

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

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

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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 my 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 along 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:

“WHEREFORE, judgement is hereby rendered finding the accused ROBERTO GUNGON y SANTIAGO guilty beyond reasonable doubt:

“1. In Criminal Case No. Q-94-54285, for kidnapping and serious illegal detention with frustrated murder, and sentencing him to death.

“2. In Criminal Case No. Q-94-54286, for carnapping, and sentencing him to suffer the indeterminate penalty of imprisonment from eighteen (18) years, as minimum, to twenty five (25) years, as maximum; and,

“3. In Criminal Case No. Q-94-54287, for robbery, and sentencing him to suffer the indeterminate penalty of four (4) years of prision correctional, as minimum, to eight (8) years of prision mayor, as maximum.

“The accused shall be credited with the entire period of his preventive imprisonment in accordance with Art. 29, Revised Penal Code, provided he is qualified thereof pursuant to said legal provision.

“The accused Gungon is further ordered to pay to Agnes Guirindola, as offended party, moral damages in the amount of P1,000,000.00, actual damages of P36,161.83, representing her hospitalization and surgical expenses, and P35,000.00, representing the value of the lost personal valuables and cash, with interest on all the sums at the legal rate from the filing of the informations herein until full payment; and P50,000.00 as exemplary damages; to Mrs. Elvira Guirindola, as owner of the Nissan Sentra car involved in the carnapping case, the sum of P218,757.90, plus interest at the legal rate from the filing of the information until full payment; and double cost of suit.

“These cases shall be archived as far as they concerned Venancio Roxas y Arguelles.”[14]

In the instant appeal, Gungon has continued to assert his innocence, assigning the following errors allegedly committed by the trial court:

“I

“THE TRIAL COURT GRAVELY ERRED IN RULING THAT APPELLANT GUNGON AND ROXAS CONSPIRED TO COMMIT THE CRIMES SUBJECT OF THE INSTANT APPEAL.

“II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING APPELLANT GUNGON OF THE COMPLEX CRIME OF KIDNAPPING AND SERIOUS ILLEGAL DETENTION WITH FRUSTRATED MURDER.

“III

“THE TRIAL COURT GRAVELY ERRED IN CONVICTING APPELLANT GUNGON OF THE CRIME OF ROBBERY.

“TV

“THE TRIAL COURT GRAVELY ERRED IN CONVICTING APPELLANT GUNGON OF THE CRIME OF VIOLATION OF REPUBLIC ACT NO. 6539 OTHERWISE KNOWN AS THE ANTI-CARNAPPING ACT.”[15]

Appellant’s challenges, in essence, would revolve on the issue, once again, of credibility of witnesses. In monotone, this Court has constantly ruled that in the determination of the veracity of testimony, the assessment by the trial court is accorded the highest degree of respect and will not be disturbed of appeal unless, of course, it is seen to have acted arbitrarily or with evident partiality. Contrary to appellant’s contention, however, it is the Court’s view that the trial court has taken due care in evaluating the testimonies given at the witness stand. This much would easily be apparent from the following excerpts of the appealed decision.

“Upon thorough consideration of the evidence, the Court finds the testimony and version of Agnes to be the truth of what transpired on January 12, 1994 and that there was no credible fact or circumstance presented in the entire course of the trial, including her cross-examination by the Defense, by the which the neutral objective, and uninvolved mind could reasonably doubt her sincerity and trustworthiness. The complainant and the accused were subjected to the closest personal observation during their stints as witnesses. There were contrasts in their demeanors on the one hand, the victim was firm, sincere, and collected when she narrated even the most painful parts of her ordeal, easily impressing the Court by her straightforward manner and strong recall of the details; while, on the other hand, although Gungon tried very much to appear cool and composed, he could not deceive the Court by hiding behind the veneer of his feigned expressions and concealing what happened by a clever façade of denials.

“xxx xxx xxx

“Gungon failed the test of credibility by relying on an implausible defense and on mere denials. To decide issues of credibility, the testimonies of witnesses are tested for their plausibility of probability, i.e., whether they were contrary to the natural course of things, or to common observation, experience, and common sense, or to contrary to natural laws, or exhibit incredible coincidences. Evidence, to be believed, must not only proceed from the mouth of a credible witness, but it must be credible in itself – such as the common experience and observation of mankind can approve as probable under the circumstances. We have no test of the truth of human testimony, except its conformity to our knowledge, observation, and experience. Whatever is repugnant to these belongs to the miraculous and is outside of judicial cognizance.”[16]

The defense, verily anchors itself on the bare denial of appellant of the specific acts imputed by the prosecution against him. Certainly, this negative assertion cannot prevail over the unimpeached testimony of the victim describing in sufficient detail the active participation of appellant in the commission of the crimes charged. In the face of the clear and positive declaration of the victim herself, the defense of denial hardly assumes probative value and sinks down the drain even further with the absence of any evidence of a sinister or nefarious motive on the part of the complainant to impute a crime so grave a wrong as that made out in the Information.

The argument that the finding of conspiracy between appellant and Venancio Roxas to commit the crimes charged has been based by the trial court merely on inferences, conjectures and presumptions is bereft of merit. A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[17] The proof of the agreement need not rest on direct evidence;[18] the agreement itself may be inferred from the conduct of the parties disclosing a common understanding among them relative to the commission of the offense.[19] Jurisprudential account tells us consistently that the conduct of the accused before, during, and after the commission of the crime may be considered to show an extant conspiracy.[20]

The trial court, exhibiting keen perception on the whole bulk of evidence before it, has come up with a number of

observations not only to prove conspiracy but likewise to establish appellant's own part therein.

"1. Gungon's presence on Panay Avenue and his meeting with Roxas were not purely coincidental and by chance but intentional and prearranged. Roxas was representing himself to Agnes as a traffic officer by his wearing of the PNP reflectorized vest while Gungon was employed by the MMA, which had a direct connection with the functions assumed by Roxas. Roxas and Gungon were associated with each other far longer than the latter has admitted.

"xxx xxx xxx

"2. Gungon's insistence that Roxas was only a casual acquaintance is rejected as devoid of truth because it is inconsistent with and contrary to the established facts and circumstances. The records already showed that Gungon knew several personal circumstances about Roxas, including the fact that Roxas was formerly employed at MMA and that Roxas was unemployed when the incident took place, but was the president of a homeowner's association in Commonwealth Avenue. Moreover, Gungon's conduct in relation to Roxas during the entire duration of the trip from Panay Avenue to Batangas City, be it judged from Agnes' point of view or from Gungon's own, exhibited a deeper and closer familiarity and association that Gungon would admit. He called Roxas 'boss,' an appellation of familiarity, if not also subordination. He never protested his being invited to the unplanned Batangas trip. He never asked who Agnes was, not where Roxas and Agnes had come from.

"In any case, even assuming that Gungon, indeed, just happened to be on Panay Avenue that afternoon, implying thereby that he had no prior understanding with Roxas to meet thereat and also indicating thereby that their acquaintance was merely casual, the Court is still puzzled: (a) why Roxas on his part, should have stopped for him; should have offered to convey him to wherever he was going; and should even invite him to go on the unplanned trip to distant Batangas without notice to the latter's family, unless they were more familiar and closer, and (b) why Gungon, on his part, should have agreed to go to Batangas unless he was in on the plans of Roxas. The unbelievable unnaturalness of Gungon's disavowal of his connection with Roxas rendered his testimony suspect and implausible.

"xxx xxx xxx

"4. Another inconsistency was detected between Gungon's allegations, on one hand, that he concealed himself in the nearby trees from the returning Roxas after the shooting of Agnes and allowed Roxas to leave in the Nissan car without him, so that he returned to Manila by bus, and, on the other hand, that the Nissan keychain and the key of the bar lock were recovered from his blue bag. If he was to be believed, how did he come into the subsequent possession of the keychain and the key unless he and Roxas had met after the shooting?

"xxx xxx xxx

6. On account of his admitted presence during the trip, although protesting his innocence, the Court has also carefully analyzed Gungon's conduct following the criminal incidents and found such conduct indicative of guilt rather than innocence. Despite his insistence to the contrary, he knew that at least one serious crime had been perpetrated because he had heard a shot and had seen Roxas returning with a firearm at hand but without Agnes. Yet, he never reported the incidents to anyone else, most of all to the authorities, despite his allegations that he thereafter continued to report to work at MMA. The civic-minded and dedicated public servant that he alleged himself to be notwithstanding, he did not impress the Court that he was truly guiltless because of his unexplained failure to report to the authorities.

"On the matter of the Davao land trip being taken on January 28, 1994, the Court must have to consider it as positively indicative of flight. It should first be mentioned, as a premise for this conclusion, that Gungon inextricably contradicted himself on this point, since, in his direct testimony, he cited the calls made by somebody about two or three days before to the office of Ms. Atencio asking her to meet a person near the

Makati Police Department about an alleged estafa case in relation to a roofing transaction as justification for the trip, implying that it was sudden and unplanned; whereas, in the cross-examination, he stated that he and his wife had planned the Davao trip for vacation purposes even before New Year's Day, 1994. Aside from negatively reflecting of Gungon's testimonial integrity, such self-contradiction, not being a merely minor or inconsequential development in the Defense's presentation, exposed the Davao trip to be for what it was – the flight of a guilty man.”[21]

It would defy logic and common sense to conclude that the above circumstances and events implicating appellant to the crime were all purely coincidental.

Nor did the trial court err in convicting appellant of the crime of kidnapping and serious illegal detention. Article 267 of the Revised Penal Code defines the felony thus:

“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 kidnapping or detention shall have lasted more than three 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, except when the accused is any of the parents, female or a public officer.

“The penalty shall be death where the kidnapping or detention was committed for the purposes of extorting ransom from the victim or any other person, even if none of the circumstances abovementioned were present in the commission of the offense.

“When the victim is killed or dies as a consequence of the detention or is raped, or is subjected to torture or dehumanizing acts, the maximum penalty shall be imposed. (As amended by Sec. 8, Republic Act No. 7659).”(Underscoring ours.)

The crime of kidnapping and serious illegal detention consists not only in placing a person in an enclosure but also in detaining that person or depriving him in any manner of his liberty.[22]

Actual restraint of the victim's liberty was evident in the instant case from the moment Agnes was taken at gunpoint from Panay Avenue to a remote place in Batangas. The victim testified, thus:

“Q. What did he do with the P50.00 bill?

“A. He received it.

“Q. After receiving the P50.00 bill, what did he do next?

“A. He gave my license back.

“Q. After getting back your license, what happened?

“A. He immediately poked a gun at me.

“xxx xxx xxx

“Q. After Venancio Roxas pointed a gun at you, what happened next?

“A. He switched off the engine and then told me, ‘Miss, kailangan ko lang ito.’

“Q. After that, what happened?

“A. I was so terrified, I cried and then pleaded to him to let me go, to take anything but not to harm me.

“Q. Did he heed your plea?

“A. No, sir.

“Q. What happened next?

“A. After some minutes, he opened the back door of the car and then someone entered, another guy entered the car.

“xxx xxx xxx

“Q. After that second guy entered the car, what happened?

“A. He reclined the seat and he took my arm and pulled me to the back seat.

“Q. While the second guy who entered the car reclined your seat, and pulled your arm towards the back seat, what was Roxas doing?

“A. He was sitting at the passenger seat and when I was at the back seat already, he took the driver’s seat.

“Q. This second guy who boarded the car and pulled you towards the back seat, is he inside the courtroom?

“A. Yes, sir.

“Q. Will you please point to him?

“xxx xxx xxx

“Court

(Witness tapping a person in the first row)

Will the person tapped please rise?

Do you wish to give your name?

“A. Yes, your honor.

“Court

What is your name?

“A. Roberto Santiago Gungon, your honor.

“xxx xxx xxx

“State Pros. Agcaoili

You said that after you refused to drink the bottle of softdrink being offered by Roxas, Roxas handed the bottle over to Gungon?

“A. Yes, sir.

“Q. After Gungon took the bottle, what happened next?

"A. He forced me to drink it, sabi niya, sige na, makakatulong ito sa iyo.

"xxx xxx xxx

"State Pros. Agcaoili

And what was your reaction to that remark of Gungon?

"A. Of course, I still refused to drink.

"Q. And when you refused, what happened next?

"A. He was still holding the bottle, and then he continued to drive and then stopped to a nearby gas station.

"Q. what did you do at the gas station if you did anything?

"A. He gassed up

"Q. After gassing up, what else happened?

"A. During that time, I was trying to escape but I cannot escape since Gungon was holding me and from time to time poking a gun at me." [23]

"Q. Going back to your earlier testimony, Madam Witness, you testified earlier that along the way, Mr. Roxas alighted from the car and bought Sprite and skyflakes, how about you and Mr. Gungon when Mr. Roxas alighted from the car?

"xxx xxx xxx

"Q. What was Mr. Gungon doing while Mr. Roxas was buying softdrinks and skyflakes?

"xxx xxx xxx

"A. Gungon and I were still inside the car and he was holding me and from time to time poking a gun at me.

"xxx xxx xxx

"Q. You also testified earlier that along the way Roxas stopped somewhere at the South Expressway and took a leak, what was Mr. Gungon doing while Mr. Roxas was taking a leak?

"A. The same thing when Roxas left the car.

"Q. What about when it was Mr. Gungon's turn to take a leak, what was Mr. Roxas doing?

"A. Roxas held me and he was holding the door and checking if it was locked and poking a gun at me." [24]

The evidence would likewise show, ineluctably, the commission of frustrated murder. Not rebutted was the medical finding that the gunshot wound sustained by the victim would have resulted in the death of the victim had it not been for the proper medical attention given to her. [25]

The trial court has, too, properly appreciated the attendance of treachery in the commission of the offense. Treachery exists when the offender employs means, methods, or forms in the execution of the crime which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might take. [26] It bears stressing that the unsuspecting and defenseless victim had sustained the gunshot wound while still trying to get up after relieving herself.

The idea of killing the victim was likewise premeditated; Agnes testified:

"State Pros. Agcaoili

After this second guy who pulled you to the back seat whom you just identified as accused Roberto Gungon pulled you towards the back seat, what happened next?

"A. I was asked where they are taking me.

"Q. What was their reply if any?

"A. They said they are taking me to Philcoa.

"Q. After telling you that they are taking you to Philcoa, what else happened?

"A. Gungon got his beeper and then he read it, then told Roxas, boss, negative Philcoa.

"Q. And what was the reaction of Roxas?

"A. He just nodded.

"Q. And what else happened?

"A. After that, Gungon said, 'Boss, dalhin na natin siya sa dati at doon na natin i-S.'

"Q. And how did Roxas react to that remark of Gungon?

"A. The same, he just nodded." [27]

The perpetrator of the premeditated killing, albeit frustrated was hatched from the moment the accused and his co-conspirator took the victim in Quezon City until she was ultimately "executed" in Batangas to insure impunity to the perpetrators by eliminating the only witness.

Murder is punishable under Article 248 of the Revised Penal Code by reclusion perpetua to death if committed with the attendant circumstances, among other circumstances, of treachery and evident premeditation. [28] When the crime is "frustrated," f a "penalty lower by one degree" or, in this case, prision mayor to reclusion temporal is imposed.

The crime of kidnapping and serious illegal detention has been correctly complexed by the trial court with frustrated murder. A complex crime is committed when a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other. [29]

In a complex crime, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period. [30] Since the kidnapping and serious illegal detention is the more serious crime, the proper penalty under Article 267 of the Revised Penal Code, as amended by Republic Act No. 7659, should be applied in its maximum period.

The Court finds merit, however, in appellant's third assigned error.

Appellant would have it that the trial court erred in convicting him of robbery considering that the taking of the victim's jewelry and cash were perpetrated while the latter was asleep. The victim herself testified that shortly after the car had proceeded from Sto. Tomas, Batangas, she lost consciousness and regained it only at about 9:30 that evening. She then found herself lying at the back seat minus her personal belongings with a total value of P38,000.00. [31]

Article 293 of the Revised Penal Code defines robbery to be one committed by any "person who, with intent to gain, shall take any personal property belonging to another, by means of violence against or intimidation of any

person, or using force upon anything xxx.” Robbery may thus be committed two ways: (a) with violence, or intimidation of persons[32] and (b) by the use of force upon things.[33] To be then liable for robbery with violence against or intimidation of persons, the following elements must concur.

- 1) that there be personal property belonging to another;
- 2) that there is unlawful taking of that property;
- 3) that the taking must be with intent to gain; and
- 4) that there is violence against or intimidation of any person or use of force upon things.

It would appear that the taking of the victim’s jewelry and cash came only by way of an afterthought on the part of the appellant. The taking was not attended by violence or intimidation upon the person of Agnes. The absence, however, of violence or intimidation did not exculpate appellant from liability for the crime of theft, punishable by Article 308, in relation to Article 309, of the Revised Penal Code, viz:

“Art. 308. Who are liable for theft. – Theft is committed by any person who, with intent to gain but without violence against, or intimidation of persons nor force upon things, shall take personal property of another without the latter’s consent.”

“Art. 309. Penalties. – Any person guilty of theft shall be punished by:

“1. The penalty of prision mayor in its minimum and medium periods, if the value of the thing stolen is more than 12,000 pesos but does not exceed 22,000 pesos; but if the value of the things stolen exceed the latter amount, the penalty shall be the maximum period of the one prescribed in this paragraph, and one year for each additional ten thousand pesos, but the total of the penalty which may be imposed shall not exceed twenty years.”

The Information in Criminal Case No. Q-94-54287 contains sufficient allegations, adequately proven by the prosecution during the trial, to warrant a conviction of appellant for the crime of theft. Section 4, Rule 120, of the 1988 Rules on Criminal Procedure provides on this score; thus:

“Section 4. Judgment in case of variance between allegation and proof. – When there is variance between the offense charged in the complaint or information, and that proved or established by the evidence, and the offense as charged is included in or necessarily includes the offense proved, included in that which is charged, or of the offense charged included in that which is proved.”

Since the value of the personal property taken from the victim amounted to P38,000.00 the penalty imposable is the maximum period of the penalty prescribed by Article 309 which is the maximum of prision mayor in its minimum and medium periods plus one year for the additional ten thousand pesos in excess of P22,000.00. Applying the Indeterminate Sentence Law, the penalty for this particular offense of theft that may thus be imposed is anywhere from two (2) years, four (4) months and one (1) day of prision correccional minimum period to six (6) years of prision correccional maximum period, as minimum, to anywhere from eight (8) years, eight (8) months and one (1) day to ten (10) years of prision mayor medium period, plus one (1) for the additional P10,000.00 in excess of P22,000.00 value of the property taken, or eleven (11) years of prision mayor maximum period, as maximum.

Lastly, appellant contends that he should not have been convicted of violation of Republic Act No. 6539, otherwise known as the Anti-Carnapping Act, because the taking of the subject motor vehicle. Roxas had already acquired effective possession of the subject vehicle. This argument would have been consequential had there been no finding of conspiracy between appellant and Venancio Roxas. In conspiracy, to once again stress it, the act of

the other co-conspirator and, therefore it is of no moment that an accused had not taken part in the actual commission of every act constituting the crime,[34] each of the conspirators being held in the same degree of liability as the others.

WHEREFORE, the Court sustains the appealed decision of the trial court, dated 15 February 1995, except for appellant's conviction for the crime of ROBBERY in Criminal Case No. Q-94-54287 which is hereby MODIFIED to one of THEFT of which offense appellant is found guilty beyond reasonable doubt and sentenced to a prison term of from two (2) years, four (4) months and one (1) day of prision correccional, as minimum to eight (8) years, eight (8) months and one (1) day of prision mayor plus one (1) year for the additional P10,000.00 in excess of P20,000.00 value of the property taken or a total of nine (9) years, eight (8) months and one (1) day, as maximum. The decision of the court a quo with respect to Criminal Case No. Q-94-54285 and Criminal Case No. Q-94-54286 is AFFIRMED. In Criminal Case No. Q-94-54285, four members of the Court, although maintaining their adherence to the separate opinions expressed in *People vs. Echegaray* (G.R. No. 117472, 07 February 1997) that Republic Act No. 7659, insofar as it prescribes the death penalty, is unconstitutional nevertheless, bow to the ruling of the Court, by a majority vote that the law is unconstitutional and that the death penalty should be according be imposed.

In accordance with Section 25 of Republic Act No. 7659, amending Article 83 of the Revised Penal Code, upon finality of this decision, let the records of this case be forthwith forwarded to the Office of the President for possible exercise of the pardoning power.

SO ORDERED.

Narvasa, C.J., Regalado, Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Martinez, Quisumbing and Purisima, JJ., concur.

[1] Appellant Gungon was charged together with Venancio Roxas and a John Doe. Both remained at large during the trial. Roxas was arrested after the trial court rendered the judgment of conviction against Gungon.

[2] Records, pp.4-5.

[3] Records of Criminal Case No. Q-94-54286, pp.1-2.

[4] Records of Criminal Case No. Q-94-54287, pp.17-18.

[5] TSN, 19 April 1994, p.20.

[6] Ibid., p.23.

[7] Ibid., p.28.

[8] Ibid.

[9] Ibid.,p.33.

[10] TSN, 11 May 1994, p.10.

[11] Records, p.117.

[12] Rollo, p.37-38.

[13] Rollo, p.34-35.

[14] Rollo, pp.53-54.

[15] Rollo, pp.75.

[16] Rollo, p.40-41.

[17] Article 8, Revised Penal Code.

[18] People vs. Pinzon, 208 SCRA 93; People vs. Quiñones, 183 SCRA 747; People vs Pineda, 157 SCRA 71.

[19] People vs. Uy, 206 SCRA 270; People vs. Dela Cruz, 190 SCRA 328.

[20] People vs. Cabilles, 25 SCRA 112; People vs. Balanag, 238 SCRA 474; People vs. Dalanon, 237 SCRA 607.

[21] Rollo, pp.140-143.

[22] People vs. Domasian, 219 SCRA 245.

[23] TSN, 19 April 1994, pp.22-34.

[24] TSN, 11 May 1994, pp.16-18.

[25] Dr. Norberto Camarce, Jr., TSN, 22 July 1994, pp.31-32.

[26] Article 14, par. 16, Revised Penal Code.

[27] TSN, 19 April 1994, pp.27-28.

[28] Article 248. Revised Penal Code.

ART. 248. Murder. - Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by reclusion perpetua to death if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.
2. In consideration of price, reward, or promise.
3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, or by means of motor vehicles, or with the use of any other means involving great waste and ruin.
4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic or other public calamity.
5. With evident premeditation.
6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

[29] Article 48, Revised Penal Code.

[30] Article 48 Revised Penal Code

[31] TSN. 19 April 1994. pp. 45-48; see also TSN 11 May 1994. pp. 20-22

[32] Articles 294, 297 and 298, Revised Penal Code.

[33] Articles 299 and 302, Revised Penal Code

[34] Antonio vs. Sandiganbayan, 166 SCRA 595; People vs. Serante, 152 SCRA 510; People vs. Paredes, 24 SCRA 635.

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