

PEOPLE OF THE PHILIPINES, APPELLEE, VS. ERNESTO M. ESCALANTE, APPELLANT.*G.R. Nos. 151111-12. December 01, 2003*

Ponente: TINGA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-nos-151111-12/>**TINGA, J.:**

A modern-day Lothario in a rustic setting. Such a man is the principal character in this case. The villain that he is, he proved to be different from his counterpart of lore. He resorted not only to charm and cunning but even to force and intimidation to snare his conquests. Devoid of scruples in the choice of his sexual exploits, he victimized four members of the same family in overlapping succession. The mother first, then the sister of the mother and finally the two minor children of the mother. The heart-rending experience of the minor victims is the story of this case.

Before this Court for automatic review is the Joint Decision[1] dated November 8, 2001 of the Regional Trial Court, Second Judicial Region, Branch 16, Ilagan, Isabela, in Criminal Cases No. 2857 and 2858, finding the appellant Ernesto M. Escalante guilty beyond reasonable doubt of two (2) counts of Kidnapping with Serious Illegal Detention and sentencing him to suffer the supreme penalty of death in each count.

The appellant was charged with the crime in two separate Informations both dated May 20, 1998. The accusatory portions of the Informations docketed as Criminal Cases Nos. 2857 and 2858, respectively, read:

CRIMINAL CASE NO. 2857

That or about the 5[th] day of January 1994 until January 11, 1998, in the municipality of Reina Mercedes, province of Isabela, Philippines, and within the jurisdiction of this Honorable Court, the said accused, did then and there, willfully, unlawfully and feloniously, kidnap one Marialisa D. Balgua, for the purpose of permanently separating her from her family and detaining her for a period of several years.[2]

CRIMINAL CASE NO. 2858

That on or about the 21[st] day of June, 1992, until January 13, 1998, in the municipality of Reina Mercedes, province of Isabela, Philippines, and within the jurisdiction of this Honorable Court, the said accused, did then and there, willfully, unlawfully and feloniously, kidnap one Marilyn D. Balgua, a girl of 12 years of age, for the purpose of permanently separating her from her family and detaining her for a period of several years.[3]

During his arraignment on October 30, 1998, the appellant, assisted by his counsel de oficio, entered the plea of not guilty on both charges. Upon motion of the prosecution[4], the cases were consolidated and jointly tried without the objection of the defense.[5]

First, the facts pertinent to Criminal Case No. 2858.

Marilyn Balgua first met the appellant when she was five years old. Her mother, Flordeliza Balgua, who was separated from her father since she was two months old entered into a common-law relationship with the appellant.[6] After three months of cohabitation as common-law spouses, the relationship ended when the

appellant married Leonora who is the sister of Marilyn's mother.[7]

On June 21, 1992, Marilyn, then twelve years old was at their residence in Barangay Nappaccu Pequeño, Reina Mercedes, Isabela when the appellant poked a knife at her and threatened to kill her and her family if she did not go with him.[8] She acceded to the order and went with him because of his death threat in addition to her deep-rooted fear of him which began when she witnessed him burn the house of her aunt, Leonila Mariano when she was five years old.[9] Marilyn was forced to go with the appellant to Umingan, Pangasinan aboard a bus bound for Dagupan. During the bus ride, the appellant threatened Marilyn not to make a commotion otherwise she would be killed.[10] When they alighted at Umingan, Pangasinan, they took another ride for Tayug[11] and proceeded to the house of the appellant's cousin, Puring, where he wasted no time in raping her. For six years, Marilyn endured being beaten up and raped by the appellant which consequently resulted in the birth of her two sons.[12] The appellant closely guarded Marilyn and refused to allow her to communicate with her mother. To prevent her escape, the appellant often required his cousin to watch her whenever he was away[13] despite the fact that she was already locked up inside the house.[14]

On January 13, 1998, Marilyn finally found the chance to escape with her children by breaking open the window when the appellant was away.[15] She went home to the house of her mother in Reina Mercedes, Isabela using the money she took from the appellant's trousers.[16]

The facts pertinent to Criminal Case No. 2857 follow.

On January 5, 1995, Marialisa Balgua was on her way home from Kingsville Hotel at Cauayan, Isabela where she worked as a cook and a cleaner when the appellant suddenly approached her, pulled her left arm and told her to go with him otherwise she would be killed.[17] Under threat of death, Marialisa went with the appellant to Nangcalabasaan, Umingan, Pangasinan where Marialisa was locked-up for three years inside a bungalow that has only one door and one barred window.[18] The appellant did everything he wanted to do to Marialisa which included the infliction of bodily harm and countless rapes.[19] The appellant's repeated sexual congress with Marialisa resulted in the birth of their daughter, Ruby, on November 11, 1995. [20]

On January 6, 1998, the appellant informed Marialisa that he was returning her to her mother in Isabela. But instead of doing so, the appellant brought her to the Beegees Resort at Prenza, Cauayan, Isabela where they stayed for five days.[21] On the fifth day of their stay at the Beegees Resort, the appellant informed her that he was going somewhere. Marialisa took advantage of his absence to escape with their daughter and immediately went home to her mother in Reina Mercedes, Isabela.[22]

As soon as Marialisa arrived at the house of her mother, they informed the barangay captain of her ordeal and the consistent death threat made by the appellant.[23]

On the other hand, Marilyn arrived on January 13, 1998. Upon learning that they (Marilyn and Marialisa) had suffered the same fate in the hands of the appellant, they decided to file charges against him.[24]

The appellant denied the accusations filed against him by Marilyn and Marialisa.

He testified that he was married to Leonora de Vera[25] and they resided at Barangay Nappaccu Pequeño, Reina Mercedes, Isabela until the year 1991 when they separated.[26] Thereafter he lived in San Fermin, Cauayan, Isabela where he worked as a radio repairman-technician and a traffic aide. Sometime in December 1994, Marilyn and Marialisa Balgua, accompanied by their mother, Flordeliza, visited him in his house in Cauayan, Isabela in order to ask him to recognize and register the child of Marialisa.[27] Hence, together with Flordeliza, the appellant had the child registered in Cauayan, Isabela with him as the father because he wanted to help them.[28]

According to the appellant, sometime in January 1995, Marilyn, Marialisa and Flordeliza again went to his house to ask him, this time, to recognize the child Marilyn was expecting.[29] Although he was not the father of the child, he agreed to the request subject to the condition that Marilyn would live with him as his wife. After Marilyn had given birth beside the Rural School in San Fermin, Cauayan on February 9, 1995[30], the appellant registered the birth of the child, with him as the father. Thereafter, they lived with each other as husband and wife. Their cohabitation resulted in the birth of their second child on November 30, 1996. He also admitted paternity of Marilyn's second child.[31] In 1998, they parted ways allegedly because Marilyn had gone abroad.[32]

On November 8, 2001, the trial court rendered a Joint Decision finding the appellant guilty in both cases. The dispositive portion of the decision reads:

WHEREFORE, the prosecution having established the guilt of the accused beyond reasonable doubt of the crime charged in both criminal cases, herein accused Ernesto Escalante is hereby sentenced to suffer the supreme penalty of death in each case, as provided for by law. Likewise, he is ordered to indemnify herein victims the amount of fifty thousand (P50,000.00) pesos each by way of compensatory damages as mandated by law and existing jurisprudence.

SO ORDERED.[33]

In assailing the judgment of conviction, the appellant assigned the following errors:

- THE TRIAL COURT ERRED IN GIVING FULL FAITH AND CREDENCE TO THE TESTIMONIES OF THE PRIVATE COMPLAINANT MARIALISA BALGUA AND MARILYN BALGUA;
- THE TRIAL COURT ERRED IN FINDING ACCUSED APPELLANT ERNESTO ESCALANTE GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF KIDNAPPING QUALIFIED BY RAPE.
- ASSUMING ARGUENDO THAT THE ACCUSED ESCALANTE IS GUILTY, HE IS GUILTY OF THE CRIME OF SIMPLE KIDNAPPING NOT QUALIFIED BY RAPE AS THE ELEMENTS OF RAPE HAVE NOT BEEN DULY ALLEGED IN THE TWO (2) INFORMATIONS.[34]

We affirm the judgment of conviction.

To secure conviction for kidnapping and serious illegal detention defined and penalized under Article 267 of the Revised Penal Code,[35] as amended, the following requisites must concur, namely: (1) the offender is a private individual; (2) he kidnaps or detains another, or in any manner deprives the latter of his liberty; (3) the act of detention or kidnapping must be illegal; and (4) in the commission of the offense any of the following circumstances is present: (a) the kidnapping or detention has lasted for more than three days; (b) it is committed by simulating public authority; (c) any serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made; or (d) the person kidnapped or detained is a minor, female, or a public officer.[36]

A reading of the testimony of Marilyn and Marialisa readily shows the concurrence of the above-cited elements in each case.

Marilyn, the first victim of the appellant, clearly testified on the fact of her illegal detention, thus:

Q:

On June 21, 1992, while you were residing at Barangay Napaccu Pequeño, Reina Mercedes, Isabela, do you remember of any unusual incident that happened in your life?

A:

Yes, sir.

Q:

What was that unusual incident all about?

A:

That was the time when Ernesto Escalante abducted me.

Q:

How did Ernesto Escalante abduct you?

A:

He poked a fan knife at me and threatened to kill me and my family once I will not go with him.

Q:

Were you afraid of him when he poked a knife at you?

A:

Yes, sir.

Q:

Why?

A:

Because he threatened me.

Q:

Why were you so afraid then?

A:

Because I saw how he burned the house of my aunt

Q:

What's the name of your aunt whose house was burned by Ernesto?

