

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MEDEL MAMALAYAN, NOEL MAMALAYAN AND (AT LARGE)
REYNALDO GARCIA, (AT LARGE), ACCUSED-APPELLANTS.**

G.R. No. 115282. October 16, 1997

Ponente: HERMOSISIMA, JR., J.

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HERMOSISIMA, JR., J.:

This is an appeal from the decision[1] rendered on June 21, 1993 by the Regional Trial Court of Calamba, Laguna, Branch 34, in RTC Criminal Case No. 3228-92-C, which found accused-appellant Medel Mamalayan guilty of the crime of robbery with rape and sentencing him to reclusion perpetua and indemnify the offended parties in the sum of P35,680.00 as actual damages and P100,000.00 as moral damages.[2]

In an information,[3] dated October 2, 1992, Assistant Provincial Prosecutor Loreto Masa charged the herein accused-appellant together with the other accused, Noel Mamalayan and Reynaldo Garcia, with the special complex crime of robbery with rape under Article 294, sub. Par. 1 of the Revised Penal Code,[4] allegedly committed as follows:

“That on or about May 31, 1988, at Barangay Lawa, Municipality of Calamba, Province of Laguna and within the jurisdiction of this Honorable Court, the accused above-named with intent of gain and with the use of force upon things, conspiring, confederating and mutually helping one another, did then and there wilfully, unlawfully and feloniously enter the house of BONIFACIO LEGASPI by then and there detaching the glass window where they gain entrance, and once inside, take, steal and carry away with them the following items, to wit:

1.

One Armalite M16 Rifle

with SN RP 005417

P8,000.00

2.

Seven (7) banana type magazines

of armalite M16 and 210 live ammos

of the same caliber

3,780.00

3.

One (1) Wall Clock (Seiko)

300.00

4.

One (1) Colored TV set 14” (Sony)

12,000.00

5.

One (1) Seiko Wrist Watch

600.00

6.

One (1) Gold ring

2,000.00

7.

One (1) pair of earring

3,000.00

8.

One (1) Stereo Cassette

1,000.00

9.

Cash Money

5,000.00

having a total value of

P35,680.00

that on the same place and occasion accused armed with fan knife, by means of violence and intimidation, conspiring, confederating and mutually helping one another take turn in having carnal knowledge with Marina Legaspi against her will and consent.

CONTRARY TO LAW.”[5]

Upon arraignment on December 16, 1992, the herein accused-appellant Medel Mamalayan, assisted by counsel, entered the plea of “not guilty.” Thereafter, trial on the merits proceeded as against accused Medel Mamalayan alone. His co-accused, Noel Mamalayan and Reynaldo Garcia, had remained at large.

On June 21, 1993, the trial court rendered judgment, the dispositive portion of which reads:

“WHEREFORE, the Court finds the accused GUILTY of the crime penalized and defined under Article 294 sub. Par. 1 of the Revised Penal Code thus rendering judgment CONVICTING the accused of the crime charged.

He is hereby sentenced to suffer an imprisonment of RECLUSION PERPETUA and to indemnify Bonifacio Legaspi the amount of P35,680.00 and to pay moral damages in the amount of P100,000.00

SO ORDERED.”[6]

The evidence for the prosecution established the following facts:

The spouses Bonifacio and Marina Legaspi gave evidence to the effect that, on May 31, 1988, only Marina and her stepson Edwin Legaspi were left in their house. Bonifacio Legaspi, who was a member of the Special Operation Group, Civil Relation Service, Armed Forces of the Philippines (AFP), was then on duty at Camp Aguinaldo, Quezon City.[7]

At about 3:00 o’clock in the morning of the same date, Marina and Edwin were awakened by the barking of their dog. Marina was surprised to find accused-appellant Medel Mamalayan, Noel Mamalayan and Reynaldo Garcia already inside their room. She came to know later that the three (3) malefactors effected their entry by removing the glass panels of one of their windows. The accused-appellant, then carrying a fan knife, poked the same at her. The three culprits, helping each other, gagged Marina’s mouth with a T-shirt. They subsequently tied her hands and feet with plastic straws.[8]

