

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARNEL ALICANDO Y BRIONES, ACCUSED-APPELLANT.

G.R. No. 117487. December 12, 1995

Ponente: PUNO, J.

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PUNO, J.:

The case at bar involves the imposition of the death penalty. With all our frailties, we are asked to play the role of an infallible God by exercising the divine right to give or take away life. We cannot err in the exercise of our judgment for our error will be irrevocable. Worse, our error can result in the worst of crimes — murder by the judiciary.

The records reveal that appellant Arnel Alicando was charged with the crime of rape with homicide[1] in an Information which reads:

"That on or about the 12th day of June 1994 in the City of Iloilo, Philippines and within the jurisdiction of this Court, said accused, did then and there willfully, unlawfully and feloniously and by means of force, violence and intimidation to wit: by then and there pinning down one KHAZIE MAE PENECILLA, a minor, four years of age, choking her with his right hand, succeeded in having carnal knowledge with her and as a result thereof she suffered asphyxia by strangulation, fractured cervical vertebra and lacerations of the vaginal and rectal openings causing profuse hemorrhages and other injuries which are necessarily fatal and which were the direct cause of her death.

CONTRARY TO LAW."

On June 29, 1994, appellant was arraigned with the assistance of Atty. Rogelio Antiquiera of the PAO, Department of Justice. Appellant pleaded guilty.

After appellant's plea of guilt, the trial court ordered the prosecution to present its evidence. It also set the case for reception of evidence for the appellant, if he so desired.[2]

The prosecution evidence shows that in the afternoon of June 12, 1994, Romeo Penecilla, father of the four year old victim Khazie Mae, was drinking liquor with Ramil Rodriguez and Remus Gaddi in his (Penecilla's) house at Barangay Rizal, Zone 1, Pulo Bala, Iloilo. Appellant joined them but every now and then would take leave and return. Appellant was living in his uncle's house some five (5) arm's length from Penecilla's house. At about 4:30 p.m., Penecilla's group stopped drinking and left.

Luisa Rebada also lives in the Penecilla neighborhood, about one and a half (1-1/2) arm's length from the house of appellant. At about 5:30 p.m. of that day, she saw the victim at the window of appellant's house. She offered to buy her "yemas" but appellant closed the window. Soon she heard the victim crying. She approached appellant's house and peeped through an opening between its floor and door. The sight shocked her - appellant was naked, on top of the victim, his left hand choking her neck. She retreated to her house in fright. She gathered her children together and informed her compadre, Ricardo Lagrana, then in her house, about what she saw. Lagrana was also

overcome with fear and hastily left.

Romeo Penecilla returned to his house at 8 o'clock in the evening. He did not find Khazie Mae. He and his wife searched for her until 1 o'clock in the morning. Their effort was fruitless. Rebada was aware that the Penecillas were looking for their daughter but did not tell them what she knew. Instead, Rebada called out appellant from her window and asked him the time Khazie Mae left his house. Appellant replied he was drunk and did not know.

As the sun started to rise, another neighbor, Leopoldo Santiago went down from his house to answer the call of nature. He discovered the lifeless body of Khazie Mae under his house. Her parents were informed and so was the police. At 9:00 a.m., Rebada suffered a change of heart. She informed Romeo Penecilla and his wife Julie Ann, that appellant committed the crime. Forthwith, appellant was arrested and interrogated by PO3 Danilo Tan. He verbally confessed his guilt without the assistance of counsel. On the basis of his uncounselled verbal confession and follow up interrogations, the police came to know and recovered from appellant's house, Khazie Mae's green slippers, a pair of gold earrings, a buri mat, a stained pillow and a stained T-shirt all of which were presented as evidence for the prosecution.

The body of Khazie Mae was autopsied by Dr. Tito Doromal, a medico-legal officer. His autopsy report reveals the following injuries sustained by the victim:

"HEAD & NECK/THORACO-ABDOMINAL REGIONS:

- 1) Contusion, purple in color, 11 x 11.3 cm., in dia., from left and right anterior neck, down to the medial portion of the left and right infraclavicular area.
- 2) Contusion, bluish purple, 5.5 x 6.3 cm., in dia., antero-lateral left chest wall.
- 3) Contusion, bluish in color, 3 in nos., 1, 0.5 & 1.1 cm., in dia., right antero--inferior chest wall.
- 4) Contusion, purple in color, 4 x 3.2 cm., in dia., left sub-costal arch.
- 5) Contusion, purple in color, 4.5 x 5 cm., in dia., supero-lateral, left iliac crest.

ON OPENING THE SKULL 7 THORACO-ABDOMINAL CAVITIES:

- a) Fractured, 2nd cervical vertebra.
- b) Fractured, crecoid cartilage.
- c) Both lungs, expanded with multiple petechial hemorrhages.
- d) Other internal organs, congested.

EXTREMITIES:

- 1) Confluent abrasion, 3 x 2.6 cm., in dia., posterior aspect, lower 3rd, left forearm.
- 2) Old wound, 2 x 1.5 cm., in dia., posterior middle 3rd, left forearm.
- 3) Old wound, 1.5 x 1 cm., in dia., antero-lateral aspect, middle 3rd, right forearm.

VAGINAL FINDINGS/ANAL FINDINGS:

- a) Lacerated wound, from the fourchette up to the dome of the rectum.
- b) Hematoma, from the fourchette up to the rectum.
- c) Lacerated wound, lateral wall of the vagina up to the level of the promontory of the sacrum with a length of

8 centimeters.

d) A cylinder with a diameter of 2 cms., easily passes the vaginal and anal openings.

CAUSE OF DEATH:

A) ASPHYXIA BY STRANGULATION.

B) FRACTURED, 2nd CERVICAL VERTEBRA.

C) HEMORRHAGE, 2nd DEGREE TO LACERATED VAGINAL & RECTAL OPENINGS."

Appellant adopted the autopsy report of Dr. Doromal as his documentary evidence to prove that the proximate cause of Khazie Mae's death was asphyxia by strangulation.

On July 20, 1994, the trial court found appellant guilty and sentenced him to death, viz:

"WHEREFORE, the court hereby finds the accused, Arnel Alicando, GUILTY beyond reasonable doubt for (sic) the Crime of Rape with Homicide penalized under Article 335 of the Revised Penal Code as amended by paragraphs 6 and 7 (No. 4) Section 11 of Republic Act No. 7659. Arnel Alicando is hereby sentenced to suffer a (sic) penalty of death and to indemnify the heirs of the offended party, Khazie Mae D. Penecilla, the sum of P50,000.00.

The death sentence shall be executed by putting the person under sentence to death by electrocution (electric chair). As soon as facilities are provided by the Bureau of Prisons, the method of carrying out his sentence shall be changed by gas poisoning (sic).

Here ends Khazie Mae's quest for justice. Her tormentor must suffer for the grievous offense he had committed. He deserves no mercy.

Cost against the accused.

SO ORDERED."

The case is before us on automatic review considering the death penalty imposed by the trial court. A new counsel, Atty. Joel Tiongco, took the cudgel for appellant. In his Brief, appellant assails the decision of the trial court as a travesty of justice.

We find that the Decision of the trial court sentencing the appellant to death is shot full of errors, both substantive and procedural. The conviction is based on an amalgam of inadmissible and incredible evidence and supported by sciotic logic.

First. The arraignment of the appellant is null and void. The trial judge failed to follow section (1) (a) of Rule 116 on arraignment. Said section provides:

"x x x

Section 1. Arraignment and plea; how made.—

(a) The accused must be arraigned before the court where the complaint or information has been filed or assigned for trial. The arraignment must be made in open court by the judge or clerk by furnishing the accused a copy of the complaint or information with the list of witnesses, reading the same in the language or dialect known to him and asking him whether he pleads guilty or not guilty. The prosecutor may, however, call at the trial witnesses other than those named in the complaint or information."

The reading of the complaint or information to the appellant in the language or dialect known to him is a new

requirement imposed by the 1985 Rules on Criminal Procedure. It implements the constitutional right of an appellant "x x x to be informed of the nature and cause of the accusation against him." [3] The new rule also responds to the reality that the Philippines is a country divided by dialects and Pilipino as a national language is still in the process of evolution. [4] Judicial notice can be taken of the fact that many Filipinos have limited understanding either of the Pilipino or English language, our official languages for purposes of communication and instruction. [5] The importance of reading the complaint or information to the appellant in the language or dialect known to him cannot thus be understated.

In the case at bar, the records do not reveal that the Information against the appellant was read in the language or dialect known to him. The Information against the appellant is written in the English language. It is unbeknown whether the appellant knows the English language. Neither is it known what dialect is understood by the appellant. Nor is there any showing that the Information couched in English was translated to the appellant in his own dialect before his plea of guilt. The scanty transcript during his arraignment, reads: [6]

"x x x

Prosecutor Edwin Fama — Appearing as public prosecutor

Atty. Rogelio Antiquiera — For the accused, Your Honor. Ready for arraignment.

Interpreter — (Reading the information to the accused for arraignment and pre-trial.)

Note: (After reading the information to the accused, accused pleads guilty)"

One need not draw a picture to show that the arraignment of the appellant is a nullity. It violated section 1(a) of Rule 116, the rule implementing the constitutional right of the appellant to be informed of the nature and cause of the accusation against him. It also denied appellant his constitutional right to due process of law. [7] It is urged that we must presume that the arraignment of the appellant was regularly conducted. When life is at stake, we cannot lean on this rebuttable presumption. We cannot assume. We must be sure.

Second. The plea of guilt made by the appellant is likewise null and void. The trial court violated section 3 of Rule 116 when it accepted the plea of guilt of the appellant. Said section provides:

"Sec. 3. Plea of guilty to capital offense; reception of evidence.?

When the accused pleads guilty to a capital offense, the court shall conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea and require the prosecution to prove his guilt and the precise degree of culpability. The accused may also present evidence in his behalf."

The records reveal how the trial judge inadequately discharged this duty of conducting a "searching inquiry." In the hearing of June 28, 1994, the transcripts reveal the following: [8]

"x x x x x x x x x

Note -

(After reading the information to the accused, accused pleads guilty.)

Court -

Question (sic) of the court to the accused.

Q -

Considering that this is a crime and under the amended law is a heinous crime, because of your plea of guilty

without the consent or even against the discretion of the court, the court will give you a mandatory death penalty because of the crime charged, do you understand?

Accused -

Yes, Your Honor.

Q -

Did you enter a plea of guilty on your own voluntary will or without any force or intimidation from any one or whatever?

Accused -

None, Your Honor.

Q -

Are you sure?

Accused -

Yes, Your Honor.

Q -

Or maybe because you were manhandled or maltreated by anyone and that will just be the consideration for you to plead guilty?

Accused -

No, Your Honor.

Court -

Were you not manhandled, please let us see your body?

Note -

(Accused raised his prison uniform or shirt and showed to the court his body from waist up.)

Accused -

No, Your Honor.

Court -

You were not maltreated in the jail?

Accused -

No, Your Honor.

Court -

Please let us see whether you have bruises so that you will be examined by a physician to the order of the court?

Accused -

No, Your Honor.

Court -

If you will plead guilty, that plea of guilty has no use because there will be a mandatory death penalty, do you still insist on your plea of guilty?

Accused -

Yes, Your Honor.

Court -

If you plead guilty to the crime charged there will be some effects on your civil rights but not until the decision will be affirmed by the Supreme Court.

Accused -

Yes, Your Honor.

Note -

(See Order dated June 28, 1994 attached to the records of this case.)"

In the next hearing on July 11, 1994, the following verbal exchange transpired, viz:[9]

"x x x x x x x x x x"

Fiscal Fama :

Appearing as the public prosecutor, ready, Your Honor.

Our first witness is Dr. Tito Doromal, Your Honor.

Atty. Antiquiera : For the accused, Your Honor.

Court :

Before the court will proceed with the reception of evidence by the prosecution Arnel Alicando, please come here. (at this juncture, Arnel Alicando, come near to the court)

The court is warning you again that this is reception of evidence by the prosecution after you plead guilty to the crime charged at, do you understand?

A :

Yes.

Q :

Do you still affirm and confirm to your plea of guilty of rape with homicide?

A :

Yes, Your Honor.

Q :

Do you still insist that your plea of guilty is voluntary without force, intimidation or whatsoever?

A :

Yes.

Q :

The court is warning you that after reception of evidence, the imposable penalty is mandatory death?

A :

Yes, Your Honor.

Q :

Despite of that, you still insist on your plea of guilty?

A :

Yes, Your Honor.

Court :

Okey, proceed."

Section 3 of Rule 116 which the trial court violated is not a new rule for it merely incorporated the decision of this Court in *People vs. Apduhan, Jr.*,^[10] and reiterated in an unbroken line of cases.^[11] The bottom line of the rule is that the plea of guilt must be based on a free and informed judgment. Thus, the searching inquiry of the trial court must be focused on: (1) the voluntariness of the plea, and (2) the full comprehension of the consequences of the plea. The questions of the trial court failed to show the voluntariness of the plea of guilt of the appellant nor did the questions demonstrate appellant's full comprehension of the consequences of his plea. The records do not reveal any information about the personality profile of the appellant which can serve as a trustworthy index of his capacity to give a free and informed plea of guilt. The age, socio-economic status, and educational background of the appellant were not plumbed by the trial court. The questions were framed in English yet there is no inkling that appellant has a nodding acquaintance of English. It will be noted too that the trial court did not bother to explain to the appellant the essential elements of the crime of rape with homicide.

A cursory examination of the questions of the trial court to establish the voluntariness of appellant's plea of guilt will show their utter insufficiency. The trial court simply inquired if appellant had physical marks of maltreatment. It did not ask the appellant when he was arrested, who arrested him, how and where he was interrogated, whether he was medically examined before and after his interrogation, etc. It limited its efforts trying to discover late body marks of maltreatment as if involuntariness is caused by physical abuse alone. Regretfully, it even turned a blind eye on the following damning entry on the June 13, 1994 Record of Events of the Iloilo PNP (Exh. "M") showing that after his arrest, the appellant was mobbed by inmates while in jail and had suffered hematoma, viz:

"c- 0262-94

INFORMATION

2:50PM - PO2 Salvador Pastoloro, Jr., PNP assigned at 327th PNP MFC, informed this office thru SPO1 W. Garcera alleging that at about 9:00 AM this date when the suspect ARNEL ALICANDO Y BRIONES, 24 yrs. old, residence of Rizal, Palapala Zone I, CP, been arrested and mobbed by the irrate residents of Zone I, Rizal, Palapala, GP, in connection of the Rape with Homicide case wherein the victim KHAZIE MAE PENECELLA Y DRILON, 4 yrs. old, residence of same place who was discovered dead under the house thereat. Suspect when turned over to this office and put on lock up cell was also mobbed by the angry inmates thus causing upon him hematoma contusion on different parts of his body."

Likewise, the trial court's effort to determine whether appellant had full comprehension of the consequences of his

plea is fatally flawed. It warned the appellant he would get the mandatory death penalty without explaining the meaning of "mandatory". It did not inform the appellant of the indemnity he has to pay for the death of the victim. It cautioned appellant there "x x x will be some effects on your civil rights" without telling the appellant what those "effects" are and what "civil rights" of his are involved.

Appellant's plea of guilt is void and the trial court erred in using it to sentence him to death. We stress that under the 1985 Rules of Criminal Procedure, a conviction in capital offenses cannot rest alone on a plea of guilt. Section 3 of Rule 116 requires that after a free and intelligent plea of guilt, the trial court must require the prosecution to prove the guilt of the appellant and the precise degree of his culpability beyond reasonable doubt. This rule modifies prior jurisprudence that a plea of guilt even in capital offenses is sufficient to sustain a conviction charged in the information without need of further proof. The change is salutary for it enhances one of the goals of the criminal process which is to minimize erroneous conviction. We share the stance that "it is a fundamental value determination of our system that it is far worse to convict an innocent person than let a guilty man go free." [12]

Third. Some prosecution evidence, offered independently of the plea of guilt of the appellant, were inadmissible, yet, were considered by the trial court in convicting the appellant.

Thus, the trial court gave full faith and credit to the physical evidence presented by the prosecution. To quote its Decision, [13] viz:

""X X X X X X X X X

Further, there are physical evidence to prove Khazie was raped. These consists of a pillow with bloodstains in its center [14] and the T-shirt [15] of the accused colored white with bloodstains on its bottom. These physical evidence are evidence of the highest order. They strongly corroborate the testimony of Luisa Rebada that the victim was raped."

These are inadmissible evidence for they were gathered by PO3 Danilo Tan of the Iloilo City PNP as a result of custodial interrogation where appellant verbally confessed to the crime without the benefit of counsel. PO3 Tan admitted under cross-examination, viz: [16]

""X X X X X X X X X

CROSS-EXAMINATION

BY ATTY. ANTIOUIERA:

Q

Mr. Witness, when for the first time did you see Arnel Alicando?

A

June 13, 1994, when I arrested him.

Q

Previous to that you have never seen him?

A

Yes, sir.

Q

When for the first time did you start investigating Arnel Alicando?

A

After I finished investigating the body of the victim, Khazie Mae Penecilla.

Q

And that was also after you were informed that Arnel Alicando was a suspect in the raping of Khazie Mae Penecilla?

A

Yes, sir.

Atty. Antiquiera:

Q

And who was that person who informed you of the suspect?

A

Luisa Rebada.

Q

Mrs. Rebada who is the witness in this case?

A

Yes, sir.

Q

And you started investigating Arnel Alicando in the morning of June 13, 1994?

A

Yes, sir.

Q

How long did you interrogate Arnel Alicando in the morning of June 13, 1994?

A

I cannot remember the length of time I investigated him.

Q

Did it take you the whole morning of June 13, 1994 in interrogating and investigating Arnel Alicando?

A

Yes, sir.

Q

And the investigation you conducted continued in the afternoon of the same date?

A

Yes, sir.

Q

The following day, June 14, 1994, you still investigated and interrogated Arnel Alicando.

A

Yes, sir.

Q

And when did you stop, finally, investigating and interrogating Arnel Alicando?

A

After I finished recovering all the exhibits in relation to this case.

Q

What date did you stop your investigation?

A

June 14, 1994, when I finished recovering the white T-shirt and pair of earring.

Atty. Antiquiera:

Q

You testified in this case, Mr. Witness, you never informed the court that you apprised the accused of his constitutional rights, is that correct?

A

I apprised him.

Q

My question is, during your testimony before this court under the direct examination of the prosecution you never informed the court that you apprised the accused of his constitutional rights?

Pros. Fama:

I did not ask him that question. How will he answer?

Court:

Sustained.

Atty. Antiquiera:

Q

When did you inform, the date when you informed Alicando of his constitutional rights?

A

On June 13.

Q

On what hour did you inform him?

A

After the witness identified him.

Q

What constitutional rights did you inform Alicando of?

A

The right to remain silent and right to get his lawyer and I have interpreted in Visayan language.

Q

And during your investigation for almost two (2) days the accused was never represented by counsel, is that correct?

A

Yes, sir.

Atty. Antiquiera:

Q

Are you aware of the law that enjoins a public officer to inform the person of his constitutional rights?

A

Yes, sir.

That is all, Your Honor."

It is now familiar learning that the Constitution has stigmatized as inadmissible evidence uncounselled confession or admission. Section 12 paragraphs (1) and (3) of Article III of the Constitution provides:

""x x x x x x x x

Sec. 12. (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

x x x x x x x x

(3) Any confession or admission obtained in violation of this or the preceding section shall be inadmissible against him."

In the case at bar, PO3 Tan did not even have the simple sense to reduce the all important confession of the appellant in writing. Neither did he present any writing showing that appellant waived his right to silence and to have competent and independent counsel. Despite the blatant violation of appellant's constitutional right, the trial court allowed his uncounselled confession to flow into the records and illicitly used it in sentencing him to death.

It is not only the uncounselled confession that is condemned as inadmissible, but also evidence derived therefrom. The pillow and the T-shirt with the alleged bloodstains were evidence derived from the uncounselled confession illegally extracted by the police from the appellant. Again, the testimony of PO3 Tan makes this all clear, viz:[17]

""x x x x x x x x

Q

Did the accused Arnel Alicando accompany you to the place of the incident?

A

Yes, sir.

Q

When you arrived at the place of the incident what did you do?

A

He pointed to the fish basin.

Q

Can you identify this fish basin which you said pointed to you by Arnel Alicando?

A

Yes, sir.

Q

Please point?

A

(Witness pointing to the fish basin already marked as Exhibit "H".)

Q

Did you ask the accused what he did with this fish basin?

A

I asked the accused what he did with the fish basin and he answered that he used the fish basin to cover Khazie Mae Penecilla when she was already dead.

Pros. Fama:

Q

You mean to say to conceal the crime?

A

Yes, sir.

Q

What else aside from this fish basin, what else did you recover?

A

At around 7 o'clock in the evening he further pointed to us the old mat and the pillow wherein he layed the victim Khazie Mae Penecilla

Q

You mean to say that you returned back to the scene of the incident that time?

A

It was already night time and it was only Kagawad Rodolfo Ignacio, my companion, who went to the place of the incident.

Q

You mean to say you were verbally instructed by the accused?

A

Yes, sir.

Q

In what particular place did you recover those things?

A

Inside the room where he raped the child.

Q

Whose house is that?

A

The house of Imelda Alicando.

Q

The wife of Romeo Alicando?

A

Yes, sir.

Q

In what particular place is that situated?

A

Inside the room where the accused was sleeping at Rizal - Palapala.

Pros. Fama:

Q

You mean to say inside that room the victim was raped by the accused?

A

Yes, sir.

Q

Can you point that pillow which you said you recovered inside the room of Imelda Alicando?

A

Yes, sir.

Q

And the mat?

A

(Witness taking out from the fish basin the mat and pillow.)

Q

Did you find something on the pillow?

A

The pillow have bloodstain in the middle.

...This was already marked as Exhibit "J", Your Honor and the mat as Exhibit "I".

Q

Aside from this what did you recover from the place of incident?

A

On June 14, 1994, at about 10:00 o'clock in the morning the accused Arnel Alicando further informed me that he kept the gold earring of the victim and her clothes inside the room of the house of Imelda Alicando.

Q

Where?

A

I saw the clothes of Khazie Mae Penecilla inside the room where the rape took place hanged on the clothes line. And I found the pair of earring at the bamboo post of the fence.

Court:

Q

Where is that bamboo post of the fence situated?

A

Around the fence of Imelda Alicando situated at the from gate on the right side.

Pros. Fama:

Q

You mean to say you returned back on June 14, you recovered the items accompanied by the accused?

A

No more, I only followed his direction.

Q

He made verbal direction to you?

A

Yes, sir.

Q

Can you please show us the white t-shirt?

A

(Witness taking out a white t-shirt from the fish basin.)

Q

Please examine that white t-shirt?

A

The t-shirt have a bloodstain."

We have not only constitutionalized the Miranda warnings in our jurisdiction. We have also adopted the libertarian exclusionary rule known as the "fruit of the poisonous tree," a phrase minted by Mr. Justice Felix Frankfurter in the celebrated case of *Nardone v. United States*.^[18] According to this rule, once the primary source (the "tree") is shown to have been unlawfully obtained, any secondary or derivative evidence (the "fruit") derived from it is also inadmissible.^[19] Stated otherwise, illegally seized evidence is obtained as a direct result of the illegal act, whereas the "fruit of the poisonous tree" is the indirect result of the same illegal act. The "fruit of the poisonous tree" is at least once removed from the illegally seized evidence, but it is equally inadmissible. The rule is based on the principle that evidence illegally obtained by the State should not be used to gain other evidence because the originally illegally obtained evidence taints all evidence subsequently obtained.^[20] We applied this exclusionary rule in the recent case of *People vs. Salanga, et al.*,^[21] a ponencia of Mr. Justice Regalado. Salanga was the appellant in the rape and killing of a 15-year old barrio lass. He was, however, illegally arrested. Soldiers took him into custody. They gave him a body search which yielded a lady's underwear. The underwear was later identified as that of the victim. We acquitted Salanga. Among other reasons, we ruled that "the underwear allegedly taken from the appellant is inadmissible in evidence, being a so-called "fruit of the poisonous tree."^[22]

But even assuming *arguendo* that the pillow and the t-shirt were admissible evidence, still, the trial court erred in holding that they "strongly corroborated the testimony of Luisa Rebada that the victim was raped." For one, there was no basis for the trial court to conclude that the stains on the pillow and t-shirt were human bloodstains. The pillow and the t-shirt were not examined by any expert. To hold that they were human bloodstains is guesswork. For another, there was no testimony that the stains were caused by either the blood of the appellant or the victim. In addition, there was no testimony that the t-shirt was the one worn by the appellant when he allegedly committed the crime. It must also be noted that it is not unnatural for appellant to have bloodstains on his shirt. He is a butcher by occupation. Romeo Penecilla himself, the father of the victim, testified he knows the appellant "because he used to accompany me during butchering of animals."^[23]

The burden to prove that an accused waived his right to remain silent and the right to counsel before making a confession under custodial interrogation rests with the prosecution. It is also the burden of the prosecution to show that the evidence derived from confession is not tainted as "fruit of the poisonous tree." The burden has to be discharged by clear and convincing evidence. Indeed, par. 1 of Section 12 of Article III of the Constitution provides only one mode of waiver --- the waiver must be in writing and in the presence of counsel. In the case at

bar, the records show that the prosecution utterly failed to discharge this burden. It matters not that in the course of the hearing, the appellant failed to make a timely objection to the introduction of these constitutionally proscribed evidence. The lack of objection did not satisfy the heavy burden of proof that rested on the prosecution.

There is no and there ought not to be any disagreement on basic principles. The Court should be concerned with the heinousness of the crime at bar and its despicable perpetration against a 4-year old girl, an impersonation of innocence itself. The Court should also be concerned with the multiplication of malevolence in our midst for there is no right to be evil, and there are no ifs and buts about the imposition of the death penalty as long as it remains unchallenged as part of the laws of our land. These concerns are permanent, norms hewn in stone, and they transcend the transitoriness of time.

Be that as it may, our commitment to the criminal justice system is not only to convict and punish violators of our laws. We are equally committed to the ideal that the process of detection, apprehension, conviction and incarceration of criminals should be accomplished with fairness, and without impinging on the dignity of the individual. In a death penalty case, the Court cannot rush to judgment even when a lowlife is involved for an erroneous conviction will leave a lasting stain in our escutcheon of justice.

In sum, the court cannot send the appellant to die in the electric chair on the basis of the procedural irregularities committed by, and the inadmissible evidence considered by the trial court. In *Binabay vs. People, et al.*,^[24] a ponencia of Mr. Chief Justice R. Concepcion, this Court held that no valid judgment can be rendered upon an invalid arraignment. Since in the case at bar, the arraignment of the appellant is void, his judgment of conviction is also void. In fairness to the appellant, and in justice to the victim, the case has to be remanded to the trial court for further proceedings. There is no philosophy of punishment that allows the State to kill without any semblance of fairness and justice.

IN VIEW WHEREOF, the Decision in Criminal Case No. 43663, convicting accused Arnel Alicando of the crime of Rape with Homicide and sentencing him to suffer the penalty of death is annulled and set aside and the case is remanded to the trial court for further proceedings. No costs.

SO ORDERED.

Narvasa, C. J., Feliciano, Regalado, Davide, Jr., Romero, Melo, Vitug, Francisco, and Panganiban, JJ., concur. Kapunan, Padilla, Bellosillo, Mendoza, and Hermosisima, Jr., JJ., join in his dissenting opinion.

[1] Criminal Case No. 43663, RTC of Iloilo City, Br. 38.

[2] Order of June 28, 1994.

[3] Section 14(2) of Article III of the Constitution.

[4] See section 6, Article XIV of the Constitution.

[5] See section 7, Article XIV of the Constitution.

[6] TSN, June 28, 1994, p. 2.

[7] Section 1, Article III of the Constitution provides: "No person shall be deprived of life, liberty, or property without due process of law . . ."

[8] TSN, June 28, 1994, pp. 2-3.

[9] TSN, July 11, 1994, p. 2.

[10] 24 SCRA 798, [1968].

[11] E.g., *People vs. Abrea*, 112 SCRA 83 [1982]; *People vs. Alibasa*, 118 SCRA 183 [1982]; *People vs. Havana*, 199 SCRA 805; *People vs. Petalcorin, et al.*, 180

[12] *In re: Winship*, 397, US358, 90 S.Ct., 1068, 25 L. Ed. 2d 368 [1970]

[13] Decision, page 7; Records, p. 96.

[14] Exh. "J".

[15] Exh. "F".

[16] TSN, July 12, 1994, pp. 18-21.

[17] TSN, July 12, 1994, pp. 14-17.

[18] 308 US 388, 60 S.Ct. 266, 84 L. ed. 307 [1939].

[19] The genesis of the doctrine was laid down in *Silverthorne Lumber Co. v. US*, 251 US 385, 40 S.Ct. 182, 64 L. Ed. 319 [1920].

[20] Del Carmen, *Criminal Procedure, Law and Practice*, 3rd Ed., pp. 64-65.

[21] GR No. 100910, July 25, 1994, 234 SCRA 407.

[22] *Ibid*, p. 416.

[23] TSN, July 12, 1994, p. 28.

[24] No. L-31008, January 10, 1971, 37 SCRA 445.

DISSENTING OPINION

KAPUNAN, J.:

The civilized mind normally recoils at the idea of taking a man's life by way of retribution for the commission of a crime. However, every so often, a crime so dastardly and repulsive comes along that even an individual usually predisposed towards rehabilitating the hard-core criminal would no longer wish to suffer in silent rage at society's kid-glove treatment of such offender, but would readily opt to exact a commensurate requital in the form of capital punishment where circumstances so demand.

Sociological theory at least since Emile Durkheim (1858-1917) has posited the idea that setting absolute outer limits on deviance is a necessary component of group identification and survival. Justice Oliver Wendell Holmes may have sensed this truth when he wrote, in *The Common Law* (1881), "The first requirement of a sound body of law is that it should correspond with the actual feelings and demands of the community, whether right or wrong (1938 ed., p. 41)."[1]

Thus, impelled by the alarming upsurge of crime resulting in the loss of human lives and wanton destruction of property affecting the nation's efforts towards sustainable development and prosperity while at the same time undermining the people's faith in the Government, Congress enacted Republic Act 7659,[2] imposing capital punishment on certain heinous crimes.

The early Spartans had word for such crimes: haineus, hateful, abominable, from the Greek prefix haton, denoting acts so hatefully or shockingly evil. The acts charged in the case at bench belong to this genre.

A totally innocent child was forever denied the opportunity to enjoy life beyond the age of four by the gruesome and hideous acts allegedly committed by the appellant who, according to the prosecution, was not content merely with satisfying his beastly desires on her, but also strangled her to death. Whether or not the circumstances of the present case require the imposition of the death penalty is the ultimate issue before us. After a thorough review of the facts and the evidence, I am afraid, I have to dissent from the majority. The legal evidence available to us overwhelmingly supports the lower court's conclusions. We should not shirk from our legal duty to impose the death penalty.

I

In the afternoon of June 12, 1994, Romeo Penecilla, father of four-year-old Khazi Mae, was having a drinking spree with Ramil Rodriguez, Remus Goddi and the appellant at his (Romeo's) house at Barangay Rizal, Zone 1, Pulo Bala, Iloilo. At about 4:30 p.m., everybody left, except for the appellant. Appellant was residing at his uncle's house about five (5) arm's length away from the Penecilla's house.

When Romeo Penecilla arrived home at 8:00 that evening, he could not find Khazi Mae. He and his wife looked for her until 1:00 in the morning to no avail.

The next morning, Leopoldo Santiago, a neighbor, got the shock of his life when, answering the call of nature outside his house, he chanced the dead body of Khazi Mae. Immediately, the girl's parents were informed. The small, lifeless body was brought to their house.

The matter was reported to the police at once. At this point, Luisa Rebada, who lived about 1-1/2 arm's length away from the house of appellant related to the girl's distraught parents what she knew.[3]

Rebada recounted that at about 5:30 of the afternoon before, she saw Khazi Mae at the window of appellant's house. She called out to her and offered to buy "yemas," for her. Appellant suddenly closed the window. Later on, Luisa heard Khazi Mae cry and then squeal. Her curiosity aroused, she crept two steps up the appellant's house, peeped through an opening between the floor and the door, and saw appellant naked on top of Khazi Mae, his right hand choking the girl's neck. Rebada became frightened and went back to her house to gather her children. She told her compadre, Ricardo Lagrana, who was in her house at that time, of what she saw. The latter got nervous and left. That evening when she heard that Khazi Mae's parents were looking for the little child, she called out from her window and asked appellant what time Khazi Mae left his house. Appellant replied that he did not know since he was drunk.[4] With Luisa Rebada's revelation, appellant was arrested.

