

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ANTONIO HAMTON A.K.A. “BOY NEGRO,” ANTONIO RAMIREZ ALIAS “TONG” OR “CHITO,” ACCUSED.

G.R. Nos. 134823-25. January 14, 2003

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PER CURIAM:

Before this Court for automatic review is the Joint Decision of the Regional Trial Court of Pasig City, Branch 70, penned by Judge Pablito M. Rojas in Criminal Cases Nos. 105326, 106115 and 106116, finding Arthur Pangilinan, Arnold Lopez and Reynaldo Yambot guilty beyond reasonable doubt of the crimes of kidnapping for ransom and illegal possession of firearms and imposing upon each of them the supreme penalty of death and a prison term of six (6) years and one (1) day to eight (8) years.

Antonio Hamton, who was found guilty of robbery and sentenced to an “indeterminate penalty of from four (4) years of prision correccional to eight (8) years of prision mayor” in Criminal Case No. 105326, filed an appeal with this Court, but later withdrew the same.[1]

The Solicitor General narrates the antecedent facts of the case as follows:

“Teofilo Garcia, and his wife, Leonida, were the sole distributors of the Singer Sewing Machines under the business name ‘Gamier Industrial Sewing Machines’. On March 8, 1994, around eleven o’clock in the morning, two armed men, later identified as Jun Notarte and Reynaldo Yambot, entered the Garcias’ office and showroom at 322 Shaw Boulevard, Mandaluyong City and announced a hold-up. After emptying Teofilo’s drawer of Two Thousand Pesos (P2,000.00) in cash, they took him with them outside to a waiting light gray Mitsubishi Lancer. Inside the car were two other men, later identified as herein appellant Arnold Lopez and Arthur Pangilinan. Teofilo was shoved into the backseat of the car and blindfolded with black sunglasses covered with adhesive tapes. One of the men told him, ‘Pera lang ang kailangan namin sa iyo’. His abductors then divested him of his gold ring worth Two Hundred Thousand Pesos (P200,000.00), his gold bracelet worth Fifty Thousand Pesos (P50,000.00), his gold necklace worth Fifty Thousand Pesos (P50,000.00), and his wallet containing, among others, Two Thousand Three Hundred Pesos (P2,300.00) in cash.

“About the time Teofilo was being led out of the office, Leonida arrived. Seeing her husband’s plight, she immediately approached the Mitsubishi Lander and asked the men inside why they were taking her husband. In response, appellant hit her on the nose with a gun and pushed her away. The Mitsubishi Lancer then sped away.

“After traveling for about two hours, the Mitsubishi Lancer stopped. Teofilo’s abductors transferred him to a trimobile where, accompanied by appellant, he traveled for thirty minutes more before finally stopping. Teofilo was brought to a house where he was confined in a room with no windows. To prevent him from escaping, his left wrist was chained to an iron grill. Three or four persons guarded him.

“On March 10, 1994, around eleven o’clock in the morning, appellant, who identified himself as ‘Adan Manalo,’ called up Leonida, telling her to prepare the amount of Ten Million Pesos (P10,000,000.00) as ransom money for her husband’s release. When Leonida pleaded for the amount to be lowered since she could

not afford it, appellant put the phone down.

“On March 12, 1994, appellant called up Leonida to inquire if she had already raised the ransom amount. Leonida replied that she had raised only Six Hundred Thousand Pesos (P600,000.00) and would be needing more time to raise the rest of the amount.

“Appellant called again around twelve noon of March 14, 1994. Asked how much money she had already raised, Leonida answered that she was still trying to raise the needed amount. She also requested appellant to get for her the key to their office vault from her husband, so that she could get the money inside and add it to the money to be paid as ransom.

“Accordingly, appellant, on March 15, 1994, told Teofilo to give him the key to their office vault and to write a note for his family so that they would know that he was still alive. Teofilo did as he was instructed.

“Around eight o’clock in the morning of March 16, 1994, appellant called up Leonida to inform her that the key to their office vault as well as a note from her husband was ready for her pick-up at Andok’s Litson located at EDSA corner Estrella Street. By ten o’clock of the same morning, Leonida was in possession of the key and the note. She was able to confirm that the note was in her husband’s handwriting. When appellant called her again later that day, Leonida informed him that she had gotten the key and the note, and that she had raised One Million Pesos (P1,000,000.00) already. Unimpressed, appellant told her that this was not enough and that he would call her again the next day.

“True to his word, appellant called around noontime the following day. Informed by Leonida that she now had One Million Two Hundred Thousand Pesos (P1,200,000.00), appellant seemed finally satisfied. He then gave Leonida instructions for the pay-off. At a little before four o’clock that afternoon, she should be at the Magallanes flyover and open the hood of her car to make it appear that it developed engine trouble. Appellant would then drive by and stop his car beside hers. After he identifies himself as ‘Adan,’ Leonida should immediately hand over the ransom money to him.

“All this time, Leonida had been coordinating with the Task Force Habagat of the Presidential Anti-Crime Commission (PACC). Alerted of these latest developments, Col. Michael Ray Aquino, Chief of Special Operations, PACC, planned for the delivery of the ransom money and Teofilo’s rescue. Eight teams were formed to monitor the pay-off and conduct rescue operations. The ransom money was placed in a light blue Dunlop bag (Exhibit G) and Leonida was instructed to wear a green dress for easy identification at the pay-off site.

“About 3:45 in the afternoon of the same day, Leonida, accompanied by her driver, arrived at the pay-off site on board her Pajero. Pursuant to appellant’s instructions, Leonida’s driver opened the hood of the Pajero. A red Toyota Corolla with Plate No. PFW 688 then approached and stopped just beside the Pajero. Leonida saw her husband seated between two men at the back of the red car. Meanwhile, appellant, who was seated in front at the passenger side, got down from the car. After identifying himself as ‘Adan,’ Leonida gave the Dunlop bag containing the ransom money to him. The Toyota Corolla then sped away.

“Inside the Toyota Corolla, appellant gave Teofilo Three Hundred Pesos (P300.00) for taxi, assuring him that they would drop him off a short distance away. Before they could do so, however, they noticed a speeding white Nissan Sentra behind them. Appellant warned his companions, ‘Puwesto kayo, delikado tayo mga kasama, alert kayo, puwesto kayo’. Without stopping to release Teofilo anymore, the Toyota Corolla raced along EDSA towards Cubao, with the Nissan Sentra in hot pursuit. The chase continued until the Toyota Corolla stopped near the intersection of Guadix Drive and ADB Avenue: Using an armalite, Jun Notarte, the driver of the Toyota Corolla, opened fire at the Nissan Sentra, shattering its windshield. Col. Raymundo Padua and his team members, the occupants of the Nissan Sentra, returned fire. During the exchange of gunfire, Jun Notarte managed to escape. However, his companions, namely appellant, Arthur Pangilinan, and Reynaldo Yambot, were not as lucky. After about ten minutes of intermittent firing, they were finally subdued and taken

into custody. Teofilo was successfully rescued, shaken but unharmed.

“Among the items recovered from Teofilo’s kidnappers were the following: the Dunlop bag containing the ransom money in the amount of One Million Two Hundred Thousand Pesos (P1,200,000.00); additional cash in the amount of Thirty Two Thousand Six Hundred Forty Seven Pesos (P32,647.00); an M-16 armalite rifle with Serial No. 164881 (Exhibit CC); and a .45-caliber pistol with Serial No. 1163568 (Exhibit A). Subsequent verification revealed that the M-16 armalite rifle and the .45-caliber pistol were not registered with the Firearms and Explosives Office, Camp Crame, Quezon City, and that no license to possess these firearms had ever been issued in the names of any of Teofilo’s kidnappers.

