

THIRD DIVISION

[G.R. No. 232361, September 26, 2018]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FRANCISCO DAMAYO Y JAIME, ACCUSED-APPELLANT.**

DECISION

PERALTA, J.:

Before the Court is an appeal from the January 30, 2017 Decision^[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07683, which affirmed with modifications the July 29, 2015 Decision^[2] of the Regional Trial Court, Branch 207, Muntinlupa City (RTC), finding accused-appellant Francisco Damayo y Jaime (*Damayo*) guilty beyond reasonable doubt of the crime of Kidnapping for Ransom.

The antecedent facts are as follows:

Damayo was indicted for Kidnapping for Ransom under Article 267 of the Revised Penal Code, as amended, in an Information which reads:

That, on or about the 7th day of August, 2008, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, a private individual, did then and there willfully, unlawfully and feloniously kidnap one JEROME ROSARIO Y SAMPAGA, an eleven (11)-year-old minor, for the purpose of extorting ransom.

CONTRARY TO LAW.

When arraigned, Damayo pleaded not guilty to the charge. After pre-trial, trial on the merits ensued.

Version of the Prosecution

As summarized by the Office of the Solicitor General (OSG), the People's factual version is as follows:

On August 7, 2008, at 12:00 noon, Jerome Rosario, then eleven (11) years old, was outside his school at Sucat Elementary School, Brgy. Sucat, Muntinlupa City when appellant, known to him as Kuya Frank, approached and told him that he was there to fetch him as they were going somewhere. Since Jerome was familiar with appellant, he went with him and both boarded a jeep bound for Pasay. Upon arriving at

Pasay, they boarded a bus. Jerome did not know where they were going.

Worried that Jerome had not returned from school, his parents Edna Rosario and Jerry Rosario started to look for Jerome. When they chanced upon Daryll, a classmate of Jerome, and asked him on his whereabouts, Daryll informed them that an unknown man had taken Jerome during dismissal time. Edna and Jerry then reported the incident to the barangay, where it was blotted.

The next day, August 8, 2008, Edna received a call on her daughter's cellphone from a person who introduced himself as Jerome's classmate. The man, whom Edna recognized to be appellant, stated that Jerome was with him and will be let go, provided that he will be given P150,000.00 and Edna will be unaccompanied when they meet. He directed her to meet him at a terminal in Dau, Pampanga.

The following day, August 9, 2008, Edna and Jerry went to the Muntinlupa City Police Station to report the matter. An operation was planned to retrieve Jerome, where it was agreed that upon meeting appellant at the designated meet-up point, Edna would touch appellant's arm, signaling to the police his identity.

At 2:00 P.M. of the same date, Edna, Jerry, and the police officers, namely, Senior Police Officer 4 (SPO4) Elias Nero, Police Officer 3 (PO3) Rudolph Delmendo, PO3 Roberto Lanting and Police Officer 2 (PO2) Julkabra Sulaiman, proceeded to the Dau terminal in Mabalacat, Pampanga. Upon seeing appellant, Edna touched his arm which prompted the police to arrest him. After handcuffing him, informing him of his arrest and reading him his constitutional rights, the police asked appellant where Jerome was being kept. Appellant told them that Jerome was at his house at No. 301 Telabastaga, San Fernando, Pampanga. They proceeded to the area and were able to safely recover Jerome.^[3]

Version of the Defense

The defense relates Damayo's version of the facts in this manner:

x x x x

11. On the other hand, accused FRANCISCO J. DAMAYO vehemently denied the charge against him and interposed that on 7 August 2010, he was instructed by Edna to fetch Jerome from school and to meet her at the Pasay bus terminal thereafter. This is because they were planning to transfer Jerome to another school in Pampanga where they were living as common-law spouses.

12. Prior to the incident, the accused, being one of the Rosarios' close friends, stayed in their house in Sucat for a couple of weeks. At which

time, he witnessed how Gerry Rosario abused his wife (Edna) and children. He (accused) tried to distance himself from the Rosarios but Edna kept on asking for his help and advice. As time went by and due to the fact that the accused has always been there for Edna, they grew closer and had an illicit relationship. Ashamed of his weakness, the accused left and stayed with his daughter in Tagaytay. Edna, however, kept on following him.

13. As a last effort to rid himself of his affair with Edna, the accused went to Clark, Pampanga to work there. He, likewise, changed his contact information. Edna, however, was able to trace him and unable to avoid her, the accused succumbed to her desires. They (Edna and the accused) started living together in Pampanga. Edna would then fetch her son, Jerome, every Friday and bring him back to Sucat every Sunday.

14. As the set up proved to be inconvenient for both Edna and Jerome, the couple (Edna and the accused) decided to just transfer Jerome to a school in Pampanga. Thus, on 7 August 2008, after his stay in Tagaytay, the accused met Edna at their house in Sucat, where she asked him to fetch Jerome from school and she will join them at Pasay bus terminal.

15. To his surprise and disappointment, however, Edna did not show up, thus, at Jerome's prodding, the accused decided to leave with Jerome and let Edna follow them to Pampanga.

16. The following day, or on 8 August 2008, Edna called the accused, asking him to bring Jerome back to Sucat, as her husband learned of their plan (to live together with Jerome in Pampanga), and got mad. Unfortunately, however, the accused had no means to travel back to Sucat that day. He (accused) told Edna to fetch Jerome herself or to wait for him to be able to come up with the money for their fare back to Sucat.

17. On 9 August 2008, while the accused was driving his jeepney, he received a call from Edna, asking him to meet her at Dau terminal. Upon arriving thereat, he was suddenly handcuffed by two (2) men in civilian clothes, accusing him of kidnapping Jerome. He instantly denied it and even told them where to find the boy. With no intention of detaining or abducting Jerome, the accused reasoned that he was only following Edna's instructions.^[4]

The RTC Ruling

After trial, the RTC rendered its Decision dated July 29, 2015, finding Damayo guilty beyond reasonable of the crime charged. The dispositive portion of which reads:

WHEREFORE, the Court finds accused Francisco Damayo y Jaime guilty beyond reasonable doubt of kidnapping and serious illegal detention

under the first (the private complainant is a minor) and second (for the purpose of extorting ransom) paragraphs of Article 267 (4) of the Revised Penal Code, and is sentenced to *reclusion perpetua* without possibility of parole. He is further ordered to pay private complainant Jerome Rosario y Sampaga civil indemnity in the amount of P25,000.00, and moral damages in the amount of P25,000.00 both with 6% interest per annum from the finality of this decision until fully paid.

The Jail Warden, Muntinlupa City Jail is directed to immediately transfer accused Francisco Damayo y Jaime to the New Bilibid Prison for the service of his sentence.

SO ORDERED.^[5]

The RTC gave credence to the prosecution evidence which established that on August 7, 2006, Damayo took Jerome Rosario y Sampaga (*Jerome*), who was then eleven years of age, from his school and brought the latter to his house in Pampanga where he deprived the said victim of his personal liberty for three (3) days and that Damayo demanded ransom of P150,000.00 from Edna, Jerome's mother, for the release of her son from captivity. According to the RTC, Jerome convincingly testified on the events that transpired during the kidnapping incident from August 7 to 9, 2006 and positively identified Damayo as his abductor. The RTC rejected the defense of denial interposed by Damayo because it was not substantiated by clear and convincing evidence.

Not in conformity, Damayo appealed his conviction before the CA.

The CA Ruling

On January 30, 2017, the CA rendered its assailed Decision affirming Damayo's conviction with modification as to the award of damages, the *fallo* of which states:

WHEREFORE, the Decision dated 29 July 2015 of the Regional Trial Court of Muntinlupa City, Branch 207, in Criminal Case No. 08-556 is AFFIRMED with the following MODIFICATIONS:

- (1) that the amounts of moral damages and civil indemnity are increased to P100,000.00, each;
- (2) that exemplary damages in the amount of P100,000.00 is further awarded.

SO ORDERED.^[6]

The CA ruled that the prosecution witnesses unerringly established the commission of the crime of kidnapping for ransom and Damayo's culpability thereof. The CA,

likewise, brushed aside Damayo's defense of denial for being self-serving and unsupported by any plausible proof.

Aggrieved, Damayo filed the present appeal and posited the lone assignment of error he previously raised before the CA, to wit:

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF KIDNAPPING SOLELY ON THE BASIS OF THE PROSECUTION WITNESSES' INCONSISTENT AND CONTRADICTORY TESTIMONIES.^[7]

In its Resolution^[8] dated August 23, 2017, the Court directed both parties to submit their supplemental briefs, if they so desire. On October 23, 2017, the OSG filed its Manifestation (in Lieu of Supplemental Brief)^[9] praying that it be excused from filing a Supplemental Brief as its Appellee's Brief had sufficiently ventilated the issues raised. On November 21, 2017, Damayo filed a Manifestation (*In lieu of a Supplemental Brief*)^[10] averring that he would adopt all his arguments in his Appellant's Brief filed before the CA where he had already adequately discussed all matters pertinent to his defense.

Insisting on his acquittal, Damayo asserts that the case for the prosecution was enfeebled by the inconsistent and contradictory testimonies of its witnesses, Jerome and Edna Rosario (*Edna*). He submits that said testimonies are barren of probative weight and, thus, his conviction based thereon was erroneous. He puts premium on the following alleged material and substantial discrepancies to impugn the credibility of Jerome and Edna:

- 1) Jerome averred in his Affidavit, dated August 9, 2008, that appellant took him by force, while during his direct testimony, Jerome recounted that he voluntarily went with Damayo because he was familiar with him;
- 2) While at the witness stand, Edna claimed that she and her husband purposely went to Jerome's classmate, Daryll, to know the whereabouts of their son, but during her later testimony, Edna alleged that she and her husband only chanced upon the said classmate; and
- 3) During her direct examination, Edna recalled that it was her daughter who received the call from Damayo, while during her cross-examination, Edna stated that she was the one who received the call from Damayo who demanded ransom of P150,000.00.

Damayo denies that he abducted Jerome and maintains that his denial gained commensurate strength since the credibility of the prosecution witnesses is wanting and questionable. He contends that any doubt should be resolved in favor of the