

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. MICHAEL U. PAGALASAN ALIAS “MIKE,” RONNIE CABALO ALIAS “ROMY, ALADIN CABALO, FERDINAND CORTEZ, A JOHN DOE IDENTIFIED ONLY AS FERNANDO, A...

G.R. Nos. 131926 & 138991. June 18, 2003

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is an automatic review of the Decision[1] of the Regional Trial Court of General Santos City, Branch 35, convicting appellant Michael U. Pagalasan of two counts of kidnapping for ransom of George Lim and his 10-year-old son Christopher Neal Lim and sentencing him to double death.

The Antecedents

The Spouses George and Desiree Lim and their three young children, one of whom was 10-year-old Christopher Neal Lim, resided at Villa Consuelo Subdivision, General Santos City. The spouses hired a security guard, Ferdinand Cortez, from the Valiant Security Agency to provide security services to the family. On September 4, 1994, at 11:00 p.m., the spouses and their children were in the master's bedroom watching television. The couple's housemaid, Julita Sarno, was in the kitchen. She heard knocks on the kitchen door. Thinking that it was Ferdinand, she opened the door. Four men, about 5'5" to 5'6" tall, each armed with handguns, two of whom were holding hand grenades, barged into the kitchen. The four intruders wore bonnets over their faces. With them was Ferdinand, whose hands were tied behind his back. When asked by the masked men where her employers were, Julita responded that they were in their bedroom. On orders of the intruders, she knocked on the bedroom door. When George's daughter opened the door, three of the masked men barged into the room, while the fourth masked man remained in the sala of the house.[2] The three masked men shouted to George and Desiree: "Walang mangyayari sa inyo basta ibigay ninyo ang kailangan namin." (Nothing will happen to you provided you give us what we want.)[3] They ransacked the house, getting cash and valuables. The masked men gave Desiree a handwritten note,[4] and dragged George and Christopher Neal Lim out of the bedroom through the sala to the garage, where George's Nissan car was parked for the night. George saw Ferdinand in the sala with his hands tied behind his back. One of the masked men ordered George to hand over the key to his vehicle, to board the car and occupy the back seat along with Christopher. Father and son did as they were told. Two of the masked men positioned themselves on either side of George and Christopher. The third man drove the car, while the fourth sat on the passenger's seat beside the driver. The car cruised along the national highway. When the car was nearing the Gambalan Kitchenette, George and Christopher were blindfolded. The masked men told them that they would be brought to Polomolok. After about fifteen minutes, the car stopped at Sitio Tupi. The two men who were seated at the back and the masked man seated beside the driver alighted from the car, bringing Christopher with them. George was transferred to the front seat beside the driver. George was told that he would be transported to Maasim.

In the meantime, SPO2 Federico Paño, the duty officer of Police Precinct No. 2, received a radio report that

George Lim and his son Christopher had been kidnapped. Police investigators were dispatched to the Lim residence to conduct an on-the-spot investigation. They brought Ferdinand and Julita to the police station for investigation. SPO2 Renato Daga-as, SPO2 Datur Villanueva and SPO1 Alimuddin Timbao were directed to establish a mobile checkpoint at the intersection of the national highway and a dirt road (Espina Road). The three policemen boarded a Tamaraw mobile car and parked it at the said intersection. At about thirty meters from the checkpoint, the masked driver of the Nissan vehicle saw the police car. Instead of running the car through the checkpoint, the driver stopped and switched off its headlights. He removed his bonnet and George's blindfold, warning the latter not to make any false move. George looked at the driver, who turned out to be the appellant Michael Pagalasan.

The three police officers approached the car. Daga-as went to the right side of the car beside the passenger seat, while Villanueva went to the left side, near the driver's seat. For his part, Timbao proceeded to the car's rear end. Daga-as and Villanueva identified themselves to George and Michael as police officers on the lookout for a certain George Lim and his son who had been kidnapped in General Santos City. Daga-as inquired from George what his name was, and George replied that he was Albert Lim. The driver identified himself as Michael Pagalasan. George gave a false first name because he was afraid Michael might shoot him. Daga-as noticed that George's fingers were trembling. Villanueva knocked at the door on the driver's side, and tried to open the same, but it was locked. When Michael himself opened the door, Villanueva pulled him out of the vehicle and brought him to the mobile car. Michael was suddenly in the custody of the policemen. George then identified himself as one of the kidnapped victims. He also told the policemen that his son was still with the other kidnappers. The policemen thereafter searched the Nissan car and found a .38 caliber^[5] handgun with six live bullets in its chamber^[6] and a grenade under the driver's seat.^[7] The policemen brought Michael and George to the police station where Ferdinand was being interrogated by police investigators. Ferdinand told George that he had nothing to do with the kidnapping, but before he could explain further, he was whisked into the investigation room. After giving a sworn statement to the police investigator, George was allowed to go home. Desiree gave George the handwritten letter earlier given to her by the kidnappers before they left the house that evening. In the letter, the spouses were warned not to coordinate with the military, nor to take any action in connection with the kidnapping without their knowledge or consent. They were also informed that the malefactors would communicate with the couple, whether by letter or through the telephone only through "MUBARAK II or 2."^[8] Julita executed an affidavit in connection with the kidnapping.^[9]

Police Inspector Antonio Evangelista ordered SPO4 Recio Aniversario to conduct a custodial investigation on Michael. Recio asked Michael if he wanted to execute an affidavit, and Michael replied that he was going to execute one. The police investigator inquired if he knew of any lawyer, to which Michael replied in the negative. The police investigator then suggested Atty. Tomas C. Falgui, a private practitioner, as his counsel. When Michael agreed, the police investigator phoned the lawyer, requesting the latter to assist Michael while undergoing custodial investigation. The lawyer agreed and forthwith proceeded to the police station. Michael gave his confession under custodial investigation with the assistance of Atty. Falgui.^[10]

In his confession, Michael admitted that upon orders of Ronnie Cabalo, he and three other men, Aladin (Ronnie's brother), a Muslim known as Ferdinand, and Bong (a resident of Purok Islam), had kidnapped George and his son Christopher. Ronnie Cabalo instructed Michael to use George's vehicle to transport father and son to the banana plantation where Aladin, Ferdinand and Boy would alight with Christopher, and to thereafter return George to his house. Aladin had given him a handgun for his use. Ferdinand Cortez was in cahoots with them. He was at first reluctant to obey Ronnie, but relented when he was told not to be afraid and to use the grenade in case of trouble. George told him that he had already given money to Aladin, and that Michael's companions had taken some pieces of jewelry from him and his wife before they left the Lim residence.

