

EN BANC

[G.R. No. 172707, October 01, 2013]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. HALIL GAMBAO Y ESMAIL, EDDIE KARIM Y USO, EDWIN DUKILMAN Y SUBOH, TONY ABAO Y SULA, RAUL UDAL Y KAGUI, THENG DILANGALEN Y NANDING, JAMAN MACALINBOL Y KATOL, MONETTE RONAS Y AMPIL, NORA EVAD Y MULOK, THIAN PERPENIAN Y RAFON A.K.A LARINA PERPENIAN AND JOHN DOES, ACCUSED-APPELLANTS.

D E C I S I O N

PEREZ, J.:

Before this Court for Automatic Review is the Decision^[1] dated 28 June 2005 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00863, which affirmed with modification the Decision^[2] of the Regional Trial Court (RTC) of Pasay City, Branch 109 dated 16 October 1998, finding accused-appellants Halil Gambao y Esmail, Eddie Karim y Uso, Edwin Dukilman y Suboh, Tony Abao y Sula, Raul Udal y Kagui, Teng Mandao y Haron, Theng Dilangalen y Nanding, Jaman Macalinbol y Katol, Monette Ronas y Ampil, Nora Evad y Mulok and Thian Perpenian y Rafon guilty beyond reasonable doubt of kidnapping for ransom as defined and penalized under Article 267 of the Revised Penal Code, as amended by Republic Act (R.A.) No. 7659.

The accused-appellants, along with an unidentified person, were charged under the criminal information^[3] which reads:

*Criminal Case No. 98-0928
For Kidnapping for Ransom as amended by RA 7659*

That on August 12, 1998 at around 7:30 o'clock in the evening at No. 118 FB Harrison Pasay City and within the jurisdiction of this Honorable Court, the above named-accused conspiring, confederating and mutually helping one another and grouping themselves together, did then and there by force and intimidation, and the use of high powered firearms, willfully, unlawfully and feloniously take, carry away and deprive **Lucia Chan y Lee** of her liberty against her will for the purpose of extorting ransom as in fact a demand for ransom was made as a condition for her release amounting to FOUR HUNDRED THOUSAND PESOS (P400,000.00) to the damage and prejudice of Lucia L. Chan in the said amount and such other amounts as may be awarded to her under the provisions of the Civil Code.

The antecedent facts were culled from the records of the case.^[4]

Lucia Chan (Chan) was a fish dealer based in Manila. She usually expected fish

deliveries, which were shipped by her suppliers from the provinces. Sometime in the afternoon of 11 August 1998, two persons, one of whom was identified as Theng Dilangalen (Dilangalen), went to Chan's residence at FB Harrison St., Pasay City to inquire about a certain passport alleged to have been mistakenly placed inside a box of fish to be delivered to her. Unable to locate said passport, the two left. The next morning, Dilangalen, together with another companion identified as Tony Abao (Abao), returned looking for Chan but were told that she was out. When the two returned in the afternoon, Chan informed them that the fish delivery had yet to arrive. Chan offered instead to accompany them to the airport to retrieve the box of fish allegedly containing the passport. Dilangalen and Abao declined and told Chan that they would be back later that evening.^[5]

Dilangalen, accompanied by an unidentified person who remains at large, returned to Chan's residence that evening. Chan's houseboy ushered them in and Chan met them by the stairs.^[6] Thereat, the unidentified companion of Dilangalen pointed his gun at Chan's son, Levy Chan (Levy), and the house companions.^[7] As the unidentified man forcibly dragged Chan, her son Levy tried to stop the man by grabbing his mother's feet. Seeing this, Dilangalen pointed his gun at Levy's head forcing the latter to release his grip on Chan's feet.^[8] Levy thereafter proceeded to the Pasay Police Headquarters to report the incident.^[9]

Chan was forced to board a "Tamaraw FX" van.^[10] After travelling for about two hours, the group stopped at a certain house. Accused-appellant Edwin Dukilman (Dukilman) warned Chan not to shout as he had his gun pointed at her mouth. Chan was ordered to go with two women,^[11] later identified in court by Chan as appellants Monette Ronas (Ronas) and Nora Evad (Evad).^[12] Chan was brought inside a house and was made to lie down on a bed, guarded by Ronas, Evad, Dukilman and Jaman Macalinbol (Macalinbol).^[13] Ronas and Evad threatened Chan that she would be killed unless she paid 20 Million Pesos.^[14]

