

THIRD DIVISION

[G.R. No. 188105, April 23, 2010]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MONICO DE CHAVEZ Y PERLAS, JUANITO MIÑON Y RODRIGUEZ,
AND ASUNCION MERCADO Y MARCIANO, ACCUSED-APPELLANTS.**

D E C I S I O N

VELASCO JR., J.:

The Case

This is an appeal^[1] by accused-appellants Juanito Miñon y Rodriguez and Asuncion Mercado y Marciano seeking their acquittal by a reversal of the November 27, 2008 Decision^[2] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 002212 which affirmed with modification their earlier conviction by the Regional Trial Court (RTC), Branch 34 in Calamba, Laguna, of the crime of Kidnapping as defined and penalized under Art. 267 of the Revised Penal Code, as amended, in Criminal Case No. 6073-98-C.

The Facts

Criminal Case No. 6073-98-C of the court of origin traces its formal beginning in an Information^[3] charging accused-appellants Juanito Miñon y Rodriguez (Juanito) and Asuncion Mercado y Marciano (Asuncion) together with Monico De Chavez y Perlas (Monico) and Joselito Lanip y Genebraldo (Joselito) with the crime of *Kidnapping for Ransom* as defined and penalized under Art. 267 of the Revised Penal Code (RPC), as amended, which reads as follows:

That on or about August 14, 1998 at the Christian School International at U.P. Los Banos, and within the jurisdiction of this Honorable Court, the above-named Accused, conspiring, confederating and mutually helping one another and grouping themselves together, did then and there, by force and intimidation, willfully, unlawfully and feloniously take, carry away and deprive PAOLO EARVIN ALONZO y CLAUD of his liberty against his will for the purpose of extorting ransom and in fact a demand for ransom was made as a condition for his release in the amount of FOUR MILLION PESOS [P4,000,000] to the damage and prejudice of PAOLO EARVIN ALONZO y CLAUD in such amount and such other amounts as may be awarded to him under the provisions of the New Civil Code.

CONTRARY TO LAW.^[4]

Upon arraignment on October 5, 1998, Juanito, Asuncion, Monico and Joselito,

assisted by their respective counsels, uniformly entered a plea of "Not Guilty." After the termination of the pre-trial conference on October 19, 1998, trial ensued.

Version of the Prosecution

To bolster its case against the four accused, the prosecution presented the testimonies of: (1) Paolo Earvin C. Alonzo (Paolo), the victim of the kidnapping; (2) Corazon Marquez Alonzo (Corazon), the grandmother of Paolo; (3) Dominador Alonzo (Dominador), the grandfather of Paolo; (4) Chief Inspector Asprinio Cabula (Chf. Insp. Cabula) of the Presidential Anti-Organized Crime Task Force (PAOCTF); and (4) Daisy Janope, an employee of Smart Telephone Co.

Paolo testified that on August 14, 1998 at around 3 p.m., he was at his school (Christian School International) in Los Baños when he was called to the door of his classroom where Asuncion, claiming to be someone from Zamboanga, told him that his grandfather had met an accident and wanted to talk to him. Paolo voluntarily went with the woman who brought him to a Ford Fiera where he saw three men, two of whom were Monico and Juanito. From Los Baños, they proceeded to the Jamboree site towards Calamba, then passed through the South Expressway and took the Calamba exit. Afterwards they stopped at a vacant lot where Monico bound him hand and foot and threatened him not to move; he was likewise blindfolded. He was placed at the front between the driver and another man. After several hours of travel, he was brought inside a house. He was able to talk to his grandmother, Corazon, three times telling her what his captors told him to say. He was held captive for 11 days until he was rescued at dawn on August 25, 1998.

Corazon testified that one of Paolo's captors called her in the evening of August 14, 1998 informing her that they have Paolo in custody. The next day, the man demanded a ransom of PhP 4M for Paolo. From August 15, 1998 until Paolo's rescue, the man called her house about a dozen times. At around 4 a.m. on August 25, 1998, they were informed by one Col. Gamban that Paolo has been rescued and that they should proceed to Camp Crame. At Camp Crame at around 6:30 a.m., in the office of then PAOCTF Chief Gen. Lacson, they saw Paolo and the kidnappers. She recognized Monico, who is the husband of her niece, Julie Marquez de Chavez. She talked to Monico who answered that they [Alonzo's] are the only ones who could help him as he was heavily indebted in the amount of PhP 800,000.