In the light of Michael's confession, farmer Hadji Aladin Malang Cabalo, Ronie Puntuan and Fernando Quizon were arrested and detained at Camp Fermin Lira Barracks, General Santos City. In the meantime, on September 6, 1994, George received another handwritten letter, ordering the release of Michael and Ronie Puntuan because they were innocent, and demanding P3,000,000 for Christopher's release.[11]

On September 9, 1994, George received another handwritten letter dated September 9, 1994, this time from "MUBARAK II or 2" informing him and his wife that the kidnappers did not want the military to be involved nor innocent people to be prejudiced. The spouses were also warned that their son would not be released alive unless Ronie Puntuan was freed in three days.[12] On the same day at 3:25 p.m., Ronie Puntuan, through counsel, filed a motion with the MTC praying that he be transferred from the Camp Fermin Lira Barracks to the General Santos City Jail.[13]

In the morning of the following day, September 10, 1994, Christopher was rescued by policemen without any ransom being paid. On September 13, 1994, George executed a sworn statement relating to the incidents that happened from September 4, 1994 to September 10, 1994.[14]

Michael was charged with kidnapping for ransom and violation of PD 1866 before the Municipal Trial Court (MTC) of General Santos City.[15]

During the initial stage of the preliminary investigation by the MTC on September 6, 1994, Atty. Falgui appeared as Michael's counsel and testified on what transpired immediately before, during and after the custodial investigation, including Michael's execution of his extrajudicial confession.[16] Michael was also placed on the witness stand and, with the assistance of counsel, testified on his extrajudicial confession. He affirmed the veracity of the contents of the said confession.[17] Subsequently, Michael, through his mother, secured the services of Atty. Emmanuel V. Fontanilla. On September 12, 1994, Michael executed an affidavit withdrawing his September 5, 1994 extrajudicial confession, in which he stated that: (a) he was not assisted by counsel of his own choice when he executed the extrajudicial confession; and (b) Ronie Puntuan, who was arrested and detained, was not Ronnie Cabalo.[18] Michael also executed a counter-affidavit where he denied the accusations against him, and clarified that he was forced and intimidated into making his September 5, 1994 confession, and he was not provided with counsel of his own choice during custodial investigation. His constitutional rights under custodial investigation were allegedly not sufficiently explained to him.[19] He filed the said affidavits with the MTC during the preliminary investigation.

On September 23, 1994, the MTC issued a resolution finding probable cause for charging the accused with kidnapping for ransom. The Office of the City Prosecutor conducted a reinvestigation of the case. On October 4, 1994, the Office of the City Prosecutor issued a resolution ordering the release of Hadji Aladin Malang Cabalo on the ground that he was not the Aladin Cabalo referred to by Michael in his confession.[20]

An Information for violation of PD 1866 was filed against Michael on October 17, 1994 with the Regional Trial Court of General Santos City, Branch 22, docketed as Criminal Case No. 11062. On November 3, 1994, Michael, Ronnie Cabalo, Aladin Cabalo, Ferdinand Cortez, a certain John Doe identified as Fernando, and Peter Doe were charged with kidnapping for ransom in an Information, docketed as Criminal Case No. 11098, which reads:

That on or about September 4, 1994, in General Santos City, Philippines, within the jurisdiction of this Honorable Court, the said accused, conspiring, and confederating together and mutually helping each other, did then and there willfully, unlawfully and feloniously kidnap George Lim, and his ten-year-old son, Christopher Neal Lim, for the purpose of extorting ransom from the said victims.[21]

The cases were raffled to Branch 22 of the Regional Trial Court. When arraigned in Criminal Case No. 11062 for Violation of PD 1866, Michael pleaded not guilty. On February 6, 1995, Michael, Ferdinand and Fernando

Quizon were arraigned in Criminal Case No. 11098 and pleaded not guilty.[22] Ronnie Cabalo and Aladin Cabalo remained at-large. On August 24, 1995, the judge hearing the cases inhibited himself. Both cases were re-raffled, assigned to, and were tried jointly by Branch 35 of the Regional Trial Court.

During the trial, Michael, through counsel, admitted the truth of the contents of the affidavit executed by Julita Sarno.[23] Michael also executed an affidavit on December 5, 1995 alleging inter alia that he was forced at gunpoint by Boy and Aladin to barge into the Lim residence and drive the latter's car, and that he did not know Fernando Quizon.[24] After the prosecution had presented all its witnesses, it filed a formal offer of its documentary evidence including Michael's December 15, 1995 Sworn Statement and his confession.[25] Michael did not file any comment or opposition to the said offer. On May 3, 1996, the trial court issued an order admitting the prosecution's documentary evidence, including Michael's confession.[26] After the prosecution had rested its case, Fernando Quizon filed a demurrer to evidence in Criminal Case No. 11098. On July 2, 1996, the court issued an order granting the demurrer to evidence of the said accused and acquitted him of the charge.[27]

The Defense and Evidence of the Accused

Ferdinand Cortez denied kidnapping George and Christopher. He testified that he had been employed as a security guard by the Valiant Security Agency. He was assigned by the agency to protect George Lim and his family. On the evening of September 4, 1994, Ferdinand was washing George's car in the garage. The house was surrounded by a 10-foot wall, and the gate was locked. Ferdinand was shocked when masked men, armed with handguns, suddenly arrived. They poked their guns at him, maltreated him, and tied his hands behind his back. The masked men knocked at the door of the house and when the housemaid Julita Sarno opened it, the men dragged Ferdinand towards the entrance, to make it appear that he was the one knocking. The masked men then barged into the sala and tied Julita's hands. Ferdinand claimed he never met any of the kidnappers before September 4, 1994. He was puzzled why he was being implicated in the case.

For his part, Michael testified that he was a Muslim, 19 years of age, and an elementary school graduate. He made a living as a conductor of his uncle's jeepney. At night, the jeepney was parked in Tambler, and it was where he usually slept. On the evening of September 4, 1994, at about 9:00 p.m., he was in their house at Purok Islam public market, General Santos City. His friend Bong arrived, and invited him for a stroll and to accompany the latter to get a motorcycle. Michael agreed. They took a tricycle and arrived at the Villa Consuelo Subdivision. Michael was surprised when the tricycle stopped near the gate of the Lim residence and masked men suddenly appeared, poking their guns at him. Bong fled, leaving Michael alone to fend for himself. The masked men ordered Michael to drive a car, and warned him that if he refused, he would be killed. Momentarily, one of the men emerged from the house, with George Lim in tow. George gave the key to his Nissan car to one of the kidnappers, who in turn handed it over to Michael. The men forced George and his son Christopher to board the car. Father and son were seated between two masked men. Afraid for his life, Michael was forced to drive the car with one of the kidnappers pointing a gun at him, seated to his right at the passenger's side. The kidnappers ordered Michael to drive the car towards the direction of Barangay Ligaya.

