

SECOND DIVISION

[G.R. No. 199710, August 02, 2017]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PO3
JULIETO BORJA, ACCUSED-APPELLANT.**

DECISION

LEONEN, J.:

Extortion done by police themselves amounting to kidnapping with ransom undermines the government efforts to establish the rule of law in general and the proper prosecution against drug traffickers in particular. Even the subsequent prosecution of the victim of extortion does not negate the criminal liability of the accused for the crime the latter committed against the former.

This resolves the appeal to the March 14, 2011 Decision^[1] of the Court of Appeals in CA-G.R. CR.-H.C. No. 03998, finding PO3 Juliето Borja (PO3 Borja) guilty beyond reasonable doubt of kidnapping for ransom.

In the Information dated May 28, 2004, Borja was charged of kidnapping punished under Article 267^[2] of the Revised Penal Code. The accusatory portion of the information read:

That on or about May 26, 2004, at or about 10:10 in the morning, at the vicinity of Brgy. Central, Diliman, Quezon City and within the jurisdiction of this Honorable Court, the above-named accused, with an unknown companion, conspiring and confederating with one another, mutually aiding and assisting one another, by the use of force, violence and intimidation and without authority of law, did then and there, willfully, unlawfully and feloniously kidnap and illegally detain victim/hostage RONALYN G. MANATAD, and thereafter demanded and received the ransom money in the amount of P100,000.00 from Edwin G. Silvio, the victim's brother, for the release of said RONALYN G. MANATAD on same date.^[3]

PO3 Borja entered a plea of not guilty during arraignment. Trial on the merits ensued.^[4]

Based on the collective testimonies of its witnesses, the prosecution alleged that at about 10:00 a.m. on May 26, 2004, Ronalyn Manatad (Ronalyn) and her friend, Vicky Lusterio (Lusterio), were walking along Agham Road, Diliman, Quezon City.^[5] Suddenly, a man who was later identified as PO3 Borja, grabbed Ronalyn by her right forearm and forcibly took her inside a gray van where three (3) other men were waiting.^[6] Both Ronalyn and Lusterio shouted for help but no one came to their rescue. Lusterio managed to escape. She immediately reported the incident to

Ronalyn's mother, Adelina Manatad (Adelina).^[7]

Meanwhile, PO3 Borja and his companions drove the van around Quezon City.^[8] One (1) of Ronalyn's abductors, a certain Major Clarito,^[9] asked for her relatives' contact numbers.^[10] Ronalyn gave the number of her brother, Edwin G. Silvio (Edwin).^[11]

Adelina received a phone call from one (1) of the kidnappers, who demanded P200,000.00 in exchange for Ronalyn's liberty. Adelina informed him that their family could not afford to pay the ransom due to their financial condition. Suddenly, the caller hung up. Edwin thereafter arrived and negotiated for a reduced ransom when one (1) of the kidnappers called again. The kidnappers acceded and lowered their demand to P100,000.00.^[12]

At this juncture, Ronalyn was transferred from the van to a car.^[13]

Edwin sought assistance from Sergeant Abet Cordova (Sgt. Cordova) of the National Anti-Kidnapping Task Force (NAKTAF). Sgt. Cordova instructed Edwin to negotiate with his sister's abductors and to notify him of any developments. Sgt. Cordova then reported the incident to NAKTAF group commander, Major Saiiti Cababasay, who immediately mobilized his team for an entrapment operation.^[14]

At around 12:00 noon, Edwin received a call from Ronalyn's abductors. They instructed him to place the money in an SM plastic bag and to proceed to the Wildlife Park along Quezon Avenue at 3:00 p.m. Edwin informed Sgt. Cordova about the payoff. The police operatives proceeded to the Wildlife Park and positioned themselves within the area.^[15]

Edwin went to the Wildlife Park at 3:00 p.m. as planned. Shortly after, PO3 Borja approached Edwin and took the SM plastic bag containing the ransom money. Upon seeing the exchange, the police operatives arrested PO3 Borja and recovered the following items from him: (1) a 0.9 mm pistol, (2) a cellphone, (3) a wallet, and (4) the P100,000.00 ransom amount. PO3 Borja was then brought to the NAKTAF headquarters for investigation.^[16]

Despite the successful entrapment operation, the authorities failed to rescue Ronalyn. While she was inside the van, Ronalyn heard one (1) of her abductors say that PO3 Borja was entrapped.^[17] The others cursed her and said, "*Putang ina, iyung kapatid mo. Tumawag ng taga-NAKTAF.*"^[18] Afterwards, she was taken by her captors to the Philippine Drug Enforcement Agency where she was charged with illegal sale of shabu.^[19]

For his defense, PO3 Borja testified that on the day of the alleged incident, he was with PO2 Ding Tan at Branch 79, Regional Trial Court, Quezon City to testify as a witness in a criminal^[20] case.^[21] However, the hearing was postponed.^[22] After securing a certificate of appearance, PO3 Borja decided to go home at 12:00 noon.^[23]

At around 2:00 p.m., PO3 Borja received a phone call from an unknown person. The

caller sought assistance to recover his sister who had been arrested. He instructed the caller to call back. On the second call, the caller told him to go to the Wildlife Park and meet a certain Edwin, who would be wearing a white T-shirt and a bull cap.
[24]

PO3 Borja proceeded to the Wildlife Park and met Edwin, who told him that Ronalyn and Lusterio had been arrested earlier in a buy-bust operation. PO3 Borja advised Edwin to go with him to the police station and report the incident. However, Edwin said that he had to wait for his cousin to arrive.
[25]

Half an hour later, Captain Frederick Obar (Capt. Obar), SPO3 Eric Orellaneda (SPO3 Orellaneda), and three (3) unidentified persons approached PO3 Borja. SPO3 Orellaneda shouted, "*Meron lang ditong nag-eextortion*" to which PO3 Borja replied, "*Wala naman akong alam*" SPO3 Orellaneda confiscated PO3 Borja's wallet, cellphone, and firearm. Afterwards, Sgt. Cordova shouted, "*O, meron ditong P100,000.00 galing kay Borja.*"
[26] PO3 Borja was then arrested and was charged of kidnapping for ransom.
[27]

In the Decision
[28] dated October 20, 2008, the Regional Trial Court found PO3 Borja guilty beyond reasonable doubt of kidnapping for ransom.
[29] Accordingly, he was sentenced to the penalty of *reclusion perpetua*:
[30]

WHEREFORE, finding the accused PO3 Julierto Borja GUILTY beyond reasonable doubt of the crime of kidnapping for ransom, defined and penalized under Article 267 of the Revised Penal Code, as amended by Republic Act [No.] 7659, the Court hereby sentences him to suffer the penalty of *reclusion perpetua*. With costs against the accused.

SO ORDERED.
[31]

PO3 Borja appealed the decision of the Regional Trial Court.
[32] He argued that Ronalyn was not deprived of her liberty because she was lawfully arrested and charged with violation of Republic Act No. 9165.
[33]

In the Decision
[34] dated March 14, 2011, the Court of Appeals affirmed with modification the Decision dated October 20, 2008 of the Regional Trial Court. PO3 Borja was ordered to pay the victim P50,000.00 as civil indemnity and P50,000.00 as moral damages.
[35]

On August 18, 2011, PO3 Borja filed his Notice of Appeal,
[36] which was given due course by the Court of Appeals in the Resolution
[37] dated September 14, 2011.

On February 6, 2012, this Court noted the records forwarded by the Court of Appeals and required the Director of the Bureau of Corrections to confirm accused-appellant PO3 Borja's confinement.
[38] In the Resolution
[39] dated March 6, 2013, the parties were then required to file their respective supplemental briefs, should they so desired.

