the Revised Penal Code[60] is alleged in both Informations. Accused-appellant is alleged to have committed murder and kidnapping while serving sentence in the penal colony by final judgment for the crime of homicide. Quasi-recidivism is a special aggravating circumstance.[61] The prosecution is burdened to prove the said circumstance by the same quantum of evidence as the crime itself. In the present case, to prove quasi-recidivism, the prosecution was burdened to adduce in evidence a certified copy of the judgment convicting accused-appellant of homicide and to prove that the said judgment had become final and executory.[62] The *raison d’être* is that:

“x x x Since the accused-appellant entered a plea of not guilty to such information, there was a joinder of issues not only as to his guilt or innocence, but also as to the presence or absence of the modifying circumstances so alleged. The prosecution was thus burdened to establish the guilt of the accused beyond reasonable doubt and the existence of the modifying circumstances. It was then grave error for the trial court to appreciate against the accused-appellant the aggravating circumstance of recidivism simply because of his failure to object to the prosecution’s omission as mentioned earlier.”[63]

In this case, the prosecution adduced in evidence merely the excerpt of the prison record of accused-appellant showing that he was convicted of homicide in Criminal Case No. 10357-R by the Regional Trial Court of Baguio (Branch 6) with a penalty of from six years and one day as minimum to fourteen years, eight months and one day as maximum and that the sentence of accused-appellant commenced on November 19, 1992 and that the minimum term of the penalty was to expire on August 16, 1997.[64] The excerpt of the prison record of accused-appellant is not the best evidence under Section 3, Rule 130 of the Revised Rules of Court[65] to prove the judgment of the Regional Trial Court of Baguio City and to prove that said judgment had become final and executory. Said excerpt is merely secondary or substitutionary evidence which is inadmissible absent proof that the original of the judgment had been lost or destroyed or that the same cannot be produced without the fault of the prosecution. The barefaced fact that accused-appellant was detained in the penal colony does prove the fact that final judgment for homicide has been rendered against him.[66] There being no modifying circumstances in the commission of the crime, accused-appellant should be meted the penalty of reclusion perpetua conformably with Article 63 of the Revised penal Code.[67]

VIII. Civil Liability of Accused-Appellant for Kidnapping and Serious Illegal Detention

The trial court awarded the amount of P100,000.00 to Julie by way of moral damages for the felony of kidnapping with serious illegal detention, predicated on her having suffered serious anxiety and fright when she was kidnapped and dragged to the mountain where she was detained for several days. The trial court is correct. Julie is entitled to moral damages.[67] In light of the factual milieu in this case, the amount is reasonable. Julie is also entitled to exemplary damages in the amount of P25,000.00.[68]

IN LIGHT OF ALL THE FOREGOING, the decision of the Regional Trial Court is hereby **AFFIRMED WITH MODIFICATION**:

- In Criminal Case No. 12900, accused-appellant is found guilty beyond reasonable doubt of murder defined in

Article 248 of the Revised Penal Code as amended and is hereby meted the penalty of reclusion perpetua, there being no modifying circumstances attendant to the commission of the felony. Accused-appellant is hereby ordered to pay to the heirs of the victim the amount of P50,000.00 as civil indemnity and the amount of P50,000.00 as of moral damages. The award of P45,000.00 as of actual damages is deleted.

- In Criminal Case No. 12903, accused-appellant is found guilty beyond reasonable doubt of kidnapping with serious illegal detention defined in Article 267 of the Revised Penal Code, as amended by Republic Act 7659, and there being no modifying circumstances attendant to the commission of the felony is hereby meted the penalty of reclusion perpetua. Accused-appellant is hereby ordered to pay moral damages to the victim, Julie Camacho, in the amount of P100,000.00 and exemplary damages in the amount of P25,000.00.

SO ORDERED.

Davide, Jr., C.J., Puno, Vitug, Mendoza, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, and Azcuna, JJ., concur.
Bellosillo, J., on leave.

[1] Penned by Judge Felomino A. Vergara.

[2] Original records, p. 1.

[3] Id. at 15.

[4] Id. at 21.

[5] Id. at 65.

[6] Exhibit "E."

[7] Exhibit "A."

[8] Ibid.

[9] Exhibit "B."

[10] TSN, Joaquin, August 20, 1996, pp. 13-14.

[11] Exhibit "A."

[12] Exhibit "D."

[13] Records, pp. 74-76.

[14] Rollo, pp. 44-45.

[15] *People v. Delovino*, 247 SCRA 637, 647 (1995).

[16] Ibid.

[17] *People v. Garcia, et al.*, 361 SCRA 598 (2001); *People v. De los Santos*, 314 SCRA 303 (1999).

[18] *People v. Dramayo, et al.*, 42 SCRA 59 (1971).

[19] 25 L.Ed. 368.

[20] *People v. Landicho, et al.*, 258 SCRA 1 (1996).

- [21] *People v. Sequino*, 264 SCRA 79 (1996).
- [22] *People v. Lopez, et al.*, 249 SCRA 610 (1995).
- [23] *People v. Cogonon*, 262 SCRA 693 (1996).
- [24] *People v. Abendan*, 360 SCRA 106 (2001).
- [25] TSN, Camacho, pp. 8-13, July 25, 1996.
- [26] *Id.* at 13-14.
- [27] *Id.* at 15-17.
- [28] *Id.* at 45-46.
- [29] *Id.* at 20-21.
- [30] *Id.* at 25-26.
- [31] TSN, Baldogo, September 17, 1996, pp. 19-20.
- [32] TSN, Baldogo, September 19, 1996, pp. 17-19.
- [33] *People v. De Mesa*, 354 SCRA 397 (2001).
- [34] *People v. Salvatierra*, 257 SCRA 489 (1996).
- [35] *People v. Garcia*, 361 SCRA 598 (2001).
- [36] Wharton, Criminal Law, Vol. 1, pp. 514-515.
- [37] *State v. Nargashian*, 106 American State Reports, 715, 58 Atl. 953.
- [38] 8 Car. & P. (Eng) 616 (1838).
- [39] TSN, Baldogo, September 19, 1996, p. 15.
- [40] *Marco v. Court of Appeals, et al.*, 273 SCRA 276 (1997).
- [41] *People v. Sulplito*, 314 SCRA 493 (2001).
- [42] The crimes were committed after the effectivity of Republic Act 7659:

Article 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:

- If the kidnapping or detention shall have lasted more than three days.
- If it shall have been committed simulating public authority.
- If any serious physical injuries shall have been inflicted upon the person kidnapped or detained; or if threats to kill him shall have been made.
- If the person kidnapped or detained shall be a minor, except when the accused is any of the parents, female or a public officer.

The penalty shall be death where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances above-mentioned were present in the

commission of the offense.

When the victim is killed or dies as a consequence of the detention or is raped, or is subjected to torture or dehumanizing acts, the maximum penalty shall be imposed.

[43] Rollo, pp. 70-71.

[44] Id. at 71-72.

[45] *People v. Sison*, 312 SCRA 792, 804 (1999).

[46] *People v. Piamonte*, 303 SCRA 577 (1999); *People v. Deopante*, 263 SCRA 691 (1996).

[47] *People v. Patrolla, Jr.*, 254 SCRA 467 (1996).

[48] *People v. Joyno*, 304 SCRA 655 (1999).

[49] *People v. Lumacang, et al.*, 324 SCRA 254 (2000).

[50] *People v. Abuyen*, 213 SCRA 569 (1992).

[51] *People v. Cabarrubias*, 223 SCRA 363 (1993).

[52] Article 63, Revised Penal Code.

[53] Velasquez, Revised Spanish-English Dictionary (Revised, 1959).

[54] Third New International Dictionary, p. 2071.

[55] *People v. Santos*, 283 SCRA 443 (1997).

[56] Groizard, *ElCodigo Penal de 1870*, Tomo V, pp. 639-640, cited in *People vs. Marasigan, et al.*, 55 O.G. 8297 (1959).

[57] *Derecho Penal*, Novena Edicion, Tomo II, pp. 700-701.

[58] *People v. Caber, Sr.*, 346 SCRA 166 (2000); *People v. Berzuela*, 341 SCRA 46 (2000).

[59] *People v. Gallego*, 338 SCRA 21 (2000).

[60] ART. 160. Commission of another crime during service of penalty imposed for another previous offense.—Penalty.—Besides the provisions of rule 5 of article 62, any person who shall commit a felony after having been convicted by final judgment, before beginning to serve such sentence, or while serving the same, shall be punished by the maximum period of the penalty prescribed by law for the new felony.

Any convict of the class referred to in this article, who is not a habitual criminal, shall be pardoned at the age of seventy years if he shall have already served out his original sentence, or when he shall complete it after reaching said age, unless by reason of his conduct or other circumstances he shall not be worthy of such clemency.

[61] Quasi-recidivism is a special aggravating circumstance and cannot be offset by a generic mitigating circumstance. (*People v. Pereto*, 111 Phil. 943).

[62] *People v. Gaorana*, 289 SCRA 665 (1998).

[63] *People v. Compendio, Jr.*, 258 SCRA 254, 268 (1996).

[64] Exhibit “D.”

[65] Original document must be produced; exceptions.—When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:

- (a) When the original has been lost or destroyed, or cannot be produced in court without bad faith on the part of the offeror;
- (b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;
- (c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole;
- (d) When the original is a public record in the custody of a public office or is recorded in a public office.

[66] *People v. Gaorana*, *supra*.

[67] Vide note 70 *infra*.

[68] Article 2219, paragraph 5, New Civil Code; *People v. Garcia*, G.R. No. 133489 and 143970, January 15, 2002.

[69] *People v. Catubig*, 363 SCRA 621 (2000).

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