

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. HENRY ENRIQUEZ Y ARCILLA, RUBEN BERAÑA Y ASUNCION, ALIAS MARCOS, FLOSERPIDO OBISPADO Y ABACA ALIAS FREDO ALIAS MARIO, AND GENE...

G.R. Nos. 31300-01. October 23, 1984

Ponente: ESCOLIN, J.

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ESCOLIN, J.:

Three separate informations were filed in the then Court of First Instance of Manila for the crime of kidnapping With ransom of Yang Wai y Chiok, to wit: People vs. Henry Enriquez y Arcilla, Ruben Beraña y Asuncion, Floserpido Obispado y Abaca and Martin Alcantara y Rivera, docketed as Criminal Case No. 90948; People vs. Virginia Bas y Beroño, docketed as Criminal Case No. 91000; and People vs. Generoso Bas, Jr. y Beroño docketed as Criminal Case No. 91111.

Upon agreement of the parties, these cases were tried jointly in Branch V, presided over by then Judge, now retired Supreme Court Justice Conrado M. Vasquez. Thereafter, the trial court rendered a decision, the decretal portion of which reads as follows:

"WHEREFORE, the Court finds the accused Henry Ennquezy Arcilla, Ruben Beraña y Asuncion alias Marcos, Floserpido Obispado y Abaca alias Fredo alias Mario [Criminal Case No. 90948] and accused Generoso Bas, Jr. y Beroño [Criminal Case No. 91111] guilty beyond reasonable doubt as principals of the crime of kidnapping for the purpose of extorting ransom, as defined and penalized in the last paragraph of Article 267 of the Revised Penal Code, as amended by Republic Act No. 1084, and hereby sentences each of them with the penalty of death.

"Finding the evidence of the prosecution to be insufficient to prove their guilt beyond reasonable doubt for the crime charged, the Court hereby acquits accused Martin Alcantara y de Vera alias Marcelo Ladero y de Vera [Criminal Case No. 90948] and accused Virginia Bas y Beroño [Criminal Case No. 91000], with costs de oficio" [p. 91, Rollo]

The imposition of the death penalties has brought said decision to this Court for automatic review.

Chronologically stated, the facts established by the prosecution — culled from the composite testimonies of the victim Yang Wai; Jose Adriano Cho, the victim's uncle in-law; Pat. Jose Borja of Norzagaray, Bulacan; Manuel Reyes, a driver from Norzagaray; Leoncio Ramirez, an employee of the City Government of Manila; NBI agent Juanito Monzaga; and Pat. Antonio Remigio, Jr., Capt. Aquilino Crame, Cpl. Reynaldo Crame, Pat. Loreto Ponti, Det. Ernesto Quirol and Pat. Ernesto Jimenez, all of Manila Police Department — are as follows:

At about 7:40 in the evening of August 27, 1968, accused Henry Enriquez went to the house of the complainant Yang Wai y Chiok, located at 651-D Nueva St., Binondo, Manila. Enriquez and Yang Wai were friends, having been classmates at the UNO High School. Yang Wai had previously guaranteed and paid an obligation amounting to P5,000.00 incurred by Enriquez while working as an agent for a candy factory. The visit then was for the

purpose of discussing repayment of said debt.

From the testimony of Yang Wai, it appears that on said occasion, he was told by Enriquez that the latter's brother-in-law would pay P2,000.00 of the P5,000.00 debt, but that the payment would be made at the Marmont Restaurant in Banawe, Quezon City. For this reason, they drove to said restaurant in Yang Wai's station wagon.

At the Mamiont Restaurant, a certain Ricky, later identified as the accused Generoso Bas, Jr., was introduced by Enriquez to Yang Wai as his brother-in-law. Generoso Bas, Jr. is the brother of Virginia Bas, a hostess in a Grace Park dancing hall, with whom Enriquez was then living maritally in an apartment located at 171 Banawe Street, Quezon City. Likewise in the restaurant were Maximiano Payawan, a former co-worker and friend of Generoso Bas, Jr., accused Floserpido Obispado, a former houseboy of the parents of Enriquez, and accused Ruben Beraña, who used to work in a metal factory with Obispado. Both Beraña and Obispado were jobless at the time.

Enriquez, Yang Wai and Bas, Jr. took a table and discussed the payment of Enriquez' debt. Bas, Jr. informed Yang Wai that the money was not with him but in the house of an aunt located at Matutum Street. Although reluctant at first, Yang Wai agreed to go there. The group which included Yang Wai, Enriquez, Beraña, Bas, Jr. and Payawan rode in Yang Wai's car to said street where Yang Wai was asked by Bas, Jr. to stop in front of an old wooden house. Bas, Jr. alighted and after making a cursory examination of the house, told Yang Wai that his aunt was not in the house. Enriquez and Bas, Jr. surmised that she must have gone to Frisco Avenue and suggested that they go there. As it was already late and he wanted to go home, Yang Wai rejected the idea. Whereupon, Enriquez requested him to take them to his parents' house at 1456 Alvarado Extension, Tondo, Manila. Yang Wai acceded.

Along España, Payawan asked Yang Wai to turn right to Don Quixote St. Moments later, Payawan asked him to stop the car as he [Payawan] was allegedly having stomach trouble. When the car stopped, Payawan suddenly grabbed the ignition key of the car and acted as if he wanted to run away. Enriquez got off the car, approached Payawan and took the key. Returning the same to Yang Wai, Enriquez asked the latter to drive on. However, when Yang Wai was about to start the car, Payawan poked a knife at him, saying: "Huwag kang kikilos, kidnap ito." Payawan then ordered Yang Wai to move to the right while he placed himself behind the wheel. Beraña, who was seated at the right side of Yang Wai, also pointed a knife at Yang Wai and told him: "Huwag kang kikilos nang masama, papatayin kita. Matalim 'yan" Simultaneously, Bas, Jr. who was at the back seat with Enriquez, pointed a gun at Yang Wai. Showing him a bullet, Bas, Jr. warned, "Sabog ito."

Having taken the wheel, Payawan drove the car towards Novaliches. He stopped at a gasoline station near the Balintawak rotonda and there accused Obispado boarded the car. The latter had with him a carton containing canned goods, bread, hacksaw, matches, cigarettes and mosquito coils. Then, they drove on. Shortly after, Yang Wai was forced to take four capsules of medicine which he could not identify and which later made him feel weak and dizzy. He was also blindfolded.

When the car finally stopped, Yang Wai, still blindfolded, was told to walk along a muddy road. Later, when his blindfold was removed, he found himself inside a plastic tent in a forested area in the mountains, with one of his hands tied to a bamboo post. With him were Beraña and Obispado. He stayed there for a week during which time Payawan and Bas, Jr. would come every now and then. On two occasions they asked him to write two letters addressed to his parents.

Meanwhile on August 28, 1968, Yang Wai's parents received a note supposedly written in Moncada, Tarlac, informing them that Yang Wai had been kidnapped, and demanding a ransom of P150,000.00.[1] The note was signed "HMB Organization, Commander Delio." Distraught over this note, Yang Wai's mother gave the same to a

brother-in-law, Jose Adriano Cho, who in turn referred it to Gen. Enrique Morales, then Chief of Police of Manila. Gen. Morales organized a team to work on the case. Pictures of Yang Wai and Enriquez, the last person seen with Yang Wai, were given to the police and surveillance work was started.

On August 30, 1968, another note was received by the parents of Yang Wai, bearing no date but also signed "Commander Delio,"^[2] giving them until September 1, 1968 to prepare the ransom money. Attached to this note was one of the letters of Yang Wai.^[3] On August 31, 1968, another ransom note was delivered to Yang Wai's parents, containing a warning that if they did not answer the telephone calls, they could expect the left hand of Yang Wai the following day and that if they still failed to answer the calls by Sunday, they would get the victim's head by Monday, wrapped in a gift package. The note was also signed "Commander Delio, HMB, Central Luzon Sector."^[4]

Apparently heeding said warning, Jose Adriano Cho, posing as the father of the victim, received the calls and was able to negotiate for the reduction of the ransom money to P60,000.00. Details of the delivery of an advance of P1,000.00 to be made on September 3, 1968 were likewise agreed upon.

On September 2, 1968, the parents of Yang Wai received another note expressing satisfaction over the agreement reached and giving instructions on how the rest of the ransom money should be delivered.^[5] This note was accompanied by the letter of Yang Wai, expressing gratitude to his parents and assuring them of his safety. The letter was dated "September 1, 1968, 3:00 A.M. Mountainside."^[6]

On the same day, September 2, preparations for the delivery of the amount of P1,000.00 on the ransom were made by Cho and the police team assigned to the case. Captain Aquilino Crame, a member of the team, contacted Leon Ramirez, an employee of the Department of Public Services of the City of Manila, who worked as part-time jeepney driver, to deliver the money. On instructions of Gen. Morales the serial numbers of the ten-peso bills amounting to P1,000.00 to be delivered to the kidnappers were listed down on a sheet of paper.^[7] The money was then placed inside a paper bag and given to Ramirez, who was instructed by Cho, introduced to Ramirez as Mr. Yang, to go to the corner of Veronica and Reina Regente Streets and wait for a "Crown" taxicab. He was instructed that, upon arrival of the taxicab, he should ask for "Mr. Yang" and should the occupant of the taxicab likewise answer "Mr. Yang," to give the bag of money to the latter. He was also shown a picture of Enriquez.

Thus, at about 2:30 A.M. of September 3, 1968, Ramirez posted himself at the corner of Veronica and Reina Regente Streets. After waiting for about ten or fifteen minutes, a "Crown" taxicab arrived. After it stopped, a woman peeped out of the window, asking, "Mr. Yang?" Ramirez answered, "Mr. Yang," then handed the bag of money to the occupants of the cab, later identified by him as Virginia Bas and Henry Enriquez. The driver of the taxicab was identified at the trial as Martin Alcantara. At that time Adriano Cho and members of the police team headed by Cpl. Reynaldo Crame, were inside a panel delivery truck parked at Reina Regente St., a short distance away from the taxicab, observing the delivery. No arrests were however made as the police team was under instructions not to make any arrest if the victim was not with the suspects.

In the evening of September 3, 1968, a team headed by Cpl. Reynaldo Crame was assigned to go to the corner of Banawe and Morong Streets where, previous surveillance had shown, the suspects had been making their telephone calls. While watching the place, Cpl. Crame noticed Yang Wai make a telephone call at a store. With him was Obispado. Two taxicabs were parked near the store. In one of the cabs was Beraña, in the other were Enriquez and Bas, Jr. At this moment, the police team effected the rescue of Yang Wai and the arrest of the suspects.

Yang Wai recounted how he and his abductors happened to be at Morong and Banawe Streets in the evening of September 3, 1968. He related that in the night of September 2, 1968, Payawan told him, Obispado and Beraña to

prepare to leave their hideout as policemen had been seen passing the place. Thus, they vacated the hiding place. As they were proceeding down the mountain, they met Bas, Jr. When the latter informed them that six policemen were at the highway, Bas, Jr. went to the road alone, while he, Payawan, Obispado and Beraña crossed the mountain. The following morning, they reached a place called Hilltop where they boarded a jeepney for a barrio called Cigti. There they took a taxicab which brought them to an apartment in Del Monte Avenue, Quezon City. He later learned that Enriquez had moved to that apartment on August 30, 1968. Inside the apartment, Yang Wai saw Bas, Jr. and Enriquez. He was brought inside a room and kept under guard one after the other by Obispado, Bas, Jr., Payawan and Beraña. Enriquez, who was in the apartment, did not talk to him, but merely patted him on the back.