Accused-appellant filed his Supplemental Brief
[40] on July 18, 2013. On the other

hand, the People of the Philippines, through the Office of the Solicitor General, manifested that it would no longer file a supplemental brief.^[41]

Accused-appellant anchors his arguments on the arrest and subsequent conviction of Ronalyn for the sale of *shabu*. He argues that it is absurd to convict him of kidnapping considering that the alleged victim was caught *in flagrante delicto* during a buy-bust operation on the day of the alleged incident.^[42] Furthermore, Ronalyn was found guilty of violation of Republic Act No. 9165 by both the Court of Appeals^[43] and this Court.^[44] She is now serving her sentence in the Women's Correctional in Mandaluyong.^[45]

On the other hand, the Office of the Solicitor General asserts that the categorical and spontaneous testimonies of the prosecution's witnesses are sufficient to convict accused-appellant of kidnapping.^[46] The Office of the Solicitor General argues that accused-appellant's defense of alibi does not deserve weight. It was not physically impossible for him to be at the place where the crime was committed since Quezon City Hall of Justice was just a few blocks away from where the victim was taken.^[47]

The sole issue for this Court's resolution is whether accused-appellant PO3 Julieta Borja is guilty beyond reasonable doubt of kidnapping punished under Article 267 of the Revised Penal Code.

This Court affirms the conviction of accused-appellant. His arguments are unmeritorious.

Ronalyn's apprehension for violation of Republic Act No. 9165 does not automatically negate the criminal liability of accused-appellant. It also does not exclude the possibility of the commission of the crime with which accused-appellant is charged. The buy-bust operation carried out against Ronalyn and her kidnapping are events that can reasonably coexist.

Furthermore, a violation of Republic Act No. 9165 bears no direct or indirect relation to the crime of kidnapping. Ronalyn's arrest and conviction are immaterial to the determination of accused-appellant's criminal liability. In other words, Ronalyn's innocence or guilt would neither affirm nor negate the commission of the crime of kidnapping against her. Therefore, the resolution of this case will depend solely on whether the prosecution has established all the elements of kidnapping under Article 267 of the Revised Penal Code.

The quantum of evidence required in criminal cases is proof beyond reasonable doubt.^[48] This does not entail absolute certainty on the accused's guilt. It only requires moral certainty or "that degree of proof which produces conviction in an unprejudiced mind."^[49] The mind and consciousness of a magistrate must be able to rest at ease upon a guilty verdict.^[50]

A conviction for the crime of kidnapping or serious illegal detention requires the concurrence of the following elements:

1. The offender is a private individual[;]

2. That individual kidnaps or detains another or in any other manner deprives the latter of liberty[;]
3. The act of detention or kidnapping is illegal[;]
4. In the commission of the offense, any of the following circumstances is present:
 - a. The kidnapping or detention lasts for more than three days.
 - b. It is committed by one who simulates public authority.
 - c. Any serious physical injury is inflicted upon the person kidnapped or detained, or any threat to kill that person is made.
 - d. The person kidnapped or detained is a minor, a female or a public officer.^[51] (Citation omitted)

Although the crime of kidnapping can only be committed by a private individual,^[52] the fact that the accused is a public official does not automatically preclude the filing of an information for kidnapping against him.

A public officer who detains a person for the purpose of extorting ransom cannot be said to be acting in an official capacity. In *People v. Santiano*,^[53] this Court explained that public officials may be prosecuted under Article 267 of the Revised Penal Code if they act in their private capacity:

The fact alone that appellant Pillueta is "an organic member of the NARCOM" and appellant Sandigan [is] "a regular member of the PNP" would not exempt them from the criminal liability for kidnapping. It is quite clear that in abducting and taking away the victim, appellants did so neither in furtherance of official function nor in the pursuit of authority vested in them. It is not, in fine, in relation to their office, but in purely private capacity, that they have acted in concert with their co-appellants Santiano and Chanco.^[54] (Citation omitted)

The burden is on the accused to prove that he or she acted in furtherance of his or her official functions. In *People v. Trestiza*,^[55] this Court noted:

Before the present case was tried by the trial court, there was a significant amount of time spent in determining whether kidnapping for ransom was the proper crime charged against the accused, especially since Trestiza and Manrique were both police officers. Article 267 of the Revised Penal Code specifically stated that the crime should be committed by a private individual. The trial court settled the matter by citing our ruling in *People v. Santiano*[.]

....

In the same order, the trial court asked for further evidence which support the defense's claim of holding a legitimate police operation.