

## SECOND DIVISION

[ G.R. No. 186472, July 05, 2010 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ANTONIO SIONGCO Y DELA CRUZ, ERIBERTO ENRIQUEZ Y GEMSON, GEORGE HAYCO Y CULLERA, AND ALLAN BON SOL Y PAZ, ACCUSED, ANTONIO SIONGCO Y DELA CRUZ AND ALLAN BON SOL Y PAZ, APPELLANTS.**

### D E C I S I O N

**NACHURA, J.:**

Before the Court for review is the September 20, 2007 Decision<sup>[1]</sup> of the Court of Appeals (CA), affirming the guilty verdict rendered by the Regional Trial Court (RTC), Branch 166, Pasig City,<sup>[2]</sup> promulgated on November 6, 2000, against appellants Antonio Siongco (Siongco) and Allan Bonsol (Bonsol), with modification on the penalty imposed and the amount of damages to be paid to their victim, Nikko Satimbre (Nikko).<sup>[3]</sup> This review is made, pursuant to the pertinent provisions of Sections 3 and 10 of Rule 122 and Section 13 of Rule 124 of the Revised Rules of Criminal Procedure, as amended by A.M. No. 00-5-03-SC.

The factual findings of both courts show that between 6:00 and 7:00 p.m. of December 27, 1998, 11-year-old Nikko, a resident of Balanga, Bataan, was induced by Siongco to board a bus bound for Pilar, Bataan, together with the latter's friends, Marion Boton (Boton) and Eriberto Enriquez (Enriquez). Nikko was told that the two would accompany him in getting the "Gameboy" that Siongco promised. Siongco was no stranger to Nikko as he used to be a security guard at Footlockers shoe store where Nikko's mother, Elvira Satimbre (Elvira), works as a cashier. After a short stop in Pilar, Bataan, the three proceeded to Mariveles, Bataan, where they met with George Hayco (Hayco). The boy was then brought to Dinalupihan, Bataan, where he was kept for the night.<sup>[4]</sup>

Meanwhile, Elvira arrived home at 7:00 p.m. and found that her son was not there. She searched for him in the places he frequented, but to no avail. As her continued search for the child proved futile, she reported him missing to the nearest police detachment.<sup>[5]</sup>

The following day, December 28, 1998, Enriquez and Siongco took Nikko to Bicutan, Taguig, Metro Manila.<sup>[6]</sup> On December 29, 1998, Elvira received a phone call from a man, later identified as appellant Siongco, who claimed to have custody of Nikko and asked for P400,000.00 in exchange for his liberty. Elvira haggled with her son's captor until the latter agreed to reduce the ransom money to P300,000.00. Elvira was also able to talk to her son who was only able to utter "*Hello Ma*" as Siongco immediately grabbed the phone from him. Siongco warned Elvira to refrain from reporting the matter to the police. He also threatened that Nikko would be killed if

she fails to give the ransom money at 6:00 p.m. of the next day at Genesis Bus Station in Pasay City.<sup>[7]</sup> That night, Elvira telephoned the Office of the Chief of Police of Balanga, Bataan and reported that Nikko was kidnapped.<sup>[8]</sup>

On December 30, 1998, Enriquez and Siongco moved Nikko to Pateros and cautioned him not to tell anybody that he was kidnapped. They stayed at the house of Heracleo San Jose (Heracleo), a relative of Enriquez. They again called Elvira who failed to keep her appointment with them in Pasay City. She explained that she was still gathering funds for the ransom money. The captors reiterated their threats and, at midnight, they called and instructed her to proceed to Avenida with whatever available money she had, subject to a subsequent agreement as to the balance. Elvira refused and insisted that she preferred to give the amount in full.<sup>[9]</sup>

In the morning of December 31, 1998, Siongco called Elvira several times with the same threats and demands. Elvira agreed to meet them that afternoon at the Genesis Bus Station in Pasay City. Nikko was allowed to speak with his mother and he assured her that he was not being maltreated. After the call, Enriquez informed Nikko that his mother wanted a "kaliwaan" (face to face exchange) deal. Soon thereafter, Enriquez and Siongco left to meet Elvira, while Nikko stayed behind.<sup>[10]</sup>