Thereafter, appellant together with Noel began ransacking the victims’ house, while Reynaldo, who was armed with a six (6) inch knife, stayed behind to guard both Marina and Edwin. The culprits were able to cart away the couple’s pieces of jewelry, cash, and appliances. They were also able to take Bonifacio’s M-16 armalite rifle, with seven (7) banana-type magazines, and 210 live ammunitions. Noel later threatened to shoot Marina with the rifle, remarking: “Eto na pala ang armalite, ang sabi mo wala. Ipatatay ko ito sa iyo eh.”[9]

The malefactors then cast their lustful eyes upon Marina. And, to make sure that Edwin would not stand in their way, Reynaldo took Edwin out of the room by kicking the boy towards a corner of the living room, about two (2) arm’s length away from Marina. Accused-appellant then approached Marina who was seated on her bed and tore her dress by grabbing it from the neckline down to the hemline. This exposed the victim’s whole body who was only wearing an undergarment. Medel, excited to see Marina’s almost naked body, untied the latter’s feet, began kissing her and roughly pulled off her underwear, destroying it in the process. While Medel was doing all of these things, Noel was watching and pointing the armalite rifle against Marina, while Reynaldo was guarding Edwin.[10]

Subsequently, the accused-appellant undressed himself, pushed Marina to the bed, went on top of her, forced her to part her thighs, and forcibly inserted his penis to her private part. The victim who was then squirming and kicking her abuser was able to avoid the appellant’s ejaculation within her organ. The accused nonetheless ejaculated after Marina was able to dislodge his penis from her private part. And, while all of these things were taking place, Noel was constantly pointing the rifle at Marina.[11]

After Medel had dismounted, his co-accused Noel Mamalayan likewise went on top of Marina. Just like Medel, Noel was not able to ejaculate inside Marina’s sexual organ because the latter squirmed and moved

incessantly.[12]

After Noel was finished, Reynaldo likewise raped Marina. Unlike the two before him, Reynaldo easily penetrated Marina for she was already too weak to put up a struggle. However, he failed to ejaculate because he was being hurried by appellant and Noel Mamalayan.[13]

Thereafter, the malefactors left the house of the victims, taking with them the stolen articles. And, upon their departure, Edwin untied Marina's hands. Shortly thereafter, Sofronio Estemo who was a former janitor at the office of Bonifacio in Camp Aguinaldo, arrived from Bicol bringing with him some crabs intended for Bonifacio. Edwin met him because his stepmother was then in a state of shock. The boy then asked Sofronio to inform and fetch his father in Quezon City.[14]

Bonifacio Legaspi, when told by Sofronio Estemo of the incident, immediately asked the permission of his superior officer, Major San Miguel, that he be allowed to go home. When he arrived at his house at about 9:00 o'clock that morning, he saw his house in disarray. Bonifacio wanted to ask Marina what happened, but the latter was still in a state of shock. Hence, he could not extract any information from her.[15]

At about 11:00 a.m. of the same date, Bonifacio then reported the incident to Brgy. Captain Romualdo Garcia. He was advised by the barangay captain to refer the case to the police. He together with his wife, proceeded to the Calamba Police Station. Marina was investigated and a complaint was filed against the three accused.[16]

The day after the incident or on June 1, 1988, Marina Legaspi submitted herself to a medical examination by Dr. Solita Plastina, Municipal Health Officer of Calamba, Laguna, who issued a medical certificate[17] finding her negative to sperm examination, but found evidence of sexual molestation.

On the other hand, the accused-appellant presented the defense of alibi and complete denial. Accused-appellant Medel Mamalayan denied his involvement in the aforesaid crime and claims that on the date of the incident, he was not in Brgy. Lawa, Calamba, Laguna but in Brgy. Bunuan, Dagupan City.[18]

The appellant maintains that on May 7, 1988, he was employed as a costume attendant by Elvira Veneracion, manager of the Manila Royal Group – a group of performers who renders variety shows and performances in different places within the Philippines.[19] According to Medel Mamalayan, he was at Brgy. Bunuan, Dagupan City, from May 8 to June 8, 1988, because their group was hired by a certain Jun Tan to perform in his club known as the Music Machine Club, which is located at Brgy. Bunuan, Dagupan City.[20] The group left Quezon City on May 8, 1988 at 1:00 o'clock in the afternoon and reached Dagupan City at around 5:00 o'clock p.m. They proceeded at once to the club upon arrival. The group and accused-appellant took first a rest for an hour and then proceeded to prepare for the show that night. The accused, then, arranged the wardrobes to be used by the dancers i.e., swim suits, shorts, etc. by taking them out of the luggages and hanged the same in the dressing room. Medel also saw to it that the music records to be used in the show were handed over to the disc jockey of the club. On May 8, 1988, the show started at 8:00 o'clock in the evening and the group first performed a variety show, a dance number and a comedy show. The dance number was performed by Myra Mamalayan, Maricris Lopez, Cristina Arcinas, Monica Mendez and Roxan de Leon. While the group was performing, the accused-appellant claims that he was at the side of the stage watching the performance together with Elvira Veneracion. The show that night lasted up to 2:00 o'clock in the morning of May 9, 1988. After the show, the accused arranged again the costumes of the performers and slept at around 4:00 o'clock in the morning.[21] Medel Mamalayan further testified that on May 31, 1988, at around 3:15 in the morning, he was inside his quarters at Brgy. Bunuan, Dagupan City, sleeping.

After evaluating the evidence for both parties, the lower court rendered judgment convicting the appellant of the crime charged.

Accused-appellant is now before the Court, imputing to the trial court the following assignment of errors:

“I

THE LOWER COURT GRAVELY ERRED IN FINDING THE COMMISSION OF THE CRIME CHARGED SOLELY ON THE BASIS OF PRESUMPTION AND THE TESTIMONIES OF BIASED, PROCURED, PERJURED, SCRIPTED AND REHEARSED PROSECUTION’S WITNESSES.

II

THE LOWER COURT GRAVELY ERRED IN HOLDING THAT APPELLANT WAS POSITIVELY IDENTIFIED ON THE BASIS OF BIASED, PROCURED, PERJURED, INCREDIBLE, REHEARSED AND SCRIPTED PROSECUTION WITNESSES.

III

THE LOWER COURT GRAVELY ERRED IN DISCREDITING ENTIRELY THE TESTIMONIES OF THE WITNESSES FOR THE DEFENSE, PARTICULARLY THE DEFENSE OF ALIBI, IN FAVOR OF THE WEAK EVIDENCE FOR THE STATE.

IV

THE LOWER COURT GRAVELY ERRED IN NOT HOLDING THAT THE PROSECUTION SUPPRESSED EVIDENCE TO COVER ITS WEAK EVIDENCE FOR THE STATE.

V

THE LOWER COURT GRAVELY ERRED IN FINDING APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED IN THE INFORMATION.

VI

FINALLY, THE LOWER COURT HAD SERIOUSLY ERRED IN NOT FINDING THAT PRIVATE COMPLAINING WITNESSES, BONIFACIO LEGASPI AND MARINA LEGASPI, HAD ORCHESTRATED THE FILING OF THE COMPLAINT AGAINST APPELLANT AND THE OTHER TWO ACCUSED WITH ULTERIOR MOTIVE THAT BONIFACIO LEGASPI WOULD BE RELIEVED OF HIS ACCOUNTABILITY OF AN ARMALITE, ITS MAGAZINES AND AMMUNITIONS ISSUED TO HIM BY THE ARMED FORCES OF THE PHILIPPINES AS ITS TECHNICAL SERGEANT THEREOF.”[22]

The Court, after a thorough evaluation and painstaking review of the records of this case, conformably with the existing laws and jurisprudence on the matter, is of the firm position that the appeal lacks merit.

As the first, second and third assigned errors of the accused-appellant are interrelated and intertwined, we will discuss them jointly.

Central to the accused’s assigned errors is the issue of the credibility of the prosecution witnesses. It has long been settled that, on the issue of credibility of witnesses, appellate courts will generally not disturb the findings of the trial court, unless there appears in the record some fact or circumstance of weight and influence which has been overlooked or the significance of which misinterpreted.[23] None of these exception exists in this case.

In this regard, we said in the case of *People vs. Tabaco*,[24] that:

“In the resolution of factual issues, the court relies heavily on the trial court for its evaluation of the witnesses and their credibility. Having the opportunity to observe them on the stand, the trial judge is able to detect that

sometimes thin line between fact and prevarication that will determine the guilt or innocence of the accused. That line may not be discernible from a mere reading of the impersonal record by the reviewing court. The record will not reveal those tell-tale signs that will affirm the truth or expose the contrivance, like the angry flush of an insisted assertion or the sudden pallor of a discovered lie or the tremulous mutter of a reluctant answer or the forthright tone of a ready reply. The record will not show if the eyes have darted in evasion or looked down in confession or gazed steadily with a serenity that has nothing to distort or conceal. The record will not show if tears were shed in anger, or in shame, or in remembered pain, or in feigned innocence. Only the judge trying the case can see all these and on the basis of his observations arrive at an informed and reasoned verdict.”

It is the contention of accused-appellant that the witnesses for the prosecution are biased, procured and perjured. This contention cannot hold water. A careful reading of the records would reveal that the appellant has not shown by any satisfactory degree of proof that these witnesses were impelled to testify against him by reason of false or ill motives. He further failed to show any animosity or ill-feeling on the part of the prosecution witnesses which could have motivated them to falsely accuse him of the crime of robbery with rape. Well settled is the rule that where there is nothing to indicate, that the principal witnesses for the prosecution were actuated by improper motive, their testimonies are entitled to full faith and credit.[25] No married woman in her right mind would subject herself to public scrutiny and humiliation in order to perpetuate a falsehood. If she did, she would take the risk of being alienated from her husband and her family. That Marina Legaspi has then resolved to face the ordeal and relate in public what many similarly situated would have kept secret, only goes to show that she complained against the accused simply to obtain justice.[26]

It is utterly incomprehensible for her to just openly admit that she was raped by three (3) men and thereby become the object of contemptuous stares and vicious and unbridled tongues, if it were not the untarnished truth. More importantly, a wife would rather “cross the great divide” than submit to the carnal desires of men other than her lawful spouse. Wives hold sacred their inviolable vow of exclusivity for their husbands.

To cast doubt on the credibility of the prosecution witnesses, the accused-appellant further cites the inconsistencies and contradictions in the testimonies of the witnesses and their sworn declarations. We find that the accused failed to show that these inconsistencies are sufficient to strip the witnesses of credibility. Being too trivial, such inconsistencies did not rock the pedestal upon which the witnesses’ credibility rests. In fact, it enhanced their credibility, as it manifests spontaneity and lack of scheming.[27] It is recognized fact that a witness testifying about the same nerve-wracking event can hardly be expected to be correct in every detail and consistent with other witnesses in every aspect, considering the inevitability of differences in perception, recollection, viewpoint or impressions, as well as in their physical, mental, emotional and psychological states at the time of reception and recall of such impressions. After all, no two individuals are alike in powers of observation and of recall. Total recall or perfect symmetry is not required as long as witnesses concur on material points.[28] Furthermore, as we have clarified in the case of *People vs. Calegan*,[29] discrepancies between the previously executed sworn statements of the witnesses and their testimonial declarations do not necessarily discredit them because it is a matter of judicial experience that the former being taken ex-parte are almost always incomplete and inaccurate. It must also be taken into account that the herein witnesses testified in court after almost five (5) years from the time of the incident in question.

The herein accused-appellant further contends that the trial court committed an error in giving credence to the testimonies of the prosecution witnesses notwithstanding their failure to positively identify him as one of the perpetrators of the crime.[30] And, to bolster this contention, he points to the barangay log book[31] and the police blotter[32] which supposedly support his claim of non-identification.

This contention deserves scant consideration.

A perusal of the records would readily show that as early as June 3, 1988, a criminal complaint[33] was already filed with the Municipal Trial Court of Calamba, Laguna. Consequently, the court a quo on the same date, issued an Order[34] for the arrest of the accused-appellant, Noel Mamalayan and Reynaldo Garcia. This necessarily implies that the herein complainants and their witnesses had adequately identified the appellant and his cohorts as the perpetrators of the crime. However, it is depressing to note that it was only on June 2, 1992, or after the lapse of almost four (4) years, that appellant Medel Mamalayan was finally caught by the police dragnet. His companions still remain scot-free.