Dominador corroborated the testimony of Corazon, adding that Paolo was rescued in Nasugbu, Batangas; that previously, when asked by the police, he denied knowing a person named Myrna Mendoza of the Laguna Lake Development Authority (LLDA) since the cellphone used in calling their house was in her name. But when asked if he knows Monico, he told the police that Monico is the husband of his wife's niece who used to work for LLDA. He was also shown a cartographic sketch of a person he failed to identify. Finally, on November 11, 1998, while he was in his office at the Forest Products Research and Development Institute, Rex de Chavez, the eldest son of Monico, and Julie Marquez de Chavez came to see him and handed him a letter, and Rex asked for forgiveness on behalf of his father.

Chf. Insp. Cabula testified as to what happened from August 14, 1998 onwards on how the PAOCTF coordinated with the Los Baños police; meeting the grandparents of Paolo and how the team conducted surveillance activities; on how they tailed Joselito to a small house at 114 Brias St., Brgy. 2, Nasugbu, Batangas where they

rescued Paolo at dawn on August 25, 1998; and the arrest of Monico and Joselito.

Upon cross-examination, however, Chf. Insp. Cabula was caught with glaring inconsistencies in his testimony and was shown not have been in the places where he claimed to be during the alleged surveillance of Joselito and Monico and the eventual rescue of Paolo.

Finally, Daisy Janope, employee of Smart Telephone Co., testified that cellphone No. 0918-863-4179 is registered in the name of Myrna T. Mendoza and that in the billing statement for the period covering August 4 to September 3, 1998, it was used several times in calling telephone No. (049)-536-3351 with the calls originating from Batangas. The telephone No. (049)-536-3351 is that of the house of Dominador and Corazon Alonzo, grandparents of Paolo.

Version of the Defense

For its part, the defense presented the testimonies of 13 individuals, *i.e.*, the four accused and that of Priscilla B. Cuevas, Danilo de Mesa Valencia, Sonny Atole, Marcelo Villegas, Gloria Penales, Benedicto Alborida, Apolinario Mamiit, Elmer Villanueva and Atty. Conrado Manicad, the counsel of Monico and Joselito.

Both Asuncion and Juanito, corroborating each other, attested that they have been misled and intimidated into committing the crime by Monico, who they similarly pointed to as the mastermind of the kidnapping; and that they were merely prevailed upon and compelled to follow Monico under pain of death.

To rebut and discredit the alleged surveillance conducted by the PAOCTF operatives on August 22, 1998, when Monico and Joselito allegedly went to the house at 114 Brias St., Brgy. 2, Nasugbu, Batangas from Brgy. Putho, Tuntungin, Los Baños, Laguna, the defense presented the testimonies of Priscilla B. Cuevas, Danilo de Mesa Valencia, Sonny Atole and Gloria Penales.

Priscilla B. Cuevas, Records Officer of the Land Transportation and Franchising Regulatory Board (LTFRB) testified on the certification that, as per their records, there are no franchises granted on the route Calamba-Nasugbu as of March 7, 2000.

Danilo de Mesa Valencia attested that he was together with Joselito and Monico in the afternoon of August 22, 1998 when they attended a meeting of the *Samahang Pantubig* in Purok 3 of Brgy. Putho, Tuntungin, Los Baños, Laguna. Sonny Atole testified playing cards with Monico at the store of Gloria Penales the whole day of August 22, 1998 except the period when Monico went with Joselito and Danilo de Mesa for the meeting. Gloria Penales, storekeeper, corroborated Sonny Atole, that Monico was playing with Sonny Atole in her store practically the whole day of August 22, 1998.

The defense also presented Marcelo Villegas, the Barangay Chairman of Barangay III, Nasugbu, Batangas, who testified being awakened at around 2 a.m. on August 25, 1998 by operatives of the PAOCTF to witness the rescue operation. The officers who talked to him were one Capt. Dandan and one Col. Aquino. He attested that Chf. Insp. Cabula was not one of the officers who conducted the rescue operation and that during the ocular inspection conducted by the trial court on May 17, 1999, he was about two meters from Chf. Insp. Cabula but the latter could not identify him

as the barangay chairman.

Joselito testified on how he was arrested at around 9 p.m. of August 24, 1998. Benedicto Alborida averred that in the evening of August 24, 1998, he was with Joselito in a birthday celebration. Apolinario Mamiit corroborated Joselito and Benedicto Alborida as it was his child's birthday celebration in the evening of August 24, 1998 that the latter attended.

