



**Republic of the Philippines
Supreme Court
Manila**

FIRST DIVISION

**PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,**

G.R. No. 189820

Present:

- versus -

SERENO, *CJ.*,
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR., and
REYES, *JJ.*

**ALBERTO M. BASAO alias
"Dodong," JOVEL S. APOLE,
MELQUIADES L. APOLE,
ESTRELITA¹ G. APOLE,
ROLANDO A. APOLE alias "Bebot,"
VICENTE C. SALON, JAIME
TANDAN, RENATO C. APOLE alias
"Boboy," ROLANDO M.
OCHIVILLO alias "Allan,"
LORENZO L. APOLE, JOHN DOE,
PETER DOE and MIKE DOE,
Accused,**

Promulgated:

**JOVEL S. APOLE, ROLANDO A.
APOLE, and RENATO C. APOLE,
Accused-Appellants.**

10 OCT 2012

X-----X

DECISION

LEONARDO-DE CASTRO, *J.*:

On appeal is the Decision² dated May 29, 2009 of the Court of Appeals in CA-G.R. CR.-H.C. No. 00428-MIN, which affirmed with

¹

Also referred to as Estrella or Esterlita in some parts of the records.

²

Rollo, pp. 3-24; penned by Associate Justice Rodrigo F. Lim, Jr. with Associate Justices Elihu A. Ybañez and Ruben C. Ayson, concurring.

modification the Joint Decision³ dated April 20, 2006 of the Regional Trial Court (RTC), Branch 41 of Cantilan, Surigao del Sur, finding accused-appellants Jovel S. Apole, Renato C. Apole, and Rolando A. Apole guilty beyond reasonable doubt in Criminal Case Nos. C-368 (Robbery with Violence Against or Intimidation of Persons by a Band) and C-369 (Kidnapping [for Ransom] and Serious Illegal Detention).

Accused-appellants, together with seven identified co-accused, namely, Alberto M. Basao (Basao), Melquiades L. Apole, Estrelita G. Apole, Lorenzo L. Apole, Vicente C. Salon (Salon), Jaime Tandan (Tandan), and Rolando M. Ochivillo (Ochivillo), plus three other unidentified persons, were charged under the following criminal Informations:

Criminal Case No. C-368

For Robbery with Violence Against or Intimidation of Persons by a Band

That on or about the 23rd day of January, 2003 at about 7:30 o'clock in the evening, more or less, at Barangay Bunga, municipality of Lanuza, province of Surigao del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with intent to gain, and armed with a short caliber unlicensed firearms, did then and there willfully, unlawfully and feloniously, take and carry away from spouses YASUMITSU YASUDA HASHIBA and EMELIE LOPIO HASHIBA cash money amounting to Forty[-]Eight Thousand Pesos (₱48,000.00), one (1) eighteen gold carats Sapphire ring, one (1) carat emerald ring, color green, eighteen carats gold ruby ring, color red, two (2) eighteen carats wedding rings (engraved with initial E to Y and Y to E) and eighteen carats gold necklace, and other personal belongings worth more or less Thirty Thousand Pesos (₱30,000.00), in the total amount of Seventy[-]Eight Thousand Pesos (₱78,000.00), against their consent, to the damage and prejudice of Mr. and Mrs. Emelie Lopio Hashiba in the aforestated amount.

Criminal Case No. C-369

For Kidnapping (for Ransom) and Serious Illegal Detention

That on the 23rd day of January 2003 at about 7:30 o'clock in the evening, at Barangay Bunga, municipality of Lanuza, province of Surigao del Sur, Philippines, and within the jurisdiction of this Honorable Court,

³

Records, pp. 300-314; penned by Judge Romeo C. Buenaflor.

the above-named accused, conspiring, confederating and mutually helping one another, armed with unlicensed firearms, did then and there willfully, unlawfully and feloniously, kidnap one YASUMITSU YASUDA HASHIBA, 48 years old and a Japanese National to undisclosed place for the purpose of extorting ransoms, wherein the latter was detained and deprived of his liberty for the period of more than five (5) days to the damage and prejudice of said victim.⁴

Accused-appellants and their identified co-accused, except for Tandan, were arraigned. They pleaded not guilty to the criminal charges against them.⁵ After the pre-trial proceedings, trial ensued.⁶

The prosecution called to the witness stand private complainant Emelie Lopio Hashiba⁷ (Emelie) and her brother Crisologo Pamad Lopio (Crisologo),⁸ who testified as follows:

Witness, Emelie Hashiba testified that on January 23, 2003 at 7:30 o'clock in the evening, she and her maid were cooking supper at their house at Bgy. Bunga, Lanuza, Surigao del Sur. At the sala were her husband, her three (3) children Hashiba Yuri, Hashiba Yu and Hashiba Hisayu, her mother and the son of their housemaid Loloy, five (5) men entered their house with gun pointed to her younger brother, Crisologo Lopio. One of them announced and said; "Don't worry, we are NPA" (New Peoples Army) and continued to say; "Huwag kayo matakot, pera lang ang kailangan namin", which means, (Do not be afraid, we only need money.) "Hindi kayo maano." (You will not be harmed.) All of them were terrified seeing the armed men with their guns and a hand grenade. She identified the armed men, with their height, built, complexion and the faces, except one who was wearing bonnet mask. Although she does not know their names at the time of the incident on January 23, 2003, she recognized them during the trial and identified each one of them, Jovel Apole, Renato Apole and Rolando Apole except the two (2), whom she failed to recognize as she forgot them.

Joven Apole and his companion brought Emelie Hashiba upstairs at the second floor at their bedroom, which was lighted and there she was divested of money and jewelries, 2 necklace 18 k, 4 rings 14 k, opal, rubi, emerald and sapphire and 2 wedding rings, worth a total of ₱30,000.00; cash money from the wallet of ₱20,000.00 and another ₱28,000.00 from

⁴ Id. at 256-257.

⁵ Id. at 86-96 and 189.

⁶ Id. at 126-127.

⁷ TSN, September 12, 2003.

⁸ TSN, February 4, 2004.

the collection of their passenger jeep, samurai sword ₱4,000.00 and icom radio, ₱5,000.00. She was asked if that was her only money and she told them “yes”. She was also asked about the gun of her husband, which she denied that her husband does not possess firearm. Then Jovel Apole asked her if that was the only money they had and she answered in the affirmative.

Dissatisfied with the value of their loot, Jovel Apole and companion demanded three (3) million pesos from her with the threat that if she will not give the amount demanded they would bring with them her son.

Shortly thereafter, they went down and back to the sala where YASUMITSU HASHIBA and companions were gathered. EMELIE HASHIBA informed the accused that they could not bring her son because he was sick, so she offered herself as the hostage, but brought YASUMITSU YASUDA HASHIBA instead. Yasumitsu Hashiba vehemently objected and offered to give them the money as soon as he goes back to Japan, but the group did not agree and insisted on the three (3) million pesos. Helpless, they brought YASUMITSU HASHIBA with them after hog-tying the occupants of the house. Before they left, they again threatened EMELIE HASHIBA that if she failed to produce the three (3) million pesos, YASUMITSU HASHIBA will be killed.

Thereafter, they left riding on the Yasumitsu Hashiba’s automobile towards the National Highway. Regaining composure she immediately called Yasumitsu Hashiba’s father in Japan thru SMART LINK. She told him that his son was kidnapped and the kidnappers are demanding three (3) million pesos. She informed him further that if she cannot produce the money, his son will be killed to which threat the father assured her that he will be sending two (2) million pesos thru the PNB, Tandag, Surigao del Sur.

On or about 7:00 o’clock in the morning of January 24, 2003 the Barangay Captain of Bunga, Lanuza, Surigao del Sur who learned of the incident visited her house. The latter confronted her why she did not report the incident to the Police Station to which query she answered that she was apprehensive her husband would be killed if she reports the incident to the police.

At about 10:00 o’clock of the same day she went to the PNB Tandag to verify if the money was already deposited in the bank, but none was deposited so she went home empty handed. When she arrived home, policemen from Lanuza and Tandag, Surigao del Sur were already waiting for her. She was advised to go to Tandag for the execution of her affidavit, which she agreed.

On the 25th day the kidnappers called her but she was not around. On the 26th day of January the kidnappers again called her and instructed her to buy a cellular phone, which she obliged. With a cellular phone she was able to talk with the kidnappers while in Tandag, Surigao del Sur. They asked if the money has arrived, and she was advised not to withdraw

the money in the bank and wait for further instructions. On January 27th and 28th, 2003 they again called but after these dates did not receive any call from them.

On January 29, 2003[,] a policeman from Dinagat Island informed her that her husband was released by the kidnappers. Probably thinking that it was a ploy of the kidnappers she did not go to Dinagat Island, San Jose and instead waited for her husband in a hotel in Tandag, Surigao del Sur.

Emelie Hashiba's version of the incident was corroborated by Crisologo Lopio, a younger brother of the former. He declared that he is the driver of Yasumitsu Hashiba of a passenger jitney. At six (6) P.M. on January 23, 2003, he was at the house of his parents which is only 15 meters away from his house at Bunga, Lanuza, Surigao del Sur. He watched T.V. for five (5) to ten (10) minutes and left proceeding to the house of his sister Emelie about 30 meters from the house of his parents. Reaching the gate of the house of Emelie, which was lighted, he was met by two (2) armed men with .45 cal. pistols pointed their guns to him and told him to enter the house so that they will talk. Entering the sala, they were ordered to sit on the sala, his mother, Yasumitsu Hashiba, the 3 children of Yasumitsu Hashiba, a child of their maid, his nephew, Emelie and Mercedita were all fetched from the kitchen and brought to the sala. Then another two (2) armed men with .38 cal. revolver entered. The latter armed men guarded them at the sala, while the other two (2) brought Emelie upstairs to their bedroom. Returning to the sala with Emelie, the two men told them that they will bring the son of Yasumitsu Hashiba and to be redeemed for two (2) million. Emelie told them that the child is sick and offered herself instead but the armed men said, "We will just kidnap Yasumitsu Hashiba." Hashiba objected, and asked, he will give the money if he will be allowed to return to Japan but of no use. The armed men did not agree and after hog-tying them, they brought out of the house leaving a threat not to report to the Police otherwise, they will kill Hashiba. They left, carnapping the car owned by Yasumitsu Hashiba.

