

FIRST DIVISION

[G.R. No. 194235, June 08, 2016]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JAY GREGORIO Y AMAR @ "JAY," ROLANDO ESTRELLA Y RAYMUNDO @ "BONG," DANILO BERGONIA Y ALELENG @ "DANNY," EFREN GASCON Y DELOS SANTOS @ "EFREN," RICARDO SALAZAR Y GO @ "ERIC," AND JOHN DOE, ACCUSED-APPELLANTS.

DECISION

LEONARDO-DE CASTRO, J.:**

Before Us on appeal is the Decision^[1] dated May 27, 2010 of the Court of Appeals in CA-G.R. CR.-H.C. No. 01776, which affirmed with modification the Decision^[2] dated October 10, 2005 of the Regional Trial Court (RTC) of Malolos City, Bulacan, Branch 12 in Criminal Case Nos. 2867-M-2002, 2868-M-2002, 2869-M-2002, 2870-M-2002. The RTC ruled in Criminal Case No. 2867-M-2002 that: (a) accused-appellants Jay Gregorio y Amar (Jay), Rolando Estrella y Raymundo (Rolando), and Ricardo Salazar y Go (Ricardo) were guilty beyond reasonable doubt as principals of the crime of kidnapping for ransom under Article 267 of the Revised Penal Code, as amended by Republic Act No. 7659;^[3] and (b) accused-appellants Danilo Bergonia y Aleleng (Danilo) and Efren Gascon y delos Santos (Efren) were guilty beyond reasonable doubt as accomplices for the same crime of kidnapping for ransom. In Criminal Case Nos. 2868-M-2002, 2869-M-2002, and 2870-M-2002, which were jointly tried and resolved with Criminal Case No. 2867-M-2002, the RTC acquitted accused-appellants Jay, Rolando, and Efren of the charges for violation of Presidential Decree No. 1866, as amended, or illegal possession of firearms, and ordered the dismissal of said cases. The appellate court modified the penalties imposed upon accused-appellants and damages awarded to the victim Jimmy Tmgy Sy (Jimmy).

I

THE ANTECEDENTS

The Information^[4] dated October 21, 2002, filed before the RTC, charged the five accused-appellants, together with a John Doe, with kidnapping for ransom under Article 267 of the Revised Penal Code, as amended, allegedly committed as follows:

That between the period October 8 to 14, 2002 in Meycauayan, and Guiguinto both in Bulacan, Dingras, Laoag and Badoc, all in Ilocos Norte, and within the jurisdiction of this Honorable Court the above-named accused, conspiring, confederating and mutually helping one [an] other, with threats and intimidation, with the use of firearms did then and there, willfully, unlawfully and feloniously take, carry away and deprive JIMMY TING y SY, male, of his liberty against his will for the purpose of extorting money as in fact a demand for money in the amount of Fifty Million Pesos Philippine Currency (P50,000,000.00) was made as a

condition for his release that the amount of One Million Seven Hundred Eighty Thousand Pesos (P1,780,000.00) ransom money was actually paid.

The case was docketed as Criminal Case No. 2867-M-2002.

Three other Informations, all dated October 21, 2002, were filed and docketed before the RTC as Criminal Case Nos. 2868-M-2002, 2869-M-2002, and 2870-M-2002, separately charging accused-appellants Jay, Rolando, and Efren, respectively, with violation of Presidential Decree No. 1866, for purportedly carrying outside their residences and having in their possession, without lawful authority to carry and possess, the following: (a) accused-appellant Jay, one caliber .45 pistol colt with SN# 121854 and one magazine with 14 live ammunition; (b) accused-appellant Rolando, one caliber .45 pistol colt Mark IV with SN# 1757394 and one magazine loaded with ammunition; and (c) accused-appellant Efren, one caliber .38 paltik revolver and 16 live ammunition.

All aforementioned criminal cases were tried together.

During their arraignment on February 27, 2003, accused-appellants pleaded not guilty to the charges against them.^[5] Thereafter, trial ensued.

Version of the Prosecution

The prosecution presented as witnesses Jimmy, the kidnap victim; Lucina Ting (Lucina), Jimmy's mother; Girlie Ting (Girlie), Jimmy's sister; Marlon delos Santos (Marlon), Jimmy's cousin; Lilibeth Corpuz (Lilibeth), Branch Manager of International Exchange Bank (IEB), EDSA Caloocan; Atty. Melchor S. Latina (Latina), Director of Legal Services, Globe Telecom; and Police Superintendent (P/Supt.) Isagani Nerez (Nerez)' and Police Senior Inspector (P/Sr. Insp.) Robert Lingbawan (Lingbawan) of Police Anti-Crime Emergency Response (PACER), Camp Crame, Quezon City.

As gathered from their collective testimonies, on October 8, 2002, Tuesday, Jimmy, Vice-President and Chief Executive Officer of Styrotech Corporation (Styrotech), left the office in Meycauayan, Bulacan, at around 7:00 p.m. Jimmy was on his way home in Malabon City with Girlie on board a Honda CRV driven by their cousin, Michelle Sitosta (Michelle), when said vehicle had a flat tire. Jimmy immediately called for assistance from their maintenance personnel, Bhong Pulga (Bhong) and Johnny, who arrived a few minutes later. While Jimmy was watching Johnny change the flat tire at the left rear portion of the vehicle, four men approached Jimmy from behind and asked his name. One of the men poked Jimmy with a gun. Upon seeing the four men with a gun, Girlie grabbed Michelle and they ran away out of fear. The four men represented themselves as agents of the National Bureau of Investigation (NBI) and accused Jimmy of possessing illegal/prohibited drugs, saying "*May drugs ka, sumama ka sa amin.*"^[6] As Jimmy was being ushered towards the road, a maroon Tamaraw FX pulled over. The armed man hit Jimmy's head with the gun and pushed Jimmy inside the Tamaraw FX.

In the meantime, Girlie and Michelle sought help from a nearby house, which was about 200 meters away from their Honda CRV. A good Samaritan accompanied Girlie and Michelle to the nearest *barangay* station and lent his cellular phone to Girlie so that she may inform her mother, Lucina, about the incident. When Girlie and

Michelle went back to their vehicle, Jimmy was already gone.

Inside the Tamaraw FX, the kidnappers took Jimmy's cellular phone and wallet, tied his hands, and blindfolded him. The kidnappers told Jimmy that they were members of the New People's Army (NPA) and they were taking him to their Commander. Fifteen minutes after exiting a toll gate at the North Diversion Road, the Tamaraw FX stopped. Jimmy sensed that some of the kidnappers alighted from the vehicle. Somebody boarded the Tamaraw FX, sat beside Jimmy, and introduced himself as the Commander. Jimmy would later identify accused-appellant Jay as the Commander. The Tamaraw FX again sped off five minutes later and entered the North Diversion Road. Along the way, accused-appellant Jay asked Jimmy questions about the ownership of Styrotech and the financial status of his family. The kidnappers continued to threaten Jimmy saying, "*Parang mahahatulan ka kapag hindi ka nakipag-cooperate, papatayin ka namin, so huwag kang papalag.*"^[7]

Using Jimmy's cellular phone, the kidnappers initially tried to contact Lucina at her residence but she was not home. The kidnappers next called Jimmy's father. Jimmy heard the driver of the Tamaraw FX, who he subsequently identified as accused-appellant Rolando, utter, "*Magandang gabi, Mr. Ting, nasa amin ang anak mong si Jimmy Ting ... Nasaan ka? ... Nasa Taiwan ka? Umuwi ka na.*" The kidnappers were finally able to reach Lucina at around 10:00 p.m., and accused-appellant Rolando said to her, "*Magandang gabi Mrs., nasa amin si Jimmy ... Maghanda kayo ng pera ... Tatawag na lang uli kami.*" The kidnappers demanded P50,000,000.00 from Lucina for Jimmy's release. When Lucina pleaded that she did not have such an amount, the kidnappers ordered her to raise the same.^[8]

After a long drive, the kidnappers made a stop-over to buy food. They gave Jimmy a hamburger and mineral water. The Commander temporarily removed Jimmy's blindfold so that he could eat his food, which gave Jimmy the chance to see his kidnappers' faces, except John Doe's.^[9]

Thirty minutes later, the kidnappers put back Jimmy's blindfold. The group travelled for two to three hours more until Jimmy felt that the Tamaraw FX was negotiating a rough road. After another 20-minute drive, the Tamaraw FX stopped at an unknown destination. It was already around 5:00 a.m. to 6:00 a.m. of the following day, October 9, 2002, Wednesday. The kidnappers removed Jimmy's blindfold, untied his hands, and led him inside a house where Jimmy saw the owner of the house and three children sleeping on the floor. The owner of the house woke the children up and ordered them to leave. The kidnappers instructed Jimmy to sit and rest. Shortly thereafter, four of the six kidnappers went back to Manila, leaving behind two of them, namely, accused-appellants Ricardo and Efren,^[10] to guard Jimmy. Jimmy fell asleep on a wooden bench out of exhaustion. Jimmy spent the rest of the day eating, watching television, and sleeping. The door and windows of the house were kept closed. Whenever Jimmy needed to answer the call of nature, he had to stand on a chair and urinate through a window.

On October 10, 2002, Jimmy had breakfast with accused-appellants Ricardo and Efren. Throughout the day, Jimmy struck up short conversations with accused-appellant Efren about the latter's life in the province and as a member of the NPA. Accused-appellants Ricardo and Efren had opened the windows of the house, affording Jimmy the opportunity to observe the surrounding area. As Jimmy walked

around the house, he saw a trophy with the inscription: Dingras, Ilocos, which gave him an idea of his location. Around 3:00 p.m. of the same day, accused-appellants Ricardo and Efren and the owner of the house started drinking beer, but they soon stopped after accused-appellant Jay called and caught them having a drinking session. Accused-appellants Ricardo and Efren threatened Jimmy that the members of the NPA operating in the area were constantly watching them.

In the early afternoon of October 11, 2002, Friday, accused-appellant Danilo arrived at the house and handed Jimmy a cellular phone. Accused-appellants Efren and Danilo instructed Jimmy to call and describe his situation to Lucina. Upon Jimmy's entreaty that he did not want his mother to worry about him, accused-appellants Efren and Danilo permitted Jimmy to merely tell Lucina to cooperate with the kidnappers. Accused-appellant Efren told Jimmy later in the afternoon that accused-appellant Danilo actually arrived there to execute Jimmy, but accused-appellant Efren would try to convince accused-appellant Danilo to spare Jimmy's life. That night, accused-appellant Danilo approached and told Jimmy that he would no longer kill him.

On October 12, 2002, Saturday, Jimmy learned that accused-appellant Jay would be arriving with two companions. Jimmy felt terrified because he believed that accused-appellant Jay was coming to personally kill him. To avoid accused-appellant Jay, accused-appellant Efren decided to transfer Jimmy to his own house. Accused-appellant Efren and Jimmy travelled by foot for 10 minutes, then rode a tricycle for another five to 10 minutes to accused-appellant Efren's house.

Accused-appellant Efren directed Jimmy to pretend to be his boss. Jimmy met accused-appellant Efren's wife, daughter, and parents. Accused-appellant Efren and Jimmy stayed at the house for only about an hour/then they took a tricycle and headed for the highway. Accused-appellant Efren and Jimmy lingered around the vicinity of the highway for about another hour. After being informed by accused-appellant Danilo that accused-appellant Jay was already gone and it was safe to go back, accused-appellant Efren and Jimmy returned to the first house. Accused-appellant Ricardo was also no longer at the house. Still, accused-appellants Efren and Danilo and Jimmy did not stay long at said house. The three of them went back to accused-appellant Efren's house where they spent the rest of the day.

On October 13, 2002, Sunday, accused-appellant Efren told Jimmy that they would bring him home but they would have to leave during the night to avoid being seen by the NPA. At around 5:30 p.m., accused-appellants Efren and Danilo and Jimmy left for Laoag City, on board accused-appellant Efren's tricycle. Jimmy, believing that they were constantly being monitored by the NPA, persuaded accused-appellants Efren and Danilo that they should hire a private vehicle instead of taking a public bus. Accused-appellant Efren hired a Mitsubishi Lancer from a certain Elmer Valenzuela (Elmer) for P1,500.00.^[11] Inside the Mitsubishi Lancer were Elmer, the driver/owner of the vehicle; Fernando Gascon (Fernando), accused-appellant Efren's brother and Elmer's substitute driver;^[12] accused-appellants Efren and Danilo; and Jimmy.

