



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **January 13, 2021**, which reads as follows:

“**G.R. No. 247286** (*Genie Nuylan v. People of the Philippines*). – The Court resolves to **NOTE** the transmittal letter dated September 14, 2020 of the Court of Appeals (CA), Manila, elevating to this Court the CA *rollo* and original records of this case.

This is a Petition for Review on *Certiorari*<sup>1</sup> from the Decision<sup>2</sup> dated November 23, 2018 of the Court of Appeals (CA) in CA - G.R. CR No. 37960 which affirmed the Decision<sup>3</sup> dated April 24, 2015 of Branch 52, Regional Trial Court (RTC), Sorsogon City finding Genie Nuylan (petitioner) guilty beyond reasonable doubt of the crime of Carnapping in violation of Republic Act No. (RA) 6539, otherwise known as the Anti-Carnapping Act of 1972 and Robbery defined and penalized under Article 293,<sup>4</sup> 294,<sup>5</sup> and 295<sup>6</sup> of the Revised Penal Code (RPC).

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<sup>1</sup> *Rollo*, pp. 12-31.

<sup>2</sup> *Id.* at 35-45; penned by Associate Justice Ramon M. Bato, Jr., with Associate Justices Ramon A. Cruz and Pablito A. Perez, concurring.

<sup>3</sup> *Id.* at 67-75; penned by Assisting Judge Bernardo R. Jimenez, Jr.

<sup>4</sup> Article 293. Who are guilty of robbery. - Any person who, with intent to gain, shall take any personal property belonging to another, by means of violence or intimidation of any person, or using force upon anything shall be guilty of robbery.

<sup>5</sup> Art. 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:

x x x x.

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

<sup>6</sup> Art. 295. Robbery with physical injuries, committed in an uninhabited place and by a band, or with the use of firearm on a street, road or alley. — If the offenses mentioned in subdivisions three, four, and five of the next preceding article shall have been committed in an uninhabited place or by a band, or by attacking a moving train, street car, motor vehicle or airship, or by entering the passenger's compartments in a train or, in any manner, taking the passengers thereof by surprise in the respective conveyances, or on a street, road, highway, or alley, and the intimidation is made with the use of a firearm, the offender shall be punished by the maximum period of the proper penalties. (Emphasis Supplied)

*The Antecedents*

The case stemmed from the following Informations:

Criminal Case No. 2008-7160  
[Carnapping]

That on or about the 8<sup>th</sup> day of October, 2007, at about 4:00 o'clock in the afternoon at Brgy. Buhatan, Sorsogon City, Philippines and within the jurisdiction of this Honorable Court, the said accused, with intent to gain and with violence against and intimidation of persons did then and there, willfully, unlawfully, and feloniously take, steal, and carry away the Honda XRM 110J motorcycle colored blue with plate no. MC-6H-6384 amounting to ₱80,000.00 belonging to Pfc. Jordan Enconado, without the latter's knowledge and consent, to his damage and prejudice.

Contrary to law.<sup>7</sup>

Criminal Case No. 2008-7161  
[Robbery]

That on or about the 8<sup>th</sup> day of October, [*sic*] 2007, at about 4:00 o'clock in the afternoon, on the road in Brgy. Buhatan, Sorsogon City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, did then and there, willfully, unlawfully, and feloniously with violence and intimidation, that is, with the use of a firearm and with intent to gain, take, steal, and carry away the cal. 45 pistol (Norinco) with serial number 912451 worth ₱30,000.00 and wallet containing undetermined amount belonging to Pfc. Matthew Fernandez, and the cal. 45 pistol (Colt) with serial number 116332 worth ₱20,000.00 belonging to Pfc. Jordan Enconado, against their will and consent, to their damage and prejudice in the aforesaid amount.

Contrary to law.<sup>8</sup>

At the onset, petitioner and his son, Gino Nuylan (Gino), were charged under Criminal Case No. 2008-7161 with Robbery. However, Gino filed a Motion to Dismiss wherein he averred that at the time of the incident he was only twelve (12) years old and therefore exempted from liability under Section 69 of RA 9344.<sup>10</sup> The RTC granted Gino's Motion to Dismiss. Thus, upon petitioner's arraignment, he pleaded not

<sup>7</sup> *Id.* at 67; as culled in the RTC Decision.

<sup>8</sup> *Id.* at 68; as culled in the RTC Decision.

<sup>9</sup> Sec. 6. Minimum Age of Criminal Responsibility. - A child fifteen (15) years of age or under at the time of the commission of the offense shall be exempt from criminal liability. However the child shall be subjected to an intervention program pursuant to Section 20 of this Act.  
x x x x.

<sup>10</sup> "Republic Act No. 9344 Otherwise known as An Act Establishing a Comprehensive Juvenile Justice and Welfare System, Creating the Juvenile Justice and Welfare Council Under the Department of Justice, Appropriating Funds Therefor and For Other Purposes."

guilty to both charges. Thereafter, pre-trial was terminated. Trial on the merits ensued.

*Version of the Prosecution*

The prosecution established that on October 8, 2007, Private First Class Matthew Fernandez (PFC Fernandez) and Private First Class Jordan Enconado (PFC Enconado), both members of the Philippine Army, were dispatched to *Brgy. Buhatan, Sorsogon* to monitor the New People's Army (NPA) activities and at the same time, gather information from petitioner, a police-military asset.<sup>11</sup>

PFC Fernandez and PFC Enconado went to the area at around 4:00 p.m., on board a Honda XRM 110J motorcycle registered under the name of PFC Enconado's brother, Jerry Enconado (Jerry). Upon arrival at petitioner's house, PFC Fernandez greeted petitioner, but the latter ignored the greetings and went back inside his house. When PFC Fernandez was about two meters away from petitioner, the latter suddenly drew out his gun and pointed it at PFC Fernandez. Petitioner ordered PFC Fernandez to lie face down on the ground. When PFC Fernandez did not obey, petitioner fired a warning shot. Petitioner told PFC Fernandez to take off his shirt. Petitioner immediately took PFC Fernandez' service firearm, told him to lie face down on the ground, and threatened to shoot him if he disobeys. Afterward, petitioner handcuffed PFC Fernandez and took his wallet.<sup>12</sup>

When petitioner saw PFC Enconado from a distance, he pointed his gun at PFC Enconado and ordered him to also lie face down on the ground. When PFC Enconado refused, petitioner fired several shots at him, but the latter was not hit. At that point, PFC Enconado dropped his gun and fled. When petitioner saw the motorcycle parked nearby, he commanded PFC Fernandez to go with him. Petitioner then drove the motorcycle with PFC Fernandez, who was still in handcuffs, seated behind. Eventually, PFC Fernandez managed to jump off the motorcycle and run away. PFC Fernandez and PFC Enconado reported the incident to the Sorsogon Police Provincial Office.<sup>13</sup>

*Version of the Defense*

For his part, petitioner alleged that at the time and date of the incident, his son told him that there were armed men tailing him. He then noticed PFC Fernandez who was holding a gun. Petitioner immediately went inside his house and shut the door. At that instance, he got hold of PFC Fernandez's hand holding the gun. After grappling for the gun's possession, petitioner got hold of the gun and pointed it at PFC

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<sup>11</sup> *Rollo*, p. 68.

<sup>12</sup> *Id.* at 69.

<sup>13</sup> *Id.* at 37-38.

Fernandez. When petitioner saw the companion of PFC Fernandez, he fled with the gun still in his possession.<sup>14</sup>

### *The RTC Ruling*

In the Decision<sup>15</sup> dated April 24, 2015, the RTC convicted petitioner of Carnapping under RA 6539 and Robbery under Articles 293, 294, and 295 of the RPC. Accordingly, in Criminal Case No. 2008-7160, the RTC sentenced petitioner to an indeterminate penalty of fourteen (14) years and eight (8) months, as minimum, to fifteen (15) years, as maximum. In Criminal Case No. 2008-7161, the RTC sentenced petitioner to an indeterminate penalty of two (2) years, four (4) months, and one (1) day of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum.<sup>16</sup>

### *The CA Ruling*

In the Decision<sup>17</sup> dated November 23, 2018, the CA affirmed *in toto* the RTC Decision.<sup>18</sup>

### *Issue*

Whether the CA erred in affirming petitioner's conviction.

### *Our Ruling*

The Petition is denied.

For a successful prosecution of Carnapping under RA 6539, the following elements must concur: "(1) the taking of a motor vehicle which belongs to another; (2) the taking is without the consent of the owner or by means of violence against or intimidation of persons or by using force upon things; and (3) the taking is done with intent to gain."<sup>19</sup>

All the elements of Carnapping are present in this case. The blue Honda XRM motorcycle with Plate No. MC-6H-6384 belongs to Jerry as evidenced by the Certificate of Registration and Official Receipt.<sup>20</sup> Petitioner took the motorcycle and drove it away without the consent of the registered owner. The *animus lucrandi* is presumed from petitioner's act of taking the motorcycle. Further, the mere use of the motorcycle without the owner's consent constitutes gain.<sup>21</sup>

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<sup>14</sup> *Id.* at 38.