When the car reached a dark portion of the road in Barangay Ligaya, three of the men alighted, bringing Christopher with them. Michael then pleaded to George to bring him first to Tambler, where the jeepney of his uncle was parked. Michael wanted to sleep there instead of going home. George agreed, and drove the car himself through Barangay Makar. George told Michael that they had to travel along Espina road, a dirt road, instead of the regular road because they might encounter policemen, and Christopher might be killed by his kidnappers. However, the car had to stop at the intersection of the national highway and Espina Road when George saw policemen and the mobile police car parked at the intersection.

Michael was arrested by the police, blindfolded, and brought to the mobile car where he was also mauled. His

head was banged against the sides of the mobile car. At the precinct, Michael was mauled anew by the policemen. It was only after he had given his statement to a police investigator that Atty. Falgui arrived and told Michael, "I am your lawyer." [28] Atty. Falgui instructed Michael to tell the whole truth. [29] When his mother Camaria Opong visited him, he told her that he had been blindfolded and mauled at the station, and that because of this, his body ached. She saw a big hump in his head. On September 8, 1994, she secured the services of Atty. Fontanilla as counsel of her son. The lawyer went to the City Jail and talked to Michael. Michael showed the lawyer the contusions and bruises on his body, and the scratches on his neck. Michael told the lawyer that he had been maltreated by an inmate at the detention cell. He also narrated that he knew nothing about the kidnapping and that he was only hired by somebody to drive a car. Michael assured the lawyer that he was not aware of the purpose of the culprits in kidnapping George and Christopher. On September 9, 1994, Atty. Fontanilla executed an affidavit reiterating the information Michael conveyed to him. [30] On September 16, 1994, Michael filed an urgent motion for medical check-up, which the court granted. [31]

Dra. Virginia Ramirez, Officer-In-Charge of the City Integrated Health Services, examined Michael on September 22, 1994 and found him suffering from myalgia residual or muscle pains due to mauling, which she surmised took place about one week to ten days before the examination. She issued a medical certificate of the said examination. [32]

On September 24, 1997, the trial court rendered judgment acquitting Ferdinand Cortez and convicting Michael of kidnapping for ransom, the decretal portion of which reads:

JUDGMENT

WHEREFORE, premises considered, the accused is hereby sentenced as follows:

In Criminal Case No. 11062 for failure of the prosecution to prove the accusation against the accused Michael Pagalasan beyond reasonable doubt, he is hereby ACQUITTED of the crime charged.

In Criminal Case No. 11098, the accused Michael Pagalasan is hereby found guilty of the crime of kidnapping for ransom as defined and penalized under Article 267 as amended by Section 8 of Republic Act 7659, and there being no modifying circumstance to consider, he is sentenced to suffer the EXTREME PENALTY OF DEATH insofar as the case of George Lim is concerned.

The same penalty of death shall also be imposed against Michael Pagalasan in the case of Christopher Neal Lim who was kidnapped on the same occasion and was released only on the sixth day after his captivity.

The case of Ferdinand Cortez, for lack of sufficient evidence to convict him, he is hereby ACQUITTED of the crime charged.

SO ORDERED. [33]

The trial court ruled in Criminal Case No. 11098 that with or without the confession of Michael, the prosecution adduced proof beyond reasonable doubt that he, in conspiracy with three others, kidnapped George and Christopher. It found the testimony of George straightforward and positive, credible and entitled to full probative weight. The trial court sentenced Michael to double death on its finding that he and his cohorts kidnapped George and Christopher for the purpose of extorting ransom. It disbelieved Michael's confession implicating Ferdinand Cortez, and acquitted the latter for failure of the prosecution to prove his guilt beyond reasonable doubt. The trial court likewise acquitted Michael in Criminal Case No. 11062.

Michael, now the appellant, asserts that:

I

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT FOR THE CRIME OF

KIDNAPPING FOR RANSOM OF CHRISTOPHER NEAL LIM DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

II

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT FOR THE CRIME OF KIDNAPPING FOR RANSOM OF ONE GEORGE LIM WITHOUT ANY BASIS IN FACT AND IN LAW.

III

THE TRIAL COURT ERRED IN NOT CONSIDERING THE DEFENSE INTERPOSED BY THE ACCUSED-APPELLANT AND IN GIVING CREDENCE TO THE INCONSISTENT TESTIMONY OF GEORGE LIM.[34]

The appellant is guilty of
kidnapping Christopher
under Article 267 of the
Revised Penal Code.

On the first assignment of error, the appellant avers that the prosecution failed to prove his guilt beyond cavil of doubt for the crime of kidnapping Christopher. George's testimony that the gun and hand grenade[35] were found in the car, under the seat beside the driver is inconsistent with his own statement before the police investigator that the said gun and grenade were found in the appellant's possession; hence, the testimony of George is incredible and barren of probative weight. The case for the prosecution was enfeebled by its failure to present Christopher to testify on his kidnapping and to corroborate the testimony of his father. The failure of the prosecution to present Christopher as a witness raised the presumption that if he had been so presented, he would have testified on matters adverse to the prosecution. For its part, the Office of the Solicitor General contends that the testimony of George, its principal witness, as well as those of its other witnesses, is sufficient to prove, beyond reasonable doubt, that the appellant conspired with three others in kidnapping Christopher for ransom. There was no need for the prosecution to present Christopher to testify on his kidnapping, as his testimony would be merely corroborative of his father's account of events.

The contention of the appellant is barren of merit.

Article 267 of the Revised Penal Code as amended by Republic Act No. 7659 reads:

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:

1. If the kidnapping or detention shall have lasted more than three days.
2. If it shall have been committed simulating public authority.
3. 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.
4. 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. (As amended by RA No. 7659).