“Separately apprehended in connection with his kidnapping incident was Antonio Hamton. Having somehow learned about Teofilo’s abduction, Antonio, at the same time that appellant was negotiating with [Leonida] for the ransom money, was also calling up Leonida, pretending to be her husband’s kidnapper. Antonio’s ruse was eventually discovered, but not before he was already able to extort Fifty Thousand Pesos (P50,000.00) from Leonida.”[2]

An Information, docketed as Criminal Case No. 1061. 14, was filed on April 14, 1994. It charged appellants in this manner:

“That [on] or about March 8, 1994 at about 11:00 o’clock in the morning at Shaw Boulevard, corner Aquino Lane in Mandaluyong City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused being all private persons conspiring, confederating and mutually helping/aiding each other and by means of force, threats or intimidation and with the use of arms and vehicles, for the purpose of demanding money or ransom, did then and there willfully, unlawfully and feloniously abduct and kidnap TEOFILO M. GARCIA while at his office; and that once in their physical custody and control detain and deprive him of his liberty against his will, and demand TEN (P10,000,000) Million from his wife Leonida Garcia, in exchange for her husband’s life, safety and freedom, but which amount through sheer patient appeals/negotiation was later reduced to P1.2 Million, which accused finally agreed and accepted which said Mrs. Leonida Garcia, did in fact give, pay and deliver the said amount or ransom money to accused to her loss, damage and prejudice.”[3]

A second Information, docketed as Criminal Case No. 106116, was filed against appellants thus:

“That, on or about March 8 & 17, 1994 in the City of Mandaluyong, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have in their possession, custody and control, a Caliber 45 Pistol, bearing Serial No. SN-1 163568, and one (1) M-16 Rifle with Serial No. RP 164881, without first having secured the necessary license and/or permit, from the corresponding office/agency of government.”[4]

During their arraignment on May 2, 1994, appellants, assisted by their respective counsels, pleaded not guilty to the twin charges of kidnapping for ransom and illegal possession of firearms.[5] After a joint trial, they were found guilty via the automatically appealed Decision, which reads in part:

“WHEREFORE, the Court hereby finds accused Arthur Pangilinan y de Guzman, a.k.a ‘Toring’; Arnold Lopez y Serrano, a.k.a. ‘Adan Manalo’; and Reynaldo Yambot y Masagaya, GUILTY beyond reasonable doubt of the offenses of Kidnapping for ransom and serious illegal detention under Article 267 of the Revised Penal Code as charged in Criminal Case No. 106115 and of the offense of Illegal Possession of Firearms as charged in Criminal Case No. 106116. For the offense of kidnapping for ransom and serious illegal detention, said accused are hereby meted out the death penalty. For the offense of Illegal Possession of Firearms, said accused are hereby sentenced to suffer the penalty of six years and one day to eight years and to pay a fine of THIRTY THOUSAND PESOS (PHP 30,000.00) with subsidiary imprisonment in case of insolvency.

“Accused Pangilinan, Lopez and Yambot are further ordered to return to the private complainant, Teofilo

Garcia, the sum of FOUR THOUSAND THREE HUNDRED PESOS (PHP 4,300.00) representing the total amount of cash taken from the latter's office and his person during the abduction, as well as to return or restore to said private complainant the gold bracelet and the gold necklace or if the same is no longer possible, to pay the value of the same which is PHP 50,000.00 each. In addition, said accused are hereby ordered to indemnify, in solidum, the private complainant, Teofilo Garcia, the amount of TWO MILLION PESOS (PHP 2,000,000.00) and to the wife of the complainant, Leonida Garcia, the amount of ONE MILLION PESOS (PHP 1,000,000.00), by way of moral damages.”[6]

Appellants submitted individual appeal briefs assailing the RTC Decision. They aver that the trial court failed to establish clearly that they had all committed conspiracy to commit kidnapping for ransom. The lower court should have imposed individual penalties upon them depending on their degree of participation in the crime.

Appellants also question their conviction for illegal possession of firearms, arguing that the prosecution failed to produce sufficient evidence showing their physical or constructive possession of the subject firearms. Further, they contend that their conviction for the said offense cannot be made on the basis of the testimony of a prosecution witness of questionable credibility and competence.

Specifically, appellant Reynaldo Yambot assigns the following errors:

“I

THE TRIAL COURT ERRED IN FINDING THE ACCUSED-APPELLANT REYNALDO YAMBOT AS CO-CONSPIRATOR IN COMMITTING THE OFFENSE OF KIDNAPPING FOR RANSOM

“II

THE TRIAL COURT ERRED IN FINDING THE ACCUSED REYNALDO YAMBOT GUILTY BEYOND REASONABLE DOUBT OF ILLEGAL POSSESSION OF FIREARMS DESPITE THE FACT THAT THE WITNESS FOR THE PROSECUTION WAS NOT CREDIBLE ENOUGH TO TESTIFY.”[7]

This assignment of errors has been adopted by appellant Arnold Lopez with the following addition:

“THE TRIAL COURT ERRED IN FINDING THE ACCUSED ARNOLD LOPEZ GUILTY BEYOND REASONABLE DOUBT OF THE OFFENSE CHARGED DESPITE THE FACT THAT HE WAS NOT SUFFICIENTLY REPRESENTED DURING THE PRESENTATION OF CO-ACCUSED ARTHUR PANGILINAN AS HOSTILE WITNESS.”[8]

On the other hand, appellant Arthur Pangilinan ascribes the following errors to the trial court:

“3.1 THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE APPELLANT AS A CONSPIRATOR IN THE OFFENSE OF KIDNAPPING FOR RANSOM AND SERIOUS ILLEGAL DETENTION.

“3.2 THE TRIAL COURT GRAVELY ERRED IN FINDING THE APPELLANT GUILTY BEYOND REASONABLE DOUBT OF ILLEGAL POSSESSION OF FIREARMS DESPITE THE ABSENCE OF EVIDENCE THAT HE WAS IN PHYSICAL OR CONSTRUCTIVE POSSESSION OF ANY OF THE SUBJECT FIREARMS AND THAT HE HAD ANIMUS POSSIDENDI AS REGARDS THESE FIREARMS.”[9]

After a careful review of the records and the arguments of both the prosecution and the defense, this Court agrees with the trial court that all three appellants are guilty of kidnapping for ransom, but not of illegal possession of firearm.

Appellants all rely on the defense of denial and alibi. They point to Jun Notarte, who is still at large, as. the

mastermind of the kidnapping. They maintain that they merely accepted his offer of jobs with higher pay, and that they were not privy to his plans to kidnap Garcia. Plainly, they want this Court to believe that they were simply in the wrong place at the wrong time with the wrong companion and for the wrong reason.

Appellant Arnold Lopez claims that Notarte offered him a job to train as a soldier, with better pay.[10] He says that because of his meager earnings as a construction worker, he was easily enticed by Notarte's promise.[11] He alleges, however, that he was not present during the abduction of the victim, because he was working in Parañaque, installing doors and windows from March 8 to 15, 1994.[12] It was only because of the job offer that he was present during the pay-off. He argues further that his participation in the kidnapping incident was very minimal, if any, so he could not have been a co-conspirator in the crime.[13]

On the other hand, Reynaldo Yambot alleges that Notarte promised to help him apply as a driver of the latter's superior officer.[14] Yambot maintains that, because he was driving his jeepney in Caloocan from March 8 to 16, 1994,[15] he was not present during the abduction of the victim. The only reason he was present during the pay-off was that Notarte had actually engaged him as a driver, but without his knowing anything about the abduction that had already taken place.[16]

Finally, Arthur Pangilinan claims that he was offered a job to watch Notarte's car at five hundred pesos a day.[17] He maintains that there were no overt acts that would link him to the kidnapping other than his "being merely an ill-fated passenger of the car used by his co-accused in two occasions, i.e., in kidnapping Mr. Garcia and in receiving the ransom from the victim's wife.[18] Further, his wife was presented in court to corroborate his claim that he had not taken part in the plan to commit the kidnapping.

At the outset, we emphasize that the identities of all the accused were adequately established by the clear and convincing testimonies of the victim and his wife. Particularly persuasive was the narration by Garcia of the events that led to his abduction, his captivity, the ransom payment and his eventual release and rescue. He never wavered in his story, even when he was subjected to an exhausting cross-examination by the defense counsels. He testified thus:

“JUSTICE CONCEPCION:

Q

On March 8, 1994 at about 11:00 in the morning do you remember where were you?