On the same day, Police Senior Inspector Rodolfo Azurin, Jr. (Police Senior Inspector Azurin, Jr.) was on duty at Crimes Operation Division of the Philippine Anti-Organized Crime Task Force (PAOCTF) office in Camp Crame, Quezon City. At 11:00 a.m., Elvira arrived and requested for assistance for the recovery of her kidnapped son. The PAOCTF team then instructed her to bring to the pay-off site a brown envelope with a letter asking for extension of payment. After briefing, Azurin and other police operatives proceeded to Genesis Bus Station in Pasay City. While waiting for Elvira, they noticed two (2) male persons, later identified as Enriquez and Siongco, restlessly moving around the place. At around 2:30 p.m., Elvira arrived carrying the brown envelope. As instructed by the kidnappers, she positioned herself near a tree and tied a white kerchief around her neck. Shortly thereafter, Enriquez approached Elvira and took the brown envelope from her. As he was walking away, the PAOCTF team arrested him. Thereafter, they followed Siongco, who hurriedly hailed a taxicab and sped away. Siongco was arrested at the residence of Heracleo in Pateros where Nikko was also rescued. Thereafter, Siongco and Enriquez were brought to Camp Crame.<sup>[11]</sup>

The investigations of Nikko and the two detainees, coupled with the follow-up operations of the PAOCTF, led to the arrest of appellant Bonsol, and the other cohorts, Hayco and Boton.<sup>[12]</sup>

On January 4, 1999, an Information<sup>[13]</sup> was filed in court, charging herein appellants Siongco and Bonsol, together with Enriquez, Hayco, Boton, and a John Doe, with KIDNAPPING and SERIOUS ILLEGAL DETENTION under Article 267 of the Revised Penal Code.

Arraigned on February 24, 1999, the five accused pleaded not guilty to the offense charged.<sup>[14]</sup> Trial then ensued; in the course of which, the prosecution presented in evidence the oral testimonies of its witnesses: 1) the victim himself, 11-year-old Nikko; 2) his mother, Elvira; 3) Heracleo, relative of accused Enriquez; 4) Police

Senior Inspector Azurin, Jr. of the PAOCTF; and 5) Police Superintendent Paul Tucay, the one who arrested Bonsol, Hayco and Boton.<sup>[15]</sup>

With the exception of Boton, all of the accused took the witness stand. Hayco and Bonsol denied knowledge of and participation in the crime. Siongco testified that, on December 27, 1998, he saw Nikko at a "*peryahan*" in Balanga, Bataan but he did not mind the boy as he was busy conversing with Enriquez about their business of selling toys. He went to Manila and stayed at the house of Heracleo on December 28 and 29, 1998 to collect installment payments from customers. On December 31, 1998, he went to his brother's house in San Juan, Metro Manila and when he came back to Pateros on the same day, he was arrested by PAOCTF agents.

Enriquez declared that Nikko voluntarily went with them. He affirmed that he travelled with Nikko and Siongco to Manila. They stayed in Bicutan and then moved to Pateros. He alleged that they called Nikko's mother because the boy kept asking for a "Gameboy." He went to the Genesis Bus Station to meet Nikko's mother, who, according to Siongco, would have something tied around her neck.<sup>[16]</sup>

The RTC rejected the denials and alibis raised by the accused and held that they conspired and mutually helped one another in kidnapping and illegally detaining Nikko by taking him through a circuitous journey from Balanga, Bataan to Manila where ransom demands for his liberty were made.

In a decision dated November 6, 2000, the RTC convicted Siongco, Bonsol, Enriquez and Hayco of the offense charged in the Information and meted upon them the extreme penalty of death. Boton was ACQUITTED on the ground of reasonable doubt. The pertinent portion of the RTC decision reads:

**WHEREFORE**, the Court finds accused **Antonio Siongco y Dela Cruz, Eriberto Enriquez y Gemson, George Hayco y Cullera and Allan Bonsol y Paz GUILTY** beyond reasonable doubt of the crime of Kidnapping and Serious Illegal Detention for the purpose of extorting ransom, as defined and penalized under Article 267 of the Revised Penal Code, as amended by Section 8 of R.A. 7659, and are hereby sentenced to suffer the **Supreme penalty of Death** and indemnify the victim, Nikko Satimbre, and his mother, Elvira Satimbre, each, in the amount of P50,000.00, as moral damages, plus the costs of suit.

On the ground of reasonable doubt, the Court finds accused **Marion Boton y Cereza NOT GUILTY** of the crime charged in the Information.

SO ORDERED.<sup>[17]</sup>

From the RTC, the case went directly to this Court for automatic review.<sup>[18]</sup> The parties were then required to file, as they did file, their respective appellants'<sup>[19]</sup> and appellee's<sup>[20]</sup> briefs. Consistent with this Court's ruling in *People v. Mateo*,<sup>[21]</sup> the case was transferred to the CA<sup>[22]</sup> for intermediate review and disposition.

