

## FIRST DIVISION

[ G.R. No. 136304, January 25, 2001 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROGER RAMA, ACCUSED-APPELLANT.**

### D E C I S I O N

**PUNO, J.:**

The birth of the New Year in 1998 saw the loss of Roger and Eufemia Cabiguin's infant child, Joyce Ann Cabiguin. For her loss, an information was filed against the accused Roger Rama, *viz*:

"That on or about the 1st day of January, 1998, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, ROGER RAMA, did then and there, wilfully, unlawfully and feloniously kidnap JOYCE ANN CABIGUIN, a minor, one (1) year and six (6) months old.

Contrary to Article 267, par. 4 of the Revised Penal Code."<sup>[1]</sup>

The prosecution's story was gathered mainly from the testimony of five-year old Roxanne Cabiguin, a cousin of Joyce Ann. On January 1, 1998, Roxanne, her sister Rose Ann, Mama Weng, Uncle Dony, grandmother Diana, Joyce Ann and the latter's younger brother Pogi were at the Dagupan public plaza. Roxanne played with her Uncle Dony, Rose Ann, and Joyce Ann at the plaza's stage while her Mama Weng sat at the side of the stage, feeding Pogi. Mama Diana went to a store to buy some food.

At that time, the accused Rama and another man were also at the plaza. Rama called Roxanne and told her that if she would bring the beautiful girl (referring to Joyce Ann) to him, he would give Roxanne a biscuit. Rama gave her one biscuit. She ate it. She then carried Joyce Ann to the accused Rama who ran away with little Joyce Ann. Roxanne told her Mama Weng and Mama Diana that Joyce Ann was taken by a man. They looked for Joyce Ann and the man but they were nowhere to be found. During her testimony, Roxanne pointed to the accused Rama as the man who took away Joyce Ann.<sup>[2]</sup>

Roxanne's testimony was corroborated by Pierre Torio. On January 1, 1998, he was with his cousin and niece at the Dagupan City plaza from about 1:15 p.m. to 4:30 p.m. Facing the stage, they sat on a bench to its right. They were about nine to ten meters away from the stage. There were about seven children playing on the stage. At about 1:30 p.m. to 2:00 p.m., the accused Rama entered the plaza and sat about five to six meters away from them. He was with two other men and a pregnant woman. He entered the plaza playground where many kids were playing. He stared at the children and looked confused, then came out seemingly not knowing what to

do, and approached the stage. But before he could reach the stage, he returned to the playground. Subsequently, at about 2:45 p.m., a tall man asked Torio if he saw the missing Joyce Ann. He replied that he saw the accused Rama acting suspiciously in the plaza. He did not see though whether Rama took Joyce Ann. By this time, Rama was nowhere in sight.<sup>[3]</sup>

On January 7, 1998, Torio's cousin called him up to go to the Dagupan City police station because the person who took Joyce Ann was there. He was asked to identify the man he saw acting suspiciously at the playground. The police pointed successively to the men sitting at the police station and each time asked Torio if that was the suspicious-acting man. He replied in the negative. When the police pointed the accused Rama, Torio confirmed that he was the man acting suspiciously. He gave a sworn statement narrating what he saw on January 1, 1998 at the Dagupan plaza playground. On the witness stand, Torio pointed to the accused Rama as the man who acted suspiciously at the playground. He affirmed that he could not be mistaken because the accused Rama sat only about five to six meters away from him.<sup>[4]</sup>

Diana Laviste Cabiguin, paternal grandmother of Joyce Ann, also testified. Along with Joyce Ann and other relatives, she went to the Dagupan plaza on January 1, 1998. At the time Joyce Ann disappeared, Diana went to McDonald's to buy some snacks. When she went back to her relatives, Joyce Ann was already gone. One of the children playing in the plaza playground, Bryan Ocampo, informed Diana's group that Joyce Anne was taken by a man. They searched in vain for the missing Joyce Ann. Two days later, or on January 3, 1998, after receiving tips from the townspeople, Diana went to Binmaley, Pangasinan, the vicinity where the accused lived. She was with a certain Elvira Sebastian, some policemen, and three children at the plaza playing with Joyce Ann on January 1, 1998, namely: thirteen-year old Bryan Ocampo, eleven-year old Benjamin Sarmiento, and Jesus Ulanday. When the group reached the house of the accused Rama, they found the latter and his wife and their children sleeping. They were permitted by the accused Rama to examine the premises of his house and to look for the missing Joyce Anne. Their search was fruitless but all three kids pointed to the accused Rama as the kidnapper. Jesus even urinated upon seeing the accused Rama because the latter spanked him when he (Jesus) ran after Rama as the latter took away Joyce Ann. Rama threatened Jesus not to follow him or else he (Rama) would throw a stone at him.