Witness Crisologo Lopio identified in Court Jovel Apole, Rolando Apole and Renato Apole and accordingly, one is at-large. After they left, Emelie told them that all her jewelries and money from her collections of their passenger jitney were taken.⁹

Both Emelie and Crisologo positively identified the three accused-appellants in court. Private complainant Yasumitsu Yasuda Hashiba (Yasumitsu) was also supposed to take the witness stand for the prosecution and identify the other accused in the case, but Yasumitsu was unable to give his testimony for lack of competent Japanese interpreters. Thus, for lack of

⁹

Records, pp. 302-306, RTC Decision dated April 20, 2006.

evidence, the prosecution moved for the provisional dismissal of the charges against accused Alberto Basao, Melquiades L. Apole, Estrelita G. Apole, Lorenzo L. Apole, Vicente Salon, and Rolando Ochivillo, which the RTC granted in its Orders¹⁰ dated May 26, 2004 and January 13, 2005.

During their turn, the defense presented the testimonies of accused-appellants Rolando Apole¹¹ and Jovel Apole;¹² and dispensed with the testimony of accused-appellant Renato Apole as he would be merely corroborating those of the first two.¹³ Accused-appellants denied the charges against them and proffered the following version of events:

That on January 23, 2003, Rolando Apole was brought by his cousins Jovel Apole and Renato Apole to the house of Allan Ochivillo in Lanuza, Surigao del Sur. They came from Tubajon, Dinagat Island, Surigao del Norte to Surigao City. From Surigao City, they boarded the Bachelor bus in going to Lanuza, Surigao del Sur. Arriving at three (3) o'clock in the afternoon, they went directly to the house of Allan Ochivillo. They saw Ochivillo for the first time and they were told by Ochivillo to stay, as he will go to the house of his friend married to a Japanese national. When Ochivillo returned home at 6:30 P.M., same day, they were informed that they will proceed there because the Japanese will see their map.

The four of them, Rolando, Jovel, Renato and Allan Ochivillo went to the house of the Japanese arriving there at 7:00 o'clock P.M. Allan Ochivillo went inside first followed by Jovel, while Rolando and Renato stayed outside. They were met by the Japanese wife and shook hands. Allan Ochivillo talked to the wife of the Japanese at the sala and after the Japanese signal to go up because there were children viewing T.V., Jovel brought with him the map. The Japanese, his wife, Allan and Jovel went up the second floor. They stayed there for 10 minutes, more or less, then they went down. Then Allan Ochivillo said, "let's go". The Japanese wife said; "Take care of my husband because we can still make money". She further said; "You just use my car and her[e] is the key", given to Allan Ochivillo. The car was driven by the Japanese with Allan Ochivillo in the front seat.

¹⁰ Id. at 158-159 and 214-216.

¹¹ TSN, November 11, 2005 and January 31, 2006.

¹² TSN, February 21, 2006.

¹³ Id. at 22-23.

On the way, the Japanese looked at the map for a while and talked to Allan Ochivillo in Tagalog, “this map have signs, and there is treasure in there, a tree, fish, starfish and a mountain.”

Arriving at Surigao City, they alighted at Sabang and they took a pumpboat and proceeded to the area where the treasure was to be found at Tambongan, Tubajon, while Ochivillo remained at Surigao City.

They arrived at Tambungan, Tubajon, Surigao del Norte on the 24th of January 2003. They were housed in the house of their uncle. In the afternoon, they verified and found that the treasure was already dug up, as there were signs of digging already.

On January 25, 2003, Jovel Apole arrived and informed Rolando and Renato that according to Allan Ochivillo, the wife of the Japanese will file a case against them and was told that each of them will receive ₱100,000.00 to kill the Japanese.

They did not kill the Japanese but released him in San Jose, Dinagat Island, Surigao del Norte.

Their uncle Lorenzo Apole, Estrelita Apole and Melquiades were arrested in connection with the kidnapping of the Japanese. Rolando and Renato went to the house of the brother of Police Director Gonzales at Surigao City to ask why Lorenzo, Melquiades and Estrelita Apole were arrested. Jovel Apole followed and the 3 of them went to the house of Gonzales guided by Nay Nita. They saw Melquiades, Lorenzo and Estrelita Apole in the house of Gonzales and after that they were brought to the barracks at Tandag. Then, they were charged of two cases. They denied the truth of the testimonies of Emelie Hashiba and Crisologo Lopio. They denied having robbed and kidnapped Yasumitsu Hashiba.¹⁴

For rebuttal, the prosecution recalled Emelie¹⁵ and presented Ochivillo¹⁶ as witnesses. Both prosecution witnesses refuted accused-appellants’ version of events. Emelie denied seeing Ochivillo at their house or any treasure map. She added that accused-appellants carried short firearms; that when accused-appellants left with Yasumitsu, Renato C. Apole drove the car; and that the ₱3,000,000.00 would be paid within four days and would be taken from the parked car. Ochivillo, for his part, avowed that he did not know accused-appellants personally; that he had not seen a treasure map; that at the time of the incident, he was having a

¹⁴ Records, pp. 306-308, RTC Decision dated April 20, 2006.

¹⁵ TSN, February 21, 2006, pp. 23-28.

¹⁶ Id. at 28-43.

drinking spree with his neighbor; and that he only met accused-appellants for the first time in Tandag when he was arrested.

The cases were submitted for decision without any documentary evidence for the prosecution and the defense.¹⁷

On April 20, 2006, the RTC promulgated its Joint Decision, with a dispositive portion that reads:

WHEREFORE, finding the accused JOVEL APOLE y SALVADOR, ROLANDO APOLE y ARANA, and RENATO APOLE y CANTORNE, guilty beyond reasonable doubt of the crimes:

A. For the crime of Robbery in Band in Criminal Case No. C-368, each of the accused Jovel Apole y Salvador, Rolando Apole y Arana and Renato Apole y Cantorne, is sentenced to suffer the indeterminate penalty of SIX (6) YEARS, FOUR (4) MONTHS and ONE (1) DAY of *prision mayor* as minimum to EIGHT (8) YEARS, TEN (10) MONTHS and ONE (1) DAY of *prision mayor* medium as maximum; to pay the private complainants the sum of ₱78,000.00; ₱50,000.00 as moral damages and ₱25,000.00 as exemplary damages and to pay the cost.

B. For the crime of kidnapping for ransom and serious illegal detention in Criminal Case No. C-369, each of the accused Jovel Apole y Salvador, Rolando Apole y Arana, and Renato Apole y Cantorne, is sentenced to suffer the supreme penalty of death; to pay the private complainants the sum of ₱50,000.00 as moral damages and ₱25,000.00 as exemplary damages and to pay the cost.

In line with the decision of the Supreme Court in *People vs. Mateo*, G.R. No[s]. 147678-87, dated July 7, 2004, let this decision be forwarded to the Court of Appeals, YMCA Building, Cagayan de Oro City for automatic review within twenty (20) days but not earlier than fifteen (15) days after the promulgation of judgment. Let the living body of the convicted prisoners, Jovel Apole y Salvador, Rolando Apole y Arana and Renato Apole y Cantorne, be brought to the New Bilibid Prison, Muntinlupa City, on maximum security.¹⁸

¹⁷ CA rollo, p. 1.

¹⁸ Records, pp. 313-314.

Pursuant to the Commitment of Final Sentence¹⁹ issued by the RTC on May 12, 2006, accused-appellants were received and imprisoned at the New Bilibid Prison, Muntinlupa City, on even date.²⁰

In the meantime, the cases were forwarded to the Court of Appeals on automatic review. Accused-appellants, represented by the Public Attorney's Office, filed their Brief²¹ on January 17, 2008 while plaintiff-appellee, represented by the Office of the Solicitor General, filed its Brief²² on May 12, 2008.

The Court of Appeals rendered its Decision on May 29, 2009, agreeing with the findings of fact and judgments of conviction of the RTC, but modifying the penalties imposed and amount of damages awarded, to wit:

Anent the penalty imposed in Criminal Case No. C-369, the court *a quo* convicted accused-appellants with the supreme penalty of death as provided under Article 267 of the Revised Penal Code. However, with the enactment of Republic Act No. 9346 which proscribed the death penalty, the appropriate penalty for the crime of kidnapping and serious illegal detention with ransom is now *reclusion perpetua*.

Furthermore, under Article 100 of the Revised Penal Code, every person criminally liable for a felony is also civilly liable.

In the case of kidnapping for ransom, the amount of ₱50,000.00 as civil indemnity is awarded in favor of complainant Emelie Hashiba in conformity with jurisprudence. Likewise, another amount of ₱50,000.00 as civil indemnity is awarded for the crime of robbery in band.²³

Ultimately, the appellate court decreed:

¹⁹ *Rollo*, p. 30.

²⁰ *Id.* at 31.

²¹ *CA rollo*, pp. 55-78.

²² *Id.* at 102-133.

²³ *Rollo*, pp. 21-22.

WHEREFORE, premises foregoing, the instant appeal is hereby **DISMISSED** and the assailed Decision is hereby **AFFIRMED** with modification insofar as the penalty imposed and the award of damages are concerned. Consequently, accused-appellants are hereby **SENTENCED** to the following:

1. For the crime of Robbery in Band in Criminal Case No. C-368, each of the accused-appellant Jovel Apole y Salvador, Rolando Apole y Arana and Renato Apole y Cantorne, is sentenced to suffer the indeterminate penalty of SIX (6) YEARS, FOUR (4) MONTHS and ONE (1) DAY of *prision mayor* as minimum to EIGHT (8) YEARS, TEN (10) MONTHS and ONE (1) DAY of *prision mayor* medium as maximum; to pay the private complainants the sum of ₱78,000.00 as actual damages; ₱50,000.00 as civil indemnity; ₱50,000.00 as moral damages; and ₱25,000.00 as exemplary damages and to pay the cost.

2. For the crime of Kidnapping for Ransom and Serious Illegal Detention in Criminal Case No. C-369, each of the accused Jovel Apole y Salvador, Rolando Apole y Arana, and Renato Apole y Cantorne, is sentenced to suffer the penalty of *reclusion perpetua*; to pay the private complainants the sum of ₱50,000.00 as civil indemnity; ₱50,000.00 as moral damages; and ₱25,000.00 as exemplary damages and to pay the cost.²⁴

Accused-appellants now seek recourse from this Court through the instant appeal.

The Court required the parties to file their respective supplemental briefs, if they so desire, in a Resolution²⁵ dated December 2, 2009. However, all the parties manifested that they have exhausted their arguments before the Court of Appeals, thus, they would no longer file any supplemental brief.²⁶

In their Brief, accused-appellants assigned the following errors allegedly committed by the RTC:

²⁴ Id. at 22-23.

²⁵ Id. at 32-33.

²⁶ Id. at 36-40 and 41-44.

I.

THE COURT A QUO GRAVELY ERRED IN GIVING FULL CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESSES DESPITE THEIR INHERENT INCREDIBILITIES AND IRRECONCILABLE INCONSISTENCIES.

II.

THE COURT A QUO ERRED IN CONVICTING THE ACCUSED-APPELLANTS DESPITE THE FAILURE OF THE PROSECUTION TO PROVE THEIR GUILT BEYOND REASONABLE DOUBT.²⁷

Plaintiff-appellee contends that accused-appellants were correctly convicted and even prays that the civil indemnity awarded in Criminal Case No. C-369 be increased.

The appeal is bereft of merit.

In this case, accused-appellants' appeal is chiefly grounded on their challenge of the credibility of the prosecution witnesses and veracity of the latter's testimonies, to which both the RTC and the Court of Appeals gave more credence and weight.

As consistently adhered to by this Court, the matter of assigning values to declarations on the witness stand is best and most competently performed by the trial judge, who had the unmatched opportunity to observe the witnesses and to assess their credibility by the various *indicia* available but not reflected on the record. The demeanor of the person on the stand can draw the line between fact and fancy. The forthright answer or the hesitant pause, the quivering voice or the angry tone, the flustered look or the sincere gaze, the modest blush or the guilty blanch – these can reveal if the witness is telling the truth or lying through his teeth.²⁸

²⁷ CA rollo, p. 57.

²⁸ *People v. Ramirez*, 409 Phil. 238, 245 (2001).

Consequently, the settled rule is that when the credibility of a witness is in issue, the findings of fact of the trial court, its calibration of the testimonies of the witnesses and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings are accorded high respect if not conclusive effect. This is more true if such findings were affirmed by the appellate court, since it is settled that when the trial court's findings have been affirmed by the appellate court, said findings are generally binding upon this Court.²⁹ Without any clear showing that the trial court and the appellate court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance, the rule should not be disturbed.³⁰

The Court finds no cogent reason to disturb, and is, therefore, conclusively bound by the findings of fact and judgments of conviction rendered by the RTC, subsequently affirmed by the Court of Appeals.

The testimonies of Emelie and Crisologo established beyond reasonable doubt the commission by accused-appellants of the crimes of robbery by a band and kidnapping for ransom.

The crime of robbery under Article 293 of the Revised Penal Code has the following elements: (a) intent to gain, (b) unlawful taking, (c) personal property belonging to another, and (d) violence against or intimidation of person or force upon things. Under Article 296 of the same Code, "when more than three armed malefactors take part in the commission of robbery, it shall be deemed to have been committed by a band." It further provides that "[a]ny member of a band who is present at the commission of a robbery by

²⁹ *Decasa v. Court of Appeals*, G.R. No. 172184, July 10, 2007, 527 SCRA 267, 287.

³⁰ *Nueva España v. People*, 499 Phil. 547, 556 (2005).

the band, shall be punished as principal of any of the assaults committed by the band, unless it be shown that he attempted to prevent the same.”³¹

All of the foregoing elements had been satisfactorily established herein. At least five (5) people, including accused-appellants, carrying guns and a hand grenade, barged into the home of, and forcibly took pieces of jewelry and other personal properties belonging to, spouses Yasumitsu and Emelie Hashiba. Accused-appellants themselves made their intent to gain clear when they assured their victims that they were only after the money.

As for the crime of kidnapping, the following elements, as provided in Article 267 of the Revised Penal Code, must be proven: (a) a person has been deprived of his liberty, (b) the offender is a private individual, and (c) the detention is unlawful.³² The deprivation required by Article 267 means not only the imprisonment of a person, but also the deprivation of his liberty in whatever form and for whatever length of time. It involves a situation where the victim cannot go out of the place of confinement or detention or is restricted or impeded in his liberty to move. In other words, the essence of kidnapping is the actual deprivation of the victim’s liberty, coupled with indubitable proof of the intent of the accused to effect such deprivation.³³

In the present case, Yasumitsu was evidently deprived by accused-appellants of his liberty for seven days. Armed with guns and a grenade, accused-appellants and their cohorts took Yasumitsu from the latter’s home in Lanuza, Surigao del Sur, to Surigao City, by car; and then all the way to Tubajon, Surigao del Norte, by boat. Accused-appellants held Yasumitsu from January 23 to January 29, 2003. During said period, Yasumitsu was unable to communicate with his family or to go home. Also during the same

³¹ *People v. Lumiwan*, 356 Phil. 521, 533 (1998).

³² *Id.* at 531.

³³ *People v. Baluya*, G.R. No. 181822, April 13, 2011, 648 SCRA 708, 716-717.

period, accused-appellants called Emelie several times to ask whether the ₱3,000,000.00 ransom payment was already available.

The Court rejects accused-appellants' claim that Yasumitsu went with them voluntarily. As the RTC acutely observed:

The claim of the defense that the victim Hashiba was not kidnapped but on his volition to go with them by reason of the treasure map implying that the Japanese would join them in the treasure hunt, is a ridiculous attempt of the accused to extricate themselves from the offense they are in. This Court is not convinced. Having observed all the demeanors of the witnesses, the Prosecution's evidence is more in accord with reason and logic. The accused protestations that they sought the services of the Japanese to interpret the treasure map and finally went with them freely to Tubajon, taxes credulity. Simple imagination militates against such pretended defenses. Firstly, if the intention of the accused was only for the purpose of requesting the Japanese to interpret the treasure map, why would the reading and interpretation be brought to the second floor and right at the bedroom of the victim, whom it could have been done at the living room? Secondly, why only the Japanese was brought to the alleged location in Tubajon? This Court takes notice that the Japanese cannot speak Filipino language or dialect. It was even the reason why the Japanese was not able to testify because of the lack of interpreter due to the objection of the accused for the wife to interpret the supposed testimony of the Japanese. Bringing along with them the Japanese to read the treasure map is not in keeping with reason because the Japanese could not be understood. Certainly, the Japanese needs interpreter.

Again, the claim of the accused that they freely released the Japanese at San Jose after finding that the area was already dug up did not convince the Court. They released the Japanese after they knew that the authorities were looking for them and that Melquiades, Lorenzo and Estrelita Apole were already arrested.³⁴

Under Article 8 of the Revised Penal Code, there is conspiracy when two or more persons come to an agreement concerning a felony and decide to commit it. It may be inferred from the acts of the accused before, during or after the commission of the crime which, when taken together, would be enough to reveal a community of criminal design, as the proof of conspiracy

³⁴

Records, pp. 310-311.

is frequently made by evidence of a chain of circumstances. To be a conspirator, one need not participate in every detail of the execution; he need not even take part in every act or need not even know the exact part to be performed by the others in the execution of the conspiracy. Each conspirator may be assigned separate and different tasks which may appear unrelated to one another but, in fact, constitute a whole collective effort to achieve their common criminal objective. Once conspiracy is shown, the act of one is the act of all the conspirators. The precise extent or modality of participation of each of them becomes secondary, since all the conspirators are principals.³⁵

There is conspiracy among accused-appellants and their cohorts when they kidnapped Yasumitsu. Their community of criminal design could be inferred from their arrival at the Hashiba's home already armed with weapons, as well as from their clearly designated roles upon entry into the house (*i.e.*, some served as lookouts; some accompanied Emelie to the second floor to look for jewelry, cash, and other property to take; and some guarded and hogtied the other people in the house) and in the abduction of Yasumitsu (*i.e.*, Jovel S. Apole went back to Surigao City to secure the release of the ransom money while Renato C. Apole and Rolando A. Apole stayed in Tubajon to guard Yasumitsu). The Court concurs with the RTC that "all these acts were complimentary to one another and geared toward the attainment of a common ultimate objective to extort a ransom of three (3) million in exchange for the Japanese[']s freedom."

The alleged inconsistencies or conflict in the prosecution witnesses' testimonies were already rejected by the Court of Appeals for the same only pertain to minor details which have inconsequential significance. The appellate court elaborated thus:

³⁵

People v. Anticamara, G.R. No. 178771, June 8, 2011, 651 SCRA 489, 506-507.

Accused-appellants now insist that the conflicting testimonies of the prosecution witnesses are inconsistent thereby creating reasonable doubt as to their culpability. One such inconsistency is when Emelie allegedly testified that her husband vehemently objected to go with the assailants contrary to her statements in her affidavit that her husband voluntarily went with the malefactors in lieu of their son. Accused-appellants also allege that Emelie's testimony that there were five (5) armed men contradicted with Crisologo Lopio's testimony that there were only four (4) armed men. Accused-appellants further allege that it is rather unusual in a kidnapping situation that the kidnappers failed to give instructions as to how the ransom money would be delivered and how the victim would then be released. Likewise, it was allegedly disturbing that during the incident it was Emelie herself who gave her telephone number to the armed men and told them to call her and even offered the car instead of the [jeepney]. Accused-appellants also point out that after Emelie withdrew the ransom money from the bank, she seemed to have just lost contact with the alleged kidnappers and records allegedly failed to show that she exerted efforts to ascertain the whereabouts of her husband. x x x.

We disagree.

The above alleged inconsistencies are of minor and inconsequential importance. Both witnesses agreed and identified the three accused-appellants to have been the armed malefactors. The testimonies of the victims were straightforward and there was no showing of any ill motive on their part to falsely testify against accused-appellants. Clearly, positive identification of the accused where categorical and consistent and without any showing of ill motive on the part of the eyewitnesses testifying on the matter prevails over his defense. When there is no evidence to show any dubious reasons or improper motive why a prosecution witness would testify falsely against the accused or falsely implicate them in a heinous crime, the testimony is worthy of full faith and credit. Furthermore, issues of sufficiency of evidence are resolved by reference to findings of the trial court that are entitled to the highest respect on appeal in the absence of any clear and overwhelming showing that the trial court neglected, misunderstood or misapplied some facts or circumstances of weight and substance affecting the result of the case.³⁶

In *People v. Delim*,³⁷ the Court further pronounced that a truth-telling witness is not always expected to give an error-free testimony considering the lapse of time and the treachery of human memory. What is primordial is that the mass of testimony jibes on material points, the slight clashing of statements dilute neither the witnesses' credibility nor the veracity of his testimony. Variations on the testimony of witnesses on the same side with

³⁶

Rollo, pp. 17-19.

³⁷

444 Phil. 430, 465 (2003).

respect to minor, collateral, or incidental matters do not impair the weight of their united testimony to the prominent facts. Inconsistencies on minor and trivial matters only serve to strengthen rather than weaken the credibility of witnesses for they erase the suspicion of rehearsed testimony.

Despite affirming the judgments of conviction against accused-appellants, the Court still modifies the penalties imposed and amounts of damages awarded by the Court of Appeals.

In Criminal Case No. C-368, accused-appellants are convicted of the crime of Robbery with Violence Against or Intimidation of Persons Committed by a Band. The penalty prescribed for said crime under Article 294(5), in relation to Article 295 of the Revised Penal Code, is the maximum period of the penalty *prision correccional* in its maximum period to *prision mayor* in its medium period.³⁸ The Indeterminate Sentence Law additionally

³⁸

ART. 294. *Robbery with violence against or intimidation of persons – Penalties.* - Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

1. The penalty of from *reclusion perpetua* to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed; or when the robbery shall have been accompanied by rape or intentional mutilation or arson.
2. The penalty of *reclusion temporal* in its medium period to *reclusion perpetua*, when or if by reason or on occasion of such robbery, any of the physical injuries penalized in subdivision 1 of Article 263 shall have been inflicted.
3. The penalty of *reclusion temporal*, when by reason or on occasion of the robbery, any of the physical injuries penalized in subdivision 2 of the article mentioned in the next preceding paragraph, shall have been inflicted.
4. The penalty of *prision mayor* in its maximum period to *reclusion temporal* in its medium period, if the violence or intimidation employed in the commission of the robbery shall have been carried to a degree clearly unnecessary for the commission of the crime, or when in the course of its execution, the offender shall have inflicted upon any person not responsible for its commission any of the physical injuries covered by subdivisions 3 and 4 of said Article 263.
5. **The penalty of prision correccional in its maximum period to prision mayor in its medium period in other cases.**

ART. 295. *Robbery with physical injuries, committed in an uninhabited place and by a band or with the use of firearm on a street, road or alley.* – If the offenses mentioned in subdivisions three, four, and **five** of the next preceding article shall have been committed in an uninhabited place or **by a band** or by attacking a moving train, street car, motor vehicle or airship, or by entering the passengers' compartments in a train or, in any manner, taking the passengers thereof by surprise in the respective conveyances, or on a street, road, highway, or alley, and the intimidation is made with the use of a firearm, **the offender shall be punished by the maximum period of the proper penalties.**

In the same cases, the penalty next higher in degree shall be imposed upon the leader of the band. (Emphases added.)

provides that the maximum of the sentence shall be that which could be properly imposed in view of the attending circumstances, and the minimum shall be within the range of the penalty next lower to that prescribed by the Revised Penal Code.

In accused-appellants' case, the maximum of the sentence should be within the range of the maximum period of *prision correccional* in its maximum period to *prision mayor* in its medium period, which shall be from eight (8) years and twenty-one (21) days to ten (10) years; while the minimum of the sentence should be within the range of *arresto mayor* in its maximum period to *prision correccional* in its medium period, which has a duration of four (4) months and one (1) day to four (4) years and two (2) months. As a result, the Court imposes upon accused-appellants the penalty of imprisonment for Four (4) years and Two (2) months of *prision correccional*, as minimum, to Ten (10) years of *prision mayor*, as maximum.

The Court sustains the award of actual or compensatory, moral, and exemplary damages in favor of private complainants. Actual damages are awarded as the compensation for such pecuniary loss suffered by the complainant as he has duly proved while moral damages may be recovered if the complainant suffered, among others, mental anguish, fright, serious anxiety, and similar injuries.³⁹ Exemplary damages, on the other hand, are imposed by way of example or correction for the public good and may be adjudicated in criminal cases if the crime was committed with one or more aggravating circumstances and the complainant has shown that he is entitled to moral, temperate, or compensatory damages.⁴⁰ In this case, private complainants have duly proven that they were robbed of their cash and jewelries, and that they felt terrified during such time, thus, entitling them to

³⁹ CIVIL CODE, Articles 2199 and 2217.

⁴⁰ Id., Articles 2229, 2230, and 2234.

be paid actual and moral damages. Considering also that the robbery was committed with the inherent aggravating circumstance of a band, and to set an example for the public good, the award of exemplary damages is in order. The award of additional civil indemnity, however, should be deleted for lack of legal basis.

In Criminal Case No. C-369, where accused-appellants are convicted of the crime of Kidnapping for Ransom and Serious Illegal Detention, the Court of Appeals correctly reduced their sentence from death to *reclusion perpetua* considering the passage of Republic Act No. 9346, prohibiting the imposition of the death penalty. The Court likewise emphasizes that accused-appellants shall not be eligible for parole. Under Section 3 of Republic Act No. 9346, “[p]ersons convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole under Act No. 4180, otherwise known as the Indeterminate Sentence Law, as amended.”⁴¹

There is also need to modify the damages awarded in Criminal Case No. C-369 in line with prevailing jurisprudence.⁴² Accused-appellants are to pay Yasumitsu the amounts of ₱75,000.00 as civil indemnity, which is awarded if the crime warrants the imposition of the death penalty; ₱75,000.00 as moral damages, because the victim is assumed to have suffered moral injuries without need of proof; and ₱30,000.00 as exemplary damages, to set an example for the public good.

WHEREFORE, the Court **AFFIRMS with MODIFICATION** the Decision dated May 29, 2009 of the Court of Appeals in CA-G.R. CR.-H.C. No. 00428-MIN, which affirmed with modification the Joint Decision dated


⁴¹ *People v. Tadah*, G.R. No. 186226, February 1, 2012, 664 SCRA 744, 747.
⁴² *Id.*

April 20, 2006 of the Regional Trial Court, Branch 41 of Cantilan, Surigao del Sur, to read as follows:

1) In **Criminal Case No. C-368**, the Court finds accused-appellants Jovel S. Apole, Renato C. Apole and Rolando A. Apole **GUILTY** beyond reasonable doubt of the crime of Robbery with Violence Against or Intimidation of Persons by a Band and sentences accused-appellants to suffer the penalty of imprisonment for Four (4) years and Two (2) months of *prision correccional*, as minimum, to Ten (10) years of *prision mayor*, as maximum, and to pay private complainants the amounts of ₱78,000.00 as actual damages; ₱50,000.00 as moral damages; and ₱25,000.00 as exemplary damages.

2) In **Criminal Case No. C-369**, the Court finds accused-appellants Jovel S. Apole, Renato C. Apole and Rolando A. Apole **GUILTY** beyond reasonable doubt of the crime of Kidnapping for Ransom and Serious Illegal Detention and sentences accused-appellants to suffer the penalty of *reclusion perpetua*, without the possibility of parole, and to pay private complainants the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages.

SO ORDERED.


TERESITA J. LEONARDO-DE CASTRO
Associate Justice

WE CONCUR:



MARIA LOURDES P. A. SERENO

Chief Justice

Chairperson



LUCAS P. BERSAMIN

Associate Justice



MARTIN S. VILLARAMA, JR.

Associate Justice



BIENVENIDO L. REYES

Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO

Chief Justice