

## PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VICTORIANO PONTILAR, JR., ACCUSED-APPELLANT.

*G.R. No. 104865. July 11, 1997*

Ponente: PANGANIBAN, J.

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### PANGANIBAN, J.:

Rape violates the person of the victim, sears her mind with debilitating trauma and unfairly stigmatizes her reputation. For this, the offender must be brought to justice -- more so in this case where the victim is a young girl only fourteen.

This is an appeal from the February 20, 1992 Decision[1] of the Regional Trial Court of Cebu City, Branch 5[2] in Criminal Case No. CBU-19353 convicting Accused Victoriano Pontilar, Jr. of the crime of rape.[3]

Third Assistant Cebu Provincial Prosecutor Antonio T. Echavez filed an Information dated July 23, 1990 charging accused-appellant with the crime of rape allegedly committed as follows:[4]

“That on or about the 5th day of June, 1990 at 5:00 o’clock in the morning, more or less, in the Municipality of Catmon, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with one Marilou Bornea, against her will and consent.”

The accused, assisted by Counsel de parte Recto de Dios, pleaded not guilty upon arraignment.[5] Trial ensued in due course. On February 20, 1992, the trial court promulgated the assailed Decision, the dispositive portion of which reads:

“WHEREFORE, all the foregoing being considered, this Court finds accused Victoriano Pontilar, Jr. guilty beyond reasonable doubt of the crime of consummated rape and hereby sentences said accused with the penalty of RECLUSION PERPETUA with all the accessory penalties prescribed by law; to indemnify the victim Marilou Bornea the sum of P30,000.00, in line with the prevailing jurisprudence on the matter (People vs. Isip, Jr., G.R. 70568, 20 Aug., 1990); moreover, it appearing that both accused and the offended party are unmarried, accused is further sentenced to acknowledge and support the offspring as a result of the crime, if any.

Accused in the service of his sentence, shall be credited with the full time during which he had undergone preventive imprisonment if he had agreed voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners; otherwise, four-fifths (4/5) of the period of his preventive imprisonment.

SO ORDERED.”[6]

Hence, this appeal.

### The Facts

### Version of the Prosecution

The prosecution presented six witnesses: (1) Marilou Bornea, the rape victim and sole eyewitness to the crime, and her companions that morning, namely: (2) Anabel[7] Bacus, (3) Arnold Ares, (4) Sinforoso Ares, (5) Peter John Mangubat and (6) Ernie Nuñez. In the appellee's brief, the Solicitor General gave the following summary of case facts:

"At about 5:00 o'clock in the moonlit morning of June 5, 1990, Marilou Bornea, Anabel Bacus, Enie Nuñez, Arnold Ares, Sinforoso Ares, Peter John Mangubat, Nene Salazar and Elizabeth Salazar were on their way home from a coronation which they attended at Bactas, Catmon in Cebu. While walking on the national road towards Catmon Daan, the group of Bornea noticed that two persons were following them. One of these two persons, who was appellant, overtook and ordered the group of Bornea to stop. Appellant frisked the four male members of the group for any firearms. When he found nothing and on the pretext that he had to do something at Catmon, appellant asked for their respective names, school grades and identification cards. (TSN, January 14, 1991, pp. 4-5)

Identifying himself as an NPA and holding a hand grenade, appellant warned the group against making any false move. He then ordered the group to go on their way with the exception of Bacus. Bacus cried because she did not want to stay behind, so Bornea remained with her. Appellant, together with Bacus and Bornea, followed the group from a distance. When they reached a tamarind tree, appellant ordered Bornea to join the group because "he has some intention with Anabel Bacus." (Ibid, pp. 6-7).

Later, the group saw appellant and Bacus approaching them. Appellant shouted at Bornea to remain in place while Bacus and the rest of the group were ordered to proceed. Bornea and the group did not want to obey at first but appellant's threat that he will throw the grenade at them, they acceded to his orders out of fear. (Ibid., p. 7)

Alone with Bornea, appellant dragged and forced her to lie down beside some stone files. He placed his hand grenade at Bornea's right side. Bornea struggled hard to be released but was overpowered by appellant. (TSN, January 24, 1991, pp. 6 & 10). Constantly reminding her of his hand grenade and pistol and threatening her with death, appellant pulled down Bornea's pants and panty to her knees. Appellant then placed his naked body on top of Bornea, inserted his penis into the vagina of Bornea and made push and pull movements. Unperturbed by Bornea's continued cries of pain, appellant only stopped his push and pull movements only after what could have been the longest fifteen minutes for Bornea. After achieving penetration and consummating his vile desires against his fourteen year old victim, appellant ordered Bornea to put on her pants and to rejoin the group. (TSN, January 14, 1991, pp. 9-10)

Bornea met Bacus and Sinforoso Ares about four minutes later and Bacus asked Bornea what appellant did to her. (TSN, January 28, 1991, p. 4) Bornea was not able to answer right away because she did not stop crying and because of fatigue. Bornea nevertheless related her traumatic experience to her two friends and later, to her grandparents. (TSN, January 14, 1991, p. 12)

A day prior to reporting the rape incident to the police on June 8, 1990, Bornea was examined by Dr. Lilia Diaz who declared the following findings:

- '1. Introitus examining finger easily;
2. Hymenal lacerations noted at 5:00, 9:00 and 11:00 o'clock;
3. Presence of blood on examining finger.'

(Exhibit 'B' and Exhibit 'B-2')"

#### Version of the Defense

Appellant denied that he raped Marilou Bornea. The defense presented five witnesses: the accused himself, his

girlfriend Imelda Colis, Pedro Colis, Andres Colina, and Verna Pontillas. The trial court summarized the version of the defense as follows:

“Accused Victoriano Pontilar, Jr. put up the defense of denial and alibi. The defense claimed that in the early evening of June 4, 1990, accused was at the dancing place in Barangay Bactas, Catmon, Cebu together with his girlfriend Imelda Colis. They arrived at the place 10:00 o’clock in the evening and stayed there until 4:00 o’clock the following day. Their companions in the dancing place were Florentino Pruel, Bienvenido Duran, Alberto Colis, Ditas Ares, Merlo Ares, Andres Colina and Lucille Colis. The group danced. At 4:30 o’clock in the morning of June 5, 1990, they started to leave the disco place and proceeded to the house of Imelda Colis located about two (2) kms. from the dancing place. At the house of Imelda Colis, accused with his companions engaged in a conversation over cups of coffee. Present in the house were the accused, his girlfriend Imelda Colis, Florentino Pruel, Bienvenido Duran, Ditas Ares, Merlo Ares and Alberto Colis. They had breakfast in Imelda’s house at 7:00 o’clock in the morning. Accused upon invitation of his girlfriend slept in the house of the latter and woke up past 10:00 o’clock in the morning of the same day. Accused denied having raped the complaining witness as charged.

Imelda Colis, the girlfriend of the accused, claimed that there is another suspect in the rape case. He is her second degree cousin, Diego Colepano, Jr., who is refuted (sic) to be a maniac. She admitted, however, that she had no personal knowledge that Diego Colepano, Jr. raped Marilou Borneo because it was the companion of Diego Colepano, Jr. who told her about the rape. She admitted that there is no case filed against Diego Colepano, Jr. for the rape of Marilou Borneo.”[8]

#### The Issues

Accused-appellant submitted the following assignment of errors:[9]

#### “I

The lower court gravely erred in believing the complaining woman that rape was committed, inspite of her admission that she did not shout nor make any resistance to the alleged sexual advances.

#### “II

The trial court gravely erred in holding that the witnesses for the prosecution are more credible than the witnesses for the defense.

#### “III

The trial court gravely erred in holding that accused-appellant should acknowledge the offspring as a result of the crime.

#### “IV

The trial court gravely erred in convicting the accused-appellant of the crime of rape, inspite of the fact that the prosecution’s evidence has not overcome the presumption of innocence.”

The foregoing, save for the matter of acknowledgment of offspring, all boil down to the question of credibility of witnesses.

#### The Court’s Ruling

The appeal is not meritorious.

### First Issue: Credibility of Witnesses

Appellant questions the credibility of the testimonies of the prosecution witnesses including Marilou Bornea. He also bewails that there were no other eyewitnesses to the alleged rape save for the victim herself. The defense further contends that there was not even “an initial and manifest resistance on the part of the complaining woman.”[10] It also brands as “unnatural” the reaction of the other prosecution witnesses who were with the victim until the time she was taken from their company and then raped by the accused -- they did not even shout for help or run to the nearest house for succor.[11]

Well-settled is the rule that the assessment of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct and attitude under grilling examination. Findings of the trial court on such matters are binding and conclusive on the appellate court unless some facts or circumstances of weight and substance have been overlooked, misapprehended or misinterpreted.[12]

After a thorough review of the entire records of this case, we find no reason to reverse the trial court’s assessment of the credibility of Marilou Bornea and the other prosecution witnesses. The testimonies of these witnesses palpably bear earmarks of truth and jibe on material points. The testimonies of Marilou and Anabel leave no doubt as to their veracity. Both recount (1) how their group[13] had been walking at Bactas, Catmon, Cebu around 5:00 a.m.; (2) how they were followed by two men -- one of whom was Accused-appellant Pontilar, Jr. -- who overtook them, blocked their path and ordered their group to stop walking; (3) that their four male companions were frisked; (4) that they were asked to identify themselves; (5) that afterwards Pontilar, Jr. initially ordered the group to go on walking except for the frightened Anabel who was to be left behind; (6) that Marilou chose to remain by her friend’s side; (7) that while the group was walking, Pontilar, Jr. ordered them to stop and asked them what he said, to which Peter John Mangubat answered “Hinto”; (8) that Pontilar, Jr. got mad at Peter John, saying, “Putang ina mo” as he kicked the latter; (9) that upon reaching a tamarind tree Marilou was told to join the others and to leave Anabel behind; (10) that the group waited for Anabel; (11) that Pontilar, Jr. and Anabel walked towards the group; (12) that Pontilar, Jr. ordered Marilou to join him and Anabel -- otherwise he would kill the latter; (13) that Marilou obliged Pontilar, Jr. who then ordered Anabel to join the group; and (14) that Pontilar, Jr. was armed with a grenade and a pistol. Consistent with her account, Anabel also testified that she had already filed a criminal case for acts of lasciviousness against accused-appellant Pontilar, Jr.[14]

More significantly, Marilou Bornea was unequivocal and unswerving in charging Accused-appellant Victoriano Pontilar, Jr. with rape. Her positive identification of accused-appellant in court was made with no trace of uncertainty. Furthermore, her account of the rape in her sworn statement to MCTC Judge Panfilo F. Alpuerto during the preliminary investigation and her testimony in court during the trial are consistent with each other; they are candid, convincing and certainly damning against Appellant Pontilar, Jr. The relevant portion of said sworn statement is as follows:

24. Q What did he do with Annabel Bacus?

A I do not know and few minutes later I was called by Victoriano Pontilar, Jr.

25. Q When Victoriano called you, what did you do?

A I waited for her and when she and Victoriano Pontilar able to catch up with me on the way, Victoriano Pontilar, Jr. ordered my companions to walk and threatened to throw a hand grenade at them if they refused, so they proceed walking, leaving me with Victoriano Pontilar, Jr.?

26. Q What did Victoriano Pontilar do with you, at this moment when you were already alone?

A He told me in a harsh voice that he will have sex with me but in the state of fear, I still have a courage to refuse his evil desire. He then forced me to lie down, on the ground simultaneously pushing me and threatening to kill me if I refuse and because of extreme fear, I lay down.

27. Q What more did Pontilar do at this juncture?

A He forcibly ordered me to take off my pantie after which he placed himself on my body half-naked, inserted his penis to my vagina and made a push and pull motion.

28. Q Did you dare not to shout for help at this juncture?

A I was so afraid, as he threatened to kill me.

x x x x x x x x

31. Q Going back to the time of the sexual act, what did you feel?

A I felt pain on my genital organ.”[15]

The pertinent portion of her testimony is reproduced below:

“Q When for the first time did you decide to remain after being ordered by the accused?

A I only approached the place where Bacus and the accused were after the latter said that should I not obeyed, (sic) he would kill Bacus.

x x x x x x x x

Q When you remained what happened next?

A He commanded Bacus to rejoin our group after which he told the group to go ahead.

Q Did the group go ahead?

A They had first stopped because they waited for me and they parried (sic) for a while and then the accused told the group that if they will not continue walking, he will throw a grenade to the group.

x x x x x x x x

Q When you're left behind (by) the group, what happened?

A The accused pulled me.

Q And then what happened next?

A He undressed me.

COURT: to witness

Q How?

A He undid my pants.

Q What else?

A He also undid my panty.

Fiscal Go: (continued)

Q Did he succeed in removing your pants and panty?

A Down to my knees.

Q How about the accused, what did he do, if any, to himself?

A He was undoing his pants.

Q When he tried, as he did, to take off your panty, what did you do?

A I tried to defend myself hoping to defend from ravishing me but I failed.

Q After your pants and panty were taken down to your knees and after the accused took his own pants, what did he do, if any?

A He positioned himself on top of me.

Q Were you then lying down or standing when you said he put himself on top of you?

A I was lying down; supine position.

Q How come that you're already lying down?

A Because he forced me to lie down.

Q How did he do that?

A He held me and pushed me down.

Court to witness:

Q Where was thr (sic) nad (sic) grenade when you're positioned down?

A He placed it in our side.

Fiscal Go: (continued)

Q When you're already lying down with your pants also down to your knees and also the accused already naked, what was the acts he did to you, if any?

A He had his penis entered my vagina.

Q How was it done?

A He held his penis.

Court: to witness

Q What happened?

A The penetration of his penis took several minutes because it was very painful to me.

Q You mean there was penetration?

A Yes.

Fiscal Go: (Continued)

Q When the penis of the accused was able to enter your organ, what did he do to you?

A He continued making a push and pull action.

Q How about you, what did you do while the pushing and pulling transpired?

A I continued crying because it was very painful.

Q If you can estimate, for how long did this pushing and pulling transpired?

A About 10 to 15 minutes.

Q And all these time of 10 to 15 minutes, what did you do?

A I wanted to shout.

Q Were you able to shout?

A No because he threatened me saying dont (sic) move thereat, otherwise, I would kill you.”[16]

Furthermore, the Court observes that it is highly inconceivable that a fourteen-year-old girl like Marilou Bornea, innocent and naive, would concoct a serious charge of rape against any man if this was not the truth. The

embarrassment and stigma alone of allowing an examination of her private parts and testifying at a public trial on the painfully intimate details of her violation practically rules out the possibility of a false accusation of rape. It is difficult to imagine that a young girl would undergo the indignities and difficulties concomitant to a prosecution for rape unless motivated by a desire to have the offender apprehended and punished.[17]

The trial court, assessing the credibility of Marilou and her testimony, stated:

“Complainant Marilou Bornea testified in a straightforward clear and honest manner how her honor was defiled. She testified and described in detail every embarrassing movement of the intrusion upon her most prized possession.

The conduct of Marilou Bornea after she was raped until she reported the crime to her grandparents and to the authorities, indicate that complainant was testifying to the truth. No motive was shown why complainant should impute the commission of such a grave felony to the accused.

The accused was positively identified by the complainant and her witnesses.”[18]

#### Appellant’s Denial and Alibi Debunked

The accused-appellant’s defense of denial and alibi must fail in view of Marilou’s convincing testimony and positive identification of the former as the culprit, as corroborated by the equally credible testimonies of the other prosecution witnesses. Alibi, like denial, is inherently weak and easily fabricated. For this defense to justify an acquittal, the accused must establish with clear and convincing evidence that it was physically impossible for him to have been at the crime scene during its commission. Appellant failed to prove this. As found by the trial court, “the accused was a mere walking distance from the scene of the crime and it is probable that he was present at the place and time of the commission of the crime of rape. There was no physical impossibility for the accused to be at the scene of the crime, considering the distance between the place of the incident and the house of his girlfriend Imelda Colis.”[19]

#### If Credible, Sole Eyewitness Testimony of Rape Victim Sufficient to Convict the Offender

The defense attempts to inject doubt by arguing that the appellant’s conviction for rape hinged basically on the sole testimony of the offended party Marilou Bornea and that there were no other eyewitnesses to the crime. This kind of reasoning is puerile. The mere fact that Marilou Bornea was raped in a secluded area, precluding the presence of other witnesses, does not at all detract from the weight of her testimony. The crime of rape, by its very nature, is normally committed away from public view without witnesses save for the perpetrator(s) and the victim(s) themselves. For this reason, “the lone testimony of the victim in the crime of rape, if credible, is sufficient to sustain a conviction.”[20] As stated by this Court through Mr. Chief Justice Andres R. Narvasa:

“Over the years, certain principles have been laid down in decisions involving the analysis and assessment of evidence in cases of rape; and, having been so often invoked and applied, have become so familiar and prosaic as to seem platitudinous. Such propositions as that rape is not normally perpetrated in the presence of third persons; hence, in prosecutions therefor, the only evidence against the accused is usually the testimony of the offended woman herself, her sole testimony being sufficient for conviction if it rings true and is otherwise credible x x x.”[21]

#### Physical Resistance Not Required in the Presence of Intimidation

Appellant further argues that he cannot be convicted of rape because the complainant made no “initial” or “manifest” resistance to the alleged sexual assault.[22] It is contended that such resistance is absent in this case as Complainant Marilou Bornea “did not even attempt to rise, she DID NOT make any form of resistance. This is indeed a conduct very strange and unnatural for a woman who is supposed to place a high value on her honor and

chastity.”[23]

This argument is bereft of merit. We stress that rape may be committed not only by force but by also intimidation.[24] The gravamen of the offense is sexual intercourse without the woman’s consent. Intimidation rules out consent to the sexual congress. For this reason, “physical resistance need not be established in rape when intimidation is exercised upon the victim and she submits herself against her will to the rapist’s lust because of fear for life and personal safety.”[25] The testimony of Marilou sufficiently explains that her failure to make a more vigorous and determined resistance was due to fear for her life. It is not difficult to comprehend how a young girl of fourteen would easily be intimidated, overpowered and cowed into submission by the offender who represented himself as an NPA guerrilla and was armed with a grenade and a pistol to boot.

#### Minor Inconsistencies Do Not Discredit Testimony Otherwise Credible

The defense also attempts to discredit the testimony of Anabel Bacus for being inconsistent with her affidavit. In the case against the accused for acts of lasciviousness, Anabel Bacus stated “that immediately after the incident when she saw Marilyn Bornea by the road, Miss Bornea told her that she was raped by Victoriano Pontilar Jr. In her affidavit, Annabel Bacus stated under oath that she was told by Miss Bornea that she was raped only after they had reached home.”[26] This contention is misleading. The salient portion of her testimony, quoted as basis of the defense’s argument, reads:

“Q And you told the Honorable Court, Branch 9, that you knew that Marilou Bornea was raped because about 15 minutes after you saw Marilou Bornea (sic) again alone crying by the side of the road, you asked her why she was crying and later on this Marilou Bornea told you that she was allegedly raped by Vicente Pontilar Jr.?

A I stated that.

x x x x x x x x

ATTY. DE DIOS:

Q Mrs. Bacus, more particularly in paragraph 16 of your sworn statement, you stated that Marilou Bornea (sic) told you that she was raped by Vicente Pontilar Jr. when you already reached home, is that correct?

A Yes, Sir.”[27]

The foregoing does not show any inconsistency. What Anabel Bacus obviously meant to convey in her answer to the latter question was that, by the time the two of them reached Marilou’s home, the latter had told her that she had been raped. This is not at all inconsistent with her answer to the previous question which merely indicated when and where Marilou first informed her of the rape.

The defense likewise argues that the “alleged presence of a companion of Victoriano Pontilar, Jr. at the scene of the alleged crime surfaced only during the cross-examination(s) of Anabel Bacus and Marilou Bornea. This was never stated in their affidavits although, indubitably, the same refers to a fact very material to the issues in this case.”[28] This belated argument does not help appellant. It is well-settled that alleged inconsistencies between testimonies in open court and ex parte affidavits do not necessarily discredit the witness since ex parte affidavits are almost always insufficient in details. A sworn statement or an affidavit is usually incomplete and generally considered to be inferior to testimony given in court.[29]

At any rate, the alleged inconsistency of Anabel’s and Marilou’s affidavits with their testimonies during the trial involves a minor detail which does not diminish their credibility as witnesses. These apparent lapses only show that their affidavits are “incomplete with respect to certain details which do not in any way detract from the overall veracity”[30] of their court testimonies. The significance of this minor lapse in detail pales in comparison with their detailed narration of the whole sordid incident which clearly established the presence of the

Accused-appellant Pontilar, Jr. at the crime scene, and the manner in which he intimidated Marilou Bornea and then raped her.[31]

#### No Fixed Reaction to a Shocking Crime

The seeming inaction and paralysis of the other prosecution witnesses (Marilou's companions) after they were ordered by Appellant Pontilar, Jr. to leave him with Marilou -- when they were already convinced of appellant's evil intentions -- are branded by defense as "highly unnatural." This argument is not persuasive.

After a thorough scrutiny of the records, the Court finds the reaction of the rape victim's companions to be compatible with human experience. It is a truism that "the workings of the human mind placed under a great deal of emotional and psychological stress are unpredictable, and different people react differently. There is no standard form of human behavioral response when one is confronted with a strange, startling, frightful or traumatic experience -- some may shout, some may faint, and some may be shocked into insensibility." [32] Thus, it was not at all unlikely that Marilou's companions were so shaken by the whole incident and frightened by the grenade/pistol-toting Accused-appellant Pontilar, Jr., who claimed to be an NPA guerrilla, that they were shocked into inaction. And although they may have reacted poorly to the situation, they could not be faulted for their indecision. For it is axiomatic that there is no rule or standard specifying how witnesses to a crime must react thereto.[33]

Based on all the foregoing discussion, the Court's conscience rests easy with the moral certainty that indeed Appellant Victoriano Pontilar, Jr. raped Marilou Bornea. However, the indemnity of P30,000.00 awarded by the trial court to Marilou Bornea must be increased to P50,000.00 in line with prevailing jurisprudence.[34]

#### Second Issue: Acknowledgment of Offspring

The defense contends that the trial court erred in ordering the appellant to acknowledge and support the offspring resulting from the crime. Appellant posits that Marilou Bornea was not pregnant when she testified in court seven months after the rape was supposedly committed. In his own words, appellant states that "(t)he court could have taken judicial notice that the complaining woman was NOT pregnant in January 1991, or seven (7) months after the date of the alleged rape. Neither was there any evidence presented by the prosecution to the effect that the complaining woman, Marilou Bornea, was pregnant." [35]

Article 345 of the Revised Penal Code provides that persons guilty of rape shall also be sentenced to "acknowledge the offspring, unless the law should prevent him from so doing" and "in every case to support the offspring." The additional sentence, therefore, theoretically finds support in the Revised Penal Code. For the imposition of these additional sentences, however, there must be a showing that the offspring was the result of the criminal sexual congress between the accused and the victim. In this case, we find no such showing, let alone an allegation, that an offspring resulted from the crime. The trial court in its Decision promulgated on February 20, 1992, or almost twenty months after the commission of the rape on June 5, 1990, did not make a finding that such an offspring had been born. Indeed, it sentenced the accused to "acknowledge and support the offspring as a result of the crime, if any." Since the imposition of the additional sentence is speculative, it has no place in the disposition of the case.

WHEREFORE, the herein questioned Decision of the trial court finding Appellant Victoriano Pontilar, Jr. guilty beyond reasonable doubt of the crime of rape, imposing on him the penalty of reclusion perpetua, is hereby **AFFIRMED**. We, however, **DELETE** the following portion: "accused is further sentenced to acknowledge and support the offspring as a result of the crime, if any." The indemnity in favor of Complainant Marilou Bornea is hereby **INCREASED** to Fifty Thousand Pesos (P50,000.00).

SO ORDERED.

Narvasa, C.J., (Chairman), Davide, Jr., Melo, and Francisco, JJ., concur.

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[1] Rollo, pp. 3-15.

[2] Judge Celso M. Gimenez presiding.

[3] Rollo, p. 14.

[4] Record, p. 29.

[5] Ibid., pp. 33-34.

[6] Decision, pp. 12-13; Rollo, pp. 14-15.

[7] Also referred to in the TSNs as “Annabel.”

[8] Decision, pp. 4-5; Rollo, pp. 6-7.

[9] Appellant’s Brief, pp. 3-4; Rollo, pp. 51-52.

[10] Ibid., pp. 5-8; Rollo, pp. 53-56.

[11] Ibid., pp. 15-16; Rollo, pp. 63-64.

[12] People vs. Ombrog, G.R. No. 104666, pp. 11-12, February 12, 1997; citing People vs. Cogonon, G.R. No. 94548, October 4, 1996, People vs. Decena, 235 SCRA 67, August 4, 1994, People vs. Balisteros, 237 SCRA 499, October 7, 1994, and People vs. Estrellanes, 239 SCRA 235, December 15, 1994.

[13] Marilou Bornea, Anabel Bacus, Arnold Ares, Ernie Nuñez, Peter John Mangubat, Elizabeth Salazar, Nene Salazar and Sinforoso Ares, Jr.

[14] See TSN, pp. 3-8, January 14, 1991, and TSN, pp. 2-7, January 15, 1991. See also the testimony of Ernie Nuñez, TSN, pp. 2-8, January 29, 1991.

[15] Record, pp. 6-7.

[16] TSN, pp. 7-11, January 14, 1991.

[17] People vs. Ramirez, G.R. No. 97920, p. 17, January 20, 1997; citing People vs. Digno, Jr., 250 SCRA 237, November 23, 1995, People vs. Dela Cruz, 251 SCRA 77, December 8, 1995, and People vs. Sanchez, 250 SCRA 14, November 16, 1995.

[18] Decision, p.5-6; Rollo, pp. 7-8.

[19] Ibid., p. 11; Rollo, p. 13.

[20] Ibid., p.19; citing People vs. Apilo, G.R. No. 101213-14, p. 19, October 28, 1996.

[21] People vs. Martinez, 219 SCRA 502, 509, March 4, 1993.

[22] Appellant’s Brief, p. 5; Rollo, p. 53.

[23] Ibid., p. 8; Rollo, p. 56.

[24] Article 335, Revised Penal Code.

[25] *People vs. Talaboc*, 256 SCRA 441, 450, April 23, 1996; citing *People vs. Dusohan*, 227 SCRA 87, October 5, 1993, *People vs. Ramos*, 245 SCRA 405, June 27, 1995, and *People vs. Angeles*, 222 SCRA 451, May 21, 1993.

[26] Appellant's Brief, p. 13; Rollo, p. 61.

[27] TSN, pp. 9, 11, January 15, 1991.

[28] Appellant's Brief, pp. 14-15; Rollo, pp. 62-63.

[29] *People vs. Layno*, G.R. No. 110833, p. 13, November 21, 1996; quoting from *People vs. Lazaro*, 249 SCRA 234, October 12, 1995, citing *People vs. Dabon* 216 SCRA 656, 664, December 16, 1992, *People vs. Gabas* 233 SCRA 77, 83, June 13, 1994, and *People vs. Loveria* 187 SCRA 47, 59, July 2, 1990.

[30] *People vs. Layno*, *supra*.

[31] See pp. 11-12.

[32] *People vs. San Juan*, G.R. No. 105556, p. 14, April 4, 1997; quoting *People vs. Gumahob*, G.R. No. 116740, November 28, 1996, citing *People vs. Malunes*, 247 SCRA 317, August 14, 1995, *People vs. Alih*, 222 SCRA 517, May 24, 1993, *People vs. Abordo*, 224 SCRA 725, July 23, 1993, *People vs. Lagrosa, Jr.*, 230 SCRA 298, February 23, 1994, and *People vs. Arnan*, 224 SCRA 37, June 30, 1993. See also *People vs. Gecomio*, 254 SCRA 82, 97, February 23, 1996.

[33] *People vs. San Juan*, *supra*, p. 15; citing *People vs. Villaruel*, 238 SCRA 408, November 25, 1994.

[34] *People vs. Gacto*, 253 SCRA 455, 469, February 9, 1996.

[35] Appellant's Brief, p. 17; Rollo, p. 65.

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