

Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

THE PEOPLE OF THE
PHILIPPINES,

Plaintiff-Appellee,

G.R. No. 229658

Members:

CARPIO, *Chairperson*

CAGUIOA,

REYES, J., JR.

LAZARO-JAVIER, and

ZALAMEDA, *JJ.*

- versus -

ELMAR SANTOS y DEL
CARMEN,

Accused-Appellant.

Promulgated:

28 AUG 2019

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DECISION

LAZARO-JAVIER, J.:

The Case

This is an appeal from the Decision¹ dated April 8, 2016 of the Court of Appeals in CA-G.R. CR HC No. 07263 entitled "*People of the Philippines v. Elmar Santos y Del Carmen*," affirming appellant's conviction for kidnapping for ransom.

The Charge

Appellant Elmar Santos y Del Carmen was charged with violation of Article 267 of the Revised Penal Code under the following Information:

¹ Penned by Associate Justice Danton Q. Bueser and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Renato C. Francisco, all members of the Fourteenth Division, CA *Rollo*, pp. 2-12.

That on or about August 18, 2009, in the province of Rosario, Cavite, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping one another, did then and there willfully, unlawfully and feloniously, kidnap and deprive ROMAN PUGEDA y Huerta of his liberty against his will, by means of threat and intimidation, with the use of firearms, by blocking and taking at gunpoint the Mitsubishi Adventure van with Plate No. WNR-849 he was driving, then bring (sic) him to different places somewhere in Tagaytay City, San Pedro, Laguna, Sariaya, Quezon and then upon reaching Candelaria, Quezon, by commandeering two (2) more vehicles, a black Toyota Fortuner with Plate No. ZDK-117 and a Lucida Van with Plate No. XGB-228, the occupants of which were also taken. That the abduction of (of) the said victim was for the purpose of extorting ransom, as in fact the accused and his cohorts demanded the amount of ONE MILLION PESOS and two (2) armalite rifles and took his personal belongings consisting of wristwatch, ring, cellular phone and wallet containing money in exchange for his liberty and that the reduced amount of ONE HUNDRED THOUSAND PESOS (Php100,000.00) was actually paid as ransom money all to the damage and prejudice of said victim.

CONTRARY TO LAW.²

Proceedings Before The Regional Trial Court

The case was raffled to the Regional Trial Court (RTC), Branch 16, Cavite City.

On arraignment, appellant pleaded not guilty.³ Trial ensued.

Private complainant Engr. Roman Pugeda, Police Investigator PO2 Jessie Avila of the Imus Municipal Police Station, and PACER member SPO1 Franklin Dumalaog testified for the prosecution while appellant Elmar Santos testified alone for the defense.

The Prosecution's Version

On August 18, 2009, around 11 o'clock in the evening, Engr. Roman Pugeda was on his way home from a friend's wake in Tanza, Cavite. While driving, Pugeda noticed a group of four (4) armed men standing at the corner of Tejero and Cuevas Subdivision. The group blocked his way and at gunpoint, ordered him to open his car. When he opened the door, one of the men commanded him to move to the passenger seat, then, he was again made to move to the back seat. One of the armed men took over in driving Pugeda's car. At the back, he sat in between two (2) of the kidnapers. Another one sat at the front passenger seat.⁴

They continued driving and when they reached Malabon, Rosario, Cavite, the man sitting on his left side blindfolded Pugeda and continued to drive off. After several hours, they stopped and the men told Pugeda he would

² Record, pp. 1-2.

³ *Id.* at 50.

⁴ TSN, July 1, 2010, pp. 6-9.

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be released only upon payment of a ₱1,000,000.00 ransom and if he could provide them with a gun.⁵ Pugeda told them he did not have that kind of money and offered to give ₱50,000.00 instead. The kidnappers got irritated and one hit Pugeda's head, exclaiming "*ganyan na lang ba ang halaga ng buhay mo?*"⁶ The kidnappers then inquired where Pugeda's parents, siblings, and wife worked. The men forcibly took his wristwatch, ring, and wallet containing his company ID, some money, and ATM card.⁷

