

THIRD DIVISION

[G.R. No. 110097, December 22, 1997]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ARNULFO ASTORGA, ACCUSED-APPELLANT.
D E C I S I O N**

PANGANIBAN, J.:

Actual detention or "locking up" is the primary element of kidnapping. If the evidence does not adequately prove this element, the accused cannot be held liable for kidnapping. In the present case, the prosecution merely proved that appellant forcibly dragged the victim toward a place only he knew. There being no actual detention or confinement, the appellant may be convicted only of grave coercion.

The Case

The foregoing principle is used by this Court in resolving the appeal of Arnulfo Astorga challenging the March 31, 1993 Decision^[1] of the Regional Trial Court of Tagum, Davao convicting him of kidnapping.

In an Information^[2] dated March 24, 1992 and docketed as Criminal Case No. 8243, Appellant Arnulfo Astorga was charged with violation of Article 267, paragraph 4 of the Revised Penal Code, allegedly committed as follows:

"That on or about December 29, 1991 in the Municipality of Tagum, Province of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent and by means of force, did then and there wilfully, unlawfully and feloniously kidnap Yvonne Traya, a minor, 8 years of age, thereby depriving her of her liberty against her will, to the damage and prejudice of said offended party."

Arraigned on February 24, 1993, Appellant Astorga, duly assisted by his counsel,^[3] pleaded not guilty to the charge. Trial on the merits ensued. The dispositive portion of the assailed Decision^[4] reads as follows:^[5]

"WHEREFORE, premises considered, the guilt of accused ARNULFO ASTORGA having been proven beyond reasonable doubt, pursuant to Article 267 paragraph 4 of the Revised Penal Code, [he] is hereby sentenced to Reclusion Perpetua to be served at the National Penitentiary, [Muntinlupa]."

This appeal was filed directly with this Court in view of the penalty imposed.^[6]

The Facts

Evidence for the Prosecution

The evidence for the prosecution was narrated in the Decision of the trial court, as follows:^[7]

"Prosecution witnesses extant from their testimonies categorically assert that around 6:30 P.M. children of neighbors were near the store of the grandparents of Yvonne Traya.

Incidentally, there was a brown out that evening hence candle was used. The daughter and nephew of her aunt Bebeth were quarelling [sic] about the possession of a flashlight until the glass got lost. Accused or 'Boy' Astorga, went near and asked her daughter Jane what happened. Glenda or Bebeth grabbed her baby and went home.

Accused told Yvonne to go with him to buy candy. She did not answer and accused immediately grabbed and hold [sic] her hand. Accused placed his hand on her shoulder and covered his [sic] mouth.

Yvonne was only eight (8) years old on 29 December 1991 when she was brought by the accused allegedly to buy candy. Some stores were closed; others were opened. Accused never went inside the store to buy candy. Instead she [sic] held and dragged Yvonne until they went inside the compound of Maco Elementary School. They were walking inside the perimeter fence, [while the accused was] holding closely the child. Later, there being no person around the gate, accused brought her out to the highway and walked towards the direction of Tagum.

Yvonne stays with her grandparents and so with her parents at Sitio Binuangan, Maco. She asked him where they were going and accused answered that they were going home. She told him that they were already on the opposite direction because her grandparent's house is at Binuangan, while their route was going towards Tagum. Indeed, it was an opposite direction. Notwithstanding the assertion of Yvonne that they were on the wrong direction, accused placed his hands on her shoulder and dragged her. She cried and protested that she must go home. Accused did not heed her plea and while she was forced to walk she continued crying.

While accused and Yvonne were walking in the situation as described, somewhere near the Luponlupon bridge they met some group of men. Having met on their opposite direction, the two, were noticed by the group of youngsters. The group were bound to Maco Catholic Church to see a drama. Having met the two and as noticed by the group accused keep [sic] on looking back at them. The group were suspicious about the man who was bringing a child. The group decided to follow them. Accused hurriedly walked fast with Yvonne, and to prevent from being

overtaken, he carried the victim and ran. They were chased. After a distance of half a kilometer they were overtaken.

Edwin Fabila declared that Jonathan, one of his companions with others in chasing, asked the accused where they were bound. He answered towards Binuangan. The group noticed something suspicious because their destination was already towards Tagum which is an opposite direction to Binuangan.

When asked who is the child, accused answered Traya. Jonathan one of those who chased knew the family. He got from the accused Yvonne who showed some resistance. Nevertheless, the group brought her home at Binuangan. Likewise, accused was also brought by them to Yvonne's home. The house of accused and Yvonne were five (5) meters away. Accused wanted to talk to the parents of the victim, but he was driven by her aunt and advised [sic] to leave otherwise he will be stabbed by Yvonne's father. He left and never talked with the family."

Evidence for the Defense

The facts as viewed by the defense are presented in the Appellant's Brief,^[8] dated December 10, 1993:

"The defense consisted of the testimonies of Arbeth Nalcot and the accused-appellant himself.