On 13 August 1998, Chan was awakened by Evad and was asked to board the "Tamaraw FX" van. After travelling for about ten minutes, the van stopped and the group alighted. Chan was brought to a room on the second floor of the house. Inside the room were three persons whom Chan identified in court as Macalinbol, Raul Udal (Udal) and Halil Gambao (Gambao).^[15] Another woman, later identified as Thian Perpenian (Perpenian), arrived.^[16] At about 9:00 o'clock in the evening, a man who was later identified as Teng Mandao (Mandao), entered the room with a handgun and asked Chan "*Bakit kayo nagsumbong sa pulis?*"^[17] Another man, whom Chan identified in court as Eddie Karim (Karim), ordered Mandao out of the room. Karim informed Chan that he was sent by their boss to ask her how much money she has.^[18] Chan was instructed to talk to her son through a cell phone and she gave instructions to her son to get the P75, 000.00 she kept in her cabinet.^[19] The group then talked to Chan's son and negotiated the ransom amount in exchange for his mother's release. It was agreed upon that Levy was to deliver P400,000.00 at the "Chowking" Restaurant at Buendia Avenue.^[20]

Inspectors Narciso Ouano, Jr. (Inspector Ouano) and Cesar Mancao (Inspector Mancao), who were assigned at the Pasay City area to conduct the investigation regarding the kidnapping, were informed that the abductors called and demanded

for ransom in exchange for Chan's release.^[21] During their surveillance the following day, Inspectors Ouano and Mancao observed a Red Transport taxicab entering the route which led to the victim's residence. The inspectors observed that the occupants of the taxicab kept on looking at the second floor of the house. The inspectors and their team tailed the taxicab until Pansol, Calamba, Laguna, where it entered the Elizabeth Resort and stopped in front of Cottage 1. Convinced that the woman the team saw in the cottage was the victim, they sought clearance from Philippine Anti Organized Crime Task Force (PAOCTF) to conduct a rescue operation.^[22]

On 14 August 1998, P/Insp. Vicente Arnado (Inspector Arnado) received information that the abductors acceded to a P400,000.00 ransom money to be delivered at "Chowking" Restaurant at Buendia Avenue at around 2:00 am. Upon learning of the information, the team immediately and strategically positioned themselves around the vicinity of the restaurant. At about 2:00 am, a light blue "Tamaraw FX" van with 4 people on board arrived. The four took the ransom money and headed towards the South Luzon Expressway. The surveillance team successfully intercepted the van and arrested the 4 men, later identified in court as Karim, Abao, Gambao and Dukilman. The team was also able to recover the P400,000.00 ransom.^[23]

At about 5:00 o'clock in the morning of the same day, the police team assaulted Cottage No. 1, resulting in the safe rescue of Chan and the apprehension of seven of her abductors, later identified in court as Dilangalen, Udal, Macalinbol, Mandao, Perpenian, Evad and Ronas.^[24]

During the 7 October 1998 hearing, after the victim and her son testified, Karim manifested his desire to change his earlier plea of "not guilty" to "guilty." The presiding judge then explained the consequences of a change of plea, stating: "It would mean the moment you withdraw your previous pleas of not guilty and enter a plea of guilty, the court of course, after receiving evidence, as in fact it has received the testimonies of [the] two witnesses, will [outrightly] sentence you to the penalty provided by law after the prosecution shall have finished the presentation of its evidence. Now that I have explained to you the consequences of your entering a plea of guilty, are you still desirous of entering a plea of 'guilty'?" Eddie Karim answered, "Yes."^[25] On hearing this clarification, the other appellants likewise manifested, through their counsel who had earlier conferred with them and explained to each of them the consequences of a change of plea, their desire to change the pleas they entered. The trial court separately asked each of the appellants namely: Gambao, Abao, Udal, Mandao, Dilangalen, Macalinbol, Ronas and Evad if they understood the consequence of changing their pleas. All of them answered in the affirmative.^[26] Similarly, Dukilman manifested his desire to change his plea and assured the trial court that he understood the consequences of such change of plea.^[27] Thereupon, the trial court ordered their re-arraignment. After they pleaded guilty,^[28] the trial court directed the prosecution to present evidence, which it did.

On 16 October 1998, the RTC rendered a decision convicting Gambao, Karim, Dukilman, Abao, Udal, Mandao, Dilangalen, Macalinbol, Ronas, Evad and Perpenian of Kidnapping for Ransom. Hence, they appealed to the CA.

In a Decision dated 28 June 2005, the appellate court affirmed with modifications the decision of the trial court. The dispositive portion of the CA decision reads:

WHEREFORE, the decision of the court *a quo* finding accused-appellants HALIL GAMBAO y ESMAIL, EDDIE KARIM y USO, EDWIN DUKILMAN y SUBOH, TONY ABAO y SULA, RAUL UDAL y KAGUI, TENG MANDAO y HARON, THENG DILANGALEN y NANDING, JAMAN MACALINBOL y KATOL, MONETTE RONAS y AMPIL and NORA EVAD y MULOK guilty beyond reasonable doubt of kidnapping for ransom defined and penalized under Article 267 of the Revised Penal Code, as amended by RA 7659 and imposing upon each of them the supreme penalty of death is **AFFIRMED WITH MODIFICATION** that each of them is ordered to pay jointly and severally the victim in the amount of P50,000.00 by way of moral damages.

It appearing that accused-appellant THIAN PERPENIAN y RAFON was only 17 years old at the time of the commission of the crime, she is hereby sentenced to suffer the penalty of *reclusion perpetua*.^[29]

Pursuant to Section 13, Rule 124 as amended by Administrative Matter No. 00-5-03-SC, the appellate court certified the case to this Court and accordingly ordered the elevation of the records.

In a Resolution^[30] dated 20 June 2006, we required the parties to file their respective supplemental briefs. The issues raised by the accused-appellants in their respective briefs, supplemental briefs and manifestations will be discussed collectively.

Insufficiency of Evidence

Accused-appellants Dukilman, Ronas, Evad would have this Court believe that the witness, Chan, was not able to positively identify them because of her failing eyesight due to old age.

This argument is bereft of merit. We note that both the trial court and the CA found Chan's testimony credible and straightforward. During her testimony, she positively identified the accused-appellants. If she had not met them before, she could not have positively identified them in open court. In fact, the participation of these accused-appellants was further established through the testimonies of the other prosecution witnesses.

Time and again, this Court has maintained that the question of credibility of witnesses is primarily for the trial court to determine. For this reason, its observations and conclusions are accorded great respect on appeal. They are conclusive and binding unless shown to be tainted with arbitrariness or unless, through oversight, some fact or circumstance of weight and influence has not been considered.^[31] In *People v. Tañedo*,^[32] this Court had occasion to reiterate the ruling that findings of fact of the trial court pertaining to the credibility of witnesses command great respect since it had the opportunity to observe their demeanor while they testified in court.^[33] It can be observed that the briefs submitted by the accused-appellants are replete with generalities and wanting in relevant particulars. It is for this reason that we are giving full credence to the findings of the trial court

regarding the credibility of witness Chan.

Perpenian likewise argued that the evidence for her conviction is insufficient. We also find her argument bereft of merit.

The testimony of Inspector Ouano, establishing Perpenian as one of the seven people apprehended when they conducted the rescue operation at around 5:00 o'clock in the morning of 14 August 1998,^[34] and the positive identification of Perpenian by Chan constituted adequate evidence working against her defense of denial.

Further, it should be noted that the only defense the accused-appellants proffered was denial. It is established jurisprudence that denial cannot prevail over the witnesses' positive identification of the accused-appellants, more so where the defense did not present convincing evidence that it was physically impossible for them to have been present at the crime scene at the time of the commission of the crime.^[35]

The foregoing considered, the positive identification by Chan, the relevant testimonies of witnesses and the absence of evidence other than mere denial proffered by the defense lead this Court to give due weight to the findings of the lower courts.

Improvident Plea

As provided for by Article 267 of the Revised Penal Code, as amended by RA 7659, the penalty for kidnapping for ransom is death. A review of the records^[36] shows that on 7 October 1998, the accused-appellants withdrew their plea of "not guilty" and were re-arraigned. They subsequently entered pleas of "guilty" to the crime of kidnapping for ransom, a capital offense. This Court, in *People v. Oden*,^[37] laid down the duties of the trial court when the accused pleads guilty to a capital offense. The trial court is mandated:

- (1) to conduct a searching inquiry into the voluntariness and full comprehension of the consequences of the plea of guilt,
- (2) to require the prosecution to still prove the guilt of the accused and the precise degree of his culpability, and
- (3) to inquire whether or not the accused wishes to present evidence in his behalf and allow him to do so if he desires.^[38]

The rationale behind the rule is that the courts must proceed with more care where the possible punishment is in its severest form, namely death, for the reason that the execution of such a sentence is irreversible. The primordial purpose is to avoid improvident pleas of guilt on the part of an accused where grave crimes are involved since he might be admitting his guilt before the court and thus forfeiting his life and liberty without having fully understood the meaning, significance and consequence of his plea.^[39] Moreover, the requirement of taking further evidence would aid this Court on appellate review in determining the propriety or impropriety of the plea.^[40]

Anent the first requisite, the searching inquiry determines whether the plea of guilt was based on a free and informed judgement. The inquiry must focus on the