

## SECOND DIVISION

[ G.R. No. 112429-30, July 23, 1997 ]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
MICHAEL NUNEZ Y SEVILLA, ACCUSED. RODOLFO CAYETANO Y  
PANGILINAN, ACCUSED-APPELLANT.**

### D E C I S I O N

**ROMERO, J.:**

Stealing with intent to gain, from being a simple, uncomplicated act in times past, albeit unlawful, has evolved into more elaborate schemes guaranteed to filch money from a person with the least risk of being caught on the part of the felon.

Those with grandiose designs of victimizing the wealthy have, with alarming frequency, resorted to kidnapping, snatching not only their intended victims, but the families of the latter, as well. Within the past few years, so steep has been the incidence in the crime of kidnapping for ransom that on December 31, 1993, Republic Act No. 7659 went into effect, categorizing the same as a heinous crime punishable by death.<sup>[1]</sup>

In the instant case which occurred before said law was passed, two high school lads were duped by the accused into going with him. One was to be used for purposes of extricating ransom from his businessman father. But the other, the son of impecunious parents, was subsequently bound hands and feet, gagged and drowned in a river like a rat, with absolutely no chance of survival.

The facts of this shocking case are as follows:

Accused-appellant Rodolfo Cayetano, together with his co-accused Michael Nunez (Nunez) and Ismael Santos alias "Ka Tony," were charged with the crimes of Kidnapping for Ransom (Criminal Case No. 12778-MN)<sup>[2]</sup> and Kidnapping with Murder (Criminal Case No. 12779-MN).<sup>[3]</sup> Only accused-appellant and Nunez were convicted and accordingly sentenced to reclusion perpetua and to pay damages. Accused Santos remains at large.

The prosecution was able to establish that at around 1:15 in the afternoon of January 21, 1993 inside the compound of Immaculate Concepcion Parochial School, accused Nunez persuaded the victim, fourteen-year old high school student Joseph Rivera, to go with him on the pretext that he would turn over the proceeds of the sale of a gun to the latter's father. He was likewise able to persuade Joseph Rivera to bring along the latter's classmate, another fourteen year-old student Neil Patrick Quillosa on the pretext that Neil would be Joseph's companion in going home later.

The two boys were brought to a nipa hut in the middle of a fishpond in Dampalit, Malabon to await a certain "Ka Tony." As the two boys attempted to go home, they

were told to go back as "Ka Tony" was coming. When they were asked in jest about their preference if they were to be killed either with a knife or with a gun, Neil answered that he would prefer a gun pointed at his head.

Thereafter, accused Nunez told them that "Ka Tony" would not enter the hut unless they were blindfolded and tied. They protested but were assured by accused Nunez that they would not be harmed. Both victims' hands and feet were tied with wire and rope.

Accused-appellant came and checked if the two victims were tied securely, after which, accused Nunez played a tape demanding three million pesos in five hundred and one thousand peso bills from the parents of Rivera in exchange for his release. Rivera was likewise made to record his own voice pleading to his parents to pay the ransom demanded. Thereafter, accused Nunez, who was then in possession of a gun, fired the same towards the window, hitting the cassette recorder.

The victims were then brought to the river by accused and accused-appellant. Accused Nunez dragged Neil by the neck towards the middle of the river and left him there to drown while accused-appellant stood guard over Rivera. Quilloso's cries for help and Rivera's pleas for their captors to save Quilloso went unheeded.

In the nipa hut, Rivera was made to record his own voice saying, "Mommy, Daddy, para makilala ninyo na sanay silang pumatay, pinatay na nila si Neil." Thereafter, he managed to untie his feet and asked accused-appellant to remove the wire around his hands on the assurance that he would not escape. The following morning, accused Nunez went to deliver the tape to Rivera's house.

While accused-appellant was busy cutting grass near the river, Rivera escaped and proceeded to the house of accused Nunez where he called up his grandmother. Thereupon, he was fetched by his grandmother and with his father, they proceeded to the Malabon Police Station and reported the kidnapping. The policemen who responded recovered the cassette recorder from the nipa hut but failed to find both accused and accused-appellant.

Neil Patrick Quilloso's body was recovered on January 23, 1993 at Chungkang River, Malabon with both hands and feet still bound with wires and his mouth gagged. Dr. Juanito Sacdalan testified that the cause of death was asphyxia due to strangulation and that the wire tied around the hands of the victim was the same wire tied around the neck.

Accused-appellant, however, denied the accusation against him claiming that on the day he arrived at the nipa hut, accused Nunez poked a gun at him and threatened to kill him if he squeals. He also claimed that accused Nunez recorded something on a cassette and he saw two children with him whose hands and feet were tied with wires. Thereafter, accused Nunez instructed one of the children, whom he came to know during the trial of this case to be Joseph Rivera, to record something which he did not hear as accused Nunez ordered him to keep his distance. He averred that when Nunez brought the children to the river, he was just watching and following them; that from his position atop the paddy, he saw accused Nunez in the middle of the river release one of the children, whom he came to know during the trial to be Neil Patrick Quilloso, as a result of which the latter drowned.

The following morning, accused Nunez told him to guard Rivera after which the former left. However, he claimed that he left Rivera inside the nipa hut to cut grass around the fishpond. When accused Nunez returned and learned from him that Rivera had left, the former likewise disappeared. Moments later, accused Nunez' father arrived and told him that he would get the cassette. He was likewise told to leave as policemen will be coming. As a result, he left and went to his grandmother's place, after which he was surrendered by his uncle to Vice President Joseph Estrada. He likewise claims that he does not know how to read and that he can write only his name and count up to fifty only. He claims to know Michael Nunez as he usually sees him when he buys "kakanin" from the latter's family.

The lower court in a joint decision<sup>[4]</sup> convicted both accused and accused-appellant with Kidnapping for Ransom and accordingly sentenced both to reclusion perpetua. Both were also found to have committed the complex crime of Kidnapping with Murder and sentenced each of them to suffer the penalty of reclusion perpetua. They were also ordered to indemnify the heirs of the victims in the amount of P50,000.00, to pay actual damages in the amount of P41,700.00 and the sum of P50,000.00 as moral damages, as well as the costs of the suit.

Hence, this appeal. Accused-appellant claims that the lower court erred:

1. In not finding that accused-appellant's low level of intelligence/state of imbecility exempts him from any criminal liability.
2. In not finding that the records of the case are not sufficient to hold a finding of conspiracy against the accused-appellant.
3. In not acquitting the accused by reason of an exempting circumstance of uncontrollable fear of an equal or greater injury.

In the first submission of error, accused-appellant claims that he possesses a very low level of intelligence as revealed in his direct testimony and cross-examination, indicating a mental age of between six (6) to ten (10) years of age. To prove his imbecility, he cited his act of cutting grass when he should be guarding his victim. As such, he should be exempted from criminal liability under the Revised Penal Code. Even assuming that he is liable, the lower court should have proceeded against him pursuant to the Child and Youth Welfare Code.

In his second submission, accused-appellant declares that he could not have conspired with accused Nunez for the following reasons: (1) accused-appellant would rather cut grass than guard his victim, as indicative of his low mental age; (2) the act of kidnapping itself was already executed and perfected by accused Nunez when the accused-appellant arrived in the nipa hut several hours after the kidnapping; (3) the testimonies of private complainant Joseph Rivera and the accused-appellant were consistent with the fact that accused-appellant was nowhere near accused Nunez when he was recording the alleged demand for payment.

In his third submission, accused-appellant testified that accused Nunez poked a gun at him and threatened him with death; so he had no alternative but to follow the orders of accused Nunez, specially considering his mental capacity.

The Court is not persuaded by such remonstrations. The defense counsel's attribution of imbecility is not supported by evidence. Imbecility, one of the exempting circumstances under Article 12 of the Revised Penal Code, is defined as feeble-mindedness or a mental condition approaching that of one who is insane. It is analogous to childishness and dotage. An imbecile, within the meaning of Article 12, is one who must be deprived completely of reason or discernment and freedom of will at the time of committing the crime.<sup>[5]</sup> He is one who, while advanced in age, has a mental development comparable to that of children between two and seven years of age.<sup>[6]</sup>

Accused-appellant's act of cutting grass rather than guarding his victim could hardly be indicative of imbecility. Rather, it may be considered as negligence but definitely not childishness or even that of one completely deprived of reason or discernment and freedom of the will. In fact, accused-appellant admitted on cross-examination that he can tell what is right and what is wrong.<sup>[7]</sup> Assuming *arguendo* that accused-appellant is an imbecile or a feeble-minded person, in the case of *People v. Formigones*,<sup>[8]</sup> it was held that feeble-mindedness is not exempting, because the offender could distinguish right from wrong. An imbecile or an insane cannot. In any case, Article 800 of the Civil Code provides that "the law presumes that every person is of sound mind, in the absence of proof to the contrary." The allegation of insanity or imbecility must be clearly proved. Moreover, the law presumes all acts to be voluntary. It is improper to presume that acts were executed unconsciously."<sup>[9]</sup>

Neither will this Court subscribe to accused-appellant's third submission that he was prompted to act the way he did due to uncontrollable fear of an equal or greater injury. Accused-appellant's claim that accused Nunez poked a gun at him and threatened him with death is belied by testimonial evidence. Granting that accused-appellant was forced to do what he did on account of fear, duress or intimidation such that he could not possibly have any opportunity to defend himself in equal combat, testimonial evidence show that he had at least four opportunities to escape. The first was when accused Nunez allegedly brought the two victims to the river while he remained on the rice paddy.<sup>[10]</sup> The second was when accused Nunez and the victim Joseph Rivera were sleeping in the nipa hut.<sup>[11]</sup> The third was when accused Nunez asked him to look for the necklace of Neil Patrick Quillosa on the river bank while the former was in the nipa hut together with the victim Joseph Rivera.<sup>[12]</sup> The fourth was when accused Nunez left him and the victim the following morning to deliver the taped or recorded ransom demand to the victim's family.<sup>[13]</sup> Accused-appellant could have easily taken advantage of any of these opportunities considering that only accused Nunez threatened him. By not availing of these chances to escape, his allegation of fear or duress becomes incredible under the circumstances.

In *People v. Villanueva*,<sup>[14]</sup> this Court stated that:

"Duress, force, fear or intimidation to be available as a defense, must be present, imminent and impending, and of such a nature as to induce a well-grounded apprehension of death or serious bodily harm if the act is not done. A threat of future injury is not enough. (16 C.J., 91).

To be available as a defense, the fear must be well-founded, an