A Yes, sir. I was in my office at about 11:00 in the morning at Shaw Blvd.

Q Were you alone in your office?

A I was with my three employees, sir.

Q What are their names?

A They are Grace Munda, Aurora Mckinley and Dado Mercado, sir.

COURT:

Q How is he related to your wife?

A He is the cousin of my wife, Your Honor.

JUSTICE CONCEPCION:

Q On that occa[s]ion, do you recall having received a visitor in your office?

A Yes, sir. Two men arrived.

Q What questions, if any, did they ask you upon entering your showroom?

ATTY. LEONARDO:

No basis, Your Honor.

COURT:

He said he had two visitors. Witness may answer.

WITNESS:

A When the two men entered in our office, one pretended to be a customer and the other one approach[ed] my three employees, sir.

xxx xxx xxx

JUSTICE CONCEPCION:

Q Why do you say that one of them pretended to be a customer?

A Because he was the one who asked me about the price of the sewing machine, sir.

Q Was there anything unusual that happened afterwards?

ATTY. LEONARDO:

We will object, Your Honor. The question is leading.

COURT:

How can it be leading? Objection overruled. Witness may answer.

WITNESS:

A Yes, there was, sir.

JUSTICE CONCEPCION:

Q What is it?

A The one who pretended as a customer pulled out the gun and pointed it at me and said, 'hold-up', sir.

Q What kind of firearm did you see?

A It's a 45 caliber, sir.

xxx xxx xxx

COURT:

All right. You said that, there were two male visitors who entered your showroom that day, what was the other one doing?

A The other one poked a gun on my three employees, sir.

JUSTICE CONCEPCION:

Q Can you identify the man who pointed the gun at your three employees if you see him again?

A Yes, sir.

Q Will you please look around the courtroom and point to the man who pointed a gun at your three employees?

COURT:

Why don't you ask him the guy who poked the gun at him.

JUSTICE CONCEPCION:

He was the one who got away, Your Honor. There were four kidnappers, one of them escape. He is at large.

COURT:

All right. Let him identify.

Q Yung nagtutok sa iyo [ng] baril nandito ba?

A Wala po.

Q Yung nagtutok ng baril sa tatlo nandito ba?

A Opo. He is here, your Honor.

Q Yung nagtutok ng baril sa tatlong empleyado mo, ituro mo, bumababa ka at ituro mo.

INTERPRETER:

Witness is pointing to a man whom when asked identify himself as Reynaldo Yambot.

JUSTICE CONCEPCION:

Q You stated that the man [who] pretended to be a customer poked a gun at you, what did he want?

COURT:

He already said, 'hold-up.'

JUSTICE CONCEPCION:

Q What did he do afterwards, if he did anything?

A After he said, 'hold-up', he opened the drawer of my table and g[o]t some P2,000.00 cash, sir.

Q Having taken the money, what did he do afterwards?

A Then he told me, you go with us, sir. After taking the money he said, 'sama ka sa amin.'

Q What was your reaction?

A I went along with him, sir.

Q Why did you go with him?

A I went with him because it was a 'hold-up' and I was afraid so I went with him, sir.

Q At the time he made those statements, what was he doing to the gun?

A He tucked it in his waist, sir.

Q Did you go with him willing?

A Yes, sir.

Q Why?

A 'Baka patayin po ako kaya sumama ako.' Perhaps they would kill me so I went along with him, sir.

Q Where did he take you?

A They b[r]ought me outside the door and outside was a car waiting, sir.

[A] I am showing you pictures of a car ... (discontinued)

COURT:

Excuse me. Why don't you ask him first to describe the car.

Q Anong itsura ng kotse?

A It was a lancer with a color which looks like a silver green with tinted windows and partially tinted front glass, Your Honor.

xxx xxx xxx

JUSTICE CONCEPCION:

Q How did you enter the vehicle that was waiting for you?

A The car was opened by accused Jun Notarte and I was pushed inside, sir.

FISCAL VILLA-IGNACIO:

Your Honor please, actually the witness said tinuhod meaning a person used his knee to shove him inside the vehicle. It's more of a kick, Your Honor.

WITNESS:

A The car was opened by accused Ju[n] Notarte and he used his knee to shove me inside, sir.

ATTY. DE LEON:

We adopt the tagalog translation also, Your Honor.

WITNESS:

A Tinuhod niya ako papasok sa kotse.

JUSTICE CONCEPCION:

Q Did you enter the front seat or the back seat?

A The back seat, sir.

Q Once you were inside the vehicle, will you tell the Court what happened?

A I was sand[w]iched by two men, sir.

COURT:

Q Who was the one to your right?

A Arthur Pangilinan was on my right, Your Honor.

Q And who was on your left?

A Yambot was on my left, Your Honor.

JUSTICE CONCEPCION:

Q Is the man whom you mentioned, Arthur Pangilinan, can you identify him?

A Yes, sir.

Q Is he in the courtroom?

A Yes, sir.

COURT:

Bumaba ka at ituro nyo po.

INTERPRETER:

Witness pointing to a man inside the courtroom whom when asked identify himself as Arthur Pangilinan.

JUSTICE CONCEPCION:

Q After you were seated sandwiched between two men, do you recall if there were any persons seated on the front of the vehicle?

A Yes, sir.

Q In the driver's seat who was seated?

A Ju[n] Notarte was in the driver's seat, sir.

Q And on the seat beside the driver?

A Beside the driver was Arnold Lopez, sir.

Q Can you identify the man whom you said as Arnold Lopez?

A Yes, sir.

Q Please point to him.

FISCAL VILLA-IGNACIO:

For the record, Your Honor, witness is stepping down from the witness stand and appearing to [point] to a man whom when asked answered by the name of Arnold Lopez.

ATTY. MACATANGAY:

For the record, Your Honor, Arnold Lopez is [the] man who is walking with c[r]utches.

COURT:

Make it of record that the man is using c[r]utches.

JUSTICE CONCEPCION:

Q After you were seated in the car, will you please state what transpired, if any?

A Yung sunglass na sinasabing piring, piniringan po ako rito.

xxx xxx xxx

Q Did you not ask these men what they wanted from you?

A I a[sk]ed them what they want from me, sir.

ATTY. MACATANGAY:

Very leading, Your Honor.

COURT:

I will allow that.

JUSTICE CONCEPCION:

Q And what is the answer, if any?

A ‘Pera lang ang kailangan namin sa iyo’, that was what they told me, sir.

Q After you were already in the car, what did you try to do in the car?

A None, sir. We were on the road.”[19]

Thereafter, Garcia further recounted his ordeal, replete with details that he could not have simply concocted. He narrated how he had been brought to a house where he was chained to an iron grill[20] and detained for ten days.[21] His testimony included details of how he had been fed, how he had relieved himself during his detention, and how he had been asked by appellant Lopez to write a letter to his family to assure them that he was still alive.[22] The testimony of the victim regarding the ransom payment was likewise credible and convincing. He detailed the events leading to the pay-off, from the time he was awakened to the time of the actual shoot-out that eventually led to the arrest of appellants.[23]

His wife, who was also present during the abduction, corroborated his testimony as follows:

“FISCAL DAÑOSOS:

Q

Will you tell this Honorable Court, Mrs. Garcia, if on March 8, 1994 you reported for work in your office?

A

Yes, I reported for work about 11 o’clock.

Q

Were you able to reach your office that morning of March 8, 1994?

A

Yes, sir.

Q

Do you recall of any unusual incident that took place that morning?

A

I saw my husband being led by the arm by a man and another man was just behind my husband and closely

following.

COURT:

Q

Where were they going?

A

I saw them going to board a blue grey vehicle.

FISCAL DAÑOSOS:

Q

Would you know the model or make of the car?

A

I did not notice but I know it was colored blue grey.

Q

What else happened when you saw that your husband was being led inside the car?

A

I saw that my husband as if he was shoved inside (tinuhod).

Q

Who of the two, if you saw, ‘tumuhod sa asawa mo’?

A

He’s a tall man with fair complexion.

Q

The one who shoved, would you kindly look around if he is in the courtroom?

A

He is not around.

Q

What about the other one who closely followed your husband?

A

He is here.

Q

Will you kindly go down and identify him by lightly tapping his shoulder?

INTERPRETER:

The witness pointed to a man inside the courtroom who when asked identified himself as Reynaldo Yambot.

[FISCAL DAÑOSOS:]

Q

After your husband was shoved inside that grey car, what else happened, if you know?

A

I alighted from my car and opened the front door of the blue grey vehicle. I saw my husband with a blindfold and a gun pointed to him.

Q

You said when you opened the car, you saw your husband already wearing a black blindfold sunglass. If you are shown that sunglass or black blindfold would you be able to recognize it?

A

Yes, sir.

Q

I'm showing to you a plastic sunglass which was previously marked, Your Honor, as exh. 'C'. Will you kindly go over and tell this Honorable Court what is the relation of that black sunglass to the blindfold you were referring to [a] while ago?

A

Parang ganito po.

Q

You also said that someone pointed a gun at your husband. What particular part of the head or the face was the gun pointed?

A

The gun was pointed to my husband's neck.

Q

Would you be able to recognize the person who was pointing a gun at your husband?

A

I would not know who was the person who pointed a gun to my husband.

Q

What kind of gun was pointed, was it a long firearm or a short firearm?

ATTY. LEONARDO:

We object to that question, Your Honor. He is suggesting to the witness her answer...

FISCAL DAÑOSOS:

If she knows.

COURT:

Q

What kind of gun was that?

A

It was a short gun.

FISCAL DAÑOSOS:

Q

If you are shown a gun of that description, as you said 'short'[, w]ould you be able to recall whether the gun that we are going to show you will be similar to that pointed to your husband's neck?

COURT:

Excuse me. Before you show that particular gun to the witness, [d]o you know what sort of hand gun was pointed to your husband?

A

No, Your Honor. Basta baril. Para pong pagalingan lang yung baril na yan, eh. Ngunit kung pakikitaan ako puwede k[o]ng ituro pero hind ko alam kung anung klaseng baril yon.

FISCAL DAÑOSOS:

Q

I'm showing to you a [hand]gun. Will you be able to tell this Honorable Court if the gun pointed to the neck of your husband would be similar to this?

A

Para pong kamukha.

FISCAL DAÑOSOS:

This was already marked as Exh. 'A', Your Honor.

Q

Now, where was your husband seated, madam witness?

A

Nasa gitna po siya ng dalawang lalake.

Q

Where? [In f]ront or at the rear?

A

He was seated at the rear of the car sandwiched by two persons.

Q

Now, you said that your husband was seated between two persons. Would you be able to tell this Honorable Court which of the two pointed a gun at your husband. Was it the person sitting at the left of your husband or

the right side of your husband?

A

I did not see clearly which of the two men was pointing a gun at my husband.

Q

You said, Mrs. Garcia, that your husband was seated between two persons at the rear seat of the car, [is] that correct?

A

Yes, sir.

Q

Would you be able to recognize any of the two that sandwiched your husband?

ATTY. LEONARDO:

Your Honor, the witness is incompetent to answer that.

COURT:

Let her answer if she knows.

A

Yung pong isa sa kaliwa ng mister ko.

FISCAL DAÑOSOS:

Q

Will you kindly look around this courtroom and point to the person Identified, the person sitting at the left of your husband?

A

At my husband's left was Reynaldo Yambut.

Q

We go back to that portion where you said you immediately opened the door of the front seat of the car...

COURT:

You would not know or you would not recall the face of the man who was seated to your husband's right?

A

I cannot recall, Your Honor.

FISCAL DAÑOSOS:

Q

You said that you opened the front seat of the car. Which side of the door of the car that you opened?

A

I opened the right side door of the vehicle.

Q

Were you able to open the car?

A

Yes, sir.

Q

What did you do, if any, when you opened the car?

A

I asked them why they are taking my husband. What wrong has he done.

Q

What was their reply, if any?

A

I did not hear any answer...

COURT:

Q

Bakit wala kang narinig na sagot. Ano ang sinabi mo sa kanila?

A

Ang sinabi ko po, 'ano ang kasalanan ng mister ko, bakit ninyo siya kinuha.' I did not hear any answer but instead I was whipped with a gun.

Q

Were you hit by this gun? Where were you hit?

A

The gun hit my nose and my nose even bled on that day.

Q

Will you tell this Honorable Court briefly what kind of gun was used to whip you?

ATTY. LEONARDO:

The witness already answered she does not know what kind of a gun was that.

[FISCAL DAÑOSOS:]

Q

All right. The next question is, is it a long gun or a short gun?

A

It was also a short gun.

Q

Would you be able to say if the gun looks similar to the one that was pointed to the neck of your husband?

ATTY. LEONARDO:

We interpose objection to that question, Your Honor. For the reason that it is not only leading but the witness is incompetent to testify on what kind of gun was she able to see.

FISCAL ASDALA:

The testimony refers to the husband not to the gun used in whipping her.

FISCAL DAÑOSOS:

Q

Would it be similar?

ATTY. LEONARDO:

She's not in a position to testify...

COURT:

Just ask her to describe it.

A

Parang pareho duon sa ipinakita sa akin. (It looks like the one I was shown earlier).

COURT:

Witness referring to a caliber 45 marked as exhibit 'A'.

FISCAL DAÑOSOS:

Q

You said you asked them, 'why are you taking my husband, what wrong has he done'. Now, did you notice if there were people in the front seat of the car?

A

Yes, sir.

Q

Would [you] be able to recognize the person who whipped you with the gun?

A

Nakilala ko po.

Q

If he is in this courtroom would [you] be able to identify him?

A

Yes, sir.

Q

Will you please step down and identify this person by lightly tapping his shoulder?

INTERPRETER:

Witness pointed to a man inside the courtroom who identified himself as Arnold Lopez.

[FISCAL DAÑOSOS:]

Q

Where was this Arnold Lopez seated?

A

He was seated in [f]ront beside the driver.

COURT:

Q

Where was he at the time when he whipped you with the gun?

A

He was seated beside the driver's seat.

FISCAL DAÑOSOS:

Q

How about the driver's seat[,] was somebody there?

A

Meron po.

Q

Would you tell this Honorable Court if that man occupying the driver's seat is inside this courtroom?

A

He is not present.

Q

Now, after you were whipped and you received no reply, what happened, if any?

A

Tinulak niya po ako palabas.

Q

Who?

A

Arnold Lopez pushed me out.

Q

Now, after you were pushed out, what else happened?

A

They sped away.

Q

Were you able to observe to what direction they sped away?

A

They were going towards the direction of Acacia Lane.”[24]

These testimonies constitute persuasive and unassailable proof that all the appellants committed the crime of kidnapping. Certainly, the positive identification of them by the victim and his wife, who had ample opportunity to see and remember their faces, more than satisfies the judicial mind and conscience. It is natural for victims of crimes to strive to remember the faces of their assailants and the manner in which they committed the crime.[25] Hence, there is usually no reason for us to doubt their testimonies or to suspect their motives. The present witnesses had close contact with the kidnappers when the victim was abducted and his wife was hit with a gun. Further, the victim was held for ten (10) days, which was more than ample time for him to be familiar with them. His wife, on the other hand, was in constant communication with one of the appellants during the ransom payment negotiations. She again saw them during the actual ransom payment.

Moreover, the appellants did not even deny their presence during the abduction or the ransom payment. This fact bolsters the credibility of the spouses and confirms that they did not simply make up their narration of the kidnapping.

As to the demand for and the actual payment of the ransom money, the victim’s wife testified thus:

“JUSTICE CONCEPCION:

Q

On March 17, 1994 you recall having received a telephone call?

A

Opo.

Q

At about what time did you receive the call?

A

Banda pong mag-aalas dose ng umaga po.

