

EN BANC

[G.R. No. 119574, March 19, 1998]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE VS.
ROBERT GUNGON Y SANTIAGO AND VENANCIO ROXAS Y
ARGUELLES, ACCUSED, ROBERT GUNGON Y SANTIAGO, ACCUSED-
APPELLANT.**

D E C I S I O N

PER CURIAM:

For a direct automatic review by this Court, conformably with Article 47 of the Revised Penal Code, as amended by Section 22 of Republic Act No. 7659, is the decision, dated 15 February 1995, of the Regional Trial Court ("RTC") of Quezon City, Branch 96, convicting accused-appellant Roberto Gungon Y Santiago of the crimes of kidnapping and serious illegal detention with frustrated murder, of carnapping and of robbery in three separate Information filed against him and two other persons.^[1] The informations averred –

In Criminal Case No. 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, 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."^[2]

In Criminal Case No. 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 in such amount as may be awarded to them under the Civil Code of the Philippines.

“CONTRARY TO LAW.”^[3]

- 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.”^[4]

The trial court gave a full account of the evidence submitted by the prosecution that led to the indictments.

It was about 3:30 in the afternoon of 12 January 1994. Agnes Guirindola, a 20-year old De La Salle University student, was driving a red Nissan Sentra car with Plate No. TKR-837 along Panay Avenue, Quezon City, on her way to a bookstore, and thereafter, to fetch her mother, Mrs. Elvira Guirindola, from work when a man, passing himself off as a traffic enforcement officer and wearing a “PNP” reflectorized vest, flagged her down and motioned her to execute a U-turn towards him. She complied. Lowering the right front window of her car, she asked the man, whose name she later learned to be Venancio Roxas, what traffic violation she had committed. Roxas replied that she had wrongly traversed a one-way street where, barely two days ago, a little girl had figured in an accident. Agnes surrendered her driver’s license. Roxas, giving her what appeared to be a ticket, remarked, “Miss, kunwari pirmahan mo ito,”^[5] but seeing that it was not the usual traffic ticket, she merely put a check sign and returned it. Roxas told her to open the door. He came on board the car and directed Agnes to proceed to the next intersection where Roxas motioned her to turn left. After executing a left turn, she stopped and handed over to him a fifty pesos (P50.00) bill which he accepted. He then returned her license.

Agnes asked Roxas where she could drop him off, instead, he suddenly pointed a gun at her and switched off the engine, saying, “Miss kailangan ko lang ito,”^[6] referring to

the car. Agnes started to cry. She pleaded with Roxas to let her go and not harm her. Instead, Roxas unlocked the rear door to let another man in. The man, identified in open court as accused-appellant Roberto Gungon, immediately reclined her seat and pulled her over to the back seat by her arms while Roxas promptly slid into the driver's seat. She was told that they were taking her to Philcoa but, after glancing at his beeper, Gungon, told Roxas, "Boss, negative Philcoa."^[7] Roxas nodded. After a while, Gungon spoke to Roxas, "Boss, dalhin na natin siya sa dati at doon na natin i-s."^[8] to which Roxas again simply nodded his head without a word.

Agnes, now really scared, took out a rosary from her bag and prayed. Momentarily, Roxas pulled over and alighted from the vehicle while Gungon held Agnes and poked a gun at her. When Roxas returned, he had with him a bottle of softdrink and skyflakes which he offered to Agnes. Agnes refused to drink after seeing some tablets floating inside the bottle. Gungon tried to persuade Agnes to take the drink, advising her, "Sige na, makakatulong ito sa iyo."^[9] The car stopped a second time to load gas at a gasoline station. Escape was nil; Guirindola made sure of that. The car thereafter proceeded southwards and on to the South Superhighway.

Roxas took time out from the wheel at a deserted area to allow him and Gungon to relieve themselves one after the other. Back on the road, Roxas told Gungon to have Agnes partake of the softdrink but she continued to resist. Agnes took out her wallet to get a prayer leaflet Gungon saw a picture and asked Agnes who it was in the photograph. She replied that it was her sister. Gungon then also took out some pictures from his wallet to show to her, identifying one photograph as that of his niece and two others as those of his girlfriend and of Roxas and his girlfriend and child. Once again, Gungon insisted that she take the drink. Fearing his menacing look and the gun pointed at her, she took a sip from the bottle. She was, still later, also forced to swallow two tablets which Roxas gave to Gungon. She took the tablets but had them under her tongue.

When asked what she wanted to eat, she said she would prefer a McDonald's sandwich. The car stopped at a bakery shop, where she noticed the address on the signboard reading, "Sto Tomas Batangas." Roxas went out and returned with a "taisan" cake which he handed over to Agnes but she just held it. Time passed, and somehow she lost consciousness. It was about 9:30 p.m. when she found herself lying at the back seat with her legs on the lap of Gungon. She noticed that her pieces of jewelry, bracelets, earrings, ring, necklace and a wristwatch, as well as cash, were missing and that her pair of shoes had been removed. She was told that the items were just being meanwhile kept for her. The pair of shoes, however, were returned to her. By this time, a third man was already seated in front of the car with Roxas.

When it was her turn to relieve herself, Roxas stopped the car at a deserted area. Gungon escorted her to a place not far away from the car. Just as she was getting up, after relieving herself, she saw a "white spark" to her right and she fell. She was shot. Feeling weak and unable to get up, she was still able to get a glance at Roxas walking back to the car. Then she passed out.

When she came to, Roxas, Gungon, and the third man, as well as the car, were nowhere insight. She managed to get up and slowly walked down the road until she reached a small house. Inside were two kids and a teenager, who, apparently shocked by her appearance, hurriedly left. She was bleeding profusely from the neck and face. She looked around the house but not finding anyone, she went to the sala to lie down. People soon arrived on a vehicle. She again lost consciousness and regained it only at

the Batangas Regional Hospital.^[10] The hospital, which was ill equipped to give full medical treatment advised her to transfer to a Manila hospital. The medical certificate described the gunshot wound:

“Gunshot wound, POE, Zygomatic area (R), POX Sub-mandibular area (L); Fx, zygomatic arch & condylar area, (R) Sec to GSW; Submandibular Gland Involvement with sinus tract.”^[11]

Recounting the circumstances that paved the way for the ultimate arrest of Gungon, the trial court narrated:

“xxx. The crimes charged herein could have easily remained unsolved because the victim *did not know* any of her tormentors. That she was abandoned in a dark and far away place strange to her, having been saved from the claws of sure death only by her abductor’s false belief of having already done her in with a single gunshot, would have made the escape of the criminals irreversible. Fate had it that her survival spelled the beginning of her tormentors’ undoing, for her ordeal was immediately brought to the attention of the NBI which moved and investigated without delay and hesitation. Cartographic sketches drawn from the recollections of the victim later started the procedure to identify the unknown perpetrators. The alacrity, coordination, and ingenuity of NBI agents Regner Feneza and Miralles led to the success of the procedure.

“Feneza recounted that on January 17, 1994 he met at the NBI offices in Manila with Miralles, who was earlier assigned to the case of Agnes, because Miralles had left word that he wanted to consult with Feneza. It seems that Feneza was the agent handling the Virginia Samaniego Villena case, another kidnapping case where the *modus operandi* had *striking similarities* with the kidnapping of Agnes. In their meeting, Miralles showed and lent to Feneza the cartographic sketches in the Agnes kidnapping. Feneza referred to his Villena files and discovered a distinct similarity of a cartographic sketch to some of the Villena suspects with pictures in his files. With Miralles’ permission, Feneza met with and talked to Agnes at the V. Luna Medical Center, and showed her about 3 or 4 pictures from his files.

“As Feneza testified: ‘*When I gave the pictures to her, she looked at them and she positively identified one in the pictures to be one of her abductors, she nearly fainted at that time.*’ Agnes had thereby positively identified Roberto Gungon, whom Feneza had already met in October or November, 1992 in connection with the Villena case. He reported this breakthrough to his superiors, who immediately authorized the search for Gungon.

“Gungon could not be arrested sooner. Based on information given to the NBI, he and his live-in partner had left Manila by car on a Wednesday, passed through Catbalogan Samar, and were bound for Davao. According to Feneza, an informant provided the information about Davao being the final destination; he testified: ‘Before he left, he left his pocket bell to somebody whom he was able to talk to. At the same time; they were calling a person and they told this person that they were in Legaspi about to board a ferry boat going to Davao.’ The information, Feneza disclosed how the NBI discovered the informant. It seems that Manila Prosecutor Alice Vidal had been approached by a certain Mrs. Atencio, supposedly Gungon’s mother-in-law, to confide Gungon’s whereabouts and to seek help; Prosecutor Vidal, in turn, notified the Makati Police Department, which happened to be collaborating with the NBI on the case. The Makati Police Department relayed the developments

to NBI, which sent agents to meet with Mrs. Atencio in the office of Prosecutor Vidal, and it was there where Mrs. Atencio disclosed the destination of Gungon and his partner. The pocketbell beeper was subsequently delivered by Mrs. Atencio to Feneza in Cubao, under a receipt.

"Feneza and fellow agent Arnold Lazaro flew to Davao on the following Friday, still in January, but Gungon and his partner could arrive there only on Saturday. On Sunday evening, the agents located the arrested him and detained him at their Regional Office in Davao. They flew him back to Manila of the first available flight on Monday. At the *lineup* held on February 1, 1994 at the NBI offices in Manila, Agnes picked Gungon out and positively identified him as one of her kidnappers.

"After the *lineup* identification, the NBI checked the contents of the *blue bag* that Gungon had brought along from Davao and found therein, among others, a *Nissan* key chain with a key; a picture of a woman, another picture of a man (Venancio Roxas), woman, and child; and a rosary. These articles were turned over to the NBI evidence custodian and were later presented in court. Feneza and Lazaro prepared their joint affidavit and other papers before transmitting the matter to the Department of Justice. Feneza readily identified and pointed to Gungon in open court during trial."^[12]

The defense version varies materially from that given by the prosecution.

Roberto Gungon, an employee of the Metropolitan Manila Authority, testified that between 3:30 and 4:00 o'clock in the afternoon of 12 January 1994, he had just come from a friend's house and was waiting for a taxicab along Panay Avenue, Quezon City, when a car stopped in front of him. It was Venancio Roxas, an acquaintance he once met at a New Year's party, who asked him where he was going. Gungon replied that he was waiting for a taxicab to get him to Cubao. Roxas, who was with a lady companion, opened the door of the car and said, "*Halika na, at idadaan ka na namin.*" He boarded and sat at the rear. Roxas drove towards Cubao. Gungon alighted at the foot of the underpass in Cubao, only to again board the car when Roxas invited him to go with them to Batangas.

Roxas proceeded to the South Superhighway with Agnes in the front right seat. On the way, Agnes reminded Roxas that her mother was waiting for her. Agnes took out her wallet and showed Gungon her ID, her picture, and her sister's picture, and in turn, he, too, drew out his wallet from his pocket and showed Agnes his wife's picture. The car stopped at a bakery in Sto. Tomas, Batangas, where Agnes and Roxas alighted to buy a piece of cake and some softdrinks. Tired, after a long drive, Gungon and Agnes had both fallen asleep. She awoke after some time and requested that the car stop to allow her to relieve herself. Gungon later learned from an investigator that the place was somewhere in Batangas City. Roxas accompanied Agnes. Gungon was left alone in the car. After about 3 to 5 minutes, he heard a gunshot and felt that something untoward had happened. He lowered the car window to look, and he saw someone, whom he presumed to be Roxas, coming towards his direction, holding a gun. Agnes was not with him. Out of apprehension, he alighted from the car, ran away, and hid in the nearby trees until Roxas finally drove away. He took a bus back to Manila, reaching home at about 10:30 that evening.^[13]

In its decision, promulgated on 15 February 1995, the RTC, Hon. Lucas P. Bersamin presiding, concluded: