

## EN BANC

[ G.R. No. 183479, June 29, 2010 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JERRY R. PEPINO  
AND DAISY M. BALAAAN, APPELLANTS.**

### D E C I S I O N

**CARPIO MORALES, J.:**

By Amended Information of February 9, 1998, appellants Jerry R. Pepino (Pepino) and Daisy M. Balaan (Daisy), along with Alfredo R. Pelenio (Pelenio),<sup>[1]</sup> were indicted before the Quezon City Regional Trial Court (RTC) for Kidnapping for Ransom with Serious Illegal Detention, as amended by Republic Act (RA) No. 7659,<sup>[2]</sup> allegedly committed as follows:

That on or about October 18, 1997 in Quezon City, Metro Manila and within the jurisdiction of this Honorable Court, the said accused conspiring and confederating together and mutually helping each other, did then and there willfully, unlawfully and feloniously kidnap ANITA D. CHING, a businesswoman, and brought her to a safehouse for the purpose of demanding ransom in the amount of P500,000.00 thereby detaining her and depriving her of personal liberty from October 18 to November 6, 1997, until the said amount was paid.

CONTRARY TO LAW.<sup>[3]</sup>

Culled from the evidence is the following version of the prosecution:

At 10:00 p.m. of October 18, 1997, Anita Ching (the victim) left her Goldline Tours office in Quezon City on board her car driven by Alejandro Soriano, together with her other employees Policarpio Guinto (Guinto) and Eva Guinto. The victim and company had barely left the office when they were blocked by a vehicle from which alighted four armed men who poked their firearms at them.<sup>[4]</sup>

The armed men, two of whom â€ Pepino and Pelenio â€ were recognized by the victim and Guinto, forcibly took the victim and boarded her on their vehicle. The victim was 30 minutes later transferred to another vehicle and taken to a safehouse where she was to be detained for 19 days.<sup>[5]</sup>

During the victim's captivity, ten persons alternately guarded her. Daisy, one of two female cohorts of the group, warned her not to escape, otherwise, she would be hanged.<sup>[6]</sup> The group initially asked for a P30 million ransom but the amount was eventually negotiated down to P500,000.00 which was paid to the group.

The victim was on November 6, 1997 released and dropped near a drugstore along Bonifacio Avenue in Quezon City by Pelenio and Daisy.<sup>[7]</sup>

Pelenio escaped from detention.<sup>[8]</sup> He was eventually recaptured in Cebu City but was killed in a shootout with the police on February 3, 2000.<sup>[9]</sup> Before his death, however, Pelenio sent a letter to the presiding judge of the trial court asking for forgiveness for his escape and admitting his complicity with Pepino in the crime.<sup>[10]</sup>

Sr./Insp. Vicente Arnado, who was called as a hostile witness for the defense, identified Pepino as the leader of a notorious kidnap-for-ransom group.<sup>[11]</sup>

Without presenting evidence, Pepino merely challenged his warrantless arrest for kidnapping as illegal, insisting that he was arrested not for said crime but as an incident of his arrest for illegal possession of firearms.

As for Daisy who claimed to have been arrested on December 6, 1997 with her uncle Pelenio, she denied having met the victim at the safehouse, alleging that it was only on December 18, 1997 when she was presented at the Department of Justice that she met the victim for the first time.<sup>[12]</sup>

Branch 86 of the Quezon City RTC, by Decision of October 9, 2000,<sup>[13]</sup> found Pepino and Daisy guilty beyond reasonable doubt as principal and accomplice, respectively, of the crime charged, disposing as follows:

WHEREFORE, PREMISES CONSIDERED, JUDGMENT is hereby rendered finding the accused **Jerry Pepino guilty beyond reasonable doubt of the crime** of kidnapping for ransom with serious illegal detention and hereby sentences him **to suffer the supreme penalty of death** and to indemnify the private complainant actual damages in the amount of P500,000.00 and moral damages in the amount of P50,000.00, plus costs.

Accused **Daisy Balaan is hereby found guilty as an accomplice in the crime** of kidnapping for ransom with serious illegal detention and the Court hereby sentences her to suffer the indeterminate penalty of six years and one day of prision mayor to twelve years and one day of reclusion temporal, and to indemnify the private complainant, jointly and severally, with Jerry Pepino to the extent of one-third, the amounts mentioned above.

The case against **Alfredo Pelinio, who appears to have died during the pendency of this case, is hereby considered closed.**

SO ORDERED. (emphasis and underscoring supplied)

Daisy having failed to attend the promulgation of judgment, a warrant for her arrest was issued.<sup>[14]</sup> It appears that she has remained at-large.<sup>[15]</sup> Despite her flight, she moved for reconsideration of the decision which the trial court, by Order of January 9, 2001,<sup>[16]</sup> denied. She thereafter filed a notice of appeal which was given

due course by the trial court.<sup>[17]</sup>

In view of the imposition of the death penalty on Pepino, the case was brought to the Court for automatic review.<sup>[18]</sup> By Resolution of February 1, 2005,<sup>[19]</sup> the Court referred the case to the Court of Appeals for action and disposition pursuant to *People v. Mateo*.<sup>[20]</sup> It appears that Pepino's appeal was consolidated with that of Daisy's.

By Decision of May 29, 2006,<sup>[21]</sup> the Court of Appeals affirmed the trial court's decision, noting that

**Pepino did not testify, and for that matter presented no evidence to defeat or attenuate the charge or evidence brought against him.** All he did in his defense was to raise the constitutional presumption of innocence, and to present his kins Renato Pepino, Larex Pepino [and] Zeny Pepino to testify that they and Pepino were illegally arrested in the latter's house in Lahug, Cebu City on December 7, 1997.

x x x x

Just like Pepino, [Daisy] claims that the evidence against her did not prove her guilt and overcome the constitutional presumption of innocence. But as said, **the prosecution evidence was ample and clear and established her guilt beyond reasonable doubt.** Clearly Anita [Ching] was cited out of context. The kidnapping covered a period of nineteen (19) days and what she said obviously referred to Day One when she was abducted by four (4) armed men. The testimony of a witness must be considered and calibrated in its entirety and not by truncated portions thereof or isolated passages therein (citation omitted). **Thus it must be considered too that Anita [Ching] said [Daisy] was among the persons she had seen in her place of captivity and had even warned her that she would be hanged if she tried to escape. She said too that after ransom was paid, [Daisy] was one of two who brought her to a place and released her.** These proved that **[Daisy]** was one of those in conspiracy to commit the felony, and hers was not a mere passive and innocuous hovering presence while Anita [Ching] was in captivity.

x x x x (emphasis and underscoring supplied)

The appellate court having denied the motions for reconsideration of Pepino and Daisy by Resolution of October 9, 2006,<sup>[22]</sup> their cases were brought to the Court.

Pepino assails his conviction on, in the main, the following grounds: lack of positive proof that he actually participated in the crime; error in appreciating against him the alleged confession-letter of the now deceased Pelinio; and the illegality of his arrest.<sup>[23]</sup>

Daisy, for her part, contends, in the main, that the prosecution failed to prove her

guilt beyond reasonable doubt.<sup>[24]</sup>

Appellants' separate appeals fail.

Since Daisy, without proffering any justifiable cause, failed to attend the promulgation of judgment and continues to be a fugitive from justice to date, her appeal must be dismissed. So Section 6 of Rule 120 of the Revised Rules of Court instructs:

SEC. 6. Promulgation of judgment.--The judgment is promulgated by reading it in the presence of the accused and any judge of the court in which it was rendered. However, if the conviction is for a light offense, the judgment may be pronounced in the presence of his counsel or representative. When the judge is absent or outside the province or city, the judgment may be promulgated by the clerk of court.

x x x x.

**If the judgment is for conviction and the failure of the accused to appear was without justifiable cause, he shall lose the remedies available in these Rules against the judgment and the court shall order his arrest.** Within fifteen (15) days from promulgation of judgment, however, the accused may surrender and file a motion for leave of court to avail of these remedies. He shall state the reasons for his absence at the scheduled promulgation and if he proves that his absence was for a justifiable cause, he shall be allowed to avail of said remedies within fifteen (15) days from notice. (emphasis and underscoring supplied)

On to the appeal of Pepino. That he was positively identified by the victim is clear.

- Q After they blocked your car, what happened?  
A Four armed men alighted.  
Q What did this [sic] armed men do?  
A They opened our car and they were forcing me to alight.  
Q Kindly look around this courtroom and can you tell us if you can identify any of the men that blocked your car?  
A Jerry Pepino (Witness pointing to accused Jerry Pepino)  
Q Who was carrying the armalite?  
A (Witness pointing to accused Jerry Pepino)  
Q There is another accused here. I am showing to you a picture of another person, can you tell us what is the relationship of this male person in the list of the accused?  
A This is Pelenio, Alfredo, he was the one who took me and he was there on the car.  
Q May we request that this particular photo of Alfredo Pelenio be marked as Exhibit A. Pelenio escaped while in the custody of the police.  
x x x x.  
Q How was [sic] the five of you seated in the car?

A I was between the two persons who were carrying  
armalite.  
Q Who was beside the driver?  
A Alfredo Pelenio.  
Q Who was beside you on the right side?  
A Jerry Pepino.  
x x x x<sup>[25]</sup> (emphasis and underscoring supplied)

Pepino was identified too by Guinto as one of the armed men who abducted the victim.

Fiscal: While you were driving on at Manotok, was there any  
unusual incident that happened?  
A Yes, sir. We were blocked by a car.  
Q What kind of a car?  
A Toyota, Corolla.  
Q After that what happened?  
A The four doors were forcibly opened and four men went  
out of a car. And then two men approached us. One of  
the men poked a gun at us and the other man also poked  
a gun at the driver.  
x x x x  
Q If you see this [sic] people or this [sic] men who  
approached you and who poked their firearm[s] at you  
and the driver, will you be able to identify them.  
A Yes, sir.  
Fiscal: Kindly look around and step down and tap the shoulder  
of those two people[.]  
Witness:  
(Witness pointing to the accused Alfredo Pelenio and  
Jerry Pepino)  
Q What did the other two persons do?  
A They just stand [sic] at their vehicle, near their vehicle.  
Q How far is that vehicle from your vehicle?  
A It was near, about 3 meters.  
x x x x.<sup>[26]</sup> (emphasis and underscoring supplied)

That Guinto did not err in identifying Pepino as one of the malefactors, there is no doubt.

Q. And this place is well lighted?  
A. There was light.  
x x x x  
Q. When these kidnappers tried to kidnap Mrs. Anita Ching[,]  
were they not wearing bonnet or mask?  
A. No, sir.  
Q. So you could really identify them because they were not  
wearing masks?  
A. Yes, sir.<sup>[27]</sup> (emphasis and underscoring supplied)