For the accused to be convicted of kidnapping, the prosecution is burdened to prove beyond reasonable doubt all the elements of the crime, namely: (a) the offender is a private individual; (b) he kidnaps or detains another, or in any manner deprives the latter of his liberty; (c) the act of detention or kidnapping must be illegal; and (d) in the commission of the offense any of the following circumstances is present: (1) the kidnapping or detention lasts for more than three days; (2) it is committed by simulating public authority; (3) any serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made; or (4) the person kidnapped or detained is a minor, female, or a public officer.[36] If the victim of kidnapping and serious illegal detention is a minor, the duration of his detention is immaterial. Likewise, if the victim is kidnapped and illegally detained for the purpose of extorting ransom, the duration of his detention is immaterial.

The essential elements for this crime is the deprivation of liberty of the victim under any of the above-mentioned circumstances coupled with indubitable proof of intent of the accused to effect the same.[37] There must be a purposeful or knowing action by the accused to forcibly restrain the victim coupled with intent.[38]

Judge Learned Hand once called conspiracy "the darling of the modern prosecutor's nursery." [39] There is conspiracy when two or more persons agree to commit a felony and decide to commit it.[40] Conspiracy as a mode of incurring criminal liability must be proven separately from and with the same quantum of proof as the crime itself. Conspiracy need not be proven by direct evidence. After all, secrecy and concealment are essential features of a successful conspiracy. Conspiracies are clandestine in nature. It may be inferred from the conduct of the accused before, during and after the commission of the crime, showing that they had acted with a common purpose and design.[41] Paraphrasing the decision of the English Court in *Regina v. Murphy*, [42] conspiracy may be implied if it is proved that two or more persons aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their combined acts, though apparently independent of each other, were, in fact, connected and cooperative, indicating a closeness of personal association and a concurrence of sentiment.[43] To hold an accused guilty as a co-principal by reason of conspiracy, he must be shown to have performed an overt act in pursuance or furtherance of the complicity.[44] There must be intentional participation in the transaction with a view to the furtherance of the common design and purpose.[45]

The United States Supreme Court in *Braverman v. United States*, [46] held that the precise nature and extent of the conspiracy must be determined by reference to the agreement which embraces and defines its objects. For one thing, the temporal dimension of the conspiracy is of particular importance. Settled as a rule of law is that the conspiracy continues until the object is attained, unless in the meantime the conspirator abandons the conspiracy or is arrested. There is authority to the effect that the conspiracy ends at the moment of any conspirator's arrest, on the presumption, albeit rebuttable, that at the moment the conspiracy has been thwarted, no other overt act contributing to the conspiracy can possibly take place, at least as far as the arrested conspirator is concerned.[47] The longer a conspiracy is deemed to continue, the greater the chances that additional persons will be found to have joined it. There is also the possibility that as the conspiracy continues, there may occur new overt acts. If the conspiracy has not yet ended, then the hearsay acts and declarations of one conspirator will be admissible against the other conspirators and one conspirator may be held liable for substantive crimes committed by the others.[48]

Each conspirator is responsible for everything done by his confederates which follows incidentally in the execution of a common design as one of its probable and natural consequences even though it was not intended as part of the original design.[49] Responsibility of a conspirator is not confined to the accomplishment of a particular purpose of conspiracy but extends to collateral acts and offenses incident to and growing out of the purpose intended.[50] Conspirators are held to have intended the consequences of their acts and by purposely engaging in conspiracy which necessarily and directly produces a prohibited result that they are in contemplation of law, charged with intending the result.[51] Conspirators are necessarily liable for the acts of another

conspirator even though such act differs radically and substantively from that which they intended to commit.[52] The Court agrees with the ruling of the Circuit Court of Appeals (Second District) per Judge Learned Hand in *United States v. Peoni*[53] "that nobody is liable in conspiracy except for the fair import of the concerted purpose or agreement as he understood it; if later comers change that, he is not liable for the change; his liability is limited to the common purpose while he remains in it." Earlier, the Appellate Court of Kentucky in *Gabbard v. Commonwealth*[54] held that:

The act must be the ordinary and probable effect of the wrongful acts specifically agreed on, so that the connection between them may be reasonably apparent, and not a fresh and independent project of the mind of one of the confederates, outside of or foreign to the common design, and growing out of the individual malice of the perpetrator.

Equally persuasive is the pronouncement of the Circuit Court of Appeals (Second District) in *United States v. Crimms*,[55] that it is never permissible to enlarge the scope of the conspiracy itself by proving that some of the conspirators, unknown to the rest, have done what was beyond the reasonable intendment of the common understanding. This is equally true when the crime which the conspirators agreed upon is one of which they severally might be guilty though they were ignorant of the existence of some of its constitutive facts. Also, while conspirators are responsible for consequent acts growing out of the common design they are not for independent acts growing out of the particular acts of individuals.[56]

In this case, the evidence on record inscrutably shows that the appellant and his three cohorts were armed with handguns; two of them had hand grenades, and all of them had masks over their faces. They gained entry into the Lim residence after overpowering the security guard Ferdinand and the housemaid Julita, and tying their hands behind their backs. One of the masked men remained in the sala, while the three others barged into the bedroom of George and Desiree, and kidnapped George and his ten-year-old son Christopher. The appellant and his cohorts forced father and son to board George's car. The appellant drove the car, dropped off Christopher and his cohorts at Sitio Tupi, and drove on with George in the car towards the direction of Maasim.

The collective, concerted and synchronized acts of the appellant and his cohorts before, during and after the kidnapping constitute indubitable proof that the appellant and his three companions conspired with each other to attain a common objective: to kidnap George and Christopher and detain them illegally. The appellant was a principal by direct participation in the kidnapping of the two victims.

The trial court found the testimony of George straightforward and positive, and entitled to credit and full probative weight.[57] The legal aphorism is that the findings of facts of the trial court, its calibration of the testimonies of witnesses and of their probative weight, its conclusions anchored on its findings are accorded high respect by the appellate court, if not conclusive effect, because of the unique advantage of the trial court of observing at close range the demeanor, conduct and deportment of witnesses as they regale the trial court with their testimonies.[58] It is true that the appellate court is not bound by the findings and conclusions of the trial court if the latter ignored, misunderstood, misapplied or misinterpreted cogent facts and circumstances, which, if considered, would change the outcome of the case.[59] This ruling, however, is inapplicable in the case at bar, since the appellant failed to establish that the trial court erred in this wise.

George testified that when the policemen found the gun and grenade[60] inside his car, the appellant was already at the police station.[61] However, in his September 13, 1994 Affidavit,[62] George stated that the policemen found the gun when the appellant was frisked, while the grenade was spotted under the passenger's seat, beside the driver. This seeming inconsistency between the two statements does not discredit his testimony nor his credibility for the following reasons: (a) it is of judicial knowledge that affidavits being taken ex parte are almost always incomplete and often inaccurate and are generally inferior to the testimony of a witness in open court;[63]

(b) the credibility of George's testimony cannot be impeached by the inconsistent statements contained in his sworn statement because the said statement was not admitted in evidence; and Section 34, Rule 132 of the Revised Rules of Evidence provides that the Court shall not consider evidence which has not been formally offered; besides, George was not confronted with his sworn statement and accorded an opportunity to explain the inconsistency;[64] (c) the inconsistency refers to trivial, minor and collateral matters and not to the substance of his testimony. Such minor inconsistency even enhances its veracity as the variances erase any suspicion of a rehearsed testimony.[65] A truth-telling witness is not always expected to give an error-free testimony, considering the lapse of time and the treachery of human memory.[66]

Neither is the case for the prosecution impaired by the failure of the prosecution to present Christopher as its witness. It bears stressing that George's testimony is corroborated by Julita and the three arresting officers. Besides, case law has it that the testimony of a single witness, if positive and credible, is sufficient to sustain a judgment of conviction.[67] The law does not require the testimonies of at least two witnesses for the conviction of an accused for kidnapping and serious illegal detention. The prosecution has the discretion to decide on who to call as witness during the trial, and its failure to present a particular witness does not give rise to the presumption that evidence willfully suppressed would be adverse if withheld, where the evidence is at the disposal of the appellant and is merely cumulative or corroborative.[68] In this case, the testimony of George is, by itself, independently of Christopher's testimony, sufficient proof of the guilt of the appellant. George had personal knowledge of the facts and circumstances of the kidnapping, as he himself had been kidnapped along with his young son. His failure to testify on where Christopher was detained after the three cohorts of the appellant had alighted from the car with Christopher, and the circumstances surrounding the rescue do not weaken the case of the prosecution, as the said facts and circumstances had occurred after the crime of kidnapping had already been a *fait accompli*.

The prosecution failed to prove
that in kidnapping George and
Christopher, the appellant and
his cohorts intended to extort
ransom.

The trial court convicted the appellant of kidnapping George and Christopher for ransom and sentenced him to double death on its finding that the appellant and his co-accused conspired to extort ransom for the release of the victims. For his part, the appellant contends that the prosecution failed to prove the element of extorting ransom. The appellant argues that he cannot be held liable for kidnapping for ransom, even if after his arrest on September 4, 1994 his co-conspirators actually demanded ransom for Christopher's release. The prosecution failed to prove that he had knowledge of and concurred with the said demand.

The Court agrees with the appellant. The second paragraph of Article 267 of the Revised Penal Code reads:

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.

The provision is pursuant to Rep. Act No. 1084 approved on June 15, 1984 derived from the so-called "Lindbergh Law" in the United States, approved on June 22, 1932, as amended on May 13, 1934.

To warrant the imposition of the death penalty for the crime of kidnapping and serious illegal detention for ransom, the prosecution must prove beyond reasonable doubt the following: (a) intent on the part of the accused to deprive the victim of his liberty; (b) actual deprivation of the victim of his liberty; (c) motive of the accused,

which is extortion of ransom from the victim or any other person. In kidnapping or serious illegal detention for ransom, the purpose of extorting ransom is a qualifying circumstance which must be alleged in the Information and proved by the prosecution as the crime itself by words and overt acts of the accused before, during and after the kidnapping and detention of the victim. Neither actual demand for nor actual payment of ransom is necessary for the crime to be committed.[69] Although kidnapping for a certain purpose is a qualifying circumstance, the law does not require that the purpose be accomplished.[70] Ransom employed in the law is so used in its common or ordinary sense: a sum of money or other thing of value, price, or consideration paid or demanded for redemption of a kidnapped or detained person, a payment that releases from captivity.[71] It may include benefits not necessarily pecuniary which may accrue to the kidnapper or a third person as a condition for the release of the victim.[72]

In this case, the prosecution was able to prove beyond reasonable doubt that the appellant conspired with three others to kidnap the victims. However, it failed to prove that they intended to extort ransom from the victims themselves or from some other person, with a view to obtaining the latter's release. The kidnapping by itself does not give rise to the presumption that the appellant and his co-conspirators' purpose is to extort ransom from the victims or any other person.

The only evidence adduced by the prosecution to prove the element of extorting ransom are the three handwritten letters: the first was received by Desiree on September 4, 1994, while the second and third letters were received by George on September 6 and 9, 1994, respectively.

The handwritten letter received by Desiree on September 4, 1994, "first letter" for brevity, reads:

Para Sa Inyo Mr. & Mrs. Lim,

Una wag na wag kayong gumawa ng hakbang na hindi namin alam o gusto, lalong-lalo na sa pakikipag-usap sa militar o magkooordinate sa militar ay hindi namin gustong mangyari ang ganon mga sistem. Ang pangalawa, wag na wag kayong tumanggap ng negotiator na walang palatandaan na galing sa amin, pakiusap lang yon na dapat ninyong sundin, madidisgrasya ang aming dala kung kayo'y magkakamali ng hakbang.

Maliwanag sana sa inyo ang aming mga salaysay.

Note...

Palatandaan na galing sa aming hakbang ay ito —

MR. MUBARAK II or 2

Sulat man o telephone[73]

The letter received by George on September 6, 1994, "second letter" for brevity, reads:

Ronie Puntuan

Michael Pagalasan

Mr. G. Lim palayain ninyo ang suspek ninyo. Wala silang kasalanan bago natin tapusin ang usapan tatlong milyong piso (3,000,000) katumbas ng kalayaan ng mahal ninyong anak. Paalisin ang mga sundalo. Kailangan ang Black Out News. Huwag kang magkakamali Mr. Lim. Kunting sipyt mo patay ang anak mo. Isang araw lamang ang tagal namin sa inyo.

(Sgd.)[74]

The handwritten letter received by George on September 9, 1994, "third letter" for brevity, reads:

Para sayo Mr. & Mrs. Lim,

Mr. Lim, gusto ko lang ipaabot sayo ang maikli kong kataga. Unang-una, ayaw namin na mga asong militar na makialam. Pangalawa, ayaw namin sa grupo na idamay ang tao na walang-alam. Alalahanin mo mabuti lahat ng mga kataga na iniwan ko sayo, Mr. Lim. Ang taong dinampot ng militar sa purok islam na si Ronie, ang taong yan walang conection (sic) sa grupo, sa madaling usapan, Mr. Lim, alalahanin mo ang anak mo sa oras na tatlong araw na taong yan hindi makalabas. Ang isipin mo ang anak mo hindi rin makalabas hanggat sa mabulok sa lupa (maliwanag).

