

## FIRST DIVISION

**[ G.R. No. 154130, October 01, 2003 ]**

**BENITO ASTORGA, PETITIONER, VS. PEOPLE OF THE  
PHILIPPINES, RESPONDENT.**

### DECISION

**YNARES-SANTIAGO, J.:**

This is a petition for review under Rule 45 of the Rules of Court, seeking the reversal of a Decision of the Sandiganbayan in Criminal Case No. 24986, dated July 5, 2001, [1] as well as its Resolutions dated September 28, 2001 and July 10, 2002.

On October 28, 1998, the Office of the Ombudsman filed the following Information against Benito Astorga, Mayor of Daram, Samar, as well as a number of his men for Arbitrary Detention:

That on or about the 1<sup>st</sup> day of September, 1997, and for sometime subsequent thereto, at the Municipality of Daram, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a public officer, being the Municipal Mayor of Daram, Samar, in such capacity and committing the offense in relation to office, conniving, confederating and mutually helping with unidentified persons, who are herein referred to under fictitious names JOHN DOES, who were armed with firearms of different calibers, with deliberate intent, did then and there willfully, unlawfully and feloniously detain Elpidio Simon, Moises dela Cruz, Wenifredo Maniscan, Renato Militante and Crisanto Pelias, DENR Employees, at the Municipality of Daram, by not allowing them to leave the place, without any legal and valid grounds thereby restraining and depriving them of their personal liberty for nine (9) hours, but without exceeding three (3) days.

CONTRARY TO LAW.[2]

On September 1, 1997, Regional Special Operations Group (RSOG) of the Department of Environment and Natural Resources (DENR) Office No. 8, Tacloban City sent a team to the island of Daram, Western Samar to conduct intelligence gathering and forest protection operations in line with the government's campaign against illegal logging. The team was composed of Forester II Moises dela Cruz, Scaler Wenifredo Maniscan, Forest Ranger Renato Militante, and Tree Marker Crisanto Pelias, with Elpidio E. Simon, Chief of the Forest Protection and Law Enforcement Section, as team leader. The team was escorted by SPO3 Andres B. Cinco, Jr. and SPO1 Rufo Capoquian.[3]

The team stopped at Brgy. Bagacay, Daram, Western Samar at 2:00 p.m., where they saw two yacht-like boats being constructed. After consulting with the local

*barangay* officials, the team learned that the boats belonged to a certain Michael Figueroa. However, since Figueroa was not around at the time, the team left Brgy. Bagacay.<sup>[4]</sup>

En route to Brgy. Manungca, Sta. Rita, Samar, the team spotted two more boats being constructed in the vicinity of Brgy. Lucob-Lucob, Daram, Samar, between 4:30-5:00 p.m., prompting them to stop and investigate. Thus, Maniscan and Militante disembarked from the DENR's service pump boat and proceeded to the site of the boat construction. There, they met Mayor Astorga. After conversing with the mayor, Militante returned to their boat for the purpose of fetching Simon, at the request of Mayor Astorga.<sup>[5]</sup>

When Simon, accompanied by dela Cruz, SPO3 Cinco, and SPO1 Capoquian, approached Mayor Astorga to try and explain the purpose of their mission, Simon was suddenly slapped hard twice on the shoulder by Mayor Astorga, who exclaimed, "*Puwede ko kamo papaglanguyon pag-uli ha Tacloban. Ano, di ka maaram nga natupa ako? Natupa baya ako. Diri kamo makauli yana kay puwede kame e charge ha misencounter.*" (I can make you swim back to Tacloban. Don't you know that I can box? I can box. Don't you know that I can declare this a misencounter?)<sup>[6]</sup> Mayor Astorga then ordered someone to fetch "reinforcements," and forty-five (45) minutes later, or between 5:00-6:00 p.m., a *banca* arrived bearing ten (10) men, some of them dressed in fatigue uniforms. The men were armed with M-16 and M14 rifles, and they promptly surrounded the team, guns pointed at the team members.<sup>[7]</sup> At this, Simon tried to explain to Astorga the purpose of his team's mission.<sup>[8]</sup> He then took out his handheld ICOM radio, saying that he was going to contact his people at the DENR in Catbalogan to inform them of the team's whereabouts. Suddenly, Mayor Astorga forcibly grabbed Simon's radio, saying, "*Maupay nga waray kamo radio bis diri somabut an iyo opisina kon hain kamo, bis diri kamo maka aro hin bulig.*" (It's better if you have no radio so that your office would not know your whereabouts and so that you cannot ask for help).<sup>[9]</sup> Mayor Astorga again slapped the right shoulder of Simon, adding, "*Kong siga kamo ha Leyte ayaw pagdad-a dinhi ha Samar kay diri kamo puwede ha akon.*" (If you are tough guys in Leyte, do not bring it to Samar because I will not tolerate it here.)<sup>[10]</sup> Simon then asked Mayor Astorga to allow the team to go home, at which Mayor Astorga retorted that they would not be allowed to go home and that they would instead be brought to Daram.<sup>[11]</sup> Mayor Astorga then addressed the team, saying, "*Kon magdakop man la kamo, unahon an mga dagko. Kon madakop niyo an mga dagko, an kan Figueroa dida ha Bagacay puwede ko liwat ipadakop an akon.*" (If you really want to confiscate anything, you start with the big-time. If you confiscate the boats of Figueroa at Brgy. Bagacay, I will surrender mine.)<sup>[12]</sup> Simon then tried to reiterate his request for permission to leave, which just succeeded in irking Mayor Astorga, who angrily said, "*Diri kamo maka uli yana kay dad on ko kamo ha Daram, para didto kita mag uro istorya.*" (You cannot go home now because I will bring you to Daram. We will have many things to discuss there.)<sup>[13]</sup>

