



Republic of the Philippines  
Supreme Court  
Baguio City

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,  
Plaintiff-Appellee,

G.R. No. 201443

Present:

- versus -

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

BETTY SALVADOR y TABIOS,  
MONICO SALVADOR, MARCELO  
LLANORA, JR. y BAYLON,  
ROBERT GONZALES y MANZANO,  
RICKY PEÑA y BORRES @ RICK,  
ROGER PESADO y PESADO @ GER,  
JOSE ADELANTAR y CAURTE,  
LOWHEN ALMONTE y PACETE,  
JUBERT BANATAO y AGGULIN @  
KOBET, and MOREY DADAAN,  
Accused-Appellants.

Promulgated:

APR 10 2013

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DECISION

REYES, J.:

This is an appeal<sup>1</sup> from the Decision<sup>2</sup> rendered by the Court of Appeals (CA) on February 25, 2011 in CA-G.R. CR-H.C. No. 03279

<sup>1</sup> The Regional Trial Court, then presided by Judge Bayani V. Vargas, and the Fourth Division of the Court of Appeals convicted ten of the accused. Seven of them filed notices of appeal (*rollo*, pp. 29-31, 87-89; CA *rollo*, pp. 897-899). On the other hand, Jose Adelantar y Caurte, intending to seek executive clemency, filed a Motion to Withdraw Appeal (*rollo*, pp. 90-92). No notices of appeal were filed by Betty Salvador and Monico Salvador.

<sup>2</sup> Penned by Associate Justice Franchito N. Diamante, with Associate Justices Josefina Guevara-Salonga and Mariflor P. Punzalan Castillo, concurring; *rollo*, pp. 2-28.

affirming, albeit with modifications, the conviction by the Regional Trial Court (RTC) of Quezon City, Branch 219 of Betty Salvador y Tabios (Betty), Monico Salvador (Monico), Marcelo Llanora, Jr. y Baylon (Marcelo), Robert Gonzales y Manzano (Robert), Ricky Peña y Borres @ Rick (Ricky), Roger Pesado y Pesado @ Ger (Roger), Jose Adelantar y Caurte (Jose), Lowhen Almonte y Pacete (Lowhen), Jubert Banatao y Aggulin @ Kobet (Jubert), and Morey Dadaan (Morey) (herein accused-appellants) for having conspired in kidnapping Albert Yam y Lee (Albert) for the purpose of extorting ransom. The RTC sentenced the accused-appellants to suffer the penalty of *reclusion perpetua* and ordered them to solidarily pay Albert the amount of PhP 100,000.00 as moral damages.<sup>3</sup> The CA Decision dated February 25, 2011 concurred with the RTC's factual findings but expressly stated in its dispositive portion the accused-appellants' non-eligibility for parole. The CA further ordered the accused-appellants to solidarily pay Albert PhP 50,000.00 as civil indemnity and PhP 100,000.00 as exemplary damages. The RTC and the CA, however, acquitted accused-appellants of kidnapping a certain Pinky Gonzales (Pinky), who, from the account of some of the prosecution witnesses, was likewise taken with Albert during the same abduction incident.

The charges against the accused-appellants stemmed from the following Informations dated April 15, 2002:

(a) In Criminal Case No. Q-02-108834 against Betty, Monico, Marcelo, Robert, Ricky, Roger and nine other John Does for the kidnapping and serious illegal detention of Pinky allegedly lasting for six days, the Information, in part, reads:

That on or about April 7, 2002 at around 7:30 in the evening, in the vicinity of the Cainta Cockpit Arena, Cainta, Rizal, the above-named accused, conspiring, confederating and mutually helping one another, with the use of firearms, threats and intimidation did then and there, willfully, unlawfully and feloniously kidnap and take away **PINKY GONZALES y TABORA** against her will; That in the process, she was forced to board a Toyota Hi-Ace van which transported her, until finally she was brought to an undisclosed location in Caloocan City where she was kept for six (6) days; That she was finally rescued on April 12, 2002 by police operatives from the Philippine National Police.<sup>4</sup>

(b) In Criminal Case No. Q-02-108835 against Jose, Lowhen, Betty, Monico, Morey, Jubert, Marcelo, Robert, Ricky, Roger and nine other John Does for the kidnapping of and demanding from Albert USD 1,000,000.00 as ransom money, the Information states:

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<sup>3</sup> CA *rollo*, p. 291.

<sup>4</sup> Id. at 20-21.

That on or about April 7, 2002 at around 7:30 in the evening, in the vicinity of the Cainta Cockpit Arena, Cainta, Rizal, the above-named accused, conspiring, confederating and mutually helping one another, with the use of firearms, threats and intimidation did then and there, willfully, unlawfully and feloniously kidnap and take away **ALBERT YAM y LEE**; That in the process, he was forced to board a Toyota Hi-Ace van which transported him, passing through the areas of U.P. Balara and Fairview in Quezon City and within the jurisdiction of this Honorable Court, until finally he was brought to an undisclosed location in Caloocan City where he was kept for six (6) days; That ransom in the amount of \$1,000,000.00 was demanded in exchange for his safe release until he was finally rescued on April 12, 2002 by police operatives from the Philippine National Police.<sup>5</sup>

During arraignment, the accused-appellants pleaded not guilty to the charges.

On June 14, 2002, pre-trial was terminated without the parties having entered into stipulations.

### **The Case for the Prosecution**

During the trial, the prosecution witnesses, with their corresponding testimonies, were:

(a) Albert, married to Evangeline Lim-Yam (Evangeline), holds a Marketing degree from De La Salle University. He also took some units under the Ateneo de Manila University's Masters in Business Administration program. He is engaged in printing and financing business. He is also a breeder of fighting cocks and race horses. On February 2002, he took over, with a partner, the operations of the New Cainta Coliseum (Coliseum), a cockpit arena.

Albert testified<sup>6</sup> that the lens grade of his eye glasses is 275. With eye glasses on, his vision is normal. Without the glasses, he can clearly see objects one to two meters away from him, but beyond that, his vision becomes blurry.<sup>7</sup>

On April 7, 2002, at around 7:30 p.m., Albert rode his Toyota Prado (Prado) with Plate No. UTJ-112 and drove out of the Coliseum's parking lot. Ahead was a white Honda Civic car (Civic), while behind was a Toyota Hi-Ace van (Hi-Ace). Upon reaching Imelda Avenue, the Hi-Ace overtook the Civic. Albert was about to follow suit, but the Hi-Ace suddenly stopped and

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<sup>5</sup> Id. at 24.

<sup>6</sup> Id. at 220-234.

<sup>7</sup> Id. at 233-234.

blocked the Civic. Six men with long firearms alighted from the Hi-Ace. Jubert and Morey approached the Civic, which was just about two to two and a half meters away from Albert,<sup>8</sup> pointed their guns at the driver, who turned out to be Pinky,<sup>9</sup> and motioned for her to step out of the car and ride the Hi-Ace. Two men ran after the “watch-your-car” boy in a nearby parking lot, but Albert no longer noticed if the two still returned to the Hi-Ace.<sup>10</sup> Roger and Robert came near the Prado and gestured for Albert to likewise alight from the vehicle and ride the Hi-Ace.

When Albert rode the Hi-Ace, he saw Marcelo in the driver’s seat and beside him was Ricky. Morey was behind the driver. So too were Jubert. Roger and Robert rode the Hi-Ace after Albert did.

Albert and Pinky were handcuffed together and made to wear dark sunglasses. The men took Albert’s wallet containing PhP 9,000.00, his driver’s license and other documents. They also took his Patek Philippe watch which costs PhP 400,000.00.

While inside the Hi-Ace, Albert and Pinky were ordered to duck their heads. Notwithstanding the position, Albert saw the lights emanating from the blue eagle figure at the Ateneo gym. He also heard one of the men telling the driver to pass by Balara. After around 20 minutes, Albert also noticed having passed by the vicinity of SM Fairview. They arrived in their destination 10 to 15 minutes after and were handcuffed separately. Albert and Pinky stayed in the house and were fed food mostly bought from Jollibee until they were rescued on April 12, 2002.

Albert described the house as “half constructed”.<sup>11</sup> They were made to stay in the basement around three and a half by four meters in size, with a stairway, small sofa, bed, table and four chairs. Behind the table was a sink and a comfort room. There was a large window about three by five feet in size, but it was covered with a blanket and a plastic sack. Albert identified Monico as the person who was beside him, pulling him up when he fell while descending the basement stairs.<sup>12</sup> Albert claimed that he was still handcuffed then and was made to wear dark eye glasses. The kidnappers allowed him to remove the dark eye glasses when he laid down in bed on the first night of their detention.<sup>13</sup> On April 8, 2002, his own eye glasses were returned to him upon his request.<sup>14</sup>

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<sup>8</sup> Id. at 228.

<sup>9</sup> Yam testified that he knew Pinky as the cousin of a certain Ana, one of his staff in the Coliseum. He had seen Pinky around 15 times and had talked to her in some occasions. However, he was not aware that at the time he was about to be abducted, Pinky was the driver of the Civic, which was in between his Prado and the Hi-Ace in which some of the accused-appellants were then riding. (Id. at 227-228.)

<sup>10</sup> Id. at 228.

<sup>11</sup> Id. at 222.

<sup>12</sup> Id. at 233; TSN, Vol. I, June 28, 2002, pp. 35-37; TSN, Vol. I, September 13, 2002, p. 35.

<sup>13</sup> TSN, Vol. I, June 28, 2002, p. 40; TSN, Vol. I, July 26, 2002, p. 24.

<sup>14</sup> TSN, Vol. I, June 28, 2002, p. 41.

Albert told the men that he was the only person they should talk to if they wanted ransom money. The men inquired how much he can give. Albert replied that he can shell out PhP 500,000.00. The men asked for Albert's phone and pin number to be able to call the latter's wife. He was ordered to write a letter to his wife informing her that he was abducted and indicating therein the names of persons from whom she could borrow money to be paid to the accused-appellants as ransom. Albert also claimed that he got to talk, through the telephone, to the person, whom the accused-appellants seemed to consider as their boss. The boss demanded USD 1,000,000.00 for Albert's release. One of the persons posted as guards in the safehouse threatened Albert that the latter would be killed unless ransom money be paid by Friday, April 12, 2002.<sup>15</sup>

Albert had seen Jose a few times in the Coliseum. Albert also recalled that immediately prior to his abduction, Jose accompanied him to his Prado and had asked for "*balato*".<sup>16</sup> Albert identified Jose as the "tipster" who acted as a look-out during the abduction incident.<sup>17</sup> Albert likewise stated that he had seen Ricky in the Coliseum on April 7, 2002 and on several other instances as the latter worked as a "*kristo*" or bet taker.<sup>18</sup> Albert recognized Marcelo as a bettor.

Albert identified Betty as the person who brought them food and who, in one occasion, had inquired from the guard how Albert and Pinky were faring in the basement.<sup>19</sup>

On April 11, 2002, at around 6:00 a.m.,<sup>20</sup> seven persons came down to the basement to threaten Albert and Pinky.<sup>21</sup> Albert later identified them as Jubert and Morey,<sup>22</sup> Marcelo, Ricky, Lowhen and Jose,<sup>23</sup> and Nelson Ocampo y Ruiz @ Joselito Estigoy<sup>24</sup> (Nelson). Thereafter, the men left behind Nelson and Lowhen to remain as guards, who took their posts in the stairway.<sup>25</sup> At around lunch time, Betty gave food to one of the guards, who in turn handed the same to Albert and Pinky. Albert was then sitting in the sofa, which was just a little over a meter away from the stairway.<sup>26</sup>

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<sup>15</sup> CA *rollo*, p. 225.

<sup>16</sup> Id.; TSN, Vol. I, July 5, 2002, p. 75.

<sup>17</sup> Id. at 230.

<sup>18</sup> Id. at 227.

<sup>19</sup> Id. at 232-233; TSN, Vol. I, August 30, 2002, p. 59; TSN, Vol. I, September 13, 2002, pp. 36-37.

<sup>20</sup> TSN, Vol. I, July 5, 2002, p. 53.

<sup>21</sup> Id. at 42-45.

<sup>22</sup> Id. at 47.

<sup>23</sup> Id. at 50.

<sup>24</sup> Id. at 51.

<sup>25</sup> Id. at 54.

<sup>26</sup> Id. at 55-58.

Albert remembered having stayed in the basement until the early hours of April 12, 2002. On that day, he heard the ferocious barking of a dog, footsteps in the second floor, and then a gun shot. Albert and Pinky stayed inside the comfort room until a uniformed man brought them out. One person, who acted as among those guarding Albert and Pinky while they were detained, was killed in the rescue operations. He was subsequently identified as Nelson. Another guard left in the evening of April 10, 2002 and he never went back.<sup>27</sup> Albert did not see Betty and Monico in the premises of the safehouse on the day the rescue operations were conducted by the police. He only saw the couple in Camp Crame around 5:00 p.m. while the former was making a statement.<sup>28</sup>

Albert and Pinky were brought to Camp Crame between 8:00 a.m. and 9:00 a.m. of April 12, 2002. Some time after lunch, a police line-up with about 15 men was presented.<sup>29</sup> Albert identified seven persons, to wit, Marcelo, Ricky, Jubert, Morey, Jose, Robert and Roger, as among his abductors. At that time, he was not yet able to pinpoint the rest of the accused-appellants because they were not presented to him in the police line-up.<sup>30</sup>

(b) Senior Inspector Arnold Palomo (S/Insp. Palomo), who is assigned at the Anti-Organized Crime for Businessmen's Concern Division of the Criminal Investigation and Detection Group (CIDG), Camp Crame, testified that on April 12, 2002, at around 6:30 a.m., he was in the vicinity of No. 3, Lumbang Street, Amparo Subdivision, Caloocan City, where they had just rescued Pinky, a victim of kidnapping. Around an hour later, Betty arrived and introduced herself as the owner of the house. She inquired why the police officers were shooting at her house. She was invited by the police to Camp Crame to answer queries anent why a crime was committed in her house. While in Camp Crame, Albert and Pinky identified her as the person who brought them food while they were detained in the safehouse. Betty was thus arrested.<sup>31</sup>

(c) Police Inspector Marites Bugnay (P/Insp. Bugnay), Assistant Chief of the Firearms Identification Division of the Philippine National Police (PNP) Crime Laboratory, testified that at around 9:30 a.m. of April 12, 2002, she and her team, with six members, went to Amparo Subdivision where a rescue operation had just taken place. They recovered a 5.56 mm Elisco rifle without serial number, a 9 mm Chinese made pistol, two long and three short magazines for a caliber 5.56 mm rifle, 188 live ammunitions, 24 pieces of cartridges fired from four different caliber 5.56 mm rifles, two

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<sup>27</sup> CA *rollo*, p. 231.

<sup>28</sup> Id. at 232; TSN, Vol. I, August 30, 2002, pp. 64-67.

<sup>29</sup> TSN, Vol. I, July 26, 2002, pp. 69-70.

<sup>30</sup> CA *rollo*, pp. 224-225, 230; TSN, Vol. I, July 5, 2002, pp. 71-73, 76; TSN Vol. I, August 30, 2002, pp. 26, 30, 67.

<sup>31</sup> Id. at 235-237; TSN, Vol. I, September 27, 2002, pp. 8-47.

lifted latent prints, among others. She made a Spot Report of the physical evidence recovered by her team. P/Insp. Bugnay, however, stated that some of the police officers, who participated in the rescue operations, also carried caliber 5.56 mm firearms.<sup>32</sup>

(d) Evangeline, Albert's wife, testified<sup>33</sup> having received seven phone calls<sup>34</sup> between April 7, 2002 and April 11, 2002 from the kidnappers informing her that they took Albert and demanding USD 1,000,000.00 as ransom money.<sup>35</sup> On April 11, 2002, she was instructed by the kidnappers to go to Jollibee along EDSA Guadalupe. The kidnappers were supposed to hand to her a letter from her husband. A police operative acted as her driver. She and the police operative got to the place between 11:30 and 11:45 in the morning.<sup>36</sup> The kidnappers called her and ordered her driver to go to the restrooms to retrieve a letter taped in one of the toilet bowls. Evangeline went back to her car. While she was inside, three men tried to forcibly open her car. She panicked, bowed down and screamed. She was, however, only able to see the suspects from their chests down.<sup>37</sup> Thereafter, P/Insp. Ferdinand Vero (Major Vero) approached the car and informed her that they were able to apprehend three suspects. She went home. The next morning, she received a call, got to talk to Albert, and thereafter proceeded to Camp Crame.

(e) PO1 Paul Pacris (PO1 Pacris) stated that he and four other police officers from the CIDG were the ones who assisted Evangeline when she met with Albert's kidnappers in Jollibee along EDSA Guadalupe. They arrived in the area at around 11:00 a.m. and after about two hours, they arrested Ricky, Jose and Marcelo who tried to forcibly open Evangeline's car. They recovered from Jose a .38 caliber Armscor with six live ammunitions. The policemen frisked the three without opposition from the latter.<sup>38</sup>

(f) PO3 Manuel Cube (PO3 Cube) corroborated<sup>39</sup> PO1 Pacris' testimony relative to the arrest of Ricky, Jose and Marcelo. PO3 Cube further stated that while it was not his team which arrested the suspects, after Jose and Ricky were turned over to them, they brought the two to Camp Crame.<sup>40</sup> While in the investigation room, he heard Jose and Ricky admit knowledge of Albert's abduction.<sup>41</sup> Jose and Ricky were then not assisted by

<sup>32</sup> Id. at 237-238; TSN, Vol. I, October 11, 2002, pp. 6-36.

<sup>33</sup> Id. at 238-242; TSN, Vol. I, November 8, 2002, pp. 6-93.

<sup>34</sup> TSN, Vol. I, November 8, 2002, p. 60.

<sup>35</sup> Id. at 18.

<sup>36</sup> Id. at 63.

<sup>37</sup> Id. at 40, 69-70.

<sup>38</sup> CA *rollo*, pp. 242-243; TSN, Vol. I, November 22, 2002, pp. 14-38; TSN, Vol. I, December 13, 2002, pp. 6-25.

<sup>39</sup> Id. at 243-247; TSN, Vol. I, January 17, 2003, pp. 3-16; TSN, Vol. I, January 24, 2003, pp. 3-15; TSN, Vol. I, February 7, 2003, pp. 8-62.

<sup>40</sup> TSN, Vol. I, January 17, 2003, p. 15; TSN, Vol. I, February 7, 2003, pp. 37-38.

<sup>41</sup> TSN, Vol. I, January 17, 2003, p. 16.

counsel.<sup>42</sup> Chief Police Superintendent Zolio M. Lachica (Col. Lachica) briefed PO3 Cube and the other policemen that the arrested suspects divulged an information that the Hi-Ace with Plate No. WNW-180 used in Albert's abduction was going to pass by Road C-5, Commonwealth Avenue on April 12, 2002.<sup>43</sup> PO3 Cube, Major Vero and other police officers riding four to five vehicles went to the place. At around 5:45 a.m., they spotted the Hi-Ace, chased it and blocked it with a police car.<sup>44</sup> Robert and Roger were inside the Hi-Ace, and the former had a shotgun. After the policemen drew their guns, the suspects surrendered.

(g) PO2 Arvin Garces (PO2 Garces), a field operative and an in-house bomb technician assigned at the CIDG's Anti-Organized Crime and Businessmen's Concern Division, testified<sup>45</sup> that on April 12, 2002, between 8:00 a.m. and 8:30 a.m., he and 20 policemen went to *Sitio* GSIS, *Barangay* San Martin de Porres, Parañaque to arrest Lowhen, Jubert and Morey. Their team leader knocked on the door of the target house, which was partially open. Lowhen came out. Jubert and Morey were in the adjacent room, which was about five meters away from where Lowhen was.<sup>46</sup> PO2 Garces was uncertain though if the said adjacent room was part of the same house where Lowhen was found.<sup>47</sup> The three suspects were informed that they were being implicated for Albert's kidnapping and would thus be taken for investigation.

Following were among the object evidence likewise offered by the prosecution: (a) sketches prepared by Albert depicting the (1) exact location where the kidnapping took place,<sup>48</sup> (2) positions of Albert and Pinky relative to the kidnappers while inside the Hi-Ace,<sup>49</sup> and (3) interior of the basement room where Albert and Pinky were detained;<sup>50</sup> (b) dark glasses wrapped with black tape and handcuffs worn by Albert and Pinky while they were detained;<sup>51</sup> (c) Albert's handwritten note dated April 10, 2002 addressed to "Vangie" and signed by "Boogs";<sup>52</sup> and (d) *Sinumpaang Salaysay*<sup>53</sup> and Supplemental Affidavit<sup>54</sup> executed by Albert on April 13, 2002 and April 15, 2002, respectively.

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<sup>42</sup> CA *rollo*, p. 246.

<sup>43</sup> TSN, Vol. I, January 24, 2003, pp. 5-6.

<sup>44</sup> Id. at 7-8.

<sup>45</sup> CA *rollo*, pp. 247-248; TSN, Vol. I, February 14, 2003, pp. 4-33; TSN, Vol. I, March 28, 2003, pp. 3-32.

<sup>46</sup> TSN, Vol. I, February 14, 2003, p. 13.

<sup>47</sup> Id. at 29.

<sup>48</sup> Records, p. 192.

<sup>49</sup> Id. at 193.

<sup>50</sup> Id. at 194.

<sup>51</sup> Id. at 186-187.

<sup>52</sup> Id. at 195.

<sup>53</sup> Here, Albert identified nine of the accused-appellants, except Lowhen, as involved in his kidnapping; id. at 196-199.

<sup>54</sup> Here, Albert identified Lowhen as one of the two guards who watched over him on April 11, 2002, the fifth day of the former's detention; id. at 200. Albert did not see Lowhen yet in the CIDG office when the former executed his first affidavit, hence, the latter was not promptly pinpointed; CA *rollo*, p. 233.



### The Case for the Defense

The defense witnesses with their testimonies were:

(a) Marcelo, resident of Sta. Ana Compound, Manila East Road, Taytay, Rizal, testified that he owns a beer house and a billiard hall. He also renders mechanical services. He claimed that from 12:00 noon until 9:00 p.m. of April 7, 2002, he was repairing a motor bike at home. Marcelo was with a certain Bogs, the owner of the motor bike, and Jobber, the former's helper.<sup>55</sup>

From April 8 to 9, 2002, Marcelo just stayed home with his daughter.<sup>56</sup>

On April 10, 2002, at around 7:00 a.m., Marcelo was in his bedroom making an accounting of the earnings of his beer house. He heard knocks at the door of his billiard hall. Thereafter, around six unidentified men entered, punched, tied him up, and threw him at the back of a white Revo without a plate. Even when Rosario, Marcelo's daughter, was slapped and kicked by the unidentified men after she inquired about their identities, she insisted that she be taken with her father. Marcelo and Rosario were brought to Camp Crame. They were made to sit down in a room with a hazy glass window. Rosario was thereafter ordered to leave the room and when she refused, she was dragged out. The men started showing Marcelo photographs and asking him questions. When he denied knowing any of the persons in the photographs, he was blindfolded with a packing tape and got kicked every time he refused to answer the men's queries. A plastic bag was likewise placed over his head making it difficult for him to breathe. His ordeal lasted for an hour, after which somebody told him that if he had PhP 100,000.00, he would be released.<sup>57</sup>

At around 5:00 p.m. or 6:00 p.m., Marcelo asked Rosario to go home and look for a lawyer. At around 10:00 a.m. of the following day, April 11, 2002, Rosario came back with a certain Atty. Platon. Marcelo narrated to Atty. Platon the circumstances surrounding his arrest.<sup>58</sup> Atty. Platon informed Marcelo that the latter was being charged of kidnapping.<sup>59</sup> Not long after, at around 10:30 a.m. to 11:00 a.m., a certain Dr. Arnold de Vera (Dr. de Vera) arrived and conducted an examination of Marcelo's injuries and bruises.<sup>60</sup> Marcelo asked Atty. Platon if he can file a complaint against the men who mauled him. Atty. Platon replied in the affirmative, but as of

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<sup>55</sup> TSN, Vol. I, June 20, 2003, pp. 11-57; TSN, Vol. I, September 3, 2003, pp. 3-31.

<sup>56</sup> Id. at 42-43.

<sup>57</sup> Id. at 14-26.

<sup>58</sup> Id. at 28-30.

<sup>59</sup> Id. at 32.

<sup>60</sup> Id. at 31; *CA rollo*, pp. 252-253.

even date, no complaint had been filed yet as Marcelo had to attend to other pressing matters relative to the kidnapping case.<sup>61</sup> Atty. Platon and Dr. de Vera left while Marcelo and Rosario stayed in Camp Crame for two nights.<sup>62</sup>

On April 12, 2002, at around 3:00 p.m. or 4:00 p.m., Marcelo was brought to a building in Camp Crame and was made to stand up alongside nine people with whom he was not acquainted. There were cameras around and a Chinese man and a woman started pointing at them.<sup>63</sup>

Marcelo denied personal acquaintance with Albert,<sup>64</sup> PO1 Pacris,<sup>65</sup> Jubert, Monico and Betty.<sup>66</sup> He admitted having been to the Coliseum as he was into cock fighting. The Coliseum, located in Cainta, is only about two kilometers away from Taytay.<sup>67</sup>

Marcelo offered the testimony of Dr. de Vera,<sup>68</sup> a plastic surgeon from St. Luke's Medical Center, Quezon City, to prove that in the morning of April 11, 2002, the former was already under the CIDG's custody. The foregoing is contrary to the prosecution's claim that between 11:30 a.m. and 12:00 noon of the said date, Marcelo was arrested in Jollibee along EDSA Guadalupe while trying to forcibly open Evangeline's car. Dr. de Vera stated that in the afternoon of April 10, 2002, Marcelo's daughter called asking for his help as her father was allegedly being manhandled. Dr. de Vera went to the CIDG office in the morning of April 11, 2002. He made a visual examination of Marcelo's body and saw hematoma in the sternum and fresh abrasions in both hands of the latter, but he did not reduce his observations into writing.<sup>69</sup> To stop Marcelo's manhandling, Dr. de Vera sought audience with the PNP Chief, but the latter was not around.<sup>70</sup>

During cross-examination, Dr. de Vera stated that once in a while, he sings and drinks in Marcelo's beer house in Taytay.<sup>71</sup>

SPO2 Eduardo Peñales' testimony was dispensed with since the parties stipulated that he was the officer who, on April 10, 2002, at around 8:35 a.m., received and recorded in the logbook of the Taytay Police Station a report from a certain Jover Porras y Perla that Marcelo was abducted by unidentified men earlier at 7:20 a.m.<sup>72</sup>

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<sup>61</sup> Id. at 46-48.

<sup>62</sup> Id. at 33.

<sup>63</sup> Id. at 34-35.

<sup>64</sup> TSN, Vol. I, September 3, 2003, pp. 9-10.

<sup>65</sup> Id. at 16-17.

<sup>66</sup> Id. at 27.

<sup>67</sup> Id. at 15.

<sup>68</sup> TSN, Vol. I, October 1, 2003, pp. 5-28.

<sup>69</sup> Id. at 7-10.

<sup>70</sup> Id. at 12.

<sup>71</sup> Id. at 14.

<sup>72</sup> Id. at 29-41.

(b) Ricky is a “*kristo*” or bet taker in Araneta Coliseum and U-Cap Cockpit in Mandaluyong, and “*mananari*” or gaffer residing in San Luis Street, Valenzuela, Metro Manila.<sup>73</sup> He was still asleep in bed with his wife on April 10, 2002, at around 9:45 a.m.<sup>74</sup> when he heard somebody knocking on the door. When he opened it, a man pointed a gun at him and told him not to ask any questions but just to go with them. There were two men and they brought him to a white Revo where he saw three other people. The owner of the house saw Ricky being taken.<sup>75</sup>

Ricky was brought to Camp Crame, was asked if he knew certain persons from the photographs shown to him, and was mauled when he replied in the negative.<sup>76</sup>

In the morning of April 12, 2002 while still detained in Camp Crame, one of the men, who forcibly took Ricky from his rented room on April 10, 2002, informed the latter that if he had PhP 20,000.00, he would be released. In the afternoon of April 12, 2002, Ricky was handcuffed and placed in a police line-up without being informed of the reason for his inclusion therein.<sup>77</sup>

Ricky denied being among those who abducted Albert on April 7, 2002 and being present in the safehouse in Amparo Subdivision, Caloocan at 6:00 a.m. of April 11, 2002.<sup>78</sup> He did not know Albert personally and had not seen him before. However, Ricky admitted having been to the Coliseum and knowing that Albert was renting the same.<sup>79</sup> Ricky was unaware of any grudge Albert, PO1 Pacris or PO3 Cube may have against him.<sup>80</sup> Ricky did not have any document to prove that he was detained in Camp Crame on April 10, 2002 and his Booking and Arrest Sheet were both dated April 12, 2002.<sup>81</sup>

Ricky’s wife, May, testified<sup>82</sup> that after the former was taken by the unidentified men, she went to Valenzuela Police Station and an officer opined that her husband may be in Camp Crame.<sup>83</sup> She went as suggested and found her husband, who assured her that he would be released.<sup>84</sup> She went home but got back to Camp Crame at 12:00 noon of April 11, 2002,

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<sup>73</sup> TSN, Vol. II, November 5, 2003, p. 3.

<sup>74</sup> Id. at 7, 14.

<sup>75</sup> Id. at 9-14.

<sup>76</sup> Id. at 15-17.

<sup>77</sup> Id. at 21-22.

<sup>78</sup> Id. at 23.

<sup>79</sup> Id. at 28.

<sup>80</sup> Id. at 40-43.

<sup>81</sup> Id. at 45.

<sup>82</sup> TSN, Vol. II, December 3, 2003, pp. 5-49.

<sup>83</sup> Id. at 17.

<sup>84</sup> Id. at 19-20.

during which time she was not anymore allowed to talk to Ricky.<sup>85</sup> She stayed in Camp Crame until past 10:00 p.m. and saw from TV Patrol that Ricky was involved in a kidnapping incident. She got to talk to her husband only on April 13, 2002.<sup>86</sup>

During cross-examination, May stated that Ricky was with her at around 7:00 p.m. of April 7, 2002.<sup>87</sup>

Ritchelda Tugbo (Tugbo), a 63-year old widow and Ricky's landlady, testified<sup>88</sup> that at around 9:30 a.m. of April 10, 2002, while she was eating breakfast, three unidentified men entered her house and took Ricky from his rented room.<sup>89</sup>

Sabina Poliquit (Poliquit), an unemployed 50-year old widow, and Rodolfo Buado (Buado), a 60-year old retired employee, who were both Ricky's neighbors, corroborated Tugbo's statements.<sup>90</sup>

(c) Jose is a trainer gaffer, breeder of fighting cocks, part-time private martial during derbies, and a resident of San Isidro, Fairview, Quezon City. During the trial, he stated<sup>91</sup> that in the evening of April 9, 2002, he went to U-Cap Cockpit in Mandaluyong, where a derby sponsored by a certain Pol Estrellado was being held, to find prospective buyers of fighting cocks and to place bets.<sup>92</sup> He left the place at around 1:00 a.m. of April 10, 2002. While waiting for a cab, a white Revo stopped in front of him, and three gun-toting men alighted therefrom.<sup>93</sup> He was shoved in the front seat in between the driver and another man. While inside the Revo, Jose's eyes were covered with packing tape. His wallet, money, watch, necklace and ring were taken, and the men stepped on his head to keep him down. A plastic bag was placed over his head making it difficult for him to breathe, and he was repeatedly punched when he denied involvement in Albert's kidnapping.<sup>94</sup>

When Jose regained consciousness, he did not know where he was but there was a boy of around 16 years of age removing the packing tape from his eyes. Adelantar only learned that he was in Camp Crame when he was brought to a room with a police line-up at around 6:00 p.m. of April 12, 2002.<sup>95</sup> He insisted that from April 10, 2002 onwards, he was held by the

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<sup>85</sup> Id. at 22.

<sup>86</sup> Id. at 25-27.

<sup>87</sup> Id. at 29, 33.

<sup>88</sup> Id. at 50-66.

<sup>89</sup> Id. at 53-55.

<sup>90</sup> TSN, Vol. II, December 10, 2003, pp. 5-37.

<sup>91</sup> TSN, Vol. II, February 11, 2004, pp. 8-67.

<sup>92</sup> Id. at 11-12.

<sup>93</sup> Id. at 15-17, 34.

<sup>94</sup> Id. at 17-21.

<sup>95</sup> Id. at 21-23.

police in Camp Crame, hence, he could not have been present at 6:00 a.m. of April 11, 2002 in the safehouse where Albert was detained, and at 11:00 a.m. of the same day in Jollibee along EDSA Guadalupe.<sup>96</sup> The boy who removed the packing tape from his eyes could attest to the foregoing, but Jose did not know his name and had not seen him anymore.<sup>97</sup> Further, Jose had never been to the Coliseum and had not personally met Albert and Pinky.<sup>98</sup> Jose alleged that he and the rest of the accused-appellants were mere fall guys.<sup>99</sup> Jose claimed that he only met Marcelo after they were both placed in the police line-up and in the same detention cell.<sup>100</sup> Jose admitted that he was acquainted with Ricky, whom he had recommended to be a “*kristo*” in Araneta Cockpit.<sup>101</sup> Out of fear, Jose had neither informed his lawyer that he was mauled by the policemen nor filed any action against them.<sup>102</sup>

(d) Betty and her husband Monico have been residing for about 33 years in 224 Malanting Street, Amparo Subdivision, Caloocan City. Betty, an elementary school graduate, is a housewife tending a sari-sari store and a piggery. Monico is a drilling contractor and plumber. Betty and Monico own the house in Lumbang Street, Amparo Subdivision, Caloocan City, where Albert and Pinky were detained from April 7 to 12, 2002.

Betty testified<sup>103</sup> that due to her busy schedule, she had not visited their house in Lumbang Street during the alleged period of Albert and Pinky’s detention. Betty and Monico had rented out for PhP 3,000.00 per month the said house to Roger since the late afternoon of April 7, 2002. Roger was recommended to the spouses by a certain Pidok Igat (Igat), their acquaintance. Betty saw Roger once but the latter was wearing sunglasses.<sup>104</sup>

Betty stated that from April 7 to 12, 2002, Monico was contracted to build a deep well in Narra Street, Amparo Subdivision, Caloocan City. In the morning of April 12, 2002, Igat told her that the house in Lumbang Street was being fired at by the policemen. She first instructed Monico to report the incident to the police, then, she ran towards the said house. She was still at a certain distance from the house when the policemen held her by the arms after finding out that she owned it. She denied knowledge of the kidnapping incident, but she was still invited by the police officers to go with them to Camp Crame.<sup>105</sup>

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<sup>96</sup> Id. at 27-29.

<sup>97</sup> Id. at 56-57.

<sup>98</sup> Id. at 30-31, 61, 64.

<sup>99</sup> Id. at 52-53.

<sup>100</sup> Id. at 39.

<sup>101</sup> Id. at 63.

<sup>102</sup> Id. at 41-43.

<sup>103</sup> TSN, Vol. II, February 18, 2004, pp. 17-40; TSN, Vol. II, March 3, 2004, pp. 3-36.

<sup>104</sup> TSN, Vol. II, February 18, 2004, pp. 30-34.

<sup>105</sup> Id. at 35-40.

Betty was not allowed to go home but was detained by the police in Camp Crame. At around 6:00 p.m. of April 12, 2002, after Albert and Pinky arrived, Betty, Roger, Jose, Marcelo, Ricky and other suspects were placed in a police line-up composed of ten people. Monico, Jubert and Morey were not among those in the line-up yet. Albert and Pinky did not pinpoint Betty from the line-up, but a police officer insisted that she be included because she owned the safehouse. Betty identified the officer as SPO1 Polero, but she was uncertain of the name, albeit describing the latter as the one who took Albert and Pinky's statements.<sup>106</sup> Betty did not see Albert and Pinky being brought out of the house during the rescue operations on April 7, 2002. Betty did not personally know Albert, but first saw him in Camp Crame in the evening of April 12, 2002.<sup>107</sup>

During cross-examination, Betty stated that Monico and Jubert were included in the police line-up.<sup>108</sup>

(e) Monico stated<sup>109</sup> that he received PhP 3,000.00 from Roger and handed it to Betty as rental for their house in Lumbang Street, Amparo Subdivision, Caloocan City. The said house is about four streets away from Betty's sari-sari store and piggery in Malanting Street. The amount was a mere deposit and he was promised that before the end of the month, PhP 6,000.00 would be paid as rental.<sup>110</sup> Monico did not visit the house from April 7 to 11, 2002, hence, he did not know if Roger actually occupied it. Within the same period, Monico was not able to talk to Igat, who was the person who referred Roger to him and Betty.<sup>111</sup>

Monico testified that he was in Betty's store in the night of April 7, 2002 and denied having assisted Albert in descending to the basement of the safehouse.<sup>112</sup>

When their house in Lumbang Street was fired at by the police in the early morning of April 11, 2002, he was instructed by Betty to report the matter to the authorities. He went to the Novaliches Police, but was informed that Amparo Subdivision is not within the said station's jurisdiction. Monico got to Bagong Silang Police Station at around 9:00 a.m., and an officer took notes while talking to him, but the former was not sure if it was a blotter. Monico was instructed to wait. At around 3:00 p.m.,

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<sup>106</sup> TSN, Vol. II, March 3, 2004, pp. 4-9; In a Counter-Affidavit executed by Monico, the police officer taking Albert's sworn statements was identified as PO1 Arturo M. Fallero, TSN, Vol. II, June 16, 2004, p. 28.

<sup>107</sup> Id. at 17.

<sup>108</sup> Id. at 25.

<sup>109</sup> TSN, Vol. II, June 16, 2004, pp. 3-30.

<sup>110</sup> Id. at 7.

<sup>111</sup> Id. at 13.

<sup>112</sup> Id. at 8-9.

a superior officer arrived, asked Monico questions and informed the latter that he knew about the shooting incident. He stayed in the police station until 6:00 p.m. The officer told Monico that the latter would be brought to Camp Crame to be interviewed and will be allowed to go home after.<sup>113</sup> In Camp Crame, Monico was informed that he was being implicated in Albert and Pinky's kidnapping. Although he and Betty denied any involvement in the charges against them, to date, for lack of opportunity on their part as they are both detained, no complaints had been filed against the officers who implicated them.<sup>114</sup>

(f) Jubert, a carpenter and a college undergraduate from Asibanglan, Pinukpok, Kalinga Province, testified<sup>115</sup> that he came to Manila to look for a job on January 2002.<sup>116</sup> For two months, from February to March 2002, he was among those who worked in constructing the Globe Telecommunications tower in Sucat. He resided in the house of his uncle, Daniel Balanay (Balanay), in Bicutan, Taguig.<sup>117</sup>

Jubert met Lowhen, a resident of Parañaque, while applying for a job to make cabinets for Perma Wood Industries on March 27, 2002.<sup>118</sup>

At around 4:00 p.m. of April 11, 2002, Jubert went to Lowhen's house to inquire about the requirements in applying as a security guard, but the latter was not home yet. Lowhen arrived at around 5:00 p.m. Morey, whom Jubert met for the first time, was also there. Lowhen bought drinks for the three of them and Jubert stayed overnight in the house of Morey, which was just about 50 meters away. While they were sleeping, men barged in, ordered them to lay face down, and handcuffed them. Jubert and Morey were taken out of the house where they saw Lowhen, who was likewise boarded into a car. Out of fear of the men who seemed angry, Lowhen, Jubert and Morey were no longer able to ask why they were being taken. They were brought to Camp Crame. Jubert denied being among those who abducted Albert and Pinky on April 7, 2002, and guarding the latter two who were detained in the basement of Betty and Monico's house in Amparo Subdivision, Caloocan City.<sup>119</sup> Jubert insisted that on April 7, 2002, he was fixing the house of his uncle, Balanay, in Bicutan, Taguig, and with him were the latter's brother and two ladies.<sup>120</sup> However, none of the mentioned persons executed affidavits to corroborate Jubert's claim as to his whereabouts on April 7, 2002.<sup>121</sup> Jubert vehemently denied having seen

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<sup>113</sup> Id. at 9-12.

<sup>114</sup> Id. at 26-27.

<sup>115</sup> TSN, Vol. II, March 17, 2004. pp. 12-43.

<sup>116</sup> Id. at 15.

<sup>117</sup> Id. at 17-18.

<sup>118</sup> Id. at 20, 38.

<sup>119</sup> Id. at 20-25.

<sup>120</sup> Id. at 30, 35-37.

<sup>121</sup> Id. at 37.

Albert prior to April 12, 2002, the day the former was arrested.<sup>122</sup>

(g) Robert, a farmer from Isabela, a driver since 1986, and resident of Western Bicutan, Taguig since 1990, alleged<sup>123</sup> that on April 7, 2002, he was in Bontoc, Mountain Province.<sup>124</sup> From March 4 to April 8, 2002, he was driving for Engineer Raymundo Vargas, Sr. (Engr. Vargas), a contractor engineer.<sup>125</sup> Robert offered as evidence a certification, dated November 6, 2003, issued by the Pines Community Developers and General Services Corporation, signed by Engr. Vargas, stating that he was employed from February 10, 1987 to April 8, 2002, and five cash vouchers showing that he was paid for his services.<sup>126</sup> The cash voucher for the payment of PhP 2,500.00, dated April 8, 2002, which was allegedly received by Robert himself,<sup>127</sup> contained erasures. Engr. Vargas justified the erasures by stating that the typewriter, which was initially used, did not yield very clear impressions on paper.<sup>128</sup> Copies of the cash vouchers were, however, secured by his wife only much later upon his lawyer's instructions.<sup>129</sup>

On April 11, 2002, Robert was arrested in his house in Bicutan by CIDG officers contrary to the prosecution's claim that he was riding the Hi-Ace with Roger and carrying a shotgun when seized by the police in Commonwealth Avenue, Quezon City on April 12, 2002.<sup>130</sup> Robert is not engaged in cockfighting.

Angelita Alto (Alto), a member of the *Barangay* Auxiliary Force of Western Bicutan, Taguig, testified<sup>131</sup> that at around 7:45 a.m. of April 11, 2002, a van parked in the corner of Sunflower and Calantas Streets, Western Bicutan, Taguig, and persons clad in dark suits alighted therefrom.<sup>132</sup> They proceeded to Robert's house where Alto's cousin stays as a boarder. The men kicked and broke the door, handcuffed, blindfolded and took Robert to the van. Alto was about three meters away from where the events transpired. When the van left, Alto took two pictures of the broken door, called up Robert's wife and recorded the events in page 1056 of the *barangay's* logbook.<sup>133</sup>

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<sup>122</sup> Id. at 32-34.

<sup>123</sup> TSN, Vol. II, September 15, 2004, pp. 7-38.

<sup>124</sup> Id. at 15.

<sup>125</sup> Id. at 16, 24.

<sup>126</sup> Id. at 17-20, 29.

<sup>127</sup> Id. at 36.

<sup>128</sup> TSN, Vol. II, October 13, 2004, p. 60.

<sup>129</sup> TSN, Vol. II, September 15, 2004, p. 37.

<sup>130</sup> Id. at 21, 33.

<sup>131</sup> Id. at 41-76; TSN, Vol. II, October 13, 2004, pp. 4-35.

<sup>132</sup> TSN, Vol. II, September 15, 2004, pp. 46-47, 67.

<sup>133</sup> Id. at 47-52.



Engr. Vargas from Baguio City corroborated<sup>134</sup> Robert's claim that they were together in Bontoc, Mountain Province from February 10 to April 8, 2002. It takes 12 to 14 hours to reach Manila from Bontoc.<sup>135</sup> Robert was with Engr. Vargas on April 7, 2002, but the former went to Baguio at 10:00 a.m. of the following day supposedly to collect rentals. Robert said he would be back in two days, but no longer showed up after. Engr. Vargas only found out in October 2003 that Robert was being implicated in a kidnapping incident after being informed by the latter's wife.<sup>136</sup>

(h) Roger, a businessman residing in Signal Village, Bicutan, Taguig, claimed<sup>137</sup> that on April 11, 2002, at around 6:00 a.m., he was walking along Bravo Street in Signal Village.<sup>138</sup> He was on his way to his brother's wake when he was taken by four armed men wearing civilian clothes, whom he later found out were police officers from the CIDG.<sup>139</sup> He only met his co-accused-appellants in Camp Crame on April 11, 2002.<sup>140</sup> He saw Albert for the first time on April 12, 2002 when the police line-up was presented to the latter.<sup>141</sup>

(i) Morey, a warehouse care taker from *Barangay Sinakbat*, Bacong, Benguet, stated<sup>142</sup> that he was in Burnham, Baguio City tending coconuts on April 7, 2002. The warehouse closed at 6:00 p.m., after which he went to his uncle's house in Trinidad, Benguet.<sup>143</sup>

At 1:00 p.m. of April 8, 2002, Morey and a certain Harris Batawang (Batawang) left Baguio for Manila. Morey was contracted to watch over a house bought by Batawang in GSIS Village, Parañaque. They got to Manila at around 9:00 p.m., spent the night in Parañaque, and the following morning, Batawang called Lowhen and introduced him to Morey.<sup>144</sup>

On April 10, 2002, Morey and Batawang bought materials for the repair of the latter's house. At 2:00 p.m. of the following day, Batawang returned to Baguio to recruit workers to help Morey in repairing the former's house.<sup>145</sup>

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<sup>134</sup> TSN, Vol. II, October 13, 2004, pp. 40-66.

<sup>135</sup> Id. at 65.

<sup>136</sup> Id. at 49-54.

<sup>137</sup> TSN, Vol. II, November 17, 2004, pp. 5-26.

<sup>138</sup> Id. at 7, 12.

<sup>139</sup> Id. at 7, 13, 25.

<sup>140</sup> Id. at 13.

<sup>141</sup> Id. at 18.

<sup>142</sup> TSN, Vol. II, February 23, 2005, pp. 7-46.

<sup>143</sup> Id. at 12-13.

<sup>144</sup> Id. at 14-16.

<sup>145</sup> Id. at 17-18.

In the evening of April 11, 2002, Lowhen called Morey and informed him that the latter has a province mate who was staying in the former's house. Lowhen was referring to Jubert. Morey went to Lowhen's house. The three drunk the gin bought by Lowhen. Lowhen slept at 11:00 p.m., leaving Morey and Jubert behind. Morey and Jubert slept in Batawang's house. The following day, men barged into Batawang's house and handcuffed Morey and Jubert. The men asked if the two knew a certain Lito, ordered them to surrender their guns, and ransacked Batawang's house. Lowhen, Morey and Batawang were boarded into a Revo and brought to Camp Crame.<sup>146</sup>

Morey denied being acquainted with the other accused-appellants apart from Lowhen and Morey. Morey initially saw Albert during the first day of hearing of the kidnapping case.<sup>147</sup>

(j) Lowhen, a resident of Parañaque City, stated<sup>148</sup> that he had been employed by Regioner Security and Investigation Agency (Regioner) as a guard since 1993. He was posted in Perma Wood Industries Corporation in Marian Road 2, Parañaque from March 4 to April 11, 2002. He worked on a 24-hour shift, usually starting at 7:00 a.m.<sup>149</sup>

On April 10, 2002, Lowhen reported for work in Perma Wood Industries at 7:30 a.m.<sup>150</sup> He offered an uncertified photocopy of his daily time record (DTR) from March 16 to 31, 2002 with his signature on it.<sup>151</sup> Anent the DTR from April 1 to 15, 2002, it was unsigned by Lowhen because at that time, he was already arrested by CIDG officers.<sup>152</sup> Logbook entries signed by Lowhen and a certain "S/G Pacete RA," the outgoing guard, indicating that the former assumed his posts at 7:00 a.m. of April 4, 6, 8 and 10, 2002 were likewise presented.<sup>153</sup> Lowhen got off from work at 7:45 a.m. of April 11, 2002,<sup>154</sup> but was no longer able to assume duties the next day because he was already taken by the CIDG officers.<sup>155</sup> He just walked and got home at 8:00 a.m., ate breakfast and went to visit a certain Roger Batersal (Batersal) in Malugay Street, Parañaque to have a picture frame repaired. Batersal, Lowhen's brother-in-law, was then having coffee, so Lowhen went inside the house, laid down in the sofa, turned on the television and slept till 4:00 p.m. The picture frame was already assembled and Lowhen went home where he saw Jubert waiting for him.<sup>156</sup> Jubert

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<sup>146</sup> Id. at 18-24.

<sup>147</sup> Id. at 34.

<sup>148</sup> TSN, Vol. II, April 6, 2005, pp. 5-127; TSN, Vol. II, April 20, 2005, pp. 2-16; TSN, Vol. II, April 27, 2005, pp. 5-39; TSN, Vol. II, May 11, 2005, pp. 5-9.

<sup>149</sup> TSN, Vol. II, April 6, 2005, pp. 9-11.

<sup>150</sup> Id. at 11-12.

<sup>151</sup> Id. at 12-13, 18.

<sup>152</sup> Id. at 21-24.

<sup>153</sup> Id. at 34-52.

<sup>154</sup> Id. at 54, 59.

<sup>155</sup> Id. at 54-55.

<sup>156</sup> Id. at 59-60.

asked Lowhen about the requirements in applying for a security guard position. Lowhen bought gin and while the two were drinking, he found out that Jubert speaks Kalinga and Ilocano. Lowhen called Morey, who hailed from Baguio and who was then a boarder in the house of the former's brother. Morey joined the drinking session but Lowhen left at around 11:00 p.m. as the latter was already dizzy and still had to assume his post at 7:00 a.m. of the following day.<sup>157</sup>

At 6:30 a.m. of April 12, 2002, Lowhen's wife woke him up, but he went back to sleep. Thereafter, Lowhen heard noises from the gate of the house, then somebody shouted ordering for men to get out. When Lowhen opened his eyes, a man wearing black was pointing a long firearm at him. Lowhen went out of the house and was directed to place his hands behind his head and lie face down on the floor. The men searched Lowhen's house. Lowhen, Morey and Jubert were taken to the nearby United Parañaque Subdivision and after about 15 to 20 minutes, they were boarded into a green Revo without a plate. Lowhen's wife wanted to tag along but she was informed that she could no longer be accommodated in the Revo, but she could just proceed on her own to Camp Crame.<sup>158</sup>

When they reached Camp Crame, Lowhen, Jubert and Morey were separated from each other.<sup>159</sup> Lowhen was brought into a room and a police officer asked him if he knew a certain Lito. Lowhen replied in the negative, then he was questioned if he knew that a man and a woman had been kidnapped. The officer stepped out of the room, but he came back later with a bald Chinese man.<sup>160</sup> The Chinese man stood near the door, looked at the officer, shook his head, then left. The officer tapped Lowhen's shoulder and asked the latter to cooperate with the police by being a star witness, for which he would be paid PhP 10,000.00 a month, or be hanged. The officer typed an affidavit, but Lowhen refused to receive it. Lowhen told the officer that he could not do what was demanded of him, then the latter left. Lowhen remained in the room until 6:30 p.m. of April 12, 2002 when he was put alongside more than 10 other persons in a police line-up.<sup>161</sup> Albert did not point at Lowhen in the line-up.<sup>162</sup> Prior to April 11, 2002, Lowhen did not personally know Albert.<sup>163</sup>

During cross-examination, Lowhen stated that he was on duty in the early morning of April 11, 2002, hence, he could not have been in the basement of the safehouse where Albert was detained at around the same time.<sup>164</sup>

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<sup>157</sup> Id. at 68-74.

<sup>158</sup> Id. at 76-82.

<sup>159</sup> Id. at 84.

<sup>160</sup> Id. at 93-95.

<sup>161</sup> Id. at 97-104.

<sup>162</sup> Id. at 110.

<sup>163</sup> Id. at 125.

<sup>164</sup> TSN, Vol. II, April 27, 2005, p. 33.

Redentor Pacete (Pacete), a construction worker who used to work as a reliever guard at Regioner, testified<sup>165</sup> that he met Lowhen when they were both assigned in Perma Wood Industries.<sup>166</sup> Pacete's signatures were affixed in Regioner's logbook indicating the times he assumed his posts before or after Lowhen.

Domingo De Guzman (De Guzman), Lowhen's supervisor in Regioner, was called by the defense to the witness stand to point out to the court that he was the one who photocopied the logbook entries and the DTR referred to by Lowhen and Pacete in their testimonies.<sup>167</sup> However, the originals cannot anymore be presented to the court because Regioner had ceased its operations in 2004 and the records were no longer available.<sup>168</sup> De Guzman brought two index cards, prepared by Regioner's secretary, indicating Lowhen's assignments from April 27, 1993 to April 11, 2002,<sup>169</sup> and 27 payroll sheets likewise including Lowhen's name covering the period from February 1, 2000 to April 15, 2002.<sup>170</sup>

The testimony<sup>171</sup> of Elsie Batersal (Elsie), Lowhen's sister, to the effect that her brother went to her house at around 8:30 a.m. of April 11, 2002 and slept there until 4:00 p.m., was dispensed with after the prosecution agreed to stipulate and admit the same.

### **The Ruling of the RTC**

The RTC rendered a Decision<sup>172</sup> on September 27, 2007. In Criminal Case No. Q-02-108834, the accused-appellants were acquitted from the charges of kidnapping and serious illegal detention of Pinky. The accused-appellants were, however, convicted of conspiring the kidnapping of, and demanding of ransom from Albert in Criminal Case No. Q-02-108835. The RTC imposed upon the accused-appellants the penalty of *reclusion perpetua* and a solidary obligation to pay Albert the amount of PhP 100,000.00 as moral damages. The RTC ratiocinated that:

Very critical in this case is the testimony of Albert Yam. He testified about how the kidnapping was perpetrated; he testified that a Toyota Hi-Ace van with eight (8) occupants blocked the path of the Honda Civic car colored white driven by Pinky Gonzales; he (Albert Yam) was driving a Toyota Prado vehicle that was behind the Honda Civic car of

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<sup>165</sup> TSN, Vol. II, May 11, 2005, pp. 10-29.

<sup>166</sup> Id. at 18, 22.

<sup>167</sup> TSN, Vol. II, July 13, 2005, pp. 38, 40-41.

<sup>168</sup> Id. at 32.

<sup>169</sup> Id. at 32-33, 47-50.

<sup>170</sup> Id. at 35.

<sup>171</sup> Id. at 68-71.

<sup>172</sup> CA *rollo*, pp. 218-291.

Pinky Gonzales; Albert Yam identified and named before this court four (4) of those who alighted from the van; he testified that accused Morey Dadaan and accused Jubert Banatao after going down from their van, approached the Honda Civic car of Pinky Gonzales; he also identified and named Roger Pesado accompanied by Robert Gonzales who went down from their van and approached his car; he testified that it was Roger Pesado who told him (Albert Yam) to come out of his vehicle; he further testified about he and Pinky Gonzales being boarded in the Toyota Hi-Ace van and identified accused Marcelo Llanora as the driver of the van, Ricky Peña who is seated beside the driver x x x. Albert Yam also testified that after their kidnapping ordeal, he learned that accused Jose Adelantar acted as look out when they were being kidnapped along the road coming from the Cainta cockpit; x x x he also testified that when the ransom was being demanded, seven (7) of their kidnappers went down to talk to him and in court gave the name[s] of six (6) of the accused, namely: Jubert Banatao, Morey Dadaan, Marcelo Llanora, Ricky Peña, Jose Adelantar and Lowhen Almonte; Albert also testified that at the instance when he fell down the steps of the stairs, it was the accused Monico Salvador who was escorting him and held him; in his testimony, he stated that accused Betty Salvador brought the food that they ate and on one occasion, saw her asking another accused about their condition; x x x Albert Yam testified that the ransom demanded by the accused is in the amount of One Million Dollars and there were possibly fifteen (15) people who were involved in the kidnapping; he further testified about the rescue operation and was able to identify seven (7) of the accused in the police line-up but mentioned in his testimony the names of eight (8) accused as among those whom he identified in the police line-up; x x x Albert Yam explained in his testimony that he also identified the accused Lowhen Almonte after the police line-up because said accused was not among those included during the police line-up and this is in accordance with a Supplemental Affidavit which Albert Yam identified in court. x x x The Court was able to deduce from the testimony of Albert Yam that Monico Salvador and Betty Salvador who are admittedly the owners of the place where Albert Yam and Pinky Gonzales were kept during the kidnapping ordeal, were not present at the precise time that the rescue was conducted by the police.

x x x x

Where there is no evidence, as in this case, to indicate that the prosecution witness was actuated by improper motive, the presumption is that he is not so actuated and that his testimony is entitled to full faith and credit. Also jurisprudence holds that if an accused had really nothing to do with a crime, it would be against the natural order of events and human nature and against the presumption of good faith that a prosecution witness would falsely testify against him. x x x

x x x x

Direct Proof of previous agreement to commit an offense is not necessary to prove conspiracy. It may be deduced from the mode, method and manner in which the offense is perpetrated, or inferred from the acts of the accused when such acts point to a joint purpose and design, concerted action and community of interest. x x x

x x x x

Here, we find a closeness of personal association and a concurrence towards a common [un]lawful purpose. x x x

x x x There were very minor loose ends in the chain of events and the testimony of these other witnesses beside[s] Albert Yam completed the narration of facts for the prosecution. These other witnesses, most of whom are police officers[,] provided the proof[s] for the prosecution as to how the kidnapping case was solved and why the accused were apprehended.

x x x x

Denial is a self[-]serving negative defense that cannot be given greater weight than the declaration of a credible witness who testifies on affirmative matters. x x x

Settled is the rule that the defense of alibi is inherently weak and crumbles in the light of positive declarations of truthful witnesses who testified on affirmative matters. x x x

x x x x

Among the documentary evidence presented which gives credence to the testimony of Albert Yam are the three (3) sketches which he prepared x x x for the prosecution. x x x [T]wo (2) pieces of dark glasses wrapped with black tape x x x, the two sets of handcuffs x x x, and the handwritten note of Albert Yam addressed to his wife x x x. Elisco 5.56 mm rifle, 9mm pistol, Armscor cal. 38 revolver, a shotgun, magazines for the firearms, live cartridges/ammunition and spent shells x x x.

x x x It must be emphasized that Pinky Gonzales never testified in court so how could the prosecution establish that she is indeed a kidnap victim. x x x<sup>173</sup> (Citations omitted and underscoring ours)

### **The Appeals Filed Against the RTC Decision and the Office of the Solicitor General's (OSG) Opposition Thereto**

The accused-appellants interposed separate appeals<sup>174</sup> essentially reiterating their respective factual claims, which were in turn refuted<sup>175</sup> by the OSG.

The OSG argued that the supposed eye defect ascribed to Albert was not severe as to hinder his ability to identify his kidnappers. The dark eye glasses, which the kidnappers had ordered Albert to put on, were loose and even slipped as he descended the basement stairs, giving him the chance to see Monico. Besides, Albert's eye glasses were returned to him on April 8, 2002. Further, it is settled that when thrust into exceptional circumstances, victims of crimes strive to remember the important details and to see the

<sup>173</sup> Id. at 283-290.

<sup>174</sup> Id. at 197-215; 292-305; 392-430; 530-561; 667-691.

<sup>175</sup> Please see the Consolidated Brief for the Appellee; id. at 723-765.

faces of their assailants. Anent Betty and Monico's claim that it was unnatural for a person involved in the commission of an offense to proceed to the scene and report the matter to the police, the OSG interpreted the foregoing as defensive acts intended to mislead the authorities in the conduct of the investigation.

Jubert offered no corroborative testimonies regarding his whereabouts from April 7 to 11, 2002.

Robert's alibi that he was in Bontoc, Mountain Province driving for Engr. Vargas should be supported by clear and convincing evidence. The said alibi weighs weaker *vis-à-vis* Albert's positive testimony relative to Robert's participation in the abduction. Engr. Vargas only testified on Robert's employment. Alto merely witnessed the circumstances of Robert's arrest on April 11, 2002.

Lowhen's post in Perma Wood Industries was not that far from the locations where the acts of kidnapping were committed, hence, no physical impossibility to get from one place to the other. The logbook, index cards and payroll sheets offered by Lowhen had no evidentiary value for being mere photocopies. Lowhen claimed that Albert did not identify him from the police line-up. However, Albert testified that he did not see Lowhen from the line-up. Besides, even if Lowhen was indeed included in the line-up, Albert, at that time, had just been rescued, thus, stressed and confused. Albert had modified his initial lapse by categorically stating in his amended affidavit that Lowhen was among those who went to the basement in the early morning of April 11, 2002.

The OSG emphasized that Albert remained unfazed and unwavering in his testimony and so were the rest of the prosecution witnesses. The OSG likewise stressed that the RTC's evaluation of the credibility of the witnesses is entitled to the highest respect and should be upheld in the absence of proof that the said court had overlooked facts which if duly regarded, may alter the result of the case.

### **The Ruling of the CA**

On February 25, 2011, the CA rendered the herein assailed Decision denying the appeal of the accused-appellants. However, the CA modified the RTC ruling by expressly stating the accused-appellants' non-eligibility for parole. Further, the accused-appellants were ordered to solidarily pay Albert PhP 50,000 as civil indemnity and PhP 100,000.00 as exemplary damages. The CA declared that:

The crucial issue in this case involves the assessment of credibility of witnesses. Could the version succinctly narrated by the victim, his wife and the police officers who participated in the operation for the rescue of the kidnap victims possibly be concocted as so alleged by the appellants?

x x x [U]nless otherwise specifically required, the testimony of a single eyewitness if credible and trustworthy is sufficient to support a finding of guilt beyond reasonable doubt. And since the determination of credibility is within the province of the trial court which has the opportunity to examine and observe the demeanor of witnesses, appellate courts will not generally interfere in this jurisdiction. x x x

x x x x

The most crucial evidence submitted in this case was the positive testimony of kidnap victim Albert Yam recognizing appellants as his abductors. Common experience tells us that when extraordinary circumstances take place, it is natural for persons to remember many of the important details. x x x [T]he most natural reaction of victims of criminal violence is to strive to see the features and faces of their assailants and observe the manner in which the crime is committed.

Yam positively identified appellants as his captors. x x x

x x x x

The evidence also shows that the accused-appellants acted in concert in perpetrating the kidnapping. x x x

x x x x

x x x [T]he fact that accused Betty Salvador's role was limited to giving victims their food is immaterial whether she acted as a principal or as an accomplice because the conspiracy and her participation therein have been established. In fact, she was the owner of the safehouse where the victims were kept. In conspiracy, the act of one is the act of all and the conspirators shall be held equally liable for the crime.

x x x x

x x x [P]olice officers are presumed to have acted regularly in the performance of their official functions in the absence of clear and convincing proof to the contrary or proof that they were moved by ill will. x x x.<sup>176</sup> Citations omitted and underscoring ours)

### **Incidents after the Rendition of the CA Decision**

The records of this case were elevated to us pursuant to the Resolution<sup>177</sup> issued by the CA on February 9, 2012 giving due course to the notices of appeal filed by the accused-appellants, except Betty and Monico.

<sup>176</sup> Rollo, pp. 22-25.

<sup>177</sup> CA rollo, pp. 912-913.



In compliance with our Resolution<sup>178</sup> dated July 2, 2012, a Supplemental Brief<sup>179</sup> was filed by the Public Attorney's Office (PAO) in behalf of the accused-appellants, except Betty and Monico. In lieu of a supplemental brief, the OSG filed a Manifestation<sup>180</sup> stating that it is adopting the arguments it had previously raised in the Consolidated Brief<sup>181</sup> filed with the CA.

### **The Issue**

Whether or not the CA gravely erred in finding the accused-appellants guilty beyond reasonable doubt of the crime of kidnapping for ransom despite the prosecution's failure to overthrow the constitutional presumption of innocence in their favor.<sup>182</sup>

The Supplemental Brief filed by the PAO once again presented the accused-appellants' factual claims in the proceedings below relative to the alleged mauling, irregular arrests and extortion attempts committed by CIDG officers against Marcelo and Ricky. The PAO stressed anew the alibis that on April 7, 2002, Morey was in his uncle's warehouse in Baguio, Robert was in Bontoc, Mountain Province driving for Engr. Vargas, while Lowhen assumed his security guard duties in Perma Wood Industries in Parañaque. The PAO also maintained that Roger was arrested at 6:00 a.m. of April 11, 2002 in Bicutan, and not on April 12, 2002 in Commonwealth Avenue.

### **Our Ruling**

The instant appeal lacks merit.

**The CA correctly found that the essential elements comprising the crime of kidnapping for ransom were present and that the accused-appellants conspired in its commission.**

*People v. Uyboco*,<sup>183</sup> enumerated the elements of the crime of kidnapping for ransom, viz:

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<sup>178</sup> *Rollo*, p. 39.

<sup>179</sup> *Id.* at 70-80.

<sup>180</sup> *Id.* at 83-86.

<sup>181</sup> *CA rollo*, pp. 723-772.

<sup>182</sup> *Rollo*, p. 71.

<sup>183</sup> G.R. No. 178039, January 19, 2011, 640 SCRA 146.

In order for the accused to be convicted of kidnapping and serious illegal detention under Article 267 of the Revised Penal Code, the prosecution is burdened to prove beyond reasonable doubt all the elements of the crime, namely: (1) the offender is a private individual; (2) he kidnaps or detains another, or in any manner deprives the latter of his liberty; (3) the act of detention or kidnapping must be illegal; and (4) in the commission of the offense any of the following circumstances is present: (a) the kidnapping or detention lasts for more than three days; (b) it is committed by simulating public authority; (c) serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made; or (d) the person kidnapped and kept in detained is a minor, the duration of his detention is immaterial. Likewise, if the victim is kidnapped and illegally detained for the purpose of extorting ransom, the duration of his detention is immaterial.<sup>184</sup>

In the case at bar, the accused-appellants, who were indicted for forcibly abducting Albert, are all private individuals. Albert was taken on April 7, 2002 and his detention lasted for six days, during which period, threats to kill him and demand for ransom were made.

In affirming the conviction of the accused-appellants, we are guided by four-settled doctrines enunciated in *People v. Martinez*,<sup>185</sup> viz:<sup>186</sup>

(a) The trial court[']s evaluation of the credibility of witnesses must be accorded great respect owing to its opportunity to observe and examine the witnesses conduct and demeanor on the witness stand;

(b) When there is no evidence to show that the prosecution witness is actuated by an improper motive, identification of the accused-appellants as the offenders should be given full faith and credit;<sup>187</sup>

(c) Conspiracy need not be established by direct proof of prior agreement by the parties to commit a crime but that it may be inferred from the acts of the accused-appellants before, during and after the commission of the crime which indubitably point to a joint purpose, concerted action and community of interest; and

(d) The respective alibis proffered by the accused-appellants cannot prevail over the unequivocal testimony of the victim categorically and positively pointing to them as his abductors, and for the defense of alibis, to be given full credit, they must be clearly

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<sup>184</sup> Id. at 161-162.

<sup>185</sup> 469 Phil. 558 (2004).

<sup>186</sup> Id. at 572-574.

<sup>187</sup> See also *People of the Philippines v. Garcia*, 424 Phil. 158, 184 (2002). (Citations omitted)

established and must not leave room for doubt.<sup>188</sup>

The accused-appellants all denied being personally acquainted with Albert or having knowledge of any grudge which the latter may harbour against them. The RTC and the CA found Albert's testimony on the participation of the accused-appellants as conspirators in the kidnapping incident, and the manner by which he had subsequently identified them, as clear and categorical.

Albert testified:

PROS. FADULLON:

Q: Mr. Witness, will you please tell this Honorable Court where you were on April 7, 2002 between the hours of 7:00 and 7:30 in the evening?

A: I was at the New Cainta Coliseum.  
x x x x

Q: Will you please tell us, Sir, if you recall if there was anything unusual that happened that evening as you were leaving the New Cainta Coliseum on your way home?

A: I was kidnapped that evening.  
x x x x

Q: Now, Sir, will you please tell this Honorable Court what happened when you notice that the Toyota Hi-Ace van stopped abruptly the path of the Honda Civic car?

A: I saw six (6) men coming down from the Hi-Ace with long firearms.  
x x x x

Q: Now tell us, Sir, what happened when six (6) men armed with long firearms alighted from the vehicle, Toyota Hi-Ace van?

A: I saw two (2) of those people went to the white car and motioned the driver with a gun pointed motioning the driver of the white vehicle to go down.

Q: You mentioned earlier that there were six (6) armed men who alighted. You accounted for, two (2) went to the driver side of the white Honda Civic car, what about the others, do you know what happened?

A: They were there and two (2) of them I think ran after the watch-your-car boy and two of them went to my car, Sir.<sup>189</sup>

When asked to identify the two men who approached the Civic, Albert pointed to Jubert and Morey. Albert named those who approached his Prado as Roger and Robert. Roger and Robert gestured for him to alight from the Prado and brought him to the Hi-Ace, where he saw Marcelo in the driver's seat and Ricky in the front passenger's seat.<sup>190</sup>

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<sup>188</sup> See also *People v. Bautista*, G.R. No. 188601, June 29, 2010, 622 SCRA 524, 545.

<sup>189</sup> TSN, Vol. I, June 28, 2002, pp. 4-11.

<sup>190</sup> Id. at 11-23.

At around 6:00 a.m. of April 11, 2002, seven men went to the basement of the safehouse where Albert and Pinky were detained. They threatened Albert with bodily harm should he not accede to their demand for ransom. Albert identified them as Jubert, Morey, Marcelo, Ricky, Lowhen, Jose and Nelson. Five of the men left but Nelson and Lowhen were left behind to guard Albert and Pinky.<sup>191</sup>

The overt acts of the accused-appellants Jubert, Morey, Marcelo, Ricky, Robert, Roger, Lowhen and Jose were undoubtedly geared towards unlawfully depriving Albert of his liberty and extorting ransom in exchange for his release.

Albert was able to identify Marcelo, Ricky, Jubert, Morey, Jose, Lowhen, Robert and Roger from a police line-up of around 15 persons presented to him in Camp Crame on April 12, 2002.<sup>192</sup> During cross-examination, Albert clarified that Lowhen was not among the seven persons he had identified as among his captors from the initial police line-up of 15 persons presented to him. Albert justified the omission by stating that he saw Lowhen only after the line-up was presented and after he had already executed his April 12, 2002 affidavit.<sup>193</sup>

In their defense, Marcelo, Ricky, Jubert, Robert, Morey, Lowhen, Jose and Roger offered their respective alibis, which fail to persuade.

Marcelo claimed that from 12:00 noon to 9:00 p.m. of April 7, 2002, he was at home repairing a motor bike. On his part, Jubert insisted that he was fixing his uncle's house in Bicutan, Taguig on the same day. Morey averred that he was in a coconut warehouse in Burnham, Baguio City, and he left the place at around 6:00 p.m. to go to his uncle's house in Trinidad, Benguet. Noticeably, Marcelo, Jubert and Morey offered no corroborative evidence to support their bare allegations.

Ricky and his wife, May, alleged that they were likewise at home on April 7, 2002. However, May's testimony does not carry much weight in view of her relation to Ricky.

Robert posited that he was in Bontoc, Mountain Province driving for Engr. Vargas from February 10, 2002 to April 8, 2002. Robert left at 10:00 a.m. of April 8, 2002 on the pretext that he would just collect rentals in Baguio. He informed Engr. Vargas that he would be back in two days. Robert testified and Alto corroborated his statement that the former was

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<sup>191</sup> TSN, Vol. I, July 5, 2002, pp. 42, 45-54.

<sup>192</sup> Id. at 71-74.

<sup>193</sup> TSN, Vol. I, August 30, 2002, pp. 26, 29-30.

arrested by CIDG officers in Bicutan, Taguig on April 11, 2002.

The test to determine the value of the testimony of a witness is whether such is in conformity with knowledge and consistent with the experience of mankind; whatever is repugnant to these standards becomes incredible and lies outside of judicial cognizance.<sup>194</sup> It defies logic to figure out why Engr. Vargas was informed that Robert was implicated in Albert's kidnapping only on October 2003, or around one and a half years after the latter's indictment. If Robert's alibi were true, it would have been more in accord with human experience if he promptly told Engr. Vargas about his predicament for the latter was then in the best position to corroborate the former's allegations. It is likewise perplexing why Robert, who had been driving for Engr. Vargas for five years, was in Taguig on April 11, 2002 and so lightly regarded his commitment to the latter that he would be back in two days. No explanations were offered to justify Robert's unreasonable omissions.

Lowhen insisted that he assumed his 24-hour duty in Perma Wood Industries in Parañaque from 7:00 a.m. of April 10, 2002 to 7:45 a.m. of April 11, 2002. He got home at 8:00 a.m., ate breakfast, and thereafter proceeded to his sister Elsie's house where he slept in the sofa until 4:00 p.m. The testimonies of Pacete, De Guzman and Elsie were offered to support Lowhen's claims. However, we find more credence in the positive and categorical statements of Albert, against whom no ill motive was ascribed by the defense, on one hand, than in the testimonies of persons, who are in one way or another are related to Lowhen. Further, there is no proof of absolute physical impossibility for Lowhen to be in Amparo Subdivision in the morning of April 11, 2002, considering that Parañaque is not very far off. In Albert's testimony, he merely made an estimate of the time in the morning of April 11, 2002, when Lowhen, along with six other men, went to the basement. Although Albert testified that it was around 6:00 a.m., he could have miscalculated the time considering that he no longer had a watch and they were in a basement. Besides, Lowhen was the link between Jubert and Morey, whose participations in the kidnapping incident on April 7, 2002 were clearly established. This renders dubious Lowhen's claim of having introduced Jubert and Morey to each other only on April 11, 2002, or four days after the latter two had taken part in the abduction of Pinky and Albert near the Coliseum.

Jose and Roger proffered nary an explanation anent where they were on April 7, 2002. Jose anchored his defense upon his presence at U-Cap Cockpit in Mandaluyong from the night of April 9, 2002 until 1:00 a.m. of April 10, 2002. While waiting for a cab going home, Jose claimed that CIDG officers arrested him and brought him to Camp Crame where he remained under the police's custody. He thus claimed that contrary to

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<sup>194</sup> *People v. Patano*, 447 Phil. 168, 186 (2003), citing *People v. San Juan*, 383 Phil. 689, 703 (2000).

Albert's claim, he could not have been in the basement of the safehouse at 6:00 a.m. of April 11, 2002. On the other hand, Roger alleged that at around 6:00 a.m. of April 11, 2002, while he was walking along Bravo Street, Signal Village, Bicutan, Taguig on his way to his brother's wake, he was arrested by CIDG officers. However, like in the cases of Marcelo, Jubert and Robert, Jose and Roger's averments were bare and unsupported by any corroborative evidence.

All told, we find that the RTC and the CA did not overlook essential facts or circumstances which may otherwise justify the acquittal of Marcelo, Ricky, Jubert, Robert, Morey, Lowhen, Jose and Roger for having conspired in kidnapping Albert for the purpose of extorting ransom. That no ransom was actually paid does not negate the fact of the commission of the crime, it being sufficient that a demand for it was made.<sup>195</sup>

We note Marcelo, Ricky, Jose and Lowhen's claims of having been subjected to mauling, illegal arrest, intimidation and extortion attempts committed by the police authorities.

It is settled that irregularities attending the arrest of the accused-appellants should have been timely raised in their respective motions to quash the Informations at any time before their arraignment, failing at which they are deemed to have waived their rights to assail the same.<sup>196</sup> No such motions were filed by the accused-appellants.

Further, without meaning to downplay or take the allegations of the accused-appellants lightly, we, however, note that these were unsubstantiated as to the identities of the offenders and uncorroborated by other pieces of evidence. To date, no complaints against the supposed abusive police officers had yet been filed by the accused-appellants. If the abuses were indeed committed, we exhort the accused-appellants to initiate the proper administrative and criminal proceedings to make the erring police officers liable. We stress that while the criminal justice system is devised to punish the offenders, it is no less the State's duty to ensure that those who administer it do so with clean hands.

**Betty and Monico are to be held as co-conspirators because they knowingly provided the venue for Albert's detention.**

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<sup>195</sup> Supra note 187, at 177-178, citing *People v. Salimbago*, 373 Phil. 56, 75 (1999).

<sup>196</sup> See *People v. Pepino*, G.R. No. 183479, June 29, 2010, 622 SCRA 293, 303.

In implicating Monico, Albert testified:

PROS. FADULLON:

Q: And you said you were first handcuffed according to you, you were handcuffed with Miss Gonzales and removed it and a new set of handcuffs were placed on you. Will you please tell us what happened after that?

A: So with my both hands handcuffed, this time I was asked to get out of the vehicle and I was led to a sort of like underground house something like that, I had to go down a couple of steps.

Q: What happened, Sir, as you were going down, as you were led inside, what you claimed to be an underground house and as you were going down several steps?

A: Because I was handcuffed and I didn't know where to go to pass at that time, I fell and a person held on my arm.

Q: What happened to your glasses as you claimed you fell as you were going downstairs?

A: My glasses went down also, Sir.

Q: And you said that there was a person who held on to you, how close or how far that person from you, Sir?

A: He was just beside me, Sir.

Q: And this person can you give us his description?

A: About 50s, about 5'9" and has a [sic] very coarse hands, Sir.

Q: This person whom according to you held on to you as you slipped you were being led downstairs, if you will see him again, will you be able to recognize him, Sir?

x x x x

[Witness pointed to Monico in the courtroom.]

x x x x

Q: What happened, Sir, when you slipped and this person now identified as accused Monico Salvador held on to you, what happened after that?

A: He held me up and led me to the stair[way] proceeding down to the house, Sir.<sup>197</sup> (Underscoring ours)

When asked during cross examination about what transpired while he was descending the basement stairs, Albert stated:

ATTY. MALLABO:

Q: Now, immediately after you catch [sic] the glasses, what exactly did you do?

A: I told him, "Pare, alalayan mo naman ako ng maayos pababa pala tayo nun."

Q: You told him that you should be carefully assisted. You told him that because you were not in a position to see where you were walking?

A: Yes, Sir.

x x x x

Q: Now, did you try to get hold of the hands of Monico Salvador after

<sup>197</sup>

TSN, Vol. I, June 28, 2002, pp. 34-37.

the incident?

A: Yes, sir.

Q: And you found out that the hands were “magaspang”?

A: Yes, Sir.

Q: And that would make you very sure that he was the one who assisted you?

A: Even more sure because I saw him also.

Q: Now, after you get [sic] hold of that [sic] glasses you said to him, “Alalayan mo naman ako.”?

A: Because I fell already. So, I said, “Pare alalayan mo naman ako ng maayos.” That was when he was here beside me.

Q: Besides [sic] you?

A: Yes.

Q: I thought that he was at your back holding your armpit?

A: He was here beside me. How do you carry somebody?

Q: If he was beside you, you were only able to recognize the left portion of his face?

A: I was able to see his face, Sir.

Q: The whole face?

A: Yes, Sir.

Q: I thought that he was beside you?

A: He was beside me.

Q: Did you go in front of him and tried to look at the features of his face?

x x x x

A: I can see him even on my side.

Q: My question is, did you go in front of the person who assisted you?

A: No, I did not face him.<sup>198</sup> (Underscoring ours)

When asked who handed him the food that he ate while in detention, Albert answered:

PROS. FADULLON:

Q: Now Mr. Witness, on that day, April 11, 2002[,] right after in the early morning, do you remember if there was any other incident that happened in that place where you and Miss Gonzales were being kept?

A: At lunch time[,] I saw a woman who brought down some foods, Sir.

Q: Lunch time of what date?

A: April 11, 2002, Sir.

Q: April 11 at around lunch time a woman brought down your food?

A: Yes, Sir.

Q: Where were you at that time, Mr. Witness, when this woman according to you came down and brought down your food?

A: At the sofa, Sir.

Q: Tell us, Mr. Witness, what happened when this woman brought down your food?

A: She gave the food to the guard and the guard gave the food to us, Sir.

Q: How far away from this woman Sir when you saw her handing the

<sup>198</sup>

TSN, Vol. I, September 20, 2002, pp. 15-19.



foods to one of the guard[s]?

A: The stairway was just beside the sofa so you can see her, Sir.

Q: That would be again approximately 2 meters or little over a meter?

A: Yes, Sir.

Q: Can you give us the description of this woman Sir who according to you came down and brought down handed over your food in [sic] one of the guards?

A: She was in [her] 50's, Sir.

x x x x

[Yam pointed to Betty in the courtroom.]

PROS. CHUA CHENG:

Q: Do you know, Mr. Witness, what kind of food that this accused you identified as Betty Salvador served that lunch time?

A: Jollibee, Sir.

Q: Tell us, Sir when for the first time you see accused Betty Salvador?

A: The night before, Sir.

Q: The night before referring to what date[,] Sir?

A: April 10, Sir.

Q: Could you tell us under what circumstances did you see the accused Betty Salvador?

A: I was having a conversation with the guard who was at the stairway at that time when I heard a woman asking questions to the guard, Sir.

Q: What question did she ask to the guard if you remember[,] Sir?

A: "Kumusta sila[?]".

Q: After that[,] what happened?

A: She gave the food to the guard, Sir.

Q: What food was this given to you that evening?

A: That was the only time Jollibbe was not serve[d], it was corn[ed] beef, Sir.

PROS. FADULLON:

Q: That would be dinner time of April 10, 2002?

A: Yes, Sir.<sup>199</sup> (Underscoring ours)

During cross examination, Albert testified having seen Betty, thus:

ATTY. MALLABO:

Q: Now, how did you see her at the time that she uttered the words, "Kumusta na sila?"

A: She was in front of me.

Q: Right in front of you?

A: I mean, she was going up the stairway. I can see her.

Q: So you want to tell us that she went down?

A: I did not say she went down. She was up there in the stairway coming down and she was about to talk to the guard who was guarding us. So, when she saw the guard and said, "Kumusta sila?"[, ] I was right there at the edge of the, at the foot of the

<sup>199</sup>

TSN, Vol. I, July 5, 2002, pp. 54-60.

stairway. So, I saw her.  
Q: So you saw her?  
A: Yes, sir.<sup>200</sup>

Albert categorically stated that on the night of April 7, 2002, Monico assisted him in descending the stairs leading to the basement of the safehouse. Albert likewise named Betty as the woman who brought him and Pinky corned beef for dinner on April 10, 2002, and food items from Jollibee for lunch on April 11, 2002.

This Court has held that the most natural reaction of victims of criminal violence is to strive to see the features and faces of their assailants and observe the manner in which the crime is committed.<sup>201</sup> It is also settled that the victim's in-court identification is more than sufficient to establish the identities of accused-appellants as among the malefactors,<sup>202</sup> and previously executed affidavits are generally considered inferior to statements that the victim gives in open court.<sup>203</sup> Hence, we hold that notwithstanding Albert's failure to identify Betty and Monico from the police line-up presented on April 12, 2002, in which the spouses were allegedly included, no reasonable doubt is cast upon the complicity of the latter two in the kidnapping. Further, Betty and Monico's postulation that if they were indeed involved, they should not have proceeded to the scene of the rescue operations and to the police station, likewise deserves scant consideration. There is no established doctrine to the effect that, in every instance, non-flight is an indication of innocence.<sup>204</sup> It is possible for the culprits to pursue unfamiliar schemes or strategies to confuse the police authorities.<sup>205</sup>

We stress though that conspiracy transcends companionship.<sup>206</sup> Mere presence at the *locus criminis* cannot by itself be a valid basis for conviction, and mere knowledge, acquiescence to or agreement to cooperate, is not enough to constitute one as a party to a conspiracy, absent any active participation in the commission of the crime.<sup>207</sup>

In the case at bar, Monico's assistance extended to Albert when the latter descended the basement stairs and Betty's visit to the safehouse to bring food could not automatically be interpreted as the acts of principals and conspirators in the crime of kidnapping for ransom.

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<sup>200</sup> TSN, Vol. I, September 20, 2002, p. 21.

<sup>201</sup> Supra note 185, at 570.

<sup>202</sup> See *People v. Jalosjos*, 421 Phil. 43, 73-74 (2001); supra note 196, at 302.

<sup>203</sup> Supra note 196, at 302.

<sup>204</sup> *People v. Garalde*, 401 Phil. 174, 211 (2000). (Citation omitted)

<sup>205</sup> Supra note 194.

<sup>206</sup> Id. at 191.

<sup>207</sup> See *People v. Montenegro*, 479 Phil. 663, 674 (2004).

*People of the Philippines v. Garcia*<sup>208</sup> is instructive anent the distinctions between a conspirator and an accomplice, viz:

In *People v. De Vera*[.] we distinguished a conspirator from an accomplice in this manner –

Conspirators and accomplices have one thing in common: they know and agree with the criminal design. Conspirators, however, know the criminal intention because they themselves have decided upon such course of action. Accomplices come to know about it after the principals have reached the decision, and only then do they agree to cooperate in its execution. Conspirators decide that a crime should be committed; accomplices merely concur in it. Accomplices do not decide whether the crime should be committed; they merely assent to the plan and cooperate in its accomplishment. Conspirators are the authors of a crime; accomplices are merely their instruments who perform acts not essential to the perpetration of the offense.

x x x x

x x x As we have held in *Garcia v. CA*, “in some exceptional situations, having community of design with the principal does not prevent a malefactor from being regarded as an accomplice if his role in the perpetration of the homicide or murder was, relatively speaking, of a minor character.” x x x.<sup>209</sup> (Citations omitted)

Monico’s assistance to Albert when the latter descended the basement stairs and Betty’s visit to the safehouse to bring Jollibee food items were not indispensable acts in the commission of the crime of kidnapping for ransom. If to be solely considered, these acts, being of minor importance, pertain to those committed by mere accomplices. Betty and Monico were not among those persons who forcibly abducted Albert while the latter was in the vicinity of the Coliseum. Neither did the spouses perform positive acts to actively detain Albert. What spells the difference on why we still find the Betty and Monico as principals and co-conspirators in the kidnapping is the circumstance that their acts coincide with their ownership of the safehouse.

Absent his knowledge, consent or concurrence in the criminal design, the owner of a place, which was used to detain kidnapped victims, cannot necessarily be considered as either a conspirator or an accomplice in the crime of kidnapping for ransom. However, in the case of Betty and Monico, their claim of ignorance relative to Albert’s detention in the basement of the safehouse is belied by their presence therein. Albert positively and repeatedly testified on the matter.

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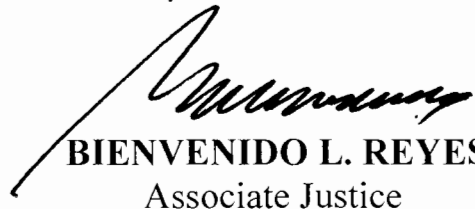
<sup>208</sup> 424 Phil. 158 (2002).

<sup>209</sup> Id. at 188-189.

In a conspiracy to commit the crime of kidnapping for ransom, the place where the victim is to be detained is logically a primary consideration. In the case of Betty and Monico, their house in Lumbang Street, Amparo Subdivision has a basement. It can be reasonably inferred that the house fitted the purpose of the kidnappers. Albert's detention was accomplished not solely by reason of the restraint exerted upon him by the presence of guards in the safehouse, but by the circumstance of being put in a place where escape became highly improbable. In other words, Betty and Monico were indispensable in the kidnapping of Albert because they knowingly and purposely provided the venue to detain Albert. The spouses' ownership of the safehouse, Monico's presence therein during Albert's arrival on the evening of April 7, 2002 and Betty's visits to bring food reasonably indicate that they were among those who at the outset planned, and thereafter concurred with and participated in the execution of the criminal design.

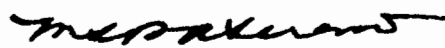
**WHEREFORE, IN VIEW OF THE FOREGOING**, the instant appeal is **DENIED**. Accordingly, the Decision dated February 25, 2011 of the Court of Appeals in CA-G.R. CR-H.C. No. 03279 is hereby **AFFIRMED** with **MODIFICATION** insofar as the amount of civil indemnity awarded to Albert Yam y Lee, to be solidarily paid by the accused-appellants, is increased from PhP 50,000.00 to PhP 75,000.00 in accordance with prevailing jurisprudence<sup>210</sup>.

**SO ORDERED.**

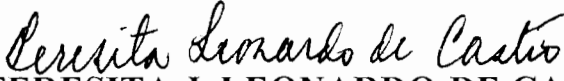


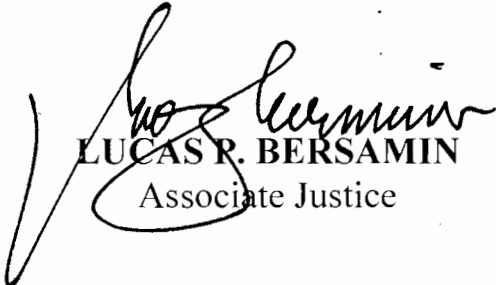
**BIENVENIDO L. REYES**  
Associate Justice

**WE CONCUR:**



**MARIA LOURDES P. A. SERENO**  
Chief Justice  
Chairperson


  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

  
**LUCAS R. BERSAMIN**  
Associate Justice

  
**MARTIN S. VILLARAMA, JR.**  
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