

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
VIRGILIO CABRAL Y CONSTANTINO AND JOSUE JAULA Y
ALEJANDRINO, DEFENDANTS. JOSUE JAULA Y ALEJANDRINO,
DEFENDANT AND APPE...**

G.R. No. L-14045. October 28, 1961

Ponente: PADILLA, J.

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PADILLA, J.:

Virgilio Cabral y Constantino and Josue Jaula y Alejandrino were charged in the Court of First Instance of Manila with complex crime of kidnapping with robbery, under the provisions of article 267 of the Revised Penal Code, as amended by Republic Acts Nos. 18 and 1084, in connection with articles 293 and 294 of the Revised Penal Code, in an information subscribed by the Assistant Fiscal of Manila. The information reads:

The undersigned accuses Virgilio Cabral y Constantino and Josue Jaula y Alejandrino of the crime of kidnapping with robbery, committed as follows:

That on or about the 28th day of July, 1957, in the City of Manila, Philippines, the said accused, being private individuals, conspiring and confederating together and mutually helping each other, with intent of gain, and taking advantage of their superior strength, willfully, unlawfully and feloniously kidnapped, detained and carried away by means of a jeepney, a motor vehicle, one Ligaya Mansilungan and her son of three and a half years of age at the point of a knife, threatening her and her child with death and other bodily harm, should she resist or cry out for help, taking them to Dagupan Street, in said City, and then to Marulas, Polo, Bulacan, and thereafter to Baliuag, Bulacan, and finally to Cabanatuan, Nueva Ecija, and then and there, by means of force and intimidation, with intent of gain and against her will, grabbed, took, stole and carried away from her one "Gruen" wrist watch valued at P100.00 some articles of clothing worth P154.00, and cash money amounting to P7.00, all belonging to the said Ligaya Mansilungan, to her damage and prejudice in the total sum of P261.00, Philippine currency.

Contrary to law. (crim. case No. 40855.) After trial, the Court rendered judgment holding that the crime committed by the defendants was not the complex crime of kidnapping with robbery because the latter was not a necessary means to commit the former offense; that the defendants could not be convicted of the crime of robbery as a separate offense from that of kidnapping; that the crime committed by the defendants was kidnapping for the purpose of extorting ransom from the victims, under the provisions of the last paragraph of article 267 of the Revised Penal Code, as amended by Republic Acts Nos. 18 and 1084, which purpose was not alleged in the information; and that the defendants are guilty of the crime of kidnapping, or serious illegal detention of a female, let alone a less than three year old child, under the provisions of clauses 3 and 4 of the same article and Code, as amended. The dispositive part of the judgment provides:

In view of the foregoing, the Court finds and so holds that the accused are guilty of the crime of kidnapping or serious illegal detention, the victim of the crime being a female, even disregarding the fact that the complainant's 3 year old son was also taken. Strictly, the penalty prescribed by Article 267 of the Revised

Penal Code, as amended, should be imposed in its maximum period in view of the aggravating circumstance of use of motor vehicle which has not been offset by any mitigating circumstance. Nevertheless, because the victim was released by the accused, the imposition of the maximum penalty would be too severe. Consequently, the accused Virgilio Cabral and Josue Jaula are each sentenced to reclusion perpetua, to indemnify the complainant in the sum of P171, the Gruen watch having been recovered, and to pay the costs.

Both defendants appealed to this Court. On 16 October 1958 Virgilio Cabral y Constantino filed a motion with drawing his appeal. On 27 October 1958 this Court granted the motion. Josue Jaula y Alejandrino is the only appellant.

At about 9:00 o'clock in the morning of 28 July 1957 (Sunday), Ligaya Mansilungan and her son less than three years old boarded a jeep for public conveyance on No. 410 Azcarraga street, her place of residence, opposite the LTB and BTrCo. bus station, to go to Tabora street, Manila. The driver of the jeep was Josue Jaula y Alejandrino, the appellant, and the passengers in the jeep when she and her son boarded it were Virgilio Cabral y Constantino and two unidentified persons. Before reaching the intersection of Azcarraga and Tabora streets, she told the appellant to stop the jeep so that she could alight but he did not stop it. After crossing Tabora street and at a point close to the Tutuban railroad station she again asked him to stop, but instead the appellant turned to Dagupan street. The two unidentified passengers jumped off from the jeep when it turned to Dagupan street. There Cabral threatened her with a knife. She asked him what he wanted from her. He warned her not to make an outcry. The appellant drove the jeep northward. Upon reaching Marulas, Bulacan, the appellant ordered the victims to move to the front seat between him and Cabral. After they had transferred to the front seat, they proceeded to Baliuag. On the way, they stopped at a gasoline station to refuel. While at the gasoline station Cabral continued aiming his knife at the right side of her body near the armpit. After refuelling, they resumed the trip and arrived at Baliuag at about 12:00 o'clock noon. They stopped in small barrio past Baliuag where Cabral and the appellant took turns in taking lunch in a store far from where they had parked the jeep. While the appellant stood guard he pointed his knife at her to prevent her from making an outcry. After Cabral and the appellant had finished their lunch, they proceeded to Cabanatuan City where they arrived at about 3:30 o'clock in the afternoon. In a small street outside the City, she was told to alight from the jeep and was boxed by Cabral and the appellant. They demanded money from her and threatened to kill her if she refused. When she told them that she did not have money, they continued boxing her. She begged them to allow her to go home so that she could get the money. After promising to give them P1,000 in cash demanded of her the next day at 10:00 o'clock in the morning at the Chinese cemetery in Manila she and her son were allowed to leave but they divested her of a Gruen watch worth P100, merchandise or goods valued at P154 and P7 in cash. After the two had left, she and her son ran and ran until she saw a wagon which she thought was bound for Manila. She related her story to the driver and asked him to give her and her son a ride. The latter allowed them to ride in the wagon up to San Vicente, Polo, Bulacan. From there they took a taxi to Manila. Mother and son arrived home at about 11:00 o'clock in the evening. Upon arrival at home, she learned from her husband Nestor Villarama that Rodolfo Villarica, a housemate, had reported her to the police authorities as missing. At about 12:00 o'clock midnight the couple proceeded to the police headquarters at Isaac Peral, Manila, to report on the incident. After hearing her story, the police authorities advised her to comply with the instructions of her kidnappers but to give them only one genuine P100 bill and the balance of the amount demanded of her in Japanese war notes.

Lieutenant Giron of the Manila Police Department assigned detective Ajnado de la Paz to work on the case. As agreed upon detective de la Paz disguised himself as a caretaker or laborer at the mausoleum of Vicente Gotamco in the Chinese cemetery and posted himself there between 9:00 and 10:00 o'clock in the morning of 29 July 1957. At about 11:00 o'clock in the morning Cabral arrived at the Chinese cemetery and asked the victim if she brought the money with her to which question she answered in the affirmative. Cabral asked her if she had any companion

and she answered that she had none. He remarked "It is good you have no companion." Ligaya handed to Cabral the money and left to rejoin detective de la Paz. After Ligaya had rejoined detective de la Paz, the former saw Cabral along Rizal Avenue Extension and she pointed him to the police officer. The latter apprehended him and found in his possession the money given to him by Ligaya marked Exhibits A and A-1 to A-10. Asked why he had the money in his possession, he did not answer. Detective de la Paz brought him in his jeep to the police station.

At the police station, lieutenant Giron ordered patrolman Abundio Cate to conduct the investigation of Cabral. Patrolman Cate conducted the investigation in the form of question and answer (Exhibit B). At the investigation Cabral admitted participation in the commission of the crime and named "Choy" as his companion. According to him "Choy" is driver of a jeep for public conveyance whom he used to meet at the Caltex gasoline station in front of P. Gomez Elementary School at Quezon Boulevard, Manila. After the investigation of Cabral, sergeant Carlos, assistant chief of the General Investigation Section, Detective Bureau, ordered a team composed of detective Edmundo Villanueva, Felipe Arcilla and patrolman Abundio Cate to apprehend the persons sleeping in the gasoline station mentioned by Cabral. The team proceeded to the gasoline station and brought to the police station for investigation seven persons whom they found there. The police officers lined them up and Ligaya Mansilungan identified Josue Jaula y Alejandrino, the appellant, as the companion of Cabral. Again Cabral was interrogated and he identified "Choy" as Josue Jaula y Alejandrino, the appellant, as his companion in the commission of the crime (Exhibit C).

At about 6:20 o'clock in the evening of 29 July 1957, Ligaya Mansilungan was examined and treated by Dr. Heriberto Ocampo, a resident physician, at the Philippine General Hospital, who found "Contusion with hematoma, left arm, middle third, lateral; (and) Contusion, right arm, middle lateral", which, in his opinion, would incapacitate her from her "customary labor or require medical attendance for a period of two (2) to three (3) days, unless complications set in or manifestations due to internal injuries which are not apparent at the time of the examination appear later." (Exhibit D.) According to the same physician, the contusions could have been caused by fist blows or by "a blow by means of a wood."

Two weeks after the incident, Ligaya Mansilungan was able to recover her Gruen watch (Exhibit E) from a woman who claimed to have bought it from somebody. She met the woman near the compound of the Children's Maternity in Oroquieta street, Manila. She failed to recover any of the merchandise or goods and P7 in cash forcibly taken from her.

The appellant denies ever knowing Virgilio Cabral y Constantino and Ligaya Mansilungan before 29 July 1957 when he was investigated at the police precinct in the evening of that day, much less kidnapping her, and going to Baliuag, Bulacan and Cabanatuan City at any time. He claims that "Choy" is not his nickname but that his Christian name is "Josue." According to him in the morning of 28 July 1957 he went to the house of her employer, Mrs. Emiliana Torres. At about 8:00 o'clock in the morning of the same day, he and Mrs. Torres brought the jeep bearing plate No. 5727-Manila (1957) to a mechanic, whose name he does not know, on Misericordia street, to have the starter repaired. Afterwards, between 9:00 o'clock and 10:00 o'clock in the morning, he and Mrs. Torres went to buy some spare parts from the Antipolo Auto Supply on Antipolo street. From there they proceeded to another shop on Dimasalang for further repairs by a mechanic known as Mang Ilo, where they stayed up to 2:00 o'clock in the afternoon. He and Mrs. Torres took their lunch in a store in front of Mang Ilo's shop. After Mang Ilo had finished repairing the jeep he brought home Mrs. Torres and drove the jeep along its route or line, Quiapo to Pasay and vice versa, until 7:00 o'clock in the evening. The next day, from morning to noon, he again had the jeep repaired. From 1:00 o'clock noon to 12:00 o'clock midnight of that day he drove the jeep along the same route or line. His employer, Emiliana Torres, and Cirilo Salonga, referred to by the

appellant as Mang Ilo, corroborated him. Mrs. Torres testifies on cross-examination that when she and the appellant went to procure some spare parts consisting of electrical wire and head light from the Antipolo Auto Supply on Antipolo street both of them signed a "vale" for the items they received (Exhibit 1).

The appellant's plea of innocence is disproved by the clear, direct and positive identification made by the victim, Ligaya Mansilungan, that he was with Virgilio Cabral y Constantino when she and her son were brought to Cabanatuan City in a jeep driven by him and there divested of her watch, merchandise or goods and money against her will and released only after she had promised to give them P1,000. She swears that she could not forget his face because he boxed her more than his co-defendant. The appellant's weak defense of alibi is not enough to destroy the clear, direct and positive identification made of him by the victim, who came to know him only when she was kidnapped by him and his co-defendant and has no evil motive to falsely testify against him and bring about his conviction and deprivation of life or liberty.

The "vale" (Exhibit 1) allegedly issued to Mrs. Emiliana Torres, the appellant's employers, when she bought the spare parts for the jeep allegedly on 28 July 1957 is written on an ordinary paper and not issued on a printed form used by duly licensed stores engaged in the business of selling spare parts. Such a receipt is easily fabricated and cannot be relied upon as evidence. The date "7-28-57" appearing on the right hand corner of the paper appears to have been tampered by the super-imposition of the numeral "8" upon the numeral "7" to make it appear that it was issued on the 28th of July 1957 and that the spare parts therein listed were procured on such date. These observations relative to Exhibit 1 render the appellant's alibi insufficient to overthrow his established identity.

The crime committed by the appellant and his co-defendant, as alleged in the information and proven by the evidence for the prosecution, is kidnapping or serious illegal detention of a female and a minor, under the provisions of clauses 3 and 4, article 267, of the Revised Penal Code, as amended by Republic Acts Nos. 18 and 1084, for which the penalty is reclusion perpetua to death. The trial court found that the aggravating circumstances of motor vehicle, without any mitigating circumstance, to offset it, attended the commission of the crime. The penalty should, therefore, be imposed in its maximum. However, the trial court imposed only the penalty of reclusion perpetua because "the victim was released by the accused, (and) the imposition of the maximum penalty would be too severe." The proper penalty, which is death, should have been imposed and if the trial court believes, as it believes, that a strict enforcement of the provisions of the penal code would result in the imposition of a clearly excessive penalty, it may, pursuant to the provisions of article 5 of the Revised Penal Code, recommend to the Chief Executive, through the Secretary of Justice, the commutation of the penalty to reclusion perpetua.

The value of the merchandise or goods amounting to P154 and P7 in cash taken from the victim which she failed to retrieve amounts to P161 only. Consequently, the appellant should be ordered to indemnify the victim in the sum of P161 only and not P171.

As to the amount of indemnity the appellant is ordered to pay the offended party the sum of P161. As to the penalty, for lack of sufficient statutory number of votes, the death penalty provided for by law cannot be imposed upon the appellant. For that reason the judgment appealed from is affirmed, with costs against him.

Bengzon, C. J., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Paredes, Dizon, and De Leon, JJ., concur.

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