A:

Leonila Mariano.

...

Q:

When Ernesto poked a knife at you and threatened you if you will not go with him, what did you do if any?

A:

I went with him because I was afraid he would kill me.

Q:

Where did accused Ernesto bring you on June 21, 1992?

A:

He brought me at (sic) Tayug, Umingan, Pangasinan.

Q:

What ride did you take in going to Tayug?

A:

A bus bound to Dagupan.

...

Q:

And when he brought you to Tayug, Umingan, what did he do to you, if any?

A:

He raped me.

Q:

How many times were you raped?

A:

Many times until I bore two (2) children.

...

Q:

Did you not report to the police authorities at Pangasinan?

A:

I did not report because I was afraid.

Q:

Why were you afraid?

A:

I was always threatened.

Q:

Did you not inform your mother that you were brought by Ernesto Escalante to Tayug, Umingan, Pangasinan?

A:

No, sir, because he does not want me to write my mother.

Q:

For how long were you kept by Ernesto Escalante at Tayug, Umingan Pangasinan?

A:

Six (6) years.

Q:

And for that period of six (6) years you never informed your mother that you were in Tayug, Umingan, Pangasinan?

A:

I never told her.

Q:

Why not?

A:

I was always threatened and he always sent his cousin to watch over me.

...

Q:

When for the first time did you inform the police authorities that you were abducted, detained and raped by Ernesto Escalante?

A:

Only now, sir, last January 13, 1998.

Q:

What police authorities did you report the matter?

A:

Police headquarters at Reina Mercedes.

Q:

And how were you able to report the matter to the police authorities of Reina Mercedes on January 13, 1998?

A:

I escaped, sir.

...

Q:

Were you alone when you escaped?

A:

I was with my two (2) children.[37]

...

Likewise, Marialisa, the second victim of the appellant, lucidly testified about her similar fate, thus:

Q:

You testified that you were kidnapped by Ernesto Escalante, how did he kidnap you?

A:

While on my way home from Cauayan, I was surprised when Ernesto suddenly appeared in front of me and pulled my left arm and said, "come with me, if not, I'll kill you".

...

Q:

After accused Ernesto pointed a knife at your neck, what else did he do, if any?

A:

He threatened to kill me if I will not go with him willingly (sitatallugud).

Q:

Where did the accused Ernesto Escalante bring you?

A:

He brought me to Umingan, Pangasinan.

Q:

And what means of transportation did you and Ernesto take in going to Umingan, Pangasinan?

A:

Nelbusco.

...

Q:

And where did Ernesto bring you in particular?

A:

Nangcalabasaan, Umingan, Pangasinan.

Q:

In whose house did he bring you?

A:

To his uncle Eugenio Escalante's house.

Q:

And how long did Ernesto keep you in the house of his uncle in Umingan, Pangasinan?

A:

He kept me there for a long period of time.

Q:

How many years?

A:

Three (3) years.

...

Q:

Could you specify what he did to you?

A:

He maltreated and raped me.

Q:

And for how many times did accused Ernesto rape you?

A:

Many times.

...

Q:

Did you report to the police of Umingan that you were raped many times by accused Ernesto Escalante?

A:

I could not report, sir, because he threatened to kill me once I report.

Q:

Did you bear any child by him?

A:

Yes, sir.

...

Q:

Could you remember the time or the exact date of your last stay in Umingan, Pangasinan?

A:

Last January 6, he promised me to bring me home at Nappaccu Pequeño. That was the last time we stayed in Umingan.

Q:

When you say January 6, what year are you referring to?

A:

1998.

Q:

And after you left Umingan, Pangasinan, where did accused Escalante bring you?

A:

He told me he will return me to my mother but he brought me to Beegees Resort at Prenza, Cauayan.

...

Q:

And for how long did you stay in Beegees resort at Prenza?

A:

Five (5) days, sir.

Q:

And after five days of staying in Beegees resort, what did you do, if any?

A:

He asked permission that he is going somewhere, that's why I got the chance to escape.

Q:

When you say that was the chance for you to escape, did you indeed escape?

A:

yes, sir.

Q:

Where did you go when you escaped?

A:

I went home to Nappaccu, Pequeño, Reina Mercedes.

Q:

Where you alone when you went home to Nappaccu Pequeño?

A:

I was with my daughter.

Q:

And did you reach Nappaccu Pequeño?

A:

Yes, sir. Upon arrival, together with my mother, we went to the barangay captain to report.[38]

Marialisa came out whole and believable with her positive, categorical and unwavering testimony on cross examination. The excerpts of her testimony appear below.

Q:

And do we understand that when he was guarding you, he was poking his knife at you?

A:

Yes, sir.

Q:

Even when you alighted, the accused poked his knife at you, is that what you mean?

A:

Yes, sir. He told me that if I'll not give myself willingly, he will hurt me and he even said that I should be submissive so that I'll not be hurt.

...

Q:

Do we understand from you that you were all alone with the accused in that house where you stayed?

A:

Yes, sir.

Q:

And if that is so, how did you manage to live there all alone without any companion except the accused?

A:

I did not have the chance to escape because he was guarding and I could not go out because I was locked inside.

...

Q:

What was the house made of, strong materials or light materials?

A:

The house was a bungalow.

Q:

There are windows and doors?

A:

Only one door and one window.

Q:

But it is usually open?

A:

No, sir, there are bars.

Q:

You tell us, was that the condition that you were in for a period of 3 years while you were staying in Nangcalabasaan, Umingan, Pangasinan?

A:

Yes, sir.

Q:

You were always at (sic) guard even when you make personal answer to the call of nature?

A:

The house is with a comfort room inside. I even wash our clothes inside and he was the one who hangs the clothes outside for drying.[39]

...

Q:

While you were in Nangcalabasaan, the accused live with you there, did he not?

A:

Yes, sir.

Q:

And every time he had sex with you, you gave yourself to him because you were afraid of him, is that correct?

A:

Yes, sir, and every time he wants to have sex with me, he first maltreats me.

Q:

Are you sure that every time he had sex with you he maltreats you?

A:

Yes, sir.

Q:

There was never an occasion when you voluntarily gave yourself to him in sexual intercourse, is that what you mean?

A:

Yes, sir, never.

Q:

But he gave you sustenance to include, money, food, shelter and clothing when you stayed in Nangcalabasaan, Umingan, Pangasinan, did he not?

A:

He never gave me money. He just feeds me. That's all.

Q:

Then when you bore him a child, did he not attend to your needs as a mother?

A:

No, sir.

...

Q:

So, you admit that after you gave life to the child of the accused, you still stayed with him in Pangasinan, is that correct?

A:

Yes, sir.

Q:

And is it not true that after you gave birth you also had sex again with him?

A:

Yes, sir, up to the time I left he did everything he wants.

Q:

And during all the time that you had sex with him you were resigned because after all he is the father of your child?

A:

I still could not accept that he is the father of my child. I just kept silent because I did not have the chance to escape.[40]

...

The evidence for the prosecution, principally the testimony of the victims, indubitably established that the appellant who is a private individual had kidnapped Marilyn, a twelve year old girl, on June 21, 1992 in Reina Mercedes, Isabela and then illegally detained her in Tayug, Pangasinan until January 13, 1998 when she escaped from her confinement. On the other hand, Marialisa was sixteen years old when the appellant kidnapped her on January 5, 1994 in Cauayan, Isabela and her detention was continued in Nangcalabasaan, Umingan, Pangasinan until January 11, 1998. In other words, the facts proven adequately satisfy the elements of the crime of kidnapping, the gravamen of which is the deprivation of their liberty.

Significantly, the pattern employed by the appellant in executing his bestial acts is readily apparent. As correctly noted by the Office of the Solicitor General in its Brief, Marilyn and Marialisa were abducted at knife point when they were too young to defend themselves. Both were brought to Umingan, Pangasinan, a place far from their family but convenient for the appellant to have sexual access to two different women situated in the same town. During the entire period of their detention, they were subjected to maltreatment, sexual abuses and threats. The appellant, likewise, sired children by both girls and took charge of registering the children's births, thereby unwittingly proving that the children's mother were not allowed to leave the houses. His minor victims were driven to escape because of their unbearable sufferings at the hands of the appellant.

Also as rightly observed by the Solicitor General from the evidence, the appellant is the macho type who enjoys having two women at the same time. First, he kept on a string the sisters Flordeliza Balgua and Leonora de Vera as common-law spouse and wife, respectively. Later, he kidnapped the minors Marilyn and Marialisa Balgua and made them sexual slaves.

The appellant seeks to discredit Marilyn and Marialisa by adverting to their testimony that Marilyn had stayed with him for six years and bore him two children while Marialisa stayed with him for three years and bore him one child.

Said testimony of the victims does not disprove, and neither is it inconsistent with, the fact of their illegal detention by the appellant who literally held them incommunicado. Indeed, it is apparent that what prevented the sisters from escaping was their extreme fear of the appellant brought about by their keen awareness of his propensity to do terrifying and unlawful acts, such as the burning the house of their relative when they were still young.

It should be noted that Marialisa was adamant in her claim that it was fear for her life that compelled her to go with the appellant and it was that same fear that caused her to stay for three long years and submit to his sexual advances.

Hence, it is understandable why the sisters were numbed by his death threats and failed to fight back, obviously resigned to their common misfortune. Fear cannot be tested by any hard-and-fast rule but must instead be viewed in the light of the perception and judgment of the victim at the time of the crime.[41] Furthermore, different people act differently to a given situation, and there is no standard form of behavioral responses when one is confronted with a strange, startling or frightful experience.[42]

The appellant avers that during the time that, according to the sisters, he had detained them it is difficult to believe that they were unaware that they were living close to each other in different barangays of the same town.[43] But verily, the appellant's separate detention of the sisters amply explains why there were totally unaware of their similar pitiful fates.