The group stopped in one place and the kidnappers asked Pugeda for the PIN of his ATM card. They called someone to verify his account. That other person found that Pugeda's account was empty.⁸ They drove for around two (2) hours more. When they stopped, he was instructed to remove his blindfold and bow his head. The sun was starting to rise by then.⁹

Pugeda could hear the kidnappers talking about taking another vehicle. At that point, the kidnappers saw, and started to chase another car. As soon as they caught up with the other car, a black Toyota Fortuner, three (3) of the kidnappers alighted from the Mitsubishi Adventure – the driver and the man sitting on his left side and the one occupying the passenger seat. He was left in his car with the man seated on his right side. They ordered the driver of the Toyota Fortuner to go down, after which, one of the kidnappers took the driver seat. Pugeda was then transferred to the Toyota Fortuner and they left his (Pugeda's) car behind. Onboard the Toyota Fortuner were a child, a woman, and a driver. The child and the woman were made to sit in the passenger seat while Pugeda and the driver of the Fortuner were made to lie down at the back of the vehicle.¹⁰

While in transit, the kidnappers informed Pugeda they had reduced their ransom demand to ₱100,000.00. The kidnappers then turned to the woman and asked what were the jobs of the child's parents. The woman answered that the family owned a water station and the child's father was a doctor from Bulacan. The kidnappers asked for the child's home number and immediately called the child's family to demand for ransom.¹¹ As for Pugeda, he was left with no choice but to agree to the ₱100,000.00 ransom. Pugeda asked for a cellphone so he could call his wife. Over the phone, Pugeda instructed his wife to deposit ₱100,000.00 to his ATM account. Pugeda noticed they were traversing the road leading to Maragondon.¹²

Upon reaching Quezon Province, one of the kidnappers informed him that his wife had deposited ₱30,000.00 to his ATM account. Pugeda heard the group talking about a woman who had his ATM in her possession. Apparently, this woman was the one monitoring the deposit. In the afternoon, Pugeda's

⁵ *Id.* at 12.

⁶ *Id.* at 13-14.

⁷ *Id.* at 12-13.

⁸ *Id.* at 15.

⁹ *Id.* at 16-17.

¹⁰ *Id.* at 20-23.

¹¹ *Id.* at 24-25.

¹² *Id.* at 26-28.

wife called the group to inform them she had completed the ₱100,000.00 deposit. They had just stopped at a terminal in Lucena and had ordered food from Jollibee.¹³

The woman in possession of Pugeda's ATM card withdrew only ₱20,000.00 from his account. The bank informed the woman that this was the maximum withdrawal amount. The kidnappers suspected that Pugeda's wife may have alerted the bank to enforce this limit. So the kidnappers threatened Pugeda that they would have to stay inside the car for five days until the whole amount was withdrawn.¹⁴

They were still on the road when Pugeda heard that the child's parents agreed to pay ransom money so the kidnappers decided to go back to Cavite. They were far from Lucena by then and were probably traversing the zigzag "*bitukang manok*" road going to Bicol. On their way back to Cavite, the kidnappers took alternate routes to avoid the checkpoints. There was one (1) checkpoint, however, which the kidnappers could not avoid. So one of them just opened the car window and when the officer manning the checkpoint saw the woman and child, they let the Toyota Fortuner pass.¹⁵

Suspicious that the police had already been alerted and taken notice of the Toyota Fortuner, the kidnappers decided to flag down yet another vehicle. This time, it was Toyota van driven by a woman. It was around noon time of August 19, 2009. Using the Toyota Fortuner, the kidnappers blocked the van, then transferred there with the child and the woman (*yaya*) and left Pugeda and the driver of the Fortuner at the back of the latter.¹⁶

Pugeda and the driver immediately drove back to Noveleta onboard the Toyota Fortuner. They went to the house of the child where Pugeda was able to talk to a caretaker and the child's aunt. From there, Pugeda texted his wife. Pugeda learned that his wife was then at the Imus Police Station to check on his car which had been recovered by the Imus Police.¹⁷

Pugeda went to the Imus Police Station to give his statement. There, he saw two (2) of the four (4) kidnappers – the driver who was identified as Jun Santos and the one (1) sitting on his left side, identified as Roger Santos. Pugeda learned that appellant had been arrested at the Cavite Medical Center while Jun Santos and Roger Santos were arrested and detained at the Imus Police Station because they held some people hostage.¹⁸

PO2 Avila testified that he was the investigator on duty at the Imus Municipal Police Station on August 19, 2009, around 10:30 in the morning. Then and there, PO2 Avila personally received a report from a certain Huerta Pugeda about the disappearance of his brother Roman Pugeda, who last went

¹³ *Id.* at 29-30, 32.

¹⁴ *Id.* at 32-33.

¹⁵ *Id.* at 33-34.

¹⁶ *Id.* at 35-37.

¹⁷ *Id.* at 37-38.

¹⁸ *Id.* at 38-40.

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to Tanza, Cavite onboard his Adventure car bearing Plate No. WNR-849 on August 18, 2009 but never came home. PO2 Avila entered in the police blotter the alleged disappearance of Roman Pugeda.¹⁹ On the same day, a report came in from Police Precinct No. 4 in Bucandala that Roman Pugeda's Adventure car was recovered in a place within its jurisdiction. The vehicle was brought to the Imus Municipal Police Station and was released to Roman Pugeda himself on August 20, 2009 around 5 o'clock in the afternoon.²⁰

PO2 Avila clarified that Huerta Pugeda presented his driver's license at the police station but did not submit a sworn statement regarding his brother's disappearance.²¹

The prosecution and the defense stipulated on the supposed testimony of SPO1 Franklin Dumalaog, a PACER operative, viz:²²

When this case was called for the continuation of prosecution evidence SPO1 Franklin Dumalaog took the witness stand. After oath and offer made, the prosecution proposed the following for stipulations which the accused admitted:

- a) that SPO1 Franklin Dumalaog is a member of PACER detailed at Cavite City known as Police Anti-Crime and Emergency Response;
- b) that on August 20, 2009, they received information from Ellen Grace Cruz one of the victims, that one of the accused a ceratin a.k.a. "Ricky" one of the kidnappers was at the hospital and in view of said information they proceeded to the hospital and took into custody the accused Elmar Santos;
- c) the existence and due execution of the Affidavit of Arrest as well as the signatures of the arresting officers;
- d) that the said witness identified accused Elmar Santos.

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The prosecution made its formal offer of evidence²³ on January 14, 2013 which the trial court admitted under Order dated February 11, 2013.²⁴

The Defense's Version

As sole witness for the defense, appellant testified that he was being treated for a gunshot wound at the Cavite Medical Center when police officers arrived on August 21, 2009 to arrest him for his alleged involvement in

¹⁹ TSN, September 15, 2011, pp. 5-8.

²⁰ *Id.* at 8-9.

²¹ *Id.* at 12.

²² Order dated October 7, 2010; Record, pp. 76-77.

²³ Record, pp. 138-139.

²⁴ *Id.* at 151.

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kidnapping. Due to his injury, he was not immediately taken out of the Cavite Medical Center. After a week, however, he was physically transferred to the Philippine National Police General Hospital where he continued treatment for his gunshot wound. One month thereafter, he was detained at the PNP Custodian Center.²⁵

Appellant denied knowledge, let alone, participation in the alleged kidnapping for ransom of Roman Pugeda. He, however, did not file a case against the police officers who arrested him simply because he did not know how to go about it and because he was still recovering from his injury.²⁶

Appellant explained that on August 20, 2009, he sustained a gunshot wound after he accidentally shot himself while holding his uncle's gun. His uncle Roperto Santos took him to Cavite City to work in the construction site where he (Roperto) used to work. After he accidentally shot himself, he was brought to the Vista Clinic located in Noveleta, Cavite. He had to be brought all the way there although there were medical clinics in Cavite City, where the accident took place, because his uncle's gun did not have a corresponding license. When asked where his uncle Roperto was, appellant said that the latter was in hiding due to pending cases against him for robbery and hold-up, murder, and others, none of which, however, happened on August 18 or 19, 2009.²⁷

Appellant maintained that he was at home in Bulacan on August 18, 2009. The only person who could attest to this was his father but he already died. His brother Roger Santos was detained at the Malolos Provincial Jail for a pending homicide case. Aside from the present case filed by Roman Pugeda against him, he had another pending case for kidnapping for ransom filed by a certain Eileen Victa Cruz.²⁸

Appellant did not make a formal offer of evidence.

The Trial Court's Ruling

By Decision²⁹ dated December 12, 2014, the trial court found appellant guilty of kidnapping for ransom, *viz*:

WHEREFORE, in view of the foregoing, the accused is found GUILTY beyond reasonable doubt of the crime of "Kidnapping for Ransom" defined and penalized under Article 267 of the Revised Penal Code. Thus, the accused is hereby sentenced to suffer the penalty of Reclusion Perpetua without eligibility for parole under Act No. 4180, otherwise known as the Indeterminate Sentence Law, as amended.

²⁵ TSN, August 22, 2014, pp. 5-10.

²⁶ *Id.* at 10.

²⁷ *Id.* at 11-15.

²⁸ *Id.* at 16-19, 23.

²⁹ Record, pp. 181-192.

The accused is likewise adjudged to pay Roman Pugeda the amount of Seventy Five Thousand Pesos (**Php 75,000.00**) as civil indemnity *ex delicto*.

SO ORDERED.³⁰

Proceedings Before The Court of Appeals

Appellant faulted the trial court for relying on Pugeda's identification of his abductors, alleging that it was unreliable and marred by suggestiveness.

Appellant asserted it was the prosecution's duty to prove the identity of the perpetrator, not simply the existence of the crime. Here, when Pugeda was interviewed at the office of the Police Anti-Crime Emergency Response (PACER) in Camp Crame, he was able to give the physical description of only two (2) of the four (4) alleged abductors for the purpose of preparing their cartographic sketches, i.e. the one who drove his car and the one who acted as negotiator. Appellant was not any one (1) one of these two (2).³¹ Hence, if Pugeda could not identify appellant as one of his kidnappers a day or two after his abduction when the harrowing experience was supposedly still fresh in his memory, then it was highly incredulous for Pugeda to identify appellant as one of his abductors through a police photographic line-up.³²

Appellant further argued that while eyewitness identification was a vital evidence, it was not always reliable or accurate. It was even prone to mis-identification for it may be influenced by different factors such as perception, lack of keenness of observation, emotional stress, proneness to suggestion from others, and even a victim's tendency to assume.³³ There was, thus, a reasonable possibility of mistake. To ensure reliability of out-of-court identification, courts had adopted the totality of circumstances test which considered the following factors: (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at that time; (3) accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the witness; (5) length of time between the crime and identification; and (6) suggestiveness of the identification procedure.³⁴

Pugeda's out-of court identification was marked by suggestiveness and influenced by many factors. Pugeda's stress and anxiety after his abduction may have affected his recollection of the identity of his abductors. Pugeda might also be impelled by other motives such as the desire to requite a crime, find a scapegoat, or support the identification already made by another. It was, thus, not remote for Pugeda to point to anybody, like appellant, as one of his abductors.³⁵

³⁰ *Id.* at 191-192.

³¹ *CA rollo*, pp. 33-34.

³² *Id.*

³³ *Id.* at 35.

³⁴ *Id.*

³⁵ *Id.* at 36.

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Appellant pleaded that his categorical denial of any participation in the crime with which he was being charged should not be considered with precipitate disfavor. While alibi may be a weak defense, where the prosecution's evidence itself were feeble, particularly on the identity of the accused as author of the crime, alibi assumed importance and acquired commensurate strength.³⁶ Further, it was settled that where the prosecution failed to meet the quantum of evidence, or that of proof of guilt beyond reasonable doubt, the presumption of innocence prevailed and acquittal of the accused was in order.³⁷

As for the People, the Court of Appeals merely noted the brief which was belatedly filed.

Court of Appeals' Ruling

By Decision dated April 8, 2016,³⁸ the Court of Appeals affirmed. It sustained the trial court's factual finding based on the clear, categorical, consistent and conclusive testimony of Pugeda himself who was proven not to have been impelled by improper motive to falsely testify against appellant. Pugeda's positive identification prevailed over appellant's weak defense of alibi. Appellant's mere denial cannot overcome Pugeda's firm and clear declaration that appellant was one of his abductors.³⁹ Although Pugeda gave a mere general description of appellant during the investigation, the same was different from recognition. Description referred only to facility of communication which not many persons possess.⁴⁰ The Court of Appeals, however, modified appellant's civil liability. The dispositive portion of the decision read, *viz*:

WHEREFORE, premises considered, the **DECISION** dated December 12, 2014, of the Regional Trial Court, Branch 16 of Cavite City is hereby **AFFIRMED** with the **MODIFICATIONS** that:

(1) The amount of civil indemnity to be paid by appellant Elmar Santos y Del Carmen is increased from Seventy Five Thousand Pesos (Php75,000.00) to **One Hundred Thousand Pesos (Php100,000.00)**.

