

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RONALD A.K.A “ROLAND” GARCIA Y FLORES,[] RODANTE ROGEL Y ROSALES, ROTCHEL LARIBA Y DEMICILLO, AND GERRY B. VALLER, ACCUSED-APP...

G.R. Nos. 133489 & 143970. January 15, 2002

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PER CURIAM:

In Crim. Case No. Q-96-68049 accused-appellants Ronald a.k.a Roland Garcia y Flores, Rodante Rogel y Rosales, Rotchel Lariba y Demicillo and Gerry B. Valler, along with a certain Jimmy Muit, were charged with and convicted of kidnapping for ransom and were sentenced each to death, except aforementioned Jimmy Muit who has remained at large, for obvious reasons, and to indemnify their victim Romualdo Tioleco P200,000.00 and to pay the costs.[1]

In a related case, Crim. Case No. Q-96-68050, which was decided jointly with Crim. Case No. Q-96-68049, accused-appellants Rotchel Lariba and Rodante Rogel were also found guilty of illegal possession of firearms and ammunition and each sentenced to an indeterminate prison term of four (4) years, nine (9) months and eleven (11) days of prision correccional as minimum, to eight (8) years, eight (8) months and one (1) day of prision mayor as maximum, and to pay a fine of P30,000.00 plus the costs.[2] No notice of appeal[3] was filed in this criminal case; nonetheless, for reasons herein below stated, we take cognizance of the case.

Atty. Romualdo Tioleco was jogging alone at Gilmore Avenue, New Manila, Quezon City, at about 5:30 o'clock in the morning of 5 October 1996.[4] He was heading towards 4th Avenue when he noticed a blue car parked at the corner of this street.[5] As he was about to cross 4th Avenue, the car lurched towards him and stopped.[6] Two (2) men quickly alighted from the car.[7] One of them pointed a gun at Atty. Tioleco while the other hit his back and pushed him into the back seat of the car.[8] Once inside, he saw two (2) other men, one on the driver's seat and the other on the back seat directly behind the driver.[9] He found out later the identities of the driver whom he undoubtedly recognized during the abduction to be accused-appellant Gerry Valler, and of the other person on the passenger seat behind Valler as accused-appellant Roland “Ronald” Garcia.[10] He described the man who disembarked from the car and who pushed him inside to be 5'5” or 5'6” in height, medium built, and the other, who threatened him with a gun, at 5'4” or 5'5” in height, dark complexioned and medium built although heftier than the other.[11] These two (2) persons have since the commission of the crime have remained at large.

While inside the car Atty. Tioleco was made to crouch on the leg room.[12] As it sped towards a destination then unknown to the victim, the men on board feigned to be military men and pestered him with the accusation of being a drug pusher and the threat of detention at Camp Crame.[13] As they were psyching him down, “they started putting blindfold on [him] and packaging tape on [his]face and handcuffed [him] on the back of [his] body.”[14] His eyeglasses were taken off “when they were putting blindfold on [him] x x x.”[15] Then they divested him of his other personal belongings, e.g., his keys, wristwatch, etc.[16]

The car cruised for thirty (30) to forty-five (45) minutes.[17] When it finally stopped, Atty. Tioleco was told to alight, led to a house and then into a room.[18] He remained blindfolded and handcuffed throughout his ordeal and made to lie down on a wooden bed.[19] During his captivity, one of the kidnappers approached him and told him that he would be released for a ransom of P2 million[20] although the victim bargained for an amount between P50,000.00 and P100,000.00 which according to him was all he could afford. While still under detention, one of his abductors told him that they had mistaken him for a Chinese national and promised his release without ransom.[21] But he was just being taken for a ride since the kidnappers had already begun contacting his sister Floriana Tioleco.

Floriana was at her office when her mother called up about her brother's kidnapping.[22] Floriana hurried home to receive a phone call from a person who introduced himself as "Larry Villanueva" demanding P3 million for Atty. Tioleco's ransom.[23] Several other calls to Floriana were made during the day and in one of those calls the ransom was reduced to P2 million.[24] Around 7:00 o'clock in the evening of the same day, 5 October 1996, P/Sr. Insp. Ronaldo Mendoza of the Presidential Anti-Crime Commission (PACC) arrived at Floriana's house to monitor her brother's kidnapping upon the request of her friends.[25] Floriana received the following day about eight (8) phone calls from the kidnappers still demanding P2 million for her brother's safe release.[26]

By the end of the day on 7 October 1996 Floriana was able to raise only P71,000.00,[27] which she relayed to the kidnappers when they called her up.[28] They finally agreed to set her brother free upon payment of this amount, which was short of the original demand.[29] The pay-off was scheduled that same day at around 8:00 o'clock in the evening at Timog Avenue corner Scout Tuazon in Quezon City near the "Lighthouse" and "Burger Machine." [30] Upon instruction of P/Sr. Insp. Mendoza, Floriana together with only two (2) female friends proceeded to this meeting place.[31] They reached there at 8:40 o'clock in the evening and waited for the kidnappers until about 10:30 or 11:00 o'clock that evening.[32]

Meanwhile, P/Sr. Insp. Mendoza relayed the information about the pay-off and other relevant facts to P/Chief Insp. Gilberto Cruz at the PACC headquarters.[33] With the information from P/Sr. Insp. Mendoza, P/Chief Insp. Cruz, together with P/Chief Insp. Winnie Quidato and Paul Tucay with P/Sr. Insp. Nilo Pagtalunan, immediately went to Timog Avenue corner scout Tuazon near the "Lighthouse" and "Burger Machine" in Quezon City.[34] They surveyed this site and saw a blue Toyota Corona with three (3) persons on board suspiciously stopping about five (5) meters from Floriana and her friends and remaining there for almost two (2) hours.[35]

Floriana and her friends left the "pay-off site" after waiting for two (2) hours more or less;[36] so did the blue Toyota Corona almost simultaneously.[37] No payment of ransom took place.[38] 3 P/Chief Insp. Cruz then ordered P/Chief Insp. Quidato and Tucay and their subordinates to tail this car which they did all the way to the De Vega Compound at Dahlia Street in Fairview, Quezon City.[39] This compound consisted of one bungalow house and was enclosed by a concrete wall and a steel gate for ingress and egress.[40] They posted themselves thirty (30) to forty (40) meters from the compound to reconnoiter the place.[41] Meanwhile, the kidnappers explained in a phone call to Floriana that they had aborted the pay-off on account of their belief that her two (2) companions at the meeting place were police officers.[42] But she assured them that her escorts were just her friends.[43]

At around 1:00 o'clock in the afternoon of 8 October 1996 Floriana received a call from the kidnappers at her house[44] who wanted to set another schedule for the payment of the ransom money an hour later or at 2:00 o'clock.[45] This time the rendezvous would be in front of McDonald's fastfood at Magsaysay Boulevard in Sta. Mesa, Manila.[46] She was told by the kidnappers that a man would go near her and whisper "Romy" to whom she would then hand over the ransom money. Floriana agreed to the proposal. With her two (2) friends, she rushed to the place and brought with her the P71,000.00.[47] About this time, the same blue Toyota Corona seen at the

first pay-off point left the De Vega Compound in Fairview.[48] A team of PACC operatives under P/Chief Insp. Cruz again stationed themselves in the vicinity of McDonald's.[49]

Floriana arrived at the McDonald's restaurant and waited for a few minutes.[50] Not long after, the blue Toyota Corona was spotted patrolling the area.[51] The blue car stopped and, after dropping off a man, immediately left the place. The man approached Floriana and whispered "Romy" to her.[52] She handed the money to him who took it.[53] Floriana identified this man during the trial as accused-appellant Roland (Ronald) Garcia.[54]

The PACC operatives tried to follow the blue car but were prevented by traffic.[55] They were however able to catch up and arrest Garcia who was in possession of the ransom money in the amount of P71,000.00.[56] They brought him inside their police car and there apprised him of his custodial rights.[57] Garcia informed the PACC operatives that Atty. Tioleco was being detained inside the De Vega compound in Fairview.[58] With this information, P/Chief Insp. Cruz ordered P/Chief Insp. Tucay and Quidato who had been posted near the compound to rescue the victim.[59]

The two (2) PACC officers, together with their respective teams, entered the compound and surged into the bungalow house where they saw two (2) men inside the living room.[60] As one of the PACC teams was about to arrest the two (2) men, the latter ran towards a room in the house where they were about to grab a .38 cal. revolver without serial number loaded with six (6) rounds of ammunitions and a .357 cal. revolver with six (6) live ammunitions.[61] The other PACC team searched the house for Atty. Tioleco and found him in the other room.[62] The two (2) men were arrested and informed of their custodial rights. They were identified in due time as accused- appellants Rodante Rogel and Rotchel Lariba.[63]

P/Chief Insp. Cruz arrived at the De Vega compound[64] and coordinated with the proper barangay authorities.[65] While the PACC operatives were completing their rescue and arrest operations, the house phone rang.[66] Accused-appellant Rogel answered the call upon the instruction of P/Chief Insp. Cruz.[67] Rogel identified the caller to be accused-appellant Valler who was then driving towards the De Vega compound.[68] In the same phone call, Valler also talked with accused-appellant Garcia to inquire about the ransom money.[69]

Then a blue Toyota Corona arrived at the De Vega compound.[70] Valler alighted from the car and shouted at the occupants of the house to open the gate.[71] Suspicious this time, however, he went back to his car to flee.[72] But the PACC operatives pursued his car, eventually subduing and arresting him.[73] The operations at the De Vega Compound ended at 8:30 in the evening and the PACC operatives, together with Atty. Tioleco and the accused-appellants, left the De Vega compound and returned to their headquarters in Camp Crame, Quezon City.[74] The ransom money was returned intact to Atty. Tioleco.[75]

When arraigned, accused-appellants Ronald "Roland" Garcia, Rodante Rogel, Rotchel Lariba and Gerry Valler pleaded not guilty to the charge of kidnapping for ransom in Crim. Case No. Q-96-68049, although during the trial Garcia admitted complicity in the abduction of Atty. Tioleco and in the receipt of the ransom money from the victim's sister Floriana.[76] In Crim. Case No. Q-96-68050 for illegal possession of firearms and ammunition, Rodante Rogel and Rotchel Lariba also pleaded not guilty.[77]

During the trial, Gerry Valler denied being part of the kidnapping for ransom and asserted that he was at the De Vega compound where he was arrested on 8 October 1996 solely to pay for the fighting cocks he had bought from one Jimmy Mui, alleged owner of the compound.[78] Accused Ronald Garcia, despite his admission to the crime, nevertheless disowned any role in planning the crime or knowing the other accused-appellants since his cohorts were allegedly Jimmy Mui and two (2) others known to him only as "Tisoy" and "Tony." [79] He also alleged that it was Jimmy Mui's red Toyota car that was used in the crime.[80] Explaining their presence at the De Vega compound at the time they were arrested, Rogel claimed that he was employed as a helper for breeding cocks in

this compound[81] while Lariba's defense focused on an alleged prior agreement for him to repair Jimmy Muit's car.[82]

Accused-appellants filed separate appellants' briefs. In the brief submitted by the Public Attorneys Office in behalf of accused-appellants Garcia, Rogel and Lariba, they argue that the crime of kidnapping for ransom was not committed since Atty. Tioleco was released from detention by means of the rescue operation conducted by the PACC operatives and the ransom money subsequently recovered.[83] They conclude that their criminal liability should only be for slight illegal detention under Art. 268, of The Revised Penal Code. Accused-appellants Rogel and Lariba further assert that they could not be held guilty of illegal possession of firearms and ammunition since neither was in complete control of the firearms and ammunition that were recovered when they were arrested and no evidence was offered to prove responsibility for the presence of firearms and ammunition inside the room.[84]

The brief filed for accused-appellant Gerry B. Valler asserts the same defense he made at the trial that he was at the De Vega compound only to pay his debts to Jimmy Muit,[85] arguing that Atty. Tioleco did not have the opportunity to really recognize him so that his identification as the driver of the car was tainted by police suggestion, and that P/Chief Insp. Cruz' testimony is allegedly replete with inconsistencies that negate his credibility.[86]

Encapsulated, the issues herein focus on (a) the "ransom" as element of the crime under Art. 267 of The Revised Penal Code, as amended; (b) the sufficiency of the prosecution evidence to prove kidnapping for ransom; (c) the degree of responsibility of each accused-appellant for kidnapping for ransom; and, (d) the liability for illegal possession of firearms and ammunition under RA 8294, amending PD 1866.

First. We do not find any quantum of merit in the contention that kidnapping for ransom is committed only when the victim is released as a result of the payment of ransom. In *People v. Salimbago*[87] we ruled -

No specific form of ransom is required to consummate the felony of kidnapping for ransom so long as it was intended as a bargaining chip in exchange for the victim's freedom. In municipal criminal law, ransom refers to the money, price or consideration paid or demanded for redemption of a captured person or persons, a payment that releases from captivity. Neither actual demand for nor actual payment of ransom is necessary for the crime to be committed. It is enough if the crime was committed "for the purpose of extorting ransom." Considering therefore, that the kidnapping was committed for such purpose, it is not necessary that one or any of the four circumstances be present.

So the gist of the crime, as aptly stated in American jurisprudence from which was derived the crime of kidnapping for ransom,[88] is "not the forcible or secret confinement, imprisonment, inveiglement, or kidnapping without lawful authority, but x x x the felonious act of so doing with intent to hold for a ransom the person so kidnapped, confined, imprisoned, inveigled, etc." [89]

It is obvious that once that intent is present, as in the case at bar, kidnapping for ransom is already committed. Any other interpretation of the role of ransom, particularly the one advanced by accused-appellants, is certainly absurd since it ironically penalizes rescue efforts of kidnap victims by law enforcers and in turn rewards kidnappers for the success of police efforts in such rescue operations. Moreover, our jurisprudence is replete with cases, e.g., *People v. Chua Huy*,[90] *People v. Ocampo*[91] and *People v. Pingol*,[92] wherein botched ransom payments and effective recovery of the victim did not deter us from finding culpability for kidnapping for ransom.

Second. Issues of sufficiency of evidence are resolved by reference to findings of the trial court that are entitled to the highest respect on appeal in the absence of any clear and overwhelming showing that the trial court neglected, misunderstood or misapplied some facts or circumstances of weight and substance affecting the result of the case.[93] Bearing this elementary principle in mind, we find enough evidence to prove beyond reasonable doubt

the cooperation of all accused- appellants in the kidnapping for ransom of Atty. Tioleco.

Truly incriminating is the judicial confession of accused-appellant Garcia of his participation in the commission of the crime. He admitted that he took part in actually depriving Atty. Tioleco of his liberty^[94] and in securing the ransom payment from Floriana Tioleco.^[95] He could not have been following mechanically the orders of an alleged mastermind, as he claims, since by his own admission he was neither threatened, forced or intimidated to do so^[96] nor mentally impaired to resist the orders.^[97] In the absence of evidence to the contrary, he is presumed to be in full possession of his faculties and conscience to resist and not to do evil.

We cannot also give credence to Garcia's asseveration that the persons still at large were his co- conspirators. This posture is a crude attempt to muddle the case as discerned by the trial court from his demeanor when he testified -

Because he had been caught in flagrante delicto, Roland Garcia admitted his participation in the crime charged. From his testimony, however, there appears a veiled attempt to shield Gerry Valler from conviction. First, Garcia claimed that the car they used was reddish in color (TSN, October 20, 1997, pp. 9, 19 & 20). Then he added that the owner of the car was Jimmy Muit and not Gerry Valler (TSN, October 20, 1997, p. 9). Next, he said that there was no conspiracy and he did not know then Gerry Valler, Rodante Rogel and Rogel Lariba until they were placed together in Camp Crame (Ibid., p. 22).

The Court however cannot simply accept this part of his story. To begin with, his repeated reference to the color of the car as reddish is quite suspicious. He conspicuously stressed the color of the car in three (3) instances without being asked. The transcripts of the notes bear out the following:

ATTY. MALLABO: Did you use any vehicle while you were there at Gilmore Street?

A:

Yes, sir.

Q:

What kind of vehicle was that?

A:

Jimmy's car, a Toyota, somewhat reddish in color x x x x

Q:

By the way, what car did you use when you were roaming around Quezon City on October 6 in the evening?

A:

Jimmy's car, which was somewhat red in color. Reddish.

Q:

And what car did you use the following day when you took the bag? The same car?

A:

The same car, the Toyota car which was somewhat reddish in color.

Such a clear attempt to mislead and deceive the Court with such unsolicited replies cannot succeed. On October 8, 1996, in the vicinity of McDonald's, he was seen alighting from the blue Toyota Corona (TSN, March 17, 1997, pp. 28-32). As earlier pointed out, the blue Toyota Corona car is owned by Gerry Valler who

was the one driving it in the afternoon of the same day to the De Vega compound (TSN, April 28, 1997, pp. 64-67; and November 10, 1997, pp. 22-28). Gerry Valler was also identified by Atty. Tioleco as the driver of the dark blue car used in his abduction (TSN, April 10, 1997, pp. 10-11; and TSN, April 14, 1997, pp. 21-27).[98]

Accused-appellant Valler's profession of innocence also deserves no consideration. Various circumstances indubitably link him to the crime. For one, he was positively identified by Atty. Tioleco to be the driver of the dark blue Toyota car used in the abduction on 5 October 1997, which car was seen again twice during the occasions for ransom payment. This was followed by a telephone call made by Valler to the house where Atty. Tioleco was being detained and in fact talked with accused-appellant Rogel to tell him that he was coming over[99] and with accused-appellant Garcia to ask from him about the ransom supposedly earlier collected.[100] Given the overwhelming picture of his complicity in the crime, this Court cannot accept the defense that he was only trying to pay his debts to Jimmy Mui when he was arrested.

We find nothing substantive in Valler's attempt to discredit the victim's positive identification of him on the trifling observation that Atty. Tioleco was too confused at the time of his abduction to recognize accused-appellant's physical features accurately. It is truly evident from the testimony of Atty. Tioleco that his vision and composure were not impaired by fear or shock at the time of his abduction and that he had the opportunity to see vividly and remember unerringly Valler's face -

Q:

Where were these two unidentified men positioned inside the car?

A:

One of them was at the driver's seat and the other one was immediately behind the driver's seat.

Q:

Now, could you please describe to this honorable court the person who was seated on the driver's seat?

A:

He has a dark complexion, medium built and short hair at that time.

Q:

If you see that person again will you be able to identify him sir?

A:

Yes, sir.

Q:

And if he's present in the courtroom will you be able to point to him?

A:

Yes, sir.

Q:

At this juncture your honor we would like to request with the court's permission the witness be allowed to step down from the witness stand and approach the person just described and tap him on his shoulder.

COURT INTERPRETER: Witness stepping down from the witness stand and approached the person he had just described and tapped him on his shoulder and who when asked to identify himself he gave his name as Gerry Valler.[101]

Even on cross-examination, Atty. Tioleco was steadfast in his reference to Gerry Valler -

Q:

What stage was that when your eyeglasses were grabbed by these persons inside the car?

A:

That was after the other accused entered the vehicle and the car zoomed away, that was when they were putting a blindfold on me, that was the time when they started removing my eyeglasses, sir x x x x[102]

Q:

So when you were inside the car, you had difficulty seeing things inside the car because you were not wearing your eyeglasses?

A:

No, sir, that is not correct, because they were close, so I can see them x x x x[103]

Q:

And as a matter of fact, it was the PACC operatives who informed you that the person being brought in was also one of the suspects, am I correct?

A:

That is not correct, sir. They said that, but I know that is one of the suspects because he was the person who was driving the vehicle at the time I got kidnapped. So I know him.

Q:

So you saw him at the time you were kidnapped that is why you were able to identify him when he was ushered in?

A:

When he was brought into the kitchen I saw him. When I saw him, I knew he was one of the suspects.

Q:

When you saw him, he was in handcuffs?

A:

Yes, sir, that is correct.

Q:

You were informed that his name is Gerry Valler?

A:

When he went inside the house and the kitchen, they started interviews, that is where I learned his name, Gerry Valler x x x x[104]

Q:

But I thought that when you were pushed inside the car, you were pushed head first, how can you easily describe this person driving the vehicle and the person whom you now identified as Roland Garcia?

A:

Even if they pushed my head, there was an opportunity for me to see the face of the accused.[105]

As we held in *People v. Candelario*, [106] it is the most natural reaction for victims of crimes to strive to remember the faces of their assailants and the manner in which the crimes are committed. There is no reason to disbelieve Atty. Tioeleco's claim that he saw the faces of his abductors considering that they brazenly perpetrated the crime in broad daylight without donning masks to hide their faces. Besides, there was ample opportunity for him to discern their features from the time two (2) of his kidnappers approached and forced him into their car and once inside saw the other two (2), including Gerry Valler, long enough to recall them until he was blindfolded.

The victim's identification of accused-appellant Valler is not any bit prejudiced by his failure to mention Valler's name in his affidavit. It is well-settled that affidavits are incomplete and inaccurate involving as they do mere passive mention of details anchored entirely on the investigator's questions.[107] As the victim himself explained

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Q: Now, in Question No. 5 and I quote x x x Why did you not identify here the name of the driver as one Gerry Valler?

A: Because they never asked me the name. They just asked me to narrate what happened. Had they asked me the name, I could have mentioned the name.[108]

In light of the positive identification by the victim of accused-appellant Valler, the latter's denial must fall absolutely. Clearly, positive identification of the accused where categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying on the matter prevails over his defense.[109] When there is no evidence to show any dubious reason or improper motive why a prosecution witness would testify falsely against an accused or falsely implicate him in a heinous crime, the testimony is worthy of full faith and credit.[110]

Finally, we do not see any merit in Valler's enumeration of alleged inconsistencies in the testimony of P/Chief

Insp. Gilbert Cruz concerning (a) the time and place of meeting between the PACC operatives and Floriana Tioleco; (b) the schedule of the first and second ransom pay-offs; (c) the number of Floriana Tioleco's companions during the aborted first pay-off; (d) the number of occupants in the blue Toyota car; and, (e) the PACC operatives' recognition of Floriana Tioleco during the ransom payments. This is an argument that clutches at straws. For one, the purported inconsistencies and discrepancies involve estimations of time or number, hence, the reference thereto by the witness would understandably vary. Furthermore, they are too minor to warrant the reversal of the judgment of conviction. They do not affect the truth of the testimonies of witnesses nor do they discredit their positive identification of accused-appellants. On the contrary, such trivial inconsistencies strengthen rather than diminish the prosecution's case as they erase suspicion of a rehearsed testimony and negate any misgiving that the same was perjured.[111]

We also do not believe that accused-appellants Rogel and Lariba are innocent bystanders in this case. It taxes the mind to believe Rogel's defense that as a caretaker of the place where Atty. Tioleco was detained, he observed nothing unusual about this incident. An innocent man would have immediately reported such dastardly act to the authorities and refused to sit idly by, but a guilty person in contrast would have behaved otherwise as Rogel did.[112]

Accused-appellant Lariba's defense is similarly incredible. He joins Gerry Valler in proclaiming that he too was allegedly at the wrong place at the wrong time for the wrong reason of just wanting to tune up the car of Jimmy Muit. But for all these assertions, he failed to produce satisfactory evidence that he was indeed there to repair such car. Of all the days he could have discharged his work, he chose to proceed on 8 October 1997 when the kidnapping was in full swing. There was even no car to repair on the date that he showed up. Like the submission of Rogel, Lariba's defense falls completely flat for he could have so easily observed the kidnapping of Atty. Tioleco that was taking place in the house of Jimmy Muit.

In sum, accused-appellants cannot rely upon the familiar phrase "reasonable doubt" for their acquittal. As demonstrated by the fastidious references of Valler to alleged inconsistencies of P/Chief Insp. Cruz, not all possible doubt is reasonable since in the nature of things everything relating to human affairs is open to some imaginary dilemma. As we have said in *People v. Ramos*,[113] "it is not such a doubt as any man may start by questioning for the sake of a doubt; nor a doubt suggested or surmised without foundation in facts or testimony, for it is possible always to question any conclusion derived from testimony. Reasonable doubt must arise from the evidence adduced or from the lack of evidence, and it should pertain to the facts constitutive of the crime charged." Accused-appellants have not shown the presence of such fatal defects in this case. Clearly, all the elements and qualifying circumstances to warrant conviction for the crime of kidnapping for ransom and serious illegal detention have been established beyond reasonable doubt.

Third. We go into the criminal liability of each accused-appellant. There is no doubt that Gerry Valler and Ronald Garcia are principals by direct participation and co-conspirators in the kidnapping for ransom of Atty. Tioleco. Their respective participation in perpetrating the crime cannot be denied. As regards their liability as co-conspirators, we find the same to have also been shown beyond reasonable doubt. Conspiracy exists when two or more persons come to agreement concerning the commission of a felony and decide to commit it for which liability is joint.[114] Proof of the agreement need not rest on direct evidence as the felonious covenant itself may be inferred from the conduct of the parties before, during, and after the commission of the crime disclosing a common understanding between them relative to its commission.[115] The acts of Valler and Garcia in coordinating the abduction, collection of ransom and detention of their victim indubitably prove such conspiracy.

Lariba and Rogel were caught inside the house where Atty. Tioleco was detained. P/Chief Insp. Paul Tucay testified on their involvement -

Q:

Okey, when you stormed the place, do you know where these two men were?

A:

The two men were seated at the sala during that time, sir.

Q:

They were seated at the sala when you entered the place?

A:

Yes, sir.

Q:

What happened after entering the gate?

A:

We announced that we were police officers of the Presidential Anti-Crime Commission.

Q:

Do you know what happened with these two men during that time?

A:

They were caught by surprise and they were about to run to the first room.

Q:

What happened when these two men who were at the living room or at the sala, when they ran to the first room?

A:

We surprised them and cornered them in that room.

Q:

What about the team of Major Quidato, where did they proceed?

A:

Major Quidato's team proceeded to the second room where Atty. Tioleco was being kept.

Q:

According to you, you gave chase to these two men who were earlier in the sala and they ran upon your announcement that you were police officers?

A:

When we cornered them in that room, they were about to grab the two revolvers loaded with six (6) rounds of ammunitions.

Q:

Where were these revolvers placed, Mr. Witness?

A:

They were placed on top of a cabinet, which, when you enter in the room, is placed on the right side of the room.

Q:

How many revolvers were you able to recover?

A:

There were two revolvers.

Q:

And can you please describe these revolvers to this Honorable Court?

A:

Yes, sir x x x x The revolvers confiscated on that raid are one (1) .38 caliber revolver without serial number loaded with 6 rounds of ammunition, live ammo, one .357 also loaded with 6 rounds of live ammunitions.[116]

Correlating the above testimony with the other evidence, it is clear that at the time Lariba and Rogel were caught, Atty. Tioleco had already been rendered immobile with his eyes blindfolded and his hands handcuffed. No evidence exists that he could have gone elsewhere or escaped. At the precise moment of their apprehension, accused-appellants Lariba and Rogel were unarmed although guns inside one of the rooms of the house were available for their use and possession.

Assessing these established circumstances in the manner most favorable to Lariba and Rogel, we conclude that they were merely guarding the house for the purpose of either helping the other accused-appellants in facilitating the successful denouement to the crime or repelling any attempt to rescue the victim, as shown by the availability of arms and ammunition to them. They thus cooperated in the execution of the offense by previous or simultaneous acts by means of which they aided or facilitated the execution of the crime but without any indispensable act for its accomplishment. Under Art. 18 of The Revised Penal Code, they are mere accomplices.

In *People v. De Vera*[117] we distinguished a conspirator from an accomplice in this manner -

Conspirators and accomplices have one thing in common: they know and agree with the criminal design. Conspirators, however, know the criminal intention because they themselves have decided upon such course of

action. Accomplices come to know about it after the principals have reached the decision, and only then do they agree to cooperate in its execution. Conspirators decide that a crime should be committed; accomplices merely concur in it. Accomplices do not decide whether the crime should be committed; they merely assent to the plan and cooperate in its accomplishment. Conspirators are the authors of a crime; accomplices are merely their instruments who perform acts not essential to the perpetration of the offense.

In the instant case, we cannot deny knowledge on the part of Lariba and Rogel that Valler and Garcia had kidnapped Atty. Tioleco for the purpose of extorting ransom and their cooperation to pursue such crime. But these facts without more do not make them co-conspirators since knowledge of and participation in the criminal act are also inherent elements of an accomplice.[118] Further, there is no evidence indubitably proving that Lariba and Rogel themselves participated in the decision to commit the criminal act. As the evidence stands, they were caught just guarding the house for the purpose of either helping the other accused- appellants in facilitating the success of the crime or repelling any attempt to rescue the victim as shown by the availability of arms and ammunition to them. These items contrast starkly with the tried and true facts against Valler and Garcia that point to them as the agents ab initio of the design to kidnap Atty. Tioleco and extort ransom from his family.

Significantly, the crime could have been accomplished even without the participation of Lariba and Rogel. As stated above, the victim had been rendered immobile by Valler and Garcia before the latter established contacts with Floriana Tioleco and demanded ransom. The participation of Lariba and Rogel was thus hardly indispensable. As we have held in *Garcia v. CA*, “in some exceptional situations, having community of design with the principal does not prevent a malefactor from being regarded as an accomplice if his role in the perpetration of the homicide or murder was, relatively speaking, of a minor character.”[119] At any rate, where the quantum of proof required to establish conspiracy is lacking and doubt created as to whether the accused acted as principal or accomplice, the balance tips for the milder form of criminal liability of an accomplice.[120]

We are not unaware of the ruling in *People v. Licayan* that conspiracy can be deduced from the acts of the accused-appellants and their co-accused which show a concerted action and community of interest. By guarding Co and Manaysay and preventing their escape, accused- appellants exhibited not only their knowledge of the criminal design of their co-conspirators but also their participation in its execution.[121] But the instant case is different. Considering the roles played by Lariba and Rogel in the execution of the crime and the state the victim was in during the detention, it cannot be said beyond reasonable doubt that these accused-appellants were in a real sense detaining Atty. Tioleco and preventing his escape. The governing case law is *People v. Chua Huy*[122] where we ruled -

The defendants’ statements to the police discarded, the participation of the other appellants in the crime consisted in guarding the detained men to keep them from escaping. This participation was simultaneous with the commission of the crime if not with its commencement nor previous thereto. As detention is an essential element of the crime charged, as its name, definition and graduation of the penalty therefor imply, the crime was still in being when Lorenzo Uy, Tan Si Kee, Ang Uh Ang, William Hao and Young Kiat took a hand in it. However, we are not satisfied from the circumstances of the case that the help given by these accused was indispensable to the end proposed. Our opinion is that these defendants are responsible as accomplices only.

Fourth. In the beginning, we noted that neither Lariba nor Rogel who were both convicted of illegal possession of firearms and ammunition in *Crim. Case No. Q-96-68049* filed a notice of appeal in accordance with established procedures, although the records show that accused- appellant Gerry Valler needlessly did so exclusively in his behalf.[123] But in light of the enactment of RA 8294 amending PD 1866 effective 6 July 1997,[124] and our ruling in *People v. Ladjaalam*[125] followed in *Evangelista v. Siztoza*,[126] we nonetheless review this conviction to give effect to Art. 22 of The Revised Penal Code mandating in the interest of justice the retroactive application of penal statutes that are favorable to the accused who is not a habitual criminal.[127]

In *Ladjaalam* we ruled that if another crime was committed by the accused he could not be convicted of simple illegal possession of firearms under RA 8294 amending PD 1866 -

Aside from finding appellant guilty of direct assault with multiple attempted homicide, the trial court convicted him also of the separate offense of illegal possession of firearms under PD 1866, as amended by RA 8294, and sentenced him to 6 years of prision correccional to 8 years of prision mayor x x x x

The trial court's ruling and the OSG's submission exemplify the legal community's difficulty in grappling with the changes brought about by RA 8294. Hence, before us now are opposing views on how to interpret Section 1 of the new law, which provides as follows:

Sec. 1. - Section 1 of Presidential Decree No. 1866, as amended, is hereby further amended to read as follows:

Sec. 1. Unlawful Manufacture, Sale, Acquisition, Disposition or Possession of Firearms or Ammunition Instruments Used or Intended to be Used in the Manufacture of Firearms or Ammunition. - The penalty of prision correccional in its maximum period and a fine of not less than Fifteen thousand pesos (P15,000) shall be imposed upon any person who shall unlawfully manufacture, deal in, acquire, dispose, or possess any low powered firearm, such as rimfire handgun, .380 or .32 and other firearm of similar firepower, part of firearm, ammunition, or machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition: Provided, That no other crime was committed.

The penalty of prision mayor in its minimum period and a fine of Thirty thousand pesos (P30,000) shall be imposed if the firearm is classified as high powered firearm which includes those with bores bigger in diameter than .30 caliber and 9 millimeter such as caliber .40, .41, .44, .45 and also lesser calibered firearms but considered powerful such as caliber .357 and caliber .22 centerfire magnum and other firearms with firing capability of full automatic and by burst of two or three: Provided, however, That no other crime was committed by the person arrested.

If homicide or murder is committed with the use of an unlicensed firearm, such use of an unlicensed firearm shall be considered as an aggravating circumstance.

If the violation of this Section is in furtherance of or incident to, or in connection with the crime of rebellion or insurrection, sedition, or attempted coup d'état, such violation shall be absorbed as an element of the crime of rebellion or insurrection, sedition, or attempted coup d'état.

The same penalty shall be imposed upon the owner, president, manager, director or other responsible officer of any public or private firm, company, corporation or entity, who shall willfully or knowingly allow any of the firearms owned by such firm, company, corporation or entity to be used by any person or persons found guilty of violating the provisions of the preceding paragraphs or willfully or knowingly allow any of them to use unlicensed firearms or firearms without any legal authority to be carried outside of their residence in the course of their employment.

The penalty of arresto mayor shall be imposed upon any person who shall carry any licensed firearm outside his residence without legal authority therefor.

x x x x A simple reading thereof shows that if an unlicensed firearm is used in the commission of any crime, there can be no separate offense of simple illegal possession of firearms. Hence, if the "other crime" is murder or homicide, illegal possession of firearms becomes merely an aggravating circumstance, not a separate offense. Since direct assault with multiple attempted homicide was committed in this case, appellant can no longer be held liable for illegal possession of firearms.

Moreover, penal laws are construed liberally in favor of the accused. In this case, the plain meaning of RA 8294's simple language is most favorable to herein appellant. Verily, no other interpretation is justified, for the language of the new law demonstrates the legislative intent to favor the accused. Accordingly, appellant cannot be

convicted of two separate offenses of illegal possession of firearms and direct assault with attempted homicide. Moreover, since the crime committed was direct assault and not homicide or murder, illegal possession of firearms cannot be deemed an aggravating circumstance x x x The law is clear: the accused can be convicted of simple illegal possession of firearms, provided that “no other crime was committed by the person arrested.” If the intention of the law in the second paragraph were to refer only to homicide and murder, it should have expressly said so, as it did in the third paragraph. Verily, where the law does not distinguish, neither should we.

The Court is aware that this ruling effectively exonerates accused-appellants x x x of illegal possession of an M-14 rifle, an offense which normally carries a penalty heavier than that for direct assault. While the penalty for the first is prision mayor, for the second, it is only prision correccional. Indeed, an accused may evade conviction for illegal possession of firearms by using such weapons in committing an even lighter offense, like alarm and scandal or slight physical injuries, both of which are punishable by arresto menor. This consequence necessarily arises from the language of RA 8294 the wisdom of which is not subject to review by this Court.[128]

Accordingly, we are constrained to dismiss Crim. Case No. Q-96-68049 and set aside the judgment of conviction therein since accused-appellants Rotchel Lariba and Rodante Rogel cannot be held liable for illegal possession of firearms and ammunitions there being another crime - kidnapping for ransom - which they were perpetrating at the same time.

In fine, we affirm the conviction of Gerry Valler and Ronald “Roland” Garcia as principals and Rotchel Lariba and Rodante Rogel as accomplices for the crime of kidnapping for ransom and serious illegal detention. This Court is compelled to impose the supreme penalty of death on Valler and Garcia as mandated by Art. 267 of The Revised Penal Code, as amended by RA 7659.

The penalty imposable on Lariba and Rogel as accomplices is reclusion perpetua, the penalty one degree lower than that prescribed for the crime committed pursuant to Art. 52 in relation to Art. 61, par. (1), of the Code. We however set aside the judgment in Crim. Case No. Q-96-68049 convicting Lariba and Rogel of illegal possession of firearms and ammunition in light of the foregoing discussion.

As regards the moral damages against accused-appellants to be paid by them in solidum, we find the amount of P200,000.00 to be reasonable compensation for the ignominy and sufferings Atty. Tioleco and his family endured due to accused-appellants’ inhumane act of detaining him in blindfold and handcuffs and mentally torturing him and his family to raise the ransom money. The fact that they suffered the trauma of mental, physical and psychological ordeal which constitute the bases for moral damages under the Civil Code[129] is too obvious to require still the recital thereof at the trial through the superfluity of a testimonial charade.

Following our finding that only Gerry Valler and Ronald “Roland” Garcia are principals by direct participation and conspirators while Rotchel Lariba and Rodante Rogel are accomplices, we apportion their respective responsibilities for the amount adjudged as moral damages to be paid by them solidarily within their respective class and subsidiarily for the others.[130] Thus, the principals, accused-appellants Ronald “Roland” Garcia and Gerry Valler, shall pay their victim Atty. Romualdo Tioleco P150,000.00 for moral damages and the accomplices P50,000.00 for moral damages.

WHEREFORE, the Decision of the court a quo is MODIFIED. In Crim. Case No. Q-96-68049 (G.R. No. 133489) accused-appellants RONALD “ROLAND” GARCIA y FLORES and GERRY B. VALLER are declared guilty as PRINCIPALS of kidnapping for ransom and serious illegal detention and are sentenced each to death, while accused-appellants RODANTE ROGEL y ROSALES and ROTCHEL LARIBA y DEMICILLO are convicted as ACCOMPLICES and are ordered to serve the penalty of reclusion perpetua with the accessories provided by law for the same crime of kidnapping for ransom and serious illegal detention. Accused-appellants are further ordered

to pay moral damages in the amount of P200,000.00, with the principals being solidarily liable for P150,000.00 of this amount and subsidiarily for the civil liability of the accomplices, and the accomplices being solidarily liable for P50,000.00 for moral damages and subsidiarily for the civil liability of the principals.

Finally, in Crim. Case No. Q-96-68050 (G.R. No. 143970) the Decision of the court a quo convicting RODANTE ROGEL y ROSALES and ROTCHEL LARIBA y DEMICILLO of illegal possession of firearms and ammunition is REVERSED and SET ASIDE in light of the enactment of RA 8294 and our rulings in *People v. Ladjaalam*[131] and *Evangelista v. Siztoza*.[132]

Four (4) Justices of the Court maintain their position that RA 7659 is unconstitutional insofar as it prescribes the death penalty; nevertheless, they submit to the ruling of the majority that the law is constitutional and the death penalty can be lawfully imposed in the case at bar.

In accordance with Art. 83 of The Revised Penal Code, as amended by Sec. 25 of RA No. 7659, upon the finality of this Decision let the records of this case be forthwith forwarded to the Office of the President for the possible exercise of Her Excellency's pardoning power. Costs against accused-appellants.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Pardo, Buena, Ynares-Santiago, De Leon, Jr., Sandoval-Gutierrez, and Carpio, JJ., concur.

[*] The name of accused-appellant "Roland Garcia y Flores" originally appearing in the Information was later amended to "Ronald" per order of the trial court based on his own testimony; see TSN, 20 October 1997, p. 24.

[1] Decision dated 8 April 1998 by Judge Jose Catral Mendoza, RTC - Br. 219, Quezon City, promulgated 13 April 1998; Rollo, pp. 75-87; Original Records, pp. 195-207.

[2] Ibid.

[3] Sec. 3. par. (c), Rule 122, Revised Rules of Criminal Procedure; *People v. Pajo*, G.R. No. 135109, 18 December 2000.

[4] TSN, 10 April 1997, p. 7.

[5] Id., p. 8.

[6] Ibid.

[7] Id., p. 9.

[8] Ibid.

[9] Id., p. 10.

[10] Id., pp. 10, 13, 18.

[11] Id., pp. 14-16.

[12] Id., p. 18.

[13] Id., pp. 19-20.

[14] Id., p. 21.

- [15] TSN, 14 April 1997, pp. 7-8.
- [16] TSN, 10 April 1997, pp. 21-22.
- [17] Id., p. 22.
- [18] Id., p. 23.
- [19] Id., pp. 24, 38.
- [20] Id., p. 27.
- [21] Id., p. 30.
- [22] TSN, 21 April 1997, pp. 6, 7.
- [23] Id., p. 9.
- [24] Id., p.16; TSN, 3 March 1997, p. 24.
- [25] Id., pp. 33, 54.
- [26] Id., p. 21.
- [27] Id., p. 28.
- [28] Id., p. 29.
- [29] Ibid.
- [30] Id., p. 30.
- [31] Id., pp. 30, 33.
- [32] Id., pp. 33, 34.
- [33] TSN, 3 March 1997, p. 26.
- [34] TSN, 17 March 1997, p. 15.
- [35] Id., pp. 16, 18.
- [36] TSN, 21 April 1997, pp. 35-36.
- [37] TSN, 17 March 1997, p. 18.
- [38] TSN, 21 April 1997, pp. 35-36.
- [39] TSN, 17 March 1997, pp. 19, 20.
- [40] TSN, 28 April 1997, p. 26.
- [41] Id., p. 23.
- [42] TSN, 21 April 1997, p. 35.
- [43] Ibid.
- [44] Id., p. 40.
- [45] Id., pp. 41-43.

