

## EN BANC

**[ G.R. No. 172604 (Formerly G.R. Nos. 155345-47), August 17, 2010 ]**

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. VENANCIO ROXAS  
Y ARGUELLES, APPELLANT.**

### D E C I S I O N

**PERALTA, J.:**

On appeal by way of automatic review is the Decision<sup>[1]</sup> dated January 13, 2006 of the Court of Appeals in CA-G.R. CR-H.C. No. 00666, affirming the Judgment<sup>[2]</sup> of the Regional Trial Court (RTC) convicting appellant Venancio Roxas y Arguelles (appellant) for the crimes of Kidnapping and Serious Illegal Detention with Frustrated Murder, Violation of Republic Act (R.A.) 6539, or the *Anti-Carnapping Act of 1972*, and Theft. The Informations alleged -

In Criminal Case No. Q-94-54285 for Kidnapping and Serious Illegal Detention with Frustrated Murder -

That on or about January 12, 1994 in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together, confederating and mutually helping one another, did then and there by means of force, violence against and intimidation of person and at gunpoint, willfully, unlawfully, and feloniously kidnap, carry away and detain AGNES GUIRINDOLA, a female, thereby depriving her of her liberty, and thereafter bring her to an uninhabited place in Barangay Bagong Pook, San Jose, Batangas and then and there, with intent to kill and with treachery, evident premeditation, and abuse of superior strength, willfully, unlawfully and feloniously shoot her in the face with a hand gun, thus performing all the acts of execution which would produce the crime of MURDER as consequence, but which, nevertheless, do not produce it by reason of causes independent of the will of the accused, that is, the able and timely medical assistance given to said Agnes Guirindola which prevented her death, resulting to her utmost grief, sorrow, sufferings and sleepless night, compensable in actual, moral and exemplary damages in such amounts as may be awarded to them under the provisions of the Civil Code of the Philippines.

CONTRARY TO LAW.<sup>[3]</sup>

In Criminal Case No. Q-94-54286 for Carnapping -

That on or about January 12, 1994, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused,

conspiring together, confederating and mutually helping one another, with intent to gain and by means of force, violence against and intimidation of person and at gunpoint, did then and there, willfully, unlawfully and feloniously, take and carry away one Nissan Sentra Model 1993 with Plate No. TKR-837, then driven by Agnes Guirindola but owned by her mother Elvira G. Guirindola, to the damage and prejudice of said Agnes Guirindola and Elvira G. Guirindola in such amount as may be awarded to them under the Civil Code of the Philippines.

CONTRARY TO LAW.<sup>[4]</sup>

and -

In Criminal Case No. 94-54287 (amended) for Robbery -

That on or about January 12, 1994 in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together, confederating and mutually helping one another, with intent to gain and by means of force, violence against and intimidation of person and at gunpoint, did then and there, willfully, unlawfully and feloniously, while on board the motor vehicle of AGNES GUIRINDOLA, a 1993 Nissan Sentra with Plate No. TKR-837, and in the course of its trip, divested and robbed said Agnes Guirindola of the following cash, check and personal belongings, to wit:

Cash	P1,000.00
Check	3,000.00
Pieces of jewelry valued at	34,000.00

and in the course of execution thereof, shoot and fatally wounded Agnes Guirindola with a handgun, which is clearly unnecessary in the commission of the crime, to the damage and prejudice of said Agnes Guirindola, in such amount as may be awarded to her under the provisions of the Civil Code of the Philippines.

CONTRARY TO LAW.<sup>[5]</sup>

The antecedent facts as culled from the records are as follows:

On January 12, 1994, around 3:00 p.m., Agnes Guirindola (Agnes), while cruising along Panay Avenue, Quezon City, on board a red 1993 model Nissan Sentra sedan with plate number TKR-837, was suddenly flagged down by a man wearing a PNP reflectorized vest. The man signaled her to make a U-turn. Agnes complied and made the U-turn. The man walked in front of her car and proceeded to the right side of the car.<sup>[6]</sup> Agnes, later on, identified the man in open court as appellant, Venancio Roxas (Roxas).

Agnes opened the right front window of the car and asked Roxas, who had positioned himself at the front passenger side, "*Ano ang problema?*" Roxas replied,

"Miss, one way street po ito." Agnes explained to the man that she usually passed by the same street and it was only that day that she had been caught. Roxas told her that the street had been made a one-way street because a girl figured in an accident in the same street two days ago.<sup>[7]</sup>

Roxas then asked for Agnes' driver's license. After taking the driver's license, Roxas handed her a piece of paper which she was asked to sign. Agnes noticed that it was not the usual traffic citation ticket but, nevertheless, she pretended to sign the same by making a check thereon.<sup>[8]</sup>

When Agnes handed back the paper to Roxas, the latter asked her to open the door of the car so that he could show her the one-way sign and the other traffic aide at the corner of the street. Agnes let Roxas enter the car. Roxas then instructed Agnes to drive to the corner of the street, and upon reaching the corner, Roxas pointed to her the one-way sign and looked for the traffic aide he had told Agnes about. The traffic aide was not there. Agnes asked Roxas where she could drop him. Roxas told Agnes to make a left turn from the corner of the street and that he will alight somewhere in Mother Ignacia. Agnes obliged and made a left turn and stopped the car. Thinking that Roxas was waiting for a bribe, Agnes took out her wallet, pulled a P50.00 bill and gave it to Roxas. After receiving the money, Roxas returned to Agnes her driver's license.<sup>[9]</sup>

Upon returning the driver's license to Agnes, Roxas immediately switched off the engine of the car and poked a gun at her saying "*Miss, kailangan ko ang kotse mo.*" Agnes, terrified and shocked by Roxas' actions, cried and pleaded with him to let her go and just take the car. Roxas continued to poke a gun at her, unmindful of what Agnes was telling him.<sup>[10]</sup>

After a while, Agnes heard a knock from outside the car. Roxas opened the rear door and then someone boarded the car, occupying the back seat. The second passenger immediately reclined the driver's seat and pulled Agnes towards the back seat. Agnes identified this man as Roberto Gungon (Gungon). Subsequently, Roxas took the driver's seat and drove the car while Gungon held Agnes on the shoulder with one hand, and her leg with the other.<sup>[11]</sup>

Agnes then heard Gungon say: "*Boss, dalhin natin sya sa Philcoa.*" After crossing Mother Ignacia Street, Gungon got his beeper and told Roxas: "*Boss, dalhin na natin siya sa dati, doon na natin siya i-s.*" Agnes became more frightened as she understood "s" to mean "salvage," a lingo for summary execution.<sup>[12]</sup>

Along the way, Roxas stopped the car and went to a sari-sari store. Gungon was left behind, holding Agnes, and would tighten his grip every time she made a slight move and sometimes would poke a gun at her. Upon returning to the car, Roxas offered Agnes a bottle of soft drink and Skyflakes biscuit. Agnes refused so Roxas handed the softdrink to Gungon and told him: "*Mamaya painom mo sa kanya at pakainin mo siya.*" Gungon took the bottle of softdrink and tried to force Agnes to drink the contents thereof. Agnes refused because she saw tablets floating inside the bottle. Roxas resumed driving, while Gungon held Agnes.<sup>[13]</sup>

Agnes testified that she planned to escape, but could not make a single move

because every time she made a slight move, Gungon would poke the gun at her. The windows of the car were tinted and remained closed.<sup>[14]</sup>

Around 5:00 p.m., Agnes noticed that they were already at the South Superhighway.<sup>[15]</sup>

Along the superhighway, Roxas stopped the car in order to urinate. Gungon guarded Agnes by holding her. When Roxas returned, Gungon alighted to relieve himself too. While Gungon was out of the car, Roxas sat at the driver's seat facing Agnes and poked his gun at her. Shortly thereafter, Gungon came back to the car and Roxas resumed driving. When Agnes took the prayer leaflet from her wallet, Gungon looked at her wallet and saw the picture of her sister. When asked if she was the one in the picture, Agnes told Gungon that it was her sister. Out of the blue, Gungon also took his wallet and showed Agnes three (3) pictures which, according to him, were the pictures of his niece, her girlfriend and that of Roxas and a lady with a little child. After showing the same to Agnes, Gungon returned the said pictures to his wallet.<sup>[16]</sup> Agnes planned to escape at that time but the car was running at a speed of 80 to 100 kilometers per hour. Agnes just continued to pray.<sup>[17]</sup>

At this point, Gungon again offered the softdrink to Agnes. When she refused, Gungon became mad and tightened his hold on Agnes, forcing her to drink it. Sensing that Gungon was already furious, Agnes took the softdrink. After Agnes drank it, Roxas told Gungon, "*Ipainom mo pa itong dalawang tablets dahil malaki sya, mahina iyong dalawa para sa kanya.*" Gungon took the tablets from Roxas and forced Agnes to swallow the same. Out of fear, Agnes took the tablets, but did not swallow them. She placed the tablets under her tongue. When Roxas and Gungon were not looking, she took her handkerchief and spat out the tablets into the handkerchief.<sup>[18]</sup>

