

## SECOND DIVISION

[ G.R. No. 127452, June 17, 1999 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ISAGANI LUARTES Y PASTOR, ACCUSED-APPELLANT.**

### D E C I S I O N

**BELLOSILLO, J.:**

This is another wicked offense - kidnapping of a minor three (3) years of age.

On 21 December 1994 the City Prosecutor of Manila charged that on 19 December 1994 the accused Isagani Luartes y Pastor, a private individual, without authority of law, willfully and feloniously kidnapped, detained or deprived of her liberty one Junichi Monique Macairan, a girl three (3) years of age, against her will and consent.

The evidence shows that in the afternoon of 19 December 1994 Evelyn Macairan went to shop at the Isetann Department Store along Claro M. Recto Avenue, Manila. With her was her three (3)-year old daughter Junichi Macairan. While strolling on the second floor of the store she noticed that Junichi was no longer by her side, so she immediately informed a sales attendant about her missing daughter. The sales attendant instructed her to proceed to the paging section on the ground floor and have her child paged.

Evelyn waited anxiously for the return of Junichi after paging her. Fifteen minutes later an MMA traffic enforcer by the name of Francisco Lacanilao, together with two (2) policemen, entered the department store with Junichi. Lacanilao asked Evelyn if she was the mother of the child. When Evelyn answered in the affirmative, Lacanilao immediately released Junichi to her. He informed Evelyn that a person had just been arrested for the kidnapping of her daughter, and so he requested Evelyn to go with him to the police station to give her statement.

On the way out of Isetann she saw the now accused Isagani Luartes outside the department store being mauled by irate bystanders on the sidewalk. He was handcuffed. On the way to the police station on board their Ford Fiera Evelyn asked him why he abducted her daughter Junichi. His reply was that he was merely interested in the jewelry worn by the child.<sup>[1]</sup>

Traffic enforcer Francisco Lacanilao testified that on 19 December 1994 he was stationed along Recto Avenue in front of Isetann Department Store and that at around 2:50 in the afternoon he noticed something unusual with a passenger jeep along Recto Avenue. Passengers were alighting from the jeep and he could hear a child crying inside the vehicle. He approached the driver and asked him if there was anything wrong and the driver whispered, "*Kidnap ito.*" Then Lacanilao noticed a man seated at the back with a child crying. Lacanilao asked the man, "*Pare, anong nangyayari?*" and he replied that the child was only afraid of people. When the man

alighted from the jeep, Lacanilao placed his arm around his shoulder and said to him, "*Halika, pare.*" But the man scampered away carrying the child with him (*karga-karga niyang patalikod*). Lacanilao gave chase and with the assistance of a motorcycle cop he was able to apprehend the suspect later identified as the accused Isagani Luartes y Pastor. The girl he was carrying turned out to be Evelyn Macairan's daughter Junichi.<sup>[2]</sup>

The defense offered a different version. According to accused-appellant Isagani Luartes, in the afternoon of 19 December 1994 he was doing his Christmas shopping at Isetann - Recto when he noticed a little girl crying beside the escalator. He took pity on her and asked her why she was crying. The child answered that she was looking for her mother.<sup>[3]</sup> He decided to accompany the child to the paging station but to reach there he had to go out of the building and use an outside entrance.<sup>[4]</sup> However, on the way out he informed a security guard about the lost child. In fact, he said he requested the guard to watch the child while he went down to the paging section but the security guard refused to take custody of the child; thus, he was forced to carry the little girl outside the department store to reach the paging section.<sup>[5]</sup> But once outside, the child continued crying as he carried her to the ground floor. It was at this time that Lacanilao approached him and asked him why the child was crying, at the same time telling him in a loud voice, "*Kinidnap mo yata yan, ah!*"<sup>[6]</sup>

Bystanders and onlookers then started milling around him. Fearing that they would harm him and the child he decided to board a passenger jeep bound for Sta. Mesa. But when the jeepney driver refused to move the vehicle and his passengers started dispersing, Luartes took the child and went down the jeep.<sup>[7]</sup> By this time the crowd had already swelled and gotten more hostile so he panicked and sought the assistance of a motorcycle cop nearby. However, to his surprise, instead of lending him succor, the police arrested him for kidnapping.

Rebutting the testimony of the accused, SPO2 Antonio Gabay, the motorcycle cop who assisted in the arrest of Luartes, narrated that in the afternoon of 19 December 1994 he saw Lacanilao chasing Luartes near Isetann - Recto. Luartes, with a child in tow, and Lacanilao were running in his direction. He blocked the path of Luartes and asked him why he was running. The latter replied that there was nothing wrong and the child was his niece.<sup>[8]</sup>

When Lacanilao informed SPO2 Gabay that Luartes was a kidnapper, he held on to Luartes and did not let him go. Gabay asked the child if she knew Luartes but she merely shook her head and cried, "*Mama, mama!*"<sup>[9]</sup> The accused together with the child was then taken back to Isetann where Evelyn Macairan was eagerly waiting for Junichi.

Giving credence to the evidence of the prosecution, the trial court found Isagani Luartes y Pastor guilty of kidnapping three (3)- year old Junichi Macairan, penalized under Art. 267, par 4, of the Revised Penal Code, as amended, and sentenced him to *reclusion perpetua* with all the accessory penalties under the law.<sup>[10]</sup>

Accused-appellant is now before us on appeal claiming that the evidence against him was too insufficient for his conviction.<sup>[11]</sup> He stresses that he does not question

the motives of the prosecution witnesses who implicated him;<sup>[12]</sup> however, he maintains that this does not mean that their accusations are gospel truth as they only misconstrued his actuations in the afternoon of 19 December 1994. He insists that he did not kidnap Junichi but was merely helping her find her lost mother.<sup>[13]</sup>

The essence of kidnapping under Art. 267 is the actual deprivation of the victim's liberty coupled with the intent of the accused to effect it.<sup>[14]</sup> Accused-appellant banks on the question of "intent" to neutralize the seemingly overwhelming evidence against him. He depicts himself simply as a good Samaritan who, despite the crowded department store, was the only one who showed pity on Junichi and who took pains to bring her back to her mother's arms.<sup>[15]</sup> According to him, it is appalling that a court, which in a criminal case is duty-bound to establish the guilt of the accused beyond reasonable doubt by clear and convincing evidence, based its conviction on mere suspicion and presumption.<sup>[16]</sup>

We disagree. The insistence of accused-appellant that he was only helping Junichi find her mother without any intention to kidnap the child is belied by the evidence. His supposed lack of intent to take custody of the child away from her mother was completely discredited by the prosecution in the rebuttal testimony of SPO2 Gabay. Thus -

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*Q: Now, Mr. Witness, Isagani Luartes claimed that x x x he was merely helping Junichi L. Macairan to locate her parent when you arrested him. What can you say about that?*

*A: What I can say, is that, I arrested him x x x because of the suspicious actuation, sir x x x x You see, sir. x x x x I saw him running and he was carrying a child and also I saw a traffic enforcer chasing after him, sir. x x x x when the accused was running, he was running towards me, so what I did (was) I stopped him and asked him why he was running, and he informed me that there was nothing wrong as the child was his niece, sir.*

*Q: After that, what else transpired, if any?*

*A: Lacanilao, the traffic enforcer who was chasing x x x him informed me that he was a kidnapper x x x x And at that time I held on to him, sir. x x x x He told me that he was going to make a phone call. I did not let him go and I asked the child whether she knows this person, and the child (shook) her head and then x x x started to cry x x x "mama, mama," sir.*

*Q: After that, what else transpired, if any?*

*A: So I brought them to the Security Guard of the Isetann, I requested the security guard x x x to page for any parent who lost a child, and after fifteen (15) minutes the mother came over and then mother and child saw each other they embraced each other, sir (Underscoring supplied).<sup>[17]</sup>*