The team was brought to a house where they were told that they would be served dinner. The team had dinner with Mayor Astorga and several others at a long table, and the meal lasted between 7:00-8:00 p.m.<sup>[14]</sup> After dinner, Militante, Maniscan and SPO1 Capoquian were allowed to go down from the house, but not to leave the *barangay*.<sup>[15]</sup> On the other hand, SPO3 Cinco and the rest just sat in the house until

2:00 a.m. when the team was finally allowed to leave.<sup>[16]</sup>

Complainants filed a criminal complaint for arbitrary detention against Mayor Astorga and his men, which led to the filing of the above-quoted Information.

Mayor Astorga was subsequently arraigned on July 3, 2000, wherein he pleaded not guilty to the offenses charged.<sup>[17]</sup> At the trial, the prosecution presented the testimonies of SPO1 Capoquian and SPO3 Cinco, as well as their Joint Affidavit.<sup>[18]</sup> However, the presentation of Simon's testimony was not completed, and none of his fellow team members came forward to testify. Instead, the members of the team sent by the DENR RSOG executed a Joint Affidavit of Desistance.<sup>[19]</sup>

On July 5, 2001, the Sandiganbayan promulgated its Decision, disposing of the case as follows:

WHEREFORE, premises considered, judgment is hereby rendered finding accused BENITO ASTORGA Y BOCATCAT **guilty** of Arbitrary Detention, and in the absence of any mitigating or aggravating circumstances, applying the Indeterminate Sentence Law, he is hereby sentenced to suffer imprisonment of four (4) months of *arresto mayor* as minimum to one (1) year and eight (8) months of *prision correctional* as maximum.

SO ORDERED.<sup>[20]</sup>

The accused filed a Motion for Reconsideration dated July 11, 2001<sup>[21]</sup> which was denied by the Sandiganbayan in a Resolution dated September 28, 2001.<sup>[22]</sup> A Second Motion for Reconsideration dated October 24, 2001<sup>[23]</sup> was also filed, and this was similarly denied in a Resolution dated July 10, 2002.<sup>[24]</sup>

Hence, the present petition, wherein the petitioner assigns a sole error for review:

5.1. The trial court grievously erred in finding the accused guilty of Arbitrary Detention as defined and penalized under Article 124 of the Revised Penal Code, based on mere speculations, surmises and conjectures and, worse, notwithstanding the Affidavit of Desistance executed by the five (5) complaining witnesses wherein the latter categorically declared petitioner's innocence of the crime charged.<sup>[25]</sup>

Petitioner contends that the prosecution failed to establish the required quantum of evidence to prove the guilt of the accused,<sup>[26]</sup> especially in light of the fact that the private complainants executed a Joint Affidavit of Desistance.<sup>[27]</sup> Petitioner asserts that nowhere in the records of the case is there any competent evidence that could sufficiently establish the fact that restraint was employed upon the persons of the team members.<sup>[28]</sup> Furthermore, he claims that the mere presence of armed men at the scene does not qualify as competent evidence to prove that fear was in fact instilled in the minds of the team members, to the extent that they would feel compelled to stay in Brgy. Lucob-Lucob.<sup>[29]</sup>

Arbitrary Detention is committed by any public officer or employee who, without legal grounds, detains a person.<sup>[30]</sup> The elements of the crime are:

1. That the offender is a public *officer* or *employee*.
2. That he *detains a person*.
3. That the detention is *without legal grounds*.<sup>[31]</sup>

That petitioner, at the time he committed the acts assailed herein, was then Mayor of Daram, Samar is not disputed. Hence, the first element of Arbitrary Detention, that the offender is a public officer or employee, is undeniably present.

Also, the records are bereft of any allegation on the part of petitioner that his acts were spurred by some legal purpose. On the contrary, he admitted that his acts were motivated by his "instinct for self-preservation" and the feeling that he was being "singled out."<sup>[32]</sup> The detention was thus without legal grounds, thereby satisfying the third element enumerated above.

What remains is the determination of whether or not the team was actually detained.