On January 5 or 6, 1998, Diana, Bryan, Benjamin, and Jesus went again to Binmaley. All three children pointed again to the accused Rama as the man who took Joyce Anne. The three children did not, however, take the witness stand. Bryan's parents were at first willing to let Bryan testify, but after Rama's wife talked to them, they changed their mind. Benjamin's father was at first also willing to let his child testify but later on had a change of heart for fear of their safety.<sup>[5]</sup>

Elvira Sebastian corroborated Diana Laviste's testimony. She testified that on the night of January 1, 1998, Diana, along with some policemen and three children who witnessed the taking of Joyce Ann, one of whom was a certain Bryan, went to her house because the first suspect was her uncle, Eduardo Sebastian. The children were asked if Eduardo was the kidnapper, but they answered in the negative. Diana asked Elvira's assistance to find the kidnapper.

The following day, or on January 2, 1998, at about 9:00 a.m., Diana went back to Elvira's house. Elvira, Diana, Bryan, Benjamin, and Jesus asked around about the missing Joyce Anne. Elvira learned from the former manager of the fish business where the accused Rama worked that there were other instances of kidnapping in the market place. She (the manager) informed Elvira that on January 1, 1998, she saw the accused Rama with a child. The manager told Elvira that the latter might be familiar with Rama's face because he was pushing carts of fish for a living and these cart pushers would usually buy doughnuts from the store of Elvira's father. Elvira stayed behind to wait for the accused Rama at the manager's store. The rest of Diana's group went to the National Bureau of Investigation. After an hour's wait in vain, Elvira left. She returned the following day, but again, the accused Rama did not show up.

On January 3, 1998, Elvira went with Diana, Bryan, Benjamin, Jesus, Roger (father of Joyce Ann), and some policemen to Rama's house. The children pointed to the accused Rama as the culprit. One of the children whom the accused Rama spanked at the park during the taking of Joyce Ann even urinated out of fright when he saw the accused. Despite the identification made by the children, the policemen did not arrest Rama. This prompted Diana to go to the Philippine National Police - Criminal Investigation and Detection Group (PNP-CIDG) in Dagupan City for the arrest of the accused Rama. The following day, she and the children went to the Magsaysay market beside Mele's restaurant and saw again the accused Rama. The children again pointed to the accused as the man behind Joyce Ann's taking. Rama threatened them not to implicate him or he would kill them. The group left the place. She executed an affidavit narrating the foregoing incidents.<sup>[6]</sup>

SPO3 Teofilo Ubando, investigator at the PNP-CIDG in Dagupan City, also took the witness stand. He testified that on January 6, 1998, Roger and his wife, Eufemia, went to the CIDG office. They reported to Ubando that the accused Rama kidnapped their daughter, Joyce Ann. Bryan and Benjamin who witnessed the accused Rama take Joyce Ann, also went to the CIDG office. The two children informed Ubando where the accused Rama lived. Eufemia, Ubando, Bryan, Benjamin, and other policemen went to Rama's house in Binmaley, Pangasinan, while Roger was left in the office. They brought with them a letter signed by Police Senior Inspector Rodolfo S. Azurin, Jr., Deputy Provincial Field Officer, inviting the accused Rama to immediately appear before the CIDG in relation to the kidnapping of Joyce Ann.<sup>[7]</sup> Upon reaching Rama's house, the group did not find him there. His wife told them that he was in Mele's restaurant. Together with Rama's wife, the group proceeded to Mele's restaurant. At about 4:30 p.m., Rama arrived. The police presented to him the letter signed by Azurin and invited him to go to their office. The accused Rama obliged. His wife went with him. When the group arrived in the CIDG office, Rama signed the letter inviting him to the police station.

The following day, or on January 7, 1998, the police presented the accused Rama and four other persons from their office in a police line-up. Benjamin and Bryan, and three other witnesses, Rose Anne Cabiguin, Jesus Cabiguin, and Andrew Cabiguin, all pointed to the accused Rama as the man who took Joyce Ann. Pictures were taken of Benjamin and Bryan, and Jesus Ulanday pointing to the accused Rama as the man who took away Joyce Ann.<sup>[8]</sup> Sgt. Moyano and Sgt. Niro took the affidavits of Benjamin and Bryan. Roger Cabiguin's statement was also taken.<sup>[9]</sup>

The accused Rama testified. From 1975 up to 1998, he was a cart pusher at the Magsaysay market in Dagupan City. He would go to work at about 6:30 p.m. and go home at about 9:00 the following morning. Fish vendors would usually hire him to carry their goods in his cart. On January 1, 1998, he was at home in Binmaley, Pangasinan, the whole day. He fetched water, helped his wife wash clothes, and took care of his youngest daughter. At 1:00 p.m. to 5:00 p.m., he went to sleep. He did not go to work in the evening as his customers usually did not sell fish on New Year's Day. The next day, he again stayed in the house. At 6:30 in the evening, he went to work and went home the following morning at 9:00. On January 3, 1998, he went to work as usual. Upon arriving home the next morning, his wife told him that at about 11:00 p.m. the previous night, some policemen went to their house looking for something. On January 4, 1998, at about 11:00 in the evening, two policemen went to his house looking for a baby. They were with an old woman whom Rama later on identified in the courtroom as Diana Laviste, a man, Bryan and Benjamin. He let the group in. They did not find the baby they were looking for. The two children stated that he (Rama) was not the man who took the missing Joyce Ann.