Q

And who was the one who called you?

A

Si Adan po.

Q

Was there any conversation?

A

Ang sabi niya po sa akin 'nadagdagan na ba 'yong pera?' 'Opo, nadagdagan na ng dalawang daan.'

COURT:

Dalawang daang piso? Dalawang daan? O two hundred thousand?

A

Two hundred thousand (P200,000.00).

JUSTICE CONCEPCION:

Q

And what did Adan say?

A

x x x sabi niya 'Ito na dahil ang sabi mo gusto mong makausap ang mister ma, ito na ang mister ma, kausapin mo na siya.'

Q

Were you able to talk to your husband?

A

Opo, kinausap niya ako. Ang sabi niya po sa akin 'lumipat ka ng bahay.'

Q

What else?

A

Yon po ang sabi niya lumipat ako ng bahay. Pa[g]katapos ko daw pong makipagusap.

COURT:

Just quote what he said. You quote what he actually said to you.

PROS. DAÑOSOS:

Ano ang sinabi?

A

Opo. Ang sabi niya lumipat ako ng bahay.

COURT:

Hindi lumipat. 'Yong mismong sinabi niya. I-quote mo 'yang sinabi niya mismo.

A

Yon nga lumipat daw ako ng bahay.

COURT:

Hindi. Kung ano ang sinabi niya mismo.

A

‘Lumipat ka ng bahay.’

JUSTICE CONCEPCION:

Q

To what house?

A

‘Lumipat ka ng bahay. Pumunta ka doon kila nanay.’

COURT:

‘Yon lang ba ang sinabi sa iyo sa telepono?’

A

Oho. Tapos ang sagot ko ‘bakit?’

Q

And what was the answer?

A

Wala na po. Ang sumagot si Adan na po.

Q

And what did Adan say?

A

Ang sabi niya ‘O, iready mo ang pera’ tatawag uli ako bago mag-ala una.’

JUSTICE CONCEPCION:

Q

What else did he say? Is that all?

A

Opo. Binaba na niya ang telepono.

Q

Do you recall if on that day Adan Manalo called you up?

A

Opo, tumawag po siya mga ala-una.

Q

What was your conversation?

A

Tinanong niya po sa akin kung magkano na ang pera. Ang sabi ko po 1.2 na.

COURT:

Q

1.2 what?

A

One million two hundred thousand pesos (P1,200,000.00) lang ang naiipon ko. Nagalit po siya sa akin. Ang sabi niya ‘bakit 1.2 lang?’ Di ba sabi mo 2 million na. Akala ko two million na.’ Hindi sabi ko. 1.2. lang ang naiipon ko sa ngayon. Baka puwede na iyon kapalit ng mister ko.

Q

And what did Adan say?

A

Na cut na naman[. [T]atawag uli ako[,] sabi niya.

Q

Did he in fact call up again?

A

Opo.

Q

At about what time.

A

Mag-aalas dos na po iyon.

Q

Ng hapon?

A

Ng hapon po.

Q

And what was your conversation with him?

A

Pumayag na po siya sa 1.2 na ibibigay ko sa kanya kapalit ng mister ko.

Q

When you said 1.2, what do you mean?

A

Ransom money.

Q

1.2 what is that?

A

One million two hundred thousand pesos (P1,200,000.00).

Q

So you said he agreed already to the amount of one million two hundred thousand pesos (P1,200,000.00)?

A

Opo.

Q

In exchange [for] your husband?

A

Opo.

Q

And what else did you talk about?

A

Binigyan niya po ako ng instruction kung saan ko ibibigay ‘yang 1 .2 million.

Q

Could you tell us what is the instruction?

A

Ang sabi niya po sa akin magkikita kami ng bago mag-alas kuwatro ng hapon sa fly-over.

Q

Fly-over where?

A

Doon po sa Magallanes papuntang Alabang doon po sa ibabaw tapat po daw ng Mercedes Benz Service. Doon po daw ako tatapat at buksan ko daw iyong hood para po daw sira ... sira ‘yang sasakyan ko at saka buksan ko po daw lahat ang bintana ng sasakyan ka.

Q

Was there any other instructions?

A

Ang sabi po niya ipaparada po daw niya sa tabi ng sasakyan ko at saka bubuksan niya sasabihin niya ‘ako si

Adan.’ Doon ka po daw ibibigay ang pera. Pag sinabi niyang siya si Adan doon ka po daw ibibigay ang pera. At saka tinanong din po niya sa akin kung anong sasakyan ang gagamitin ko.

Q

Did you tell him?

A

Opo, sinabi ko po Pajero ang gagamitin kong sasakyan. Ibinigay ko po lahat ‘yung plate number.

Q

What plate number did you give?

A

‘T’ as in Task, ‘F’ as in Force and ‘H’ as in Habagat. Number 808.

Q

What else did you talk about?

A

[‘Y]on pa. Sabi niya bago mag-alas kuwatro nandon na ako. Binaba na po niya.

Q

Now what happened after your phone conversation?

A

I called up PACC.

Q

Whom did you call?

A

Si Major Aquino po at saka si Tinyente Mendoza. Nagpunta po sila sa bahay.

Q

Were you able to talk with them?

A

Opo.

Q

What was your conversation with them?

A

Sinabi ko po sa kanila magbabayaran na kami dito sa lugar na ito bago mag-alas kuwatro magkikita kami sa ibabaw ng fly-over.

Q

Did you tell them what fly-over?

A

Opo. ‘Yan pang sa Magallanes papuntang Alabang doon po ako pupuwesto.

Q

What time you should go there?

A

Bago mag-alas kuwatro nandoon na ako sa ibabaw.

Q

What did Major Aquino and his companion tell you?

A

Wala na po. Umalis na po sila. Ako naman po papunta na sa luga(r) na ibibigay ko ‘yang pera.

COURT:

Q

Are you saying that Major Aquino did not give you any instruction?

A

Wala na po. Basta ang sabi niya ‘O sige pumunta ka na doon.’ Hindi ko na po alam kung ano ang gagawin nila.

JUSTICE CONCEPCION:

Q

Did you in fact go to the fly-over on the corner of Magallanes?

A

Opo, pumunta po ako.

Q

In what vehi[cl]e were you riding?

A

‘Yon pong Pajero.

Q

Who was driving?

COURT:

Q

At what time did you leave your house?

A

Siguro po mga alas 3:15 po.

JUSTICE CONCEPCION:

Q

Who was the driver?

A

May driver po ako.

Q

And where were you seated?

A

Sa tabi po ng driver.

Q

When you went to the place [w]here you bringing anything with you?

A

Opo, meron po.

Q

What were you bringing?

A

‘Yon pong pera na nakalagay sa bag.’

COURT:

Q

How much?

A

One million two hundred thousand pesos (P1,200,000.00).

Q

Place in?

A

Nakalagay po sa bag na Dunlop na kulay asul.

JUSTICE CONCEPCION:

Q

Did you arrive at the fly-over in Magallanes?

COURT:

Were you not going to ask her to identify the bag?

JUSTICE CONCEPCION:

Later on Your Honor because the money were xeroxed. We will ask her. Nakarating na ba kayo sa Magallanes?

A

Opo, nakarating po kami.

Q

And what happened upon your arrival in Magallanes?

A

3:45 ng makarating po kami doon.

Q

Did your driver comply with the instruction to open the hood?

A

Opo. Bumaba po siya at saka binuksan 'yong hood na kunwari nasiraan 'yong sasakyan. Eh, matagal po kami doon. May lumapit pa pong traffic aide. Ang sabi ko sandali na lang, inaayos pa 'yong sasakyan eh. Ang sabi ko aalis na rin kami dahil ho tumagal kami doon ng mga ten minutes eh. Tinataboy na kami ng traffic aid. Ngayon ho sinara namin 'yong hood. Lumakad ho kami unti-unti eh kasi nga hindi po ho sila dumarating. Eh ngayon siguro mga alas-kuwatro na ho sila dumating biglang meron pumaradang red toyota sa tabi namin.

