



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,  
Plaintiff-appellee,

G.R. No. 200512

Present:

CARPIO, *J.*, Chairperson,  
PERALTA,  
MENDOZA,\*  
LEONEN, and  
MARTIRES,\*\* *JJ.*

-versus-

ELMER AVANCENA Y  
CABANELA, JAIME POPIOCO Y  
CAMBAYA<sup>1</sup> and NOLASCO  
TAYTAY Y CRUZ,  
Accused-appellants.

Promulgated:

07 JUN 2017

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DECISION

LEONEN, *J.*:

This is an appeal from the Decision dated September 17, 2010<sup>2</sup> of the Court of Appeals in CA-G.R. CR-HC No. 03928 affirming the Joint

<sup>1</sup> Accused-appellants Elmer Avancena y Cabanela and Jaime Popioco y Cambaya are also referred to in the *Rollo* and *CA rollo* as “Elmer Avanceña” and “Jaime Procopio.”

\* On official leave.

\*\* On official leave.

<sup>2</sup> *Rollo*, pp. 2–30. The Decision was penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justices Celia C. Librea-Leagogo and Michael P. Elbinias of the Second Division, Court of Appeals, Manila.

Decision dated December 22, 2008<sup>3</sup> and Order dated March 5, 2009<sup>4</sup> of Branch 62, Regional Trial Court of Makati City. The assailed judgments found Elmer Avancena y Cabanela (Avancena), Jaime Popioco y Cambaya (Popioco), and Nolasco Taytay y Cruz (Taytay) guilty of kidnapping with serious illegal detention and robbery.

On August 10, 2004, two (2) Informations were filed charging Avancena, Popioco, Taytay, Generoso Jaymalin y Conde (Jaymalin), Eric Nazareno y Bonita (Nazareno), and Gil Grefaldeo y Lasin (Grefaldeo) with the crimes of Kidnapping for Ransom and Robbery/Extortion.<sup>5</sup> The Informations were subsequently amended on February 28, 2005 to exclude Jaymalin and Grefaldeo.<sup>6</sup> The Amended Informations read:

Crim. Case No. 04-2817

That on or about August 1, 2004 in Barangay Bangkal, Makati City and within the jurisdiction of this Honorable Court, the above-named accused, being then private individuals and armed with handguns, conspiring, confederating and mutually helping one another, did then and there, with the use of force, threat, violence and intimidation, willfully, unlawfully and feloniously take, kidnap and deprive Rizaldo Policarpio y Legaspi of his liberty against his will for purposes of extorting money in the amount of One Hundred Fifty Thousand (P150,000.00) as a condition for his release; That said Rizaldo Policarpio y Legaspi was in fact only released after he was illegally detained for almost seven hours and after his father had paid the amount of Four Thousand Pesos (P4,000.00) to the accused to the damage and prejudice of Rizaldo Policarpio y Legaspi in whatever amounts that may be awarded him under the provisions of the New Civil Code.

CONTRARY TO LAW.<sup>7</sup>

Crim. Case No. 04-2818

That on or about August 9, 2004 along Evangelista St., Barangay Bangkal, Makati City and within the jurisdiction of this Honorable Court, the above-named accused, then armed with handguns, conspiring, confederating and mutually helping one another, with intent of gain, did then and there, by means of threat and intimidation, willfully, unlawfully and feloniously take from Alfonso Policarpio the amount of SIX THOUSAND PESOS (P6,000.00) against his will and to the damage and prejudice of said Alfonso Policarpio in whatever amounts that may be awarded him under the provisions of the New Civil Code.

<sup>3</sup> CA *rollo*, pp. 84–103. The Joint Decision, docketed as Criminal Case No. 04-2817-18, was penned by Judge Selma Palacio Alaras.

<sup>4</sup> Id. at 104–105. The Order was penned by Judge Selma Palacio Alaras.

<sup>5</sup> Id. at 10–13.

<sup>6</sup> Id. at 41. The amended informations were the result of a reinvestigation conducted by the Department of Justice. See RTC Joint Decision, p. 2.