(2) Appellant Elmar Santos y Del Carmen is ordered to pay the private offended party interest on the damages at the legal rate of six percent (6%) per annum from the date of finality of this judgment.

IT IS SO ORDERED.⁴¹

³⁶ *Id.*

³⁷ *Id.* at 36-37.

³⁸ *Id.* at 71-82.

³⁹ *Id.* at 80-81.

⁴⁰ *Id.* at 79.

⁴¹ *Id.* at 81.

The Present Appeal

Appellant now faults the Court of Appeals for sustaining the verdict of conviction. Adopting the arguments in its appeal brief before the Court of Appeals,⁴² appellant reiterates that Pugeda was unable to describe his physical appearance and the latter's purported out-of-court identification of him as one of his abductors was not trustworthy, the same having been marked by suggestiveness during the identification procedure at the police station.

The People, through the OSG, manifested that it was no longer filing a supplemental brief.⁴³

Issue

Did the prosecution establish appellant's guilt of kidnapping for ransom?

Ruling

Article 267 of the Revised Penal Code, as amended by Republic Act No. 7659, defines the crime of kidnapping and prescribes the penalty therefor, thus:

ART. 267. Kidnapping and serious illegal detention. — Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of reclusion perpetua to death:


1. If the kidnapping or detention shall have lasted more than three days.
2. If it shall have been committed simulating public authority.
3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained, or if threats to kill him shall have been made.
4. If the person kidnapped or detained shall be a minor, except when the accused is any of the parents, female, or a public officer.

The penalty shall be death where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances above-mentioned were present in the commission of the offense.

When the victim is killed or dies as a consequence of the detention or is raped, or is subjected to torture or dehumanizing acts, the maximum penalty shall be imposed. (As amended by RA No. 7659).

⁴² Per Manifestation (In Lieu of Supplemental Brief) dated July 27, 2017, *Rollo*, pp. 27-28.

⁴³ Manifestation dated August 3, 2017; *rollo*, pp. 21-22.



To sustain a conviction of kidnapping, the prosecution must prove the following elements: (a) the offender is a private individual; (b) he kidnaps or detains another, or in any manner deprives the latter of his liberty; (c) the act of detention or kidnapping must be illegal; and (d) in the commission of the offense any of the following circumstances is present: (1) the kidnapping or detention lasts for more than three days; (2) it is committed by simulating public authority; (3) any serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made; or (4) the person kidnapped or detained is a minor, female, or a public officer. If the victim of kidnapping and serious illegal detention is a minor, or if the crime is perpetrated for the purpose of extorting ransom, the duration of detention is immaterial. The essence of the crime is the purposeful or knowing action by the accused to forcibly restrain the victim coupled with intent.⁴⁴

These elements were indubitably established in this case: appellant is a private individual who deprived Pugeda of his liberty by restraining him and not allowing him to leave and go home unless and until ransom was paid in exchange for his freedom. Appellant was positively identified as one of the kidnapers by Pugeda himself. Pugeda had the opportunity to see appellant's face when his blindfold was removed. He heard appellant's voice and saw how he moved for they were onboard the same vehicle for many hours. There is, thus, no reason to doubt Pugeda's identification of appellant as one of his abductors for the same was made with moral certainty enough to overcome the presumption of innocence. *People v. Ali*,⁴⁵ et al. elucidates, viz:

xxx Positive identification pertains essentially to proof of identity. In order that identification be deemed with moral certainty enough to overcome the presumption of innocence, it must be impervious to skepticism on account of its distinctiveness. Such distinctiveness is achieved through identification evidence which encompass unique physical features or characteristics like the face, voice or any other physical facts that set the individual apart from the rest of humanity. In the case at bar, it is unquestionable that Ali was identified with moral certainty. Oliz was able to distinguish and identify accused considering their proximity inside the vehicle and the duration of the captivity. Thus, she was intimately familiar with Ali's facial features and voice-enough to lend credibility to her identification of the accused. xxx

As discussed, Pugeda had the opportunity to take a good look at the faces of his abductors at some point during the time they held him captive. And with certainty, he identified them when shown photos by the police officers during investigation. Pugeda was also able to identify appellant as one of his kidnapers in open court and convincingly gave a detailed narration of his abduction – how the perpetrators at gunpoint took control of his car, the conversation between the abductors, the abduction of new victims while he was still in the custody of appellant and the latter's companions. Given the

⁴⁴ See *People v. Niegas*, 722 Phil. 301, 310 (2013), citing *People v. Pagalasan*, 452 Phil. 341, 362 (2003).

⁴⁵ G.R. No. 222965, December 6, 2017, 848 SCRA 205, 218-219.

situation appellant was in during that fateful night he was kidnapped, it is expected that he endeavored to see the faces of his kidnappers and it is not likely that he would easily forget their faces. The Court, thus, ordained:

xxx Common human experience tells us that when extraordinary circumstances take place, it is natural for persons to remember many of the important details. 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. x x x. All too often, the face of the assailant and his body movements create a lasting impression on the victim's mind and cannot thus be easily erased from his memory.⁴⁶ xxx

Time and again, we have recognized and upheld the trial court's factual determination for the matter of assigning values to declarations on the witness stand is best and most competently performed by the trial judge, who had the unmatched opportunity to observe the witnesses and to assess their credibility by the various indicia available but not reflected on the record. The trial court has the singular opportunity to observe the witnesses through the different indicators of truthfulness or falsehood, such as the angry flush of an insisted assertion, or the sudden pallor of a discovered lie, or the tremulous mutter of a reluctant answer, or the forthright tone of a ready reply; or the furtive glance, the blush of conscious shame, the hesitation, the sincere, or the flippant or sneering tone, the heat, the calmness, the yawn, the sigh, the candor or lack of it, the scant or full realization of the solemnity of an oath, the carriage and mien.⁴⁷

Here, the trial court was in the best position to determine Pugeda's honesty and candor on the witness stand. It scrutinized Pugeda's every word and action and found him to be credible and truthful and such finding was sustained by the Court of Appeals. The Court's independent review of the case records reveals that the concurrent factual findings and legal conclusion of the trial court and Court of Appeals are supported by the testimonial and documentary evidence extant from the records and there is no cogent reason to deviate from them.

Appellant's insistence that Pugeda's identification was marked by suggestiveness is completely devoid of merit. For appellant cannot point to a particular act clearly demonstrating how police officers employed such suggestion, if indeed it really happened.

To be sure, there are two (2) rules for out-of-court identifications through photographs as enunciated in *People v. Pineda*.⁴⁸

⁴⁶ Supra Note 44.

⁴⁷ See *People v. Fabro*, G. R. No. 208441, July 17, 2017, 831 SCRA 215, 231-232.

⁴⁸ *People v. Nuñez*, G.R. No. 209342, October 4, 2017, 842 SCRA 125, citing *People v. Pineda*, 473 Phil. 517 (2004).

The *first* rule in proper photographic identification procedure is that a series of photographs must be shown, and not merely that of the suspect. The *second* rule directs that when a witness is shown a group of pictures, their arrangement and display should in no way suggest which one of the pictures pertains to the suspect.

Appellant did not adduce convincing proof that the police officers presented his picture alone, or that in presenting several photographs, the police zeroed in on him, thus, making an improper suggestion to Pugeda on his identity as the latter's kidnapper.

Nothing on record supports appellant's assertion of suggestiveness. On the contrary, records reveal that during the investigation at the PACER Office in Camp Crame, Quezon City, Pugeda was confident that he could identify his abductors once he sees them and when actually shown photographs of possible suspects, Pugeda had in fact identified three (3) of the four (4) perpetrators in the photos, thus:

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12. TANONG: Kung sakaling makikita mo muli ang mga kumidnap o dumukot sa iyo maaari mo ba silang makilala?