COURT:

Q

Where did they park their car?

A

They parked their car parallel to my car.

JUSTICE CONCEPCION:

Q

You mentioned a red toyota. I am showing you Exhibit 'I' on which attached Exhibits 'I-1' and 'I-2', can you identify them?

A

Para pang kahawig na ganito. Ganitong kulay.

Q

Ang ano?

A

Ang sasakyan.

Q

Kahawig na paano?

A

Para pong ganyan.

Q

After this toyota car stoppped beside the Pajero, what transpired next?

A

Bumukas po 'yong dalawang bintana. Bandang kanan nila. Dalawang bintana.

Q

Nang ano? Nang anong kotse?

A

Yong red toyota po.

Q

And where were you at that time?

A

Nandoon po ako sa tabi ng driver.

Q

Nang?

A

Nang sasakyan ko po, 'yong Pajero.

Q

When those two (2) windows on the right side of the car, the toyota car open did you see anything?

A

Nakipag-usap po sa akin ... Nakita ko po ang mister ko at saka 'yong katabi niya.

COURT:

Q

Where was he seated? Right or left?

A

Parang nasa gitna po. Parang nandito po siya sa tagiliran.

Q

When you saw your husband where was he seated?

A

Dito po sa tabi ng bintana.

Q

Kaya nga, where was he seated?

A

Sa likod po.

Q

Yes, where was he seated, right, middle or left?

A

Right.

Q

Extreme right?

A

Yes.

JUSTICE CONCEPCION:

Q

Was he alone in the back seat?

A

Hindi ho. Nakita ko ho 'yong sa kaliwa niya.

Q

Can you identify the man who was seated on his left?

A

Opo. (Witness pointing to a man inside the court room, who, when asked, answered by the name of Arthur Pangilinan.

Q

Do I understand from you that there were only two (2) persons seated at the back seat of the toyota?

A

Apat po sila. Pang lima ang mister ko. Kaya lang hindi ko nakita 'yong isa doon sa bandang hulihan.

Q

'Yong upuan lang sa likod 'yong katabi ng asawa mo? Ilang tao ang nakita mong naroroon? Isang tao lang o...?

A

Dalawa lang sila. Kaya lang hindi ko mamukhaan ‘yong isa po dahil ‘yong bintana eh, hindi ko na siya makita.

Q

What about in the front seat, was there anybody in the front seat?

A

Meron po. ‘Yon po si Adan.

Q

Can you identify them?

A

Opo, si Arnold Lopez.

COURT:

Q

Saan nakaupo si Arnold Lopez?

A

Doon po sa harapan na tabi ng driver.

JUSTICE CONCEPCION:

Q

Can you identify him?

A

Opo. (Witness pointing to a man inside the court room, who, when asked, identified himself as Arnold Lopez as the man seated beside the driver.)

Q

Was there anyone seated at the driver’s seat of the red toyota?

A

Meron po ‘yong driver. Kaya lang hindi ko po siya nakita. May tao doon dahil dalawang bukas na bintana.

COURT:

Q

Nakita mo ‘yong driver?

A

Hindi ko po nakita. ‘Yong paa lang ang nakita ko.

JUSTICE CONCEPCION:

Q

Have you seen your husband in the car? What transpired next? What happened after you saw your husband?

A

After ho? Nakipag-usap po siya sa akin.

Q

What did he say?

A

Ang sabi niya uuwi na daw po ako magtataksi na lang siya. Magtataksi na lang po daw siya pauwi sa amin. Tapos po sinarado na po 'yong bintana.

COURT:

Will you please quote it.

A

'Umuwi ka na, uuwi na lang ako. Magtataksi na lang ako.'

JUSTICE CONCEPCION:

Q

You said ... You mentioned that you have with you on that day one million two hundred thousand pesos (P1,200,000.00)?

A

Opo.

Q

Now, what did you do with that money?

A

Bumaba po si Adan.

COURT:

Q

Who is Adan?

A

Si Arnold Lopez. Sabi niya 'ako si Adan, amin na ang pera.'

JUSTICE CONCEPCION:

Q

Where was Adan Manalo at the time he uttered that words?

ATTY. LEONARDO:

We object to the question of distinguished Justice Your Honor.

COURT:

Why?

ATTY. LEONARDO.

Because he already stated that Adan went out.

COURT:

He went out of the car.

ATTY. LEONARDO:

Yes, [he] went out Your Honor. The question is where was he seated?

COURT:

Q

Where was he if you know in relation to where he was seated? Saan si Adan, ah, si Arnold Lopez?

A

Doon po sa unahan ng sasakyan. Binuksan niya bumaba siya pagkatapos kinuha niya ang pera sa akin.

Q

Katabi siya ng driver mo?

A

Opo. Ito po 'yong driver ka dito niya pinadaan ang pera.

Q

Kaya nga saan nakatayo si Adan?

A

Doon po sa labas sa tabi ng driver ko. (He was standing beside my driver when I gave the money to him).

JUSTICE CONCEPCION:

Q

I am showing you this kind of bag which bag has a word 'Dunlop' on it and previously marked as Exhibit 'G', can you identify this bag?

A

Opo, 'yan po ang pinaglagyan ko ng pera.

Q

After you deliver the bag containing one million two hundred thousand pesos (P1,200,000.00), what happened next?

A

Umalis na po kami. Bumalik na po ako sa bahay namin.

Q

When you say 'kami', to whom do you refer? 'Umalis na kami'.

A

'Yong driver ko.

Q

'Yong driver mo at ikaw?

A

Opo.

Q

And what about the car what happened to it?

A

Umalis na rin po siya. Magkaiba kami ng daan. (They left and we went Into different directions).

Q

You said you went in different directions, the Pajero and the toyota car. To what directions did you go?

A

Going to Manila.

Q

And what about the toyota car, where was it [heading]?

A

Hindi ko na po sila alam kung saan sila lumiko.”[26]

Clearly, the appellants' denial cannot overcome the positive identification by the complaining witness and his wife.

As a defense, denial is indeed insipid and weak, being easy to fabricate and difficult to disprove.[27] Mere denial of involvement in a crime cannot take precedence over the positive testimony of the offended party.[28]

Strangely, considering their proven participation in the crime, appellants Lopez and Yambot also proffer the defense of alibi. For it to prosper, however, it is not enough for them to prove that they were somewhere else when the crime was committed; they must likewise demonstrate that it was physically impossible for them to have been at the scene of the crime at the time.[29] This, appellants miserably failed to show.

Moreover, other than giving self-serving testimonies, they did not present any evidence to corroborate their denial and alibi. It cannot be gainsaid that self-serving declarations are inadmissible as evidence of the facts asserted.[30] As a general rule, the reason for the exclusion of such evidence is not that it might never contribute to the ascertainment of the truth. Rather, the reason is that, if received, it would most likely consist of falsehoods fabricated for the occasion and mislead more than enlighten.[31]

Time and time again, this Court has ruled that denial and alibi are the weakest of all defenses, because they are

easy to concoct and difficult to disprove.[32] Furthermore, they cannot prevail over the positive and unequivocal identification of appellant by the offended party.[33] Absent any showing of ill motive on the part of the eyewitness testifying on the matter, a categorical, consistent and positive identification of the accused prevails over denial and alibi.[34] Unless substantiated by clear and convincing proof, denial and alibi are negative, self-serving and undeserving of any weight in law.[35]

In the instant case, there is no showing of any improper motive on the part of the victim or his wife to testify falsely against the accused or to implicate them falsely in the commission of so heinous a crime. The logical conclusion, then, is that no such improper motive exists and that the testimonies are worthy of full faith and credence.[36]

Likewise, the fact that the judge who penned the decision was not the same one who had heard the testimonies of all the witnesses is not a compelling reason to jettison the findings of the court a quo. This circumstance does not ipso facto render the judgment erroneous, more so when it appears to be fully supported by the evidence on record.[37] While a judge in such a situation has no way to test the credibility of all the witnesses, since he did not have the unique opportunity of observing their demeanor and behavior under oath, the trial court's factual findings are nonetheless binding on this Court when these are ably supported by the evidence on record.[38] Unless there is a clear showing of grave abuse of discretion, the validity of a decision is not necessarily impaired by the fact that its ponente only took over from a colleague who had earlier presided at the trial.[39]

Appellants also question the RTC decision finding all of them in conspiracy to commit kidnapping for ransom. They submit that conspiracy was not established with positive and conclusive evidence. According to them, to be guilty of conspiracy, they must be shown to have participated in the criminal design and, at the same time, to have committed overt acts necessary or essential to the perpetration of the offense.

