

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ERNESTO G. CORPUZ @ BEN, ACCUSED-APPELLANT.

G.R. No. 101005. May 31, 1993

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

On 21 June 1989, fifteen-year old Mercy Amor Magallanes of Dagupan City, assisted by her mother Flora Magallanes, filed with Branch 43 of the Regional Trial Court of Dagupan City a criminal complaint charging the accused-appellant with the complex crime of Forcible Abduction with Rape allegedly committed in this wise:

"That on or about the 19th day of June, 1989, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, ERNESTO G. CORPUZ @ Ben, with lewd design, did then and there, wilfully, unlawfully and criminally, abduct one MERCY AMOR MAGALLANES by forcibly loading her in a motorized tricycle at gun point and under continuous threats and bringing her to an isolated and dim place at San Miguel Calasiao, Pangasinan where accused have (sic) carnal knowledge of said MERCY AMOR MAGALLANES, against her will and consent, to the damage and prejudice of the latter.

Contrary to Art. 342 in relation to Art. 355 of the Revised Penal Code."[1]

The case was docketed as Criminal Case No. D-9395.

Trial on the merits ensued after the accused-appellant had pleaded not guilty during his arraignment on 16 August 1989.[2] The witnesses presented by the prosecution were the offended party, her mother, Flora Magallanes, Cpl. Anacleto Andaya, Jose Mejia and Dr. Rico Reyes. The defense presented Herminio Abungan, Virgilio Loresco and the accused-appellant. On 21 June 1991, the trial court promulgated its decision[3] finding the accused-appellant guilty as charged. The dispositive portion of the decision reads:

"WHEREFORE, the Court finds the accused Ernesto G. Corpuz @ Ben GUILTY beyond reasonable doubt of the crime of Forcible Abduction with Rape defined and penalized under Article 342 in relation to Article 335 of the Revised Penal Code, and he is hereby sentenced to suffer the penalty of Reclusion Perpetua and to pay Mercy Amor Magallanes civil indemnity in the amount of FIFTY THOUSAND (P50, 000.00) PESOS.

SO ORDERED."[4]

The trial court summarized the conflicting versions of the prosecution and the defense as follows:

"The prosecution, based mainly on the testimonies of the complainant, Mercy Amor Magallanes, and her mother, Flora Magallanes put forward the following version:

‘On 19 June 1989, at about 10:00 o'clock in the evening, while walking along A.B. Fernandez Avenue on her way home from the house of her friend, Mercy Amor Magallanes was forcibly taken at gun point by accused Ernesto Corpuz with the use of a motorized tricycle. Afraid that accused might kill her, the complainant boarded the

tricycle and was brought by the accused to a secluded place in San Miguel, Calasiao, Pangasinan. There, the accused started kissing her, totally undressed her and with continuous threats, ordered her to sit down with her legs spread on the motorcycle's seat, and then and there succeeded in unleashing his bestial lust in sexually abusing his victim in that position. Having satisfied his lust, accused allowed the complainant to put on her dress and thereafter brought her back to Dagupan City and after giving her P10.00, accused ordered her to go home. She refused to divulge the matter to her parents because her ravisher threatened to kill her if she will do so, until two days later or on 21 June 1989, when her mother learned of such unfortunate incident through a neighbor.'

The prosecution, to further bolster its claim presented three (3) other witnesses: Jose Mejia, the Barangay Captain of Pantal District, Dagupan City; Cpl. Anacleto Andaya, a member of Dagupan City Police Station and the assigned desk officer and Dr. Rico Reyes, the examining physician, whose testimonies consist mainly:

'That on 21 June 1989, Mercy Amor Magallanes together with her parents reported the incident to the Barangay Captain who immediately summoned Ernesto Corpuz, the alleged rapist. Said accused while admitting that he had sexual intercourse with the complainant, he denied that the same was without her consent as she voluntarily went with him to Calasiao, Pangasinan.

On same date, the complainants now with the Barangay Captain proceeded to the Police Station where they had their complaint recorded in the Police Blotter. Thereafter, the complainant was brought to the Gov. Teofilo Sison Provincial Hospital for examination, for which a Medico-Legal Certificate was issued by the examining physician.'

For its part, the defense presented only one (1) witness (sic), accused Ernesto Corpuz. The version posited by the defense is that:

'At about five o'clock in the afternoon of 19 June 1989, complainant Mercy Amor Magallanes voluntarily rode with the accused in his tricycle, taking the back seat, and went with him to all the places where he brought his passengers.

Came half past eight in the evening, accused still with the complainant at his back seat brought a passenger to Calasiao, Pangasinan, who promised to pay a fare of P10.00. After said passenger alighted, the two proceeded to Barangay Balani, also in Calasiao, where accused made his proposal to complainant to have sex with him. The complainant voluntarily accepted such proposal and with full consent had sexual intercourse with him. Thereafter, they both went back to Dagupan City where complainant stayed with the accused in taking other passengers until 9 o'clock of the same evening when she decided to go home after having received P50.00 from the accused. Defense further advanced the theory that complainant was accused's paramour on account of his giving money to her for at least ten times from the month of April to June 1989.'"[5]

The trial court gave its imprimatur to the prosecution's version because (a) it is "hard to believe" that the offended party, as claimed by the accused-appellant, voluntarily went with him in the evening of 19 June 1989 as "[t]here is no iota of proof that accused and complainant were having some kind of special relationship prior to the incident"; his claim that he had amorous relations with her is not supported by any evidence; (b) his claim that she had been receiving money from him on several occasions "is intriguing, if not inherently improbable"; (c) the victim "openly declared that she was raped" and jurisprudence is settled that "when a woman testifies that she has been raped, she says in effect all that is necessary to show that rape was committed, especially when her testimony is clear and free from contradiction and her sincerity and candor, free from suspicion"; (d) besides, "a young girl like the offended party herein would not expose herself publicly airing acts repugnant to modesty and her honor unless she is urged by the force of sincerity and by the honest desire to obtain redress for her grievance"; and (e) the offended party's failure to shout for help is not proof of the absence of resistance because the accused-appellant

"threatened to kill her if she should shout or do anything against his wishes."[6]

On 21 June 1991, the accused-appellant filed his Notice of Appeal[7] which the trial court approved on 15 July 1991.[8] We accepted the appeal on 30 September 1991.[9]

In his Appellant's Brief,[10] the accused-appellant maintains that the trial court erred:

"I

X X X IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME OF FORCIBLE ABDUCTION WITH RAPE ANCHORING ITS VERDICT OF GUILT ON THE DUBIOUS CONCLUSION THAT THE COITUS WAS COMMITTED THROUGH INTIMIDATION AND WITHOUT THE CONSENT OF THE COMPLAINANT.

II

X X X IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED."[11]

Both errors are jointly discussed by the accused-appellant who advances the following arguments in support thereof:

(a) "[T]he theory of the prosecution is so improbable to be worthy of credence and belief"; it is "much more incredible than that of the defense." The trial court "totally disregarded the evidence of the accused merely for (sic) the perception that his evidence is incredible." It "did not bother to consider the circumstances tending to establish that there was no intimidation whatsoever and that the complainant consented to the sexual congress of (sic) the accused."[12]

(b) There is no basis to the trial court's conclusion that the offended party was forcibly taken at gun point by the accused in a motorized tricycle because although the said offended party testified that the accused told her that "you go with me or else I will shoot you,"[13] the accused-appellant was not then holding a gun but only "the handle of the motorcycle." [14]

(c) On direct examination, the offended party declared that she was on her way home "from the house of her barkada" when she was forcibly taken by the accused-appellant yet, on cross-examination, "she testified that she was roaming Dagupan City to look for her father at Pantranco station." [15]

(d) During the sexual congress, "it can be inferred that she actually consented to the desire of the accused. There was no indication whatsoever that complainant manifestly resisted the rape nor did she bother to flee or shout for help. On the contrary complainant [was] tickled when she was being kissed and embraced by the accused. Under these circumstances it would be unnatural for a woman to tickle (sic) considering that what is happening to her is a traumatic experience." [16]

(e) The conduct of the offended party after the incident is "contrary to common experience and observation"; anger and hatred are what a rape victim should feel; in the case of the offended party, she was dropped off at Arellano Bani where she was given P10.00 by the accused-appellant, then she went home and slept and on the following morning she proceeded with her normal chores. [17]

He then concludes that his guilt was not proved beyond reasonable doubt and that the trial court, instead of applying the presumption of innocence in his favor, presumed him guilty. He prays that We reverse the assailed decision and acquit him of the crime charged.

In the Brief for the Appellee,[18] the People maintains otherwise and insists that the prosecution was able to establish all the elements of the complex crime of forcible abduction[19] with rape[20] and that the trial court did not err in giving weight and credence to the testimony of the offended party which it found to be categorical and straightforward. It stresses that it would be highly unusual and contrary to human nature for her to impute the commission of a heinous crime to another person if it were not true. As to the element of force, the People maintains that it need not be irresistible; so long as it brings the desired result, all considerations of whether or not it was irresistible is beside the point. What is essential is that the act was accomplished against the will of the offended party and despite her resistance.[21]

The People further contends that:

"In any case, as a mentally retarded girl, complainant was not only 'deprived of reason or otherwise unconscious' but also had the mentality and intelligence of a girl 'under twelve years of age.' The deprivation of reason contemplated by law does not need to be complete. Mental abnormality or deficiency is enough (People vs. Nguyen, G.R. No. 93433, August 5, 1991)."[22]

Finally, the People stresses that the issue which confronted the trial court was one of credibility of witnesses since the "version proffered by the accused-appellant was but a mere denial which partakes the nature of an alibi,"[23] hence, its findings on credibility deserve the highest respect because it was in the best position to see the witnesses, hear them testify and observe their demeanor on the witness stand.[24]

The issue on the mental state of the offended party raised by the People deserves attention for if, indeed, she were "a mentally retarded girl" and had "the mentality and intelligence of a girl 'under twelve years of age,'" then, in the light of the accused-appellant's admission that he had carnal knowledge with her, the affirmance of the conviction would be inevitable. If sexual intercourse with a woman under twelve (12) years of age is rape under the third circumstance of Article 335 of the Revised Penal Code, then, it should follow that carnal knowledge with a woman above twelve (12) years of age whose mental capacity is that of a child below twelve (12) years of age constitutes rape.[25]

In its challenged decision, the trial court is silent regarding the alleged mental retardation of the offended party -- a fourth grader who was, however, an out-of-school youth at the time of the incident. If she were, the trial court would have immediately seized that fact and decided the case against the accused-appellant solely on that ground. We have carefully examined the original records of this case and the transcripts of the stenographic notes of the testimonies of the witnesses and, except for the following manifestation, reservation of objection and statement of the court before the offended party, to wit:

"PROSECUTOR MANAOIS:

We have no other witness inside the courtroom, your Honor.

Before the witness will testify, your Honor, may we make of record that the witness is retarded, your Honor.

ATTY. MORALES:

May we also manifest, your Honor that she be asked few questions if she could answer intelligently then we could object, your Honor.

COURT:

She is mentally retarded."[26]

have found nothing else to show that, indeed, the offended party is mentally retarded. On the contrary, the

foregoing manifestations and statement of the court were followed by nine (9) pages, typewritten in single-space, of direct examination questions propounded to and intelligently answered by the offended party,[27] wherein she narrated the sordid details of her forcible abduction and rape. She also withstood the grueling cross-examination conducted some three (3) weeks later.[28] No evidence was adduced to prove the victim's mental capacity. The trial court gave full faith to her testimony and resolved the culpability of the accused-appellant on the basis thereof. The contention, then, of the People that she is mentally retarded is not supported by the evidence.

And now to the assignment of errors. It is obvious that at the bottom thereof is the factual findings of the trial court which, in turn, involve the issue of credibility of witnesses. It is axiomatic that appellate courts will generally not disturb the factual findings of the trial court since the latter is in a better position to weigh conflicting testimonies, having heard the witnesses themselves and observed their deportment and manner of testifying, unless it is found that the trial court has plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case.[29] In the instant case, the defense points to Us, as earlier adverted to, certain facts or circumstances which it feels the trial court failed to consider and which, if considered, could have altered the result of the case or entitled him to an acquittal.

Guided by the basic principles in the review of rape cases, to wit: (1) an accusation for rape can be made with facility, (2) in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution, and (3) the evidence for the prosecution must stand or fall on its merits and cannot be allowed to draw strength from the weakness of the evidence for the defense;[30] We have painstakingly studied the evidence and, except for the assailed finding of the trial court that the offended party was abducted "at gun point," found no cogent reason to depart from the above rule on the conclusiveness of the trial court's determination on the issue of credibility of witnesses and its findings of fact. The above error of the trial court does not affect the result, for although the offended party did not, as correctly pointed out by the accused-appellant, testify that she was abducted "at gun point," she nevertheless declared on direct examination that the accused forcibly took her by threatening to kill her if she did not go with him, thus:

"A On my way home, Ben Corpuz forcibly took me, ma'm.[31]

x x x

A The accused told me to go with him or else he will kill me ma'm."[32]

On cross-examination, the offended party related how the accused threatened to kill her:

"Q What did he tell you when he stopped before you?

A He told me the following words and I quote, 'You go with me or else I will shoot you.'

Q He told you that (sic) words when he was on top of your (sic) tricycle?

A Yes, sir.

Q He told you this (sic) words when he was still holding the handle of the motorcycle?

A Yes, sir.

Q And because of those words that he will kill you, you rode on the tricycle is that correct?

A Yes, sir.

Q And then you proceeded to Calasiao?

A Yes, sir."[33]

It is, thus, clear that she was threatened with death if she would not go with him. She did not, therefore, go with him voluntarily, but was coerced to do so. To the offended party, or to any ordinary girl of her age and educational attainment, the threat of death by being shot at was enough to produce a well-founded fear that if she did not go with the accused-appellant as bidden, she would, indeed, be killed. That there was no evidence of the firearm with which he threatened to shoot her is entirely irrelevant for under the circumstances, she was not expected to verify the truth or falsity of the threat before she could react one way or the other. To require that she should is to exact an unreasonable demand on victims of intimidation and set a specific rule, with mathematical precision, for the determination of the sufficiency of the threat or intimidation needed to deprive one of his will or freedom. Intimidation must be viewed in the light of the victim's perception and judgment at the time of the commission of the crime and not by any hard and fast rule; it is enough that it produces the fear that if the victim does not yield to the demand of the accused, the latter will carry out his threat.[34]

The alleged inconsistency in the offended party's testimony as to where she was and what she was doing at the time she was forcibly taken is de minimis. Whether she was on her way home, as she had testified in her direct examination, or roaming around in search of her father does not affect the substance of her testimony that she was forcibly taken by the accused-appellant. Settled is the rule that discrepancies or inconsistencies on minor matters do not impair the essential integrity of the prosecution's evidence as a whole or reflect on the witness' honesty.[35] Such inconsistencies, which may be caused by the natural fickleness of memory, even tend to strengthen rather than weaken the credibility of the witness because they erase any suspicion of rehearsed testimony.[36]

Nor are We impressed with the claim of the accused-appellant that the victim consented to the sexual intercourse since there was no manifest resistance on her part or an attempt to flee or shout for help, and that, on the contrary, she was tickled when she was being kissed and embraced by the accused-appellant. The threat employed on the offended party did not end after she rode on his tricycle; it was, in fact, a continuing threat because he had not yet accomplished his principal objective, i.e., the rape of the victim. The fear instilled in the victim could by no means be considered as having ceased or diminished; on the contrary, her being forcibly taken out of the city and into a remote area at nighttime could not but have heightened her fears. At the place he had chosen to unleash his bestial instinct, he raped her. She testified as follows on direct examination:

"PROSECUTOR MANAOIS:

Q When the accused Ernesto Corpus raped you, where did he lie down?

A He raped me on the seat of his motorcycle, ma'am.

Q Was it inside the sidecar outside?

A On the driver seat, ma'am.

Q So it is clear now that the accused let you lie down on the motorcycle?

A No, I did not lie down on the driver seat of the motorcycle, he ordered me to seat (sic) on the driver seat of the motorcycle, ma'am.

Q After the accused raped you on that night of June 19, 1989, what did you feel?

A I was hurt, ma'am.

x x x

Q What part of your body was hurt?

A My vagina, ma'am.

Q After sexually abusing you at San Miguel, Calasiao, what happened next?

A No more, ma'am."[37]

Note that the defense never objected to the repeated use of the word raped. We have held in a number of cases that when a woman says that she has been raped she says in effect all that is necessary to show that rape has been committed and that if her testimony meets the test of credibility, the accused may be convicted on the basis thereof.[38]

The offended party's failure to flee or to shout for help was satisfactorily explained by her. The place where she was raped was isolated, there were no houses or people around and he did not allow her to leave. On re-direct examination, she testified as follows:

"Q You said that during all the time you were riding on the tricycle after the time he finished sexual intercourse, you did not call for any help, did you tell us why you did not call for help?

A Because the place where he brought me there were no persons and no houses.

Q Aside from the fact that there was (sic) no people in the place where he brought you, will you tell us the reason you did not ask for any help while he brought you to Calasiao, after the time he finished abusing you?

A He did not allow me to leave.

COURT:

Q Why did you not allow to (sic) ask for help when you were brought to Calasiao by the accused?

A There were no houses, sir."[39]

The tickling, capitalized upon by the accused-appellant as seeming proof of her "consent," is lifted from the following answer of the offended party on cross-examination:

"Q Of course, madam witness when he kissed your lips, you are (sic) tickled, is it not?

A. Yes, sir."[40]

Read in the light of her previous and succeeding answers, it is obvious that no reasonable and logical inference can be drawn therefrom that her being tickled by the kiss amounted to consent to the rape. For, as a matter of fact, she categorically declared:

"Q What did he tell you if he told you anything?

A The accused told (sic) the following words and I quote, 'You removed your dress if you will not remove it, I will shot (sic) you.'[41]

Finally, her actuations after the incident were not unnatural. It was established that she was threatened with death by the accused-appellant if she will report the incident, thus:

"Q You said that you did not report to your parents when you arrived home on that evening of June 19, 1989 after the accused sexually abused (sic) you, you did not report to your parents, what the accused done (sic) to you, will you tell us why you did not tell to (sic) your parents?

A I did not report the incident that the accused have (sic) done to me as there was a threat coming from the accused that if I will report the matter to my parents he will kill me."[42]

Anyway, she did finally report the matter to her mother on the morning of 21 June 1989, and together with her,

she thereafter reported it to the police authorities. Her sworn statement and those of her mother were taken on that date.[43] She also submitted herself to a medical examination by Dr. Rico Reyes,[44] who confined the said examination to the victim's "private portion." [45] Considering a Filipina's inbred modesty and antipathy in airing publicly things which affect her honor, it is difficult to believe that she would admit the ignominy she had undergone if it were not true. A complainant would not risk ruining her future and exposing herself to ridicule if her charge were not true. If she does undergo the expense, trouble and inconvenience of a public trial, suffer scandals, embarrassments and humiliation (such action would indubitably invite, as well as allow, an examination of her private parts), it is due to her desire to bring to justice the person who had abused her.[46] The accused-appellant has not shown any ulterior or improper motive on the part of the offended party to impute to him the commission of a heinous and detestable crime. Where there is no evidence and nothing to indicate that the offended party was actuated by any improper motive, the presumption is that she was not so actuated and her testimony is entitled to full faith and credit.[47]

In the light of the foregoing, it is unnecessary to delve into the defense put up by the accused-appellant. After all, as admitted by him, his theory is incredible, albeit stating that that of the prosecution is "much more incredible than that of the defense."

All told, the prosecution has successfully discharged its burden of proving beyond reasonable doubt the guilt of the accused-appellant for the complex crime of forcible abduction with rape.

Under Article 342 of the Revised Penal Code, the two (2) elements of forcible abduction are the taking of a woman (a) against her will and (b) with lewd designs. Lewd designs means unchaste designs.[48] We have earlier shown that she was, through threats and intimidation, and therefore against her will, taken by the accused-appellant from Dagupan City to San Miguel, Calasiao, Pangasinan. That it was with lewd design is evident from the fact that rape was, in fact, committed. And rape, under any clime and civilization will always be unchaste. The forcible abduction, however, was but the means to commit the crime of rape. Rape was committed when the accused-appellant had carnal knowledge of the offended party through intimidation.[49] Pursuant then to Article 48 of the Revised Penal Code, the penalty for the more serious crime shall be imposed. The more serious crime is rape which, in the instant case, absent a showing that it was committed with a deadly weapon or that the victim had become insane, is penalized by reclusion perpetua, the penalty correctly imposed by the trial court.

WHEREFORE, no reversible error having been committed by the trial court, the decision in Criminal Case No. D-9395 of Branch 43 of the Regional Trial Court of Dagupan City, dated 2 May 1991, is hereby **AFFIRMED** in toto, with costs against accused-appellant ERNESTO G. CORPUZ @ Ben.

SO ORDERED.

Feliciano, (Chairman), Bidin, Romero, and Melo, JJ., concur.

[1] Original Records (OR), 1-2 Rollo, 4-5. The criminal complaint was approved by the City Prosecutor of Dagupan City (Exhibit "D-3").

[2] Id., 14.

[3] Id., 85-88; Id., 16-19. Per Judge Senecio O. Ortile. The decision is dated 2 May 1991.

[4] Id., 88; Id., 19.

[5] Decision 1-2; OR, 85-86; Rollo, 16-17.

- [6] OR, 87; Rollo, 18.
- [7] Id., 89.
- [8] Id., 90.
- [9] Rollo, op. cit., 21.
- [10] Rollo, 24, et seq.
- [11] Appellant's Brief, 1; 7.
- [12] Id., 9.
- [13] TSN, 11 October 1989, 3.
- [14] Appellant's Brief, 10.
- [15] Id., 11.
- [16] Id., 12.
- [17] Id., 13-14.
- [18] Rollo, 40, et seq.
- [19] Article 342, Revised Penal Code.
- [20] Article 335, Id.
- [21] People vs. Sarile, 71 SCRA 593 [1976].
- [22] Brief for the Appellee, 11-12.
- [23] Brief for the Appellee, 16.
- [24] People vs. Mahinay, 80 SCRA 273 [1977].
- [25] People vs. Manlapaz, 88 SCRA 704 [1979]; People vs. Gallano, 108 SCRA 405 [1981]; People vs. Asturias, 134 SCRA 405 [1985]; People vs. Sunga, 137 SCRA 130 [1985]; People vs. Palma, 144 SCRA 236 [1986]; People vs. Race, 212 SCRA 90 [1992].
- [26] TSN, 19 September 1989, 2.
- [27] Id., 3-11.
- [28] TSN, 11 October 1989, 1-10 (in double space).
- [29] People vs. Garcia, 89 SCRA 440 [1989]; People vs. Bautista, 92 SCRA 465 [1979]; People vs. Abejuela, 92 SCRA 503 [1979].
- [30] People vs. Tismo, 204 SCRA 535 [1991]; People vs. Casinillo, G.R. No. 97441, 11 September 1992.
- [31] TSN, 19 September 1989, 4.
- [32] Id.
- [33] TSN, 11 October 1989, 3.
- [34] See People vs. Grefiel, G.R. No. 77228, 13 November 1992.

[35] *People vs. Santos*, 183 SCRA 25 [1990]; *People vs. Bernardino*, 193 SCRA 448 [1991].

[36] *People vs. Salufrania*, 159 SCRA 401 [1988]; *People vs. Cabato*, 160 SCRA 98 [1988]; *People vs. Custodio*, 197 SCRA 538 [1991]; *People vs. Madriaga*, 211 SCRA 698 [1992].

[37] TSN, 19 September 1989, 7.

[38] *People vs. Avero*, 165 SCRA 130 [1988]; *People vs. Poculan*, 167 SCRA 176 [1988]; *People vs. Abonada*, 169 SCRA 530 [1989]; *People vs. Rosell*, 181 SCRA 679 [1990]; *People vs. Barcelona*, 191 SCRA 100 [1990].

[39] TSN, 11 October 1989, 10-11.

[40] *Id.*, 6.

[41] TSN, 11 October 1989, 8.

[42] *Id.*, 11.

[43] Exhibits "C" and "C-1," and "E" and "E-1."

[44] Exhibit "B."

[45] TSN, 9 February 1990, 7.

[46] *People vs. Patilan*, 197 SCRA 354 [1991]; *People vs. Tismo*, *supra.*, citing several cases.

[47] *People vs. Simon*, 209 SCRA 148 [1992].

[48] AQUINO, R.C., *The Revised Penal Code*, vol. III, 1988 ed., 440.

[49] Second circumstance, Article 335, Revised Penal Code.

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