SAGOT: Opo, sa katunayan po ay nakapagbigay na ako ng carthographic sketch kay SPO1 Jonathan Hilario sa tanggapan ng PACER Camp Crame, Quezon City don sa kidnapper ng syang nagmamaneho ng Fortuner at yong isang kidnapper na tumatayong negosyador na sya rin bumatok sa aking ulo.

13, TANONG: Mayroon akong mga larawan na ipapakita sa iyo maaari mo bang tingnan kong may nakikilala ka sa kanila (Several pho(to)graphs of persons were shown to the affiant)

SAGOT: Opo, ito pong nakatoga na may pangalang ROGER SANTOS y DEL CARMEN @ JAY ay sya po ang bumatok sa aking ulo at tumatayong negosyador at sya ay ang nakaupo sa gawing kaliwa ng gitnang upuan ng fortuner, at ito namang isang litrato ng lalake na may bigute at medyo mahaba ang buhok na may pangalang RUPERTO SANTOS y FRIAS ay isa rin sa mga nagbibigay ng desisyon sa gagawin nila, at nakaupo sa gawing kanan ng gitnang upuan ng sasakyan at ito namang lalake nan aka-t-shirt na kulay blue na may pangalang ELMAR SANTOS y DEL CARMEN @ (E)rick na isa ring membro ng grupo at nakaupo sa pagitan ni ROGER SANTOS at RUPERTO SANTOS y FRIAS.

xxx⁴⁹

In determining the admissibility and reliability of an out-of-court identification the *totality of circumstances test* is applied. *People v. Lugnasin*⁵⁰ elucidated, viz:

⁴⁹ Record, p. 18.

⁵⁰ 781 Phil. 701, 713 (2016), citing *People v. Teehankee*, 319 Phil. 128, 180 (1995).

xxx Out-of-court identification is conducted by the police in various ways. It is done thru show-ups where the suspect alone is brought face to face with the witness for identification. It is done thru mug shots where photographs are shown to the witness to identify the suspect. It is also done thru line-ups where a witness identifies the suspect from a group of persons lined up for the purpose. Since corruption of out-of-court identification contaminates the integrity of in-court identification during the trial of the case, courts have fashioned out rules to assure its fairness and its compliance with the requirements of constitutional due process. In resolving the admissibility of and relying on out-of-court identification of suspects, courts have adopted the totality of circumstances test where they consider the following factors, viz.: (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at that time; (3) the accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and, (6) the suggestiveness of the identification procedure. xxx

The Court finds that the prosecution had complied with the *totality of circumstances test*: (1) To repeat, Pugeda had the singular opportunity to view his kidnappers face-to-face; his proximity to them and the amount of time that he was with them inside the car allowed for such close encounter; (2) being with his abductors continuously for more than 24 hours, Pugeda was focused on familiarizing himself with his abductors. He observed their every move and listened in on their conversations. His degree of attention on them is, thus, indubitable; (3) Pugeda identified appellant when shown a picture of the latter during investigation at the police station and his unwavering identification of appellant continued in open court; (4) in identifying appellant in the photographs and in open court, Pugeda was so certain that appellant was one [1] of the four [4] persons who abducted him on August 18, 2009 in Cavite; (5) A day after he was abandoned by his kidnappers, Pugeda positively identified appellant as one [1] of his abductors; and (6) no proof of suggestiveness was adduced showing that an improper suggestion on the identity of his kidnappers was made on Pugeda. Verily, any perceived suggestiveness was stamped out by the certainty by Pugeda's categorical and unquestionable identification of appellant.

Penalty

The Court of Appeals correctly increased the civil indemnity awarded by the trial court from ₱75,000.00 to ₱100,000.00. This is in accord with *People v. Gambao*.⁵¹ The latter case, however, also awarded moral damages and exemplary damages which are proper for cases where death is the penalty but cannot be imposed under the present law.⁵² The Court ordained, thus:

⁵¹ 718 Phil. 507 (2013) (citations omitted).

