

## EN BANC

[ G.R. NO. 171653, April 24, 2007 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JUDITH JATULAN Y PONCE, ACCUSED-APPELLANT.**

### DECISION

**GARCIA, J.:**

Under mandatory review is the decision<sup>[1]</sup> dated 16 December 2005 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01596, affirming an earlier decision of the Regional Trial Court (RTC) of Antipolo City which found herein appellant JUDITH JATULAN y PONCE @ "Lito" GUILTY beyond reasonable doubt of the crime of KIDNAPPING for RANSOM and sentenced him to the extreme penalty of death by lethal injection.

On 20 February 1995, in the RTC of Antipolo City, an Information<sup>[2]</sup> for KIDNAPPING for RANSOM under Article 267 of the Revised Penal Code was filed against herein appellant JUDITH JATULAN y PONCE @ "Lito" and three others, namely: Paul Liporada y Honorio, Meil Liporada y Honorio and Gilbert Denyega y Musico. Docketed in the same court as Criminal Case No. 95-11947 and raffled to Branch 73 thereof, the Information alleged:

That at about 12:30 in the afternoon of 13 February, 1995 at Teremil Subdivision, Mambugan, Antipolo, Rizal and within the jurisdiction of this Honorable Court, the above-named accused, together with some other persons whose liabilities are still being determined in a preliminary investigation, conspiring, confederating and mutually helping one another, did then and there, willfully, unlawfully and feloniously take, carry away and kidnap KARWIN AMADO, a minor being only five (5) years old, against his will and without the knowledge and consent of his parents, and thereafter brought him to a safehouse in a mountainous area at Sitio Tagisan, Mayamot, Antipolo Rizal where he was kept, detained and deprived of his liberty for the purpose of extorting ransom in the amount of TWO HUNDRED FIFTY THOUSAND PESOS(P250,000.00) for his release.

CONTRARY TO LAW.

Arraigned on 21 March 1995, all four accused, assisted by their counsel *de officio* with the three minor co-accused further assisted by their respective parents, entered a plea of "NOT GUILTY" to the offense charged against them. In time, trial ensued in the course of which the prosecution presented in evidence the oral testimonies of its witnesses, to wit: the victim himself, Karwin Amado, admittedly only about five (5) years old at the time of the incident; his mother, Teresita Amado; his sister, Karen Amado; and Inspector Jose Molave Dueñas, deputy chief of police

intelligence of Task Force *Habagat*, and elements of the Presidential Anti-Crime Commission (PACC) who all testified on matters relating to their investigation of the case and the operations they conducted to rescue the kidnapped victim.

For its part, the defense offered in evidence the oral testimony of appellant himself and those of his three (3) minor co-accused, all three of whom denied any knowledge as to appellant's plan to kidnap Karwin and who substantially declared that they were tricked by appellant into performing several tasks for the latter in connection with the kidnapping of Karwin and the subsequent demand for ransom.

In a decision<sup>[3]</sup> dated 3 September 2002, the trial court found appellant GUILTY beyond reasonable doubt of the offense charged in the Information and meted upon him the extreme penalty of death by lethal injection but ACQUITTED the three (3) minor co-accused for insufficiency of evidence against them. We quote the *fallo* of the decision:

WHEREFORE, in view of the foregoing considerations, accused Judith Jatulan is hereby found guilty beyond reasonable doubt for kidnapping Karwin Amado for the purpose of extorting ransom from the latter's family. Judith Jatulan is hereby sentenced to the extreme penalty of death by lethal injection and to pay the costs of the proceedings.

For insufficiency of evidence Paul Liporada y Honorio, Meil Liporada y Honorio and Glenbert Denyega y Musico are hereby ACQUITTED.

SO ORDERED.

From the trial court, the case went directly to this Court for automatic review. The parties were then required by the Court to file, as they did file, their respective appellant's and appellee's brief. A reply brief was also filed by appellant.

Thereafter, and consistent with this Court's decision in *People v. Efren Mateo y Garcia*<sup>[4]</sup> which modified the provisions of the Revised Rules on Criminal Procedure insofar as they provide for automatic direct appeals from the RTC to this Court in cases where the penalty imposed is death or *reclusion perpetua* or life imprisonment, the case, including its entire records and the briefs earlier filed by the parties, was transferred to the CA for appropriate action and disposition. Thereat, the appeal was docketed as CA-G.R. CR-H.C. No. 01595.

In a decision<sup>[5]</sup> dated 16 December 2005, the CA dismissed the appeal and affirmed the judgment of conviction rendered against appellant, thus:

WHEREFORE, premises considered, the present appeal is hereby DISMISSED, for lack of merit. The appealed decision dated September 3, 2002 of the court a quo finding the accused guilty beyond reasonable doubt of the crime of kidnapping for ransom under Art. 267 of the Revised Penal Code, as amended by R.A. No. 7659, and sentencing accused-appellant JUDITH JATULAN y PONCE to death by lethal injection is hereby AFFIRMED and UPHELD.

With costs against the accused-appellant.

Pursuant to Section 13, Rule 124 (A.M. No. 00-5-03-SC in re: Amendment to the Revised Rules of Criminal Procedure to Govern Death Penalty Cases), let the entire records of the case be forwarded to the Honorable Supreme Court for review.

SO ORDERED.

In its Resolution of 24 March 2004, the Court accepted the case after undergoing an intermediate review by the CA, and required the parties to file their respective supplemental briefs if they so desire. In its subsequent Resolution of 20 June 2006, the Court noted the parties' separate manifestations that they are no longer filing any supplemental brief because all the arguments they intend to raise before the Court have been thoroughly discussed in their respective briefs before the CA.

Based on the evidence adduced by the prosecution, the CA found the following facts to have been duly established:

In the early afternoon of February 13, 1995, in front of their house at Teremil Subdivision, Mambugan, Antipolo, Rizal, Karwin Amado who was then only five (5) years old, was approached by accused Judith "Lito" Jatulan. Lito told the child he will give him a "shaider" toy but they have to go to the mountain to get it. The child then went with Lito. At about five (5) o'clock in the afternoon, Karwin's mother, Teresita Amado arrived from work and failing to find Karwin inside the house, asked the boy's playmates who told her they did not play with Karwin. She then inquired from their neighbors who informed her that they did not see Karwin the whole afternoon. They looked for Karwin until dark but still did not find him. At about eight (8) o'clock in the evening, she reported the matter to the police authorities.

The following morning, February 14, 1995, the family of Karwin received a sealed envelope with a ransom note inside, which was left at their gate and reads as follows:

Bago ang lahat ay binabati kita ng Happy B-day. Ang iyong anak ay nasa mabuting kalagayan at hindi sya maaano kung susundin nyo and aming kagustuhan, magpadala kayo ng salapi P250,000 thousand para sa kabayaran ng inyong anak na bunso. [A]ng maghahatid ng Pera ay and inyong anak na babae at ihahatid nya sa tapat ng paaralan ng mayamot ELEM. School sa dyip na sira dadalhin ang salapi sa araw ng merkules alas 3:00 ng hapon. [L]agi nyong tatandaan walang makakaalam na mga pulis o kung sino man kung hindi alam nyo na ang mangyayari lalung-lalo na kung hindi makararating ang taong binigyan nyo ng pera sa takdang oras.

(A SKETCH OF THE SPOT WHERE PAY-OFF WILL TAKE PLACE)

Ang inyong anak ay maluwalhating makakauwi sa inyo pag nasa amin na ang salapi maging tapat lamang kayo at ganyan din naman kami.

Hindi mapapahamak ang anak [*ninyo*] kung tutupad kayo sa ating kasunduan.

Because she had no money for ransom, Karwin's mother sought help from the Presidential Anti-Crime Commission (PACC). The Task Force Habagat of the PACC immediately ordered surveillance, investigation and operation using boodle money for the scheduled pay-off the following day.

On February 15, 1995, at around 2:15 in the afternoon, Karen Amado, Karwin's 16 year-old sister, proceeded to the designated place in front of Mayamot Elementary School. She was carrying the ransom (boodle) money inside a black attaché case. Shortly thereafter, three (3) boys, later identified as co-accused Paul Liporada, Glenbert Denyega and Meil Liporada, arrived. Paul asked her if she was waiting for someone and she said she was just waiting for a jeepney. Paul and Glenbert went to accused Jatulan, who was hiding in a nearby alley, while Meil was left to watch on the girl. When they returned to the jeep, they showed her a paper on which was written "Karwin Amado". Karen told them she would not give them the money until they have her brother. Again, the two (2) went to the alley and upon returning told Karen that Karwin will go home at La Colina (Subdivision) the following morning. The two (2) taller boys (Paul and Glenbert) kept going back to the alley while the smallest boy (Meil) guarded Karen. When it was already three (3) o'clock, Karen gave them the attaché case. As the boys were walking towards the alley carrying the attaché case, PACC agents and policemen who were monitoring the pay-off at a distance, suddenly appeared. Paul and Glenbert were arrested while accused Lito and Meil ran away. Meil was apprehended later by policemen at his house at around six (6) o'clock in the evening. The three (3) boys were brought to PACC and being minors, they were detained first at Camp Crame in Quezon City for three (3) months and thereafter at the National Training School for Boys (Boy's Town).

On February 16, 1995, after a follow-up operation by the PACC Task Force Habagat, Jatulan was arrested in an old nipa hut in a mountainous area at Cogeo, Antipolo, Rizal, where they also rescued the kidnapped child, Karwin. The alleged mastermind, a certain Benjamin Ponce, Jr., alias "Onyok", a cousin of Jatulan, remained at large.<sup>[6]</sup>

On the other hand, the defense has its own account of the incident. We quote from no less his brief<sup>[7]</sup> appellant's version of what supposedly transpired:

Accused-appellant JUDITH JATULAN, on the other hand, testified that on 15 February 1995 at about 3:00 o'clock p.m., the three (3) other accused who were accompanied by PACC men went to his house to look for his counsel Benjamin Ponce, Jr. alias "Onyok." That was the first time he met the three (3) other accused. A certain Insp. Dueñas requested him to accompany them to the place where Onyok was hiding. So they proceeded first to Onyok's uncle in Kamias, then they went back to Mrs. Amado's residence. They continued to look for Onyok until he remembered the place where Onyok used to stay in Mayamot, Antipolo,

Rizal. They went to the place and found the child alone. The boy was made to sit on his lap and a picture was taken of them. Contrary to Mrs. Amado's claim, no arrest was made in the said place. He was brought to Camp Crame so that his statement could be taken. But in Camp Crame, no statement was taken from him. Instead, the attaché case was brought out, opened, and placed in front of a certain colonel. Without any question, they asked him to point his finger to said attaché case. He was forced to do it because somebody was punching his side. The people around during that time were the children, Mrs. Amado, Commissioner Fajardo, and others. Some were armed with .45 caliber firearms and armalites while he was all alone and not even assisted by a lawyer when he was investigated.

As he did in the CA, appellant presently maintains that the prosecution failed to muster the required proof beyond reasonable doubt to justify his conviction for the offense charged. He submits that there was no deprivation of liberty on the part of Karwin, insisting that the latter voluntarily went with a certain "Onyok" to get the promised "Shaider" toy and that during the period that Karwin was with him (appellant) at the hut where he was eventually rescued, the boy "could do as he wished," including escaping, but did not.

The appeal must fail.

Article 267 of the Revised Penal Code, as amended by Republic Act No. 7659,<sup>[8]</sup> defines the crime of kidnapping, viz:

ART. 267. **Kidnapping and serious illegal detention.**--Any private individual who shall kidnap or detain another, or in any other manner deprive him of 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 circumstance above-mentioned were present 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.