Republic of the Philippines
Supreme Court
Manila

EN BANC

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

- versus -

HALIL GAMBAO y ESMAIL, EDDIE KARIM y USO, EDWIN DUKILMAN y SUBOH, TONY ABAO y SULA, RAUL UDAL y KAGUI, THENG DILANGALEN y NANDING, JAMAN MACALINBOL y KATOL, MONETTE RONAS y AMPIL, NORA EVAD y MULOK, THIAN PERPENIAN y RAFON a.k.a LARINA PERPENIAN and JOHN DOES,
Accused-Appellants.

G.R. No. 172707

Present:

SERENO, *C.J.*,
CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,
BRION,*
PERALTA,
BERSAMIN,
DEL CASTILLO,
ABAD,
VILLARAMA, JR.,
PEREZ,
MENDOZA,
REYES,
PERLAS-BERNABE, and
LEONEN, *JJ.*

Promulgated:

OCTOBER 01, 2013

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DECISION

PEREZ, *J.*:

Before this Court for Automatic Review is the Decision[1] dated 28 June 2005 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00863, which affirmed with modification the Decision[2] of the Regional Trial Court (RTC) of Pasay City, Branch 109 dated 16 October 1998, finding accused-appellants Halil Gambao y Esmail, Eddie Karim y Uso, Edwin Dukilman y Suboh, Tony Abao y Sula, Raul Udal y Kagui, Teng Mandao y Haron, Theng Dilangalen y Nanding, Jaman Macalinbol y Katol, Monette Ronas y Ampil, Nora Evad y Mulok and Thian Perpenian y Rafon guilty beyond reasonable doubt of kidnapping for ransom as defined and penalized under Article 267 of the Revised Penal Code, as amended by Republic Act (R.A.) No. 7659.

The accused-appellants, along with an unidentified person, were charged under the criminal information[3] which reads:

Criminal Case No. 98-0928
For Kidnapping for Ransom as amended by RA 7659

> That on August 12, 1998 at around 7:30 o'clock in the evening at No. 118 FB Harrison Pasay City and within the jurisdiction of this Honorable Court, the above named-accused conspiring, confederating and mutually helping one another and grouping themselves together, did then and there by force and intimidation, and the use of high powered firearms, willfully, unlawfully and feloniously take, carry away and deprive **Lucia Chan y Lee** of her liberty against her will for the purpose of extorting ransom as in fact a demand for ransom was made as a condition for her release amounting to FOUR HUNDRED THOUSAND PESOS (₱400,000.00) TO THE DAMAGE AND PREJUDICE OF Lucia L. Chan in the said amount and such other amounts as may be awarded to her under the provisions of the Civil Code.

The antecedent facts were culled from the records of the case:[4]

Lucia Chan (Chan) was a fish dealer based in Manila. She usually expected fish deliveries, which were shipped by her suppliers from the provinces. Sometime in the afternoon of 11 August 1998, two persons, one of whom was identified as Theng Dilangalen (Dilangalen), went to Chan's residence at FB Harrison St., Pasay City to inquire about a certain passport alleged to have been mistakenly placed inside a box of fish to be delivered to

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* No part.
1 CA *rollo*, pp. 419-438; Penned by Associate Justice Eliezer R. De Los Santos with Associate Justices Eugenio S. Labitoria and Arturo D. Brion (now a member of this Court) concurring.
2 Records, Vol. I, pp. 282-301.
3 Id. at 53.
4 CA *rollo*, pp. 179-186.

her. Unable to locate said passport, the two left. The next morning, Dilangalen, together with another companion identified as Tony Abao (Abao), returned looking for Chan but were told that she was out. When the two returned in the afternoon, Chan informed them that the fish delivery had yet to arrive. Chan offered instead to accompany them to the airport to retrieve the box of fish allegedly containing the passport. Dilangalen and Abao declined and told Chan that they would be back later that evening.[5]

Dilangalen, accompanied by an unidentified person who remains at large, returned to Chan's residence that evening. Chan's houseboy ushered them in and Chan met them by the stairs.[6] Thereat, the unidentified companion of Dilangalen pointed his gun at Chan's son, Levy Chan (Levy), and the house companions.[7] As the unidentified man forcibly dragged Chan, her son Levy tried to stop the man by grabbing his mother's feet. Seeing this, Dilangalen pointed his gun at Levy's head forcing the latter to release his grip on Chan's feet.[8] Levy thereafter proceeded to the Pasay Police Headquarters to report the incident.[9]

Chan was forced to board a "Tamaraw FX" van.[10] After travelling for about two hours, the group stopped at a certain house. Accused-appellant Edwin Dukilman (Dukilman) warned Chan not to shout as he had his gun pointed at her mouth. Chan was ordered to go with two women,[11] later identified in court by Chan as appellants Monette Ronas (Ronas) and Nora Evad (Evad).[12] Chan was brought inside a house and was made to lie down on a bed, guarded by Ronas, Evad, Dukilman and Jaman Macalinbol (Macalinbol).[13] Ronas and Evad threatened Chan that she would be killed unless she paid 20 Million Pesos.[14]

On 13 August 1998, Chan was awakened by Evad and was asked to board the "Tamaraw FX" van. After travelling for about ten minutes, the van stopped and the group alighted. Chan was brought to a room on the second floor of the house. Inside the room were three persons whom Chan identified in court as Macalinbol, Raul Udal (Udal) and Halil Gambao (Gambao).[15] Another woman, later identified as Thian Perpenian

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5 TSN, 6 October 1998, pp. 2-5
6 Id. at 6.
7 Id.
8 Id. at 7.
9 Id. at 8.
10 TSN, 5 October 1998, p. 10.
11 Id. at 13.
12 Id. at 15.
13 Id. at 15-16.
14 Id. at 17.
15 Id. at 19-21.

(Perpenian), arrived.[16] At about 9:00 o'clock in the evening, a man who was later identified as Teng Mandao (Mandao), entered the room with a handgun and asked Chan "*Bakit kayo nagsumbong sa pulis?*"[17] Another man, whom Chan identified in court as Eddie Karim (Karim), ordered Mandao out of the room. Karim informed Chan that he was sent by their boss to ask her how much money she has.[18] Chan was instructed to talk to her son through a cell phone and she gave instructions to her son to get the ₱75, 000.00 she kept in her cabinet.[19] The group then talked to Chan's son and negotiated the ransom amount in exchange for his mother's release. It was agreed upon that Levy was to deliver ₱400,000.00 at the "Chowking" Restaurant at Buendia Avenue.[20]

Inspectors Narciso Ouano, Jr. (Inspector Ouano) and Cesar Mancao (Inspector Mancao), who were assigned at the Pasay City area to conduct the investigation regarding the kidnapping, were informed that the abductors called and demanded for ransom in exchange for Chan's release.[21] During their surveillance the following day, Inspectors Ouano and Mancao observed a Red Transport taxicab entering the route which led to the victim's residence. The inspectors observed that the occupants of the taxicab kept on looking at the second floor of the house. The inspectors and their team tailed the taxicab until Pansol, Calamba, Laguna, where it entered the Elizabeth Resort and stopped in front of Cottage 1. Convinced that the woman the team saw in the cottage was the victim, they sought clearance from Philippine Anti Organized Crime Task Force (PAOCTF) to conduct a rescue operation.[22]

On 14 August 1998, P/Insp. Vicente Arnado (Inspector Arnado) received information that the abductors acceded to a ₱400,000.00 ransom money to be delivered at "Chowking" Restaurant at Buendia Avenue at around 2:00 am. Upon learning of the information, the team immediately and strategically positioned themselves around the vicinity of the restaurant. At about 2:00 am, a light blue "Tamaraw FX" van with 4 people on board arrived. The four took the ransom money and headed towards the South Luzon Expressway. The surveillance team successfully intercepted the van and arrested the 4 men, later identified in court as Karim, Abao, Gambao and Dukilman. The team was also able to recover the ₱400,000.00 ransom.[23]

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16 Id. at 33.
17 Id. at 22.
18 Id. at 23.
19 Id. at 25.
20 Id. at 26-27.
21 TSN, 7 October 1998, p.12.
22 Id. at 14-16.
23 TSN, 8 October 1998, pp. 4-6.

At about 5:00 o'clock in the morning of the same day, the police team assaulted Cottage No. 1, resulting in the safe rescue of Chan and the apprehension of seven of her abductors, later identified in court as Dilangalen, Udal, Macalinbol, Mandao, Perpenian, Evad and Ronas.[24]

During the 7 October 1998 hearing, after the victim and her son testified, Karim manifested his desire to change his earlier plea of "not guilty" to "guilty." The presiding judge then explained the consequences of a change of plea, stating: "It would mean the moment you withdraw your previous pleas of not guilty and enter a plea of guilty, the court of course, after receiving evidence, as in fact it has received the testimonies of [the] two witnesses, will [outrightly] sentence you to the penalty provided by law after the prosecution shall have finished the presentation of its evidence. Now that I have explained to you the consequences of your entering a plea of guilty, are you still desirous of entering a plea of 'guilty'?" Eddie Karim answered, "Yes."[25] On hearing this clarification, the other appellants likewise manifested, through their counsel who had earlier conferred with them and explained to each of them the consequences of a change of plea, their desire to change the pleas they entered. The trial court separately asked each of the appellants namely: Gambao, Abao, Udal, Mandao, Dilangalen, Macalinbol, Ronas and Evad if they understood the consequence of changing their pleas. All of them answered in the affirmative.[26] Similarly, Dukilman manifested his desire to change his plea and assured the trial court that he understood the consequences of such change of plea.[27] Thereupon, the trial court ordered their re-arraignment. After they pleaded guilty,[28] the trial court directed the prosecution to present evidence, which it did.

On 16 October 1998, the RTC rendered a decision convicting Gambao, Karim, Dukilman, Abao, Udal, Mandao, Dilangalen, Macalinbol, Ronas, Evad and Perpenian of Kidnapping for Ransom. Hence, they appealed to the CA.

In a Decision dated 28 June 2005, the appellate court affirmed with modifications the decision of the trial court. The dispositive portion of the CA decision reads:

> WHEREFORE, the decision of the court a *quo* finding accused-appellants HALIL GAMBAO y ESMAIL, EDDIE KARIM y USO,

24 TSN, 7 October 1998, pp. 17-18.
25 Id. at 2-3.
26 Id. at 2-5.
27 Id. at 5-6.
28 Id. at 7-10.

> EDWIN DUKILMAN y SUBOH, TONY ABAO y SULA, RAUL UDAL y KAGUI, TENG MANDAO y HARON, THENG DILANGALEN y NANDING, JAMAN MACALINBOL y KATOL, MONETTE RONAS y AMPIL and NORA EVAD y MULOK guilty beyond reasonable doubt of kidnapping for ransom defined and penalized under Article 267 of the Revised Penal Code, as amended by RA 7659 and imposing upon each of them the supreme penalty of death is **AFFIRMED WITH MODIFICATION** that each of them is ordered to pay jointly and severally the victim in the amount of P50,000.00 by way of moral damages.
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> It appearing that accused-appellant THIAN PERPENIAN y RAFON was only 17 years old at the time of the commission of the crime, she is hereby sentenced to suffer the penalty of *reclusion perpetua.*[29]

Pursuant to Section 13, Rule 124 as amended by Administrative Matter No. 00-5-03-SC, the appellate court certified the case to this Court and accordingly ordered the elevation of the records.

In a Resolution[30] dated 20 June 2006, we required the parties to file their respective supplemental briefs. The issues raised by the accused-appellants in their respective briefs, supplemental briefs and manifestations will be discussed collectively.

Insufficiency of Evidence

Accused-appellants Dukilman, Ronas, Evad would have this Court believe that the witness, Chan, was not able to positively identify them because of her failing eyesight due to old age.

This argument is bereft of merit. We note that both the trial court and the CA found Chan's testimony credible and straightforward. During her testimony, she positively identified the accused-appellants. If she had not met them before, she could not have positively identified them in open court. In fact, the participation of these accused-appellants was further established through the testimonies of the other prosecution witnesses.

Time and again, this Court has maintained that the question of credibility of witnesses is primarily for the trial court to determine. For this reason, its observations and conclusions are accorded great respect on appeal. They are conclusive and binding unless shown to be tainted with

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29 CA *rollo*, pp. 436-437.
30 *Rollo*, pp. 23-24.

arbitrariness or unless, through oversight, some fact or circumstance of weight and influence has not been considered.[31] In *People v. Tañedo*,[32] this Court had occasion to reiterate the ruling that findings of fact of the trial court pertaining to the credibility of witnesses command great respect since it had the opportunity to observe their demeanor while they testified in court.[33] It can be observed that the briefs submitted by the accused-appellants are replete with generalities and wanting in relevant particulars. It is for this reason that we are giving full credence to the findings of the trial court regarding the credibility of witness Chan.

Perpenian likewise argued that the evidence for her conviction is insufficient. We also find her argument bereft of merit.

The testimony of Inspector Ouano, establishing Perpenian as one of the seven people apprehended when they conducted the rescue operation at around 5:00 o'clock in the morning of 14 August 1998,[34] and the positive identification of Perpenian by Chan constituted adequate evidence working against her defense of denial.

Further, it should be noted that the only defense the accused-appellants proffered was denial. It is established jurisprudence that denial cannot prevail over the witnesses' positive identification of the accused-appellants, more so where the defense did not present convincing evidence that it was physically impossible for them to have been present at the crime scene at the time of the commission of the crime.[35]

The foregoing considered, the positive identification by Chan, the relevant testimonies of witnesses and the absence of evidence other than mere denial proffered by the defense lead this Court to give due weight to the findings of the lower courts.

Improvident Plea

As provided for by Article 267 of the Revised Penal Code, as amended by RA 7659, the penalty for kidnapping for ransom is death. A

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31 *People v. Montanir, et al.*, G.R. No. 187534, 4 April 2011, 647 SCRA 170, 185-186.
32 334 Phil. 31, 36 (1997).
33 *People v. Yanson-Dumancas*, 378 Phil. 341, 364 (1999) citing *People v. Tañedo*, 334 Phil. 31, 36 (1997).
34 TSN, 7 October 1998, pp. 17-18.
35 *People v. Salcedo*, G.R. No. 186523, 22 June 2011 652 SCRA 635, 644 citing *Lumanog v. People of the Philippines*, G.R. No. 182555, 7 September 2010, 630 SCRA 42, 130-131.

review of the records[36] shows that on 7 October 1998, the accused-appellants withdrew their plea of "not guilty" and were re-arraigned. They subsequently entered pleas of "guilty" to the crime of kidnapping for ransom, a capital offense. This Court, in *People v. Oden*,[37] laid down the duties of the trial court when the accused pleads guilty to a capital offense. The trial court is mandated:

> (1) to conduct a searching inquiry into the voluntariness and full comprehension of the consequences of the plea of guilt,
> (2) to require the prosecution to still prove the guilt of the accused and the precise degree of his culpability, and
> (3) to inquire whether or not the accused wishes to present evidence in his behalf and allow him to do so if he desires.[38]

The rationale behind the rule is that the courts must proceed with more care where the possible punishment is in its severest form, namely death, for the reason that the execution of such a sentence is irreversible. The primordial purpose is to avoid improvident pleas of guilt on the part of an accused where grave crimes are involved since he might be admitting his guilt before the court and thus forfeiting his life and liberty without having fully understood the meaning, significance and consequence of his plea.[39] Moreover, the requirement of taking further evidence would aid this Court on appellate review in determining the propriety or impropriety of the plea.[40]

Anent the first requisite, the searching inquiry determines whether the plea of guilt was based on a free and informed judgement. The inquiry must focus on the voluntariness of the plea and the full comprehension of the consequences of the plea. This Court finds no cogent reason for deviating from the guidelines provided by jurisprudence[41] and thus, adopts the same:

> Although there is no definite and concrete rule as to how a trial judge must conduct a "searching inquiry," we have held that the following guidelines should be observed:
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> 1. Ascertain from the accused himself
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> (a) how he was brought into the custody of the law;
> (b) whether he had the assistance of a competent counsel during the custodial and preliminary

36 TSN, 7 October 1998, pp. 1-10.
37 471 Phil. 638 (2004).
38 Id. at 648.
39 *People v. Ernas*, 455 Phil. 829, 838 (2003).
40 *People v. Pastor*, 428 Phil. 976, 993 (2002).
41 Id. at 986-987.

investigations; and
(c) under what conditions he was detained and interrogated during the investigations. This is intended to rule out the possibility that the accused has been coerced or placed under a state of duress either by actual threats of physical harm coming from malevolent quarters or simply because of the judge's intimidating robes.

2. Ask the defense counsel a series of questions as to whether he had conferred with, and completely explained to, the accused the meaning and consequences of a plea of guilty.

3. Elicit information about the personality profile of the accused, such as his age, socio-economic status, and educational background, which may serve as a trustworthy index of his capacity to give a free and informed plea of guilty.

4. Inform the accused the exact length of imprisonment or nature of the penalty under the law and the certainty that he will serve such sentence. For not infrequently, an accused pleads guilty in the hope of a lenient treatment or upon bad advice or because of promises of the authorities or parties of a lighter penalty should he admit guilt or express remorse. It is the duty of the judge to ensure that the accused does not labor under these mistaken impressions because a plea of guilty carries with it not only the admission of authorship of the crime proper but also of the aggravating circumstances attending it, that increase punishment.

5. Inquire if the accused knows the crime with which he is charged and fully explain to him the elements of the crime which is the basis of his indictment. Failure of the court to do so would constitute a violation of his fundamental right to be informed of the precise nature of the accusation against him and a denial of his right to due process.

6. All questions posed to the accused should be in a language known and understood by the latter.
7. The trial judge must satisfy himself that the accused, in pleading guilty, is truly guilty. The accused must be required to narrate the tragedy or reenact the crime or furnish its missing details.

It is evident from the records[42] that the aforesaid rules have not been

42 TSN, 7 October 1998, pp. 2-10.

fully complied with. The questions propounded by the trial court judge failed to ensure that accused-appellants fully understood the consequences of their plea. In fact, it is readily apparent from the records[43] that Karim had the mistaken assumption that his plea of guilt would mitigate the imposable penalty and that both the judge and his counsel failed to explain to him that such plea of guilt will not mitigate the penalty pursuant to Article 63 of the Revised Penal Code. Karim was not warned by the trial court judge that in cases where the penalty is single and indivisible, like death, the penalty is not affected by either aggravating or mitigating circumstances. The trial court judge's seemingly annoyed statement that a conditional plea is not allowed, as provided below, is inadequate:

> Atty. Ferrer: Your Honor please, may we be allowed to say something before the trial. For accused Eddie Karim we manifest and petition this court that he be allowed to be re-arraigned Your Honor please, considering that he will plead guilty as charged but the imposable penalty is lowered, Your Honor.
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> Court: You cannot make a conditional plea of guilty, that is what the law says. You plead guilty, no condition attached. Conditional plea is not allowed.
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> Atty. Ferrer: Considering, Your Honor, accused Eddie Karim is already repenting
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> Court: Nevertheless. Read the law. If you entered a plea of guilty there should be no condition attached. We cannot make that condition and dictate to the court the penalty. [44]

Although the pleas rendered, save for Perpenian's, were improvidently made, this Court will still not set aside the condemnatory judgment. Despite the trial court judge's shortcomings, we still agree with his ruling on accused-appellants' culpability.

As a general rule, convictions based on an improvident plea of guilt are set aside and the cases are remanded for further proceedings if such plea is the sole basis of judgement. If the trial court, however, relied on sufficient and credible evidence to convict the accused, as it did in this case, the conviction must be sustained, because then it is predicated not merely on the guilty plea but on evidence proving the commission of the offense charged.[45] The manner by which the plea of guilty is made, whether improvidently or

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43 Id. at 2.
44 Id.
45 *People v. Pastor,* supra note 40 at 997.

not, loses legal significance where the conviction can be based on independent evidence proving the commission of the crime by the accused.[46]

Contrary to accused-appellants' assertions, they were convicted by the trial court, not on the basis of their plea of guilty, but on the strength of the evidence adduced by the prosecution, which was properly appreciated by the trial court.[47] The prosecution was able to prove the guilt of the accused-appellants and their degrees of culpability beyond reasonable doubt.

Degree of Culpability

Accused-appellants Dukilman, Ronas and Evad argue in their respective briefs that conspiracy, insofar as they were concerned, was not convincingly established. Dukilman hinges his argument on the fact that he was not one of those arrested during the rescue operation based on the testimony of Inspector Ouano.[48] On the other hand, Ronas and Evad base their argument on the fact that they had no participation whatsoever in the negotiation for the ransom money.

We hold otherwise. Although Dukilman was not one of those apprehended at the cottage during the rescue operation, the testimony of Police Inspector Arnado sufficiently established that he was one of the four people apprehended when the police intercepted the "Tamaraw FX" at the Nichols Tollgate.[49] Likewise, the testimony of Police Inspector Ouano sufficiently established that Ronas and Evad were two of those who were arrested during the rescue operation.[50] This Court has held before that to be a conspirator, one need not participate in every detail of the execution; he need not even take part in every act or need not even know the exact part to be performed by the others in the execution of the conspiracy.[51] Once conspiracy is shown, the act of one is the act of all the conspirators. The precise extent or modality of participation of each of them becomes secondary, since all the conspirators are principals.[52] Moreover, Chan positively identified the accused-appellants and placed all of them at the crime scenes.

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46 *People v. Oden*, supra note 37 at 649.
47 *People v. Ceredon*, G. R. No. 167179, 28 January 2008, 542 SCRA 550, 568.
48 TSN, 7 October 1998, pp. 17-18.
49 TSN, 8 October 1998, pp. 4-6.
50 TSN, 7 October 1998, pp. 17-18.
51 *People v. Basao,* G.R. No. 189820, 10 October 2012, 683 SCRA 529, 546.
52 Id.

Under Article 8 of the Revised Penal Code, there is conspiracy when two or more persons come to an agreement concerning a felony and decide to commit it. It has been a long standing opinion of this Court that proof of the conspiracy need not rest on direct evidence, as the same may be inferred from the collective conduct of the parties before, during or after the commission of the crime indicating a common understanding among them with respect to the commission of the offense.[53] The testimonies, when taken together, reveal the common purpose of the accused-appellants and how they were all united in its execution from beginning to end. There were testimonies proving that (1) before the incident, two of the accused-appellants kept coming back to the victim's house; (2) during the kidnapping, accused-appellants changed shifts in guarding the victim; and (3) the accused appellants were those present when the ransom money was recovered and when the rescue operation was conducted.

Seeing that conspiracy among Gambao, Karim, Dukilman, Abao, Udal, Mandao, Dilangalen, Macalinbol, Ronas and Evad was established beyond reasonable doubt based on the proffered evidence of the prosecution, the act of one is the act of all the conspirators.

In Perpenian's Supplemental Brief,[54] she directs this Court's attention to the manifestation made by the prosecution regarding their disinterest in prosecuting, insofar as she was concerned.[55] However, pursuant to the ruling of this Court in *Crespo v. Judge Mogul*,[56] once the information is filed, any disposition of the case or dismissal or acquittal or conviction of the accused rests within the exclusive jurisdiction, competence and discretion of the courts; more so in this case, where no Motion to Dismiss was filed by the prosecution.

The trial court took note of the fact that Perpenian gave inconsistent answers and lied several times under oath during the trial.[57] Perpenian lied about substantial details such as her real name, age, address and the fact that she saw Chan at the Elizabeth Resort. When asked why she lied several times, Perpenian claimed she was scared to be included or identified with the other accused-appellants. The lying and the fear of being identified with people whom she knew had done wrong are indicative of discernment. She knew, therefore, that there was an ongoing crime being committed at the

53 *People v. De Chavez*, G.R. No. 188105, 23 April 2010, 619 SCRA 464, 478.
54 CA *rollo*, pp. 330- 357.
55 TSN, 7 October 1998, pp. 6-7.
56 235 Phil. 465, 476 (1987).
57 TSN, 8 October 1998, pp. 28-30.

resort while she was there. It is apparent that she was fully aware of the consequences of the unlawful act.

As reflected in the records,[58] the prosecution was not able to proffer sufficient evidence to hold her responsible as a principal. Seeing that the only evidence the prosecution had was the testimony[59] of Chan to the effect that on 13 August 1998 Perpenian entered the room where the victim was detained and conversed with Evad and Ronas regarding stories unrelated to the kidnapping, this Court opines that Perpenian should not be held liable as a co-principal, but rather only as an accomplice to the crime.

Jurisprudence[60] is instructive of the elements required, in accordance with Article 18 of the Revised Penal Code, in order that a person may be considered an accomplice, namely, (1) that there be community of design; that is knowing the criminal design of the principal by direct participation, he concurs with the latter in his purpose; (2) that he cooperates in the execution by previous or simultaneous act, with the intention of supplying material or moral aid in the execution of the crime in an efficacious way; and (3) that there be a relation between the acts done by the principal and those attributed to the person charged as accomplice.

The defenses raised by Perpenian are not sufficient to exonerate her criminal liability. Assuming *arguendo* that she just came to the resort thinking it was a swimming party, it was inevitable that she acquired knowledge of the criminal design of the principals when she saw Chan being guarded in the room. A rational person would have suspected something was wrong and would have reported such incident to the police. Perpenian, however, chose to keep quiet; and to add to that, she even spent the night at the cottage. It has been held before that being present and giving moral support when a crime is being committed will make a person responsible as an accomplice in the crime committed.[61] It should be noted that the accused-appellant's presence and company were not indispensable and essential to the perpetration of the kidnapping for ransom; hence, she is only liable as an accomplice.[62] Moreover, this Court is guided by the ruling in *People v. Clemente*, et al.,[63] where it was stressed that in case of doubt, the participation of the offender will be considered as that of an accomplice rather than that of a principal.

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58 TSN, 7 October 1998, p. 5.
59 Id.
60 *People v. Tamayo*, 44 Phil. 38, 49 (1922).
61 *People v. Toling*, 180 Phil. 305, 321-322 (1979).
62 *People v. Ubiña*, 97 Phil. 515, 534 (1955).
63 128 Phil. 268, 278-279 (1967).

Having admitted their involvement in the crime of kidnapping for ransom and considering the evidence presented by the prosecution, linking accused-appellants' participation in the crime, no doubt can be entertained as to their guilt. The CA convicted the accused-appellants of kidnapping for ransom and imposed upon them the supreme penalty of death, applying the provisions of Article 267 of the Revised Penal Code. Likewise, this Court finds accused-appellants guilty beyond reasonable doubt as principals to the crime of kidnapping for ransom. However, pursuant to R.A. No. 9346,[64] we modify the penalty imposed by the trial court and reduce the penalty to *Reclusion Perpetua,* without eligibility for parole.

Modification should also be made as to the criminal liability of Perpenian. Pursuant to the passing of R.A. No. 9344,[65] a determination of whether she acted with or without discernment is necessary. Considering that Perpenian acted with discernment when she was 17 years old at the time of the commission of the offense, her minority should be appreciated not as an exempting circumstance, but as a privileged mitigating circumstance pursuant to Article 68 of the Revised Penal Code.

Under Section 38 of R.A. No. 9344,[66] the suspension of sentence of a child in conflict with the law shall still be applied even if he/she is already eighteen (18) years of age or more at the time of the pronouncement of his/her guilt.

Unfortunately, at the present age of 31, Perpenian can no longer benefit from the aforesaid provision, because under Article 40 of R.A. No. 9344,[67] the suspension of sentence can be availed of only until the child in

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64 An Act Prohibiting the Imposition of Death Penalty in the Philippines.

65 An Act Establishing a Comprehensive Juvenile Justice and Welfare System, Creating the Juvenile Justice and Welfare Council Under the Department of Justice, Appropriating Funds Therefore and for Other Purposes.

66 Sec. 38. *Automatic Suspension of Sentence.* - Once the child who is under eighteen (18) years of age at the time of the commission of the offense is found guilty of the offense charged, the court shall determine and ascertain any civil liability which may have resulted from the offense committed. However, instead of pronouncing the judgment of conviction, the court shall place the child in conflict with the law under suspended sentence, without need of application: *Provided, however*, That suspension of sentence shall still be applied even if the juvenile is already eighteen years (18) of age or more at the time of the pronouncement of his/her guilt.

Upon suspension of sentence and after considering the various chcumstances of the child, the court shall impose the appropriate disposition measures as provided in the Supreme Court Rule on Juveniles in Conflict with the Law.

67 Sec. 40 in relation to Sec. 38 of RA No. 9344.

Sec. 40. *Return of the Child in Conflict with the Law to Court.* - If the court finds that the objective of the disposition measures imposed upon the child in conflict with the law have not been fulfilled, or if the child in conflict with the

conflict with the law reaches the maximum age of twenty-one (21) years. This leaves the Court with no choice but to pronounce judgement. Perpenian is found guilty beyond reasonable doubt as an accomplice in the crime of kidnapping for ransom. Since this Court has ruled that death as utilized in Article 71 of the Revised Penal Code shall no longer form part of the equation in the graduation of penalties pursuant to R.A. No. 9346,[68] the penalty imposed by law on accomplices in the commission of consummated kidnapping for ransom is *Reclusion Temporal*, the penalty one degree lower than what the principals would bear (*Reclusion Perpetua*).[69] Applying Article 68 of the Revised Penal Code, the imposable penalty should then be adjusted to the penalty next lower than that prescribed by law for accomplices. This Court, therefore, holds that as to Perpenian, the penalty of *Prision Mayor*, the penalty lower than that prescribed by law (*Reclusion Temporal*), should be imposed. Applying the Indeterminate Sentence Law, the minimum penalty, which is one degree lower than the maximum imposable penalty, shall be within the range of *Prision Correccional*; and the maximum penalty shall be within the minimum period of *Prision Mayor,* absent any aggravating circumstance and there being one mitigating circumstance. Hence, the Court imposes the indeterminate sentence of six (6) months and one (1) day of *Prision Correccional*, as minimum, to six (6) years and one (1) day of *Prision Mayor*, as maximum.

As regards Perpenian's possible confinement in an agricultural camp or other training facility in accordance with Section 51 of R.A. 9344, this Court held in *People v. Jacinto*[70] that the age of the child in conflict with the law at the time of the promulgation of the judgment is not material. What matters is that the offender committed the offense when he/she was still of tender age. This Court, however, finds such arrangement no longer necessary in view of the fact that Perpenian's actual served term has already exceeded the imposable penalty for her offense. For such reason, she may be immediately released from detention.

> law has willfully failed to comply with the conditions of his/her disposition or rehabilitation program, the child in conflict with the law shall be brought before the court for execution of judgment.
>
> If said child in conflict with the law has reached eighteen (18) years of age while under suspended sentence, the court shall determine whether to discharge the child in accordance with this Act, to order execution of sentence, or to extend the suspended sentence for a certain specified period or **until the child reaches the maximum age of twenty-one (21) years** (emphasis supplied).

68 *People v. Bon*, 536 Phil. 897, 940 (2006).

69 Article 52 Revised Penal Code.

70 G.R. No. 182239, 16 March 2011, 645 SCRA 590, 625.

We note that in the Order[71] dated 9 October 1998, the trial court admitted the documentary evidence offered by the counsel for the defense proving that the real name of Thian Perpenian is Larina Perpenian.

In view of the death of Mandao during the pendency of this case, he is relieved of all personal and pecuniary penalties attendant to the crime, his death[72] having occurred before rendition of final judgement.[73]

There is prevailing jurisprudence,[74] 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:[75]

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.

The ruling of this Court in *People v. Montesclaros*[76] is instructive on the apportionment of civil liabilities among all the accused-appellants. The entire amount of the civil liabilities should be apportioned among all those who cooperated in the commission of the crime according to the degrees of their liability, respective responsibilities and actual participation. Hence, each principal accused-appellant should shoulder a greater share in the total amount of indemnity and damages than Perpenian who was adjudged as only an accomplice.

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71 Records, Vol. I, p. 200.
72 *Rollo*, pp. 84 and 96.
73 *People v. Jose*, 163 Phil. 264, 273 (1976); Article 89 Revised Penal Code.
74 *People v. Tadah*, G.R. No. 186226, 1 February 2012, 664 SCRA 744, 748; *People v. Basao et al*, G.R. No. 189820, 10 October 2012, 683 SCRA 529, 551.
75 An Act Prohibiting the Imposition of Death Penalty in the Philippines.
76 G.R. No. 181084, 16 June 2009, 589 SCRA 320, 345.

Taking into account the difference in the degrees of their participation, all of them shall be liable for the total amount of ₱300,000.00 divided among the principals who shall be liable for ₱288,000.00 (or ₱32,000.00 each) and Perpenian who shall be liable for ₱12,000.00. This is broken down into ₱10,666.67 civil indemnity, ₱10,666.67 moral damages and ₱10,666.67 exemplary damages for each principal; and ₱4,000.00 civil indemnity, ₱4,000.00 moral damages and ₱4,000.00 exemplary damages for the lone accomplice.

WHEREFORE, the 28 June 2005 Decision of the Court of Appeals in CA-G.R. CR–H.C. No. 00863 is hereby **AFFIRMED WITH MODIFICATIONS.** Accused-appellants HALIL GAMBAO y ESMAIL, EDDIE KARIM y USO, EDWIN DUKILMAN y SUBOH, TONY ABAO y SULA, RAUL UDAL y KAGUI, THENG DILANGALEN y NANDING, JAMAN MACALINBOL y KATOL, MONETTE RONAS y AMPIL and NORA EVAD y MULOK are found guilty beyond reasonable doubt as **principals** in the crime of kidnapping for ransom and sentenced to suffer the penalty of *Reclusion Perpetua*, without eligibility of parole. Accused-appellant THIAN PERPENIAN y RAFON A.K.A. LARINA PERPENIAN is found guilty beyond reasonable doubt as **accomplice** in the crime of kidnapping for ransom and sentenced to suffer the indeterminate penalty of six (6) months and one (1) day of *Prision Correccional*, as minimum, to six (6) years and one (1) day of *Prision Mayor*, as maximum. Accused-appellants are ordered to indemnify the victim in the amounts of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages and ₱100,000.00 as exemplary damages apportioned in the following manner: the principals to the crime shall jointly and severally pay the victim the total amount of ₱288,000.00 while the accomplice shall pay the victim ₱12,000.00, subject to Article 110 of the Revised Penal Code on several and subsidiary liability.

The Court orders the Correctional Institute for Women to immediately release THIAN PERPENIAN A.K.A. LARINA PERPENIAN due to her having fully served the penalty imposed on her, unless her further detention is warranted for any other lawful causes.

Let a copy of this decision be furnished for immediate implementation to the Director of the Correctional Institute for Women by personal service. The Director of the Correctional Institute for Women shall submit to this Court, within five (5) days from receipt of a copy of the decision, the action he has taken thereon.

SO ORDERED.

JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

ANTONIO T. CARPIO
Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

(No part)
ARTURO D. BRION
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

(On Official Leave)
LUCAS P. BERSAMIN
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

ROBERTO A. ABAD
Associate Justice

(on sick leave)
MARTIN S. VILLARAMA, JR.
Associate Justice

(on official leave)
JOSE CATRAL MENDOZA
Associate Justice

BIENVENIDO L. REYES
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC MARIO VICTOR F. LEONEN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

MARIA LOURDES P. A. SERENO
Chief Justice