(Sign)

Palatandaan

MUBARAK II - 2[75]

As gleaned from the three letters, there was no demand for ransom in exchange for George and Christopher's liberty. While there is a demand for ransom of P3,000,000 in the second letter, and a demand for the release of Ronie Puntuan within three days in the third letter, the said demands are in consideration of Christopher's release from custody, and not that of George.

Even then, the prosecution failed to adduce evidence that the second letter demanding ransom in the amount of P3,000,000 for the release of Christopher actually came from the appellant and his co-conspirators. It bears stressing that in the first letter, the kidnappers made it clear to the couple that only those communications, whether by letter or by telephone, bearing the name "MR. MUBARAK II or 2" came from them:

Note...

Palatandaan na galing sa aming hakbang ay ito —

MR. MUBARAK II or 2

Sulat man o telephone[76]

The second letter received by George was signed by an unidentified person. It was not stated that the letter came from "MUBARAK II-2." That the second letter could not have come from the appellant and his cohorts is buttressed by the fact that the third letter, which came from "MUBARAK II-2," does not even mention any demand for ransom in the amount of P3,000,000 for Christopher's release.

The Court can only surmise, but it is possible that the signatory and sender of the second letter could have been acting independently of the appellant and his co-conspirators in order to profit from the kidnapping. It bears stressing that the kidnapping of Christopher and George was already known when the appellant was arrested on September 4, 1994, and the crime had already been reported to the police authorities. Persons other than the co-conspirators of the appellant could have written the letter.

Since there is no evidence that the signatory and sender of the second letter is a co-conspirator of the appellant, the latter is not bound by the said letter, conformably to Section 28, Rule 130 of the Revised Rules of Evidence which reads:

Sec. 28. Admission by third party. — The rights of a party cannot be prejudiced by an act, declaration, or omission of another, except as hereinafter provided.

Even if it is assumed for the nonce that the second letter came from a co-conspirator, the same is not binding on the appellant, absent evidence aliunde that he knew of and concurred with the said ransom demand. It bears stressing that when George received the second letter on September 6, 1994, the appellant had already been arrested and detained. The conspiracy forged by the appellant and his cohorts on or before September 4, 1994 had already ceased, when on the said date, the appellant was arrested by the policemen and detained.[77]

Neither is the third letter admissible in evidence against the appellant to prove that he conspired with others to demand the release of Ronie Puntuan in consideration for Christopher's freedom. The appellant and his cohorts could not have planned to demand ransom for the release of Ronie Puntuan as early as September 4, 1994, the date of the kidnapping: Ronie had not yet been arrested on this date. The appellant was arrested first, and Ronie's detention was only to follow. Furthermore, the third letter was sent to George on September 9, 1994. At that point, the appellant had already been arrested by the policemen, and was already in jail. There is no evidence that while in jail, the appellant had knowledge of and concurred with the said ransom demand. It may be reasonably inferred that the appellant's co-conspirators could have decided to demand Ronie Puntuan's release as a consideration for Christopher's liberty, while the appellant was already languishing in jail. The said demand for ransom was a new and independent project of the appellant's co-conspirators, growing out of their own malice, without any a priori knowledge on the part of the appellant or his post facto concurrence therewith. Indeed, the records show that on September 9, 1994, the very day the co-conspirators sent the third letter to George, Ronie Puntuan through counsel Atty. Jose Jerry L. Fulgar, also the counsel for the appellant, filed a motion with the MTC, praying that he be detained at the General Santos City Jail:

WHEREFORE, premises considered, it is most respectfully prayed that an order be please issued directing that accused Ronie Puntuan be please detained at General Santos City Jail with the instruction that the said accused be separated from his co-accused as desired by the Police Officers.[78]

That the appellant plotted with his co-conspirators to demand the release of Ronie Puntuan as a condition for Christopher's liberty is too far-fetched, considering that Ronie and the appellant had the same lawyer. Ronie Puntuan himself, through his and the appellant's counsel, prayed to the court that he be transferred from Camp Fermin Lira Barracks to the General Santos City Jail.

The appellant is also guilty
of slight illegal detention of
George under Article 268
of the Revised Penal Code.

Aside from convicting the appellant of kidnapping Christopher, the trial court also convicted him of kidnapping George under Article 267 of the Revised Penal Code. But the Office of the Solicitor General contends that the appellant is guilty of another felony: slight illegal detention under Article 268 of the Revised Penal Code, because none of the circumstances enumerated in Article 267 of the Revised Penal Code is present in the kidnapping and detention of George. The prosecution may have failed to prove that the appellant and his co-conspirators intended to extort ransom for George's release; however, as a matter of substantive law, the appellant may be held guilty of two separate crimes, although he and his co-conspirators kidnapped George and Christopher on the same occasion and from the same situs. As a matter of procedural law, the appellant may be convicted of slight illegal detention under the Information for kidnapping for ransom as the former is necessarily included in the latter crime.

The Court agrees with the Office of the Solicitor General. The appellant is guilty of slight illegal detention under Article 268 of the Revised Penal Code which reads:

Art. 268. Slight illegal detention. — The penalty of reclusion temporal shall be imposed upon any private individual who shall commit the crimes described in the next preceding article without the attendance of any of the circumstances enumerated therein.

The same penalty shall be incurred by anyone who shall furnish the place for the perpetration of the crime.

If the offender shall voluntarily release the person so kidnapped or detained within three days from the commencement of the detention, without having attained the purpose intended, and before the institution of

criminal proceedings against him, the penalty shall be prision mayor in its minimum and medium periods and a fine not exceeding seven hundred pesos. (As amended by Republic Act No. 18).

While the epigraph or title of the article mentions only slight illegal detention, kidnapping committed in connection with the lower offense of slight illegal detention is also covered by the article.[79]

The felony has the following essential elements:

1. That the offender is a private individual.
2. That he kidnaps or detains another, or in any other manner deprives him of his liberty.
3. That the act of kidnapping or detention is illegal.
4. That the crime is committed without the attendance of any of the circumstances enumerated in Art. 267.[80]

The crime of slight illegal detention is consummated upon the occurrence of all the elements thereof. "A day," in the last paragraph of Article 268 of the Revised Penal Code, should be understood as twenty-four hours, to be counted from the deprivation of the liberty of the victim until the cessation thereof. As Cuello Calon put it: "El plazo de los tres dias de veinte cuatro horas y desde el momento de la privacion de libertad si en que esta cesare." [81] The rescue or escape of the victim within three days from his kidnapping and detention is not an exempting circumstance. The voluntary release by the offender of the victim within three days from his detention, without the offender having attained his purpose and before the institution of criminal proceedings against him for slight illegal detention, is not an exempting circumstance; it merely serves to reduce the penalty to prision mayor in its maximum and medium periods and a fine not exceeding P700.