With respect to the barangay log book[35] and police blotter[36] the trial court gave little importance to it on account of its unreliability. Thus, we quote with approval the findings of the trial court, viz:

“x x x The evidence he presented consisting of the [b]arangay [l]og [b]ook and the [p]olice [b]lotter which entered the report are both unreliable. The [b]arangay [l]og [b]ook contained many vacant spaces in between entries. This is suspicious because normally entries in the log book are done chronologically as the events entered takes place. The entry in question may have been inserted after the incident. But more than this, it is unusual for the barangay log book to remain in the custody of a person who is no longer a barangay captain. It is standard operating procedure that the barangay log book is turned over to the incumbent barangay captain as soon as he assumes office. This suspicion is even accentuated by the fact that Romualdo Garcia is a relative of the accused Reynaldo Garcia. x x x With regards to the entry of the police in the police blotter, the defense presented SPO4 Antonio Elauria, whose testimony was to the effect that he merely jotted down the entry. There is peculiarly no testimony to the effect that he merely jotted down the entry. There is peculiarly no testimony to the effect that what was entered in the log book was exactly the report made by T/Sgt. Bonifacio Legaspi. It is not far fetch to deduce that the entry may have been the impression of the person making the entry and does not reflect the actual matters or circumstances reported by the reporting party.”[37]

At any rate, Marina Legaspi, at the witness stand, positively identified and pointed to accused-appellant Medel Mamalayan as one of those who robbed her house of its belongings and was one of the persons who raped her. The trial court found her testimony to be natural, straightforward and convincing, describing in vivid detail her horrifying experience. We quote relevant portions of her testimony:

Q: Now you mentioned that the perpetrators of the robbery [with rape] were Medel Mamalayan, Noel Mamalayan and Reynaldo Garcia, could you point to them if they are here in court?

A: Yes, sir.

Q: Please point to him?

A: That man, sir.

Q: Who is that man?

A: Medel Mamalayan, sir.

Q: How about the two, Noel Mamalayan and Reynaldo Garcia, are they in Court?

A: They are not here, sir.”[38]

The above-quoted testimony was further corroborated by Edwin Legaspi, another prosecution witnesses, who unequivocally declared that accused-appellant was one of those who took their personal belongings and raped his step-mother. The said witness positively identified Medel Mamalayan when he testified that:

Q: You mentioned that three (3) men suddenly entered your house and your room where you and your Auntie were sleeping, gagged your Auntie and tied her hand and feet, question, were you able to recognize these three (3) men who entered your room, gagged your Auntie and tied your Auntie?

A: Yes, sir. I recognized [them].

Q: Who were these three (3) persons who entered in(sic) your house.

A: They were Medel Mamalayan, Noel Mamalayan and Reynaldo Garcia.

Q: If these three (3) persons are in court, will you be able to recognize them and point to them?

A: Only one of them is present, sir.

COURT:

Who is that one?

A: That man, Your Honor, Medel Mamalayan.

INTERPRETER:

Witness, Your Honor, pointed to a man inside the courtroom.

xxx xxx xxx

COURT:

Record the fact that when asked the witness to identify Medel Mamalayan, he pointed to a person in Court whom when asked gave his name as Medel Mamalayan.[39]

Going now to the alibi interposed by the accused-appellant, he claims that on the date in question he was in Brgy. Bunuan, Dagupan City performing his duties as a costume attendant of Manila Royal Group – a group of entertainers performing variety shows in different places in the country.[40] Thus, he asserts that he could not have participated in the robbery with rape.

The Court is not persuaded by this defense.

We find the appellant's invocation of alibi as unavailing and futile, not only by reason of its inherent weakness but also because of the circumstances pointing to its contrived nature.[41] Well-entrenched is the rule that the defense of alibi cannot prevail over the positive identification of the accused by prosecution witnesses who have no motive to testify falsely against him.[42] And, alibi becomes less plausible as a defense when it is mainly established by the accused himself and his immediate relatives and not by credible persons.[43]

As the trial court aptly observed:

“But more than this, the Court is not convinced by the evidence presented by the accused to support his alibi. Three witnesses testified with respect to the alibi. Myra Mamalayan, the sister of the accused Medel Mamalayan is suspect because she is biased and is naturally expected to support the story of her brother to avoid criminal responsibility. The testimony of Elvira Veneracion is peculiarly not supported by any documents hence, one that may be readily fabricated. The fact that Veneracion allegedly manages the Manila Royal Group, an entertainment group giving performances outside Manila, her failure to produce booking contract belies her claim that the group existed. More, the fact that Veneracion failed to produce a business license to support her claim, bolster the finding that her testimony is highly unreliable. This aside, the Court finds the demeanor of the witnesses while testifying to be totally unconvincing. There is no ring of candor nor truth in her testimony because it fails to inspire credence. She was observed to be recalcitrant, untidy and shift. She kept looking at the defense counsel before answering questions as if waiting for cues for her answer. The many details she testified on, such as Mamalayan's being with her all the time watching the performances of the group; the different occasions when Mamalayan was in the dressing room attending to the costumes of the dancers; the exact time she sleeps at night and wake(sic) up in the morning, is incredible, considering that these were events that took place over five years ago and she was testifying from memory. This is a clear effort on her part to supplant much too many details to her story in order to establish Mamalayan's presence in Dagupan, it is also earmark of bias and of being coached.”[44] (Emphasis ours)

As to his forth assigned error, the herein accused-appellant maintains that the prosecution suppressed evidence by intentionally failing to present other witnesses or evidence before the trial court because their testimonies and probative value would be unfavorable to their case.[45]

We find this contention bereft of merit.

As we elucidated in the case of *People vs. Jumamoy*,[46] to wit:

“The prosecution’s failure to present the other witnesses listed in the Information did not constitute suppression of evidence. xxx The prosecutor has the exclusive prerogative to determine the witnesses to be presented for the prosecution. If the prosecution has several eyewitnesses, as in the instant case, the prosecutor need not present all of them but only as many as may be needed to meet the quantum of proof necessary to establish the guilt of the accused beyond reasonable doubt. The testimonies of the other witnesses may, therefore, be dispensed with for being merely corroborative in nature. This court ruled that the non-presentation of corroborative witnesses would not constitute suppression of evidence and would not be fatal to the prosecution’s case. Besides, there is no showing that the eyewitnesses who were not presented in Court as witnesses were not available to the accused. We reiterate the rule that the adverse presumption from a suppression of evidence is not applicable when (1) the suppression is not willful; (2) the evidence suppressed or withheld is merely corroborative or cumulative; (3) the evidence is at the disposal of both parties; and (4) the suppression is an exercise of a privilege. Moreover, if the accused believed that the failure to present the other witness was because their testimonies would be unfavorable to the prosecution, he should have compelled their appearance by compulsory process to testify as his own witnesses or even as hostile witnesses.” (Underlining supplied)

On his fifth and sixth assigned errors, the accused-appellant in a desperate attempt to exculpate himself from liability, advances the incredible theory that the Legaspi spouses had orchestrated the filing of the criminal complaint against him and his two companions to relieve Bonifacio of his accountability for the armalite rifle, its magazines and ammunitions.[47] We find this assertion ridiculous and outrageous, not only because it has no basis but because it is too flimsy and frivolous to consider.

In respect to the penalty imposed, the Solicitor General, believing that the penalty of reclusion perpetua had been converted into a divisible penalty (ranging from twenty [20] years and one [1] day to forty [40] years),[48] and construing the law in a manner favorable to the accused, theorizes that the penalty to be imposed should be “the indeterminate penalty of twenty (20) years of reclusion temporal, as minimum, to forty (40) [years] of reclusion perpetua, as maximum.”[49] This contention is unacceptable. The matter of whether reclusion perpetua may be considered a divisible penalty in light of R.A. No. 7659 was passed upon and settled by this Court in an extended Resolution in the case of *People vs. Lucas*.^[50] The Court sitting en banc, ruled that although Section 17 of R.A. No. 7659 has fixed the duration of reclusion perpetua from twenty (20) years and one (1) day to forty (40) years, there was no clear legislative intent to alter its original classification as an indivisible penalty. It shall then remain as an indivisible penalty.