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

CONTRARY TO LAW.<sup>8</sup>

On April 26, 2005, Avancena, Popioco, Nazareno, and Taytay were arraigned where they entered the plea of not guilty. Trial on the merits ensued.<sup>9</sup>

Rizaldo Policarpio (Rizaldo) testified that at around 12:30 a.m. of August 1, 2004, “he went to [a] 7/11 convenience store located at the corner of Evangelista St., Pasay City to buy [a] sandwich.” He boarded his Tamaraw FX and as he drove, he noticed a vehicle tailing him; it was a gray Isuzu Crosswind with no headlights and plate number.<sup>10</sup>

Rizaldo decided to head to the nearest police precinct on Evangelista Street. Upon alighting from his vehicle, he heard someone call his name. A man, whom he later identified as Avancena, alighted from the gray Isuzu Crosswind across the street. Rizaldo recognized him because they lived in the same barangay. Avancena told Rizaldo that one (1) of his companions in the Isuzu Crosswind noticed that Rizaldo received illegal drugs. Rizaldo denied Avancena’s accusations. Avancena instructed Rizaldo that they should board Rizaldo’s vehicle because Avancena was going to introduce him to the group’s team leader, Tony Abalo (Abalo).<sup>11</sup>

While they were boarding Rizaldo’s vehicle, he noticed Avancena calling over his companions in the Isuzu Crosswind. Avancena’s companions alighted from their vehicle and approached them. One (1) of them, who introduced himself as Abalo, boarded the backseat of Rizaldo’s vehicle. Upon Avancena’s request, they distanced themselves about 50 meters away from the police precinct and went to the corner of Kaiga Street where Avancena asked him again about a certain person that Rizaldo did not know. Avancena suggested again that “they should talk five [5] blocks away from the precinct.”<sup>12</sup>

At the corner of Lacuna Street and Evangelista Street, Avancena alighted from Rizaldo’s Tamaraw FX and talked to his companions in the Isuzu Crosswind. Avancena returned to Rizaldo’s vehicle, opened the driver’s side door, and told Rizaldo to move over to the passenger’s side. Rizaldo could not complain because Avancena had a gun. He moved to the passenger’s side but was surprised when another person, later identified as Taytay, opened the passenger’s side door, boarded the vehicle, and

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<sup>8</sup> Id. at 17.

<sup>9</sup> Id. at 41, RTC Joint Decision.

<sup>10</sup> Id. at 42, RTC Joint Decision.

<sup>11</sup> Id.

<sup>12</sup> Id.

handcuffed him. He demanded Avancena to explain what was happening but Avancena did not respond.<sup>13</sup>

Avancena drove to the Philippine Drug Enforcement Agency parking lot on Adriatico Street, Malate, Manila. Upon arriving, Rizaldo's handcuffs were removed and he was boarded on the Isuzu Crosswind. He was handcuffed again by Taytay whom he asked for an explanation but the latter did not answer.<sup>14</sup>

Avancena, Taytay, and Abalo, together with the rest of their group, boarded the Isuzu Crosswind and drove through Taft, Libertad and went around going to Makati. Abalo alighted when they reached Roxas Boulevard and Tambo Road. Then, they drove through Epifanio Delos Santos Avenue on the way to Makati. Once parked along Makati Avenue in front of Landmark Department Store, "Avancena and one [1] of his companions alighted from the vehicle." After 30 minutes, they came back to the vehicle and the group drove through Pasay Road again to return to the Philippine Drug Enforcement Agency parking lot. While onboard, Rizaldo was asked again about other people he might knew. The group started hurting him; Taytay was strangling him on his left side, Nazareno was holding him on his right side, and Popioco was punching him. Rizaldo pleaded with them to no avail.<sup>15</sup>

Upon arriving at the Philippine Drug Enforcement Agency parking lot, Avancena told Rizaldo that they would release him if his father would pay them ₱150,000.00. Rizaldo replied that his father did not have that amount of money and asked what it was for, since "he did not do anything illegal." Avancena removed his handcuffs and they alighted from the vehicle to have coffee on the sidewalk. After having coffee, Avancena commanded Rizaldo to call his father through a mobile phone. Rizaldo spoke to his father and told him to come over to the Philippine Drug Enforcement Agency since there were people demanding ₱150,000.00 for his release even though "he did not do anything wrong." Avancena grabbed the phone to talk to Rizaldo's father. Rizaldo, however, did not hear their conversation. They boarded the Isuzu Crosswind again and waited for an hour and a half for Rizaldo's father to arrive.<sup>16</sup>

At around 5:00 a.m. to 5:30 a.m., Rizaldo's father, Alfonso Policarpio (Alfonso), arrived. Alfonso alighted from his vehicle and boarded the Isuzu Crosswind on the passenger's side. Rizaldo recalled that his father was

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<sup>13</sup> Id.

<sup>14</sup> Id. at 42-43, RTC Joint Decision.

<sup>15</sup> Id. at 43.

<sup>16</sup> Id.

angry and told Avancena that he did not have the money requested. Alfonso invited Avancena for breakfast at Jollibee at the corner of Vito Cruz and Taft Avenue so they could talk. At Jollibee, everyone except Rizaldo alighted. The group invited Rizaldo for breakfast but he begged off since his body was aching. “[Rizaldo] waited for them for about 30 [to] 45 minutes.”<sup>17</sup>

After breakfast, the group came back and one (1) of them took off Rizaldo’s handcuffs. Alfonso followed the group and approached Avancena to hand him money, saying, “*Pare*, this is the only money I have, just call me by cellphone and I will give the remaining balance later.” They returned to the Philippine Drug Enforcement Agency parking lot to get Rizaldo’s vehicle. Then, Rizaldo drove home with his father following him.<sup>18</sup>

At around 1:00 p.m., Avancena called Rizaldo on his mobile phone to ask for the balance but Rizaldo told him to just ask his father. He then turned off his phone. “He claimed that he was traumatized by the incident.”<sup>19</sup>

Alfonso, on the other hand, testified that on August 1, 2004, at around 4:00 a.m. to 5:00 a.m., his son Rizaldo called him on his mobile phone. He could not understand what Rizaldo was saying at first but noticed that his son was afraid and seemed to be already crying. Rizaldo informed him that he was abducted (*dinukot*) by Philippine Drug Enforcement Agency, through Avancena’s group. Alfonso wondered why the Philippine Drug Enforcement Agency would arrest his son when its Task Force Hunter under Director Reynaldo Jaylo (Director Jaylo) had already been dissolved since July 2004. Their conversation was disrupted but his mobile phone rang again showing his son’s number. The man on the other line introduced himself as Avancena who told him to proceed to the Philippine Drug Enforcement Agency parking lot to talk about his son and to bring him any amount of money.<sup>20</sup>

Alfonso brought a borrowed amount of ₱5,000.00 to the Philippine Drug Enforcement Agency. At the parking lot, he saw Avancena in the driver’s seat waving to him. Avancena instructed him to sit at the passenger’s side and to talk to Rizaldo first. His group then alighted from the vehicle.<sup>21</sup>

Rizaldo informed him that “[Avancena’s group] was linking him to drug-related cases.” Alfonso told his son that “[Avancena’s group] was no

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<sup>17</sup> Id.

<sup>18</sup> Id.

<sup>19</sup> Id. at 43–44, RTC Joint Decision.

<sup>20</sup> Id. at 44.

<sup>21</sup> Id.

longer connected with [the Philippine Drug Enforcement Agency]" and that they were asking for ₱150,000.00 for his release.<sup>22</sup>

After talking, Alfonso alighted from the vehicle and invited Avancena to breakfast at Jollibee. When they entered Jollibee, Avancena asked him, "*Pare*, did you bring with you the ₱150,000.00?" Alfonso answered, "*Pare*, I did not bring with me that amount, it is too big." Avancena inquired how much money he was able to bring. He replied that he only brought ₱4,000.00 as he was paying for breakfast. Avancena said, "Okay *pare*, you could bring your son home but don't forget that you still have a balance." He was also told that if he did not pay, his son would be abducted again.<sup>23</sup>

After breakfast, Avancena told Alfonso to follow him outside. Avancena's group boarded the Isuzu Crosswind. Alfonso went to Avancena's window and handed him ₱4,000.00. They then drove back to the Philippine Drug Enforcement Agency with Alfonso following in his car. At the Philippine Drug Enforcement Agency, Avancena gave Alfonso his son's car keys. He also noticed that Avancena gave one (1) of his companions a small key to unlock his son's handcuffs. When they went home to rest, Rizaldo told him that during this time, "Avancena called him twice."<sup>24</sup>

On August 2, 2004, at around 10:00 a.m., Rizaldo and Alfonso went to the Anti-Illegal Drugs Special Operations Task Force (AIDSOTF) at Camp Crame to report the incident. While Alfonso was talking to a certain Colonel Aguilar, Avancena called on his cellphone. He answered and pointed to it to inform Colonel Aguilar that Avancena was on the other line. Avancena asked him for the balance of ₱150,000.00. Alfonso told him that he could not afford that amount and asked if he could just pay ₱40,000.00. Avancena countered with ₱50,000.00 but eventually agreed to ₱40,000.00.<sup>25</sup>

Colonel Aguilar went with them to the National Anti-Kidnapping Task Force (NAKTAF) where investigations were conducted. Colonel Aguilar instructed Alfonso to produce the money but Alfonso told him he did not have that amount. Colonel Aguilar told him to just bring any amount of money he could so the money could be brought to the laboratory to be marked. Alfonso was able to give ₱6,000.00 in ₱20.00 bills.<sup>26</sup>

The pay-off was scheduled on August 6, 2004, but it did not push

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<sup>22</sup> Id.

<sup>23</sup> Id.

<sup>24</sup> Id. at 44-45, RTC Joint Decision.

<sup>25</sup> Id. at 45.

<sup>26</sup> Id.

through. On August 7, 2004, Alfonso received a call from Abalo who claimed to be Avancena's team leader. They decided that Alfonso would deliver the money on August 9, 2004 in the afternoon. After the phone call, Alfonso called NAKTAF to disclose his agreement with Abalo.<sup>27</sup>

At around 11:00 a.m. on August 9, 2004, NAKTAF deployed 20 operatives to Alfonso's place on Evangelista Street, Barangay Bangkal. A briefing was conducted and Alfonso was given a plastic bag containing the marked money and was instructed to hand it to Avancena's group.<sup>28</sup>

At around 12:00 noon, NAKTAF directed Alfonso to go to Evangelista Street and advised him of the operatives present in the vicinity. He went in front of the Iglesia ni Cristo Church, the pre-arranged pay-off place. At around past noon, Avancena's group, along with two (2) other companions, arrived in a white Revo. Avancena approached him and retrieved the plastic bag with the marked money. The group boarded their vehicle and entered Gen. Mojica Street. Suddenly, Alfonso heard a gunshot and sirens and a commotion followed.<sup>29</sup>

After the commotion, Alfonso entered Gen. Mojica Street and asked around what happened. He was told that people were injured during the commotion. A NAKTAF operative approached and asked him to fetch his son and to follow them to the NAKTAF office where they were asked who was responsible for the abduction. Alfonso executed a sworn statement to detail his account of events.<sup>30</sup>

Several police officers from the NAKTAF and AIDSOTF were also called to testify on the circumstances surrounding the planning and coordination for the entrapment operation.<sup>31</sup> Captain Jeffrey Villarosa, commander of the Anti-Kidnapping Special Operations Group, testified that he personally witnessed Alfonso give the marked money to Avancena.<sup>32</sup> Police Senior Inspector Juanita Darlucio Sioson, a forensic officer, testified that Avancena's group tested positive for the presence of yellow ultraviolet powder on their faces.<sup>33</sup> Police Inspector Zosima Nabor (Police Inspector Nabor) of the Human Resource Service of Philippine Drug Enforcement Agency likewise attested that members of Avancena's group were not employees of Philippine Drug Enforcement Agency. She further affirmed that Task Force Hunter led by Director Jaylo was deactivated on July 30,

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<sup>27</sup> Id.

<sup>28</sup> Id.

<sup>29</sup> Id. at 45-46.

<sup>30</sup> Id. at 46.

<sup>31</sup> Id. at 90-94.

<sup>32</sup> Id. at 91.

<sup>33</sup> Id. at 93.

2004 and that she was unaware of the documentation of any of its volunteer agents.<sup>34</sup>

In the defense's version of the facts, Nazareno testified that he was with Avancena's group on the night of August 1, 2004 conducting surveillance operations on Rizaldo as volunteer agents for the Philippine Drug Enforcement Agency. He alleged that they followed Rizaldo's vehicle along Evangelista Street and that when Rizaldo noticed he was being tailed, he parked in front of the police precinct, alighted from his vehicle, and approached them to ask why he was being followed. Avancena told him that he noticed Rizaldo hand something to someone on Villaruel Street. Rizaldo volunteered to return to Villaruel Street so Avancena boarded Rizaldo's vehicle.<sup>35</sup>

Nazareno claimed that the group followed Rizaldo's vehicle supposedly to Villaruel Street but the vehicle proceeded to the Philippine Drug Enforcement Agency Office in Vito Cruz, Manila. Rizaldo allegedly offered them "work regarding drugs" but that he had to ask his father's permission first. Alfonso, Rizaldo's father, arrived and talked to Avancena. He then invited them to eat at Jollibee. After eating, Alfonso gave them ₱4,000.00 which they refused to accept. Alfonso insisted and even "threw it on top of the taxi."<sup>36</sup> Alfonso asked for the number of Avancena who had no mobile phone, so he was given Popioco's number instead. They parted ways and the group headed to the office.<sup>37</sup>

Nazareno recalled that on August 9, 2004, Alfonso invited them to eat at his house on Evangelista Street and to tell them that the information Rizaldo gave them was already available. The group only stayed in the garage. Alfonso insisted on giving the ₱20.00 bills to Avancena but the latter refused to accept so Alfonso threw the money at them and said, "*mga walanghiya kayo nadali ko rin kayo.*" Alfonso fired his gun upwards then shot Popioco on his left arm. AIDSOTF and NAKTAF operatives then entered the premises, pointed their guns at them, and brought them to Camp Crame.<sup>38</sup> Taytay and Popioco gave substantially the same account as Nazareno.<sup>39</sup>

Avancena corroborated Nazareno's testimony and added that at midnight on August 1, 2004, they were conducting surveillance on a certain Rene Belmonte, a drug pusher, upon instructions of Director Jaylo. He saw

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<sup>34</sup> Id. at 92-93.

<sup>35</sup> Id. at 94.

<sup>36</sup> It was not mentioned where the taxi came from.

<sup>37</sup> CA *rollo*, p. 94.

<sup>38</sup> Id. at 95.

<sup>39</sup> Id. at 95-97.

a Tamaraw FX approach and told the group that he recognized the driver as Rizaldo. He noticed a man give something to Rizaldo so they alighted from the vehicle to approach the man but he had gone to an alley. He told the group that they should follow the Tamaraw FX because he knew it was involved in drugs. When confronted, Rizaldo said that it was nothing and challenged Avancena to talk to the person who allegedly handed him something. Avancena boarded Rizaldo's vehicle for them to go back and look for the person but Rizaldo changed his mind and offered to give him information on persons selling drugs instead.<sup>40</sup>

Avancena likewise denied that there was kidnapping since "Rizaldo knew him and voluntarily went with them in their [Philippine Drug Enforcement Agency] office." He insisted that his group was directed to go to the Policarpio residence on August 9, 2004 to get information about selling of drugs.<sup>41</sup>

On December 22, 2008, Branch 62, Regional Trial Court of Makati City rendered a Joint Decision<sup>42</sup> finding Avancena, Popioco, and Taytay (accused-appellants)<sup>43</sup> guilty beyond reasonable doubt of kidnapping with serious illegal detention and robbery.

The dispositive portion of the Joint Decision read:

WHEREFORE, in light of the foregoing facts established, finding the accused, ELMER AVANCENA y CABANELA, JAIME POPIOCO y CAMBAYA, and NOLASCO TAYTAY y CRUZ GUILTY beyond reasonable doubt of the felony of kidnapping with serious illegal detention defined and penalized under Article 267 of the Revised Penal Code, this Court hereby sentences the foregoing individual to suffer the penalty of RECLUSION PERPETUA without eligibility for parole under the Indeterminate Sentence Law pursuant to Section 3 of Republic Act No. 9346.

On charge of robbery defined and penalized under Article 294 (5) of the Revised Penal Code, finding the accused ELMER AVANCENA y CABANELA, JAIME POPIOCO y CAMBAYA, and NOLASCO TAYTAY y CRUZ GUILTY beyond reasonable doubt of the offense charged, they are all required to suffer the indeterminate penalty of four (4) years of prision correccional medium as minimum to six (6) years and one (1) day of prision mayor minimum, as maximum.

The Jail Warden of the Makati City Jail is hereby ordered to

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<sup>40</sup> Id. at 97.

<sup>41</sup> Id. at 98.

<sup>42</sup> Id. at 84–103.

<sup>43</sup> Accused Eric Nazareno y Bonita died on July 28, 2007 during the pendency of the case in the trial court. (CA *rollo*, p. 84)

commit the persons of the foregoing accused to the National Bilibid Prisons immediately and to submit his Report of the actions he has taken within ten (10) days from notice hereof.

The firearms seized in connection with this case, to wit: one (1) cal. 9 mm Llama Parabellum with serial number 10763-95, one (1) cal. .45 ACP Norinco with serial number 600187 and one (1) 9 mm Pietro Beretta with serial number M03095Z are hereby confiscated in favor of the government and if still in Court's custody, be immediately turned-over to the Firearms and Explosives Division, PNP.

SO ORDERED.<sup>44</sup>

Accused-appellants filed a Motion for Reconsideration of this Joint Decision but it was denied in an Order<sup>45</sup> dated March 5, 2009. Thus, they appealed to the Court of Appeals.<sup>46</sup>

On September 17, 2010, the Court of Appeals affirmed the Regional Trial Court's Joint Decision.<sup>47</sup> The Court of Appeals found that the evidence established the accused-appellants' "concerted and collective efforts" in handcuffing and detaining Rizaldo inside their vehicle and that his father had to negotiate his release.<sup>48</sup> The Court of Appeals likewise affirmed the finding that they were also guilty of robbery since "they were caught *in flagrante delicto* in a planned, coordinated and legitimate entrapment operation."<sup>49</sup>

Accused-appellants filed a Notice of Appeal<sup>50</sup> manifesting their intention to appeal to this Court, which was given due course by the Court of Appeals.<sup>51</sup> The Office of the Solicitor General manifested to this Court that it was no longer filing a supplemental brief and would be adopting the brief it filed before the Court of Appeals.<sup>52</sup> Accused-appellants, on the other hand, submitted a Memorandum,<sup>53</sup> which this Court considered as their Supplemental Brief.<sup>54</sup>

In their Memorandum, accused-appellants allege, among others, that

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<sup>44</sup> Id. at 102–103.

<sup>45</sup> Id. at 104–105.

<sup>46</sup> Id. at 38.

<sup>47</sup> *Rollo*, pp. 2–30.

<sup>48</sup> Id. at 27–28.

<sup>49</sup> Id. at 29.

<sup>50</sup> Id. at 31.

<sup>51</sup> Id. at 32.

<sup>52</sup> Id. at 47–49, Manifestation (In Lieu of Supplemental Brief).

<sup>53</sup> Id. at 52–61, Memorandum for Accused-Appellants.

<sup>54</sup> Id. at 63. On June 20, 2016, this Court issued a Resolution allowing accused-appellant Nolasco Taytay y Cruz to be referred to Ospital ng Muntinlupa to undergo a cholecystectomy. He was readmitted to the National Bilibid Prison Hospital Ward on August 18, 2016 for post-surgery care. (*Rollo*, pp. 107–121)

the trial court chose to convict Nazareno despite his death. They claim that this case is the “revenge” of Alfonso, who sought the help of his friends in NAKTAF and AIDSOTF to fabricate the charges against them.<sup>55</sup> They argue that “Jabalo,” Jaymalin, and Grefaldeo were initially charged with the offense but that Alfonso surprisingly withdrew the case against them.<sup>56</sup>

Accused-appellants maintain that Rizaldo could have sought help from the nearby police precinct if he was in danger and that the Policarpio family did not seek police assistance.<sup>57</sup> They likewise insist that Rizaldo admitted that he was caught (*hinuli*), not abducted (*dinukot*), by legitimate Philippine Drug Enforcement Agency operatives.<sup>58</sup> They also point out that forensic examination found ultra-violet powder on their faces, not their hands, which proves their testimony that Alfonso threw the marked money at them.<sup>59</sup>

The sole issue to be resolved is whether accused-appellants are guilty beyond reasonable doubt of kidnapping and serious illegal detention under Article 267 of the Revised Penal Code and robbery under Article 294(5) of the Revised Penal Code.

## I

Article 267<sup>60</sup> of the Revised Penal Code states:

Article 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.

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<sup>55</sup> Id. at 52.

<sup>56</sup> Id. at 56–57.

<sup>57</sup> Id. at 57.

<sup>58</sup> Id. at 58.

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

<sup>60</sup> As amended by Rep. Act No. 7659 (1993).

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The penalty shall be death penalty 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.

In kidnapping for ransom, the prosecution must be able to establish the following elements: “[*first,*] the accused was a private person; [*second,*] he [or she] kidnapped or detained or in any manner deprived another of his or her liberty; [*third,*] the kidnapping or detention was illegal; and [*fourth,*] the victim was kidnapped or detained for ransom.”<sup>61</sup>

Accused-appellants claim that they were agents of the Philippine Drug Enforcement Agency’s Task Force Hunter but were unable to present any evidence to substantiate their claim. The prosecution, however, was able to present Police Inspector Nabor of the Human Resource Service of Philippine Drug Enforcement Agency, who testified that accused-appellants “[were] not in any manner connected with [Philippine Drug Enforcement Agency].”<sup>62</sup> It also submitted to the trial court a letter sent by P/Supt. Edwin Nemenzo of the Philippine Drug Enforcement Agency to Philippine National Police P/Sr. Supt. Allan Purisima stating that the accused-appellants were not agents of the Philippine Drug Enforcement Agency.<sup>63</sup>

Nonetheless, even if they were employed by the Philippine Drug Enforcement Agency, detaining any private person for the purpose of extorting any amount of money could not, in any way, be construed as within their official functions. If proven, they can be guilty of serious illegal detention.<sup>64</sup> Their badges or shields do not give them immunity for any criminal act.

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<sup>61</sup> *People v. Gregorio*, G.R. No. 194235, June 8, 2016 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/june2016/194235.pdf>> 12 [Per J. Leonardo-De Castro, First Division] citing *People v. Lugnasin*, G.R. No. 208404, February 24, 2016 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/february2016/208404.pdf>> 6 [Per J. Leonardo-De Castro, First Division].

<sup>62</sup> *CA rollo*, p. 98.

<sup>63</sup> *Id.* at 99.