At this juncture, we note the fact that the victims were steadfast and unshaken in their recital of their abominable confinement even in the course of their gruelling cross-examination. Marilyn testified on cross-examination, as follows:

Q:

Is it not a fact that you rode in the sidecar of the tricycle while the accused rode behind the driver?

A:

No, sir, we both rode inside and he was poking a knife at me.

Q:

Is it not a fact that you brought along with you some personal belongings that time?

A:

No, sir.

Q:

Do you mean to say that you rode in a tricycle from Nappaccu Pequeño to Tayug?

A:

No, sir, up to Cauayan and when we were in Cauayan we rode in a bus.

Q:

Are you familiar with the streets in Cauayan?

A:

Only some.

Q:

Is it not a fact also that when you were on board the tricycle together with the accused you passed by some policemen directing traffic in the streets of Cauayan?

A:

Yes, sir.

Q:

And you did not report or you did not make any move to catch the attention of the police who were directing traffic, is it not?

A:

No, sir, because he was poking a knife at me and he was threatening me.

Q:

Yes, but don't you know, Madam Witness, that if you make a move, the policemen automatically comes to your rescue?

A:

I was afraid then, sir.

Q:

Even if he was not already poking a knife at you?

A:

Yes, sir.

Q:

How many policemen did you see while you were on board the tricycle together with the accused?

A:

Two all in all. One at the market and one at the outpost at Roxas St..[44]

...

Q:

When you were taken by the accused on June 21, 1992, what was his exact words to you when he took you?

A:

He just told me to accompany him to make dentures and when I refused to go with him he poked a knife at me and threatened to kill me and my family.

Q:

That same day on June 21, 1992, when he took you that was the time he threatened to kill you if you do not go with him?

A:

Yes, sir.

Q:

Did you not plead to him not to molest you because you did not like to go with him?

A:

I pleaded to him but he continued on threatening me and threatened to kill me once I refuse to go with him.[45]

Q:

Is it not true that the accused cajoled you to join him because he promised a job for you?

A:

No, sir.

Q:

And you want to tell this court that out of fear for your life you went with the accused on June 21, 1992?

A:

Yes, sir.

Q:

And you said that he poked a knife on you, what kind of knife was that?

A:

A fan knife, *viente-nuebe*.^[46]

...

Q:

Yes, but when you boarded the bus he was right behind you poking his knife at your back?

A:

Yes, sir, while he was poking the knife he covered it with his jacket.

Q:

Did not anyone of the passengers notice you in that situation?

A:

No, sir, because he warned me not to move and told me, once I create a commotion inside, he will kill me.

Q:

You became afraid when he took you at your residence at Barangay Nappaccu Pequeño until you reached the National highway?

A:

Yes, sir, and even when I was still five (5) years old because I saw how he burned the house of my aunt.

Q:

And you did not do anything while on your way to Tayug, Pangasinan?

A:

I never did anything because I was afraid.[47]

...

Q:

And how did he support you during all the time that you were with him?

A:

He gives us any time he wants to give us.

Q:

Is it not true that you resigned to your status being known to be the wife of the accused without placing any protest?

A:

No, sir, he was always threatening me.

Q:

Is it not true that he left you in Umingan to attend to his work in Cauayan, to his dental work?

A:

No, sir, he just worked in Pangasinan.

Q:

But you shared the same bed with him during all the time that you stayed in Umingan, Pangasinan?

A:

Yes, sir, we were living in one roof.

Q:

And except for the first intercourse that you had with him you submitted yourself to him, is it not?

A:

I always refused to sleep with him but he hurts me.

Q:

You mean to say that every time you have intercourse with him he beats you?

A:

Yes, sir.

Q:

Even after you gave life to your first child?

A:

Up to my second child, that's how we live with each other.

Q:

He always maltreats you before he had sex with you?

A:

Yes, sir.

Q:

And you did not complain to his cousins you being maltreated by the accused?

A:

His cousins were the ones guarding me when he leaves the house.

Q:

You never went out of the house of his cousin while you were in Umingan, Pangasinan?

A:

Yes, sir.

Q:

So you were virtually a prisoner inside the house of his cousin in Umingan?

A:

Yes, sir, he oftentimes padlocks the door once he leaves.[48]

...

Q:

When did he consider you as his wife, was that before the birth of your second child?

A:

When I was conceiving my first child, sir.

Q:

But during your stay with him in Pangasinan as his wife, he provided you and your two children with shelter, food and clothing, is that correct?

A:

Yes, sir.

Q:

In other words, you were supported by him, is that correct?

A:

Yes, sir.

Q:

And after you begot your first child, you did not complain anymore and resigned yourself to your fate as you were being treated as his wife by the accused?

A:

Because of my fear, I just submitted myself to him, sir.

Q:

You mean to say, that you were under the grief of fear even after you gave birth to your second child by him?

A:

Yes, sir.

Q:

You want the court to believe that you were helpless for the period of 6 years as you were not able to report your misfortune that befell you to the authorities concerned?

A:

No, sir. I was really very afraid and he threatened to kill me, that's why I did not escape.[49]

Needless to state, the appellant has miserably failed in his attempt to show that Marilyn voluntarily had gone with him as his lover. Neither has he succeeded in showing that Marilyn had learned to submit herself to him and assume the role of his wife willingly during the six years that she was detained.

Consequently, the defense of denial set up by the appellant as well his attempt to discredit the testimony of Marilyn and Marialisa merits no consideration.

The appellant's story is simply nonsensical. It is unnatural for a man to admit the paternity of the children he did not sire especially of two minor sisters as in this case. And it is contrary to human nature and experience for a mother to entrust her daughters to a former lover who had betrayed her by marrying her sister. Considering that the appellant failed to show that his minor victims were of loose morals, this Court takes judicial notice of a Filipina's inbred modesty and shyness and her antipathy in publicly airing acts which blemish her honor and virtue.[50]

Also, no ill-motive may be laid on the victims in accusing the appellant of such a grave crimes if the same were not true, especially since their accusation would likely result in their children being deprived of a father.

This Court finds no cogent reason to deviate from the assessment made by the trial court anent the credibility of the minor victims who testified during the trial of these cases. After all, it is a time-honored doctrine that the findings of the trial court are given weight and the highest degree of respect by the appellate court in view of the fact that the matter of assigning values to the testimony of witnesses is a function best performed by the trial court. It can weigh the testimony of witnesses in the light of the latter's demeanor, conduct and attitude at the trial. This rule of course admits certain exceptions, not even one of which is present, to wit: (1) when patent inconsistencies in the statements of witnesses are ignored by the trial court, or (2) when the conclusions arrived at are clearly unsupported by the evidence.[51]

As a last-ditch effort to secure exculpation, the appellant insists that the failure of the prosecution to present the policemen concerned to testify on the efforts of Flordeliza to look for her daughters as well as her failure to seek help from the National Bureaus of Investigations (NBI) is detrimental to their case. He likewise makes an issue of the failure of the prosecution to charge the person who guarded Marilyn during her confinement as a co-conspirator to the crime of kidnapping.

The arguments are of no consequence. It is obvious that the alleged omissions do not militate against the appellant's culpability. The evidence of the prosecution has adequately established the commission of the crimes and the appellant's authorship thereof. In fact, it is settled that even the testimony of a single witness is sufficient to support a conviction so long as it is clear and straightforward and worthy of credence by the trial court.[52] More importantly, it should be noted that the discretion on who to prosecute depends on the prosecution's sound assessment as to whether the evidence before it can justify a reasonable belief that a person has committed an offense.[53] Therefore, the non-inclusion of the person who guarded Marilyn in the Information is of no moment.

With respect to the alleged lack of effort on the part of Flordeliza to search for her daughters, the contrary is clearly borne out by the evidence. Indeed, the record of the case reflects Flordeliza's earnest steps to find her daughters after their disappearance. She testified, thus:

Q:

Do you remember of any unusual incident that happened to your daughter Marilyn Balgua on June 21, 1992?

A:

That was the date when she was abducted, sir.

Q:

Who abducted Marilyn Balsa on June 21, 1992?

A:

Ernesto Escalante, sir.

Q:

Did you see Marilyn Balsa after she was abducted on June 21, 1992?

A:

No more, sir.

Q:

Did you see her again?

A:

In 1998, sir.

Q:

When for the first time did you see your daughter Marilyn after she was abducted by the accused on June 21, 1992?

A:

January 13, 1998, sir.

Q:

Where in particular did you see your daughter Marilyn on January 13, 1998?

A:

She came home to our house, sir.

Q:

Where is your house situated?

A:

Napac Pequeño, sir.

Q:

Was she alone when she came to your house on January 13, 1998?

A:

Yes, sir.

Q:

What did she tell you when she came home on January 13, 1998 after she was abducted by Ernesto Escalante on June 21, 1992?

A:

She told me that Ernesto Escalante took her away, sir.

Q:

What else did she tell you, if any?

A:

She told me he molested her, sir.

Q:

Did she tell you where Ernesto Escalante brought her when she was abducted by him on June 21, 1992?

A:

Yes, sir, she told me he brought her to Pangasinan.

Q:

How old was Marilyn Balgua, your daughter, when she was abducted by Ernesto Escalante on June 21, 1992?

A:

12 years old, sir.

Q:

And what action did you take when your daughter Marilyn was abducted by Ernesto Escalante on June 21, 1992?

A:

I searched for her but I was not able to find her, sir.

Q:

When you did not find her after you searched for her, what did you do then?

A:

I reported it to our barangay captain, sir.

Q:

Who was the barangay captain of Nappaccu Pequeño, Reina Mercedes, Isabela on June 21, 1992?

A:

Pedro Bassig, sir.

Q:

And did you report to barangay captain Pedro Bassig that your daughter was kidnapped?

A:

Yes, sir.

Q:

And when you reported to barangay captain Pedro Bassig that your daughter Marilyn Balgua was kidnapped, what action did the barangay captain take, if any?

A:

The barangay captain reported it to town in Reina Mercedes but they did not give much importance and that they told me to look first.

...

Q:

Do you remember also any unusual incident that happened to your daughter Marializa on January 5, 1994?

A:

Yes sir, that was the day when she was taken away from us.

Q:

Who took your daughter Marializa away from you?

A:

Ernesto Escalante, sir.

Q:

And how old was your daughter Marializa Balgua when she was taken away by Ernesto Escalante on January 5, 1994?

A:

She was going 17, sir.

Q:

Are we made to understand that she was only 16 years old at that time?

A:

Yes, sir.

Q:

And did you ever see your daughter Marializa again after she was abducted by the accused Ernesto Escalante on January 5, 1994?

A:

No more, sir.

Q:

Where is she now if you know?

A:

I only saw her on January 11, 1998, sir.

Q:

That was the first time you saw your daughter Marializa Balgua after she was abducted by Ernesto Escalante on January 5, 1994?

A:

Yes, sir.

Q:

By the way, what action did you take when your daughter Marializa was also abducted by the accused Ernesto Escalante on January 5, 1994?

A:

Again I reported the matter to the police but the same answer was given to me as what happened to my first

daughter?

Q:

Who was the policeman to whom you reported that your daughter Marializa Balgua was abducted by Ernesto Escalante?

A:

I could not remember their names because it was a long time ago.

Q:

Aside from the police, to whom did you also report about the incident?

A:

The barangay captain, sir.

Q:

As a mother , what did you feel when your daughters Marializa and Marilyn were abducted by accused Ernesto Escalante?

A:

I was in grief because he destroyed the future of my daughters, sir.[54]

...

Q:

Now when your daughters disappeared, did you not tell the police to look for your daughters in Pangasinan?

A:

I requested them but they told me that it was not their jurisdiction already and I should go to Pangasinan but I am very poor so I could not go to Pangasinan, sir.

Q:

Did you not go to Pangasinan and try to look for your daughters?

A:

No, sir, because I do not know Pangasinan.[55]

There is no doubt that the trial court properly lent credence to the positive testimony of the prosecution witnesses as against the defense of denial of the appellant. The rule is that denial, if unsubstantiated by clear and convincing

evidence, is a negative and self-serving evidence which has no weight in law and cannot be given greater evidentiary value over the testimony of credible witnesses who testified on affirmative matters.[56]

According to the trial court, the supreme penalty of death[57] should be imposed in accordance with the last paragraph of Article 267 that mandates the imposition of death when the victim of detention had been raped.[58] But apparently, the court overlooked or even ignored the fact that the commission of the rape is not alleged in the Informations. The failure to aver the qualifying circumstance of rape, or better — the countless rapes committed during the detention of the victims as borne out by the evidence — has simply turned the efforts of the prosecution to naught. Despite the establishment of the innumerable rapes as fact, they cannot be considered for purposes of imposing the death penalty on account of the prosecution's mortal failure to make the corresponding allegation in the Information. The 2000 Rules on Criminal Procedure requires that aggravating circumstances, whether generic or qualifying, must be alleged in the Information. Thus, Sections 8 and 9, Rule 110, of the said Rules provide:

Section 8. Designation of the offense.- The complaint or Information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

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

Section 8 simply provides that the Information or complaint must state the designation of the offense given by the statute and specify its qualifying and generic aggravating circumstances. On the other hand, the use of the word 'must' in said section 9 indicates that the requirement is mandatory and, therefore, the failure to comply with Sec. 9, Rule 110, means that generic aggravating circumstances, although proven at the trial, cannot be appreciated against the accused if such circumstances are not stated in the Information.[59]

Accordingly, we are constrained to impose the lower penalty which is reclusion perpetua for each of the crimes charged for two reasons: First, the kidnapping of Marilyn was committed on June 21, 1992 or prior to the reimposition of the death penalty effective on December 31, 1993 under Republic Act No. 7659 and therefore in the light of the proscription in Section 19(1) of the 1987 Constitution, the death penalty cannot be imposed. Second, as earlier discussed, the 2000 Revised Rules on Criminal Procedure specifically requires the averment of the aggravating circumstance to merit the imposition of the higher penalty.

Finally, the question of damages. The award by the trial court of the amount of P50,000.00 as compensatory damages is erroneous. Actual or compensatory damages must be duly proved and established with reasonable degree of certainty, and courts cannot rely on conjecture or guesswork on the fact and extent of damages.[60]

But in light of the factual milieu in this case, the award of moral and exemplary damages is in order. The fact that the victims suffered the trauma of mental, physical and psychological ordeal constitutes sufficient basis for the award of moral damages.[61] Specifically, Marilyn was detained for six years and gave birth to two sons by the appellant while Marialisa was confined for three years and gave birth to a daughter also by the appellant. The award of moral damages to Marilyn and Marialisa in the amount of P300,000.00 and P200,000.00, respectively, is warranted. On exemplary damages, the presence of an aggravating circumstance, whether ordinary or qualifying, entitles the offended party to the award thereof pursuant to Article 2230 of the Civil Code.[62] Accordingly, the award of P50,000.00 as exemplary damages for each case is reasonable.

WHEREFORE, the judgment of the Regional Trial Court, Second Judicial Region, Branch 16, Ilagan, Isabela, in Criminal Cases No. 2857 and 2858 convicting appellant Ernesto M. Escalante of kidnapping and serious illegal detention is AFFIRMED with MODIFICATION. He is hereby sentenced to suffer the penalty of reclusion perpetua in each of the cases, as well as to pay Marilyn and Marialisa both surnamed Balsa the sums of P300,000.00 and P200,000.00, respectively, by way of moral damages, and the further sum of P50,000.00 as exemplary damages to each of them, with costs against the appellant in both instances.

SO ORDERED.

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

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- [1] Rendered by Judge Isaac R. De Alban; Rollo, p. 20; Record, p. 205.
- [2] Rollo, p. 4.
- [3] Id., p. 5.
- [4] Record, p. 44, Criminal Case No. 2858; p. 25, Record, Criminal Case No. 2857
- [5] Record, p. 49.
- [6] TSN, pp. 1-5, December 14, 1998.
- [7] Id., p. 20.
- [8] Id., p. 6
- [9] Id., p. 7.
- [10] Id., p. 25.
- [11] Id., p. 26
- [12] Id., p. 27
- [13] Id., pp. 8-9.
- [14] TSN, p. 18, January 21, 1999.
- [15] Id., p. 17.
- [16] TSN, p. 31, December 14, 1998.
- [17] TSN, p. 35, February 22, 1999.
- [18] Id., p. 57.
- [19] Id., p. 37.
- [20] Id., p. 43.
- [21] Id., p. 38.
- [22] Id., p. 39.
- [23] Id., p. 39.

[24] *Id.*, p. 41.

[25] TSN, p. 27, August 1, 2000.

[26] *Id.*, p. 28.

[27] *Id.*, p. 29.

[28] *Id.*, pp. 30-31.

[29] *Id.*, p. 32.

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

[31] *Id.*, p. 36.

[32] *Id.*, p. 37.

[33] Rollo, p. 20.

[34] Appellant's Brief, pp. 1-2; Rollo, pp. 45-46.

[35] ART. 267. Kidnapping and serious illegal detention.— Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of reclusion perpetua to death.

- 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. (As amended by RA No. 7659).

[36] *People v. Acbangin*, G.R. No. 117216; 337 SCRA 454 (2000).

[37] TSN, December 14, 1998, pp. 6-10.

[38] TSN, February 22, 1999, pp. 35-39.

[39] TSN, January 21, 1999, pp. 56-58.

[40] *Id.*, at 42-44.

[41] *People v. Lustre*, 330 SCRA 189 (2000).

[42] *People v. Mumar*, 333 SCRA 221 (2000).

[43] Appellant's Brief, December 9, 2002, p. 22.

[44] TSN, December 14, 1998, pp. 18-19.

- [45] TSN, December 14, 1998, pp. 21-22.
- [46] Id., at pp. 22-23.
- [47] Id., at pp. 25-26.
- [48] Id., at pp. 28-30.
- [49] TSN, January 21, 1999, pp. 12-13.
- [50] People vs. Tano, G.R. No. 133872, 331 SCRA 449 (2000).
- [51] People v. Rubio, G.R. No. 118315, June 20, 1996.
- [52] People v. Alvarez, 345 SCRA 361 (2000).
- [53] Tan vs. Sandiganbayan, 292 SCRA 452 (1998).
- [54] TSN, July 12, 1999, pp. 5-11.
- [55] TSN, id., pp. 17-18.
- [56] People vs. Lustre, 330 SCRA 189 (2000)
- [57] Record, p. 205.
- [58] Supra, note 35
- [59] People v. Nerio Suela, G.R. Nos. 133570-71, January 15, 2002.
- [60] People vs. Panaga, G.R. No. 125967-70. May 5, 1999.
- [61] People vs. Garcia, 281 SCRA 463 (1997).
- [62] People vs. Catubig, G.R. No. 137842, August 23, 2001.

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