

## SECOND DIVISION

[ G.R. No. 113685, June 19, 1997 ]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
THEODORE BERNAL, JOHN DOE AND PETER DOE, ACCUSED-  
APPELLANTS.**

### D E C I S I O N

**ROMERO, J.:**

Accused-appellant Theodore Bernal, together with two other persons whose identities and whereabouts are still unknown, were charged with the crime of kidnapping in Criminal Case No. 26658-92 of the Regional Trial Court of Davao City, Branch 10, under an information<sup>[1]</sup> dated July 13, 1992, which reads as follows:

“That on or about August 5, 1991, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, armed with hand guns, conspiring, confederating and cooperating together and helping one another, and by means of force, violence, intimidation and threat, wilfully, unlawfully, and feloniously grabbed and kidnapped one Bienvenido Openda, Jr., while the latter was drinking liquor with his friends at Bolton Isla, this City and was brought, handcuffed and carried away using a PU then fled together with Bienvenido Openda, Jr., thereby depriving the said Bienvenido Openda, Jr. of his liberty against his will.

CONTRARY TO LAW.”

A plea of not guilty having been entered by Bernal during his arraignment, trial ensued. The prosecution presented four witnesses.<sup>[2]</sup> On the other hand, Theodore Bernal testified for his defense.

The material facts and events as found by the court a quo are:

It appears that on August 5, 1991, around 11:30 in the morning, while Roberto Racasa and Openda, Jr. were engaged in a drinking spree, they invited Bernal, who was passing by, to join them.

After a few minutes, Bernal decided to leave both men, apparently because he was going to fetch his child. Thereafter, two men arrived, approached Openda, Jr., and asked the latter if he was “Payat.”<sup>[3]</sup> When he said yes, one of them suddenly pulled out a handgun while the other handcuffed him and told him “not to run because they were policemen” and because he had an “atraso” or a score to settle with them. They then hastily took him away. Racasa immediately went to the house of Openda, Jr. and informed the latter’s mother of the abduction.

The theory of the prosecution, as culled from the testimony of a certain Salito Enriquez, tends to establish that Openda, Jr. had an illicit affair with Bernal's wife Naty and this was the motive behind the former's kidnapping. Until now, Openda, Jr. is still missing.

On the other hand, the defense asserts that Openda, Jr. was a drug-pusher arrested by the police on August 5, 1991, and hence, was never kidnapped.<sup>[4]</sup>

On December 10, 1993, the court a quo rendered judgment<sup>[5]</sup> finding Bernal "guilty beyond reasonable doubt of the crime of kidnapping for the abduction and disappearance of Bienvenido Openda, Jr. under Article 267 of the Revised Penal Code and hereby sentences him to reclusion perpetua and to indemnify his mother Teresita Openda in the amount of P50,000.00 for her mental anguish and moral suffering."<sup>[6]</sup>

Bernal assails the lower court for giving weight and credence to the prosecution witnesses' allegedly illusory testimonies and for convicting him when his guilt was not proved beyond reasonable doubt.

We find no compelling reason to overturn the decision of the lower court.

The Court notes that up to this day, neither the victim nor his body has been found. This, however, does not preclude the Court from ruling on the merits of the case. In kidnapping, what is important is to determine and prove the fact of seizure, and the subsequent disappearance of the victim will not exonerate an accused from prosecution therefor. Otherwise, kidnappers can easily avoid punishment by the simple expedient of disposing of their victims' bodies.

Article 267 of the Revised Penal Code provides thus:

*"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 five 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, 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."

For the charge of kidnapping to prosper, the deprivation of the victim's liberty, which

is the essential element of the offense, must be duly proved. In the case at bar, Bernal indisputably acted in conspiracy with the two other unknown individuals "as shown by their concerted acts evidentiary of a unity of thought and community of purpose."<sup>[7]</sup> Proof of conspiracy is perhaps most frequently made by evidence of a chain of circumstances only.<sup>[8]</sup> The circumstances present in this case sufficiently indicate the participation of Bernal in the disappearance of Openda, Jr.

The prosecution has proffered sufficient evidence to show that, indeed, Bernal, together with his two companions, abducted Openda, Jr. on August 5, 1991. A certain Adonis Sagarino, a childhood friend and neighbor of the victim, testified that he saw Bernal at the billiard hall at about 11:00 a.m. with his two companions and overheard him dispatching one of them to "Tarsing's Store" to check if a certain person was still there. This person later turned out to be Openda, Jr. He added that after the latter's presence was confirmed, the three men left the billiard hall. Minutes later, Openda, Jr., already handcuffed, passed by the billiard hall with Bernal's companions.

