

## THIRD DIVISION

[ G.R. No. 208170, August 20, 2014 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
PETRUS YAU A.K.A. "JOHN" AND "RICKY" AND SUSANA YAU Y  
SUMOGBA A.K.A. "SUSAN", ACCUSED-APPELLANTS.**

### D E C I S I O N

**MENDOZA, J.:**

This is an appeal from the September 7, 2012 Decision<sup>[1]</sup> of the Court of Appeals (CA), in CA-G.R. CR-HC No. 03446, which affirmed the December 14, 2007 Decision<sup>[2]</sup> of the Regional Trial Court, Branch 214, Mandaluyong City (RTC), in Criminal Case No. MC-04-7923.

The RTC found accused-appellant Petrus Yau (*Petrus*) guilty beyond reasonable doubt as principal of the crime of kidnapping for ransom and serious illegal detention, as defined and penalized in Article 267 of the Revised Penal Code (*RPC*), as amended by Republic Act No. 7659, (*R.A. No. 7659*), and convicted accused-appellant Susana Yau y Sumogba (*Susana*) as an accomplice to the commission of the same crime.

#### ***The Facts***

Petrus and Susana were charged with the crime of Kidnapping For Ransom in the Information,<sup>[3]</sup> dated February 13, 2004, the accusatory portion of which reads:

That on or about January 20, 2004, at around 2:00 P.M. in the vicinity of Shoemart Mega Mall, Mandaluyong City, the above-named accused, conspiring, confederating and mutually helping one another, with the use of a sleeping substance, did then and there, willfully, unlawfully and feloniously kidnap and take away ALASTAIR JOSEPH ONGLINGSWAM in the following manner, to wit: while said ALASTAIR JOSEPH ONGLINGSWAM was on board a white Toyota taxi cab with plate number PVD-115 being driven by the above-named accused Petrus Yau a.k.a. "John" and "Ricky" and the taxi cab was travelling along Epifanio Delos Santos (EDSA) Avenue, he suddenly fell unconscious and upon regaining consciousness he was already handcuffed and in chains inside a house located at B23, L2, Ponsettia St., Camilla Sorrento Homes, Panapaan IV, Bacoar, Cavite, where he was kept for twenty two (22) days, which house is owned by accused Susana Yau y Sumogba and while therein he was maltreated; that ransom in the amount of SIX HUNDRED THOUSAND DOLLARS (US\$600,000.00) and TWENTY THOUSAND PESOS (Php20,000.00) for each day of detention was demanded in exchange for his safe release until he was finally rescued on February 11, 2004, by

PACER operatives of the Philippine National Police.

CONTRARY TO LAW.

*Version of the Prosecution*

In the Appellee's Brief,<sup>[4]</sup> the Office of the Solicitor General (OSG) presented the following narration of the kidnapping:

On January 20, 2004, at around 1:30 in the afternoon, private complainant Alastair Onglingswam, who is a practicing lawyer and businessman from the United States, went out of Makati Shangrila Hotel, where he was billeted, and hailed a white Toyota taxi cab with plate number PVD-115 to take him from the said hotel to Virra Mall Shopping Center in San Juan, Metro Manila. While the said taxicab was plying along EDSA, and within the vicinity of SM Megamall, private complainant received a phone call from his associate Kelly Wei in Hong Kong. He noted that while he was on the phone conversing with his associate, appellant Petrus Yau, whom he noted to have short black hair, a moustache and gold framed eyeglasses, would from time to time turn to him and talk as if he was also being spoken to. Thereafter, he felt groggy and decided to hang-up his phone. He no longer knew what transpired except that when he woke up lying down, his head was already covered with a plastic bag and he was handcuffed and chained.

