

LUIS ASISTIO, ET AL., PETITIONERS, VS. HON. LOURDES P. SAN DIEGO, JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL, QUEZON CITY BRANCH IX, RESPONDENT.

G.R. No. 21991. March 31, 1964

Ponente: REYES, J.B.L., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-21991/>

REYES, J.B.L., J.:

This is a verified petition for certiorari and habeas corpus, praying for the annulment and setting aside of the orders of the Court of First Instance of Rizal (in its Case Q-5388) denying bail to the petitioners herein, and that the said parties be granted bail by this Court.

It is not contested that on July 22, 1963, petitioners Luis Asistio alias Baby, Pedro Rebullo alias Pita, Edgardo Pascual alias Ging, Lorenzo Meneses alias Lory, Alfredo Caimbon alias Tatoo, Benigno Urquico alias Bening, Federico Zaragoza alias Det, and Jose Baello alias Celeng, were, with various other persons, accused by the Quezon City fiscal of the crime of kidnapping for ransom in violation of the last paragraph of Article 267 of the Revised Penal Code, as amended by Republic Act No.18. The amended information describes how the crime was committed in the following terms:

"That on or about the 26th day of December, 1962, in Quezon City, Philippines, the above-named accused, being private individuals with the exception of the accused VICTORIANO ARANDA and LORENZO MENESES who are public officers, conspiring together, confederating with and mutually helping and aiding one another, with threats to kill the person of Chua Pao alias 'SO NA' and for the purpose of extorting ransom in the amount of TWENTY THOUSAND PESOS (P20,000.00) from the said CHUA PAO Alias 'SO NA' or from his wife did, then and there willfully, unlawfully and feloniously kidnap, detain and deprive the person of the paid CHUA PAO alias 'SO NA' of his liberty, to his damage and prejudice.

That the following aggravating circumstances attended the commission of the aforestated crime:

1. That the accused VICTORIANO ARANDA and LORENZO MENESES took advantage of their public positions as peace officers of Caloocan City and Quezon City, respectively;
2. That the aforesaid offense was committed with the aid of armed men, or persons who insure or afford impunity
3. That in the commission of the aforesaid offense,1 graft and fraud were employed by the accused;
4. That the aforestated crime was committed by means of motor vehicles; and
5. That the wrong done in the commission of the aforestated offense was deliberately augmented by causing other wrongs not necessary for its commission.

Contrary to Law."

Petitioners applied for bail on the ground that the record of the ex parte investigation conducted by the fiscal

showed, from the testimony of the offended party himself, Chua Pao alias So Na, that the latter was (a) voluntarily released by his captors (b) within 24 hours from seizure and (c) without any ransom being, in fact, paid. The applicants contended that under the last paragraph of Article 268 of the Revised Penal Code, bearing in mind the three circumstances previously mentioned, the penalty imposable upon them, even if found guilty, could only be prison mayor, in its minimum and medium periods, and if a fine not exceeding 700 pesos; that their crime, therefore, could not be a capital one, so that, even if the evidence were strong, they were entitled to bail.

The respondent judge, in view of the State's opposition to the bail petition, proceeded to hear the evidence of the State in support thereof, and, after considering said evidence, on November 8, 1963 denied the application for bail. Thereupon, the accused resorted to this Court, alleging abuse of discretion, and reiterating their position in the court below.

This proceeding not being an appeal from the order denying bail, we need not pass upon the pronouncement of the court below that the evidence of guilt is strong. That conclusion, based upon the trial court's appreciation of the evidence, can not be deemed to be capricious and whimsical so as to justify our issuing a writ of certiorari, in the absence of other circumstances to the effect, and none are here urged.

We will, therefore, confine ourselves to considering the legal point raised by the petitioners, i.e., whether the crime committed by them can be held non-capital, in view of the special features alleged by said petitioners, to wit, that the person kidnapped was (a) voluntarily released by his captors; (b) that he was voluntarily released within 24 hours from the kidnapping; and (c) that no ransom was actually paid for his release, although ransom had been demanded.

The resolution of the question depends upon the interpretation to be given to Articles 267 and 268 of the Revised Penal Code, as amended by Republic Acts Nos. 18 and 1084. These articles provide that:

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

1. If the kidnapping or detention shall have lasted more than five 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, female or a public officer.

The penalty shall be death^[1] 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. (As amended by Republic Act No. 18 and 1084).

ART. 268. Slight illegal detention. - The penalty of reclusion temporal shall be imposed upon any private individual who shall commit the crimes described in the next preceding article without the attendance of any of circumstances enumerated therein.

The same penalty shall be incurred by anyone who shall furnish the place for the perpetration of the crime.

If the offender shall voluntarily release the person so kidnapped or detained within three days from the commencement of the detention, without having attained the purpose intended, and before the institution of criminal proceedings against him, the penalty shall be prison mayor in its minimum and medium periods and a fine not exceeding seven hundred pesos. (As amended by Republic Act No. 18) (Sept. 25, 1946)"

Petitioners vigorously argue that the last paragraph of Article 268 applies not only to slight illegal detention but also to kidnapping and serious illegal detention penalized by Article 267; so that even if the detention was made for the purpose of extorting ransom, the penalty would be reduced to prision mayor and fine if the requisites of Article 268, last paragraph, do obtain. Upon the other hand, the prosecution sustains the proposition that under the last paragraph of Article 267, all that is required for the imposition of the death penalty is that (a) there be kidnapping, and (b) that the kidnapping be resorted to for the purpose of extorting ransom, since said last paragraph explicitly provides that punishment "even if none of the circumstances abovementioned (i.e., in the preceding paragraphs of Article 267) were present in the commission increased to death in 1954 by Republic Act 1084 mission of the offense", and that the third paragraph of Article 268 modifies only slight illegal detentions under that article and does not apply to acts described in Article -267.

Consideration of the legislative history of these articles will show that the legal thesis propounded by the petitioners in this case is untenable, and that the view of the prosecution was correct. As originally enacted in 1928, the Revised Penal Code (Act 3815 of the pre-Commonwealth Philippine Legislature) provided, in its Articles 267 and 268, the following:

"Art. 267. Detention illegal grave. - Sera castigado con la penade de reclusidiii temporal, el particular que secuestrare o encerrare a otro o en cualquier forma le privare tie libertad:

1. Si el eneierro o detencion hubiere durado inas veinte dias.
2. Si se hubiere ejecutado con simulacion de autoridad publica.
3. Si se hubieren causado lesiones graves a la persona, encerrada o detonida, o se le hubieie amenazado de rmierte.

ART. 268. Detention ilegal leve. - Sera castigado con la pena de prision mayor el particular que cometiere el delito de que se trasta en el articulo anterior sin la concurrencia de ninguna de las circunstancias previstas en el mismo.

En la misma penal incurrira el que proporcionare lugar la ojecucion del delito.

Si el culpable diere espontaneamente libertad al secuestrado detenido dentro de los tres dias de su detencion sin haber logrado el objeto que se propusiere ni haberse comenzado alguna investigacion o proseco contra el, las penas seran prision correccional ensus grados miniimo y medio y multa que no exceda de 500 pesos."

Five things are immediately apparent from a comparison of this original version and the text as it stood when petitioners committed the crime charged, and they are:

- That kidnapping under Article 267 depended solely on the circumstances in which the kidnapping took place, irrespective of the end sought by the kidnapper;
- That the third paragraph of Article 268 already existed in the original version, and plainly was not intended to apply to crimes under Article 267;
- Article 268 then described two variants of dig illegal detention;
 - (a) Slight detention where none of the circumstances specified in Article 267 was present (Article 268, par. 142), penalized by prision mayor;
 - (b) Slight detention where, in addition to the absence of any of the circumstances mentioned in Article 267, there were, besides three other circumstances, the voluntary release of the kidnappee within 3 days from seizure, plus the fact that the purpose intended (whatever it should be, ransom, marriage, disclosure of secrets, etc.) was not

attained, plus the third fact that the release was effected before the institution of criminal proceedings against the culprit or culprits.

Clearly, therefore, Articles 267 and 268 were originally mutually exclusive.

4. Kidnapping for purpose of ransom was made an independent variant with a heavier penalty (reclusion perpetua to death) only in 1946, when the Legislature enacted Republic Act No. 18, which added a last paragraph to Article 267. It is under this paragraph that petitioners stand indicted. The penalty for kidnapping for ransom was raised in 1954 to death (without alternatives) by Republic Act No. 1084.

5. The same Republic Act No. 18 increased by one degree the penalties provided in Article 268, first paragraph, from prision mayor to reclusion temporal, and, under the third paragraph of the article, from prision correccional and P500.00 fine to prision mayor and fine of P700.00.

Now then, if originally (in 1928) the third paragraph of Article 268 of the Revised Penal Code did not relate at all to the crimes penalized under Article 267, it can not be seriously contended that said paragraph should be intended to cover any of the crimes in Article 267 when in 1946 the Legislature (by Republic Act No. 18) established the delict of kidnapping for ransom for the first time as a distinct form of serious illegal detention under Article 267, and prescribed a heavier penalty for it. This conclusion is bolstered by the fact that Republic Act No. 18, in amending Article 267, did not make any change in the wording of Article 268, but merely increased the penalties provided therein.

Nowhere, therefore, are indicia to show that by Republic Act No. 18 the legislator desired to make the last paragraph of Article 268 applicable to Article 267, as petitioners now contend.

Had the Legislature intended that the third paragraph of Article 268 should apply not only to slight illegal detention under that article but also to serious illegal detention under Article 267, it would have either so expressed or at least made of said third paragraph a separate article when it enacted the Code, or either on of Republic Acts No. 18 and 1084.

Finally, slight illegal detention being penalized with reclusion temporal under Article 268, first paragraph, it is rational that the penalty should be reduced by one degree to prision mayor, where the special mitigating circumstances, mentioned in paragraph 3 of said article, are present (i.e., early voluntary release before indictment and non-attainment if purpose). But why should these very same circumstances operate to reduce the death penalty (provided for kidnapping for ransom in Article 267) also to prision mayor, when it would then represent a reduction of not less than three (3) degrees? What reason is there to hold the same circumstances (early release, etc.) to be more efficacious in lowering the penalty for serious illegal detention (Art. 267) than in slight detention for which a lesser penalty (Art. 268) is prescribed?

It is argued that unless the reduction of penalty provided for in the third paragraph of Article 268 is made applicable to kidnapping for ransom under Article 267, the life of the person kidnapped would be endangered, since his captors would find no reason to release him, as by so doing they would not benefit from a reduction of penalty. This argument appears to us to be better addressed to the discretion of the lawmaker that dictates the policies to be followed in repressing lawlessness. It is certainly a consideration that would not justify the Court's disregard of the evident intent of the law, as disclosed by the structure and the historical development of articles 267 and 268 of the Revised Penal Code, heretofore discussed, and which, in our opinion, render it clear beyond doubt that the third paragraph of Article 268 was not, and could not have been, intended by the lawmaker to apply in any way to kidnapping or serious illegal detention punishable under Article 267. The successive increases in the gravity of the penalty for kidnapping for ransom merely evidences the law's intent to deter such crime from

being committed at all.

It being thus shown that the crime of which petitioners stand accused is a capital one, and that the Court of First Instance, after due hearing and consideration of the evidence before it, has found that in its judgment the evidence against the accused is strong, there is no alternative but to declare that the extraordinary writs of certiorari and habeas corpus applied for should be, as they hereby are, denied. Costs against petitioners.

Bengzon, C. J., Padilla, Labrador Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

Bautista Angelo, J., dissenting.

Concepcion, J., reversed his vote.

[1]Increased to death in 1954 by Republic Act 1084. LUIS ASISTIO, ET AL. Petitioners versus HON. LUORDES P. SAN DIEGO, ETC., Respondent.

DISSENTING

BAUTISTA ANGELO, J.:

Petitioner is one of the sixteen accused of kidnapping for ransom before the Court of First Instance of Quezon City. He filed, thru counsel, a petition for bail, and the same having met an opposition from the government prosecutor, the court set a date for the hearing of the petition. However, the hearing was held in abeyance considering that the accused had not yet been arraigned. In the mean time, hearing on the merits started at which the offended party testified. From his testimony he admitted that he was voluntarily released by his alleged kidnappers within 24 hours and no ransom was in effect paid. In his testimony, he never mentioned petitioner as one of those who kidnapped him.

On August 15, 1963, after the offended party had testified, petitioner reiterated his plea for bail on the ground that considering the admission of the offended party, the penalty imposable on him would be at most prision mayor, which is bailable. On November 8, 1963, the court a quo denied the petition on the ground that the evidence against him is strong.

The issue before us is whether petitioner is accused of a crime for which a capital penalty is prescribed. While the information accuses petitioner, together with other 15 persons, of kidnapping for the purpose of extorting ransom which under Article 267, last paragraph, is penalized with death, however, the record shows that the offended party was released within 24 hours and no ransom was paid by the victim. There is no indication that petitioner ever asked for it. He was not even mentioned by the offended party as one of his kidnappers. Such being the case, the most that can be imputed to petitioner is the crime of slight illegal detention defined in Article 268, paragraph 3, of the Revised Penal Code, which prescribes a penalty of prision mayor in its minimum and medium periods.

But the majority opinion holds that the act imputed to petitioner even considering the admission made by the offended party is still that of kidnap for ransom which is penalized with death, because the third can only refer to the crime described in Article 267 without the attendance of any of the circumstances therein enumerated and not the last paragraph added therein which, as already said, penalizes kidnapping for ransom with death. Its reasoning follows:

"NOW then, if originally (in 1928) the third paragraph of Article 268 of the Revised Penal Code did not relate, at all to the crimes penalized under Article 267, it can not be seriously contended that said paragraph should be intended to cover any of the crimes in Article 267 when in 1946 the Legislature (by Republic Act No. 18)

established the delict of kidnapping for ransom for the first time as a distinct form of serious illegal detention under Article 267, and prescribed a heavier penalty for it. This conclusion is bolstered by the fact that Republic Act No. 18, in amending Article 267, did not make any change in the wording of Article 268, but merely increased the penalties provided therein.

"Nowhere, therefore, are indicia to show that by Republic Act No. 18 the legislature desired to make the last paragraph of Article 268 applicable to Article 267, as petitioners now contend.

"Had the Legislature intended that the third paragraph of Article 268 should apply not only to slight illegal detention under that article but also to serious illegal detention under Article 267, it would have either so expressed or at least made of said third paragraph a separate article when it enacted the Code, or either one of Republic Acts No. 18 and 1084."

The view of the majority is too technical to be accepted for it cannot be denied that the clear intent of the third paragraph of Article 268 is to lighten the criminal liability of an offender who voluntarily releases the person kidnapped within three days from the commencement of his detention without having attained his purpose, and within this framework comes squarely the case of petitioner. The evident purpose of this provision is to encourage the kidnapper to treat with leniency his captive in the hope of deserving a lesser penalty as otherwise its implication would work great prejudice to the victim. If one who kidnaps and releases him in three days after failing to attain his purpose has to serve the same penalty as one who keeps his victim indefinitely until he pays the ransom, he would find no inducement in pursuing the former course knowing that in doing so, he, would not derive and advantage.

That this view is more tenable is discernible from the fact that when Republic Act No. 18 was adopted Congress not only added the last paragraph of Article 267 but even made substantial changes in the third paragraph of Article 268, Undoubtedly, the failure to make any reference to that last paragraph in the provision ameliorating the penalty is merely due to an oversight and not to a desire to consider kidnapping for ransom as a separate crime. The least that can be said is that this provision is penal in character and any doubt it may engender should be resolved in favor of the accused.

For these reasons, I vote to grant bail to petitioner.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.