

## EN BANC

[ G.R. No. 174471, January 12, 2016 ]

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS. JERRY PEPINO Y RUERAS AND PRECIOSA GOMEZ Y CAMPOS, RESPONDENTS.**

### D E C I S I O N

**BRION, J.:**

This is an appeal filed by Jerry Pepino (*Pepino*) and Preciosa Gomez (*Gomez*) assailing the June 16, 2006 decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CR-HC No. 02026.

### ANTECEDENTS

The prosecution evidence showed that at 1:00 p.m., on June 28, 1997, two men and a woman entered the office of Edward Tan at Kilton Motors Corporation in Sucat, Paranaque City, and pretended to be customers. When Edward was about to receive them, one of the men, eventually identified as Pepino, pulled out a gun. Thinking that it was a holdup, Edward told Pepino that the money was inside the cashier's box. Pepino and the other man looted the cashier's box, handcuffed Edward, and forced him to go with them.<sup>[2]</sup> From the hallway, Jocelyn Tan (mentioned as "Joselyn" in some parts of the record), Edward's wife, saw Pepino take her husband. She went to the adjoining room upon Edward's instructions.<sup>[3]</sup>

Pepino brought Edward to a metallic green Toyota Corolla where three other men were waiting inside. The woman (later identified as Gomez) sat on the front passenger seat.<sup>[4]</sup> The abductors then placed surgical tape over Edward's eyes and made him wear sunglasses. After travelling for two and a half hours, they arrived at an apartment in Quezon City. The abductors removed the tape from Edward's eyes, placed him in a room, and then chained his legs. Pepino approached Edward and asked for the phone number of his father so that he could ask for ransom for his (Edward's) liberty. Edward told Pepino to negotiate with his wife, but the latter insisted on talking to his father.<sup>[5]</sup>

At around 5:00 p.m. of the same day, the kidnappers called Edward's father and demanded a P40 million ransom for his release. Edward's father told the kidnappers that he did not have that amount. The abductors negotiated with Jocelyn who eventually agreed to a P700,000.00 ransom. The kidnappers told Jocelyn to pack the money into two packages and to drop these at a convenience store in front of McDonald's at Mindanao Avenue. They further demanded that Edward's vehicle be used to bring the money.<sup>[6]</sup>

After four days, or on July 1, 1997, Antonio Gepiga (the family driver) brought the agreed amount to the 7-Eleven convenience store at Mindanao Avenue as

instructed.<sup>[7]</sup> That evening, three men and Gomez blindfolded Edward, made him board a car, and drove around for 30 minutes. Upon stopping, they told Edward that he could remove his blindfold after five minutes. When Edward removed his blindfold, he found himself inside his own car parked at the UP Diliman Campus. He drove home and reported his kidnapping to Teresita Ang See, a known anti-crime crusader.<sup>[8]</sup>

After five months, the National Bureau of Investigation (NBI) informed Edward that they had apprehended some suspects, and invited him to identify them from a lineup consisting of seven persons: five males and two females. Edward positively identified Pepino, Gomez, and one Mario Galgo.<sup>[9]</sup> Jocelyn likewise identified Pepino.<sup>[10]</sup>

Pepino and Gomez did not testify for their defense. The defense instead presented Zeny Pepino, Reynaldo Pepino, NBI Special Investigator Marcelo Jadloc and P/Sr. Insp. Narciso Quano (mentioned as "Qano" in some parts of the record).

Zeny testified that she and her husband, Jerry Pepino, were inside their house in Cebu City on December 7, 1997, when about 20 heavily armed men entered their house looking for Jerry. When Jerry asked them if they had a warrant of arrest, one of the men pointed a gun at him and handcuffed him; the armed men then hit him with the butt of an armalite and punched him. The men also took Pepino's wristwatch and wallet, as well as Zeny's bag and watch. Some of the armed men searched the second floor of the house, and found a .45 caliber gun. The armed men brought Zeny and Pepino outside their house where Zeny saw Renato Pepino and Larex Pepino already handcuffed. The armed men brought them to the Cebu City Police Headquarters before bringing them to the NBI Headquarters in Manila. The following day, Jerry, Renato, and Larex were brought to the Department of Justice (DOJ). Zeny, on the other hand, was released after being detained at the NBI for three (3) days.<sup>[11]</sup>

Reynaldo's testimony was summarized by the CA as follows:

x x x On December 6, 1997, he accompanied accused-appellant Gomez to his brother's sister-in-law who happens to work in a recruitment agency. While they were inside the latter's house at Lot 2, Block 15, Marikina Heights, Marikina City, they heard a noise at the gate. When he peeped through the window, he saw two (2) motorcycles and two (2) Vannette vans. Shortly thereafter, someone kicked the back door and several armed men emerged therefrom and announced their arrest. When he asked them if they had any warrant, they replied: "*Walang warrant, warrant. Walang search, search.*" They were then hogtied and made to lie face down. Five (5) of them then went upstairs and seized his personal belongings together with his briefcase which contained P45,000.00, documents of accused-appellant Gomez, and his .45 caliber pistol as well as his license and permit to carry the same. No receipts were issued for their personal effects which were confiscated. They were subsequently brought to Camp Crame and subjected to torture. The following day, they were brought to the Department of Justice and a case for kidnapping was filed against him. Upon reinvestigation, however, he

was discharged from the Information and the court dismissed the case against him.<sup>[12]</sup>

SI Jadloc and Police Senior Inspector Quano, Jr. were presented as hostile witnesses.

Jadloc declared on the witness stand that NBI Assistant Director Edmundo Arugay dispatched a team to Cebu City to investigate a kidnap-for-ransom case. The team immediately conducted surveillance operations when they arrived at Calle Rojo, Lahug, Cebu City. One of the team members saw Renato and Larex Pepino with guns tucked in their waists. When the team approached them, the two men ran inside their house. The team went after them and on entering the house, they saw Jerry in possession of a .45 caliber gun. The team arrested Jerry, Renato and Larex, and then brought them to the NBI Headquarters in Manila.<sup>[13]</sup>

Quano testified that he was designated as the leader of a team tasked to arrest members of a kidnap-for-ransom group at their safe house in Lot 2, Block 50, Marikina Heights, Marikina City. When they arrived there, they introduced themselves as police officers. The police forcibly opened the door after the occupants of the house refused to open the ground floor door. During their search at the second floor, the operatives found an armalite and a .45 caliber gun. The members of the team handcuffed Gomez and Reynaldo, and then brought them to Camp Crame.<sup>[14]</sup>

The prosecution charged Preciosa Gomez, Jerry Pepino, Reynaldo Pepino, Jessie Pepino, George Curvera, Boy Lanyujan, Luisito "Tata" Adulfo, Henriso Batijon (a.k.a. Dodoy Batijon), Nerio Alameda, and an alias Wilan Tan with kidnapping for ransom and serious illegal detention before the Regional Trial Court {RTC}, Branch 259, Paranaque City.<sup>[15]</sup> Reynaldo was subsequently discharged after reinvestigation. Only Pepino, Gomez, and Batijon were arraigned; their other co-accused remained at large.

In its May 15, 2000 decision, the RTC convicted Pepino and Gomez of kidnapping and serious illegal detention under Article 267 of the Revised Penal Code (as amended) and sentenced them to suffer the death penalty. The RTC also ordered them to pay Edward P700,000.00 representing the amount extorted from him; P50,000.00 as moral damages; and P50,000 as exemplary damages. The trial court acquitted Batijon for insufficiency of evidence.

The RTC held that Edward positively identified Pepino and Gomez as two of the persons who forcibly abducted him at gunpoint inside Kilton Motors, and who consequently detained him somewhere in Quezon City for four (4) days until he was released inside the UP Diliman Campus after the payment of ransom. The RTC added that Jocelyn corroborated Edward's testimony on material points. It also pointed out that Edward identified both Pepino and Gomez at the lineup conducted inside the NBI compound, although Jocelyn only recognized Gomez.

The RTC further ruled that the accused were already estopped from questioning the validity of their arrest after they entered their respective pleas.

The case was automatically elevated to this Court in view of the death penalty that the RTC imposed. We referred the case to the CA for intermediate review pursuant to our ruling in *People v. Mateo*.<sup>[16]</sup>

In its decision dated June 16, 2006, the Court of Appeals affirmed the RTC decision with the modification that the amounts of moral and exemplary damages were increased from P300,000.00 and P100,000.00, respectively.

The CA held that Pepino and Gomez were deemed to have waived any objection to the illegality of their arrests when they did not move to quash the information before entering their plea, and when they participated at the trial.

The CA further ruled that Pepino and Gomez conspired with each other to attain a common objective, *i.e.*, to kidnap Edward in exchange for ransom.

While the case was under review by the Supreme Court, Pepino filed an urgent motion to withdraw his appeal, which the Court granted.<sup>[17]</sup> Only Gomez's appeal is now pending before us.

In her brief<sup>[18]</sup> and supplemental brief,<sup>[19]</sup> Gomez maintained that it was impossible for Edward to have seen her in the front seat of the getaway car because he (Edward) was blindfolded. She also alleged that the prosecution failed to prove that she had conspired with the other accused.

Gomez further claimed that Edward's identification of her during trial "may have been preconditioned x x x by suggestive identification"<sup>[20]</sup> made at the police lineup. She further argued that the death penalty imposed on her is no longer proper due to the enactment of Republic Act No. 9346.

### **THE COURT'S RULING**

**We affirm Gomez's conviction, but we modify the penalty imposed and the awarded indemnities.**

#### **Illegality of the Arrest**

We point out at the outset that Gomez did not question before arraignment the legality of her warrantless arrest or the acquisition of RTC's jurisdiction over her person. Thus, Gomez is deemed to have waived any objection to her warrantless arrest.

It is settled that [a]ny objection to the procedure followed in the matter of the acquisition by a court of jurisdiction over the person of the accused must be opportunely raised before he enters his plea; otherwise, the objection is deemed waived.<sup>[21]</sup> As we held in *People v. Samson*:<sup>[22]</sup>

[A]ppellant is now estopped from questioning any defect in the manner of his arrest as he failed to move for the quashing of the information before the trial court. Consequently, any irregularity attendant to his

arrest was cured when he voluntarily submitted himself to the jurisdiction of the trial court by entering a plea of "not guilty" and by participating in the trial.<sup>[23]</sup>

At any rate, the illegal arrest of an accused is not sufficient cause for setting aside a valid judgment rendered upon a sufficient complaint after a trial free from error. Simply put, the illegality of the warrantless arrest cannot deprive the State of its right to prosecute the guilty when all other facts on record point to their culpability. It is much too late in the day to complain about the warrantless arrest after a valid information had been filed, the accused had been arraigned, the trial had commenced and had been completed, and a judgment of conviction had been rendered against her.<sup>[24]</sup>

### **Sufficiency of the Prosecution Evidence**

#### **a. Elements of kidnapping proved**

The elements of kidnapping and serious illegal detention under Article 267 of the Revised Penal Code, as amended, are: (1) the offender is a private individual; (2) he kidnaps or detains another or in any other manner deprives the latter of his liberty; (3) the act of detention or kidnapping must be illegal; and (4) in the commission of the offense, any of the following circumstances is present: (a) the kidnapping or detention lasts for more than three (3) days; or (b) it is committed by simulating public authority; or (c) serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made; or (d) the person kidnapped or detained is a minor, female, or a public officer. If the victim of kidnapping and serious illegal detention is a minor, the duration of his detention is immaterial. Likewise, if the victim is kidnapped and illegally detained for the purpose of extorting ransom, the duration of his detention is also of no moment and the crime is qualified and becomes punishable by death even if none of the circumstances mentioned in paragraphs 1 to 4 of Article 267 is present.<sup>[25]</sup>

All these elements have been established by the prosecution. Edward positively identified Gomez and Pepino - both private individuals - as among the three persons who entered his office and pretended to be Kilton Motors' customers. He further declared that Pepino pointed a gun at him, and forcibly took him against his will. To directly quote from the records:

ATTY. WILLIAM CHUA:

Q: Can you tell us if anything unusual happened to you on June 28, 1997?

EDWARD TAN:

A: I was kidnapped.

x x x x

Q: Can you tell this Court how the kidnapping was initiated?

A: At around 1:00 o'clock in the afternoon, there were three persons who entered the office of Kilton Motors and pretended to be customers.

Q: What was the gender of these three persons that you are referring to?