In the case of *People v. Acosta*,<sup>[33]</sup> which involved the illegal detention of a child, we found the accused-appellant therein guilty of kidnapping despite the lack of evidence to show that any physical restraint was employed upon the victim. However, because the victim was a boy of tender age and he was warned not to leave until his godmother, the accused-appellant, had returned, he was practically a captive in the sense that he could not leave because of his *fear* to violate such instruction.<sup>[34]</sup>

In the case of *People v. Cortez*,<sup>[35]</sup> we held that, in establishing the intent to deprive the victim of his liberty, it is not necessary that the offended party be kept within an enclosure to restrict her freedom of locomotion. At the time of her rescue, the offended party in said case was found outside talking to the owner of the house where she had been taken. She explained that she did not attempt to leave the premises for fear that the kidnappers would make good their threats to kill her should she do so. We ruled therein that her fear was not baseless as the kidnappers knew where she resided and they had earlier announced that their intention in looking for her cousin was to kill him on sight. Thus, we concluded that fear has been known to render people immobile and that appeals to the fears of an individual, such as by threats to kill or similar threats, are equivalent to the use of actual force or violence.<sup>[36]</sup>

The prevailing jurisprudence on kidnapping and illegal detention is that the curtailment of the victim's liberty need not involve any physical restraint upon the victim's person. If the acts and actuations of the accused can produce such fear in the mind of the victim sufficient to paralyze the latter, to the extent that the victim is compelled to limit his own actions and movements in accordance with the wishes of the accused, then the victim is, for all intents and purposes, detained against his will.

In the case at bar, the restraint resulting from fear is evident. In spite of their pleas, the witnesses and the complainants were not allowed by petitioner to go home.<sup>[37]</sup> This refusal was quickly followed by the call for and arrival of almost a dozen "reinforcements," all armed with military-issue rifles, who proceeded to encircle the

team, weapons pointed at the complainants and the witnesses.<sup>[38]</sup> Given such circumstances, we give credence to SPO1 Capoquian's statement that it was not "safe" to refuse Mayor Astorga's orders.<sup>[39]</sup> It was not just the presence of the armed men, but also the evident effect these gunmen had on the actions of the team which proves that fear was indeed instilled in the minds of the team members, to the extent that they felt compelled to stay in Brgy. Lucob-Lucob. The intent to prevent the departure of the complainants and witnesses against their will is thus clear.

Regarding the Joint Affidavit of Desistance executed by the private complainants, suffice it to say that the principles governing the use of such instruments in the adjudication of other crimes can be applied here. Thus, in *People v. Ballabare*, it was held that an affidavit of desistance is merely an additional ground to buttress the defenses of the accused, not the sole consideration that can result in acquittal. There must be other circumstances which, when coupled with the retraction or desistance, create doubts as to the truth of the testimony given by the witnesses at the trial and accepted by the judge. Here, there are no such circumstances.<sup>[40]</sup> Indeed, the belated claims made in the Joint Affidavit of Desistance, such as the allegations that the incident was the result of a misunderstanding and that the team acceded to Mayor Astorga's orders "out of respect," are belied by petitioner's own admissions to the contrary.<sup>[41]</sup> The Joint Affidavit of Desistance of the private complainants is evidently not a clear repudiation of the material points alleged in the information and proven at the trial, but a mere expression of the lack of interest of private complainants to pursue the case. This conclusion is supported by one of its latter paragraphs, which reads:

11. That this affidavit was executed by us if only to prove our sincerity and improving DENR relations with the local Chiefs Executive and other official of Daram, Islands so that DENR programs and project can be effectively implemented through the support of the local officials for the betterment of the residence living conditions who are facing difficulties and are much dependent on government support.<sup>[42]</sup>

Petitioner also assails the weight given by the trial court to the evidence, pointing out that the Sandiganbayan's reliance on the testimony of SPO1 Capoquian is misplaced, for the reason that SPO1 Capoquian is not one of the private complainants in the case.<sup>[43]</sup> He also makes much of the fact that prosecution witness SPO1 Capoquian was allegedly "not exactly privy to, and knowledgeable of, what exactly transpired between herein accused and the DENR team leader Mr. Elpidio E. Simon, from their alleged `confrontation,' until they left Barangay Lucob-Lucob in the early morning of 2 September 1997."<sup>[44]</sup>

It is a time-honored doctrine that the trial court's factual findings are conclusive and binding upon appellate courts unless some facts or circumstances of weight and substance have been overlooked, misapprehended or misinterpreted.<sup>[45]</sup> Nothing in the case at bar prompts us to deviate from this doctrine. Indeed, the fact that SPO1 Capoquian is not one of the private complainants is completely irrelevant. Neither penal law nor the rules of evidence requires damning testimony to be exclusively supplied by the private complainants in cases of Arbitrary Detention. Furthermore, Mayor Astorga's claim that SPO1 Capoquian was "not exactly privy" to what