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

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

Ponente: PERALTA, J.

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PERALTA, J.:

On appeal by way of automatic review is the Decision[1] dated January 13, 2006 of the Court of Appeals in CA-G.R. CR-H.C. No. 00666, affirming the Judgment[2] 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.[3]
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> In Criminal Case No. Q-94-54286 for Carnapping -
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> 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.
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> CONTRARY TO LAW.[4]
>
> 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.[5]

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.[6] 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.[7]

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.[8]

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.[9]

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.[10]

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

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driver's seat and drove the car while Gungon held Agnes on the shoulder with one hand, and her leg with the other.[11]

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.[12]

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.[13]

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.[14]

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

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.[16] 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.[17]

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.[18]

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.[19]

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.[20]

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.[21]

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.[22]

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.[23] 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.[24] 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.[25]

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,[26] jewelry purse,[27] key chain with a key to the lock of her Nissan Sentra car,[28] and the check taken from her, which were all presented in evidence in the trial of Gungon as well as in the trial of the instant case against Roxas.[29]

In the meantime, the NBI conducted a manhunt for Roxas. On September 11, 1995, Roxas was arrested by elements of the NBI inside the municipal hall of Taysan, Batangas, where he was working under the Office of the Mayor using the aliases "Joe Villamor" and "Marianito Villamor."

Agnes further testified that the name of appellant Venancio Roxas was supplied by the NBI, but she was very sure

that he was the person who fatally shot her. She positively identified Roxas on January 12, 1994 during a police line-up at the NBI as the perpetrator other than Gungon, of the crimes charged. She told the NBI agents that the person in the picture was the one who had flagged her down and shot her on January 12, 1994.

For the defense, appellant denied committing the crimes charged against him. He claimed that it was impossible for him to be at the place of incident on January 12, 1994. He narrated that on that same day, at around 6:00 to 7:00 p.m., he and a certain Tranquilino Mangiliman and two others were installing an antenna on the roof of his house. He added that he never left his house that evening. Both Mangiliman and his wife, Hermogena Roxas, testified that on January 12, 1004, Roxas was in his house at Feria Compound, Commonwealth Town Homes, Quezon City.

Subsequently, in a Decision[30] dated September 5, 2002, the court a quo, found Roxas guilty of Kidnapping and Serious Illegal Detention with frustrated murder, carnapping and theft, the dispositive portion of which reads:

> WHEREFORE, judgment is hereby rendered in these cases finding accused Venancio Roxas y Arguelles guilty beyond reasonable doubt:
>
> In Criminal Case No. Q-94-54285 for Kidnapping and serious illegal detention with frustrated murder, and sentences him to suffer the maximum penalty of DEATH.
>
> In Criminal Case No. Q-94-54286, for Carnapping, and sentences him to suffer the indeterminate penalty of imprisonment from 18 years, as minimum, to 25 years, as maximum;
>
> In Criminal Case No. Q-94-54287, for the crime of Theft, and sentences him to suffer the indeterminate penalty of imprisonment from 2 years, 4 months and 1 day of prision correccional, as minimum, to 8 years, 8 months and 1 day of prision mayor, as maximum, plus 1 year for the additional P10,000.00 in excess of P20,000.00 value of the property taken or a total of 9 years, 8 months and 1 day, as maximum.
>
> The accused shall be credited in full of his preventive imprisonment.
>
> Accused Roxas is also liable to pay the offended party Agnes Guirindola, moral and exemplary damages in the amount of P1,000,000.00 and P500,000.00, respectively, actual damages in the amount of P36,161.83, representing her hospitalization and related expenses, and P38,000.00 representing the value of the articles taken from her. Accused Roxas is likewise ordered to pay Mrs. Elvira Guirindola the amount of P250,257.90.00, representing the cost of repair of the subject vehicle.
>
> SO ORDERED.
>
> August 29, 2002, Quezon City.[31]

Roxas moved for a reconsideration of the September 5, 2002 decision of the court a quo. Likewise, noting the well-attended promulgation of the court a quo's decision, Roxas also moved for the inhibition of the Honorable Judge Demetrio Macapagal, Sr. He argued that the presence of then Justice Secretary Hernando Perez showed the court's predisposition to convict him of the offenses charged. Roxas contended that he was robbed of his right to due process because the Judge Demetrio Macapagal, Sr. had lost the cold neutrality of an impartial judge required of him in trying and resolving cases.

In an Order[32] dated October 8, 2002, the RTC denied appellant's motions for inhibition and reconsideration.

Meanwhile, appellant's co-accused Roberto Gungon y Santiago was found guilty of the same charges in a Decision[33] dated March 19, 1998. Roxas was at-large during the trial and was arrested only after the RTC rendered the judgment of conviction against Gungon. Thus, the cases, as far as they concerned Roxas, was archived until he was eventually arrested on September 11, 1995.

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The records of this case were originally elevated to this Court for automatic review. Conformably with our ruling in People v. Mateo,[34] however, the case was referred to the Court of Appeals for intermediate review.

In its Decision[35] dated January 13, 2006, the appellate court affirmed in toto the decision of the court a quo.

Thus, this appeal, raising the following arguments:

> I
>
> WHETHER OR NOT THE COURT A QUO ERRED IN RENDERING IN THE ABOVE-TITLED CASE DESPITE THE FACT THAT THE PRESIDING JUDGE OF THE COURT A QUO HAS LOST THE COLD NEUTRALITY OF AN IMPARTIAL JUDGE, THEREBY VIOLATING THE RIGHT OF THE ACCUSED-APPELLANT TO DUE PROCESS.
>
> II
>
> WHETHER OR NOT THE COURT A QUO ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE OFFENSES OF (1) KIDNAPPING AND SERIOUS ILLEGAL DETENTION WITH FRUSTRATED MURDER, (2) CARNAPPING, AND (3) THEFT.

Roxas challenged the RTC judge's neutrality as he invoked that he was deprived of his right to due process because of the "unexplained presence" of the former Secretary of the Department of Justice, Hernando Perez, in court. He contended that the RTC was already predisposed to convict him even before trial.

We are unconvinced.

The Court finds no basis for appellant's allegation that he was deprived of due process of law and that the trial conducted was far from impartial and fair. The imputation of bias and partiality is not supported by the record. The fact that the trial judge opted to believe the prosecution's evidence rather than that of the defense is not a sign of bias.[36]

Even if the RTC had allowed the presence of then Secretary Hernando Perez and the media, there is no sufficient basis to show that their presence or pervasive publicity unduly influenced the court's judgment. Before we could conclude that appellant was prejudiced by the presence of the media and Secretary Perez, he must first show substantial proof, not merely cast suspicions. There must be a showing that adverse publicity indeed influenced the court's decision.[37] We found none, in this case.

Appellant further argued that the RTC erred in finding him guilty of the crimes charged against him.

Time and again, we have ruled that the findings of the trial court on the credibility of witnesses and their testimonies are entitled to the highest respect and will not be disturbed on appeal in the absence of any clear showing that the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which would have affected the result of the case. The trial court is in a better position to decide the question of credibility, having seen and heard the witnesses themselves and observed their behavior and manner of testifying.[38]

We have painstakingly examined the records of the case, particularly the testimonies for the prosecution and the defense. However, after much examination, we find no persuasive much less compelling reason to depart from the findings of the trial court.

Agnes not only positively identified her abductors, she also graphically narrated what happened on January 12, 1994. Actual restraint of the victim's liberty was evident in the instant case from the moment Agnes was taken from Panay Avenue to a remote place in Batangas. Agnes testified, thus:

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Q - After Roberto Gungon pulled you towards the back seat, what happened?
A - Venancio Roxas took the driver seat and started the car, sir. I mean, he took the driver seat and started the car.

Q - What was Roberto Gungon doing after Venancio Roxas started the car?
A - He was holding me sir.

Q - How was he holding you?
A - One hand on my shoulder and the other one is (sic) on my leg, sir.

x x x x

Q - What did Gungon do with the bottle?
A - He still forced me but when I refused he just placed it down in the car, sir.

Q - After that what happened?
A - Roxas still drove and Gungon was still holding me, then after that we went to this gasoline station to gas up, sir.

x x x x

Q - Why were you not able to escape while you were seated and crying?
A - Because Gungon was holding me and everytime I just made a slight move, he poked the gun at me, sir.[39]

x x x x

Q - While you were praying, do you know what Gungon and Roxas were doing at that time?

x x x x

A - Yes, Roxas was driving and Gungon was still holding me and he asked Roxas if he could relieve himself, sir.

x x x x

Q - After your car stopped, what happened?
A - He told Gungon that he'll take a leak (sic) first before Gungon so Roxas alighted from the car and took a leak (sic), sir.

Q - How about Gungon, where was he?
A - He was seated beside me, he was still holding me, sir.

Q - After Roxas finished leaking (sic), do you know what did he do (sic), if any?
A- Yes, he went back to the car, he sat at the driver's seat, he faced in front of me (sic), took the gun and poked it at me and then Gungon alighted from the car and he was the next one who took a leak (sic), sir.

x x x x

Q - After Roxas alighted from the car, where were you at that time?
A - I was still sitting at the car, with Gungon, sir.

Q- What was Gungon doing at that time?
A- Yes, we were waiting for Roxas and he was holding my leg, sir.[40]

x x x x

Q - Previously, you testified that Gungon was holding you and everytime you made a slight movement he would grips (sic) you firmly and poke a gun at you. My question is - for how long had Gungon been doing

this?
A - Ever since he pulled me from the driver seat to the back seat up to the time when we were cruising along South Superhighway, sir.

Q - Up to that while you were driving?
A - Yes, sir.

Q - When you reached Batangas, in the bakery, what was Gungon's (sic) doing to you, if any?
A- He kept on holding me although from time to time and only when I made a slight move, sir.[41]

Thus, based on the foregoing testimony of Agnes, the trial court did not err in convicting appellant of the crime of kidnapping and serious illegal detention. Article 267 of the Revised Penal Code defines the crime, 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;

- If the kidnapping or detention shall have lasted more than three days.

- If it shall have been committed simulating public authority;

- 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;

- 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 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.

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).[42]

The evidence likewise reveal, undoubtedly, the commission of frustrated murder as qualified by the circumstances of treachery and evident premeditation. The medical findings show that had it not been due to the timely and proper medical attention given to the victim, the gunshot wound sustained by the victim would have been fatal.

Treachery exists when an offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and specially to ensure its execution, without risk to himself, arising from the defense which the offended party might make. As narrated by Agnes, she could not have been aware that she would be attacked by appellant. In the darkness of the night while she just finished relieving herself and still trying to get up, she was shot by appellant in the head with a gun. There was no opportunity for her to defend herself, since appellant, suddenly and without provocation, shot her as she was about to get up. The essence of treachery is the unexpected and sudden attack on the victim which renders the latter unable and unprepared to defend himself by reason of the suddenness and severity of the attack. This criterion applies whether the attack is frontal or from behind.[43]

Moreover, the requisites of evident premeditation was likewise duly established in this case, to wit: (a) the time when the accused determined to commit the crime; (b) an act manifestly indicating that the accused has clung to his determination; and (c) a sufficient lapse of time between such determination and execution to allow him to reflect upon the consequences of his act.[44]

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The prosecution's evidence particularly the testimony of Agnes demonstrated that Gungon and Roxas had indeed planned to kill her from the time they took the car. As testified to by Agnes:

> Q- You said that Roxas returned with a biscuit and a bottle of softdrink, what was done with the biscuit and bottle of softdrink, if you know?
> A - I refused to accept it, he insisted but still I refused so he just handed it to Gungon. He just told Gungon "mamaya painom mo sa kanya at pakainin mo siya," sir.
>
> Q - Why did you refuse the softdrink?
> A- Simply because when he handed it to me I saw tablets floating inside the bottle, sir.[45]
>
> x x x x
>
> Q - At about 5:00 and 6:00 in the evening of January 12, 1994 where were you at that time?
>
> x x x x
>
> A- Actually we were not really there, its (sic) we were headed towards South Superhighway. I mean I don't know the exact place but I am familiar that we were heading towards South super highway, sir.
>
> x x x x
>
> Q - When you reached the South Superhighway at that time what happened?
> A - While we were in the car Gungon got his beeper and then he told Roxas "Boss, negative Philcoa," sir.
>
> x x x x
>
> Q - While you were driving along South super highway at that time, do you know what happened inside the car between the three of you?
> A - Yes, sir. That time Gungon was still holding me and then he told Roxas "boss, dalhin na natin siya sa dati, doon na natin siya i-s."
>
> Q - After you heard that remark of Gungon, what did you do?
> A - Well, of course I was shocked and I asked them if they were going to rape me or kill me or just leave me somewhere, I do not know, sir.
>
> Q - After you uttered those words, do you know if Gungon answered?
> A - Yes, sir, he told me that don't give us ideas (sic).[46]
>
> x x x x
>
> Q - What did you do when the bottle of softdrink was being offered to you?
> A - I refused to get it, sir.
>
> Q - When you refused to drink it, do you know what did Gungon do?
> A - Yes, he got mad and furious, he held me so tight and forced me to drink it, sir.
>
> Q - Now, because he was furious and he was angry at you, what did you do?
> A - I took the softdrink, sir.
>
> Q- After you drank that softdrink, what happened?
>
> x x x x
>
> A - Yes, sir, after drinking it Roxas offered two (2) more tablets to Gungon, he told to Gungon "ipainom mo pa sa kanya itong dalawang tabletas dahil malaki siya, mahina iyong dalawa para sa kanya".[47]
>
> x x x x

Q - Do you know what time was it when you woke up?
A - I guess it was about 9:30 or 10:00 in the evening, sir.

Q - How were you able to place the time?
A - There is a watch on the dashboard of the car, sir.[48]

Thus, from the foregoing, it is evident that the commission of the killing, albeit frustrated, was formed from the moment the accused took the victim in Quezon City until she was ultimately "executed" in Batangas. The lapse of more than eight hours, that is, approximately from 1:00 p.m. to 10:00 p.m., satisfies the last requisite for the appreciation of evident premeditation as there was sufficient time for meditation and reflection before the commission of the crime yet appellant proceeded with the same.

Likewise, we agree that Roxas is also guilty of violation of the Anti-Carnapping Law. R.A. 6539, otherwise known as An Act Preventing and Penalizing Carnapping, defines carnapping as the taking, with intent to gain, of a motor vehicle belonging to another without the latter's consent, or by means of violence against or intimidation of persons, or by using force upon things." More specifically, the elements of the crime are as follows:

1. That there is an actual taking of the vehicle;

2. That the offender intends to gain from the taking of the vehicle;

3. That the vehicle belongs to a person other than the offender himself;

4. That the taking is without the consent of the owner thereof; or that the taking was committed by means of violence against or intimidation of persons, or by using force upon things.

A careful examination of the evidence presented would show that all the elements of carnapping were proven in this case. It cannot be denied that the 1993 Nissan Sentra with plate number TKR-837 was unlawfully taken from Agnes without her consent and by means of force or intimidation, considering that he and his co-accused alternately poked a gun at Agnes. After shooting her, appellant also flee with the subject vehicle which shows his intent to gain. Agnes also positively identified appellant and Gungon as the ones who took the subject vehicle from her.

Finally, we likewise agree that Roxas is only guilty of theft and not robbery as initially charged.

From the records, it appears that the jewelries and cash were taken from Agnes without the attendance of violence or intimidation upon her person. Agnes herself testified that when she regained consciousness, she already found her necklace, pair of earrings, watch and cash, to be missing.[49] While it was proven beyond reasonable doubt that appellant took Agnes' personal things, there was no evidence, however, that the taking was employed with the use of force, violation and intimidation.

PENALTIES

As to the imposable penalty, we sustain the findings of the RTC, as affirmed by the appellate court, with modification as to the penalty for the crime of kidnapping and serious illegal detention with frustrated murder and the awarding of damages.

The crime of kidnapping and serious illegal detention has been correctly complexed by the RTC 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.

In a complex crime, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period. Since the kidnapping and serious illegal detention is the more serious crime, the proper penalty

under Article 267[50] of the Revised Penal Code, as amended by R.A. 7659, should be applied in its maximum period; thus, the penalty should be death. However, in light of R.A. 9346, or the Anti-Death Penalty Law, which prohibits the imposition of the death penalty, the imposition of the penalty of reclusion perpetua instead of death is, thus, proper and ineligible for parole.

[Likewise, in accordance with current jurisprudence, we modify the award of damages, and apply People of the Philippines v. Richard O. Sarcia[51]] where we said:

> The principal consideration for the award of damages, under the ruling in People v. Salome and People v. Quiachon is the penalty provided by law or imposable for the offense because of its heineousness, not the public penalty actually imposed on the offender.
>
> x x x x
>
> It should be noted that while the new law prohibits the imposition of the death penalty, the penalty provided for by law for a heinous offense is still death and the offense is still heinous. Consequently, the civil indemnity for the victim is still Php75,000.00.
>
> People v. Quiachon also rationcinates as follows:
>
> With respect to the award of damages, the appellate court, following prevailing jurisprudence, correctly awarded the following amounts: P75,000.00 as civil indemnity which is awarded if the crime is qualified by circumstances warranting the imposition of the death penalty; P75,000.00 as moral damages because the victim is assumed to have suffered moral injuries, hence, entitling her to an award of moral damages even without proof thereof, x x x.
>
> Even if the penalty of death is not to be imposed on the appellant because of the prohibition in R.A. No. 9346, the civil indemnity of P75,000.00 is still proper because, following the rationcination in People v. Victor, the said award is not dependent on the actual imposition of the death penalty but on the fact that qualifying circumstances warranting the imposition of the death penalty attended the commission of the offense. The Court declared that the award of P75,000.00 shows "not only a reaction to the apathetic societal perception of the penal law and the financial fluctuations over time but also the expression of the displeasure of the court of the incidence of heinous crimes against chastity."
>
> The litmus test therefore, in the determination of the civil indemnity is the heinous character of the crime committed, which would have warranted the imposition of the death penalty, regardless of whether the penalty actually imposed is reduced to reclusion perpetua.[52]

WHEREFORE, the instant appeal is DENIED. The Decision of the Court of Appeals, dated January 13, 2006, in CA-G.R. CR-HC No. 00666, is AFFIRMED with MODIFICATION, insofar as to sentence appellant Venancio Roxas y Arguelles to suffer the penalty of reclusion perpetua for the crime of Kidnapping and Serious Illegal Detention with Frustrated Murder, and to declare him ineligible for parole. Appellant is, likewise, ordered to pay Agnes Guirindola P75,000.00 as civil indemnity, P75,000.00 as moral damages, and P30,000.00 as exemplary damages. Costs against the appellant.

SO ORDERED.

Corona, C.J., Carpio, Carpio Morales, Velasco, Jr., Nachura, Leonardo-De Castro, Del Castillo, Abad, Villarama, Jr., Mendoza, and Perez, JJ. , concur.
Brion, J, no part.
Bersamin, and Aranal-Sereno, JJ., on leave.

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[1] Rollo, pp. 3-44.

[2] CA rollo, pp. 63-90.

[3] Id. at 12-14.

[4] Id. at 15-16.

[5] Id at 21-23.

[6] TSN, April 17, 1996, pp. 21-23. (Direct examination of Agnes Guirindola)

[7] Id. at 24-25.

[8] Id. at 26.

[9] Id. at 26-28.

[10] Id. at 28-30.

[11] Id. at 30-31.

[12] TSN, May 27, 1996, pp. 14, 17-18. (Cross-examination of Agnes Guirindola.)

[13] TSN, April 17, 1996, pp. 32-33. (Direct examination of Agnes Guirindola.)

[14] Id. at 33-35.

[15] Id. at 35, 40-44.

[16] The pictures [Exhibits "F" and "F-1"], together with the rosary of Agnes and the key to the Nissan Sentra car, were later on recovered from the possession of Gungon when he was arrested and detained at the NBI in Manila.

[17] TSN, April 17, 1996, pp. 45-51, 58. (Direct examination of Agnes Guirindola.)

[18] Id. at 58-63.

[19] Id. at 64-67.

[20] Id. at 68-70.

[21] TSN, April 25, 1996, pp. 12-18. (Direct examination of Agnes Guirindola.)

[22] Id. at 18-21.

[23] Id. at 21-23.

[24] Id. at 24-25.

[25] Id. at 40-42.

[26] Exhibit "E."

[27] Exhibit "E-1."

[28] Exhibit "D."

[29] TSN, April 25, 1996, pp. 26-31. (Direct examination of Agnes Guirindola.)

[30] CA rollo, pp. 63-90.

[31] Id. at 89.

[32] Id. at 93.

[33] People v. Gungon, G.R. No. 119574, March 19, 1998, 257 SCRA 618.

[34] G.R. Nos. 147678-87, July 4, 2004, 433 SCRA 640.

[35] CA rollo, pp. 268-310.

[36] People v. Tabarno, 312 Phil. 542, 548 (1995).

[37] People v. Sesbreño, 372 Phil. 762, 780 (1999).

[38] People v. Andres, G.R. No. 122735, September 25, 1998, 296 SCRA 318, 331-332.

[39] TSN, April 17, 1996, pp. 31-35.

[40] Id. at 45-66.

[41] TSN, April 25, 1996, p. 11.

[42] Emphasis supplied.

[43] People of the Philippines v. Ryan Lalongisip y Delos Angeles, G.R. No. 188331, June 16, 2010.

[44] People v. Juan, 324 Phil. 770, 783 (1996).

[45] TSN, April 17, 1996, p. 32.

[46] Id. at 41-44.

[47] Id. at 61-63.

[48] Id. at 67-68.

[49] Id. at 68-69.

[50] 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 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 penalty 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.

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.

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[51] G.R. No. 169641, September 10, 2009, 599 SCRA 20.

[52] Id. at 44-45.

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