- [46] Ibid.
- [47] Ibid.
- [48] TSN, 28 April 1997, p. 27.
- [49] TSN, 17 March 1997, p. 24.
- [50] TSN, 21 April 1997, p. 43.
- [51] TSN, 17 March 1997, p. 28.
- [52] TSN, 21 April 1997, p. 43.
- [53] Ibid.
- [54] Id., p. 45.
- [55] TSN, 31 March 1997, pp. 32, 37.
- [56] TSN, 17 March 1997, p. 32.
- [57] Id., pp. 81-82.
- [58] Id., p. 32.
- [59] Id., p. 33.
- [60] TSN 28 April 1997, pp. 36, 38.
- [61] Id., p. 41.
- [62] Id., p. 39.
- [63] Id., pp. 56, 57.
- [64] Id., p. 58.
- [65] Id., p. 61.
- [66] Id., p. 62.
- [67] Id., p. 63.
- [68] TSN, 31 March 1997, p. 58.
- [69] Id., p. 59.
- [70] TSN, 28 April 1997, p. 64.
- [71] TSN, 17 March 1997, p. 37.
- [72] Id., p. 38
- [73] Ibid.
- [74] TSN, 31 March 1997, p. 88.
- [75] TSN, 3 March 1997, p. 41.
- [76] TSN, 20 October 1997, pp. 8-21, 32.

[77] Original Records, pp. 26-28.

[78] TSN, 10 November 1997, p. 22. Jimmy Mui is one of the accused in the criminal cases for kidnapping for ransom (Crim. Case No. Q-96-68049) and illegal possession of firearms and ammunitions (Crim. Case No. Q-96-68050) but remains at large.

[79] *Id.*, pp. 8, 10, 22, 26.

[80] *Id.*, pp. 9, 19.

[81] TSN, 15 September 1997, pp. 7-14.

[82] TSN, 22 September 1997, pp. 8-20.

[83] Rollo, pp. 70-71.

[84] *Id.*, pp. 72-73.

[85] *Id.*, pp. 118-119.

[86] *Id.*, pp. 100-116.

[87] G.R. No. 121365, 14 September 1999, 314 SCRA 282, 301.

[88] *People v. Kamad Akiran*, No. L-18760, 29 September 1966, 18 SCRA 239.

[89] *Keith v. State*, 163 So. 136, 138-139.

[90] 87 Phil. 258 (1950).

[91] 95 Phil. 945 (1954).

[92] No. L-26931, 28 May 1970, 33 SCRA 73.

[93] *People v. Mittu*, G.R. No. 109939, 8 June 2000, 333 SCRA 121.

[94] TSN, 20 October 1997, pp. 8-11.

[95] *Id.*, p. 21.

[96] *Id.*, p. 35.

[97] *Id.*, p. 52.

[98] Rollo, pp. 84-85; Underscoring in the original.

[99] TSN, 28 April 1997, pp. 62-64; TSN, 31 March 1997, p. 58. Rodante Rogel's out-of-court statement identifying Gerry Valler as the caller is admissible as part of the *res gestae* (present sense impression).

[100] *Id.*, p. 59. Roland Garcia's out-of-court statement identifying Gerry Valler as the caller is admissible as part of the *res gestae* (present sense impression). His other statement wherein Valler talked with Ronald Garcia asking for the ransom is admissible as circumstantial evidence of his actual criminal participation.

[101] TSN, 10 April 1997, pp. 10-11.

[102] TSN, 14 April 1997, p. 8.

[103] *Id.*, p. 12.

[104] *Id.*, pp. 24-25.

[105] *Id.*, pp. 26-27.

[106] G.R. No. 125550, 28 July 1999, 311 SCRA 475.

[107] *People v. Geralde*, G.R. No. 128622, 14 December 2000; *People v. Salimbago*, see Note 87.

[108] TSN, 14 April 1997, p. 31.

[109] See Note 107.

[110] *Ibid.*

[111] *People v. Salimbago*, see Note 87; *People v. Ramos*, G.R. No. 124765, 2 July 1999, 309 SCRA 643.

[112] *People v. Pingol*, No. L-26931, 28 May 1970, 33 SCRA 73.

[113] See Note 111.

[114] See Note 109.

[115] *Ibid.*

[116] TSN, 28 April 1997, pp. 38-42.

[117] G.R. No. 128966, 18 August 1999, 312 SCRA 640, 662.

[118] *Garcia v. CA*, G.R. No. 134730, 18 September 2000, 340 SCRA 545.

[119] *Id.*, p. 562, quoting *People v. Nierra*, 96 SCRA 1, 15 (1980).

[120] *People v. Ragundiaz*, G.R. No. 124977, 22 June 2000, 334 SCRA 193.

[121] G.R. Nos. 140900 & 140911, 15 August 2001.

[122] 87 Phil. 259, 270 (1950).

[123] Original Records, p. 213.

[124] *People v. Valdez*, G.R. No. 127663, 11 March 1999.

[125] G.R. Nos. 136149-51, 19 September 2000, 340 SCRA 617.

[126] G.R. No. 143881, 9 August 2001.

[127] Sec. 5, Rule 122, Revised Rules of Criminal Procedure. It is also an established rule that no notice of appeal is required where the decision appealed from is the result of a joint trial and the death penalty is thereafter imposed.

[128] See Note 125, pp. 646-650.

[129] Art. 2219.

[130] Arts. 109 and 110, The Revised Penal Code. For an illustration of the allocation of civil liability, see *Lumiguiz v. People*, No. L-20338, 27 April 1967, 19 SCRA 842 cited in I L.B. Reyes, The Revised Penal Code, p. 933.

[131] See Note 125.

[132] See Note 126.

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