

## FIRST DIVISION

[ G.R. No. 143644, August 14, 2002 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
RUBIROSA PASTRANA Y TEFORA, ACCUSED-APPELLANT.**

### D E C I S I O N

**YNARES-SANTIAGO, J.:**

This is an appeal from the decision<sup>[1]</sup> of the Regional Trial Court of Manila, Branch 18, convicting accused-appellant Rubirosa Pastrana y Tefora of the crime of kidnapping and failure to return a minor and imposing upon her the penalty of *reclusion perpetua*.

The information filed against accused-appellant reads:

That on or about March 16, 1997, in the City of Manila, Philippines, the said accused, being then entrusted with the custody of one WILLY SIASON Y GARPEN,<sup>[2]</sup> a minor child, nine (9) years of age, did then and there willfully, unlawfully and feloniously kidnap and detain said Willy Siason y Garpen, by then and there taking and carrying him away and deliberately failed to restore him to his mother or guardian.

Contrary to law.<sup>[3]</sup>

When arraigned on April 7, 1999, accused-appellant pleaded not guilty.<sup>[4]</sup> Trial on the merits thereafter ensued.

The antecedent facts reveal that complainant Erma Postejo was then working as a domestic helper in Canada. She has four children namely, Jenny, Doroteo, Aresola, and 9-year old Willy Garpen, Jr., her son by a common-law-relationship.<sup>[5]</sup>

Sometime in January 1997, while in Canada, Erma was introduced by her sister, Elma Saludarez<sup>[6]</sup> to spouses Leopoldo and Rebecca Frias who informed her that their daughter, accused-appellant Rubirosa Pastrana of Tondo, Manila, can help process Willy's travel documents to Canada. Erma agreed to hand the processing of her son's papers to accused-appellant and consequently sent her, on various occasions, Canadian dollars equivalent to a total of P18,300.00.<sup>[7]</sup>

On February 15, 1997, accused-appellant went to the house of Erma at 1229 Sampaguita St., Malaria, Tala, Caloocan City and introduced herself to the children of Erma as the one who will work out the processing of their travel documents to Canada.<sup>[8]</sup>

In one of the telephone conversations of Erma and accused-appellant, the latter informed Erma that Willy was suffering from acute bronchitis. Thus, Erma sent P5,610.00 to accused-appellant with the instruction that P3,000.00 thereof should

be given to her other son, Doroteo, and the balance to be spent for Willy's medical treatment. Accused-appellant, however, gave Doroteo only P2,500.00 and not P3,000.00 as instructed by Erma.<sup>[9]</sup>

On March 16, 1997, accused-appellant fetched Willy and Aresola from Caloocan and brought them to her apartment in Tondo, for the purpose of bringing Willy to the hospital. On March 17, 1997, Aresola went home to attend her classes. That same day, Erma called up accused-appellant who informed her that she was not able to bring Willy to the hospital because she used the money to pay her personal obligations.<sup>[10]</sup>

On March 19, 1997, Erma learned that Willy had already been treated and that accused-appellant demanded P4,000.00 for the alleged expenses she incurred for Willy's medical treatment. Accused-appellant also told Erma that the tap water in Tondo is not safe for Willy, thus, she asked her to send P60,000.00 to purchase a water purifier. Likewise, accused-appellant requested financial assistance from Erma for her job application in Singapore. Erma, however, refused to transmit the amounts asked by accused-appellant and ordered her to return Willy to Caloocan but the latter ignored her.<sup>[11]</sup>

On March 25, 1997, Erma found out from Aresola that accused-appellant did not return Willy to Caloocan. Aresola then tried to contact accused-appellant in Tondo, but she was told that she has left her apartment.<sup>[12]</sup>

On March 27, 1997, at around 11:00 a.m., accused-appellant went to Caloocan and informed Doroteo that Willy was missing. He was allegedly last seen playing inside her apartment in the morning of March 26, 1997. They searched for Willy but their efforts were fruitless.<sup>[13]</sup>

On April 24, 1997, Erma returned to the Philippines to look for her son. Through the help of the Volunteers Against Crime and Corruption (VACC), Erma discovered that, contrary to the claim of accused-appellant, Willy was not actually treated by Dr. Rebecca Nakpil Miranda.<sup>[14]</sup>

Accused-appellant vehemently denied the charges against her. She testified that she resided in an apartment in Tondo, Manila, and used to work as a liaison officer of a travel agency. Sometime in February 1997, she received a letter from her parents in Canada, requesting her to help Erma Postejo in the procurement of the travel papers of her son, Willy Garpen. On February 15, 1997, she went to the house of Erma Postejo in Caloocan, and introduced herself to the children of Erma. On March 16, 1997, she took Willy to her apartment in Tondo for the purpose of bringing him to Mary Johnston Hospital, where he was treated by Dr. Rebecca Nakpil Miranda for acute bronchitis. On various occasions, she received the total amounts of P18,000.00 and P5,610.00 from Erma for the expenses of Willy. On March 26, 1997, Willy disappeared. She allegedly last saw him playing inside their apartment that morning.<sup>[15]</sup>

On the same day, she reported Willy's disappearance to the authorities and did her best to find him. The following day, March 27, 1997, she went to Erma's relatives in Caloocan and informed them that Willy was missing. They searched for Willy but to no avail.<sup>[16]</sup>

On May 11, 2000, the trial court rendered the assailed judgment of conviction. The decretal portion thereof reads:

WHEREFORE, the court finds the accused, Rubirosa Pastrana, y Tefora, guilty beyond reasonable doubt of the crime of kidnapping and failure to return a minor under Article 270 of the Revised Penal Code and sentences her to suffer reclusion perpetua with all the accessory penalties provided by law and to pay the costs. On the civil liability of the accused she is ordered to pay the complainant moral damages and nominal damages in the sum of P500,000.00 and P100,000.00, respectively, with interest thereon at the legal rate of 6% per annum from this date until fully paid.

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

Hence, the instant appeal based on the following assignment of errors:

I

THE TRIAL COURT ERRED IN HOLDING THAT THE ACCUSED WAS ENTRUSTED WITH THE CUSTODY OF WILLY SIASON Y GARPEN (sic) (WILLY).

II

ASSUMING THAT THE ACCUSED WAS ENTRUSTED WITH THE CUSTODY OF WILLY, THE TRIAL COURT ERRED IN HOLDING THAT THE ACCUSED KIDNAPPED, DETAINED AND/OR DELIBERATELY FAILED TO RESTORE WILLY TO HIS MOTHER OR GUARDIAN.

III

THE TRIAL COURT ERRED IN FOCUSING ON PERCEIVED WEAKNESS OF THE DEFENSE INSTEAD OF DETERMINING WHETHER THE PROSECUTION'S EVIDENCE IS STRONG ENOUGH TO MEET THE REQUISITE STANDARD OF PROOF BEYOND REASONABLE DOUBT.

IV

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED AND IN NOT ACQUITTING HER ON THE GROUND OF REASONABLE DOUBT.

V

THE TRIAL COURT ERRED IN ORDERING THE ACCUSED TO PAY COMPLAINANT P500,000.00 MORAL DAMAGES AND P100,000.00 NOMINAL DAMAGES, WITH INTEREST THEREON AT 6% PER ANNUM FROM DATE OF THE JUDGMENT UNTIL FULL PAYMENT.<sup>[18]</sup>

Kidnapping and failure to return a minor under Article 270 of the Revised Penal Code has two essential elements, namely: (1) the offender is entrusted with the custody of a minor person; and (2) the offender deliberately fails to restore the said minor to his parents or guardians. What is actually being punished is not the kidnapping of the minor but rather the deliberate failure of the custodian of the minor to restore the latter to his parents or guardians. The word deliberate as used in Article 270