

## THIRD DIVISION

[ G.R. No. 168552, October 03, 2011 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JERRY JACALNE Y GUTIERREZ, ACCUSED-APPELLANT.**

### D E C I S I O N

**PERALTA, J.:**

For resolution is the appeal filed by appellant Jerry G. Jacalne assailing the Court of Appeals (CA) Decision<sup>[1]</sup> dated March 31, 2005 in CA-G.R. CR-H.C. No. 00473.

The facts of the case follow.

In an Information<sup>[2]</sup> dated March 15, 1996, appellant was charged with Kidnapping and Serious Illegal Detention committed as follows:

That on or about the 8<sup>th</sup> day of March 1996, in the Municipality of Las Piñas, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, who is a private individual, without legal authority or justifiable motive, did then and there kidnap and detain JOMARIE J. ROSALES, a female, minor (7 years old) for the purpose of depriving complainant of her liberty.

CONTRARY TO LAW.<sup>[3]</sup>

During the arraignment, appellant pleaded "not guilty" to the crime charged.<sup>[4]</sup> Trial on the merits ensued.

The prosecution established the following facts:

On March 8, 1996, at 8:00 in the morning, the victim Jomarie Rosales (Jomarie), then seven (7) years of age, female, residing at No. 142 Mabuhay Street, Las Piñas City and a grade 1 pupil, attended her classes at the CAA Elementary School in Las Piñas from 8:00 to 10:00 in the morning.<sup>[5]</sup> While on her way home, Jomarie noticed that appellant was following her. She ran, but appellant eventually caught up with her.<sup>[6]</sup> Appellant told her that she should go with him, but Jomarie refused and told him that her mother would be angry.<sup>[7]</sup> Jomarie held on to a post, but appellant dragged and forced her to go to his house at Patola Street which is 100 to 150 meters away.<sup>[8]</sup>

When they reached appellant's house, appellant placed Jomarie at the back of the

steel gate of his fenced residence.<sup>[9]</sup> Thereafter, appellant went inside the house then returned with a piece of rope.<sup>[10]</sup> He used the rope in tying the hands of Jomarie.<sup>[11]</sup> Jomarie pleaded that she be released because her mother would be worried, but appellant refused.<sup>[12]</sup>

After more or less one hour, appellant untied Jomarie's hands and instructed her to walk straight toward the road. He even told her not to turn left, otherwise, she would not be able to reach home. Appellant also threatened her not to tell anybody of what happened or else he would kill her.<sup>[13]</sup>

Jomarie reached home around noon then took her lunch.<sup>[14]</sup> She did not tell her mother Marissa Rosales (Marissa) about the incident because of fear, until after three days.<sup>[15]</sup> Marissa reported the incident to the *barangay* and had it blotted.<sup>[16]</sup> Jomarie and Marissa went to Patola Street where the house of appellant is located. Upon seeing appellant, Jomarie pointed him as the person who committed the crime.<sup>[17]</sup>

On March 14, 1996, Jomarie, accompanied by her mother, executed a Sworn Statement<sup>[18]</sup> before SPO1 Benjamin M. Javier. While inside the police station, Jomarie identified appellant (who was inside the investigation room) as the perpetrator.<sup>[19]</sup>

Appellant, on the other hand, denied the accusation against him. He explained that on March 12, 1996, while in his house painting a tricycle, Jomarie, Marissa, and two others approached him then asked if he is familiar with a *nipa* hut or a house surrounded by plants, which he answered in the negative.<sup>[20]</sup> They likewise mentioned to him about an incident whereby a child was tied and raped. After telling them that he was not aware of the incident, the four left.<sup>[21]</sup> In the afternoon of the same day, Marissa and Jomarie allegedly returned to his place. This time, they talked to appellant's neighbors. The following day, he was arrested.<sup>[22]</sup>

The defense also presented Marites Calzado,<sup>[23]</sup> George Resurreccion<sup>[24]</sup> and Joseph Conmigo, as witnesses.<sup>[25]</sup> Their testimonies tend to prove that in many occasions, Jomarie denied that it was appellant who kidnapped her.<sup>[26]</sup>

On May 29, 2000, the Regional Trial Court of Las Piñas City (RTC), Branch 275, rendered a Decision<sup>[27]</sup> finding the appellant guilty beyond reasonable doubt of the crime charged and sentenced him to suffer the penalty of *reclusion perpetua*.