Equally important is the testimony of Roberto Racasa, a resident of Bucana, Davao City who knew both Bernal and the victim, the former being his neighbor and compadre. He narrated that he and the victim were drinking at "Tarsing's Store" on that fateful day when Bernal passed by and had a drink with them. After a few minutes, Bernal decided to leave, after which, two men came to the store and asked for "Payat." When Openda, Jr. confirmed that he was indeed "Payat," he was handcuffed and taken away by the unidentified men.

Likewise, a certain Salito Enriquez, a tailor and a friend of Openda, Jr., testified that sometime in January 1991, Openda, Jr. confided to him that he and Bernal's wife Naty were having an affair. One time, Naty even gave Openda, Jr. money which they used to pay for a motel room. He advised Naty "not to do it again because she (was) a married woman."<sup>[9]</sup> Undoubtedly, his wife's infidelity was ample reason for Bernal to contemplate revenge.

Motive is generally irrelevant, unless it is utilized in establishing the identity of the perpetrator. Coupled with enough circumstantial evidence or facts from which it may be reasonably inferred that the accused was the malefactor, motive may be sufficient to support a conviction.<sup>[10]</sup> Openda, Jr.'s revelation to Enriquez regarding his illicit relationship with Bernal's wife is admissible in evidence, pursuant to Section 38, Rule 130 of the Revised Rules on Evidence, viz.:

"Sec. 38. *Declaration against interest.* -- The declaration made by a person deceased, or unable to testify, against the interest of the declarant, if the fact asserted in the declaration was at the time it was made so far contrary to declarant's own interest, that a reasonable man in his position would not have made the declaration unless he believed it to be true, may be received in evidence against himself or his successors-in-interest and against third persons."

With the deletion of the phrase "pecuniary or moral interest" from the present provision, it is safe to assume that "declaration against interest" has been expanded to include all kinds of interest, that is, pecuniary, proprietary, moral or even penal.

<sup>[11]</sup>

A statement may be admissible when it complies with the following requisites, to wit: "(1) that the declarant is dead or unable to testify; (2) that it relates to a fact against the interest of the declarant; (3) that at the time he made said declaration the declarant was aware that the same was contrary to his aforesaid interest; and (4) that the declarant had no motive to falsify and believed such declaration to be true."<sup>[12]</sup>

Openda, Jr., having been missing since his abduction, cannot be called upon to testify. His confession to Enriquez, definitely a declaration against his own interest, since his affair with Naty Bernal was a crime, is admissible in evidence<sup>[13]</sup> because no sane person will be presumed to tell a falsehood to his own detriment.<sup>[14]</sup>

In his brief, Bernal highlights supposed inconsistencies in Sagarino's testimony. He alleges that the latter could not have seen the actual handcuffing because "Tarsing's Store" could not be seen from the billiard hall. Sagarino's testimony shows that after Bernal and two others left the billiard hall, the latter came back with Openda, Jr., already handcuffed.

"Q The three of them together?

A Yes, sir.

Q And what about you, where did you stay?

A I just stayed in the billiard hall.

Q While you stay (sic) in the billiard hall, after a while, what did you see next?

A The two came back.

Q Who were these two whom you said who (sic) came back?

A The companions of Bernal.

Q And what did these two men do?

A They apprehended Jun-jun Openda."<sup>[15]</sup>

From this proceeding, Bernal wrongly inferred that Sagarino actually saw Openda, Jr. arrested. The lower court correctly rejected this argument by holding that:

"But Sagarino has not said that he saw the actual handcuffing of Openda, Jr. at the Tarsing or Tarcing store. On the contrary, he says that he had not known who the person was that Bernal referred to when he requested one of this two companions to go see if that person was still there at the store, and that he came to know that he was Openda, Jr. only after he saw Openda, Jr. pass by the billiard hall already handcuffed, with the two unidentified companions of Bernal with him, on their way out to the main road."<sup>[16]</sup>

If one had a direct view of "Tarsing's Store" from the billiard hall, Bernal would not have requested his companion to check if Openda, Jr. were still there drinking with Racasa. Another discrepancy pointed out by Bernal arose from the testimonies of Racasa and Sagarino. Racasa, on cross-examination, stated: