

## SECOND DIVISION

[ G.R. No. 126024, April 20, 2001 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LITO  
UBONGEN Y FELWA, ACCUSED-APPELLANT.**

### D E C I S I O N

**QUISUMBING, J.:**

On appeal is the decision of the Regional Trial Court in Trinidad, Benguet, Branch 63, in Criminal Case No. 94-CR-2097, finding appellant Felito Ubongen y Felwa guilty beyond reasonable doubt of the crime of kidnapping and serious illegal detention and sentencing him to suffer the penalty of *reclusion perpetua* and to pay the costs of the suit.<sup>[1]</sup> The facts of the case pieced together from the testimony of Rosalina Posadas, the victim's mother, and other prosecution witnesses are as follows:

Rose Ann Posadas was three years and ten months old at the time of the alleged kidnapping. She lived in a house *cum* beauty parlor with her mother Rosalina at A-56 Poblacion, La Trinidad, Benguet. Her mother testified that on April 17, 1994 at about 6:00 P.M., Rose Ann went to the parlor and told her that an old man invited her to go with him to buy a banana and an orange. Since Rosalina was then attending to a customer, Rosalina didn't bother to check on the old man and just told her daughter to sit behind her. A few minutes later, she noticed her daughter was nowhere in sight.

She inquired around and sought the help of her neighbors. They reported Rose Ann's disappearance to the police. Two search teams in two cars were organized. A certain Rosaline Fontanilla, a child who lived in the neighborhood, informed the searchers that she saw Rose Ann with an old man walking towards Buyagan Road. Rosaline thought the old man was Rose Ann's grandfather.

The searchers drove towards Buyagan road. After 45 minutes, the first car reached Taltala's Store located one kilometer from the beauty parlor. Garcia, one of the searchers, entered the store and found Rose Ann with the old man who was later identified as herein appellant Felito Ubongen y Felwa. When asked why he had the child with him, Felito just kept silent. While on the way to the police station at La Trinidad, Philip Leygo, Jr., one of the searchers, allegedly slapped Felito.

At the police station, Rosalina executed a sworn statement. Thereafter Felito was charged with kidnapping.

The Information filed by the Prosecutor against him reads:

The undersigned accuses LITO UBONGEN y FELWA of the crime of Kidnapping, defined and penalized under Article 267 of the Revised Penal

Code, committed as follows:

That on or about the 17<sup>th</sup> day of April, 1994, at Poblacion, Municipality of La Trinidad, Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously kidnap one ROSE ANN POSADAS, a minor, three (3) years of age, and take her to Buyagan, La Trinidad, Benguet, without the knowledge and consent, or permission of her parents.<sup>[2]</sup>

After arraignment wherein appellant pleaded not guilty, trial ensued.

Aside from Rosalina, three other witnesses testified during the hearing. Rodolfo Garcia, a storekeeper who helped in the search for Rose Ann, corroborated the story of Rosalina. He added that he was a member of the CVO or Civilian Volunteer Organization and upon seeing appellant, he and his companions invited the latter to the police station. He said that appellant did not resist arrest. However, Garcia stated that they had no warrant of arrest at the time they invited appellant to the police station.

Phillip Leygo, Jr., a laborer who was with witness Garcia and who also helped in the said search for Rose Ann, corroborated Garcia's story. However, Leygo admitted that he and his companions slapped appellant,<sup>[3]</sup> a matter denied by Garcia.

SPO2 Mariano Abansi received the report on the missing Rose Ann and her alleged rescue. Abansi testified that appellant when approached, "could not give valid reasons with regards to (sic) the kidnapping incident and was observed to be under the influence of liquor."<sup>[4]</sup> In his defense, appellant testified and gave his version of the incident as follows:

On April 17, 1995 at about 5 P.M., appellant reached the junction at the foot of the capitol building. He meant to take a jeepney to his home but changed his mind and decided to walk. On his way, he noticed a child sitting by the sidewalk. He approached her and told her not to sit where she was so that she would be hit by a passing vehicle. He asked her what her name was, who her parents were, and where she lived. She didn't answer but only kept pointing towards Buyagan.<sup>[5]</sup> When he offered to accompany her to her house, she started to walk in front of him. Along the way he asked three strangers if they knew the child. When it started to drizzle, they sought shelter in Taltala's Store where the searchers met them. *En route* to the police station, he tried to explain that he merely chanced upon the child and wanted to help the child reach her home, but the three men on board the police car started to slap him. While he was detained in the police station, a certain Sgt. Salvador called for the brother of appellant. When the brother arrived he noticed that appellant's face and eyes were swollen and his nose was bleeding. Appellant told his brother that he had been mauled. The following day, appellant was brought to the provincial jail. A lawyer met with him four days later.

Pedro Ubongen, a brother of appellant, testified that indeed he visited appellant in jail when a certain Sgt. Salvador of the La Trinidad Police Station called him to tell him that his brother was in jail. Pedro testified that when he saw his brother, the

latter's eyes and face were swollen and his nose was bleeding. He added that he did not think of seeking medical attention for his brother because he was "taken aback."

[6] On March 2, 1995, the prosecution called on Rose Ann to determine if she was competent to testify. From her responses, the trial court ruled out taking her testimony. The trial court observed that at three years old, she had no perception and impression of what really happened.[7] On June 13, 1996, the trial court rendered its aforesaid decision.

Now, before us, appellant avers that:

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF KIDNAPPING AND SERIOUS ILLEGAL DETENTION DESPITE INSUFFICIENCY OF EVIDENCE.

The sole issue is whether or not the prosecution witnesses are credible and the evidence sufficient to prove appellant's guilt beyond reasonable doubt.

Appellant insists that he did not kidnap Rose Ann nor did he have any intention to detain her. He only wanted to help and secure the safety of a child whom he chanced upon on the road. According to him, the child could not tell him where she lived, though the child kept pointing to the direction of Buyagan when he asked her where she lived. After failing to get that information from others, they ended in the store where the searchers found them. Appellant argues that Rosalina's testimony that Rose Ann told her he offered the child fruits, to entice her to go with him, should not be given credence since it is only hearsay, and it has no probative value considering that even the court ruled that the child was too young and incompetent to testify. Since the prosecution could not establish appellant's intent, he concludes that the charge of kidnapping against him could not stand.

The Office of the Solicitor General, for its part, contends that the findings of the trial court as to the credibility of witnesses must be given great respect, absent findings that the trial court might have erroneously misappreciated, misapplied or overlooked some facts of importance which could change the outcome of the case. The OSG stresses that Rosalina had no reason to falsely testify against appellant and asks that we note that Rose Ann was found by appellant very close to her house; that appellant did not inquire from neighbors; nor did he deliver the child to the nearby police station, implying that appellant had intended to waylay and kidnap the child.

It is well-entrenched rule that factual findings of the trial courts, especially when they concern the appreciation of testimony of witnesses, are accorded great respect. However, an exception is made when the judgment is based on a misapprehension of facts, so that this Court may choose to substitute its own findings.[8] The prosecution would make us accept that appellant enticed Rose Ann to go with him with intent to kidnap the child, depriving her of her liberty, under false inducement without which she would not have gone with appellant. But we find the testimony of the mother that her child told her that an old man offered to buy the child fruits is patently hearsay. Note that the information allegedly came from the mouth of a three-year-old whom the trial judge had declared incompetent to testify in court. Familiar and fundamental is the rule that hearsay testimony is