Arbeth Nalcot, a resident of Tagum, Davao, testified tht [sic] in the afternoon of December 29, 1991, she was at the Municipal Hall of Maco, Davao. She saw Astorga with two (2) companions. They were drinking Red Horse and were already drunk. When they finished drinking, she went with Astorga to the latter's house. (TSN, pp. 7-8 and 18, March 23, 1993). The house of Astorga is about 5 meters away from the house of the complainant[.] Yvonne came and asked money from the accused to buy candy. The two went together and she was left behind. She told them to hurry up. When they failed to return, she looked for them, but because it was already dark, she did not find them. She went back to the house of the accused. (Ibid., pp. 10-11).

Arnulfo Astorga, a resident of Maco, Davao and a gold panner testified that 'at around 1:00 P.M. of December 29, 1991, he arrived at Maco from Tagum. Upon arrival his two friends, Vicvic and Anding were already at his home. They decided to drink, hence they proceeded to Adecor Cottage and drank two gallons of Tuba. At around 2:00 P.M., they were at the market place and drink beer grande. At 5:00 P.M. on the same day, the three proceeded near the municipal hall and with some persons, they again continued their drinking spree taking up Red Horse wine'. (Decision, p. 3).

At about 6:00 P.M., he was already drunk and he went home. Yvonne approached him and asked him money to buy candy. He told her that they will buy. They were not able to buy because the two stores where they went were already closed. (TSN, pp. 12 and 13, March 24, 1993). He took her for a stroll for his drunkenness [sic] to subside. They walked inside the school premises which was about 20 meters away

from the second store. They went out of the school compound going towards Lupon-lupon because due to his drunkenness [sic], he thought it was the way towards their house. (Ibid, pp. 14-15) They reached Lupon-lupon bridge, crossed it twice thinking that it was the bridge near the municipal hall. After reaching Purok, they met several persons, he was asked where (sic) they were heading, and he answered to Tagumpay, but he was told that they [sic] way was already going to Tagum. He requested those persons to guide them to Tagumpay. They asked him who was the child he was carrying. He answered that it was Traya's child. (Ibid, pp. 16-17). He was carrying the child because he was already crying as she already wanted to go home. The group of persons, men and women, guided them. Yvonne was being held by the women. They arrived at Yvonne's house. He talked to the auntie of the child and told her that he would converse with her but he was advised to go away because the father of Yvonne might hack him. So he went home. (Ibid, pp. 18-19)"

The Trial Court's Ruling

The trial court justified its finding of guilt with the following discussion:^[9]

"Accused insisted [that] he was already drunk hence when he took Yvonne to buy candy, he strolled with her so that his drunkenness be subsided.

All these defense version was rebutted by Yvonne when she categorically declared that she did not smell liquor on the accused.

His defense of intoxication has no leg to stand [on].

Consider these facts.

Never did he present Vicvic and Anding to corroborate that he was intoxicated that afternoon and at dusk because of their drinking spree from 1:00 P.M. until 5:00 P.M.

He did not rebut the testimonies of Fabila that when they noticed his actions suspicious bringing with him a child, he walked fast dragging Yvonne. When he noticed that the group of youngsters were chasing him, he carried Yvonne and ran until they covered a distance of half a kilometer in chasing them, until they had overtaken him.

If he was that intoxicated, being under stupor and weakened by liquor, he could not ran that fast carrying Yvonne for half a kilometer.

Moreover, Yvonne categorically in straight forward testimony asserted that she did not smell liquor on the accused.

Accused, naivety [sic], that because of his intoxication, he got lost and was not able to proceed with Yvonne to Binuangan was a shallow afterthought.

It must be recalled that Yvonne told him they were already going at opposite direction from home. Instead they were heeding towards

Tagum. Accused did not change course.

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Again, not only force was employed in having Yvonne as captive by dragging, slapping her mouth and was holding her tight, but accused also used psychological means of scaring her about a red eyed ghost.

Through this means and efforts, Yvonne was deprived of her liberty and was by force prevented to go home to her parents.

On rebuttal, Yvonne denied that she asked money from accused to buy candy. She also denied as testified by defense witness Arbeth Nalcot that she went to the house of the accused on 29 December 1991 or on any other dates to ask money from Astorga for candy.

Defense evidence are [sic] punctured with unbelievability in his off tangent and incredible theory of drunkardness. His alleged being lost in the direction of Binuangan in spite of Yvonne's insistence and that of the person they met that he was on the wrong way considering that there are no criss crossing roads except the highway, is preposterous."

The Issues

Appellant imputes the following errors to the trial court:^[10]

"I

The trial court erred in giving credence to the testimonies of the prosecution's witnesses which were replete with inconsistencies and contradictions.

II

The trial court erred in convicting the appellant despite the fact that Yvonne Traya was not detained, locked-up or deprived of her liberty.

III

The trial court erred in convicting the appellant despite the fact that appellant had no motive to kidnap Yvonne Traya."

In the main, appellant challenges the credibility of the prosecution witnesses and the legal characterization of the acts imputed to him.

The Court's Ruling

The appeal is partly meritorious. Appellant should be convicted only of grave coercion, not kidnapping.

First Issue: Credibility of Prosecution Witnesses