<sup>15</sup> *Id.* at 67-75.

<sup>16</sup> *Id.* at 75.

<sup>17</sup> *Rollo*, pp. 35-45.

<sup>18</sup> *Id.* at 44.

<sup>19</sup> *People v. Cariño*, G.R. No. 232624, July 9, 2018, 871 SCRA 372.

<sup>20</sup> *Rollo*, p. 72.

<sup>21</sup> *People v. Cariño*, *supra* note 10.

On the other hand, to sustain a conviction for Robbery under Article 293 of the RPC, the prosecution must prove the following elements: (1) there is a taking of personal property; (2) the personal property belongs to another; (3) the taking is with *animus lucrandi*; and (4) the taking is with violence against or intimidation of persons or with force upon things.<sup>22</sup>

Records show that all of the elements of Robbery are likewise present in this case. While pointing a gun at PFC Fernandez, petitioner took the former's service firearm, ordered him to lie on the ground, and handcuffed him. Petitioner also took PFC Fernandez's wallet and money.

Finally, as to the penalty imposed for the offense of Carnapping, the Court finds no reason to make any modifications. Section 14 of RA 6539 provides that any person who is found guilty of Carnapping, irrespective of the value of motor vehicle taken, be punished by imprisonment of not less than fourteen (14) years and eight (8) months, and not more than seventeen (17) years and four (4) months, when the Carnapping was committed without violence or intimidation of persons or force upon things. The subject motorcycle was taken while parked and with the key in the ignition. Under the Indeterminate Sentence Law, as applied to an offense punishable by a special law, the Court shall sentence the accused to an indeterminate penalty, the maximum of which shall not exceed the maximum range fixed by the special law and the minimum term shall not be less than the minimum range fixed by the special law. Hence, the RTC correctly imposed in the Carnapping case against petitioner the indeterminate penalty of fourteen (14) years and eight (8) months, as minimum, to fifteen (15) years, as maximum term.

As regards the penalty for the crime of robbery, Article 294 (5) of the RPC provides the penalty of *prision correccional* in its maximum period to *prision mayor* in its medium period which ranges from 4 years, 2 months, and 1 day to 10 years. Article 295 of the RPC likewise provides that if the robbery was committed with the use of firearm on the street, the accused shall be punished by the maximum period of the proper penalty or eight (8) years and twenty one (21) days to ten (10) years. Records reveal that petitioner committed the robbery with the use of a firearm on PFC Fernandez on the street; thus, the penalty must be imposed in its maximum period.

The return of the Warrant of Arrest made by PO1 Rony Peñalba stated that petitioner voluntarily surrendered to the Investigation Section of the Sorsogon Police Provincial Office on April 28, 2008.<sup>23</sup> However, this mitigating circumstance of voluntary surrender cannot be

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<sup>22</sup> *Del Rosario v. People*, G.R. No. 235739, July 22, 2019.

<sup>23</sup> *Rollo*, p. 74.

appreciated in favor of petitioner because the qualifying circumstance of use of a firearm on a street cannot be offset by a mitigating circumstance.

Applying the Indeterminate Sentence Law, petitioner is entitled to a minimum term to be taken within the penalty next lower in degree to that imposed by the RPC, or *arresto mayor* in its maximum period to *prision correccional* in its medium period, which has a range of four (4) months and one (1) day to four (4) years and two (2) months. As aforesaid, with the presence of a qualifying circumstance, the penalty shall be imposed in its maximum period. Thus, the penalty of imprisonment to be imposed should be two (2) years, ten (10) months and twenty one (21) days, as minimum, to eight (8) years and twenty-one (21) days, as maximum.

**WHEREFORE**, the Petition is **DENIED**. The Decision dated November 23, 2018 of the Court of Appeals in CA - G.R. CR No. 37960 is **AFFIRMED** with **MODIFICATION** in that in Criminal Case No. 2008-7161, petitioner Genie Nuylan is sentenced to suffer the indeterminate penalty of two (2) years, ten (10) months and twenty one (21) days, as minimum, to eight (8) years and twenty one (21) days, as maximum.

**SO ORDERED.”**

By authority of the Court:

*Misael Domingo C. Battung III*  
**MISAELO DOMINGO C. BATTUNG III**  
*Division Clerk of Court*  
4/25/21

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