

## THIRD DIVISION

[ G.R. No. 117873, December 22, 1997 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MERCY  
SANTOS Y ENTIENZA, ACCUSED-APPELLANT.  
D E C I S I O N**

**PANGANIBAN, J.:**

Even though the extrajudicial confession is excluded for having been extracted in violation of the Constitution, the Court holds that appellant may nonetheless be convicted on the basis of the remaining evidence clearly showing her liability for kidnapping. The Court also reiterates these rules: (1) the assessment of the credibility of witnesses and their testimonies is best left to the discretion of the trial court; and (2) bare denials cannot overturn the positive and straightforward testimonies of witnesses who are not shown to have any ill motive in testifying against the accused.

**The Case**

The foregoing summarizes the Court's ruling on this appeal from the Decision,<sup>[1]</sup> dated October 3, 1994, of the Regional Trial Court of Quezon City, Branch 96, in Criminal Case No. Q-93-42733, convicting Appellant Mercy Santos y Entienza of kidnapping.

In the Information dated March 25, 1993 filed by Assistant Quezon City Prosecutor Medardo H. Palomaria, appellant was charged as follows: <sup>[2]</sup>

"That on or about the 8th day of March, 1993, in Quezon City, Philippines, the abovenamed accused, conspiring, confederating with four (4) other persons whose true names, identities, whereabouts and other personal circumstance have not yet been ascertained and mutually helping one another, did, then and there wilfully, unlawfully and feloniously kidnap one CHARMAINE MAMARIL, a female, a minor, 7 years of age, represented herein by her mother, RAQUEL MAMARIL, from her school at Kaligayahan Elementary School located at Rivera Compound, Barangay Kaligayahan, Novaliches, Quezon City, and brought her to a house at No. 8 G Araneta Avenue, Sto. Domingo, Quezon City, on March 13, 1993, thereby illegally detaining her for five (5) days, to her damage and prejudice."

With the assistance of Atty. Noel Ocampo of the Public Attorney's Office, she pleaded "not guilty" to the charge during the arraignment.<sup>[3]</sup> A pre-trial conference was conducted on June 2, 1993, but no stipulation or agreement was arrived at.<sup>[4]</sup> After trial, the court a quo rendered the assailed Decision, the decretal portion of which reads:<sup>[5]</sup>

"WHEREFORE, judgment is hereby rendered finding the accused MERCY SANTOS y ENTIENZA guilty beyond reasonable doubt of the crime of KIDNAPPING AND SERIOUS ILLEGAL DETENTION and sentencing her to suffer reclusión perpetua; to indemnify the victim CHARMAINE MAMARIL, her parents, and members of her family, represented by her mother, RAQUEL MAMARIL, in the sum of Pesos: One Hundred Thousand (P100,000.00); and to pay the costs of suit."

Hence, this appeal.<sup>[6]</sup>

### **The Facts**

#### **Version of the Prosecution**

The trial court narrated the facts of this case as presented by the prosecution: <sup>[7]</sup>

"Charmaine Mamaril, a kindergarten pupil, was brought to school, the Kaligayahan Elementary School, in Novaliches, Quezon City by her mother, Raquel Mamaril, at noontime on March 8, 1993. Raquel left Charmaine in her classroom with her classmates but stayed awhile, going home only after 12:30 p.m. She would be going back for Charmaine, according to her daily routine, at 2:00 p.m. When she returned to fetch Charmaine before 2:30 p.m., Charmaine's teacher Ms. Grace Lucena, met and asked her if the child had already reached home; Raquel replied that Charmaine did not know the way home. She then looked for her child in school until someone informed her that a woman had earlier fetched her daughter. She immediately reported the matter to the police authorities stationed in Novaliches at around 3:00 p.m. and then to the National Bureau of Investigations the next day; she also approached radio and television stations for help. She and her family conducted their own search from then until her daughter was finally found on March 13, 1993.

Raquel recounted how her child was recovered. According to her, a police sergeant came to her house on March 13, 1993 and asked for her; he told her to contact Kagawad Aida Bautista of Sto. Domingo. When contacted, Bautista informed her that a child named Charmaine was with her; Raquel immediately went to Bautista with some identification papers of Charmaine, and the child was turned over to her after showing the birth certificate. This occurred on a Saturday.

Although Charmaine's kidnapper was not immediately caught, the matter did not end with the return of Charmaine to her family's bosom. Two days later, on Monday, Bautista telephoned Raquel to tell her that the woman, a certain Mercy Santos, had returned to her place to claim Charmaine. Raquel wasted no time notifying NBI Agent Roel Jovenir, who, in turn and with other NBI agents, accompanied by Raquel and her husband, proceeded to Bautista's place and arrested Santos.

Following the arrest of Santos, the kidnapping was investigated at the NBI office, where Raquel gave her written statement.

Bautista recalled that she was at the store on No. 719 Quezon Avenue, Quezon City on March 9, 1993 when, at around 2:00 p.m., a woman approached and asked if she could leave her child with her; that she told the woman to just leave the child 'at the bench' of the store; that the woman then left the child there; that when it was already 7:00 p.m. and the woman had not yet returned, she became worried for the child and reported the matter to the Barangay Chairman who also reported it to Eagle Base, the base of the Barangay officials; that on March 12, 1993, she read from a newspaper about a child who was kidnapped in Novaliches; that she immediately called up the Novaliches police sub-station to know more about the kidnapping; that when the child's mother later phoned her on March 13, 1993, she required the caller to bring the birth certificate of the child for identification, that later that day, the child was returned to her parents in the presence of Barangay Chairman Jose Valdez, the reporter of Pinoy and a barangay tanod; that on March 15, 1993, the woman who had left the child returned for her; that she called up the child's parents to tell them about this; and that soon, three NBI agents, including one named Roel, came with the parents of the child and, after talking to the woman, arrested her.

The victim, Charmaine, aged 7 years, declared that Mercy Santos took her; that she was seated and crying in school when Mercy waved for her to draw near; that after she approached, Mercy promised to give her a 'surprise' if she went with her to a big house where there were many children; that she went with Mercy and was brought to a big house with many children; that she and Mercy slept there; that Mercy later brought her to the store owned by Ate Tina; and that Ate Tina later brought her to a house where she saw her 'daddy.'

Roel Jovenir was assigned as special investigator of the Anti-Fraud and Action Division of the NBI from April 18, 1992 to June 1, 1993, whose duties included the conduct of surveillance, making arrests, and investigating and filing cases involving violations of laws, like the Revised Penal Code. He testified that on March 9, 1993, Raquel Mamaril filed her written complaint at the NBI offices against an unidentified woman for allegedly kidnapping her daughter on March 8, 1993; that although Raquel's statement was taken only on March 15, 1993, the NBI were already conducting their investigation and surveillance of the kidnapping incident in the vicinity of Kaligayahan Elementary School since the filing of the complaint; that on March 13, 1993, Raquel called to tell him about the child being under the custody of Bautista; that he and the child's parents rushed to Bautista's place and rescued the child; that on March 15, 1993, Raquel again called up to inform him that the suspected kidnapper had gone back to Bautista's place to fetch the child; that in the company of other NBI operatives, namely, Agents Arnel Azul, SPO1 Rodrigo Mapoy, and Emeterio Armada, he proceeded to the Bautista house and waited for the suspect to return; that they arrested the suspect upon her return and brought her to the NBI; that the suspect was Mercy Santos; that Santos was investigated in the presence of counsel, Atty. Gordon Uy, after she was informed of her rights under the Constitution; that she executed and signed a statement, on the occasion of which she admitted the kidnapping; that during the investigation by

question and answer, Atty. Uy would raise objections by cautioning Santos against answering, in which case the objection and the question objected to were not anymore typed in the statement; and that photographs were taken of Charmaine and the accused during the confrontation.”

### **Version of the Defense**

Appearing as the lone witness for the defense, appellant denied the prosecution’s allegations and insisted that her extrajudicial confession was extracted in violation of her constitutional rights. The trial court related her version of the facts, as follows:

[8]

“The accused testified in her own behalf on November 24, 1993. She stated that she was arrested by NBI Agent Jovenir on March 15, 1993 at Araneta Avenue, Talayan Village, Quezon City, at the residence of Aida Bautista; that she was at Bautista’s house because her friend named Elsa had asked her to fetch Charmaine at that place; that she did not know the surname of Elsa, but Elsa lived on Tops Street, Talayan; that she had come with Elsa from Novaliches; that Elsa had left Charmaine at Bautista’s place and later requested her to fetch the child; that Elsa was a nightclub dancer whom she had known for two years; that she was not the woman whom Bautista said had left Charmaine at the store; that she was not able to confer with any Atty. Uy and she might have merely signed the affidavit; that she did not know Atty. Uy; and that she signed Exhibit C only because she was threatened by NBI Agent Rodrigo Mapoy and was maltreated.”

### **Ruling of the Trial Court**

The trial court convicted appellant of kidnapping and serious illegal detention. It observed that appellant’s identification by the victim and by Witness Bautista was positive and unassailable. Their testimonies were straightforward and unhesitating, especially in their identification of the appellant as the kidnapper. The evidence on appellant’s direct and personal participation in the crime was “absolutely credible, trustworthy and sincere.”

The trial court rejected appellant’s explanation that she was merely fetching the victim upon her friend’s request. It was incredible that her friend would refuse to testify on her behalf, if this allegation were true, considering the gravity of the charge leveled against her.

Besides, the trial court considered her extrajudicial confession more than sufficient evidence of her guilt. Such confession was declared as competent evidence against her, despite her denials of having given it and her claims of duress and intimidation. Its voluntariness was sufficiently proven, as it was given after she was apprised of her constitutional rights with the assistance of her counsel of choice, a certain Atty. Gordon Uy. Her subsequent retraction during the trial was rejected as a flimsy

machination to extricate herself from criminal liability.

### **The Issues**

The appellant assigns the following errors against the trial court: [9]

#### **I**

The trial court gravely erred in giving full weight and credence to the incredible, unworthy and unreliable testimonies of the prosecution witnesses and in disregarding the theory of the defense.

#### **II**

The trial court gravely erred in not giving credence to the defense of denial raised by the accused Mercy Santos.

#### **III**

The trial court gravely erred in admitting in evidence the extra-judicial confession of the accused despite the fact that it was elicited in violation of the exclusionary rule on evidence.

#### **IV**

The trial court gravely erred in convicting the accused-appellant despite failure of the prosecution to prove his (sic) guilt beyond reasonable doubt."

For clarity and convenience, the Court will tackle the issues in the following order: (1) admissibility of the extrajudicial confession, (2) credibility of witnesses and appellant's denial, and (3) sufficiency of evidence.

### **The Court's Ruling**

The Court rejects the appeal. Although the extrajudicial confession is inadmissible in evidence, there are, apart from said confession, other credible and competent pieces of evidence to establish her guilt beyond reasonable doubt.

#### **First Issue: Extrajudicial Confession Inadmissible**

A confession is not admissible in evidence unless the prosecution satisfactorily shows that it was obtained within the limits imposed by the 1987 Constitution. Section 12, Article III thereof, provides:

"(1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived