REPUBLIC OF THE PHILIPPINES
COURT OF APPEALS
MANILA

THIRTEENTH (13TH) DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

-versus-

CA-G.R. CR HC No. 07777
(Crim. Case No. 13-1992)

JANET LIM NAPOLES and REYNALDO LIM Y LUY ALIAS "JOJO",
Accused.

x----------x

JANET LIM NAPOLES,
Appellant.

x----------x

MANIFESTATION
(IN LIEU OF REJOINDER)

The **OFFICE OF THE SOLICITOR GENERAL (OSG)** respectfully states:

1. In her Reply Brief dated September 20, 2016, appellant reiterated her argument that the essential element of deprivation of liberty is absent and wanting in this case.

2. After examining and reviewing anew the evidence presented by both the prosecution and defense, the OSG finds that the evidence presented does not support the conviction beyond reasonable doubt that appellant committed the crime of Serious Illegal Detention.

3 At this juncture, it may be significant to point out that the Solicitor General shares in the task and responsibility of dispensing justice and resolving disputes. He is similarly a servant of the law, the two-fold aim of which is that guilt shall not escape or innocent suffer.[1]

[1] Gonzales vs Chavez, et al. G.R. No. 97351, February 4, 1992

4. And while the OSG is, by law, constituted the law office of the Government whose specific powers and functions include that of representing the Republic and/or the people, it is not prohibited from taking a position adverse to that of its clients, the People of the Philippines included, whenever it finds the contention of the adverse party or an accused tenable.

5. As the Supreme Court in **Orbos vs. CSC**[2] enunciated:

> **This is not the first time that the Office of the Solicitor General has taken a position adverse to his clients** like the CSC, the National Labor Relations Commission, among others, **and even the People of the Philippines.** In such instances, **the Solicitor General nevertheless manifests his opinion and recommendation to the Court which is an invaluable aid in the disposition of the case.** On some occasions he begs leave to be excused from intervening in the case, more so, when the client had already filed its own comment different from the stand of the Solicitor General or in a situation when he finds the contention of a private party tenable as against that of the government or any of its agencies. **The Solicitor General has recommended the acquittal of the accused in appealed criminal cases.**[3]

6. In this case, the evidence tend to show that Benhur Luy was not actually restrained or deprived of his liberty during the period of his alleged detention.

7. To be sure, Benhur Luy was actually left unrestrained in Bahay ni San Jose from December 20, 2015 to March 22, 2015. Bahay ni San Jose is a retreat house/priests home in Magallanes Village run by Monsignor Josefino Ramirez. Thereat, Benhur Luy attended Mass and did other spiritual activities like praying and fasting. He freely walked around the premises. He had his celfone with him and was seen and heard talking to someone. Indeed, Benhur Luy comported himself as a free man inside Bahay ni San Jose.

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[2] G.R. No. 92561, September 12, 1990
[3] Emphasis supplied

8. As revealed by Fr. Peter Edward Lavin when he testified on October 30, 2013:

> Q. And in your visit to Bahay ni San San Jose to see Benhur Luy, what happened Mr. witness.
>
> A: Well, usually, I go to Monsignor Ramirez first because he is the eldest and acting as the superior of the house and I greeted him and there was once when I arrived I said hello to Benhur he was walking in the garden I think he was praying and I saw him even stopped at the huge Belen in the garden, and there was one occasion when I visited and I saw him inside the Chapel with a Bible and he was taking down some notes, I think he was taking down some passages and taking down some notes, and one time also when I was there when I came in when we were talking I saw him in the living area I saw him walking in front of the swimming pool, he was quite happy because he was talking to someone in the cellphone.
>
> xxx xxx xxx
>
> Q. With the several occasions that you went there to Bahay ni San Jose, did you inquire about Benhur's retreat, how would you rate Benhur's retreat, was it successful or not?
>
> A Personally, I could not judge on that but seeing him when I was there reading the Bible in the Chapel and maybe meditating he was taking down notes and seeing him walk around in a very peaceful prayerful manner, I think the retreat was going fine and as the priests were sharing to me they were sharing with each other after the mass during dinner.[4]

9. Indeed, in his daily reflections while inside Bahay ni San Jose, Benhur Luy never, in the least bit, hinted or mentioned that he was being restrained or deprived of his liberty. On the other hand, his entries reveal that he was peacefully undergoing a spiritual retreat.[5]

[4] T.S.N. October 30, 2013, pp. 82-84
[5] Exhibit V and S and Exhibit W and 9 common exhibits

10. It must be noted that neither appellant nor co-accused Reynaldo Lim stayed with Benhur Luy in Bahay ni San Jose.

11. Moreover, during the period of his alleged detention, Benhur Luy was able to see his family thrice: December 24, 2012 at the Heritage Memorial Park, and January 9, 2013 and February 23, 2013 at the Pacific Plaza Towers in Taguig City, and in none of these instances did he intimate to anyone of them that he was being detained or kidnapped by the appellant.

12. Furthermore, on several occasions, Benhur Luy had been out of the retreat house without incident. In fact, at one time or on January 22, 2013, he joined accused Reynaldo Lim and several priests for dinner at Rai Rai Ken in Magallanes before walking to Rustan's Supermarket to buy some foodstuff.[6]

13. Although Benhur Luy was not physically prevented from leaving Bahay ni San Jose, he never tried to leave the retreat house on his own.

14. Significantly, there was nothing in Benhur Luy's letter dated February 21, 2013 which would indicate that he was being detained against his will by appellant.[7]

15. Most tellingly, during the "rescue" conducted on March 22, 2013 at South Garden Unit, Pacific Plaza, Taguig City, Benhur Luy refused to go with the agents of the National Bureau of Investigation (NBI) and shoutingly insisted that he had not been kidnapped by the accused Reynaldo Lim. It must be noted that these NBI agents came together with the members of his family.

16. This incident was witnessed by Pacific Plaza security officers Fernando M. Masayon[8] and Feliciano Alcantara[9] who both testified that Benhur Luy resisted his

[6] T.S.N. October 25, 2013 (afternoon hearing), pp. 69-71
[7] Letter dated February 21, 2013, Exhibit R and 6, common exhibit
[8] Sinumpaang Salaysay dated April 15, 2013 (Exhibit 12) and T.S.N. August 19, 2014, pp. 20-22
[9] Sinumpaang Salaysay dated April 10, 2013 (Exhibit 13) T.S.N. August 19, 2014, p. 53

alleged "rescuers" and shouted at his brother that he had not been kidnapped.

17. As Fernando Masayon declared in open court:

Q When you said Mr. witness that Benhur Luy was hold by the NBI agents what was his reaction?

A Nagpupumiglas po sya.

Q: And then?

A: Ayaw po nyang sumama.

Q: How did you know that he does not want to go with them?

A Kasi may sinasabi po sya na tinatanong siya ng kapatid niya sabihin mo yung totoo

xxx xxx xxx

Q: And what was his response when his brother told him for you to tell the truth?

A: Sinabi po nya na walang kasalanan si sir Jojo wala siyang alam at saka hindi siya kinidnap.[10]

18. And as Feliciano Alcantara, for his part, testified:

Q Mr witness, were you the one who accompanied the NBI agents to the unit?

A: Together with Mr. Masayon.

Q Were you able to enter the unit Mr. witness?

A Nong nagkasigawan na po, sir.

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Q So after you entered what did you see?

A Nakita ko po si Benhur na nakaupo sa sofa may hawak na throwing pillow sinisigawan yong kapatid niya hindi ko naman alam na kapatid niya nalaman ko na lang later on na kapatid niya yon

Q What are the words he uttered when he was shouting?

[10] T.S.N. August 19, 2014, pp. 20-22

A: "Ano ba kayo hindi ako kinikidnap."

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Q: Aside from the NBI people, were there other people in the room?

A: Si Masayon po, si Benhur, yong NBI, yong nanay niya at saka yong kapatid niya.[11]

19. Even NBI agent Rodante Berou, who allegedly "rescued" Benhur Luy, confimed Luy's reaction and added that at the time of the "rescue", he did not see Benhur Luy being physically restrained, nor did he see accused Reynaldo Lim armed or accompanied by bodyguards or security guards. In fact, after Benhur Luy initially refused to go with him, he advised the parents of Benhur Luy to talk to him first.

Q: Was there any Benhur Luy when you entered, the alleged victim?

A: Benhur Luy was sitting beside the corner Madam. There was another sofa there, he was sitting there?

Q: How far from the family was he seated?

A: As far as I can remember, from here to that because there was a table in the middle.

PROSECUTOR GARVIDA:

About two (2) meters.

ATTY. LORNA KAPUNAN:

Two meters.

Q: When you saw Benhur Luy two (2) meters away from the family, was he being or was there any bodygurads sitting close to Benhur?

A: Bodyguards of whom Madam?

Q: Any person?

A: Whose bodyguard?

Q: Was there anybody sitting near benhur Luy when you entered the premises?

A: None Madam.

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[11] TSN August 19 2014 p. 53

Q: Did you see bodyguards inside that unit that you entered?

A. Whose bodyguards, Madam?

Q. Any bodyguards?

A. No bodyguards.

Q. There were no bodyguards, did you see Benhur Luy there handcuff?

A. No ma'am.

Q. Did you see this Reynald Lim, would you know if he was armed?

A. He was not armed, Sir.

Q. Did he prevent you when you entered from talking to Benhur?

A. I immediately proceeded to Benhur Madam.

Q. What is his reaction, did Benhur Luy ask you who are you?

A. No, he did not ask me, ma'am. I introduced myself to him and said we are conducting rescue operations.

Q. And you said when asked if this Benhur did anything, ha said to you "Ayaw kong sumama sa inyo wala naming masamang ginagawa si Kuya Jojo" when he said this statement, was he under any threat, you said there was no bodyguards, you said he was not handcuff, was there any threat present?

A. When we approached him, he was trembling Madam and his eyes were very big, wide open "Ayaw kong sumama sa inyo wala naming ginagawang masama si Kuya Jojo."

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Q. When you said he was looking at you?

A. Yes Madam.

Q. So, Mr. witness, he was not scared of Reynald Lim, he was scared of you, correct? He was trembling when you entered the premises and you saw him there seated in the sofa and Mr. Lim was there, he was trembling?

A. When I approached him, he was trembling.

Q He trembled only when you approached him, correct?

A. Yes sir

Q So you are the source of the threat, correct?

A: I will not answer, Madam.

Q You will not answer because that is self-evident Now, what did you do when he said "Ayaw kong sumama sa inyo"

A. So, I asked the parents to talk to Benhur [12]

20. Benhur Luy did not deny having uttered these statements. Strangely, he claimed to have been scared of the NBI agents despite the fact that they came with the immediate members of his family.

21. The CCTV footages taken during the time of the alleged "rescue" lend incontrovertible support to the testimonies of these witnesses and would show that Benhur Luy did not thereafter voluntarily go with the NBI agents.

22 The contents of these CCTV footages were detailed in the DOJ Resolution dated June 10, 2013[13] which initially dismissed the complaint against the accused:

> Anent the CCTV footages at Pacific Plaza Tower on March 22, 2013, we find that they are likewise exculpatory evidence for the respondents. The first and second videos of Jojo and Benhur walking through the Pacific Plaza service stairways does not prove any detention of the latter, much less that he was under the control of Jojo. On the contrary, the video at the service hallways shows that Benhur was walking by himself behind Jojo and without restraints of movement Meanwhile, the third video, taken at the lobby of Pacific Plaza shows a group of persons congregating outside the lobby at the passenger drop off *cul de sac*. A struggle or argument can be seen later in the video until the man in checkered shirt (Benhur) is taken by a group of persons to a vehicle. Juxtaposed with the testimonies of the Pacific Plaza security guards who stated that there was a struggle between the NBI agents and

[12] T S N. September [illegible] 2013, pp. 110-111
[13] Exhibit 1

Benhur, it would seem that indeed, the latter was at a loss as to who was taking him from the condominium building, through the lobby and into the waiting vehicle. This is consistent with the other testimonies of witnesses who heard Benhur shout, "hindi ako kinidnap, ayokong sumama sa inyo." Nothing can be any more exculpatory than that shout from Benhur.

23. Indeed, the conduct and behavior of Benhur Luy during the period of his alleged detention belie the fact that he was detained or deprived of his liberty, contrary to the findings of the trial court in its April 14, 2015 Decision.

RESPECTFULLY SUBMITTED.

Makati City, Metro Manila, January 11, 2017.

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EXPLANATION

(Pursuant to Section 11, Rule 13 of the Rules of Court)

The foregoing **Manifestation (in Lieu of Rejoinder)** is being filed and served by registered mail, personal filing and service not being practicable due to lack of material time and personnel.

ARMAND V. MORALES
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Copy furnished:

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