

## FIRST DIVISION

[ G.R. No. 201443, April 10, 2013 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BETTY SALVADOR Y TABIOS, MONICO SALVADOR, MARCELO LLANORA, JR. Y BAYLON, ROBERT GONZALES Y MANZANO, RICKY PEÑA Y BORRES @ RICK, ROGER PESADO Y PESADO @ GER, JOSE ADELANTAR Y CAURTE, LOWHEN ALMONTE Y PACETE, JUBERT BANATAO Y AGGULIN @ KOBET, AND MOREY DADAAN, ACCUSED-APPELLANTS.**

### D E C I S I O N

**REYES, J.:**

This is an appeal<sup>[1]</sup> from the Decision<sup>[2]</sup> rendered by the Court of Appeals (CA) on February 25, 2011 in CA-G.R. CR-H.C. No. 03279 affirming, albeit with modifications, the conviction by the Regional Trial Court (RTC) of Quezon City, Branch 219 of Betty Salvador y Tabios (Betty), Monico Salvador (Monico), Marcelo Llanora, Jr. y Baylon (Marcelo), Robert Gonzales y Manzano (Robert), Ricky Peña y Borres @ Rick (Ricky), Roger Pesado y Pesado @ Ger (Roger), Jose Adelantar y Caurte (Jose), Lowhen Almonte y Pacete (Lowhen), Jubert Banatao y Aggulin @ Kobet (Jubert), and Morey Dadaan (Morey) (herein accused-appellants) for having conspired in kidnapping Albert Yam y Lee (Albert) for the purpose of extorting ransom. The RTC sentenced the accused-appellants to suffer the penalty of *reclusion perpetua* and ordered them to solidarily pay Albert the amount of PhP 100,000.00 as moral damages.<sup>[3]</sup> The CA Decision dated February 25, 2011 concurred with the RTC's factual findings but expressly stated in its dispositive portion the accused-appellants' non-eligibility for parole. The CA further ordered the accused-appellants to solidarily pay Albert PhP 50,000.00 as civil indemnity and PhP 100,000.00 as exemplary damages. The RTC and the CA, however, acquitted accused-appellants of kidnapping a certain Pinky Gonzales (Pinky), who, from the account of some of the prosecution witnesses, was likewise taken with Albert during the same abduction incident.

The charges against the accused-appellants stemmed from the following Informations dated April 15, 2002:

(a) In Criminal Case No. Q-02-108834 against Betty, Monico, Marcelo, Robert, Ricky, Roger and nine other John Does for the kidnapping and serious illegal detention of Pinky allegedly lasting for six days, the Information, in part, reads:

That on or about April 7, 2002 at around 7:30 in the evening, in the vicinity of the Cainta Cockpit Arena, Cainta, Rizal, the above-named accused, conspiring, confederating and mutually helping one another, with the use of firearms, threats and intimidation did then and there,

willfully, unlawfully and feloniously kidnap and take away **PINKY GONZALES y TABORA** against her will; That in the process, she was forced to board a Toyota Hi-Ace van which transported her, until finally she was brought to an undisclosed location in Caloocan City where she was kept for six (6) days; That she was finally rescued on April 12, 2002 by police operatives from the Philippine National Police.<sup>[4]</sup>

(b) In Criminal Case No. Q-02-108835 against Jose, Lowhen, Betty, Monico, Morey, Jubert, Marcelo, Robert, Ricky, Roger and nine other John Does for the kidnapping of and demanding from Albert USD 1,000,000.00 as ransom money, the Information states:

That on or about April 7, 2002 at around 7:30 in the evening, in the vicinity of the Cainta Cockpit Arena, Cainta, Rizal, the above-named accused, conspiring, confederating and mutually helping one another, with the use of firearms, threats and intimidation did then and there, willfully, unlawfully and feloniously kidnap and take away **ALBERT YAM y LEE**; That in the process, he was forced to board a Toyota Hi-Ace van which transported him, passing through the areas of U.P. Balara and Fairview in Quezon City and within the jurisdiction of this Honorable Court, until finally he was brought to an undisclosed location in Caloocan City where he was kept for six (6) days; That ransom in the amount of \$1,000,000.00 was demanded in exchange for his safe release until he was finally rescued on April 12, 2002 by police operatives from the Philippine National Police.<sup>[5]</sup>

During arraignment, the accused-appellants pleaded not guilty to the charges.

On June 14, 2002, pre-trial was terminated without the parties having entered into stipulations.

### **The Case for the Prosecution**

During the trial, the prosecution witnesses, with their corresponding testimonies, were:

(a) Albert, married to Evangeline Lim-Yam (Evangeline), holds a Marketing degree from De La Salle University. He also took some units under the Ateneo de Manila University's Masters in Business Administration program. He is engaged in printing and financing business. He is also a breeder of fighting cocks and race horses. On February 2002, he took over, with a partner, the operations of the New Cainta Coliseum (Coliseum), a cockpit arena.

Albert testified<sup>[6]</sup> that the lens grade of his eye glasses is 275. With eye glasses on, his vision is normal. Without the glasses, he can clearly see objects one to two meters away from him, but beyond that, his vision becomes blurry.<sup>[7]</sup>

On April 7, 2002, at around 7:30 p.m., Albert rode his Toyota Prado (Prado) with Plate No. UTJ-112 and drove out of the Coliseum's parking lot. Ahead was a white

Honda Civic car (Civic), while behind was a Toyota Hi-Ace van (Hi-Ace). Upon reaching Imelda Avenue, the Hi-Ace overtook the Civic. Albert was about to follow suit, but the Hi-Ace suddenly stopped and blocked the Civic. Six men with long firearms alighted from the Hi-Ace. Jubert and Morey approached the Civic, which was just about two to two and a half meters away from Albert,<sup>[8]</sup> pointed their guns at the driver, who turned out to be Pinky,<sup>[9]</sup> and motioned for her to step out of the car and ride the Hi-Ace. Two men ran after the "watch-your-car" boy in a nearby parking lot, but Albert no longer noticed if the two still returned to the Hi-Ace.<sup>[10]</sup> Roger and Robert came near the Prado and gestured for Albert to likewise alight from the vehicle and ride the Hi-Ace.

When Albert rode the Hi-Ace, he saw Marcelo in the driver's seat and beside him was Ricky. Morey was behind the driver. So too were Jubert. Roger and Robert rode the Hi-Ace after Albert did.

Albert and Pinky were handcuffed together and made to wear dark sunglasses. The men took Albert's wallet containing PhP 9,000.00, his driver's license and other documents. They also took his Patek Philippe watch which costs PhP 400,000.00.

While inside the Hi-Ace, Albert and Pinky were ordered to duck their heads. Notwithstanding the position, Albert saw the lights emanating from the blue eagle figure at the Ateneo gym. He also heard one of the men telling the driver to pass by Balara. After around 20 minutes, Albert also noticed having passed by the vicinity of SM Fairview. They arrived in their destination 10 to 15 minutes after and were handcuffed separately. Albert and Pinky stayed in the house and were fed food mostly bought from Jollibee until they were rescued on April 12, 2002.

Albert described the house as "half constructed".<sup>[11]</sup> They were made to stay in the basement around three and a half by four meters in size, with a stairway, small sofa, bed, table and four chairs. Behind the table was a sink and a comfort room. There was a large window about three by five feet in size, but it was covered with a blanket and a plastic sack. Albert identified Monico as the person who was beside him, pulling him up when he fell while descending the basement stairs.<sup>[12]</sup> Albert claimed that he was still handcuffed then and was made to wear dark eye glasses. The kidnappers allowed him to remove the dark eye glasses when he laid down in bed on the first night of their detention.<sup>[13]</sup> On April 8, 2002, his own eye glasses were returned to him upon his request.<sup>[14]</sup>

Albert told the men that he was the only person they should talk to if they wanted ransom money. The men inquired how much he can give. Albert replied that he can shell out PhP 500,000.00. The men asked for Albert's phone and pin number to be able to call the latter's wife. He was ordered to write a letter to his wife informing her that he was abducted and indicating therein the names of persons from whom she could borrow money to be paid to the accused-appellants as ransom. Albert also claimed that he got to talk, through the telephone, to the person, whom the accused-appellants seemed to consider as their boss. The boss demanded USD 1,000,000.00 for Albert's release. One of the persons posted as guards in the safehouse threatened Albert that the latter would be killed unless ransom money be paid by Friday, April 12, 2002.<sup>[15]</sup>

Albert had seen Jose a few times in the Coliseum. Albert also recalled that immediately prior to his abduction, Jose accompanied him to his Prado and had asked for "*balato*".<sup>[16]</sup> Albert identified Jose as the "tipster" who acted as a look-out during the abduction incident.<sup>[17]</sup> Albert likewise stated that he had seen Ricky in the Coliseum on April 7, 2002 and on several other instances as the latter worked as a "*kristo*" or bet taker.<sup>[18]</sup> Albert recognized Marcelo as a bettor.

Albert identified Betty as the person who brought them food and who, in one occasion, had inquired from the guard how Albert and Pinky were faring in the basement.<sup>[19]</sup>

On April 11, 2002, at around 6:00 a.m.,<sup>[20]</sup> seven persons came down to the basement to threaten Albert and Pinky.<sup>[21]</sup> Albert later identified them as Jubert and Morey,<sup>[22]</sup> Marcelo, Ricky, Lowhen and Jose,<sup>[23]</sup> and Nelson Ocampo y Ruiz @ Joselito Estigoy<sup>[24]</sup> (Nelson). Thereafter, the men left behind Nelson and Lowhen to remain as guards, who took their posts in the stairway.<sup>[25]</sup> At around lunch time, Betty gave food to one of the guards, who in turn handed the same to Albert and Pinky. Albert was then sitting in the sofa, which was just a little over a meter away from the stairway.<sup>[26]</sup>

Albert remembered having stayed in the basement until the early hours of April 12, 2002. On that day, he heard the ferocious barking of a dog, footsteps in the second floor, and then a gun shot. Albert and Pinky stayed inside the comfort room until a uniformed man brought them out. One person, who acted as among those guarding Albert and Pinky while they were detained, was killed in the rescue operations. He was subsequently identified as Nelson. Another guard left in the evening of April 10, 2002 and he never went back.<sup>[27]</sup> Albert did not see Betty and Monico in the premises of the safehouse on the day the rescue operations were conducted by the police. He only saw the couple in Camp Crame around 5:00 p.m. while the former was making a statement.<sup>[28]</sup>

Albert and Pinky were brought to Camp Crame between 8:00 a.m. and 9:00 a.m. of April 12, 2002. Some time after lunch, a police line-up with about 15 men was presented.<sup>[29]</sup> Albert identified seven persons, to wit, Marcelo, Ricky, Jubert, Morey, Jose, Robert and Roger, as among his abductors. At that time, he was not yet able to pinpoint the rest of the accused-appellants because they were not presented to him in the police line-up.<sup>[30]</sup>

(b) Senior Inspector Arnold Palomo (S/Insp. Palomo), who is assigned at the Anti-Organized Crime for Businessmen's Concern Division of the Criminal Investigation and Detection Group (CIDG), Camp Crame, testified that on April 12, 2002, at around 6:30 a.m., he was in the vicinity of No. 3, Lumbang Street, Amparo Subdivision, Caloocan City, where they had just rescued Pinky, a victim of kidnapping. Around an hour later, Betty arrived and introduced herself as the owner of the house. She inquired why the police officers were shooting at her house. She was invited by the police to Camp Crame to answer queries anent why a crime was committed in her house. While in Camp Crame, Albert and Pinky identified her as the person who brought them food while they were detained in the safehouse. Betty was thus arrested.<sup>[31]</sup>

(c) Police Inspector Marites Bugnay (P/Insp. Bugnay), Assistant Chief of the Firearms Identification Division of the Philippine National Police (PNP) Crime Laboratory, testified that at around 9:30 a.m. of April 12, 2002, she and her team, with six members, went to Amparo Subdivision where a rescue operation had just taken place. They recovered a 5.56 mm Elisco rifle without serial number, a 9 mm Chinese made pistol, two long and three short magazines for a caliber 5.56 mm rifle, 188 live ammunitions, 24 pieces of cartridges fired from four different caliber 5.56 mm rifles, two lifted latent prints, among others. She made a Spot Report of the physical evidence recovered by her team. P/Insp. Bugnay, however, stated that some of the police officers, who participated in the rescue operations, also carried caliber 5.56 mm firearms. [32]

(d) Evangeline, Albert's wife, testified [33] having received seven phone calls [34] between April 7, 2002 and April 11, 2002 from the kidnappers informing her that they took Albert and demanding USD 1,000,000.00 as ransom money. [35] On April 11, 2002, she was instructed by the kidnappers to go to Jollibee along EDSA Guadalupe. The kidnappers were supposed to hand to her a letter from her husband. A police operative acted as her driver. She and the police operative got to the place between 11:30 and 11:45 in the morning. [36] The kidnappers called her and ordered her driver to go to the restrooms to retrieve a letter taped in one of the toilet bowls. Evangeline went back to her car. While she was inside, three men tried to forcibly open her car. She panicked, bowed down and screamed. She was, however, only able to see the suspects from their chests down. [37] Thereafter, P/Insp. Ferdinand Vero (Major Vero) approached the car and informed her that they were able to apprehend three suspects. She went home. The next morning, she received a call, got to talk to Albert, and thereafter proceeded to Camp Crame.

(e) PO1 Paul Pacris (PO1 Pacris) stated that he and four other police officers from the CIDG were the ones who assisted Evangeline when she met with Albert's kidnappers in Jollibee along EDSA Guadalupe. They arrived in the area at around 11:00 a.m. and after about two hours, they arrested Ricky, Jose and Marcelo who tried to forcibly open Evangeline's car. They recovered from Jose a .38 caliber Armscor with six live ammunitions. The policemen frisked the three without opposition from the latter. [38]

(f) PO3 Manuel Cube (PO3 Cube) corroborated [39] PO1 Pacris' testimony relative to the arrest of Ricky, Jose and Marcelo. PO3 Cube further stated that while it was not his team which arrested the suspects, after Jose and Ricky were turned over to them, they brought the two to Camp Crame. [40] While in the investigation room, he heard Jose and Ricky admit knowledge of Albert's abduction. [41] Jose and Ricky were then not assisted by counsel. [42] Chief Police Superintendent Zolio M. Lachica (Col. Lachica) briefed PO3 Cube and the other policemen that the arrested suspects divulged an information that the Hi-Ace with Plate No. WNW-180 used in Albert's abduction was going to pass by Road C-5, Commonwealth Avenue on April 12, 2002. [43] PO3 Cube, Major Vero and other police officers riding four to five vehicles went to the place. At around 5:45 a.m., they spotted the Hi-Ace, chased it and blocked it with a police car. [44] Robert and Roger were inside the Hi-Ace, and the former had a shotgun. After the policemen drew their guns, the suspects surrendered.