

## FIRST DIVISION

[ G.R. No. 121519, October 30, 1996 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
VICENTE TY AND CARMEN TY, ACCUSED-APPELLANTS.**

### D E C I S I O N

**KAPUNAN, J.:**

Vicente Ty AND Carmen Ty were charged with the crime of kidnapping and failure to return a minor in an information filed by 2nd Assistant City Prosecutor of Kalookan City Rosauro J. Silverio, the accusatory portion of which reads:

That on or about the month of April 1989, in Kalookan City, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, being then the owners, proprietors, managers and administrators of Sir John Clinic and as such said accused had the custody of Arabella Somblong, a minor, conspiring together and mutually helping one another and with deliberate intent to deprive the parents of the child of her custody, did then and there willfully, unlawfully and feloniously fail to restore the custody of said Arabella Sombong to her parents by giving said custody of subject minor to another person without the knowledge and consent of her parents

Contrary to Law.<sup>[1]</sup>

Both accused were arrested, and then arraigned on October 27, 1992 when they pleaded not guilty to the crime charged.

After trial, on May 31, 1995, a decision was rendered by the Regional Trial Court of Kalookan City, Branch 123, the decretal portion of which disposes as follows:

WHEREFORE, this Court finds both accused Spouses Vicente Ty and Carmen Ty guilty beyond reasonable doubt of the crime of kidnapping a minor and failure to return the same as defined and penalized by Article 270 of the Revised Penal Code and hereby sentences them to suffer imprisonment of *reclusion perpetua*. The accused are hereby ordered to pay the private complainant the sum of P100,000.00 by way of moral damages caused by anxiety, by her being emotionally drained coupled by the fact that up to this date she could not determine the whereabouts of her child Arabella Sombong.

SO ORDERED.<sup>[2]</sup>

The accused now interposes this appeal alleging the ensuing assignment of errors, *viz:*

THE TRIAL COURT ERRED IN FINDING THAT APPELLANTS 'DELIBERATELY FAILED TO RESTORE THE CHILD TO HER MOTHER,' AND CONVICTING THEM UNDER ART. 270 OF THE REVISED PENAL CODE, AND SENTENCING THEM TO '*RECLUSION PERPETUA*';

## II

THE TRIAL COURT ERRED IN NOT HOLDING THAT THE CRIME COMMITTED, IF ANY, IS THAT DEFINED AND PENALIZED UNDER ART. 227 OF THE REVISED PENAL CODE;

## III

THE TRIAL COURT ERRED IN NOT RECOMMENDING EXECUTIVE CLEMENCY PURSUANT TO PRECEDENT IN '*PEOPLE vs. GUTIERREZ*,' 197 SCRA 569; and

## IV

THE TRIAL COURT ERRED IN AWARDING 'COMPLAINANT THE SUM OF P100,000.00 BY WAY OF MORAL DAMAGES.'<sup>[3]</sup>

The relevant antecedents surrounding the case are as follows:

On November 18, 1987, complainant Johanna Sombong brought her sick daughter Arabella, then only seven (7) months old, for treatment to the Sir John Medical and Maternity Clinic located at No. 121 First Avenue, Grace Park, Kalookan City which was owned and operated by the accused-appellants. Arabella was diagnosed to be suffering bronchitis and diarrhea, thus complainant was advised to confine the child at the clinic for speedy recovery. About three (3) days later, Arabella was well and was ready to be discharged but complainant was not around to take her home. A week later, complainant came back but did not have enough money to pay the hospital bill in the amount of P300.00. Complainant likewise confided to accused-appellant Dr. Carmen Ty that no one would take care of the child at home as she was working. She then inquired about the rate of the nursery and upon being told that the same was P50.00 per day, she decided to leave her child to the care of the clinic nursery. Consequently, Arabella was transferred from the ward to the nursery.<sup>[4]</sup>

Thereafter, hospital bills started to mount and accumulate. It was at this time that accused-appellant Dr. Ty suggested to the complainant that she hire a "yaya" for P400.00 instead of the daily nursery fee of P50.00. Complainant agreed, hence, a "yaya" was hired. Arabella was then again transferred from the nursery to the extension of the clinic which served as residence for the hospital staff.<sup>[5]</sup>

From then on, nothing was heard of the complainant. She neither visited her child nor called to inquire about her whereabouts. Her estranged husband came to the clinic once but did not get the child. Efforts to get in touch with the complainant were unsuccessful as she left no address or telephone number where she can be reached. This development prompted Dr. Ty to notify the barangay captain of the child's abandonment.<sup>[6]</sup> Eventually, the hospital staff took turns in taking care of Arabella.<sup>[7]</sup>

Sometime in 1989, two (2) years after Arabella was abandoned by complainant, Dr. Fe Mallonga, a dentist at the clinic, suggested during a hospital staff conference that Arabella be entrusted to a guardian who could give the child the love and affection, personal attention and caring she badly needed as she was thin and sickly. The suggestion was favorably considered, hence, Dr. Mallonga gave the child to her aunt, Lilibeth Neri.<sup>[8]</sup>

In 1992, complainant came back to claim the daughter she abandoned some five (5) years back.

