

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. JOSE CAÑETE, PASTOR ESTOROSOS, ANATALIO COCA, AND ROSMAR INTONG, DEFENDANTS AND APPELLANTS.

G.R. No. L-30491. January 21, 1972

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PER CURIAM:

This case is before Us for automatic review of a decision of the Court of First Instance of Misamis Occidental convicting defendants Jose Cañete, Pastor Estorosos, Anatalio Coca and Rosmar Intong of the crime of multiple rape of Presida Alvarado, and sentencing them to the extreme penalty, as well as to jointly and severally indemnify her in the sum of P5,000, and to pay the costs.

It appears that, on May 23, 1968, the Provincial Fiscal of Misamis Occidental filed with said court an amended information charging the aforementioned defendants, together with Tomas Alburo and Alejandro Apdujan, with the crime of multiple rape, in:

"That on or about the 15th day of February, 1968, in the Poblacion of the municipality of Calamba, province of Misamis Occidental, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conspiring and confederating together and helping one another in their common bestial purpose and one of them pretending to be a policeman to allay the fear and gain the confidence of their victim, first led one Presida Pilar Alvarado to a supposed parking place for vehicles where she could allegedly take transportation for Plaridel, but actually, took her to an isolated place of the town, and once there, by means of force and intimidation with a knife to kill her if she made an outcry, did then and there, with abuse of their superior strength, willfully, unlawfully and feloniously pin her down on the ground and then attack, assault and abuse her, one after the other, to wit: while one was committing sexual intercourse with her against her will, the five (5) co-accused held her hands, legs and mouth, until all the six (6) accused had sexual intercourse with her against her will – one of them twice – in the same manner, that is, with the assistance and cooperation of all the accused.

"Contrary to Art. 335 of the Revised Penal Code, as amended by R.A. 4111, with the aggravating circumstances of (a) abuse of superior strength, (b) night time and (c) craft."

Upon arraignment, the defendants entered a plea of not guilty. The prosecution, subsequently, began to present its evidence, but, after the introduction of the testimony of several witnesses, it moved for the dismissal of the information against defendant Alejandro Apdujan, in order to use him as a state witness. Despite the opposition of counsel for the other defendants, His Honor, the trial Judge, granted said motion. After resting its case, later, the prosecution moved to dismiss the case against defendant Tomas Alburo, which was granted, upon the ground of insufficiency of the evidence against him. Thereupon, the lower court took the evidence for the defense and then the rebuttal evidence for the prosecution. Judgment was, subsequently, rendered as above stated.

The facts, as found by the trial court and embodied in the counterstatement of facts of the prosecution, are as follows:

""* * * Presida Alvarado, a demure country lass 18 years of age, left her residence at Dipolog, Zamboanga del

Sur, by passenger bus for Plaridel, Occidental Misamis, where she was to meet her mother who was arriving from Manila' (pp. 129, 173, t.s.n., Suan; pp. 217, 218, t.s.n., Mancao). 'She alighted at the Plaridel Calamba road junction, both in Misamis Occidental, as her bus did not proceed to Plaridel but stopped at Calamba' (p. 130, t.s.n., Suan). 'She went to a nearby store' (p. 130, id.). 'It was about twilight of February 15, 1968' (p. 129, id.; pp. 86, 88, t.s.n., Mancao). 'She waited for a bus to pass by bound for Plaridel but none came' (p. 130, t.s.n., Suan). 'Sometime afterwards, Alejandro Apdujan approached her and pretending to be a policeman inquired why she was in that place' (p. 130, id.). 'Beguiled by the assurance that he was a man of the law and trustworthy, she told him that she was waiting for a ride going to Plaridel to meet her mother' (pp. 130-131, 165, id.). 'Said Apdujan told her to go with him as he would get ride for her' (p. 131, id.). 'In her innocent belief that would be the case, she went willingly with him' (p. 132, id.; p. 87, t.s.n., Mancao). 'Apduhan brought her to a place near a school where he said the bus was' (pp. 132-133, t.s.n., Suan; p. 88, t.s.n., Mancao). 'From the time they left the store they were followed by a bunch of men, keeping at a distance from them' (p. 132, t.s.n., Suan). 'She subsequently identified these men to be the accused Jose Cañete, Pastor Estorosos, Rosmar Intong, Anatalio Coca, and Tomas Alburo' (pp. 152, 153-156, t.s.n., Suan; pp. 6-8, 66, 67, 69, 108-110, 111-112, 116, t.s.n., Suan). 'Within a few minutes these accused caught up with Presida and Apdujan, and in an authoritative manner inquired what the two were doing there and likewise told them that they were policemen, but were really not policemen' (pp. 133, 165, t.s.n., Suan; pp. 90, 115-116, 116-117, t.s.n., Mancao). 'As before, she stated she was waiting for a truck bound for Plarider', (p. 134, t.s.n., Suan; p. 90, t.s.n., Mancao). 'And when they (accused) were, within reach of the girl, she was immediately grabbed and held on each arm by Rosmar Intong and Pastor Estorosos, Jose Cañete brought out a hunting knife and poked its pointed end at her side, Rosmar Intong covered her mouth and she was then forcibly laid on the ground on her back' (pp. 134-136, 137, 149, t.s.n., Suan; pp. 90-92, t.s.n., Mancao). 'Whereupon, her panties were removed, Jose Cañete removed his pants, mounted her, inserted his penis into her vagina, making an up and down movement, all the time held by her arm by Rosmar Intong, including her mouth, the other hand held by Pastor Estorosos, her legs held by Anatalio Coca' (pp. 136, 142, 158-159, t.s.n., Suan; pp. 93-94, t.s.n., Mancao). 'She struggled to free herself, tried to make an outcry for help but her hands were pinned against her sides and her voice muffled by the hand covering her mouth' (pp. 136-137, t.s.n., Suan). 'After Jose Cañete was finished Anatalio Coca had his turn' (p. 137, t.s.n., Suan). 'Accused Jose Cañete took the place of Coca in holding the girl together with Pastor Estorosos, Rosmar Intong to stifle resistance and prevent succor for her, after which Alejandro Apdujan had his turn, followed by Rosmar Intong and Pastor Estorosos, and again by Anatalio Coca for the second time' (pp. 138-139, 146, 160-162, t.s.n., Suan; pp. 93-94, 96-99, t.s.n., Mancao). 'All the time Tomas Alburo was standing by' (pp. 149-150, t.s.n., suan; p. 102, t.s.n., Mancao). 'After ravishing her by giving vent to their lust the accused all left' (p. 103, t.s.n., Suan). 'By that time Presida was utterly exhausted and dazed' (pp. 103, 105, t.s.n., id.). 'She was not held all the time during the coition as she was so weak and helpless that she could not do anything to repel the assault on her person' (pp. 147, 163, t.s.n., Suan; pp. 96, 101, t.s.n., Mancao). 'The moon was bright that night; and she recognized her attackers' (pp. 156-157, t.s.n., Suan; p. 101, t.s.n., Mancao). 'She stood up and walked, without any sense of direction until she came to a house which she later came to know as belonging to one Anghe and requested that she sleep there' (pp. 103, 105, t.s.n., Suan). 'The old woman Anghe noticing her disheveled condition with dirty dress inquired what befell her and she did tell her' (p. 104, t.s.n., id.). 'She was offered food by the old woman but she could not eat as what happened to her was preying on her mind' (p. 104, id.). 'Neither could she sleep that night' (p. 105, id.). 'The following day the house owner reported to the police and pretty soon, Mayor Lorenzo P. de Guzman of Calamba, Misamis Occidental came to where she was and she told Mayor de Guzman that she was raped by 5 men who took turns in sexually assaulting her' (pp. 105-106, t.s.n., Suan; pp. 1-2, testimony of Mayor Lorenzo P. de Guzman). 'She told the Mayor that she could identify them and gave the identities of her assailants by describing them' (pp. 106-107, t.s.n., suan; pp. 3-4, testimony of Mayor de Guzman). Her individual description of her assailants caused Mayor de Guzman to immediately apprehend the accused Jose Cañete, Pastor Estorosos, Anatalio Coca, Alejandro Apdujan, and Tomas Alburo, except Rosmar Intong who then left Calamba for Zamboanga del Sur to escape arrest, as the Mayor knew, as he so testified, whom these descriptions fit' (pp. 65-74, 72-83, 108, t.s.n., Suan; pp. 3-4, 5-6, 9-11, testimony of Atty. de Guzman). 'She was then brought to the town hall by a

policeman and at about 8:30 A.M., February 16, 1968, from among a group of civilians, she positively identified and pointed to accused Anatalio Coca, Jose Cañete, Pastor Estorosos, and Alejandro Apdujan as those who ravished her the night before' (pp. 66-69, 152-156, t.s.n., Suan; pp. 108-112, 116, t.s.n., Mancao; pp. 6-8, testimony of Mayor de Guzman). 'Rosmar Intong was not then present as he went into hiding in Cabasalan, Zamboanga del Sur' (p. 152, t.s.n., Suan; p. 69, t.s.n., Mancao). 'She identified all the accused in court and came to know their individual names later on' (p. 155, t.s.n., Suan). 'Among those she told about her raping were the Chief of Police Bolotaolo of Calamba and her mother, Pilar Alvarado' (p. 113, t.s.n., Suan; p. 220, t.s.n., Mancao). 'She was then brought to Oroquieta for medical examination in the provincial hospital' (p. 148, t.s.n., Suan; p. 97, t.s.n., Mancao). 'Later on she executed her affidavit found in the record of this case' (p. 114, t.s.n., Suan).

""Presida's version finds corroboration in the testimony of discharged accused – state witness Alejandro Apdujan who stated that all the accused, including himself, except Tomas Alburo, took turns in the carnal relation with Presida. He told the circumstance of his pretension to being a policeman, bringing the girl near the school building, followed by his co-accused and their seizing the girl whereupon Jose Cañete poked her side with a hunting knife, held on the legs by Anatalio Coca, on either arms by Rosmar Intong who also covered her mouth and the other arm by Pastor Estorosos, to prevent struggle or outcry forcing her to lay on the ground then assaulting her one after the other.' (pp. 21-31, t.s.n., Mancao). 'Her affidavit, too, gives truth to her version' (p. 113, t.s.n., Suan). 'The testimonies of Mayor Lorenzo de Guzman and Police Chief Bolotaolo further confirms the version of Presida to her pin-pointing Jose Cafiete, Alejandro Apdujan, Pastor Estorosos, Anatalio Coca and Tomas Alburo in the town hall as her assailants' (pp. 66-69, t.s.n., Suan; pp. 6-8, testimony of Mayor de Guzman, t.s.n., Suan; pp. 198, 200-201, t.s.n., Mancao). 'Furthermore, said accused orally confessed that they perpetrated the crime to Mayor de Guzman and his Chief of Police Bolotaolo' (pp. 80, 82, 107, t.s.n., Suan; pp. 8-11, testimony of Mayor de Guzman, t.s.n., Suan; p. 195, t.s.n., Mancao).

""From the medical evidence Exhibit 'A' presented there is no doubt that Presida Alvarado had sexual intercourse' (pp. 34, 40, t.s.n., Suan). 'The proof is indubitable, i.e., the presence of live and dead sperm cells inside the vaginal canal, and the agency by which these sperm cells were introduced is none other than the male penis thru coition' (Exh. 'A'; pp. 5-6, t.s.n., id.). 'The life time of these sperm cells is up to 48 hours' (p. 15, id.). 'Dr. Conol testified that she was examined in the Misamis Occidental Provincial Hospital at past 3:00 P.M. of February 16, 1968' (pp. 9, 16, id.). 'Presida Alvarado alleges that the intercourse took place at about 7:30 or thereabouts at night of February 15, 1968. The examination of this girl was made by Dr. Conol within fifteen (15) hours from the time of the intercourse. The presence of the sperm cells, one half alive and one half dead, jibes with the medical testimony of Dr. Conol that the deposit of the sperm cells were made well within the 48 hours lifetime period of sperm cells. And the profusion of the sperms attest to the recentness of its introduction' (pp. 14, 20, 34, t.s.n., Suan).

""The victim Presida at the time of the commission of the rape was having her monthly menstruation and the physician who physically examined her found it so' (pp. 9, 18, t.s.n., Suan). 'Despite the blood from her menstrual flow, there were still found live and dead sperm cells in her vaginal vault, which were found after a laboratory examination under the microscope' (pp. 14, 19, t.s.n., id.).

""The evidence disclose that the introitus (vagina) of Presida admits two finger very tightly and reacted to pain. Her vagina does not show any visible sign of rupture or laceration. The expert witness explains that she either had previous sexual intercourse or her vagina is elastic.' (pp. 9-10, 14, 20, 21, 32-33, 35, 37-39, t.s.n., Suan)

""The doctor also observed the bedraggled, unkempt appearance of Presida, with dirty clothes, when brought to the hospital for physical examination.' (p. 25, t.s.n., id.).

* * * * *

""The same witness found physical injuries on her person. Superficial abrasions, in left and right knees and

slight swelling on her right neck, which might have been caused when she was forced to the ground in the act of intercourse and the swelling by a steady and firm pressure on her neck to hold her still and submit to sexual intercourse' (pp. 9, 10, 12, 13, t.s.n., id.).

""Antecedent circumstance relative to her personal appearance before Dr. Conol at the hospital also show that she told the doctor that she was raped by more than one person by answering 'marami ho' upon the physician's query as to what happened to her and her reply. She further said she did not personally know her ravishers but could recognize them by features. The doctor likewise observed that her memory was bad and that she could not express herself clearly which the expert witness attributes to have been the psychological shock as an aftermath effect of her rape. Explaining further, Dr. Conol said that this may be due to intense pain or abhorrence which may last for a few days or last forever. Even in the absence of fear or worry, there could still be a psychological shock.' (pp. 26-30, 39, t.s.n., id.)."

Defendant Jose Cañete denied having performed the acts imputed to him by the prosecution, whereas his co-defendants Pastor Estorosos, Rosmar Intong and Anatalio Coca testified that, on February 15, 1968, between 6:30 and 8:30 p.m., each one of them, independently of the others, had – seemingly, in the order given – upon solicitation of Alejandro Apdujan, who offered to them, separately from one another, the services of a prostitute, accepted the offer and then proceeded to an uninhabited store, in front of the Sacred Heart School in Calamba, Misamis Occidental, where Presida Alvarado was; that, after paying P5 to Alejandro Apdujan, each (Estorosos, Intong and Coca) had sexual intercourse with her on the floor of said store and in the presence of Alejandro Apdujan and his brother Rodolfo Apdujan; and that Presida Alvarado had willingly consented to said act.

The lower court, however, gave no credence to this version of the defense, and, We think, correctly, for it is uncorroborated and contradicted, apart from being inherently incredible. Indeed, Rodolfo Apdujan testified, in rebuttal, that he had not been at the scene of the occurrence or seen either the defendants or Presida Alvarado in the evening of February 15, 1968, and that he did not know her until she went to the town hall of Calamba, the next morning. Besides, if Cañete had not even seen the complainant said evening, and she was a harlot, who consented to having coitus with defendants Intong, Coca and Estorosos, after they had paid the price agreed upon therefor, there was absolutely no reason – and none has been suggested by the defense – why she would impute to any of them the commission of a crime so grave and heinous as that with which they are charged.

Again, unlike the uncorroborated and contradicted testimony of the defendants, that of the complainant was corroborated, not only by the testimony of disinterested witnesses, whose veracity can hardly be assailed, but, also, by several uncontested and incontestible facts that leave no room for doubt about the truth of the version of the prosecution. To be sure, complainant's testimony was confirmed by her disheveled condition and dirty dress when, soon after the occurrence, she entered the house of an old woman nicknamed Anghe, not far away from the scene of the crime, whom she (Presida) informed of the outrage committed upon her person; by the fact that she could neither eat the food offered to her by Anghe nor sleep that night; that early the next morning, Anghe reported the occurrence to the police; that pretty soon, the mayor of Calamba, Lorenzo de Guzman, came and was informed by Presida that she had been raped the night before by five men, who took turns and helped each other in assaulting her; that she gave the mayor a physical description of her rapists; that such description enabled the mayor to cause defendants Jose Cañete, Pastor Estorosos, Anatalio Coca and Tomas Alburo to be apprehended that same morning; that defendant Rosmar Intong was not among those then arrested, he having, earlier that morning, left Calamba for Zamboanga del Sur, where he was later apprehended; that when she was brought to the town hall later that morning, complainant identified, from a group of persons there lined up, appellants Cañete, Estorosos, Coca and Apdujan, as being four (4) of the five (5) men who had ravished her the night before.

Aside from corroborating the foregoing, Mayor De Guzman and Calamba Police Chief Mederico Bolotaolo stated that, after being so identified by the complainant, defendants Cañete, Apdujan, Estorosos and Coca verbally

admitted their guilt to them – the mayor and the chief of police – although Estorosos was the only one who executed an affidavit, Exhibit B-1, to this effect.

Complainant was further corroborated by the fact that, upon examination by Dr. Emerico Conol of the Misamis Occidental Provincial Hospital, on February 16, 1968, at about 3:45 p.m., he found, inter alia, abrasions on her left and right knees and a swelling in her neck. The defense maintains that her injuries would have been more serious if the theory of the prosecution were true, but this argument is devoid of merit. Obviously, she would have had no such injuries had she willingly had coition with the defendants in consideration of the price allegedly paid by them. Besides, having been completely subdued and pinned to the ground by several men, who held her extremities and covered her mouth, apart from the person on top of her, she was absolutely impotent and unable to offer a strong resistance that would leave graver external marks on her person. In fact, the next afternoon, Dr. Emerico Conol noticed her bedraggled and unkempt appearance, that her face was blank; that she could not express herself clearly; that she could not remember how many, specifically, had ravished her, but said that they were many, and that he, accordingly, opined that her condition bespoke a psychological shock, which may be the effect of rape.

Appellants stress the absence of any laceration in complainant's vagina, at the time of her medical examination, in an effort to show that her testimony is incredible. Dr. Conol explained, however, that complainant had either had previous sexual intercourse or an elastic vagina, although he seemed inclined to take the latter alternative. Indeed, 3 Wharton and Stille Medical Jurisprudence[1] cites "the case of a girl eighteen years of age, whose vagina was notably enlarged by coition, although the hymen was uninjured. This membrane was crescentic, thick, and fleshy, but as elastic as india rubber." In the case of Presida Alvarado, her vagina admitted two fingers, but "very tightly" and with some pain. These factors clearly refute the theory that she was a harlot. What is more, it appears that complainant belongs to a family of more than modest means. Her parents were engaged in the fishing business, "with an investment of three (3) fishing boats, valued at P15,000 each, and a net annual income of P30,000 a year, with a bank account of P20,000.00 more or less," in the language of His Honor, the trial Judge. At any rate, even a prostitute may be ravished.

It is next urged that the lower court erred in discharging Alejandro Apdujan so that he could be a state witness, and in giving weight to his testimony; but it is conceded that, even if an error had been committed in so discharging Apdujan from the prosecution, his testimony is not thereby rendered inadmissible in evidence.

"In the discharge of a co-defendant, the court may reasonably be expected to err. Where such error is committed, it cannot, as a general rule, be cured any more than any other error can be cured which results from an acquittal of a guilty defendant in a criminal action. A trial judge cannot be expected or required to inform himself with absolute certainty at the very outset of the trial as to everything which may be developed in the course of the trial in regard to the guilty participation of the accused in the commission of the crime charged in the complaint. If that were practicable or possible, there would be little need for the formality of a trial. In coming to his conclusions as to the 'necessity for the testimony of the accused whose discharge is requested;' as to the 'availability or non-availability of other direct or corroborative evidence;' as to which of the accused is the 'most guilty' one; and the like, the judge must rely in a large part upon the suggestions and the information furnished by the prosecuting officer. * * *." [2]

The defense maintains that the credibility and weight of Apdujan's testimony have been seriously impaired by the fact that it is not in accord with the sworn statement (Exh. 1) made by him on February 17, 1968, and differs from complainant's testimony in some respects. The differences in their testimonies refer, however, to minor details which are indicative of their veracity, for persons who witness the same occurrence seldom – if ever – have indetical impressions about the particulars thereof, aside from the fact that a girl, like complainant herein, who was abused by five men and, hence, in a state of psychological shock, can hardly be expected to have a clear

notion of the circumstances surrounding the occurrence. Then, too, the defense says that she referred to the scene of the crime as being near or at the back of a school building, which is, allegedly, contradicted by the testimony of Alejandro Apdujan who stated that it was near a cemetery. What complainant affirmed, however, was that the attack upon her took place while Alejandro Apdujan and she were going in "the direction" of the schoolhouse. Besides, the same was near the cemetery.

Upon the other hand, the testimony of Alejandro Apdujan was substantially corroborated by the complainant; by the fact that, in the morning of February 16, 1968, she identified the defendants – except Rosmar Intong, who was not present – in the town hall of Calamba; by the admission of guilt made by him and his co-defendants Cañete, Coca and Estorosos, soon thereafter, in the presence of the Mayor and the chief of police of Calamba; and by the sworn confession of Pastor Estorosos, Exhibit B-1, dated February 17, 1968, admitting his guilt and implicating his co-defendants.

Apdujan's affidavit, Exhibit 1, dated February 17, 1968, indicating that he was not one of the rapists, does not necessarily render his testimony in court unworthy of credence. Having been made long before he was discharged from the information, it was only natural for Alejandro Apdujan to exculpate himself in said affidavit.

"The true doctrine which should govern the testimony of accomplices, or what may be variously termed principals, confederates, or conspirators, is not in doubt. The evidence of accomplices is admissible and competent. Yet such testimony comes from a 'polluted source.' Consequently, it is scrutinized with care. It is properly subject to grave suspicion. If not corroborated, credibility is affected. Even then, however, the defendant may be convicted upon the unsupported evidence of an accomplice. If corroborated absolutely or even to such an extent as is indicative of trustworthiness, the testimony of the accomplice is sufficient to warrant a conviction. This is true even if the accomplice has made previous statements inconsistent with his testimony at the trial and such inconsistencies are satisfactorily explained." [3]

The fact that Apdujan was not included as defendant in the first information filed with the court of first instance, on April 2, 1968, is pointed out by the defense as a circumstance affecting his credibility or the weight of his testimony. We find no merit in this pretense. His non-inclusion in the original information was due merely to the fact that the case against him was then still pending preliminary investigation in the Municipal Court of Calamba, Misamis Occidental, and that it was only after Apdujan had waived the second stage of said preliminary investigation that the record of said case was forwarded to the court of first instance. Upon receipt of said record, or on May 23, 1968, the provincial fiscal moved to dismiss the separate criminal case against Apdujan and consolidated it with the case against Cañete, Coca, Estorosos, Alburo and Intong, by filing an amended information against the six (6) of them.

The defense maintains, also, that the lower court erred in considering the confession of Estorosos, the same having allegedly been secured through fraud, inasmuch as said defendant testified that "neither the chief of police" nor the municipal judge of Calamba had read it to him before he signed thereon. It is obvious, however, that his uncorroborated testimony cannot prevail over that of the municipal mayor, the chief of police and the municipal judge of Calamba, who testified to the contrary. What is more, Mayor De Guzman and Chief of Police Bolotaolo testified that, as early as February 16, 1968, shortly after Estorosos was identified by complainant herein, he had admitted to said mayor and the chief of police his guilt. Furthermore, Judge Isabelo Villanueva affirmed that, after reading the contents of Exhibit B-1 to Estorosos and asking him whether the contents thereof are true, Estorosos answered in affirmative and signed the statement.

Upon a careful review of the record, We have no doubt about the guilt of appellants herein and the existence a conspiracy between them, as evinced by their unity of action and purpose. The crime charged having been committed, inter alia, with the use of a deadly weapon (hunting knife), the legal provision applicable is Article

335 of the Revised Penal Code, as amended by Republic Acts Nos. 2632 and 4111, which prescribes the penalty of life imprisonment to death. Considering that there was abuse of superior strength and ignominy, resulting from the direct participation of five (5) men in the commission of the offense and its perpetration in the presence of each other,[4] said penalty should be meted out in its maximum period, which is death. And since each one of the defendants had, not only conspired with each other and had carnal knowledge of the complainant, but, also, physically and materially assisted the others in satisfying their concupiscence, each is guilty of the rape committed by him and of that perpetrated by the other defendants.[5]

Each defendant should, accordingly, be sentenced five (5) times to death and his civil liability for each offense should be increased from P5,000 to P12,000,[6] and thus modified, the decision appealed from is hereby affirmed in all other respects, with costs against defendants Jose Cañete, Pastor Estorosos, Anatolio Coca and Rosmar Intong. It so ordered.

Concepcion, C.J., Reyes, J.B.L, Makalintal, Zaldivar, Castro, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

[1] Fifth ed., p. 132, Note 5.

[2] 4 Moran, Comments on the Rules of Court, 1970 Ed., p. 324, citing: U.S. vs. De Guzman, 30 Phil. 416, and People vs. Velasco, 42 Phil. 75.

[3] U. S. vs. Remigio, 37 Phil. 599, 610-611. See also, People vs. Gongora, L-14030-31, July 31, 1963.

[4] U.S. vs. Banagale, 24, Phil. 69; U.S. vs. Camilo, 36 Phil. 757; U.S. vs. Baul, 39 Phil. 846; U.S. vs. Tandoc, 40 Phil. 954; People vs. Caroz, 68 Phil. 521; People vs. Velo, 80 Phil. 438; People vs. Macaya, 85 Phil. 540; People vs. Glore, 87 Phil. 739.

[5] People vs. Jose, L-28232, Feb. 6, 1971. See also: People vs. Soriano, L-29057, Oct. 30, 1970; U.S. vs. Candelaria, 2 Phil. 104; U.S. vs. Asilo, 4 Phil. 175; U.S. vs. Casanas, 5 Phil. 377; U.S. vs. Perez, 13 Phil. 287; U.S. vs. Cueva, 23 Phil. 553; U.S. vs. Javier and Caguicla, 31 Phil. 235; U.S. vs. Valdez, 40 Phil. 876; People vs. Castillo, 76 Phil. 839; People vs. Villa, 81 Phil. 193; People vs. Perez, Kid Perez, 83 Phil. 314; People vs. Toledo, 83 Phil. 777; People vs. Margen, 85 Phil. 839; People vs. Mostoles, 85 Phil. 883; People vs. Alfaro, 91 Phil. 404.

[6] People vs. Pantoja, L-18793, Oct. 11, 1968; People vs. Sangaran, L-21757, Nov. 26, 1968; People vs. Gutierrez, L-25372, Nov. 29, 1968; People vs. Buenbrazo, L-27852, Nov. 29, 1968; People vs. Bakang, L-20908, Jan. 31, 1969; People vs. Labutin, L-23513, Jan. 31, 1969; People vs. Acabado, L-26104, Jan. 31, 1969; People vs. Vacal, L-20913, Feb. 27, 1969; People vs. Gonzalez, L-23303-04, May 20, 1969; People vs. Tapeo, L-26491, May 20, 1969; People vs. Mabaga, L-26337, July 25, 1969; People vs. Pagaduan, L-26948, Aug. 25, 1969; People vs. Agdeppa, L-17489, Dec. 24, 1969; People vs. Empeno, L-27610, May 29, 1970; People vs. Antonio, L-25845, Aug. 25, 1970; People vs. Pan Provo, L-28347, Jan. 8, 1971; People vs. Esmael, L-28533, Feb. 24, 1971; People vs. Mercado, L-30298, Mar. 30, 1971.

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