Later in the evening, Obispado told him that he was to call up his parents and talk to them. They left the house to go to a telephone booth, taking two taxicabs which proceeded to the grocery store at the corner of Banawe and Morong Sts. It was while he was making the telephone call that police officers arrived and arrested Obispado, Beraña, Enriquez and the taxi drivers, Alcantara and a certain Apolinario Butlega. In the ensuing confusion, Bas, Jr. was able to escape.

Thereafter, Yang Wai and the suspects were brought to the temporary base of operations of the police team at the Manila Hotel. They were later transferred to the Police Headquarters for investigation. Yang Wai gave a statement before Pat. Antonio Remigio, Jr. on September 4, 1968. [Exhibit "I", p. 6, Folder of Exhibits] The suspects were interrogated almost simultaneously by different investigators. Beraña gave a statement before Pat. E. Jimenez;[8] Obispado's statement was taken by Pat. Loreto Ponti;[9] Alcantara gave his statement under the name of "Marcelo Ladero" before agent Godofredo Ayento of the NBI;[10] while Enriquez gave his statement before Pat. Remigio, Jr.[11] On September 9, 1968, Enriquez gave an additional statement before Pat. Remigio, Jr.[12]

On September 12, 1968 at 11:00 P.M., Virginia Bas was apprehended at the Tocadero Night Club in Manila. She gave a statement before Pat. Remigio, Jr. the following morning.[13]

Sometime before September 21, 1968, Generoso Bas, Jr. was arrested by Manila Police operatives at Barrio Maangas, Parugkan Camarines Sur. He was brought to the Office of the Chief of Police, MPD, where he gave a statement before Pat. Remigio, Jr. on September 21, 1968.[14] He likewise gave an additional statement before Pat. Remigio, Jr. the following day.[15]

In their defense, appellants claimed that the supposed kidnapping was a mere simulated ruse devised by Yang Wai himself. In the alternative, they denied participation in the kidnapping of the victim, alleging that it was perpetrated by Maximiano Payawan alone, the sole suspect who was never apprehended by the authorities. Each further alleged to have been maltreated by the police investigators into signing his extrajudicial confession.

Tims, according to Henry Enriquez, in the night of August 27, 1968 he went to the house of the victim to inquire whether the latter had found a buyer for his Bedford panel. He had asked Yang Wai to sell the same and had given him the registration papers so that the proceeds could be applied to his indebtedness. Shortly after, Yang Wai invited him to the Marmont Restaurant, where he was surprised to see Bas, Jr., Payawan, Beraña and Obispado seated at a table. After he and Yang Wai had taken another table, Payawan approached him to ask if he [Payawan] could borrow Enriquez's camera. They exchanged pleasantries, and it was during this conversation that Yang Wai reiterated his proposal to Enriquez that a mock kidnapping be undertaken with Yang Wai himself as the victim so that he [Yang Wai] could have some capital to start a business. Yang Wai had confided to him that his parents would not give him money unless he went to the United States for further studies. Enriquez added that Yang Wai had previously proposed such scheme to him, but that like the first time, he rejected the idea. He then asked Bas, Jr., Obispado and Beraña to go home. Yang Wai and Payawan remained in the restaurant, and it was only in the

evening of September 3, 1968 at around 6:00-6:30 P.M. that he saw them again at his new residence at 69 Del Monte Avenue, Quezon City. Yang Wai's hands were then tied and his clothes were dirty. When Yang Wai begged Enriquez to ask Payawan to release him, Payawan remarked, "Help me, kuarta na ito." It was only then that Enriquez learned that Yang Wai and Payawan had gone ahead with the sham kidnapping. About fifteen minutes later, Enriquez was able to persuade Payawan to untie Yang Wai. He then gave Yang Wai a fresh T-shirt and they took supper.

At about 8:00 that night, he asked Beraña and Obispado to accompany Yang Wai in going home. The two hailed a taxi and boarded the same with Yang Wai. When Enriquez saw the taxicab make a left turn at Matutum 'Street, which was not the way to Yang Wai's house, he hailed another taxi and followed them. He caught up with the other taxicab at the corner of Morong and Banawe Streets where it was parked. When he was about to alight from the taxicab, he was placed under arrest and brought to the Manila Hotel, later transferred to the MPD headquarters.