Meanwhile, in Pasig City, Lucina had been in constant communication with the kidnappers since Jimmy's abduction on October 8, 2002, negotiating the amount of ransom for her son's release. Per the kidnappers' instructions, Lucina deposited

P50,000.00 on October 10, 2002 and another P50,000.00 on October 14, 2002 to Jimmy's savings account with IEB. Lilibeth, IEB Branch Manager, confirmed that the said amounts were deposited with the bank but were later withdrawn through the automated teller machine (ATM). Subsequently, the kidnappers agreed to accept P1,680,000.00 as ransom and ordered that the said amount be delivered to them on October 14, 2002, at around 8:00 a.m., at the Shell Gas Station along the Expressway in Malolos, Bulacan. Lucina, suffering from severe nervousness, asked the kidnappers if her nephew, Marlon, could bring the ransom to them. The kidnappers acceded to Lucina's request.

Simultaneously, PACER was actively conducting an investigation of the kidnapping incident and formed a Response Team and Manhunt Team headed by P/Supt. Nerez and P/Sr. Insp. Lingbawan, respectively. Based on information gathered, the PACER Response Team proceeded to Ilocos Norte and coordinated with the local police. On October 14, 2002, Monday, the PACER Response Team established a checkpoint in Badoc, along the main highway traversing Ilocos Norte to Ilocos Sur. At around 8:00 a.m. of said day, the PACER Response Team flagged down a Mitsubishi Lancer with plate number UJH 480. P/Supt. Nerez recognized Jimmy, who was seated behind the driver, and ordered Jimmy to get out and the rest of the passengers to remain inside the car. P/Supt. Nerez led Jimmy away from the Mitsubishi Lancer as members of the PACER Response Team arrested Elmer, Fernando, and accused-appellants Efren and Danilo.^[13] A .38 caliber pistol was recovered from accused-appellant Efren.

After his rescue by the PACER Response Team, Jimmy had the opportunity to talk to his mother, Lucina. Jimmy then informed P/Supt. Nerez that there might still be a chance to catch the other kidnappers as Jimmy's family was on its way to meet the kidnappers for the ransom payout. P/Supt. Nerez immediately relayed the information to P/Sr. Insp. Lingbawan.

As instructed, Marlon proceeded on October 14, 2002 to the Shell Gas Station along the Expressway in Malolos, Bulacan, with the PACER Manhunt Team discreetly following behind him. Marlon initially parked his vehicle in front of Lutong Bahay, but was directed by the kidnappers to transfer to a parking space in front of Burger King. Marlon noticed a maroon Tamaraw FX parked behind him. Moments later, a man alighted from the Tamaraw FX, walked towards Marlon's vehicle, and opened the front door at the passenger's side. As Marlon handed the man the ransom, he got the chance to see the latter's face, and he would subsequently identify the man as accused-appellant Ricardo.^[14] After accused-appellant Ricardo returned to the Tamaraw FX, Marlon received a call from the kidnappers, who apologized to him for the inconvenience and told him that he could already leave. Thus, Marlon left the place ahead of the kidnappers in the Tamaraw FX.

P/Sr. Insp. Lingbawan witnessed accused-appellant Ricardo approach Marlon's vehicle, receive a brown bag containing the ransom from Marlon, and board a maroon Tamaraw FX with plate number TTE 334. After the payout, the PACER Manhunt Team trailed the Tamaraw FX. At around 3:00 a.m. on October 15, 2002, the Tamaraw FX parked at a Shell Gas Station in Carmen, Pangasinan. At this point, P/Sr. Insp. Lingbawan received by radio a command from P/Supt. Nerez to already arrest the persons on board the Tamaraw FX. The PACER Manhunt Team arrested accused-appellants Jay, Rolando, and Ricardo and recovered only a portion of the ransom amounting to P600,000.00. Two .45 caliber pistols were confiscated from