Such postulations are merely feeble attempts to escape liability. We do not subscribe to the tale of appellants that they associated with Jun Notarte, the alleged mastermind, simply because he had offered them high-paying jobs.

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[40] The agreement need not be proven by direct evidence;[41] it may be inferred from the conduct of the parties before, during and after the commission of the offense, [42] pointing to a joint purpose and design, concerted action, and community of interest.[43] Indeed, jurisprudence consistently tells us that conspiracy may be deduced from the mode and manner in which the offense was perpetrated.[44]

In the case at bar, as the trial court correctly held, conspiracy may be deduced from the appellants' acts that show concerted action and community of interest. If it can be proven that two (2) or more persons aimed their acts toward the accomplishment of the same unlawful object -- so that their acts, though apparently independent, were in fact connected and cooperative, indicating closeness of personal association and concurrence of sentiment -- then conspiracy may be inferred, even though no actual meeting among them to concert means can be shown.[45] Consequently, the conspirators shall be held equally liable for the crime, because in a conspiracy the act of one is the act of all.[46]

Undoubtedly, in perpetrating the kidnapping for ransom, conspiracy existed among herein accused-appellants. Viewed in its totality, the individual participation of each of them pointed to a joint purpose and criminal design. Notarte and Yambot snatched the victim from his office in Mandaluyong, Metro Manila.

Pangilinan and Yambot sandwiched him in the car and transported him, together with the others, to a house where he was detained for ten days. Lopez negotiated with the victim's wife for the ransom payment. Further, all three appellants set out to the designated place of ransom payment. These acts were complementary to one another and

were geared toward the attainment of a common ultimate objective. That objective was to extort a ransom of P10 million (which was later reduced to P1.2 million through bargaining by the victim's wife) in exchange for the victim's freedom.

Moreover, it is difficult to accept the excuse of appellants that they had nothing to do with the kidnapping. We agree with the following observation of the trial court:

"Pangilinan's pretenses do not jibe well with reality. From his own version of the incident, there was no need for Notarte to have hired him merely to watch the former's car on the day of the abduction. For, it must be emphasized that when Notarte and Yambot left the car and entered the building for the purpose of abducting Garcia, one of Notarte's companions, Arnold Lopez, was left in the car. Evidently, Lopez could very well have assumed the role of watching the car without the need of having to hire an extra hand for the purpose.

"Moreover, it is significant to note that as early as March 08, 1994 when Garcia was forcibly taken from his office whom Pangilinan thought, as he was made to understand, was a drug-pusher, he already entertained some suspicion that it was not so and that Notarte and his group were into something illegal when instead of going to Camp Crame to detain the drug-pushing suspect, they bypassed Camp Crame and proceeded to Baliuag, Bulacan. He was even prompted, by reason of said unexpected turn of events, to tell his wife right after he was given PHP 500.00 as his compensation for the day and after he was sent home by Notarte that what he saw was not an arrest of a suspect but a hold-up. Yet, when Notarte again passed by his house on March 17, 1994, Pangilinan again went with Notarte, although Pangilinan claims that he was only forced to do so because of alleged threat by Notarte that something would happen to him and his family if he refuses to go with him. Such threat, assuming it was made, pales into significance in the light of the fact that Pangilinan accepted from Notarte an additional amount of PHP 1,000.00 which, if anything, clearly demonstrates, coupled with his earlier participation, his complicity or connivance with Notarte in the abduction of Teofilo Garcia."

xxx xxx xxx

"The accused Pangilinan, Lopez and Yambot uniformly declared that their involvement with Notarte was only on account of the latter's offer to them of better-paying jobs and not because of his plan to kidnap a person of which they were not privy to. Only the naive would fall for such a ruse. If their testimonies are to be believed, the jobs being offered to them were no better than their jobs at the time the offers were made. Besides, all of them profess to barely know Notarte when he approached them about the jobs and yet they appear to have readily accepted the offers. On the part of Notarte, he could not have been stupid enough to have recruited men of dubious loyalty and commitment to a risky and dangerous undertaking." [47]

Verily, it is "inconceivable that members of a kidnapping syndicate would entrust the performance of an essential and sensitive phase of their well-planned criminal scheme to people not in cahoots with them, and who had no knowledge whatsoever of the details of their nefarious plan." [48]

Appellant Lopez also argues that he cannot be convicted, because he was not sufficiently represented during the presentation of co-appellant Pangilinan as hostile witness.

Such an argument would hold if Lopez's conviction were based on Pangilinan's testimony. But as we have held above, Lopez was convicted because of the positive identification made not only by the victim, but also by the victim's wife who also pointed to him as the person who had whipped her with a gun on the day her husband was abducted. [49]

When Arthur Pangilinan testified in the absence of Lopez's counsel, the court appointed Atty. Leonardo to represent Lopez for that day. [50] However, we find that such an appointment did not provide the appellant with adequate representation to safeguard his rights fully. It was irregular because Pangilinan, whom the lawyer was also representing, gave incriminating statements against Lopez. As the counsel of Pangilinan, Atty. Leonardo

could not have objected either to his questions or to his answers to safeguard the rights of his other client, Lopez. However, this notwithstanding, the incriminating evidence provided by the victim and his wife are more than sufficient to convict Lopez even without Pangilinan's testimony.

Appellants were charged with and convicted of the crime of kidnapping for ransom and serious illegal detention. Article 267 of the Revised Penal Code 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 liberty, shall suffer the penalty of reclusion perpetua to death.

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

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

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

The elements of the crime of kidnapping and serious illegal detention are the following: (a) the accused is a private individual; (b) the accused kidnaps or detains another, or in any manner deprives the latter of his liberty; (c) the act of detention or kidnapping is illegal; and (d) in the commission of the offense, any of the four circumstances mentioned above is present.[51] Moreover, the imposition of the death penalty is mandatory if the kidnapping was committed for the purpose of extorting ransom.[52] In the instant case, appellants cannot escape the penalty of death, inasmuch as it was sufficiently alleged and indubitably proven that the kidnapping had been committed for the purpose of extorting ransom.

As to the conviction of the appellants for illegal possession of firearms, we are constrained to dismiss and set aside this portion of the judgment. They cannot be held liable for such offense, since there was another crime -- kidnapping for ransom -- which they were committing at the same time.

The law governing illegal possession of firearms provides:

“SECTION 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 .38 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 center-fire 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’etat, such violation shall be absorbed as an element of the crime of rebellion or insurrection, sedition, or attempted coup d’etat.

“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.”[53] (Emphasis supplied)

Interpreting this law, this Court has consistently ruled that if an unlicensed firearm is used in the commission of any other crime, there can be no separate offense of simple illegal possession of firearms.[54] Explained the Court:

“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.”[55]

In sum, we affirm the conviction of the appellants as principals in the crime of kidnapping for ransom and serious illegal detention. However, we set aside the judgment convicting them of illegal possession of firearms.

As regards the articles allegedly taken from the victim during the kidnapping, we find that the prosecution failed to prove with certainty the amount of money or the value of the jewelry taken from him. These cannot be presumed. Moreover, we reduce the award of moral damages to three hundred thousand pesos (P300,000.00) to be paid by the appellants solidarily. The fact that the victim suffered the trauma of mental, physical and psychological ordeal constitutes sufficient basis for an award of moral damages.[56] Meanwhile, an aggravating circumstance, whether ordinary or qualifying, entitles the offended party to exemplary damages within the meaning of Article 2230 of the Civil Code.[57] There being a demand for ransom in this case, and by way of example or correction, the offended party shall receive exemplary damages in the amount of one hundred thousand pesos (P100,000.00).[58]

WHEREFORE, the decision of the RTC of Pasig City (Branch 70) in Criminal Case No. 106115 sentencing appellants to death for kidnapping for ransom is **AFFIRMED** with the **MODIFICATION** that they shall pay the victim in solidum the amount of three hundred thousand pesos (P300,000.00) as moral damages and an additional amount of one hundred thousand pesos (P 100,000.00) as exemplary damages. Costs against appellants.

However, the Decision of the court a quo convicting them of illegal possession of firearms in Criminal Case No. 106116 is REVERSED and SET ASIDE.

Three Justices of the Court maintain their position that R.A. No. 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 that the death penalty can be lawfully imposed in the case at bar.

In accordance with Section 25 of R.A. No. 7659 amending Section 83 of the Revised Penal Code, let the records of this case be forthwith forwarded, upon finality of this decision, to the Office of the President for possible exercise of the pardoning power.

SO ORDERED.

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

[1] Motion to Withdraw Appeal dated April 29, 1999; rollo, pp. 135-136. See also the June 22, 1999 Supreme Court Resolution granting the Motion to Withdraw Appeal filed by Antonio Hamton; rollo, p. 137.

[2] Appellee's Brief, pp. 5-12; rollo, pp. 202-209. Citations omitted.

[3] Rollo, pp. 26-27; records, vol. 1., part 1, pp. 1-2.

[4] Id., p. 29; records, vol. 1, part 2, p. 1.

[5] See RTC Order dated May 2, 1994; Id., p. 28.

[6] RTC Decision, pp. 19-20; rollo, pp. 115-116; records, vol. 2, pp. 712-713.

[7] Brief for the accused-appellant Reynaldo Yambot, p. 2; rollo, p. 282.

[8] Brief for the accused-appellant Arnold Lopez, p. 2; rollo, p. 142.

[9] Brief for the accused-appellant Arthur Pangilinan, p. 7; rollo, p. 400.

[10] TSN, March 18, 1997, p. 5.

[11] Brief for the accused-appellant Arnold Lopez, p. 11; rollo, p. 151.

[12] TSN, February 10, 1997, pp. 4-6.

[13] Brief for the accused-appellant Arnold Lopez, p. 13; rollo, p. 153.

[14] TSN, May 7, 1997, p. 6.

[15] Id., p. 5.

[16] Brief for the accused-appellant Reynaldo Yambot, p. 9; rollo, p. 289.

[17] TSN, October 2, 1995, p. 13.

[18] Brief for the accused-appellant Arthur Pangilinan, p. 19; rollo, p. 411.

[19] TSN, May 23, 1994, pp. 10-22. Italics supplied.

[20] TSN, May 24, 1994, pp. 7-8.

- [21] *Id.*, pp. 30-31; TSN, May 24, 1994, p. 9.
- [22] *Id.*, pp. 9-16.
- [23] *Id.*, pp. 20-33; .TSN, May 25, 1994, pp. 3-20.
- [24] TSN, June 16, 1994, pp. 12-30. Italics supplied.
- [25] *People vs. Bacungay*, G.R. No. 125017, March 12, 2002; *People vs. Garcia*, G.R. Nos. 133489 & 143970, January 15, 2002; *People vs. Candelario*, 311 SCRA 475 (1999).
- [26] TSN, July 7, 1994, pp. 3-22. Italics supplied.
- [27] *People vs. Bacungay*, *supra*; *People vs. Dacoba*, 289 SCRA 265 (1998); *People vs. Garcia*, 281 SCRA 463 (1997).
- [28] *People vs. Lachica*, G.R. No. 143677, May 9, 2002; *People vs. Manayan*, G.R. No. 142741-43, October 25, 2001; *People vs. Dacara*, G.R. No. 135822, October 25, 2001.
- [29] *People vs. Hofileña*, 334 SCRA 214 (2000); *People vs. Legaspi*, 331 SCRA 95 (2000); *People vs. Llanes*, 324 SCRA 727 (2000); *People vs. Rendoque*, 322 SCRA 622 (2000).
- [30] *Restaurante Las Conchas vs. Llego*, 314 SCRA 24 (1999).
- [31] Francisco, *The Revised Rules of Court in the Philippines: Evidence*, vol. VII, part 1 (1997 ed.), p. 321.
- [32] *People vs. De Leon*, G.R. No. 144052, March 6, 2002; *People vs. Sansaet*, G.R. No. 139330, February 6, 2002; *People vs. Cuenca*, G.R. No. 143819, January 29, 2002.
- [33] *People vs. Sansaet*, *supra*; *People vs. Manayan*, *supra*.
- [34] *People vs. Lachica*, *supra*; *People vs. Sansaet*, *supra*; *People vs. Manayan*, *supra*; *People vs. San Agustin*, 350 SCRA 216 (2001).
- [35] *People vs. Jose*, 324 SCRA 196 (2000), citing *People vs. Villablanca*, 316 SCRA 13 (1999).
- [36] *People vs. Banela*, 301 SCRA 84 (1999).
- [37] *People vs. Zuniega*, 352 SCRA 403 (2001); *People vs. Salimbago*, 314 SCRA 282 (1999).
- [38] *People vs. Salimbago*, *supra*.
- [39] *People vs. Ulzoron*, 286 SCRA 741 (1998).
- [40] Art. 8, Revised Penal Code.
- [41] *People vs. Tejero*, G.R. No. 135050, April 19, 2002; *People vs. Pacificador*, G.R. No. 126515, February 6, 2002; *People vs. Garcia*, G.R. Nos. 133489 and 143970, January 15, 2002; *Erquiaga vs. CA*, G.R. No. 124513, October 17, 2001.
- [42] *People vs. Matic*, G.R. No. 133650, February 19, 2002; *People vs. Bejo*, G.R. No. 138454, February 13, 2002; *People vs. Macabales*, 347 SCRA 429 (2000); *People vs. Quitlong*, 292 SCRA 360 (1998); *People vs. Alas*, 274 SCRA 310 (1997); *People vs. Garalde*, *supra*; *People vs. Lumiwan*, 295 SCRA 215 (1998); *People vs. Gungon*, 287 SCRA 618 (1998).
- [43] *People vs. Licayan*, G.R. Nos. 140900 and 140911, August 15, 2001; *People vs. Domasian*, 219 SCRA 245 (1993).

[44] People vs. Suyum, G.R. No. 137518, March 6, 2002; People vs. Concorcio, G.R. Nos. 121201-02, October 12, 2001; People vs. Aquino, G.R. No. 145371, September 28, 2001.

[45] People vs. Bacungay, *supra*.

[46] People vs. Boiller, G.R. Nos. 144222-24, April 3, 2002; People vs. Bacungan, *supra*; People vs. Manlansing, G.R. Nos. 131736-37, March 11, 2002.

[47] RTC Decision, pp. 13-14; rollo, pp. 110-111; records, vol. 2, pp. 706-707.

[48] People vs. Bacungay, *supra*.

[49] TSN, June 16, 1994, pp. 27-28.

[50] TSN, October 2, 1995, pp. 3-5.

[51] People vs. Oliva, G.R. No. 126359, October 25, 2001; People vs. Flores, G.R. No. 116488, May 31, 2001; People vs. Ubongen, G.R. No. 126024, April 20, 2001.

[52] Art. 267, Revised Penal Code.

[53] § 1, Presidential Decree 1866, as amended by Republic Act 8294.

[54] People vs. Garcia, *supra*; Evangelista vs. Sistoza, G.R. No. 143881, August 9, 2001; People vs. Ladjalam, 340 SCRA 617(2000).

[55] People vs. Ladjalam, *supra*, pp. 649-650.

[56] People vs. Garcia, *supra*.

[57] People vs. Catubig, G.R. No. 137842, August 23, 2001.

[58] People vs. Deang, 338 SCRA 657 (2000).

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