Appellant appealed to this Court. Conformably with our ruling in *People v. Mateo*,<sup>[28]</sup> however, the case was referred to the CA for intermediate review.<sup>[29]</sup>

In its Decision<sup>[30]</sup> dated March 31, 2005, the CA affirmed *in toto* the decision of the court *a quo*. Thus, this appeal raising the sole error:

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING  
THE DECISION OF THE TRIAL COURT CONVICTING THE ACCUSED-

APPELLANT OF THE CRIME OF KIDNAPPING WITH SERIOUS ILLEGAL  
DETENTION.<sup>[31]</sup>

Appellant assails the trial and appellate courts' appreciation of the credibility of the witnesses for the prosecution. He submits that the court failed to consider certain facts and circumstances, which have affected the credibility of Jomarie.<sup>[32]</sup> He explains that Jomarie either failed to identify appellant or has categorically denied that he was the one who allegedly kidnapped her.<sup>[33]</sup>

We do not find any reason to depart from the conclusions of the trial and appellate courts.

Time and again, we have ruled that the findings of the trial court on the credibility of witnesses and their testimonies are entitled to the highest respect and will not be disturbed on appeal in the absence of any clear showing that the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which would have affected the result of the case.<sup>[34]</sup> The trial court has the singular opportunity to observe the witnesses through the different indicators of truthfulness or falsehood, such as the angry flush of an insisted assertion or the sudden pallor of a discovered lie or the tremulous mutter of a reluctant answer or the forthright tone of a ready reply; or the furtive glance, the blush of conscious shame, the hesitation, the sincere or the flippant or sneering tone, the heat, the calmness, the yawn, the sigh, the candor or lack of it, the scant or full realization of the solemnity of an oath, the carriage and mien.<sup>[35]</sup>

Kidnapping and serious illegal detention is defined and punished under Article 267 of the Revised Penal Code (RPC), as amended by Republic Act (RA) 7659:

ART. 267. *Kidnapping and serious illegal detention.* - Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of *reclusion perpetua* to death:

1. If the kidnapping or detention shall have lasted more than three days.
2. If it shall have been committed simulating public authority.
3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained, or if threats to kill him shall have been made.
4. If the person kidnapped or detained shall be a minor, except when the accused is any of the parents, female or a public officer.

The penalty shall be death where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances abovementioned were presented in the commission of the offense.

When the victim is killed or dies as a consequence of the detention or is raped, or is subjected to torture or dehumanizing acts, the maximum penalty shall be imposed.

The crime has the following elements: (1) the offender is a private individual; (2) he kidnaps or detains another, or in any 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 is present: (a) the kidnapping or detention lasts for more than three days; (b) it is committed by simulating public authority; (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 official.<sup>[36]</sup>

Records show that the prosecution established the above elements.

It is undisputed that appellant is a private individual. As to the second, third and fourth elements, we agree with the trial court, as affirmed by the CA, that Jomarie's and Marissa's testimonies adequately showed that indeed, appellant kidnapped Jomarie, a minor, and detained her for more or less an hour.

The essence of the crime of kidnapping is the actual deprivation of the victim's liberty, coupled with the intent of the accused to effect it.<sup>[37]</sup> It includes not only the imprisonment of a person but also the deprivation of his liberty in whatever form and for whatever length of time.<sup>[38]</sup> 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.<sup>[39]</sup>

In this case, appellant dragged Jomarie, a minor, to his house after the latter refused to go with him. Upon reaching the house, he tied her hands. When Jomarie pleaded that she be allowed to go home, he refused. Although Jomarie only stayed outside the house, it was inside the gate of a fenced property which is high enough such that people outside could not see what happens inside. Moreover, when appellant tied the hands of Jomarie, the former's intention to deprive Jomarie of her liberty has been clearly shown. For there to be kidnapping, it is enough that the victim is restrained from going home.<sup>[40]</sup> Because of her tender age, and because she did not know her way back home, she was then and there deprived of her liberty.<sup>[41]</sup> This is irrespective of the length of time that she stayed in such a situation. It has been repeatedly held that if the victim is a minor, the duration of his detention is immaterial.<sup>[42]</sup> This notwithstanding the fact also that appellant, after more or less one hour, released Jomarie and instructed her on how she could go home.

Against the categorical testimonies of the prosecution witnesses, appellant can only offer the defense of denial. However, denial is a self-serving negative evidence, which cannot be given greater weight than that of the declaration of a credible witness who testifies on affirmative matters.<sup>[43]</sup> Like alibi, denial is inherently a weak defense, which cannot prevail over the positive and credible testimonies of prosecution witnesses who, as in this case, were not shown to have any ill-motive to testify against appellant.<sup>[44]</sup>