

## SECOND DIVISION

[ G.R. No. 184179, April 12, 2010 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JULIAN PAJES Y OPONDA AND MIGUEL PAGHUNASAN Y URBANO, ACCUSED-APPELLANTS.**

### D E C I S I O N

**PEREZ, J.:**

This is before this Court by way of an ordinary Appeal<sup>[1]</sup> from the Decision<sup>[2]</sup> dated 14 April 2008 of the Court of Appeals in CA-G.R. CR-HC No. 00555. In the said decision, the appellate court affirmed the conviction of appellants Miguel Paghunasan (Paghunasan) and Julian Pajes (Pajes), for the crime of Kidnapping for Ransom under Article 267 of the Revised Penal Code,<sup>[3]</sup> and meted upon them the penalty of *reclusion perpetua*. The dispositive portion of the assailed decision reads:

**WHEREFORE**, in view of the foregoing, the appealed *Decision* is **AFFIRMED** with **MODIFICATION** in that accused-appellants Julian Pajes ("Mario"/Pajes) and Miguel Paghunasan ("Yoyoy"/"Yoy"/"Iyoy"/Paghunasan) are hereby sentenced to suffer the penalty of *reclusion perpetua*. They are also jointly and solidarily ORDERED to pay P130,000.00 to Amelita Yang Cesar as indemnity for the amount taken from her office, and moral damages in the amount of Php50,000.00.<sup>[4]</sup>

In view of the gravity of the penalty imposed and in order to minimize, if not eradicate, the possibility of error, this Court saw it fit to revisit the records of this case and re-examine the facts as found by the trial court and the Court of Appeals. Our review brings us to the following facts:

Private complainant Amelita Yang Cesar (Mrs. Cesar) is the manager of the NC Farms in Pulung Cacusud, Angeles City.<sup>[5]</sup> Around 4:30 in the afternoon of 31 January 2002, Mrs. Cesar was at her office preparing the payroll of her employees when a man posing as a buyer of chicken, rang the doorbell of the farm.<sup>[6]</sup> Unsuspecting of any danger, Mrs. Cesar instructed one of her workers to sell a chicken to the buyer standing outside of the farm's main gate.<sup>[7]</sup>

As soon as the chicken was handed, the buyer pushed the gate and, immediately, five (5) armed men forced their way inside the farm's premises.<sup>[8]</sup> The *poseur-buyer*, who goes by the *alias* "Yoyoy,"<sup>[9]</sup> turned out to be part of a group of malefactors set to rob NC Farms and to kidnap Mrs. Cesar.

Mrs. Cesar was able to witness the violent entry of the malefactors from the two-way mirror of her office and quickly rushed to lock its door.<sup>[10]</sup> But before Mrs. Cesar could do so, Yoyoy was able to kick the door and the group of armed men barged into the office of Mrs. Cesar.<sup>[11]</sup> Once inside, the leader of the group, a man named Serio Panday, pointed a gun at the right temple of Mrs. Cesar and forced her to surrender the farm's payroll money.<sup>[12]</sup> All in all, Serio Panday was able to extort roughly One Hundred Thirty Thousand Pesos (P130,000.00) in cash from Mrs. Cesar.<sup>[13]</sup>

Meanwhile, the other malefactors stormed the kitchen, where Erlinda Santos (Erlinda), a cook of Mrs. Cesar, was staying.<sup>[14]</sup> The sight of armed men left Erlinda stunned with fear.<sup>[15]</sup> One of the intruders told Erlinda, "*Hold-up ito, tumahimik ka para walang mangyari sa iyo.*"<sup>[16]</sup> The intruders then scoured the place and proceeded upstairs in search of other occupants.<sup>[17]</sup>

After ransacking the office and before making their escape, Serio Panday directed his cohorts to bring Mrs. Cesar along with them.<sup>[18]</sup> Against her will, Mrs. Cesar was made to board her own delivery van which the group decided to use as their getaway vehicle.<sup>[19]</sup> She was placed at the back of the van where three armed men, including Yoyoy, guarded her.<sup>[20]</sup> Two other members of the group occupied the front passenger seats, while another one drove the van.<sup>[21]</sup>

After driving for a while, the group stopped along the base of a mountain in Capas, Tarlac, to pick up a certain Ponggay Ventura who would guide the group to a *nipa* hut - a safehouse at the top of the mountain.<sup>[22]</sup> The group also picked up a certain "Mario" to drive the van to their destination, replacing the group's former driver.<sup>[23]</sup>

Prior to reaching the *nipa* hut, however, the cellular phone of Mrs. Cesar rang.<sup>[24]</sup> The phone of Mrs. Cesar was then in the possession of one of the kidnappers by the name of "Brad," who answered<sup>[25]</sup> and demanded from the caller, who happened to be Mrs. Cesar's brother-in-law, Fifty Million Pesos (P50,000,000.00) in exchange for the release of Mrs. Cesar.<sup>[26]</sup>

