

## EN BANC

[ G.R. No. 128622, December 14, 2000 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALMA GARALDE Y TAN AND KIL PATRICK IBERO ACCUSED-APPELLANTS.**

### D E C I S I O N

#### PER CURIAM:

This is an automatic review of the Joint Judgment, dated 27 December 1996, of the Regional Trial Court, Branch 79 of Quezon City in Criminal Cases Nos. Q-94-58657 and Q-94-58658, finding accused-appellants Kil Patrick Ibero and Alma Tan Garalde guilty beyond reasonable doubt of the crime of Kidnapping for Ransom and Serious Illegal Detention, as principal and accomplice, respectively. The trial court sentences accused-appellant Ibero to suffer the maximum penalty of death and accused-appellant Garalde to suffer the penalty to *reclusion perpetua*.

The Information in Criminal Case No. Q-94-58657 charged accused-appellant Garalde and her husband Roque Garalde with violation of Presidential Decree No. 1866 (Illegal Possession of Firearms and Ammunition), as amended, as follows:

That on or about the 20<sup>th</sup> day of August 1994, in Quezon City, Philippines, 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 and feloniously have in their possession and under their custody and control the following, to wit: 1) two (2) M16 rifles, one of which bearing serial no. RP146697 and other has a defaced serial number; 2) two (2) rifle Grenades; and 3) one hundred twenty five (125) rounds of ammunitions of M16 rifle, without first having obtained the proper license therefore.

Contrary to law.<sup>[1]</sup>

The Information in Criminal Case No. Q-94-58658 charged accused-appellants, together with Roque Garalde and several unidentified John does, with Kidnapping and Serious Illegal Detention defined and penalized under Article 267 of the revised Penal Code, as amended by Republic Act No. 7659, as follows:

That on or about August 9, 1994 in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together, confederating and mutually helping one another, did then and there by means of force, violence against and intimidation of person and a gunpoint, willfully, unlawfully and feloniously kidnap, carry

away and detain Paolo Bellosillo (13 years old), John Bellosillo (8 years old), and Niño Bellosillo (11 years old), who are minors, and Dianita Bebita, Janidy Dumagpi and Antonio Paquera against their will and consent, thus depriving them of their liberty, for the purpose of extorting ransom for their release, which, after payment thereof in the amount of P410,000.00 and two sets of jewelry, the kidnapped victims were released, and the accused divided the ransom money among themselves, to the damage and prejudice of the afore-named victims.

Contrary to law.<sup>[2]</sup>

Among those charged, only accused-appellants were arraigned and both entered a plea of not guilty. A joint trial of the two cases ensued. The prosecution presented as its witnesses Kathryn "Kata" Bellosillo, Dianita Bebita, Paolo Bellosillo and C/Insp. Michael Ray Aquino. As culled from their testimonies, the facts of the case are as follows:

On 9 August 1994, at about 6:45 in the morning, Paolo Bellosillo (13 years old), his brother John Bellosillo (8 years old) and their cousin Niño Bellosillo (11 years old), all grade school students at the Ateneo de Manila University, were on board a Toyota Lite Ace van driven by Antonio Paquera, the family driver. The boys were on their way to school. With them were their *yayas*, Dianita Bebita and Janidy Dumagpi. When they were near the corner of Scouts Limbaga and Ybardolaza Streets in Quezon City, a taxi suddenly bumped the right portion of the van. As a result of the impact, the van stopped. Three (3) men hurriedly alighted from the taxi and approached the van. One of them poked his gun at Dianita and ordered her not to make a scene. They then forced their way inside the van and blindfolded all the passengers. Dianita, who was seated in the front seat beside the driver, and Antonio, the driver, were instructed to move to the back of the van. One of the men then took the wheel and drove the van. After being on the road for a considerable length of time, they stopped and the kidnap victims were brought to a house where they were kept inside a room.<sup>[3]</sup>

At around 7:45 in the morning of the same day, Mrs. Kathryn Bellosillo, mother of Paolo and John, who was then in the hospital watching over her sick daughter, received a call from Sonny Boy, her brother-in-law and father of Niño. He told Kathryn that he just received a call from a stranger who told him that Paolo, John and Niño were kidnapped. The caller demanded ten million pesos (P10,000,00.00) in exchange for the release of the boys. Kathryn forthwith called up the Ateneo to check if the boys attended their classes. Kathryn talked to Father Cuerquis, the grade school principal, who confirmed that the boys were not in their respective classrooms. The Bellosillo family then sought the help of General Panfilo Lacson of the Presidential Anti-Crime Commission (PACC).<sup>[4]</sup>

In the evening of the same day, Kathryn received another call from one of the kidnappers. The man on the line spoke sternly and told Kathryn, "makinig kang mabuti. Pera lang ang kailangan namin. Maghanda kayo ng P10 million. Pag hindi ninyo naibigay, sasampulan naming kayo. Patay ang driver, tapos ang dalawang yaya, tapos young tatlong bata." During the following days, the kidnappers, through a man who identified himself as "Mang Ernesto," contacted Kathryn several times by

telephone. Mang Ernesto asked Kathryn if they already have the money. On 12 August 1994, upon her plea, Kathryn was able to speak to Paolo on the phone. Paolo begged his mother to give the kidnappers the money so that they could go home. Kathryn told her son that they were trying their best to raise the amount demanded by the kidnappers. Kathryn tried to prolong her conversation with her son in order that the PACC men would be able to trace where the call was being made.<sup>[5]</sup>

Meanwhile, as soon as he was informed about the kidnapping, General Lacson dispatched C/Insp. Michael Ray Aquino to conduct an investigation. At about 10:00 in the morning of 9 August 1994, Aquino, Sr. Insp. Paul G. Tucay and Insp. Milo B. Pagtalunan, with their respective teams, immediately went to Scout Limbaga. They learned from the ambulant vendors and bystanders in the area that the Lite Ace van carrying the Bellosillo children was cut by a taxi and a blue Toyota Corolla car with the commemorative plate number ALMA in front. Following a procedure called "back-tracking," the PACC men divided themselves into three teams to track the possible routes taken by the kidnappers after the abduction. Aquino and his team sighted a blue Toyota Corolla with plate number TCJ 185 along Commonwealth Avenue. There were at least four suspicious looking passengers in said car. Aquino and his followed the Toyota Corolla. Aquino then contacted the other teams to ask for their assistance in tailing the car. Aquino's team was joined by the team of Pagtalunan in the Quezon City Elliptical Circle and by the team of Tucay in Philcoa. They followed the blue Toyota Corolla until it stopped in front of a house in Evangeline Pascual St., B.F. Resort Village, Las Piñas. The house was owned by a certain Atty. Manzano.<sup>[6]</sup>

Thereafter, Aquino and his team went back to Camp Crame. Aquino, however, instructed the team of Tucay to stay behind and keep an eye on the Toyota Corolla. Aquino then contacted the LTO to ask about the ownership of the Toyota Corolla with plate number TCJ-185. He was informed that the car was registered under the name of accused-appellant Alma Garalde with address at U.P. BLISS, Quezon City. It was learned that Alma Garalde is married to co-accused Roque Garlade. It was further discovered that accused-appellant Garalde no longer resided in U.P. BLISS but in Frankville Subdivision, Novaliches, Quezon City.<sup>[7]</sup> *Id.*, at 12-13.7

As earlier mentioned, Kathryn was able to talk to Paolo by phone on 12 August 1994. The call was traced to the house of Atty. Manzano in Las Piñas. At around this time, the PACC men who manned said house confirmed that they saw the Toyota Corolla arrive with four (4) men and a boy who was presumably Paolo.<sup>[8]</sup> After a series of negotiations over the phone, the Kidnappers agreed to reduce the ransom from P10,000,000.00 to P410,000.00 in cash and several pieces of jewelry valued at P80,000.00.<sup>[9]</sup>

At dawn of 16 August 1994, the kidnappers released Dianita. They allowed her to go home and talk to Kathryn about the payment of the ransom. When Dianita arrived at the Bellosillo residence, she was crying. She told Kathryn that the kidnappers directed her to go home in order to get the ransom money and deliver it to them.<sup>[10]</sup> Subsequently, Kathryn received a call from Mang Ernesto who gave the instructions on how the payment of the ransom was to be made.<sup>[11]</sup>

As per instructions of the kidnappers, Dianita herself drove the Lite Ace van to the

east Avenue Medical center at around 7:30 to 8:30 in the morning of that same day. She brought with her the P410,000.00 in cash plus the jewelry. Again, as instructed, she parked the van at the parking lot but left the engine running. She went to the back of the van, blindfolded herself and covered her head with a sweater. A few minutes later, she felt somebody opening the door of the van. The person who entered the van asked if the money was with her. Dianita answered in the affirmative. The van moved and they traveled for a time. They stopped at some place where another man asked if the money was already there. The man in the van replied in the affirmative. The van moved again. Dianita was informed that they were taking her to the children. The van eventually stopped and the kidnappers left. Sensing that she was already alone, Dianita removed her blindfold. She recognized the place to be Novaliches. She waited for the children until 1:00 in the afternoon but they never came. She called up Kathryn and told the latter about what happened. The family driver fetched Dianita in Novaliches without the children.

[12]

Earlier, Kathryn contacted the PACC about the pay off which was to take place at the east Avenue Medical Center. Several PACC men were dispatched by Aquino to monitor the pay off. The men observed that the Toyota Corolla with plate number TCJ-185 was at said hospital. They (PACC men) tailed the van and the Toyota Corolla when these two vehicles left the hospital. The surveillance lasted for about three (3) hours but the authorities lost the subject vehicles at around 11:30 in the morning in Congressional Avenue, Quezon City.[13]

The following day, the PACC men conducted an intensive investigation at Frankville Subdivision in Novaliches, Quezon City. Upon discreet inquiries in said neighborhood, they were able to locate the Toyota Corolla with plate number TCJ-185 in No. 45 Frankville Subdivision, Novaliches, Quezon City. The car was parked in the garage of a two-storey house. Aquino and his team saw several men coming in and out of the house. One man was later identified as Roque Garalde, husband of accused-appellant Garalde. The PACC, however, decided to refrain from taking any action as yet so as not to compromise the safety of the kidnap victims.[14]

At around 4:00 in the morning of 18 August 1994, after nine (9) days in captivity, Paolo, John and Niño, together with the family driver, Antonio Paquera, were released. They were blindfolded and told to board the car. They rode the car which seemed to drive around in circles. Finally, it stopped and they were directed to get off. The kidnappers gave them P100 for their fare and instructed them to count from 1 to 20 before they remove their blindfolds. They did as told. After taking off their blindfolds, the boys and Antonio hailed a taxi. When they finally got home, their families were already waiting for them. They had a tearful but joyous reunion.[15]

On 19 August 1994, the PACC, through P/Insp. Brimar Rodica, applied for and was issued search warrants by Judge Pablito M. Rojas, RTC, Branch 160 of Pasig City.[16] The warrants authorized the search of the residence of Roque and Alma Garalde in No. 45 Frankville Subdivision, Novaliches, Quezon City, in connection with the crimes of kidnapping with ransom and illegal possession of firearms. Armed with these warrants, on 20 August 1994, Aquino together with SPO4 Roberto Lancaon, SPO2 Rolando Jimenez, SPO1 Guillermo Ramos, SPO2 Virgilio Baragan and SPO1 Wilfredo Cuartel, conducted a search of the said house which resulted in the recovery of, among others, the Toyota Corolla with plate number TCJ-185, firearms,

various kinds of ammunition and cellular phones.<sup>[17]</sup> The firearms and ammunition were found in one of the rooms in the second floor of the house. Several photographs were also recovered. For record purposes, the search was taped on video by the PACC operatives. Upon verification with the Firearms and Explosives Unit in Camp Crame, it was learned that neither Roque nor accused-appellant Garalde was a licensed firearms holder.<sup>[18]</sup>

Present during the search were the children of Roque Garalde and a certain Serapio Moresca. Moresca was brought to the Task Force Habagat headquarters for investigation. He voluntarily gave a statement and was subsequently released. The photographs recovered from the house of the Garaldes were then shown to the kidnap victims for identification. They identified accused-appellant Ibero as one of their abductors from these photographs.<sup>[19]</sup>

Thereafter, the PACC operatives went back to B.F. Resort, Las Piñas and showed the photographs to the security guards of said subdivision. The guards stated that they recognize one of the men in the photographs to be accused-appellant Ibero. On 22 August 1994, the police authorities arrested accused-appellant Ibero in Parañaque at the back of a church. The following day, he was made to stand in a police line-up together with other men. Accused-appellant Ibero was singled out by the kidnap victims as one of their abductors.<sup>[20]</sup>

During their respective testimonies, Dianita and Paolo again positively identified accused-appellant Ibero as one of the three men who abducted them on 9 August 1994.<sup>[21]</sup> they narrated that it was accused-appellant Ibero who blindfolded the family driver and ordered him to move to the back of the van.<sup>[22]</sup> It was likewise accused-appellant Ibero who blindfolded Paolo in the van.<sup>[23]</sup> Dianita further positively identified accused-appellant Garalde. Dianita testified that on the fifth day of their abduction, her blindfold was removed. She then saw accused-appellant Garalde peep through the door of the room where they were kept. Dianita heard accused-appellant Garalde, "*itali ninyong mabuti iyan at baka makawala.*" Accused-appellant Garalde was referring to the driver, Antonio, who was then blindfolded and tied.<sup>[24]</sup>

Moreover, Paolo narrated that sometime during their abduction, he was brought to a different house. It was there where he was able to talk to his mother on the phone.<sup>[25]</sup> After his telephone conversation with his mother, he was brought back to the house where the other kidnap victims were kept. He also testified that on the fifth day of their abduction he heard a woman say "*talian n'yo iyan ng mabuti at baka makawala pa yan.*" He did not see the woman because he was blindfolded at that time. When he viewed the videotape taken by the PACC operatives during the search, Paolo recognized one of the rooms shown there as the same room where they were kept.

According to Paolo, he recognized the room because there were times when their blindfolds were removed.<sup>[26]</sup>

As his defense, accused-appellant Ibero interposed the defense of alibi. He averred that in the evening of 8 August 1994, he was in the house of his sister in 3196 Quirino Avenue, Tambo, Parañaque. They were celebrating the birthday of their