WHEREFORE, the decision appealed from is hereby AFFIRMED in toto.
SO ORDERED.

Davide, Jr., (Chairman), Bellosillo, Vitug, and Kapunan, JJ., concur.

[1] Penned by Judge Francisco Ma. Guerrero.

[2] Decision of the Trial Court dated June 21, 1993, p. 19; Rollo, p. 32.

[3] Rollo, p. 5.

[4] ART. 294. Robbery with violence against or intimidation of persons. – Penalties. – Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

1. The penalty of reclusion perpetua to death, x x x or when the robbery shall have been accompanied by rape x x x.

[5] Rollo, p. 5.

[6] Decision of the Trial Court dated June 21, 1993, p. 19; Rollo, p. 32.

[7] TSN, April 6, 1993, pp. 3-7.

[8] Id., April 6, 1993, pp. 7-10.

[9] Id., April 6, 1993, pp. 10-17.

[10] Id., April 6, 1993, pp. 17-21.

[11] Id., April 6, 1993, pp. 21-24.

[12] Id., April 6, 1993, pp. 24-25.

[13] Id., April 6, 1993, pp. 25-26.

[14] Id., April 6, 1993, pp. 27-30.

[15] Id., February 9, 1993, pp. 26-28.

[16] Id., February 9, 1993, pp. 29-43.

[17] Exhibit “A”, Original Record, p. 6.

[18] TSN, May 18, 1993, pp. 26-27.

[19] Id., May 18, 1993, pp. 4-5.

[20] Id., May 18, 1993, pp. 5 and 12.

[21] Id., May 18, 1993, pp. 7-24.

[22] Appellant’s Brief dated October 13, 1994; Rollo, pp. 42-43.

[23] People vs. Gabris, 258 SCRA 663 [1996]; People vs. Atuel, 261 SCRA 339 [1996]; People vs. Ombrog, G.R. No. 104666, February 12, 1997.

[24] G.R. Nos. 10032-100385, March 19, 1997, citing People vs. de Guzman, 188 SCRA 407 [1990].

[25] People vs. Tabaco, G.R. Nos. 10032-100385, March 19, 1997.

[26] People vs. Cristobal, 252 SCRA 507 [1996].

[27] Ibid.

[28] People vs. Pareja, G.R. No. 88043, December 9, 1996.

[29] 233 SCRA 597 [1994].

- [30] Appellant's Brief dated October 13, 1994, pp. 34-35; Rollo, pp. 75-76.
- [31] Exhibit "3", Original Record, p. 582.
- [32] Exhibit "4", Original Record, p. 583.
- [33] Exhibit "D", Original Record, pp. 1-2.
- [34] Original Record, p. 8.
- [35] Exhibit "3", Original Record, p. 582.
- [36] Exhibit "4", Original Record, p. 583.
- [37] Decision of the Trial Court dated June 21, 1993, pp. 17-18; Rollo, pp. 30-31.
- [38] TSN, April 6, 1993, pp. 27-28.
- [39] TSN, April 27, 1993, pp. 8-10.
- [40] Appellant's Brief dated October 13, 1994, pp. 32-33; pp. 73-74.
- [41] People vs. Java, 227 SCRA 668 [1993].
- [42] People vs. Azugue, G.R. No. 110098, February 26, 1997.
- [43] Antonio vs. Court of Appeals, G.R. Nos. 100513 and 111559, June 13, 1997.
- [44] Decision of the Trial Court dated June 21, 1993, pp. 15-16; Rollo, pp. 28-29.
- [45] Appellant's Brief dated October 13, 1994, pp. 43-44; Rollo, pp. 84-85.

[46] 221 SCRA 333 [1993].

- [47] Appellant's Brief dated October 13, 1994, p. 44; Rollo, p. 85.
- [48] Section 21 of R.A. No. 7659.
- [49] Appellee's Brief dated March 6, 1995, p. 19; Rollo, p. 168.

[50] 240 SCRA 66 [1995].

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