When private complainant complained that the handcuffs were too tight, a man who was wearing a red mask and introduced himself as "John" approached him and removed the plastic bag from his head and loosened his handcuff. John informed him that he was being kidnapped for ransom and that he will be allowed to make phone calls to his family and friends. Hours later, John returned with telephony equipment, tape recorder, phone and a special antennae cap for the cellphone. With these equipment, private complainant was allowed to call his girlfriend and father and asked them for the PIN of his ATM cards and for money, however, with instructions not to inform them that he was kidnapped. A day after, he was told by his captor to call his girlfriend and father to tell them that he was still alive as well as to reveal to them that he was kidnapped for ransom and his kidnappers were demanding Six Hundred Thousand Dollars (US\$600,000.00) as ransom and Twenty Thousand Pesos (Php20,000.00) a day as room and board fee.

The private complainant's family, girlfriend (Iris Chau) and friends received a text message purportedly from the former informing them that he was kidnapped and ransom for his liberty was demanded.

On January 21, 2004, the family of the victim informed the United States Embassy in Manila about the situation and a meeting with the representatives of the Philippine National Police was arranged.

Subsequently, Chau received an email from the purported kidnapper

demanding US\$2,000.00. Chau then wired US\$1,000.00, upon instructions, to Ong Kwai Ping thru Metro Bank and Trust Company. Likewise, private complainant's brother Aaron Onglingswam made eight (8) deposits to Ong Kwai Ping's account in Metro Bank, amounting to Two Hundred Thousand Pesos (Php200,000.00), to ensure his brother's safety and eventual release.

During private complainant's twenty-two (22) days of captivity, while he was allowed to communicate with his family almost daily to prove that he was still alive and was served with meals almost five times a day either by John or the other accused Susan Yau, he was also maltreated i.e. beaten with sticks, made to lay-down biting a piece of wood which was made as target for a rifle.

On February 10, 2004, the PACER received information that a taxi with plate number PVD 115 plying along Bacoor was victimizing passengers. Upon instructions of P/Supt. Isagani Nerez, members of the Police Anti-Crime and Emergency Response Task Force (PACER) were ordered to proceed to Bacoor, Cavite to look for Toyota Corolla White Taxicab with Plate No. PVD 115.

On February 11, 2004, at around 4:00 o'clock in the morning, the PACER group proceeded to Bacoor and positioned themselves along Aguinaldo Highway under the overpass fronting SM Bacoor. Not having caught sight of the taxi, after three hours, the group moved to a different location along the Aguinaldo Highway where they were able to chance upon the said vehicle. Thus, they followed it, then flagged it down and approached the driver. The driver was asked to scroll down his window and was told that the vehicle was being used to victimize foreign nationals. Appellant did not offer to make any comment. Hence, this prompted the officers to ask for his name and since he answered that he was Petrus Yau, a British national, they asked him for his driver's license and car registration but appellant was not able to produce any. Since he could not produce any driver's license and car registration, they were supposed to bring him to the police station for investigation, however, when shown a picture of private complainant and asked if he knew him, he answered that the man is being kept in his house. He was immediately informed that he was being placed under arrest for kidnapping private complainant Alastair Onglingswam after being informed of his constitutional rights. Thereafter, appellant's cellphones, a QTEK Palmtop and Sony Erickson were confiscated. Upon instructions of P/Supt. Nerez, [appellant] was brought to the parking lot of SM City Bacoor for a possible rescue operations of the victim.

Appellant led the team to his house and after opening the gate of his residence, he was led back to the police car. The rest of the members of PACER proceeded inside the house and found a man sitting on the floor chained and handcuffed. The man later identified himself as Alastair Onglingswam.

During the trial of the case, private complainant positively identified Petrus Yau as his captor and the taxi driver. Test conducted by the United

States Federal Bureau of Investigation reveals that the DNA found in the mask used by private complainant's captor matched that of appellant Petrus Yau.<sup>[5]</sup>

### *Version of the Defense*

Petrus and Susana denied the accusation, and stated the following in their Brief<sup>[6]</sup> to substantiate their claim of innocence:

Accused Petrus Yau denied having committed the crime. He averred that the supposed kidnap victim coordinated with the police to set up the subject case against him and his family. He is a British national. He had been in the Philippines for many times since he was 14 years old. He came to the country in July 2001 for a vacation and had not left since then. On September 2001, he got married to Susana Yau. Prior thereto, he was in Singapore running some businesses.