In this case, the appellant is a private individual. George had been kidnapped and detained illegally by the appellant and his cohorts, but only for less than a day. George regained his freedom after the appellant had been arrested at the intersection of the national highway and Espina Road. There is no evidence that the appellant and his cohorts kidnapped George for the purpose of extorting ransom for his release. There is likewise no evidence that they inflicted any serious physical injuries on George, or simulated public authority, or threatened to kill him. Furthermore, there is no evidence that the appellant and his cohorts intended to detain the victim for more than three days.

Although the appellant and his co-conspirators kidnapped George and Christopher on the same occasion and from the same situs, the appellant is guilty of two separate crimes: kidnapping under Article 267 of the Revised Penal Code, and slight illegal detention under Article 268 of the Revised Penal Code. The appellant and his co-conspirators were animated by two sets of separate criminal intents and criminal resolutions in kidnapping and illegally detaining the two victims. The criminal intent in kidnapping Christopher was separate from and independent of the criminal intent and resolution in kidnapping and detaining George for less than three days. In the mind and conscience of the appellant, he had committed two separate felonies; hence, should be meted two separate penalties for the said crimes: one for kidnapping under Article 267 of the Revised Penal Code and another for slight illegal detention under Article 268 of the same code.[82] The felony of slight illegal detention is necessarily included in the crime of kidnapping for ransom; thus, the appellant may be convicted of the former crime under an Information for kidnapping for ransom.[83]

PENALTIES FOR THE CRIMES COMMITTED BY THE APPELLANT

The crimes committed by the appellant were aggravated by dwelling,[84] the victims having been kidnapped in their house; by the use of motor vehicle,[85] the victims having been transported by the appellant from their house with the use of George's car; and by a band, the crime having been committed by the appellant and three

co-conspirators.[86] However, the Court cannot consider these aggravating circumstances in determining the proper penalties for the said crimes, because the same were not alleged in the Information as mandated by Sections 8 and 9, Rule 110 of the Revised Rules of Criminal Procedure.[87] Although the said rules took effect after the commission of the crimes by the appellant, the same is favorable to the appellant; hence, should be applied retroactively.[88]

The appellant is not entitled to the privileged mitigating circumstance under the second paragraph of Article 268 of the Revised Penal Code[89] because he did not voluntarily release George within three days from the kidnapping. George was recovered by the policemen at the intersection of the national highway and Espina Road.

The prescribed penalty for kidnapping under Article 267 of the Revised Penal Code as amended by Rep. Act No. 7659 is reclusion perpetua to death. There being no aggravating circumstance or modifying circumstance in the commission of the crime, the proper penalty for the said crime is reclusion perpetua, conformably to Article 63 of the Revised Penal Code. The prescribed penalty for slight illegal detention is reclusion temporal in its full period, with a range of twelve years and one day to twenty years. To determine the minimum of the indeterminate penalty, the penalty shall be reduced by one degree, prision mayor, which has a range of six years and one day to twelve years. The minimum of the indeterminate penalty shall be taken from the full range of the penalty at the discretion of the Court. The maximum of the indeterminate penalty shall be taken from the medium period of reclusion temporal, conformably to Article 64, paragraph 1 of the Revised Penal Code. Hence, the appellant shall suffer an indeterminate penalty of nine years and four months of prision mayor in its medium period as minimum, to sixteen years and five months of reclusion temporal in its medium period as maximum.

CIVIL LIABILITIES OF THE APPELLANT

Although the prosecution adduced testimonial evidence that the appellant and his co-conspirators ransacked the bedroom of the victims and took cash and valuables, the prosecution nevertheless failed to adduce any documentary evidence to prove the amount of the said cash and the value of the jewelry. Hence, Spouses George and Desiree Lim are not entitled to actual damages.

Under Article 2219, paragraph 5 of the New Civil Code, moral damages may be recovered. In this case, the prosecution adduced testimonial evidence that for the crimes committed by the appellant and his co-conspirators, Spouses George and Desiree suffered mental anguish, fright and serious anxiety caused by the kidnapping of George and their son Christopher. Considering the factual milieu in this case, the Court believes that the said spouses are entitled to moral damages in the amount of P100,000 for the kidnapping of Christopher, and the amount of P50,000 for the illegal detention of George. The appellant is also liable to the spouses for exemplary damages in the total amount of P50,000 for the two crimes conformably with current jurisprudence.[90]

IN LIGHT OF ALL THE FOREGOING, the Decision dated September 27, 1997 of the Regional Trial Court of General Santos City, Branch 35, is **AFFIRMED WITH MODIFICATIONS**. Appellant Michael Pagalasan alias "Mike" is found guilty of kidnapping under Article 267, paragraph 4 of the Revised Penal Code and there being no modifying circumstances in the commission of the crime is hereby sentenced to suffer the penalty of reclusion perpetua. Appellant Michael Pagalasan alias "Mike" is found guilty beyond reasonable doubt of the crime of slight illegal detention under Article 268 of the Revised Penal Code and there being no modifying circumstances in the commission of the crime is hereby sentenced to suffer an indeterminate penalty of from nine years and four months of prision mayor in its medium period as minimum to sixteen years and five months of reclusion temporal in its medium period as maximum. The said appellant is ordered to pay to Spouses George and Desiree Lim the total amount of P150,000 as moral damages; and P50,000 as exemplary damages in the two cases.

Costs de oficio.

SO ORDERED.

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

- [1] Penned by Judge Antonio S. Alano.
- [2] Exhibit "H."
- [3] Records, p. 24.
- [4] Exhibit "C."
- [5] Exhibits "A" and "A-1."
- [6] Exhibits "F" and "F-5."
- [7] Exhibit "B."
- [8] See note 3.
- [9] Exhibit "F."
- [10] Exhibits "G" to "G-2-C."
- [11] Exhibit "D." (The signature is illegible.)
- [12] Exhibit "E."
- [13] Records, pp. 21-22.
- [14] Id. at 5-6.
- [15] Id. at 11.
- [16] Id. at 110-112.
- [17] Id. at 113-125.
- [18] Exhibit "K."
- [19] Exhibit "4."
- [20] Records, p. 78.
- [21] Id. at 1.
- [22] Ronie Puntuan was not arraigned.
- [23] Exhibit "H."
- [24] Exhibit "J."
- [25] Records, pp. 194-202; 265-268.
- [26] Id. at 210.
- [27] Id. at 220.