Monico for his part merely testified that after his arrest, he met Paolo about eight times.

Defense counsel Atty. Conrado Manicad testified that it was impossible for Chf. Insp. Cabula to tail Joselito from the latter's residence to the residence of Monico using 16 men, eight cars and four motorcycles for the width of the alley they have to traverse can only accommodate one person at a time. This was corroborated by Elmer Villanueva, a pre-school teacher of Brgy. Tuntungin, Los Baños, Laguna.

The RTC Conviction

On May 7, 2001, RTC rendered a Decision^[5] convicting Monico, Asuncion and Juanito while acquitting Joselito, the *fallo* reads:

ACCORDINGLY, this Court finds accused MONICO DECHAVEZ y PERLAS, JUANITO MIÑON y RODRIGUEZ and ASUNCION MERCADO y MARCIANO **GUILTY** beyond reasonable doubt of the crime of Kidnapping as defined and penalized under Article 267 of the Revised Penal Code, as amended, and hereby sentences each one of them to suffer the penalty of **DEATH**.

For failure of the prosecution to prove the guilt of the accused JOSELITO LANIP y GENEBRALDO beyond reasonable doubt, said accused is hereby ordered **ACQUITTED**.

The Provincial Jail Warden of the Province of Laguna is hereby directed to release from detention accused Joselito Lanip y Genebraldo unless detained for some other valid cause.

With costs against the convicted accused.

SO ORDERED.^[6]

The RTC noted that Monico merely used alibi for August 22, 1998 but could not and did not account for his whereabouts on August 14, 1998 when the kidnapping was committed. Besides, he did not explain his virtual confession, in the morning of August 25, 1998, to his auntie-in-law, Corazon.

On the theory of exempting or justifying circumstance raised by Juanito and Asuncion, *i.e.*, they acted under the impulse of an uncontrollable fear of an equal or greater injury or they caused damage to another in order to avoid an evil or injury, the RTC viewed it with incredulity considering the many inconsistencies in their

respective testimonies. However, the fiasco of the testimony of Chf. Insp. Cabula, destroyed the case against Joselito, which the RTC acquitted.

Pursuant to the above RTC decision of conviction, Monico, Asuncion and Juanito, who were in custody in Laguna, were committed for confinement to the New Bilibid Prison in Muntinlupa City and to the Correctional Institute for Women in Mandaluyong.^[7]

The case was elevated to this court for automatic review, docketed as **G.R. No. 150387**. The three accused filed their respective briefs.^[8] However, in conformity with *People v. Mateo*,^[9] we transferred this case to the CA on March 7, 2006,^[10] for appropriate action and disposition.

Affirmance of Conviction by the CA

As stated at the threshold hereof, the CA, in the herein assailed September 15, 2005 Decision,^[11] affirmed the judgment of conviction of the trial court but lowered the penalty to *reclusion perpetua* pursuant to RA 9346, thus:

WHEREFORE, in view of the foregoing premises, the instant appeal is hereby DENIED and, consequently, DISMISSED. The assailed decision dated May 7, 2001, is hereby AFFIRMED with MODIFICATION. Monico De Chavez y Perlas, Juanito Miñon y Rodriguez and Asuncion Mercado y Marciano shall suffer the penalty of *Reclusion Perpetua*, taking into consideration the enactment of Republic Act 9346, instead of death.

SO ORDERED.^[12]

The CA found that all the elements of kidnapping under Art. 267 of RPC were duly proven beyond reasonable doubt. The categorical testimony of Paolo was the lynchpin in the prosecution's case, and his positive identification of Monico, Asuncion and Juanito damning to the defense. Likewise, it ruled that the demand for ransom was duly proven. Besides, as to Asuncion and Juanito, it ratiocinated that aside from their bare testimonies no other evidence was presented to prove or corroborate them, more so when their bare assertions ran counter to the categorical and credible testimony of Paolo.

Aggrieved, Juanito and Asuncion filed their respective Notices of Appeal^[13] while Monico filed a Motion for Extension of Time^[14] of 30 days to file a motion for reconsideration. The CA, per a February 6, 2009 Resolution^[15] gave due course to the appeals filed by Juanito and Asuncion while it denied Monico's motion.

The Issues

Aggrieved, Juanito and Asuncion are now with this Court via the present appeal, substantially raising the same assignment of errors raised in **G.R. No. 150387**, which were duly considered and passed upon by the appellate court.

In his appellant's brief,^[16] filed in **G.R. No. 150387**, Juanito raises the following