Upon reaching the top of the mountain at about 6:00 in the evening, Mrs. Cesar was led by her abductors inside the *nipa* hut.<sup>[27]</sup> From the inside looking out, Mrs. Cesar saw, and met, for the first time Mario who introduced himself as the driver of the group.<sup>[28]</sup> Shortly afterwards, Mario was ordered by Serio Panday to dispose of the delivery van by driving it all the way down from the mountain to the town proper of Capas, Tarlac.<sup>[29]</sup> Mario would later on return to the mountain around 9:00 that evening, after leaving the van somewhere in *Barangay Dolores*, Capas, Tarlac.<sup>[30]</sup>

Aside from Mario, Mrs. Cesar also saw two new faces outside the *nipa* hut--one of which was of a man, while another was of a woman with long hair.<sup>[31]</sup> Mrs. Cesar also noticed a red pick-up truck parked about five hundred (500) meters away from the *nipa* hut.<sup>[32]</sup>

Later that night, Yoyoy told Mrs. Cesar to call her husband, Christopher Cesar (Mr.

Cesar).<sup>[33]</sup> Upon making contact, Yoyoy reiterated Brad's earlier demand of Fifty Million Pesos (P50,000,000.00) for the release of Mrs. Cesar.<sup>[34]</sup> When Mr. Cesar refused to pay because the amount asked was too much for his means, Yoyoy became irritated and hung up.<sup>[35]</sup> Mrs. Cesar spent the rest of the night inside the *nipa* hut guarded by appellant Yoyoy.<sup>[36]</sup>

The next morning, Yoyoy resumed negotiations with Mr. Cesar.<sup>[37]</sup> Following a consultation with his fellow kidnappers, Yoyoy finally conceded to a ransom of Eight Hundred Thousand Pesos (P800,000.00) proposed by Mr. Cesar.<sup>[38]</sup> Yoyoy then informed Mr. Cesar that the pay-off would be at the Capas cemetery at 7:00 that evening.<sup>[39]</sup>

Mario accompanied Mrs. Cesar to the Capas cemetery for the agreed pay-off.<sup>[40]</sup> The other kidnappers, including Yoyoy, arrived earlier and were already scattered throughout the cemetery.<sup>[41]</sup> Later, Mr. Cesar arrived with his driver, and they were approached by Yoyoy who had alighted from a motorcycle.<sup>[42]</sup> Upon securing from Mr. Cesar the ransom money, Yoyoy signaled Mario to release Mrs. Cesar.<sup>[43]</sup> Yoyoy then rode off on a motorcycle, while Mario left the cemetery alone.<sup>[44]</sup>

What followed was a hot pursuit operation supervised by the National Anti-Kidnapping Task Force (NAKTAF).<sup>[45]</sup> Unknown to the kidnappers, Mr. Cesar coordinated with the NAKTAF prior to the pay-off.<sup>[46]</sup> In fact, the driver who was with Mr. Cesar at the Capas cemetery is actually PO3 Ceferino Gatchalian, an undercover agent of the NAKTAF.<sup>[47]</sup>

The hot pursuit operations led to the apprehensions of herein appellants Pajes<sup>[48]</sup> and Paghunasan.<sup>[49]</sup> Also arrested were one Rustico Pamintuan and one Luz Gonzales, who were the owners of the red pick-up truck parked outside of the *nipa* hut where Mrs. Cesar was detained.<sup>[50]</sup>

On 17 May 2002, both of the appellants, along with Rustico Pamintuan, Luz Gonzales as well as the other persons<sup>[51]</sup> alleged to be involved in the abduction of Mrs. Cesar, were charged of Kidnapping for Ransom penalized under Article 267<sup>[52]</sup> of the Revised Penal Code.<sup>[53]</sup> The accusatory portion of the Information<sup>[54]</sup> reads:

That on or about 4:30 o' clock in the afternoon of January 31, 2002 in the Municipality of Capas, Province of Tarlac and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully kidnapped and detain Amelita Yang Cesar in a *Nipa* Hut at *Barangay* Aranguren, Capas, Tarlac who was released on February 01, 2002 in exchange of ransom in the amount of P800,000.00.

Considering that the other accused remain at large, only the appellants, Rustico Pamintuan and Luz Gonzales were arraigned and were able to enter a plea of not guilty. For them, trial thereafter ensued.

During the trial, Mrs. Cesar positively identified appellant Paghunasan as the very same "Yoyoy" who acted as a *poseur*- buyer at NC Farms; who kicked the door of her office to enable his armed companions to enter; who negotiated with Mr. Cesar for her release in exchange for a ransom of Eight Hundred Thousand Pesos (P800,000.00); and who was among those responsible for her abduction and subsequent detention in the *nipa* hut at the top of the mountain.

Erlinda, Mr. Cesar and PO3 Ceferino Gatchalian corroborated the identification made by Mrs. Cesar. Erlinda pointed to appellant Paghunasan as one of the armed men who entered the office kitchen of NC Farms. Mr. Cesar and PO3 Gatchalian, on the other hand, testified that it was appellant Paghunasan who approached them in the Capas cemetery, and who received the ransom money for the release of Mrs. Cesar.

Likewise positively identified in the course of the trial was appellant Pajes. Mrs. Cesar testified that appellant Pajes is the same "Mario" who acted as the driver for her kidnappers, who was among those who guarded her in the *nipa* hut, and who accompanied her to the Capas cemetery for the pay-off.

After the prosecution rested its case, accused Rustico Pamintuan and Luz Gonzales filed a motion to dismiss by way of a demurrer to the evidence. In an Order<sup>[55]</sup> dated 28 October 2003, the Regional Trial Court of Capas, Tarlac, Branch 66, granted the demurrer to the evidence, effectively resulting into the acquittal of Rustico Pamintuan and Luz Gonzales.

The appellants, on the other hand, would have a different fate. In the Decision<sup>[56]</sup> dated 16 September 2004 of the trial court, the appellants were found guilty beyond reasonable doubt of Kidnapping for Ransom and were meted the ultimate penalty of death. The decretal portion of the ruling reads:

WHEREFORE, finding **Miguel Paghunasan y Urbano @ Yoyoy** and **Julian Pajes y Oponda**, guilty beyond reasonable doubt, the Court hereby imposes the penalty of DEATH upon them. The accused are hereby jointly and solidarily ordered to pay the amount of P800,000.00 to the victim as indemnity of the ransom paid. The accused are jointly and solidarily ordered to pay P130,000.00 to Amelita Yang Cesar as indemnity of the amount taken from her office. The accused are ordered to pay moral damages of P50,000.00.

On automatic intermediate review,<sup>[57]</sup> the Court of Appeals affirmed the conviction of the appellants. The appellate court, however, reduced the penalty to *reclusion perpetua* in light of Republic Act No. 9346, which prohibits the imposition of the death penalty.

Hence the instant appeal.

#### Appellant Miguel Paghunasan

Appellant Paghunasan proffers the defense of alibi. The plain version of Paghunasan was that he was not at the *locus criminis* at the time the alleged crime was

committed. Rather, Paghunasan maintains that he was merely at his home in Caloocan City the whole day of 31 January 2002.<sup>[58]</sup>

To strengthen his alibi, Paghunasan points to what he perceives as flaws in his open-court identification by the private complainant Mrs. Cesar, her husband Mr. Cesar, PO3 Ceferino Gatchalian and Erlinda. Paghunasan explains:

- 1.) Mrs. Cesar's identification is not worthy of belief for it is contrary to common experience that a kidnap victim like herself, was not blindfolded by her kidnappers so as to allow her to see where she was being taken.<sup>[59]</sup>

Moreover, Mrs. Cesar categorically stated in her *Sinumpaang Salaysay* <sup>[60]</sup> that she did not know the names of her captors. She was only able to identify Paghunasan after the latter was already arrested and presented to her *via* a police line-up conducted by the NAKTAF.<sup>[61]</sup>

- 2.) The identification by Mr. Cesar and PO3 Gatchalian is likewise highly doubtful considering that their respective testimonies contradict each other. Mr. Cesar testified that Paghunasan was alone at the time he received the ransom money, but PO3 Gatchalian testified that two other persons accompanied Paghunasan.<sup>[62]</sup>

- 3.) Erlinda's identification is also suspect. During the time that she executed her own *Sinumpaang Salaysay*,<sup>[63]</sup> Erlinda was shown a picture of appellant Paghunasan by NAKTAF agents, but was then unable to identify Paghunasan as one of the kidnappers.<sup>[64]</sup>

The Court is not impressed.

It is a well-settled principle in law that the defense of alibi is one of the weakest defenses available to an accused in a criminal case.<sup>[65]</sup> As it may easily be concocted, alibis are invariably viewed with suspicion, and, as a general rule, crumbles in light of positive identification of the offender by truthful witnesses.<sup>[66]</sup>

Conversely however, this Court has, in more than one occasion, held that the defense of alibi may acquire commensurate strength where the witnesses have made no positive and proper identification of the offender.<sup>[67]</sup> This is because the inherent weakness of alibi as a defense does not operate to relieve the prosecution of its responsibility to establish the identity of the offender by the same quantum of evidence required for proving the crime itself.<sup>[68]</sup> By assailing the credibility of his open-court identification, appellant Paghunasan seems to believe that the latter doctrine may be applied in this case.

The Court does not agree. A simple scrutiny of the contentions raised by appellant Paghunasan will reveal that they are specious at best, and not sufficient to destroy