

EN BANC

[G.R. No. 125017, March 12, 2002]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
GERARDO BACUNGAY Y CAINDOY, ERIC RICAFRANCO Y
MALABANA, CRIS IGLESIA Y OGNALA AND RENATO MENDEZ Y
DE LEON, ACCUSED-APPELLANTS.**

DECISION

PER CURIAM:

We view with grave concern the proliferation across the country of criminal syndicates and even loose aggroupments fueling an alarming and unprecedented wave of kidnappings in recent years. Preying mostly on affluent members of the Filipino-Chinese community, and even on foreign tourists, they rake in millions of pesos in ransom, virtually transforming kidnapping into a lucrative industry in this part of the world. Despite the determined and intensified efforts of various law enforcement agencies to dismantle and neutralize these outlaws, their illegal activities continue unabated. By any conceivable legal measure, kidnapping for ransom must be contained and its perpetrators dealt with with the full force of the law, not only because by its nature it is despicable, but more importantly, for reasons of maintaining public order, safety and security, so crucial to the social and economic progress of the country. Yet, the enormous burden of repressing this plague is not exclusive to the police and military arms of the State. It requires likewise a coordinated participation of the courts and an uncompromising cooperation of the elements of civil society.

The Decision of the Regional Trial Court of Makati City in Crim. Cases Nos. 95-786, 95-787 and 95-788 finding accused-appellants GERARDO BACUNGAY, ERIC RICAFRANCO, CRIS IGLESIA and RENATO MENDEZ guilty of three (3) counts of kidnapping for ransom and imposing upon them the penalty of death for each count^[1] is before us on automatic review.

The inculpatory evidence against the four (4) accused-appellants shows that at around 8:00 o'clock in the evening of 12 March 1995 Ivonne Keh^[2] was driving her car along Galaxy Street, Bel-Air Subdivision, Makati City, with her mother Chinya Hwang who was seated beside her and uncle Alberto Drit Chua who was at the back seat. All of a sudden a red car overtook them and blocked their path, forcing Ivonne Keh to stop. Three (3) armed men – two (2) of whom were later identified as accused-appellants Gerardo Bacungay and Eric Ricafranco, while the third remained unknown -alighted from the red car and started banging the windows of the car of Ivonne Keh, ordering her to unlock the doors. Ivonne Keh who was now gripped with fear yielded. One of the men dragged her out of the car and shoved her to the back seat. Eric Ricafranco and his unidentified companion then squeezed themselves at the back seat together with the victims while Gerardo Bacungay took the driver's seat and drove the car out of Bel-Air Subdivision, followed by the red car.

The victims were ordered to close their eyes as they were divested of their money, jewelry and other personal belongings. But Ivonne Keh would occasionally peek to find out where they were being taken and noticed that they were somewhere in Pasay City, later on, in Bicutan, Taguig. Before long, the cars stopped at a vacant lot in an unknown location. This time all three (3) victims were blindfolded and Alberto Drit Chua was taken out of the car and commanded to make a phone call to his family to produce P5,000,000.00 for their release.^[3] It was already daybreak when accused-appellants and the victims left the place. Later, they momentarily stopped at an undetermined gasoline station where Ivonne Keh was separated from her mother and uncle, and then proceeded on their way.

After a long drive, Ivonne Keh sensed that they entered an apartelle where she was reunited with her mother and uncle in one of the rooms.^[4] The victims later found out that they were somewhere in Tagaytay. Thereafter, their abductors conferred and deliberated on who should go to Manila to get the money and who should stay. Apparently, it was agreed upon that accused-appellant Eric Ricafranco would stay and guard Ivonne Keh, while the rest of accused-appellants would go to Manila with Ivonne Keh's mother and uncle to withdraw money from a bank.^[5]

As soon as the group left, Ivonne Keh pleaded to Eric Ricafranco to allow her to use the telephone. Eric initially refused but, after repeated entreaties, finally acceded and accompanied Ivonne Keh to the telephone outside the room.^[6] The victim then immediately called a friend, conversed with her in Chinese, and informed her of the situation and her whereabouts.

Meanwhile, the abduction was reported to the Philippine National Police. At about 7:00 o'clock in the morning of 13 March 1995 Police Inspector Rolando Bijasa of Camp Gen. Ricardo Papa, Bicutan, Taguig, Metro Manila, received orders from then Police Chief Superintendent Jewel Canson to conduct a search and rescue operation.

Two (2) teams were organized and deployed to Tagaytay City, the last known whereabouts of victim Ivonne Keh. The police operatives scoured the vicinity and eventually tracked down the victim inside the apartelle. They stormed the room where the victim was detained and rescued her from one of her abductors, Eric Ricafranco, who was then apprehended while watching television. When subjected to a tactical interrogation, he disclosed to the police that his co-accused Gerardo Bacungay would be back at the apartelle as soon as he secured the ransom.^[7]

Consequently, the police rescue teams set up a dragnet for the returning kidnappers. At about 6:30 in the evening police "spotters" positioned outside the building radioed the rescue teams inside about two (2) men on board a white car, later identified as accused-appellants Cris Iglesia and Renato Mendez, entering the apartelle compound. The two (2) men went to the front desk of the hotel and, after inquiring from the attendant, proceeded to the room of Ivonne Keh and Eric Ricafranco. The waiting policemen immediately nabbed the two (2) as soon as they entered the room. Cris Iglesia and Renato Mendez vehemently denied any knowledge of the kidnapping, claiming that they were simply hired by Bacungay to pick-up an "eloping couple" in Tagaytay City who turned out to be kidnap victim Ivonne Keh and Eric Ricafranco who was guarding her.

Gerardo Bacungay was apprehended when another police team headed by a certain Capt. Agbayalde arrived at his place in Better Living, Parañaque, Metro Manila, and effected his arrest.^[8] The third member of the kidnap group eluded arrest and remained at large to date. No evidence exists on record as to how the other victims, Chinya Hwang and Alberto Drit Chua, were rescued or whether ransom had in fact been paid, since after the incident these two (2) victims hurriedly left the country and decided to settle in Canada, and thus failed to testify during the trial.

Accused-appellants were charged with kidnapping for the purpose of extorting ransom under three (3) separate *Informations*. They pleaded innocent to the charges. Gerardo Bacungay and Eric Ricafranco proffered a general denial; while Cris Iglesia and Renato Mendez banked heavily on the lack of positive identification by complaining witness Ivonne Keh. As earlier stated, the trial court convicted accused-appellants as charged, and sentenced all of them to death. In rejecting their defenses, the trial court held in the main -

The Court rejects the defense of accused Renato Mendez and Cris Iglesia as ridiculous and without factual basis. In the first place, there was no couple that eloped. Ivonne Keh did not elope with Eric Ricafranco. The latter was arrested in a room of an apartelle in Tagaytay City guarding Ivonne Keh. Besides, common sense will tell us that relatives of an eloping couple will not hire any person to fetch them specially when they were not known to the couple. On the other hand, the evidence clearly shows that kidnap victims Ivonne Keh, Alberto Chua and Chinya Hwang pointed to the accused during the police investigation and by Ivonne Keh during the hearing as one among those who kidnapped them.^[9]

Accused Eric Ricafranco was also positively identified by kidnap victims Ivonne Keh during the trial and by Alberto Chua and Chinya Hwang during the police identification line-up as among those who kidnapped them x x x x Finally, accused Gerardo Bacungay was also positively identified by the victims Ivonne Keh, Chinya Hwang and Alberto Chua during the police identification line-up at the police station and by Ivonne Keh during the trial as one of those who kidnapped them x x x x From the recitation of findings of facts of the Court, there is sufficient evidence on record to prove that the purpose of kidnapping was for "extorting ransom from the victims."^[10]

In the present recourse, accused-appellants insist on the reversal of the judgment of conviction and impute the following errors to the court below: (a) The trial court erred in convicting accused-appellants Gerardo Bacungay and Eric Ricafranco on the basis of the doubtful identification by complainant Ivonne Keh, who was blindfolded at the time of the purported kidnapping, and given the poor lighting condition of the area where she was allegedly abducted; and, (b) The trial court erred in convicting Cris Iglesia and Renato Mendez in the absence of a real and direct evidence linking them to the kidnapping.

