

SECOND DIVISION

[G.R. No. 181822, April 13, 2011]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOEL
BALUYA Y NOTARTE, ACCUSED-APPELLANT.**

D E C I S I O N

PERALTA, J.:

On appeal before the Court is the Decision ^[1] of the Court of Appeals (CA), dated September 25, 2007 in CA-G.R. CR No. 02370, which affirmed with modification the Decision ^[2] of the Regional Trial Court (RTC) of Manila, Branch 38, dated April 3, 2006 in Criminal Case No. 03-218310, finding herein appellant Joel Baluya guilty beyond reasonable doubt of the crime of kidnapping and serious illegal detention and sentencing him to suffer the penalty of *reclusion perpetua*.

In an Information dated September 4, 2003, appellant was indicted before RTC of Manila for the crime of kidnapping and serious illegal detention, allegedly committed as follows:

That on or about August 31, 2003, in the City of Manila, Philippines, the said accused, being then a private individual, did then and there willfully, unlawfully and feloniously kidnap, take, detain and carry away one GLODIL CASTILLON Y MAAMBONG, a minor, nine (9) years old, son of Gloria Castillon y Maambong, while the latter was playing outside of their residence along Laon Laan St., Sampaloc, this City, by poking a knife on his back, twisting his hands and forcibly bringing him to Novaliches, Quezon City, thus detaining and depriving him of his liberty under restraint and against his will and consent.

Contrary to law. ^[3]

On November 5, 2003, appellant, duly assisted by his counsel, entered a plea of "not guilty" to the offense charged. ^[4]

Thereafter, trial ensued.

The facts, as established by the prosecution, are as follows:

Around 10:30 a.m. of August 31, 2003, the victim, Glodil Castillon (Glodil), who at that time was nine (9) years old, was playing in front of their house located along Laon Laan St., Sampaloc, Manila. ^[5] While in the midst of play, he saw herein appellant. Appellant then called Glodil's attention and summoned him to come forth. ^[6] Immediately thereafter, appellant seized him by twisting his right arm, pointed a

knife at him and told him that if appellant's wife, Marissa, would not show up Glodil's mother would not see him anymore. [7] Appellant and Glodil then boarded a jeepney and went to Blumentritt. [8] When they were in Blumentritt, appellant called up Glodil's mother, Gloria, telling her to show him his wife so that she will also be able to see Glodil. [9] Gloria then asked appellant to allow her to talk to her son as proof that Glodil was indeed with him. [10] Appellant then passed the telephone to Glodil, but the latter was only able to momentarily talk with his mother because appellant immediately grabbed the telephone from him. [11] Thereafter, Glodil's mother reported the incident to the police. [12] Meanwhile, appellant and Glodil again boarded a jeepney and went to Novaliches. [13] It was Glodil's first time to reach Novaliches. [14] Upon reaching Novaliches "Bayan," they headed straight to a barbershop where they fetched appellant's three minor children. [15] They then proceeded to a church where appellant left his children and Glodil in the playground within the church premises. [16] Glodil played, ate and slept with appellant's children until the afternoon of the same day. During that period, appellant returned from time to time to check on them and bring them food. [17] At 3:30 p.m. of the same day, appellant again called up Gloria and, while shouting, asked if his wife was already there. [18] He then threatened Gloria by saying that "*kapag hindi mo ipakita sa akin si Marissa, hindi mo na makikita ang anak mo.*" [19] Subsequently, Gloria was able to talk to Marissa and convince her to meet with appellant at the Novaliches public market. [20] Unknown to appellant, the police already had a plan to arrest him, which they did when he showed up to meet with his wife. In the meantime, around 4:00 p.m. of August 31, 2003, Glodil was able to seize an opportunity to escape while appellant was away. [21] He walked from the place where appellant left him in Novaliches until he reached their house and it took him around four hours to do so. [22] He was able to trace back their house by reading the signboard of the jeepneys and following the route of those that pass by his place of residence. [23]

On the other hand, the defense interposed the defense of denial alleging that on August 31, 2003, appellant went to the house of his common-law-wife's aunt, Gloria, at Laon Laan St. in Sampaloc, Manila for the purpose of asking the latter if his wife, with whom he has been separated, has been there. [24] Gloria told him that his wife went to their house once but has not seen her since then. [25] After an hour of talking with Gloria, appellant bid her goodbye. It was then that Glodil approached him and asked if he could go with him to Novaliches. [26] Since Glodil already went with him to Novaliches several times in the past, appellant acceded to the child's request on the condition that he ask his mother for permission, which the latter readily gave. [27] Appellant and Glodil then proceeded to the former's house in Novaliches. [28] After taking lunch, appellant took his children and Glodil to the playground and left them there. [29] When he returned around 4:30 p.m., Glodil was no longer there. [30] His children told him that Glodil's aunt, by the name of Rosaly, fetched him. [31] Appellant then brought home his children. Around 6:00 p.m. of the same day, the police, together with Gloria and his wife, arrived at his house wherein he was apprehended and brought to a police station in Novaliches. [32] After having been subjected to a medical examination, he was turned over to Police Station 4 in

Balic-Balic, Manila, where he was subsequently charged with kidnapping. [33] Appellant alleges that his wife and her aunt came up with the scheme of accusing him with kidnapping so that his wife would be able to take their children from him. [34] Appellant also claims that Gloria is angry with "warays" and because he is a "waray" she is also angry with him. [35]

In its Decision dated April 3, 2006, the RTC found the version of the prosecution credible and, accordingly, rendered judgment as follows:

WHEREFORE, judgment is hereby rendered finding accused Joel Baluya GUILTY of the crime of Kidnapping with Serious Illegal Detention and sentences him to suffer the penalty of *reclusion perpetua* with all the accessory penalties provided by law and to pay the costs.

SO ORDERED. [36]

Aggrieved by the trial court's decision, appellant appealed his conviction to the Court of Appeals (CA).

The parties filed their respective appeal briefs. [37]

On September 25, 2007, the CA rendered its Decision, the dispositive portion of which reads thus:

WHEREFORE, the DECISION DATED APRIL 3, 2006 is AFFIRMED, subject to the modification that accused JOEL BALUYA y NOTARTE is ordered to pay to victim Glodil M. Castillon the amounts of P30,000.00 as moral damages and of P15,000.00 as nominal damages.

Costs of suit to be paid by the accused.

SO ORDERED. [38]

On October 24, 2007, appellant filed his Notice of Appeal of the CA Decision. [39]

On June 16, 2008, this Court required the parties to file their respective supplemental briefs if they so desired. [40] Both appellant and appellee, however, manifested that they were adopting their previous arguments and that they were willing to submit the case on the basis of the records already submitted.

Thus, the following Assignment of Errors in appellant's brief, dated October 27, 2006, are now deemed adopted in this present appeal:

I

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED GUILTY

BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.

II

THE COURT A QUO GRAVELY ERRED IN GIVING CREDENCE TO THE TESTIMONY OF THE PROSECUTION WITNESSES THAT THE VICTIM WAS FORCIBLY TAKEN AND DEPRIVED OF HIS LIBERTY UNDER RESTRAINT AND AGAINST HIS WILL AND CONSENT.

III

THE COURT A QUO GRAVELY ERRED IN FAILING TO DETERMINE THE ALLEGATION OF MINORITY OF THE VICTIM. [41]

Appellant argues that the prosecution failed to prove the presence of all the elements of the crime charged. In particular, the defense contends that there is no evidence to show that the victim was deprived of his liberty.

The Court is not persuaded.

The elements of kidnapping and serious illegal detention under Article 267 [42] of the Revised Penal Code (RPC) are:

- (1) the offender is a private individual;
- (2) he kidnaps or detains another or in any other manner deprives the latter of his liberty;
- (3) the act of detention or kidnapping is illegal; and
- (4) in the commission of the offense, any of the following circumstances are present: (a) the kidnapping or detention lasts for more than 3 days; or (b) it is committed by simulating public authority; or (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. [43]

In the instant case, the Court is convinced that the prosecution has adequately and satisfactorily proved all the aforesaid elements of kidnapping and serious illegal detention.

The presence of the first element is not in issue as there is no dispute that appellant is a private individual.

As to the second element of the crime, the deprivation required by Article 267 of the RPC means not only the imprisonment of a person, but also the deprivation of his liberty in whatever form and for whatever length of time. [44] It involves a situation where the victim cannot go out of the place of confinement or detention or is restricted or impeded in his liberty to move. [45] If the victim is a child, it also

includes the intention of the accused to deprive the parents of the custody of the child. [46] In other words, the essence of kidnapping is the actual deprivation of the victim's liberty, coupled with indubitable proof of the intent of the accused to effect such deprivation. [47] In the present case, Glodil was in the control of appellant as he was kept in a place strange and unfamiliar to him. Because of his tender age and the fact that he did not know the way back home, he was then and there deprived of his liberty. The intention to deprive Glodil's parents of his custody is also indicated by appellant's actual taking of the child without the permission or knowledge of his parents, of subsequently calling up the victim's mother to inform her that the child is in his custody and of threatening her that she will no longer see her son if she failed to show his wife to him.

Appellant's arguments that the victim is free to go home if he wanted to because he was not confined, detained or deprived of his liberty and that there is no evidence to show that Glodil sustained any injury, cannot hold water. The CA is correct in holding that for kidnapping to exist, it is not necessary that the offender kept the victim in an enclosure or treated him harshly. Where the victim in a kidnapping case is a minor, it becomes even more irrelevant whether the offender forcibly restrained the victim. [48] As discussed above, leaving a child in a place from which he did not know the way home, even if he had the freedom to roam around the place of detention, would still amount to deprivation of liberty. [49] For under such a situation, the child's freedom remains at the mercy and control of the abductor. [50] It remains undisputed that it was his first time to reach Novaliches and that he did not know his way home from the place where he was left. It just so happened that the victim had the presence of mind that, when he saw an opportunity to escape, he ran away from the place where appellant left him. Moreover, he is intelligent enough to read the signboards of the passenger jeepneys he saw and follow the route of the ones going to his place of residence.

Appellant alleges that Glodil was not forcibly taken, but instead voluntarily went with appellant to Novaliches. The general rule is that the prosecution is burdened to prove lack of consent on the part of the victim. However, where the victim is a minor, lack of consent is presumed. [51] Aside from his self-serving testimony, appellant failed to present competent evidence to overcome such presumption. Thus, the presumption stands that Glodil, being only nine (9) years old on August 31, 2003, is incapable of giving consent and is incompetent to assent to his seizure and illegal detention.

The defense further argues that appellant had no intention to detain Glodil and that his purpose is to merely use him as "a leverage against Glodil's mother, who refused to produce Marissa, his live-in partner." The Court, however, cannot fathom how appellant could have used Glodil as leverage or bargaining tool to force Marissa to meet with him without depriving him of his liberty. In any case, appellant's motive is not relevant, because it is not an element of the crime.

With respect to the third element of the offense charged, the prosecution proved that appellant's act of detaining the victim was without lawful cause.

As to the last element of the crime, appellant contends that the victim's minority was not sufficiently proven. However, the Court agrees with the Office of the Solicitor General (OSG) that the victim's minority was alleged by the prosecution in