

SECOND DIVISION

[G.R. No. 116311, February 01, 1996]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
IMELDA VILLANUEVA Y PAQUIRING, ACCUSED-APPELLANT.**

D E C I S I O N

MENDOZA, J.:

This is an appeal from the decision of the Regional Trial Court of Manila, Branch 35, finding accused-appellant guilty of kidnapping as defined and punished in Art. 267, par. 4 of the Revised Penal Code and sentencing her to *reclusion perpetua* and to pay the costs.

Complainant Jocelyn Gador-Silvestre is the mother of a baby boy named Aris Silvestre, eight months old at the time of the incident in question. She was residing in a squatters' area in Intramuros, Manila, known as Maestranza Compound. Accused-appellant was also a resident of that place.

It appears that at around 9:00 o'clock in the morning of July 1, 1993, accused-appellant took complainant's child to the Escolta, which is located a few meters from Intramuros and was arrested a few hours later near the Jones Bridge, upon complainant's claim that accused-appellant had taken her child and run away with him.^[1] Accused-appellant admitted having taken the child with her to the Escolta but claimed that she had done so with the permission of complainant.

Anyway, an information was filed on July 7, 1993 against accused-appellant charging her with the kidnapping of a minor. She pleaded not guilty and was thereafter tried, during which complainant Jocelyn Gador-Silvestre and SPO4 Rosalio Mimo, Jr., police investigator of the Western Police District Command, testified.

The gist of complainant's testimony is as follows: On July 1, 1993, at around 9:00 o'clock in the morning, she took her eight-month child out for a walk. She saw accused-appellant Imelda Villanueva with a group, having drinks. When she asked them why they were drinking so early in the morning, accused-appellant just laughed and instead asked her if she could carry her child. Complainant said she agreed but told accused-appellant not to go far but "just in [the] vicinity."^[2] Later, as a certain Karen asked complainant about her child, complainant noticed that accused-appellant and her child were gone. Alarmed, she searched for accused-appellant and the child around the area but she did not find them. Some people told her that accused-appellant had crossed the Jones Bridge, which connects Intramuros to the Escolta. On being told this, complainant "waited at the plaza and started to cry," while her mother-in-law, Erlinda Silvestre, who was Chairman of Barangay No. 656, and a Barangay Tanod looked for accused-appellant. The two eventually found accused-appellant at the Escolta at 2:00 o'clock in the afternoon and arrested her.^[3]

On cross-examination, complainant admitted having been told by accused-appellant that she (accused-appellant) would go for a "stroll around the vicinity" with the child and that she knew accused-appellant although not intimately, as she saw accused-appellant in the barangay almost daily.^[4]

SPO4 Rosalio Mimo testified on the investigation he conducted when accused-appellant was brought to the police station.

Testifying in her defense, accused-appellant claimed she had gone to the Escolta at 9:00 o'clock in the morning on July 1, 1993 to find out what time the moviehouse was going to open. As the movie was not going to begin until 10:30 A.M., she decided to go home and come back to see a movie later. On her way, however, she met Erlinda Silvestre and a Barangay Tanod.^[5] Without warning Erlinda Silvestre slapped her and took the child from her. She was taken to the house of Erlinda Silvestre where she was questioned and then turned over to the police station.

Accused-appellant stated further that she and complainant were neighbors in Intramuros, their houses being just in front of each other;^[6] that she had been living there for eight years^[7] and that she and complainant had been close friends for the past four years.^[8]

On May 19, 1994, the trial court rendered judgment, finding accused-appellant guilty as charged. Hence, this appeal.

In her lone assignment of error, accused-appellant contends that the trial court erred in convicting her of the charge because the fact is that she had no intention to detain or keep the child away from his mother. The Solicitor General, in behalf of the People, joins accused-appellant and moves that her conviction be set aside.

We agree. Accused-appellant was convicted of kidnapping and serious illegal detention under Art. 267 of the Revised Penal Code which reads in part as follows:

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:

. . . .

4. If the person kidnapped or detained shall be a minor, except when the accused is any of the parents, female or a public officer.

The essence of the offense is the actual deprivation of the victim's liberty^[9] coupled with intent of the accused to effect it.^[10] In the case at bar, as the person supposedly detained was an infant, eight months old, the question is whether there is evidence to show that, in taking the child with her to the Escolta, accused-appellant's intention was to take his custody from his mother. We find none in the record of this case, which shows, on the contrary, that accused-appellant had been permitted by the mother to carry the child. Indeed, the complainant and accused-appellant were neighbors and close friends in Intramuros. They had known each

other for four years. Their houses were in front of each other.^[11] Although complainant claimed she had allowed accused-appellant to have her child, provided "it [was] just in [their] vicinity,"^[12] the fact is that on previous occasions, accused-appellant had been allowed to take the child not just in the immediate vicinity of complainant's house but as far as Plaza Mexico in Intramuros, near the Commission on Immigration and Deportation building. Accused-appellant testified that she had grown fond of the baby and it is not farfetched to suppose that complainant, like so many Filipino mothers -especially those living in close proximity to each other - shared her baby with her neighbors, including accused-appellant.

Complainant testified that they did not find accused-appellant until 2:00 P.M., suggesting that accused-appellant kept the baby so long because her intention was really to run away with the baby. No evidence was, however, introduced by the prosecution regarding the arrest of accused-appellant. Complainant's testimony that accused-appellant was arrested at 2:00 P.M. near a Jollibee restaurant on the Escolta is not based on her own personal knowledge but only on what she had been told, presumably by her mother-in-law, Erlinda Silvestre. Erlinda Silvestre herself did not testify. The testimony of accused-appellant is the only competent account of her arrest in the record. In her testimony she said:^[13]

- Q:** What did you do together with the child at Escolta, Madam witness?
- A:** I just went to see the theater if it is open sir.
- Q:** Was the theater open at that time?
- A:** Not yet sir.
- Q:** And upon seeing the theater not yet open, what did you do?
- A:** I decided to go home, sir.
- Q:** And after you decided to go home, what happened next, madam witness?
- A:** I met the mother-in-law of Jocelyn Gador, sir.
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- Q:** Now, after you have met the mother-in-law of Jocelyn Gador and companion, what happened next?
- A:** I was just surprise when I was slapped by the woman, sir.
- Q:** When you said "by the woman" to whom are you referring to?
- A:** The mother-in-law of Jocelyn Gador, sir. Erlinda Silvestre sir.
- Q:** Now, what happened next when you were slapped by Erlinda Silvestre?
- A:** I was dragged going towards their place, sir.
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- Q:** And because you said you went to see a movie to the Escolta, why it take you that long to return to Jocelyn Gador?
- A:** We met with her mother-in-law at 11:00 sir.
- Court:** Where?

A: Ascending at the bridge of Jones Bridge your Honor.

Court:

What bridge is this?

A: Jones Bridge sir.

It would thus appear that accused-appellant was arrested at 11:00 A.M. (not 2:00 P.M. as complainant alleged), as she was ascending the Jones Bridge on her way home to Intramuros. As the Solicitor General points out, the "2:00 in the afternoon" which complainant mentioned was the time the accused-appellant met the complainant in the house of Erlinda Silvestre.^[14] It was not the time accused-appellant was found on the Escolta with the child.

Moreover, from where accused-appellant was found (whether near the Jollibee restaurant, as complainant claimed based on what she had been told, or at the foot of the Jones Bridge, as accused-appellant testified) to the house of Erlinda Silvestre is not such a distance that anyone with intention to run away with a child would take three or even five hours to negotiate. If that had been accused-appellant's intention, she would have gone very far and probably would not have been found by Erlinda Silvestre and her companion.

The trial court, however, found accused-appellant's claim (that she had gone to the Escolta to see what time the theater would open) "difficult to believe."^[15] The trial court said:

The Court finds the version of the defense difficult to believe. During her direct examination the accused said, "I just went (to Escolta at 9:00 o'clock in the morning) to see the theater if it is open." (TSN, Jan. 7, 1994, p. 4.) On cross-examination she further said her purpose in going to Escolta was to watch a movie. (Ibid., p. 10) And yet she admitted that she knows that the theater opens at 10:30 o'clock in the morning. (Ibid.) The Court, thus, finds preposterous the claim of the accused that she went to Escolta early in the morning on July 1, 1993 to verify if the theater was already opened when she very well knows that the opening time of the movie house was at 10:30 o'clock.

When it was pointed out to the accused that a child 8 or 9 months old is not allowed admittance in any theater, she lamely said, "I will not bring the child along in the theater, what I really wanted to is to look if the theater is opened and I will see movie alone." (Ibid., p. 10.) She also affirmed that after verifying what movie was then showing in Capitol Theater, she would return the child to its mother, and then go back to Escolta at 10:30 o'clock on time for the opening of the movie house. (Ibid., p. 12.) But she likewise admitted that she was accosted by Erlinda Silvestre, mother-in-law of Jocelyn, at around 11:00 o'clock the same morning, while she was ascending Jones Bridge from Escolta, with the child still in her custody. (Ibid., pp. 11-12) Knowing that Capitol Theater would open and start its show at 10:30 o'clock that morning, the accused has not satisfactorily explained why she tarried and did not immediately return the child to its mother, after she had supposedly ascertained the opening hour of Capitol Theater.