Upon review, the CA concurred with the factual findings and conclusions of the trial

court and affirmed the judgment of conviction but modified the penalty imposed to *reclusion perpetua*. The CA increased the amount of moral damages to P100,000.00 and awarded P100,000.00 as exemplary damages, to be paid jointly and solidarily by the accused to their victim, Nikko. The *fallo* of the CA Decision states:

**WHEREFORE**, the Judgment dated November 6, 2000 of the RTC Branch 166, Pasig City, in Criminal Case No. 115317-H, is **AFFIRMED** with the **MODIFICATION** that accused-appellants are sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole and ordered to jointly and solidarily pay private complainant Nikko Satimbire the amounts of P100,000.00 as moral damages and P100,000.00 as exemplary damages.

**SO ORDERED.**<sup>[23]</sup>

Only herein appellants Siongco and Bonsol were able to perfect an appeal<sup>[24]</sup> of the CA Decision. Consequently, in its September 29, 2008 Resolution,<sup>[25]</sup> the CA declared the conviction of accused Enriquez and Hayco as final and executory, and a Partial Entry of Judgment was made against them.<sup>[26]</sup> In a Resolution dated April 13, 2009,<sup>[27]</sup> this Court accepted the appeal interposed by Siongco and Bonsol.

We deny the appeal.

Article 267 of the Revised Penal Code, as amended by Republic Act (R.A.) No. 7659, defines and penalizes kidnapping and serious illegal detention as follows:

Art. 267. *Kidnapping and serious illegal detention.* - Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of *reclusion perpetua* to death:

1. If the kidnapping or detention shall have lasted more than three days.
2. If it shall have been committed simulating public authority.
3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained, or if threats to kill him shall have been made.
4. If the person kidnapped or detained shall be a minor, except when the accused is any of the parents, female, or a public officer.

The penalty shall be death where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances above-mentioned were present in the commission of the offense.

When the victim is killed or dies as a consequence of the detention or is

raped, or is subjected to torture or dehumanizing acts, the maximum penalty shall be imposed.

In the recent *People of the Philippines v. Christopher Bringas y Garcia, Bryan Bringas y Garcia, John Robert Navarro y Cruz, Erickson Pajarillo y Baser (deceased), and Eden Sy Chung*,<sup>[28]</sup> we reiterated the following elements that must be established by the prosecution to obtain a conviction for kidnapping, viz.: (a) the offender is a private individual; (b) he kidnaps or detains another, or in any manner deprives the latter of his liberty; (c) the act of detention or kidnapping must be illegal; and (d) in the commission of the offense, any of the following circumstances is present: (1) the kidnapping or detention lasts for more than three days; (2) it is committed by simulating public authority; (3) any serious physical injuries are inflicted upon the person kidnapped or detained, or threats to kill him are made; or (4) the person kidnapped or detained, is a minor, a female, or a public officer. If the victim is a minor, or is kidnapped or detained for the purpose of extorting ransom, the duration of detention becomes immaterial.

The essence of kidnapping is the actual deprivation of the victim's liberty, coupled with indubitable proof of the intent of the accused to effect such deprivation.<sup>[29]</sup>

As correctly held by the RTC and the CA, the prosecution indubitably proved beyond reasonable doubt that the elements of kidnapping and serious illegal detention obtain in the case at bar. Accused-appellants are private individuals who, together with their cohorts, took 11-year-old Nikko out of his hometown in Balanga, Bataan on December 27, 1998. They brought him to Manila on December 28, 1998, where demands for a P400,000.00 ransom were made to his mother.

Appellants contend that the essential element of detention or deprivation of liberty was absent because Nikko voluntarily went with them and that he was free to move around and play with other children. We disagree.

The deprivation required by Article 267 of the Revised Penal Code means not only the imprisonment of a person, but also the deprivation of his liberty in whatever form and for whatever length of time. It includes a situation where the victim cannot go out of the place of confinement or detention or is restricted or impeded in his liberty to move.<sup>[30]</sup> In this case, although Nikko was free to move around, he was at all times under the alternate watch of appellants and their cohorts. He was in their physical custody and complete control as he was kept in places strange and unfamiliar to him. While he was allowed to play in the houses where he was kept, the fact remains that he was under the control of his captors who left him there, as he could not leave the house until they shall have returned for him. Because of his tender age and the fact that he did not know the way back home, he was then and there deprived of his liberty.

As to the contention of appellant Siongco that there was no force or intimidation involved in the taking, this Court held in *People of the Philippines v. Ernesto Cruz, Jr. y Concepcion and Reynaldo Agustin y Ramos*<sup>[31]</sup> that the fact that the victim voluntarily went with the accused did not remove the element of deprivation of liberty, because the victim went with the accused on a false inducement, without which the victim would not have done so. In the present case, when Nikko boarded