After a careful review of the records and the arguments of the prosecution and defense, we are satisfied with the finding of the court *a quo* that all four (4) accused-appellants are indeed guilty of the crimes charged for which they must be punished accordingly.

We deal first with the merits of the appeal of Gerardo Bacungay and Eric Ricafranco.

Complaining witness Ivonne Keh positively identified accused-appellants Gerardo Bacungay and Eric Ricafranco as two (2) of those who abducted them on 12 March 1995. In the police line-up conducted during the criminal investigation of the case, and more significantly during the trial, she pointed to accused-appellants Bacungay and Ricafranco as part of the group of men who kidnapped them, thus -

ATTY. FERNANDEZ: Now you stated that three (3) persons approached you from the car that blocked yours, could you remember the faces of those three (3) persons who drove the car?

WITNESS: Yes, two of them are here, sir.

COURT: (To the witness) And?

WITNESS: The third one is not here.

COURT: You said that two (2) of them are here?

WITNESS: Yes and the other one is not here, your Honor.

COURT: Yes, is not here because he was able to escape. Can you point out who are those two, who among the three (3) blocked your way?

WITNESS: Yes your Honor, there.

COURT: (To the accused) What is your name?

WITNESS: Eric Ricafranco, your Honor.

COURT: And the other one?

ATTY. FERNANDEZ: (Butted in to the witness) You said two, how about the other one? x x x x^[11]

COURT: (To the witness) The whole duration, that is what you mean. The whole duration that you were brought and held in that apartelle, can you identify the people who were there?

WITNESS: Yes, sir.

COURT: Who are they?

WITNESS: Him and him and the other one is not here, your Honor.

COURT: (To both accused) Your name?

ACCUSED: Eric Ricafranco, sir.

COURT: How about you?

ACCUSED: Gerardo Bacungay, sir x x x x^[12]

In the face of the positive identification by the complaining witness, accused-appellants' denial vanishes into thin air. Indeed, denial, like alibi, is an insipid and weak defense, being easy to fabricate and difficult to disprove. A positive identification of the accused, when categorical, consistent and straightforward, and without any showing of ill motive on the part of the eyewitness testifying on the matter, prevails over this defense. When there is no evidence to show any dubious reason or improper motive why a prosecution witness would testify falsely against

an accused or falsely implicate him in a heinous crime, the testimony is worthy of full faith and credit.^[13]

Accused-appellants made much of the following testimony on cross-examination of complaining witness Ivonne Keh:

ATTY. ELEVASO: Ms. Witness will you tell this Honorable Court again at what time were you blocked by the kidnappers?

WITNESS: At 8:00 o'clock, sir.

Q: In the evening?

A: Yes, in the evening, sir x x x x

Q: And how would you say was the lighting at the place?

A: It was dark, sir.

Q: And these three (3) persons who came banging at the window of your car and then you said later that one of them sat at the driver's seat and two (2) of them sat beside you and your uncle?

A: Two of them sat at the back with us, sir.

Q: Yes, one of them was beside your uncle and one was beside you, could you tell this Honorable Court who was driving the car?

A: He, sir.

COURT: Witness pointing to accused Gerry Bacungay.

Q: And who was seated beside your uncle?

A: There, sir.

COURT: Witness pointing to accused Eric Ricafranco.^[14]

Q: This skin mask, how was it placed over the head of the driver?

A: I was shocked, sir. I did not notice that anymore, I did not mind it, sir.

Q: So you did not notice what was he wearing?

A: No, sir.

Q: How about the other one seated beside you, what was he wearing at that time?

A: They were normal, what color, I do not remember.

Q: How about the other person?