

## THIRD DIVISION

[ G.R. No. 152285, October 24, 2003 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JOSE OBESO,  
APPELLANT.**

### **D E C I S I O N**

**PANGANIBAN, J.:**

The prosecution bears the burden of proving beyond reasonable doubt the guilt of the accused. Every conviction must rest on the strength of the people's evidence, never on the weakness of that for the defense.

#### **The Case**

Before us is an appeal from the June 19, 2001 Decision<sup>[1]</sup> of the Regional Trial Court (RTC) of Cebu City (Branch 18) in Criminal Case No. CBU-49812, convicting Jose Obeso of kidnapping and serious illegal detention. The decretal portion of the Decision reads as follows:

"WHEREFORE, in view of the foregoing facts and circumstances, accused Jose Obeso is found guilty beyond reasonable doubt of the crime of kidnapping and serious illegal detention under Article 267 of the Revised Penal Code and he is hereby imposed the penalty of RECLUSION PERPETUA, with the accessory penalties of the law; to indemnify the victim with damages in the sum of P50,000.00 and to pay the costs."<sup>[2]</sup>

In an Information<sup>[3]</sup> dated February 23, 1999, appellant was charged as follows:

"That on or about the 9<sup>th</sup> day of December 1998 at around 3:00 o'clock in the afternoon, more or less, at Sitio Ilang-Ilang, Barangay Lagtang, Municipality of Talisay, Province of Cebu, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, a private individual, without lawful authority and for the purpose of detaining the victim, or depriving her liberty, a minor, three (3) years old at the time of the commission of the offense and female, without the consent of the victim or her parent or guardian did then and there willfully, unlawfully and feloniously kidnap, detain, or deprive the liberty of one Lilibeth Cabriana, the victim, to the damage and prejudice of the latter."<sup>[4]</sup>

During his arraignment on April 12, 1999, appellant, assisted by his counsel,<sup>[5]</sup> pleaded not guilty after the Information had been read and translated to him in a language that he fully understood.<sup>[6]</sup> After pretrial and trial, the lower court promulgated its assailed Decision. The Public Attorney's Office then filed a Notice of Appeal on August 7, 2001.<sup>[7]</sup>

## **The Facts**

### **Version of the Prosecution**

In its Brief,<sup>[8]</sup> the Office of the Solicitor General (OSG) narrates the factual antecedents of the case as follows:

"Around four (4) o'clock in the afternoon of December 9, 1998, Elizabeth Cabriana, an unwed mother, together with her three (3) year old daughter Lilibeth Cabriana, went to the Talisay Public Market located at Tabuno[k], Talisay, Cebu, to do some caroling to augment their day to day expenses. As it would be too burdensome for Elizabeth to bring Lilibeth along with her, she (Elizabeth) took her child to the store of Lucy Nacasio. Thereupon, Elizabeth instructed Lucy's daughter, Wowie, to look after her child after which, Elizabeth left.

"After finishing her caroling around five (5) o'clock in the afternoon of the same day, Elizabeth proceeded to Lucy's place to fetch Lilibeth. To her surprise, Elizabeth was informed by both Lucy and Wowie that a certain Jose Obeso took her child.

"Frantic, Elizabeth proceeded to the reservoir located at Ilang-Ilang, Lagtang, Talisay, Cebu, to seek the assistance of Gemelito Abendan, a 'barangay tanod,' in retrieving her child.

"Upon her arrival, Elizabeth requested Gemelito to look for Lilibeth. A short while thereafter, one of Gemelito's neighbors informed the latter that accused-appellant was last seen headed towards the back portion of Gemelito's house. Acting on the information, Gemelito followed the route supposedly taken by appellant.

"A few moments thereafter, Gemelito chanced upon the appellant and Lilibeth. Per Gemelito's recollection, Lilibeth was [seated] on the lap of the appellant. Immediately, Gemelito took possession of the child and inquired from the appellant why the latter brought the child there. In response, appellant answered that Lilibeth wanted to go 'up there' pointing to the hilly portion beyond the road. At this point, Gemelito noticed that appellant was drunk. Having gained custody of the child, Gemelito took the lat[t]er to her mother. Thereafter, Gemelito brought the appellant to the police station at Tabunok, Talisay, Cebu.

"Lilibeth Cabriana, the victim in this case, testified that she knows the appellant as in fact, she pointed to the appellant when instructed to do so. When asked why she knew the appellant, Lilibeth pressed her left hand on her private part. Subsequently, the court asked Lilibeth what had the appellant done to her. Again, in response to the question propounded by the court, Lilibeth placed her left hand on her front. When asked by the court what Lilibeth meant by placing her left hand near her private part, Lilibeth uttered the word 'Jose.'

"Lilibeth likewise admitted having been carried by the appellant towards

the latter's house. At this juncture, the court asked Lilibeth what appellant did to her when she was brought to appellant's house, to which Lilibeth answered by pressing her hand against her private part. Lilibeth likewise testified that she was crying when the appellant brought her to his house.

"When called to the witness stand, appellant presented an entirely different version of the incident. According to him, on December 9, 1998, he was in the vicinity of the Tabunok Public Market when he saw the victim, Lilibeth Cabriana. Allegedly, the child was looking for her mother. Appellant knew Lilibeth because he frequently saw that latter with Elizabeth in the public market.

"Basically, appellant averred that he merely guided the child towards the side of the road to avoid being hit by the oncoming vehicles. Not too long thereafter, a barangay tanod apprehended him. Appellant was informed that Lilibeth's mother was looking for her."<sup>[9]</sup>

### **Version of the Defense**

On the other hand, appellant relates his version of the facts thus:

"**JOSE OBESO** averred that on December 9, 1998 at around 4:00 o'clock in the afternoon, after buying rice and viand, and while he was walking towards his house passing through the highway, he saw a child at the Tabunok Public Market whom he knew by the name of Lilibeth Cabriana. He happened to know the child because she used to go with her mother [to] the public market where her mother sold vegetables. At the time he saw the child, the latter was crying and was looking for her mother. Thinking of the safety of the child, he guided her and placed her beside him so that she would not be hit by the passing vehicles. After guiding and placing her in a safe place outside the Tabunok Public Market, he was apprehended by a barangay tanod at around 5:00 o'clock in the afternoon. He was in the company of the child for about ten (10) minutes. He did not take the child to any other place. He was with the child as she was crying. He held the child by the hand when he guided her towards the side of the road because there were many passing vehicles. He had no other purpose other than that.

"After the barangay tanod apprehended him, he was detained and a complaint for kidnapping was filed against him. Asked if he knows what is meant by kidnapping, he replied that he knows that kidnapping is to bring a person somewhere in order to be paid for her release.

"Upon further examination by the defense counsel, he declared that he accompanied the child Lilibeth Cabriana [to] Ilang-Ilang, Lagtang, Talisay, while she was waiting for her mother. It was about five (5) minutes that he was with the child when a barangay tanod arrived and arrested him. The barangay tanod told him that the mother of the child was looking for her. He turned over the child to her mother. Prior to his arrest, he already intended to bring the child to the barangay hall."<sup>[10]</sup>

## **Ruling of the Trial Court**

The RTC ruled that the prosecution had established beyond reasonable doubt all the elements of the crime of kidnapping and serious illegal detention. The lower court construed deprivation of liberty as actual confinement or restriction of the person of the offended party. The RTC perfunctorily rejected the defense of denial, holding that "greater weight must be given to positive testimony than to the denial of the defendant."

Hence, this appeal. <sup>[11]</sup>

## **The Issues**

In his Brief, appellant submits this lone error for our consideration:

"The court a quo gravely erred in finding accused-appellant guilty beyond reasonable doubt of kidnapping and serious illegal detention."<sup>[12]</sup>

## **The Court's Ruling**

The appeal is meritorious.

### **Sole Issue:**

### **Guilt Beyond Reasonable Doubt**

Appellant anchors his defense on the alleged failure of the prosecution to overcome his right to be presumed innocent. In particular, he questions the finding of the court *a quo* that he "illegally kidnapped, detained or in any manner deprived the alleged victim of her liberty."<sup>[13]</sup>

Kidnapping and serious illegal detention are defined and punished under Article 267 of the Revised Penal Code (RPC), which reads:

"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."

The elements of the crime are as follows:

1. The offender is a private individual.
2. That individual kidnaps or detains another or in any other manner deprives the latter of liberty.
3. The act of detention or kidnapping is illegal.
4. In the commission of the offense, any of the following circumstances is present:
  - a. The kidnapping or detention lasts for more than three days.
  - b. It is committed by one who simulates public authority.
  - c. Any serious physical injury is inflicted upon the person kidnapped or detained, or any threat to kill that person is made.
  - d. The person kidnapped or detained is a minor, a female or a public officer.<sup>[14]</sup>

The crux of the controversy in this case is the second element relating to detention or deprivation of liberty. Appellant firmly asserts that nowhere in the testimonies of the prosecution witnesses was it established that he had illegally deprived the child of her liberty. In fact, he points to the prosecution's failure to ask her directly whether she was forcibly taken against her will.

In turn, appellee argues that the mere fact that the girl was found with appellant in the mountainous area of Ilang-Ilang, Lagtang, Cebu, undeniably demonstrated his intention to restrain and deprive her of her liberty. Appellee cites jurisprudence in support of its position that in the crime of kidnapping and serious illegal detention, the victim need not be kept within an enclosure to restrict freedom of movement.

We agree with appellant. It is true that for kidnapping to take place, it is not necessary that the victim be placed in an enclosure;<sup>[15]</sup> neither is it necessary that the detention be prolonged.<sup>[16]</sup> However, 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>[17]</sup>

A review of the narration of events by the prosecution itself shows that it was not able to establish actual confinement, detention or restraint of the child. The testimonies of its witnesses did not adequately prove that she had been forcefully transported, locked up or restrained.