⁵² Republic Act No. 9346, entitled "*An Act Prohibiting the Imposition of Death Penalty in the Philippines*," signed into law on June 24, 2006.

xxx There is prevailing jurisprudence on civil liabilities arising from the commission of kidnapping for the purpose of extorting ransom from the victim or any other person under Article 267 of the Revised Penal Code. The persons convicted were held liable for ₱75,000.00 as civil indemnity; ₱75,000.00 as moral damages; and ₱30,000.00 as exemplary damages.

We take this opportunity to increase the amounts of indemnity and damages, where, as in this case, the penalty for the crime committed is death which, however, cannot be imposed because of the provisions of R.A. No. 9346:

1. ₱100,000.00 as civil indemnity;
2. ₱100,000.00 as moral damages which the victim is assumed to have suffered and thus needs no proof; and
3. ₱100,000.00 as exemplary damages to set an example for the public good.

These amounts shall be the minimum indemnity and damages where death is the penalty warranted by the facts but is not imposable under present law. xxx

Applying *Gambao*, the Court awards Pugeda moral damages of ₱100,000.00 and exemplary damages of ₱100,000.00. Appellant is also liable for ₱20,000.00 corresponding to the money withdrawn by the kidnappers from Pugeda's ATM account.⁵³

ACCORDINGLY, the appeal is **DENIED**. The Decision dated April 8, 2016 of the Court of Appeals in CA-G.R. CR HC No. 07263 is **AFFIRMED** with **MODIFICATION**. Appellant is found guilty of kidnapping for ransom defined and penalized under Article 267 of the Revised Penal Code and sentenced to *reclusion perpetua* without eligibility for parole.

He is further ordered to pay the following amounts:

1. ₱100,000.00 as civil indemnity;
2. ₱100,000.00 as moral damages;
3. ₱100,000.00 exemplary damages;
4. ₱20,000.00 representing the money extorted from Pugeda.

These amounts awarded shall earn interest at the rate of six percent (6%) *per annum* from the date of the finality of the Court's Decision until fully paid.

SO ORDERED.

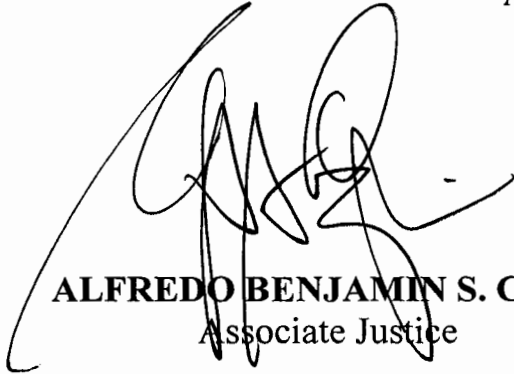

AMY C. LAZARO- JAVIER
Associate Justice

⁵³ Record, p. 144, conformably with *People v. Pepino*, 777 Phil. 29, 63 (2016).

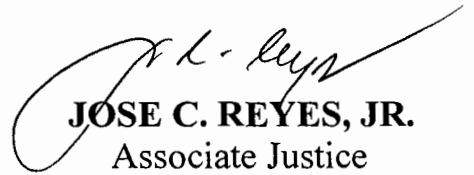
WE CONCUR:



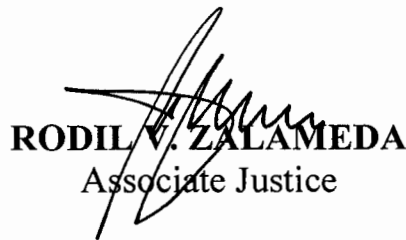
ANTONIO T. CARPIO
Associate Justice



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



JOSE C. REYES, JR.
Associate Justice



RODIL V. ZALAMEDA
Associate Justice

ATTESTATION

I attest 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.

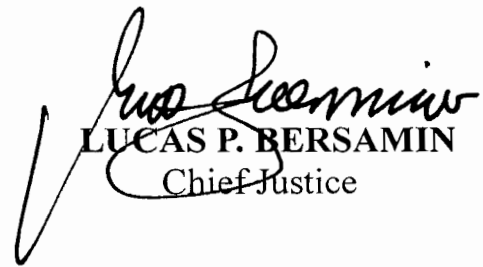


ANTONIO T. CARPIO
Associate Justice
Chairperson



CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the above Division Chairperson's Attestation, 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.


LUCAS P. BERSAMIN
Chief Justice

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