<sup>64</sup> Revised Penal Code, art. 267 provides:

Article 267. 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 *reclusión temporal*:

1. If the locking up or detention shall have lasted more than twenty days.
2. If it shall have been committed simulating public authority.
3. If any serious physical injuries shall have been inflicted upon the person locked up or detained, or if threats to kill him shall have been made.

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The prosecution was likewise able to prove that Rizaldo was illegally deprived of his liberty. The undisputed facts establish that on August 1, 2004, around midnight, Rizaldo was in his vehicle being followed by accused-appellants along Evangelista Street. When he alighted from his vehicle near the police station, accused-appellant Avancena approached him and implied that he was involved in the sale of illegal drugs. Accused-appellant boarded his vehicle and told Rizaldo to drive, with the rest of the accused-appellants following in their vehicle. Upon reaching the corner of Lacuna and Evangelista Streets, accused-appellant Avancena took over the steering wheel. Accused-appellant Taytay boarded the vehicle and handcuffed Rizaldo and they drove to the Philippine Drug Enforcement Agency parking lot in Malate. Accused-appellant Popioco and Nazareno also boarded the vehicle. They drove around for a while in the Manila and Makati areas but eventually returned to the Philippine Drug Enforcement Agency parking lot. While on board, accused-appellant Taytay tried to strangle Rizaldo while accused-appellant Popioco punched him.<sup>65</sup>

In order to prove kidnapping, the prosecution must establish that the victim was “forcefully transported, locked up or restrained.”<sup>66</sup> It must be proven that the accused intended “to deprive the victim of his liberty.”<sup>67</sup> The act of handcuffing Rizaldo and physically harming him to prevent escape falls under this definition. Accused-appellants, however, claim that Rizaldo was not kidnapped because he voluntarily went with the accused-appellants.

“[T]he fact that the victim voluntarily went with the accused [does] not remove the element of deprivation of liberty [if] the victim went with the accused on a false inducement without which the victim would not have done so.”<sup>68</sup> Rizaldo would not have gone with the accused-appellants had they not misrepresented themselves as Philippine Drug Enforcement Agency agents who allegedly caught him selling illegal drugs.

Accused-appellants also told Rizaldo that he would only be released if Alfonso paid them ₱150,000.00. “The act of holding a person for a proscribed purpose necessarily implies an unlawful physical or mental restraint against the person’s will, and with a willful intent to so confine the victim.”<sup>69</sup> If Rizaldo was indeed free to leave, there would have been no

<sup>65</sup> CA rollo, p. 99.

<sup>66</sup> *People v. Cruz*, 616 Phil. 424, 445 (2009) [Per J. Peralta, En Banc] citing *People v. Ubongen*, 409 Phil. 140, 149–150 (2001) [Per J. Quisumbing, Second Division].

<sup>67</sup> Id. citing *People v. De la Cruz*, 342 Phil. 854 (1997) [Per J. Melo, Third Division] and *People v. Sinoc*, 341 Phil. 355 (1997) [Per C.J. Narvasa, Third Division].

<sup>68</sup> Id. at 446, citing *People v. Santos*, 347 Phil. 723 (1997) [Per J. Panganiban, Third Division].

<sup>69</sup> *People v. Soberano*, 346 Phil. 449, 461 (1997) [Per J. Regalado, Second Division] citing 24 Am Jur 2d, Abduction and Kidnapping, Sec. 21, 191.

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reason for Alfonso to come rushing to his son's aid. Rizaldo was also able to come home only after Alfonso negotiated his release.

Taken together, the prosecution was able to establish the elements of kidnapping for ransom, which is punishable under the Revised Penal Code with death. Considering the suspension of the death penalty,<sup>70</sup> the proper penalty is *reclusion perpetua* without eligibility for parole.<sup>71</sup>

## II

Accused-appellants, however, were also charged with robbery under Article 294(5) of the Revised Penal Code,<sup>72</sup> which states:

Article 294. Robbery with Violence Against or Intimidation of Persons — Penalties. — Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

....

5. The penalty of *prision correccional* in its maximum period to *prision mayor* in its medium period in other cases.

The elements of simple robbery are “a) that there is personal property belonging to another; b) that there is unlawful taking of that property; c) that the taking is with intent to gain; and d) that there is violence against or intimidation of persons or force upon things.”<sup>73</sup>

Rizaldo's ordeal did not end with his release from captivity. While reporting the crime to AIDSOTF in Camp Crame, Alfonso received a call from accused-appellant Avancena demanding the payment of ₱150,000.00. Because of the continued demands for payment, NAKTAF had the opportunity to set up an entrapment operation.<sup>74</sup> Alfonso gave AIDSOTF ₱6,000.00, which NAKTAF prepared as marked money and placed in a plastic bag.<sup>75</sup>

During the entrapment operation, accused-appellants arrived in the designated place in a white Toyota Revo. Accused-appellant Avancena approached Alfonso and received the marked money from him. When they drove away, NAKTAF agents followed them and were able to apprehend

<sup>70</sup> Rep. Act No. 9346 (2006).

<sup>71</sup> See A.M. No. 15-08-02-SC (2015).

<sup>72</sup> As amended by Rep. Act No. 7659 (1993).

<sup>73</sup> *Sazon v. Sandiganbayan*, 598 Phil. 35, 45 (2009) [Per J. Nachura, Third Division] citing *People v. Pat*, 324 Phil. 723, 741–742 (1996) [Per J. Romero, Second Division].

<sup>74</sup> *CA rollo*, pp. 101–102.

<sup>75</sup> *Id.* at 89.

them. NAKTAF was able to recover the marked money from them.<sup>76</sup>

In this instance, there was a taking of personal property belonging to Alfonso by means of intimidation. “Taking is considered complete from the moment the offender gains possession of the thing, even if [the offender] has no opportunity to dispose of the [thing].”<sup>77</sup> The marked money was recovered from the accused-appellants when they were arrested, which proves that they were able to gain possession of Alfonso’s money.

Accused-appellants, however, counter that the ultraviolet powder dusted on the marked money was found on their faces, not their hands. This detail is irrelevant. A number of events could have transpired from the time NAKTAF agents apprehended the Toyota Revo up to the time the accused-appellants were handcuffed and brought to Camp Crame,<sup>78</sup> including the possibility that the accused-appellants simply wiped their hands clean. What is essential is that the prosecution was able to establish that at the time of their arrest, the marked money was recovered from the accused-appellants.

Accused-appellants likewise allege that this case was Alfonso’s “revenge” against them. They, however, failed to substantiate any of these allegations. This Court does not find any merit to accused-appellants’ other allegations, such as Nazareno’s conviction even after his death and that Alfonso requested the dropping of charges against “Jabalo,” Jaymalin, and Grefaldeo. A reading of the first page of the trial court’s Joint Decision shows that Nazareno’s criminal liability was extinguished by his death.<sup>79</sup> There was also no “Jabalo” charged and the dropping of charges against the other accused was the result of a reinvestigation by the Department of Justice.<sup>80</sup>

Considering the weight of evidence presented by the prosecution, accused-appellants are found guilty beyond reasonable doubt of robbery under Article 294(5) of the Revised Penal Code. The proper penalty is *prision correccional* maximum to *prision mayor* medium.

Applying the Indeterminate Sentence Law, the minimum penalty shall be within the range of the penalty next lower in degree, *arresto mayor* maximum to *prision correccional* medium or four (4) months and one (1) day to four (4) years and two (2) months. There being no aggravating or

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<sup>76</sup> Id. at 102.

<sup>77</sup> See *Sazon v. Sandiganbayan*, 598 Phil. 35, 45–46 (2009) [Per J. Nachura, Third Division].

<sup>78</sup> CA rollo, p. 92.

<sup>79</sup> See footnote 1 of RTC Decision, CA rollo, p. 84.

<sup>80</sup> See footnote 8 of RTC Decision, CA rollo, p. 84.

mitigating circumstances, the maximum of the penalty shall be within the range of the penalty in its medium period, *prision mayor* minimum, or from six (6) years and one (1) day to eight (8) years.<sup>81</sup> Thus, the trial court did not err in imposing the indeterminate penalty of four (4) years of *prision correccional* medium, as minimum to six (6) years and one (1) day of *prision mayor* minimum, as maximum.<sup>82</sup>

**WHEREFORE**, the appeal is **DISMISSED**. The Decision dated September 17, 2010 of the Court of Appeals in CA-G.R. CR-HC No. 03928 is **AFFIRMED**.

**SO ORDERED.**

  
**MARVIC M.V.F. LEONEN**  
Associate Justice

WE CONCUR:

  
**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson

  
**DIOSDADO M. PERALTA**  
Associate Justice

On official leave  
**JOSE CATRAL MENDOZA**  
Associate Justice

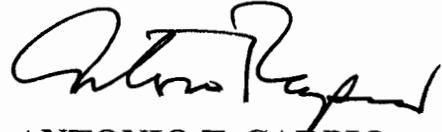
On official leave  
**SAMUEL R. MARTIRES**  
Associate Justice

<sup>81</sup> See also *Eduarte v. People*, 603 Phil. 504, 520 (2009) [Per J. Chico-Nazario, Third Division].

<sup>82</sup> *CA rollo*, p. 103.

**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, Second Division

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the 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.



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