On January 20, 2004, at around 2:00 o'clock in the afternoon (the date and time the victim was kidnapped), Petrus Yau was at home sleeping.

On February 11, 2004 (the date the victim was allegedly rescued) at around 8:30 – 9:00 o'clock in the morning, he went to his wife Susana in her shop and got money to be deposited to the Asia Trust Bank. He parked his car outside the bank. After he alighted from his car, three (3) men bigger than him held his hands: one (1) of them held his neck. They pushed him inside their van. They tied his hands with packing tape, covered his eyes with the same tape, and his head with a plastic bag. They kicked and beat him until he became unconscious.

When he regained consciousness, he was inside an air-conditioned room. His hands were handcuffed and he felt very cold because his body was wet. His head was still being covered. He shouted asking where he was. People came in and he heard them talking in Tagalog. They kicked him for about twenty (20) seconds. Later, he was made to sit, as he was lying on the floor. He said that he could not see anything, thus, someone removed the cover of his head. They accused him of being a kidnapper, to which he replied that he was not. He pleaded to them to allow him to make a call to the British Embassy, his friends and his wife, but to no avail.

When he was taken into custody, he had his wedding ring, watch and a waist bag containing his British passport, alien certificate, driver's license, Asia Trust bankbook in the name of Susana Yau, ATM Cards (in his name) of Metrobank, PCI Equitable Bank and Banco de Oro, VISA Card, and some cash given to him by his wife . He lost those personal properties.

After four (4) to five (5) hours, he was transferred to another room without a window. The following day, he was brought to and detained at the PACER Custodial Center.

Petrus Yau can speak English but he is better in the Chinese language, both Mandarin and Cantonese. He bought the taxi he was driving in August 2003 for Eighty Five Thousand Pesos (Php85,000.00) for personal use and/or for resale. It had a defective engine (usually overheats), without an aircon and cannot travel for long journey. He does not drive a taxi to earn a living. He had police friends who told him that he cannot drive a taxi as an occupation since his driver's license is non-professional.

Sometime on June 2003, he and his wife Susana had a heated argument over his womanizing. Hence, she decided to live separately from him (though she was pregnant at that time) and moved to another house (Block 5, Lot 4, Tulip Street, Andrea Village, Bacoar, Cavite). Sometimes, she would visit him.

Petrus claimed that his house does not have a basement, contrary to the victim's testimony that he was placed in the basement. He was not in his house when the police officers allegedly rescued the kidnapped victim. He left his house in good condition in the morning before his arrest. The white Toyota Corolla taxi he was driving had markings of faded grey, not black, as claimed by Alastair.

During the inquest proceedings, Petrus Yau was not assisted by a counsel and was not informed of his constitutional rights.

Susana Sumogba Yau denied the accusation that she was in the company of the kidnapper every time the latter served Alastair's food (lunch and dinner). She is legally married to Petrus Yau. They have two (2) children named Charlie and Vivian. On February 11, 2004, she lived at Block 5, Lot 4, Tulips Street, Andrea Village, Bacoar, Cavite, while Petrus Yau lived at Block 23, Lot 2, Ponsettia Street, Sorrento Town Homes, Bacoar, Cavite, with his girlfriend. Susana and Petrus were separated since June 2003.

On February 11, 2004, she called him to pick up the amount of Php7,000.00 (earnings of her sari-sari store) and to deposit it in her account at Asia Trust Bank. She would request Petrus to do such errand for her as she does not trust her househelp. Petrus came to her at around 7:00 o'clock in the morning. At around 11:00 o'clock a.m. of the same day, four (4) to five (5) policemen arrived at her residence and told her to come with them to the hospital where Petrus was brought because he met a vehicular accident along Aguinaldo Highway.

Susana, together with her children and helpers, went with them, and rode in their van. They, however, were not brought to the hospital but to an office. Thereat, Susana saw her husband (almost dead) inside a small room with a one-way mirror. She was not able to talk to him. She, together with her children and helpers, were detained for three (3) days inside a small room. After three (3) days, her children and helpers were released and they went home. At that time, she was not provided with the assistance of a counsel.

Susana stated that her husband's name is Petrus Yau. He is not known