When her pleas allegedly went unanswered, she filed a petition for habeas corpus against accused-appellants with the Regional Trial Court of Quezon City. Said petition was however denied due course and was summarily dismissed without prejudice on the ground of lack of jurisdiction, the alleged detention having been perpetrated in Kalookan City.

Thereafter, the instant criminal case was filed against accused-appellants.

Complainant likewise filed an administrative case for dishonorable conduct against accused-appellant Dr. Carmen Ty before the Board of Medicine of the Professional Regulation Commission. This case was subsequently dismissed for failure to prosecute.

On October 13, 1992, complainant filed a petition for habeas corpus with the Regional Trial Court of Quezon City, this time against the alleged guardians of her daughter, namely, Marietta Neri Alviar and Lilibeth Neri. On January 15, 1993, the trial court rendered a decision granting the petition and ordering the guardians to immediately deliver the person of Cristina Grace Neri to the complainant, the court having found Cristina to be the complainant's child. On appeal to the Court of Appeals, however, said decision was reversed on the ground that the guardians were not unlawfully withholding from the complainant the rightful custody of Cristina after finding that Cristina and complainant's daughter are not one and the same person. On January 31, 1996, this Court in *Sombong v. Court of Appeals*<sup>[9]</sup> affirmed the Court of Appeals' decision.

In this appeal, accused-appellants would want us to take a second look and resolve the issue of whether or not they are guilty of kidnapping and failure to return a minor. Accused-appellants of course contend that they are not guilty and the Solicitor General agrees. In its Manifestations and Motion in lieu of Appellee's Brief, the Office of the Solicitor General recommends their acquittal.

We agree.

As we have mentioned above, this Court in *Sombong v. Court of Appeals*<sup>[10]</sup> affirmed the decision of the Court of Appeals reversing the trial court's ruling that complainant has rightful custody over the child, Cristina Grace Neri, the latter not being identical with complainant's daughter, Arabella. The Court discoursed, thusly:

Petitioner does not have the right of custody over the minor Cristina because, by the evidence disclosed before the court *a quo*, Cristina has not been shown to be petitioner's daughter, Arabella. The evidence adduced before the trial court does not warrant the conclusion that Arabella is the same person as Cristina.

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In the instant case, the testimonial and circumstantial proof establishes the individual and separate existence of petitioner's child, Arabella, from that of private respondents' foster child, Cristina.

We note, among others, that Dr. Trono, who is petitioner's own witness, testified in court that, together with Arabella, there were several babies left in the clinic and so she could not be certain whether it was Arabella or some their baby that was given to private respondents. Petitioner's own evidence shows that, after the confinement of Arabella in the clinic in 1987, she saw her daughter again only in 1989 when she visited the clinic. This corroborates the testimony of petitioner's own witness, Dra. Ty, that Arabella was physically confined in the clinic from November, 1987 to April, 1989. This testimony tallies with her assertion in her counter-affidavit to the effect that Arabella was in the custody of the hospital until April, 1989. All this, when juxtaposed with the unwavering declaration of private respondents that they obtained custody of Cristina in April, 1988 and had her baptized at the Good Samaritan Church on April 30, 1988, leads to the conclusions that Cristina is not Arabella.

Significantly, Justice Lourdes K. Tayao-Jaguros, herself a mother and the *ponente* of the herein assailed decision, set the case for hearing on August 30, 1993 primarily for the purpose of observing petitioner's demeanor towards the minor Cristina. She made the following personal but relevant manifestation:

The undersigned *ponente* as a mother herself of four children, wanted to see how petitioner as an alleged mother of a missing child supposedly in the person of Cristina Neri would react on seeing again her long lost child. The petitioner appeared in the scheduled hearing of this case late, and she walked inside the courtroom looking for a seat without even stopping at her alleged daughter's seat; without even casting a glance on said child, and without even that tearful embrace which characterizes the reunion of a loving mother with her missing dear child. Throughout the proceedings, the undersigned *ponente* noticed no signs of endearment and affection expected of a mother who had been deprived of the embrace of her little child for many years. The conclusion or finding of undersigned *ponente* as a mother, herself, that petitioner-appellee is not the mother of Cristina Neri has been given support by aforestated observation xxx.

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Since we hold that petitioner has not been established by evidence to be entitled to the custody of the minor Cristina on account of mistaken identity, it cannot be said that private respondents are unlawfully withholding from petitioner the rightful custody over Cristina. At this juncture, we need not inquire into the validity of the mode by which private respondents acquired custodial rights over the minor, Cristina.

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Under the facts and ruling in *Sombong*, as well as the evidence adduced in this case accused-appellants must perforce be acquitted of the crime charged, there being no