On January 5, 1998, Rama again went to work until 9:00 a.m. He arrived home at about 10:30 a.m. and stayed there until 12:00 noon. He went to the city and watched a movie from 1:00 p.m. to 4:00 p.m. He then proceeded to the Magsaysay market to get his cart. Thereupon, a CIDG member approached him and asked him to go with his group because they were going to ask him some questions. He was asked where he brought the missing Joyce Ann, but he denied taking the child. When he arrived at the CIDG office in Tapuac, the CIDG members asked him to join a police line-up. Bryan and Benjamin were then brought out and they pointed to the accused and said "It's him." At the latter part of his testimony, however, the accused Rama testified that the children said, "It's not him." When shown Exhibit B-1, a picture of two children pointing to him, the accused confirmed that the two children were Bryan and Benjamin. Another unidentified child pointed to the accused Rama. Roxanne who later on testified in court also pointed to him at the line-up. These children were not assisted when they identified him at the police line-up. After investigation, Rama was asked to stay in the CIDG detachment from January 6 to 9, 1998, then he was transferred to Bonuan, then he was again brought back to the CIDG office. Rama testified that he did not know of any reason why Diana Laviste and Roger Cabiguin filed a case against him, why Bryan and Benjamin identified him as the culprit during the police line-up, and why Roxanne identified him in court as the man who took Joyce Ann. He also did not have any grudge against Pierre Torio.

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Violeta Cayabyab also testified in defense of the accused Rama. She was Rama's neighbor in Binmaley, Pangasinan. She testified that on January 1, 1998, the accused Rama was in his house the whole day. On cross-examination, however, she testified that as a vegetable vendor, she would leave Binmaley at dawn and purchase her vegetables in Dagupan at about 3:00 a.m everyday. She would then sell her vegetables in the morning and go home at about 11:00 a.m. She also testified that the accused Rama's family and her family are good neighbors. They consider each other as part of the family. Between the accused Rama and the private complainant, she admitted that she would side with Rama.[11]

Edilberto Aguada took the witness stand. He is a canteen owner and the person from whom the accused Rama had been getting his cart for two years. On January 1, 1998, the accused Rama reported for work in the evening. He also worked in the

evening of January 2, 1998. On cross-examination, however, he admitted that he did not see the accused Rama until evening on January 1, 1998. The same was true of January 2, 1998. He admitted that he did not know what the accused Rama did on those days.<sup>[12]</sup>

SPO4 Reynaldo de Vera of the Dagupan City Police Station also testified. On January 1, 1998, Diana Laviste reported the kidnapping of Joyce Ann Cabiguin. On January 4, 1998, Diana, along with Roger, went back to the police station and informed them that the children who were witnesses to the kidnapping of Joyce Ann lived in Pantal. De Vera, SPO2 Cesar Calimag, Diana, and Roger went to Pantal to pick up the children. The group then went to the house of the accused Rama in Gayaman, Binmaley. When they saw the accused Rama in his house and the two children were asked if he was the man who took away Joyce Ann, they answered that he was not the one. The police asked the children to further examine the face of the accused Rama, but the children confirmed that it was not him. The group then left the house and proceeded back to the police station. De Vera did not make any written record of the identification process. The police likewise no longer followed up the case of the missing Joyce Ann.<sup>[13]</sup>

The trial court gave credence to the prosecution's story. It convicted the accused Rama, viz:

"WHEREFORE, the accused is hereby found guilty beyond reasonable doubt of the offense charged as defined and penalized by Article 267 of the Revised Penal Code, as amended by R.A. No. 7659, and is hereby sentenced to suffer the penalty of reclusion perpetua and to pay the parents of the victim the amount of P100,000.00 as moral damages and another amount of P20,000.00 as temperate or moderate damages. Considering that reclusion perpetua shall be from twenty years and one day to forty years (Art. 27, RA 7659), the period within which he has been placed under detention shall be deducted from his sentence."<sup>[14]</sup>

Hence this appeal by the accused Rama on the following grounds:

I.

THE TRIAL COURT GRAVELY ERRED IN NOT DISMISSING THE CASE DESPITE SEVERAL INSTANCES WHEREIN THE PROSECUTION WAS NOT ABLE TO PRESENT OR CONTINUE THE PRESENTATION OF ITS EVIDENCE.

II.

THE TRIAL COURT ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF KIDNAPPING.

We first deal with the issue of the prosecution's repeated failure to present evidence. On April 20, 1998, due to the absence of the public prosecutor, the lower court issued an order resetting the hearing to April 30 and May 4, 1998 with a warning to the prosecution that if it fails to present its witness without any reason, the case would be dismissed.<sup>[15]</sup> The hearing scheduled on April 30, 1998, was, however, cancelled because the judge was on leave. On May 4, 1998, the prosecution witness did not appear. The court gave the prosecution another chance