He recounted the maltreatment he received from the police investigators. He denied having been in a taxicab at Reina Regente Street in the early morning of September 3, 1968 and having received a bag of money from Ramirez, alleging instead that he was in his house the whole night of September 2, 1968 and early morning of September 3, 1968, sleeping with his common-law wife, Virginia Bas. He likewise disclaimed having made any telephone calls to the parents of Yang Wai during the period from August 27 to September 3, 1968.

Asked if he knew of any reason why Yang Wai should implicate him, he surmised that Yang Wai must have blamed him for the failure of the kidnapping and that Yang Wai might have resented the fact that the Bedford panel was sold by Enriquez's father without Yang Wai's consent.

The version of Henry Enriquez of the kidnapping incident was corroborated by his other co-accused. Floserpido Obispado testified that on August 27, 1968, he and Ruben Beraña went to the house of Enriquez at Banawe Street, Quezon City, to follow up Enriquez's promise to give them a job. At around 7:00 in the evening of the same day, Enriquez left the house to see Yang Wai, leaving word that should anyone look for him, he would be at the Marmont Restaurant. About an hour later, Payawan arrived, looking for Ennquez. As Payawan had allegedly something important to tell Ennquez, they, i.e., Obispado, Beraña, Bas, Jr. and Payawan, went to Marmont Restaurant where Ennquez said he would be. They took a table and started drinking beer. Soon after, Henry Enriquez and Yang Wai came and took a table about 2 meters away. Payawan approached them and the three talked with each other. Obispado said that he did not know what the topic of the conversation was. A little later, Enriquez came to their table and asked them to go home. Thus, Payawan, Obispado, Beraña and Bas, Jr. left, while Enriquez and Yang Wai were left behind.

On August 28 and 29, 1968, he [Obispado] was in the house of Enriquez to help Enriquez pack his things preparatory to his transferring to a new house. He could not remember his activities nor whereabouts from August 30 to September 2, but he stated that on the latter date, he was already staying in the new apartment unit of Enriquez at 69 Del Monte Avenue.

Shortly before 6:00 P.M. on September 3, 1968, Payawan and Yang Wai arrived at the house of Enriquez. Yang Wai, looking very tired, approached Enriquez and cried. Enriquez then told him and Beraña to accompany Yang Wai in going home. It was during this trip that he, Beraña and Enriquez were arrested. They were brought to the Manila Hotel, later transferred to the MPD Headquarters where he was coerced into signing a confession.

At the witness stand, Generoso Bas, Jr. likewise corroborated the testimonies of Enriquez and Obispado as to what transpired on the evening of August 27, 1968. He also attempted to give an account of his whereabouts on the succeeding days. He declared that on August 30, 1968, they, i.e. Enriquez, Virginia Bas and himself, with the

help of Obispado and Beraña, transferred to their new residence at 69 Del Monte Avenue, Q.C. He said that Enriquez and Obispado were able to find this new place the day before and that they had earlier planned to move out of the apartment at 161 Banawe Street because the water pressure there was low. On August 31, 1968, he went to his sister at Malabon, Rizal, to ask her help in getting him a job, the husband of his sister being the manager of a glass factory. However, instead of finding him employment, his sister advised him to go to the province to help their parents. He thus went home to Maahas, Camarines Sur, on September 2, 1968, remaining there for about one week until policemen from Manila came and arrested him. He was brought to the police headquarters in Legaspi City, subsequently taken to the MPD Headquarters, where he was allegedly maltreated into signing a confession.

The incidents of August 27, 1968, as narrated by Enriquez, Obispado and Bas, Jr. were repeated by Ruben Beraña in his testimony, who likewise claimed to have spent the night in question in the house of Enriquez at Banawe Street. He claimed to have stayed in said house up to noon time of August 28, 1968, after which he proceeded to his aunt's house at 153 C. Cordero St., Grace Park, where he stayed until about 4:00 P.M. of September 2, 1968, after which he went to Enriquez's new house at 69 Del Monte Avenue. He stayed overnight at said house on the request of Enriquez to help him do some household chores. At about 6:00 P.M. of September 3, 1968, Payawan arrived with Yang Wai. The latter's hands were tied and his clothes were dirty. Yang Wai was crying when he asked Enriquez to help him. Payawan, however, remarked, "Kuarta na to," to which Enriquez retorted, "Masama ang ginawa mo." Thereafter, Yang Wai and Enriquez talked in Chinese, which language Beraña did not understand. After supper at around 8:00 P.M., Enriquez asked Beraña and Obispado to accompany Yang Wai in going home. They took a cab for this purpose, but along the way, Yang Wai asked Beraña for the nearest telephone where he could call. The taxicab driver suggested a place and brought the taxicab to a store. Yang Wai gave Obispado a number to call, and the latter went into the store. After a while, Obispado came back and informed Yang Wai that he could not contact the number. Thereupon, Yang Wai alighted and went to the telephone himself. It was while Yang Wai was at the telephone that the police officers arrived and arrested them.

Like his other co-appellants, Beraña refuted the voluntariness of his extrajudicial confession by detailing the maltreatment allegedly received from the police investigators.

He likewise presented a birth certificate issued by the Local Civil Registrar of San Fernando, Camarines Sur, purporting to show that he was born on December 22, 1953, thereby making him less than 15 years old at the time of the trial.

In view of his claim, the lower court directed the parties to present evidence on said question. The prosecution offered in evidence the statement given by Ruben Beraña before the police investigators where he stated that he was then 18 years old and his admission in the Arrest Report [Exh. "MM", p. 75, Folder of Exhibit] that he was born on August 4, 1950. To prove irregularities in the entries in the Register of Births of San Fernando, Camarines Sur, the prosecution likewise presented photostat copies of the Register of Births for December 1953 and the year 1950.[16] The former contained an entry showing a certain Ruben Beraña to have been born on December 22, 1953 to Casiano Beraña, 29 years old and Magdalena Asuncion, 25 years old; while the latter showed a certain Casiano Beraña, Jr., to have been born on August 1, 1950 to Casiano Beraña, likewise 29 years old and Magdalena Asuncion, also 25 years of age. A comparison of the two entries furthermore showed the number of children of the Beraña spouses to have remained at three [3]. This evidence, coupled with his observation of the person of Ruben Beraña left the trial judge unconvinced of Beraña's claim with respect to his age.

In their briefs, all the accused vehemently assail the admissibility of their extrajudicial confession, which they alleged to have been extorted through force and coercion. We find no necessity to dwell at length on this issue.

Suffice it to state that even if said extrajudicial confessions were cast aside, there remains strong and competent evidence on record to establish their complicity in the crime charged, and this consists in the testimony of the victim, Yang Wai, which was accorded full credence and weight by the trial judge. We have carefully and painstakingly scrutinized said testimony and found the same straightforward, sound and convincing. Thus, if we, who were not afforded the same opportunity to observe the witness' demeanor and conduct, have easily reached the same conclusion the trial judge did with respect to us truth and veracity, then there is no reason for us to disregard the probative value assigned to it by the trial judge.

Besides, appellants failed miserably to discredit the testimony of Yang Wai. lie defense uniformly offered by the appellants is alibi, i.e. that they were in some place other than the scene of the crime. Alibi, however, is generally recognized as the weakest of defenses for its susceptibility of fabrication. Alibi may be entitled to credence where positive identification of the accused by a witness is wanting. But in the case at bar, all the appellants were positively identified by the victim Yang Wai, and there is no showing why said witness should falsely incriminate appellants in a crime so serious as the one charged herein. The explanation given by Enriquez that Yang Wai was blaming him for the failure of the sham kidnapping is too strained to induce belief. It is quite incredible that a friend of long standing would act in such manner, especially after Yang Wai proved himself to be a true friend of one in need, as he had demonstrated when he guaranteed and actually paid the indebtedness incurred by Enriquez. The other reason advanced by the latter, that Yang Wai got angry with him over the sale of the Bedford panel without the former's consent is patently a fabrication. From the facts of the case, it was impossible for Yang Wai to have known of the alleged sale of said panel at any time during and after his detention.

Equally unworthy of belief is the accused's alternative theory that the kidnapping was a mere simulated scheme concocted by Yang Wai himself. No normal human being could be so base and ungrateful as to conceive such scheme for the purpose of securing money from his own parents. And we are not inclined to attribute to Yang Wai such evil traits; neither could we charge Yang Wai with an irresponsible act of proposing such a delicate scheme to a mere acquaintance like Payawan.

It is equally impossible for the crime to have been committed by Payawan alone, considering that the ransom notes were hand-delivered to Yang Wai's residence and that negotiations were conducted over the telephone. Moreover, the distance between the detention site as well as the lack of telephone facilities therein would necessarily entail the services of more than one person if Yang Wai still had to be kept constantly under guard. Thus, it was Enriquez' role to accept delivery of the amount of P1,000.00 advanced on the agreed ransom, while his other co-accused kept the victim under detention.

Another circumstance contributing to the improbability of the accused's claim that it was Payawan alone who kidnapped Yang Wai is the fact that it was to Enriquez's new residence at 69 Del Monte Avenue that Yang Wai was brought by Payawan on September 3, 1968. No explanation was given by the accused as to how Payawan would have known the new address where Enriquez had meanwhile transferred. On the other hand, such fact strongly tends to strengthen prosecution's theory that Enriquez was a co-conspirator who had knowledge of and participation in the kidnapping of Yang Wai.

Beraña's additional defense of minority is likewise untenable. The only evidence relied upon by Beraña to prove his claim is the birth certificate issued by the Local Civil Registrar of San Fernando, Camarines Sur. The prosecution, however, was able to cast serious doubts as to its veracity. Thus, the burden of proof had been shifted anew to defendant Beraña, who could have readily submitted additional proof or presented competent witnesses to substantiate his claim. His failure to discharge this responsibility is indicative of the vacuity of said defense. Besides, we have examined the photographs of Beraña taken during the reenactment of the crime in September, 1968[17] and like the trial judge, we are convinced that his physical appearance belies the pretension that he was

then below 15 years of age.

WHEREFORE, the judgment appealed from is hereby affirmed. However, for lack of the necessary votes, the penalty of death is hereby commuted to reclusion perpetua.

SO ORDERED.

Fernando, C.J., Makasiar, Guerrero, Abad Santos, Melencio-Herrera, Plana, Relova, Gutierrez, Jr., de la Fuente, and Cuevas, JJ., concur.

Aquino, J., for death penalty.

Teehankee, J., took no part.

Concepcion Jr., J., on vacation leave.

[1] Exhs. "K", "K-1", p. 13, Folder of Exhibits.

[2] Exh. "J", p. 9, Folder of Exhibits.

[3] Exh. "A", p. 1, Folder of Exhibits.

[4] Exhs. "K-2", "K-3", pp. 13-14, Folder of Exhibits.

[5] Exh. "M-2", p. 22, Folder of Exhibits.

[6] Exh. "B", p. 6, Folder of Exhibits.

[7] Exh. "P", p. 36, Folder of Exhibits.

[8] Exh. "R", p. 42, Folder of Exhibits.

[9] Exh. "S", p. 46, Folder of Exhibits.

[10] Exh. "T", p. 49, Folder of Exhibits.

[11] Exh. "Q", p. 37, Folder of Exhibits.

[12] Exh. "X", p. 63, Folder of Exhibits.

[13] Exh. "Z", p. 58, Folder of Exhibits.

[14] Exhs. "AA", p. 64, Folder of Exhibits.

[15] Exhs. "BB", p. 168, Folder of Exhibits.

[16] Annexes "D", and "E", pp. 192-193, Original Records.

[17] Exhs. "V-V-1" to "V-37", p. 86, Folder of Exhibits.

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