Afterwards, Agnes told Roxas and Gungon that she was hungry and wanted to eat a McDonald's sandwich. Gungon replied that they were in the province and that there was no McDonald's there. Roxas told Agnes that they will just drop by a restaurant to buy something to eat. Roxas then stopped by a bakery and alighted from the car, while Gungon held Agnes. It was at this point that Agnes noticed the signboard of the bakery which read something like Sto. Tomas or San Jose, Batangas. After a while, Roxas came back with a "*taisan*" cake and offered it to Agnes which she refused. At that instance, Agnes felt dizzy and fell asleep.<sup>[19]</sup>

When Agnes woke up, she found herself lying at the back seat with her legs on the lap of Gungon. The car was at a standstill. She noticed from the car's clock on the dashboard that it was about 9:30 or 10:00 p.m. She also found out that her jewelries consisting of bracelets, pair of earrings, necklace and a watch worth around P30,000.00 to P40,000.00, as well as her pair of shoes, were already gone. When she asked Gungon about them, the latter told her that they were just keeping the same for her. Agnes also lost her wallet containing a check in the amount of P3,000.00 and cash in the amount of P1,000.00.<sup>[20]</sup>

Agnes also noticed that there was already a third man sitting in front of the car beside Roxas who was still driving. She then asked them if she could relieve herself. Gungon asked Roxas if Agnes would be allowed to relieve herself to which Roxas answered in the affirmative. Agnes fixed her hair and then asked Gungon for her

shoes. Gungon put the shoes on her feet. Roxas alighted from the car and opened the rear door. Gungon alighted first from the car followed by Agnes. Gungon then led Agnes to a nearby grassy area and told her, "*O, dyan ka na lang umihi.*" After Agnes relieved herself, and as she was about to get up and return to the car, she saw white sparks at her right side and then she fell down. When she opened her eyes, she saw Roxas walking back towards the car with a gun in his hand. She did not see Gungon at that particular time. Then she lost consciousness.<sup>[21]</sup>

When Agnes regained consciousness, she was all alone. Roxas, Gungon and the third man, as well as the car, were no longer there. It was very dark. She followed a "sparkling light" that led her to a small house. Upon reaching the house, she opened the door and saw two (2) children and a teenager singing. She asked for their help but upon seeing her, they ran away. She then saw a lady standing at the stairs of the house carrying a baby. Agnes asked for her help but the lady went upstairs and locked herself inside the room. Agnes followed her and knocked at the door of the room asking for help, but still the lady did not come out of the room. She then went downstairs and lied down on the sofa. Only then did she notice that blood was profusely oozing from her face and there were "holes" in the left side of her neck and her right cheek.<sup>[22]</sup>

After a while, Agnes heard a vehicle arrive and also heard voices saying: "*May taong duguan sa loob ng bahay, tulungan natin siya!*" Agnes was then carried to a Fiera motor vehicle and brought to the Batangas Regional Hospital, where she was treated for her wounds and given first aid.<sup>[23]</sup> Agnes sustained the following injuries:

Gunshot wound, POE, Zygomatic area (R), POX Sudmandibular area (L); Fx, zygomatic arch & condylar area, (R) Sec to GSW; Submandibular Gland involvement with sinus tract. (Exhibit "A," Medical Certificate dated February 1, 1994 signed by attending physician Dr. Lauro R. San Jose, Captain MC, Neurosurgery 4-A, p. 177, Volume III, Record)

The following day, about 3:00 a.m. of January 13, 1994, the parents of Agnes and the rest of the family arrived at the hospital. Her parents immediately arranged for her transfer to the V. Luna General Hospital (now AFP Medical Center) in Quezon City, where she was treated further, operated on and confined for forty-three (43) days.<sup>[24]</sup> Agnes incurred actual damages amounting to P36,161.83 for her hospitalization, surgical operation and medical treatment, and suffered moral damages the amount of which she cannot readily quantify, as a result of the ordeal she underwent on that fateful day of January 12, 1994.<sup>[25]</sup>

Upon transfer of Agnes to the V. Luna General Hospital, her parents immediately reported the incident to the National Bureau of Investigation (NBI) in Manila, which promptly conducted an investigation. On January 17, 1994, some NBI agents visited her for the taking of the cartographic sketches of Roxas and Gungon. On January 19, 1994, another group of NBI agents went to the hospital and showed her 3 to 4 pictures of Gungon who was subsequently arrested in Davao City. On February 1, 1994, Agnes positively identified Gungon at the NBI in a police lineup consisting of 5 to 6 men. Likewise, Agnes was able to identify certain personal effects recovered from Gungon such as her rosary beads,<sup>[26]</sup> jewelry purse,<sup>[27]</sup> key chain with a key