[28] TSN, 9 January 1997, p. 19.

[29] Ibid.

[30] Exhibits "K" and "J."

[31] Exhibit "I."

[32] Exhibit "1."

[33] Records, p. 289.

[34] Rollo, pp. 79-80. The appellant also assails in his brief the admissibility of his confession alleging that Atty. Tomas Falgui was not the competent and independent counsel envisaged in Section 12, paragraph 1 of the 1987 Constitution. He avers that the said counsel was not of his own choice and was merely foisted on him by police investigator SPO4 Recy Aniversario. He was forced by policemen to execute his confession. The trial court erred in using his extrajudicial confession as species of proof in convicting him of kidnapping for ransom. The Office of the Solicitor General, for its part, contends that there is no need for the Court to resolve the issue, as the appellant's extrajudicial confession is merely corroborative of George's testimony, the absence of which cannot in any way affect the prosecution's case. The trial court, in fact, stated in its decision that even without the extrajudicial confession of the appellant, the other evidence of the prosecution by themselves constituted proof beyond reasonable doubt of the guilt of the appellant of the crime charged.

The Court agrees with the Office of the Solicitor General that in convicting the appellant of kidnapping for ransom of George and Christopher, it relied on the collective testimonies of George and the other witnesses of the prosecution and on the statement of Julita Sarno, the truth of the contents of which was stipulated on by the prosecution and the appellant. The other issues raised by the appellant in his brief may be resolved by the Court independently of appellant's confession. Hence, there is no need for the Court to still delve into and resolve the issue of the admissibility of the appellant's confession.

[35] Exhibits "A" and "B."

[36] *People v. Salimbago*, 314 SCRA 282 (1999).

[37] *People v. Borromeo*, 323 SCRA 547 (2000).

[38] *People v. Soverano*, 281 SCRA 438 (1997).

[39] *Harrison v. United States*, 7 F.2d. 259 (1925).

[40] Article 8, Revised Penal Code.

[41] *People v. Quilaton*, 324 SCRA 670 (2000).

[42] 172 Eng. Rep. 502 (1837).

[43] *People v. Del Rosario*, 305 SCRA 740 (1999).

[44] *People v. Elijorde*, 306 SCRA 188 (1999).

[45] *People v. Del Rosario*, *supra*.

[46] 87 L.ed. 23 (1942).

[47] 22A Corpus Juris Secundum, Conspiracy, p. 1150; *US v. Eng*, 241 F.2d. 157 (1957).

[48] Section 30, Rule 130, Revised Rules of Evidence.

[49] 15A Corpus Juris Secundum, Conspiracy, p. 828.

[50] Id.

[51] Ingram v. United States, 259 F.2d. 886 (1958).

[52] Pring v. Court of Appeals, 138 SCRA 185 (1985).

[53] 100 F.2d. 401 (1938).

[54] 236 SW 942 (1922).

[55] 123 F.2d. 271 (1941).

[56] Martin v. State, 8 So. 23 (1890).

[57] Records, p. 287.

[58] People v Ramos,. G.R. No. 142577, December 27, 2002.

[59] People v. Realin, 301 SCRA 495 (1999).

[60] Exhibits "A" and "B."

[61] TSN, 7 February 1996, p. 37 (George Lim).

[62] Records, p. 5.

[63] People v. Silvestre, 307 SCRA 68 (1999).

[64] People v. De Guzman, 288 SCRA 346 (1998).

[65] People v. Khor, 307 SCRA 295 (1999).

[66] People v. Ebrada, 296 SCRA 353 (1998).

[67] People v. Barellano, 319 SCRA 567 (1999).

[68] People v. Barellano, supra.

[69] See note 36.

[70] 1 Am.Jur.2d Abduction and Kidnapping, p. 199.

[71] People v. Akiran, 18 SCRA 239 (1966).

[72] United States v. Cleveland, 56 F.Supp. 890 (1944).

[73] Exhibit "C," p. 199 (underscoring supplied).

[74] Id. at 200.

[75] Exhibit "E," p. 202 (underscoring supplied).

[76] See note 66.

[77] 22A C.J.S. 1150; US v. Eng, 241 F.2d 157 (1957).

[78] Records, p. 22.

[79] Regalado, Criminal Law Conspectus, 2000 ed., p. 493 (emphasis supplied).

[80] Reyes, Revised Penal Code, Vol. II, 2001 ed., p. 543.

[81] Cuello Calon, Derecho Penal, Book II, 1961 ed., p. 649.

[82] The appellant is not guilty of a continuous crime for his overt acts of kidnapping Christopher and George. For a continuous crime to be committed, there should be separate acts performed during a period of time; unity of penal provisions infringed upon or violated; and unity of criminal intent or purpose; which means that two or more violations of the same penal provision are united in one and the same intent leading to the preparation of the same criminal purpose or aim. (Cuello Calon, Derecho Penal, Vol. II, p. 521, cited in *People v. Zapata*, 88 Phil. 688 (1951).

[83] SEC. 4. Judgment in case of variance between allegation and proof. — When there is variance between the offense charged in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved.

SEC. 5. When an offense includes or is included in another. — An offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitute the latter. And an offense charged is necessarily included in the offense proved, when the essential ingredients of the former constitute or form part of those constituting the latter. (Rule 120, Sections 4 and 5, Revised Rules of Criminal Procedure.)

[84] Article 14, paragraph 3, Revised Penal Code.

[85] Article 14, paragraph 20, Revised Penal Code.

[86] Article 14, paragraph 6, Revised Penal Code.

[87] Sec. 8. 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.

Sec. 9. Cause of the accusation. — The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

[88] *People v. Garcia*, G.R. No. 145505, March 14, 2003.

[89] If the offender shall voluntarily release the person so kidnapped or detained within three days from the commencement of the detention, without having attained the purpose intended, and before the institution of criminal proceedings against him, the penalty shall be prision mayor in its minimum and medium periods and a fine not exceeding 700 pesos. (As amended by Rep. Act No. 18, approved Sept. 5, 1946.)

[90] *People v. Catubig*, 363 SCRA 621 (2001).

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