During the investigation conducted by PO3 Danilo Tan, appellant readily admitted raping and killing Khazi Mae.[5] The police were able to recover from appellant's house Khazi Mae's green slippers, a pair of gold earrings placed on top of a bamboo post, a bloodied buri mat, a pillow with a blood stain in the middle, and a stained T-shirt owned by appellant.

An autopsy conducted and Dr. Tito Doromal, the medico-legal officer, revealed the following findings:

HEAD & NECK/THORACO-ABDOMINAL REGIONS:

- 1) Contusion, purple in color, 11 x 11.3 cm., in dia., from left and right anterior neck, down to the medial portion of the left and right infra-clavicular area.
- 2) Contusion, bluish purple, 5.5 x 6.3 cm., in dia., antero-lateral left chest wall.

3) Contusion, bluish in color, 3 in nos., 1, 0.5 & 1.1 cm., in dia., right antero-inferior chest wall.

4) Contusion, purple in color, 4 x 3.2 cm., in dia., left sub-costal arch.

5) Contusion, purple in color, 4.5 x 5 cm., in dia., supero-lateral, left iliac crest.

ON OPENING THE SKULL & THORACO-ABDOMINAL CAVITIES:

a) Fractured, 2nd cervical vertebra.

b) Fractured, crecoid cartilage.

c) Both lungs, expanded with multiple petechial hemorrhages.

d) Other internal organs, congested.

EXTREMITIES:

1) Confluent abrasion, 3 x 2.6 cm., in dia., posterior aspect, lower 3rd, left forearm.

2) Old wound, 2 x 1.5 cm., in dia., posterior middle 3rd, left forearm.

3) Old wound, 1.5 x 1 cm., in dia., antero-lateral aspect, middle 3rd, right forearm.

VAGINAL FINDINGS/ANAL FINDINGS:

a) Lacerated wound, from the fourchette up to the dome of the rectum.

b) Hematoma, from the fourchette up to the rectum.

c) Lacerated wound, lateral wall of the vagina up to the level of the promontory of the sacrum with a length of 8 centimeters.

d) A cylinder with a diameter of 2 cms., easily passes the vaginal and anal openings.

CAUSE OF DEATH:

A) ASPHYXIA BY STRANGULATION.

B) FRACTURED, 2nd CERVICAL VERTEBRA.

C) HEMORRHAGE, 2nd DEGREE TO LACERATED VAGINAL & RECTAL OPENINGS.[6]

Consequently, an information was filed with the Regional Trial Court of Iloilo City, Branch 38, docketed as Criminal Case No. 43663, charging Arnel Alicando with the crime of rape with homicide, committed as follows:

That on or about the 12th day of June, 1994 in the City of Iloilo, Philippines and within the jurisdiction of this Court, said accused, did then and there willfully, unlawfully and feloniously and by means of force, violence and intimidation to wit: by then and there pinning down one KHAZIE MAE PENECILLA, a minor, four years of age, choking her with his right hand, succeeded in having carnal knowledge with her and as a result thereof she suffered asphyxia by strangulation, fractured cervical vertebra and lacerations of the vaginal and rectal openings causing profuse hemorrhages and other injuries which are necessarily fatal and which were the direct cause of her death thereafter.

CONTRARY TO LAW.[7]

On June 28, 1994, appellant, assisted by Atty. Rogelio Antiquiera of the Public Attorney's Office (PAO), pleaded guilty to the crime charged.

The trial court ordered the prosecution to present evidence to prove the guilt of the accused and the precise degree of his culpability. It likewise set the case for reception of evidence for the accused, if he wished to.[8]

In the course of the trial, the prosecution presented (1) Luisa Rebada; (2) Dr. Tito Doromal, the medico-legal officer; (3) SPO1 Manuel Artuz, the exhibit custodian of Iloilo City Police Station; (4) PO3 Danilo Tan; (5) SPO3 Rollie Luz, police investigators; and (6) Romeo Penecilla, the victim's father.

The defense, for its part, merely presented the autopsy report of Dr. Tito Doromal to show that the proximate cause of death was asphyxia by strangulation.

On July 20, 1994, the trial judge rendered a decision imposing the death penalty on Arnel Alicando.

The case is now before us on automatic review. Disagreeing with the trial court's conviction of the accused for the crime of Rape with Homicide and the said court's imposition of the death penalty the Court's majority has decided to overturn the conviction and remand the case to the trial court on the basis of the following alleged procedural irregularities:

First, that the arraignment of the appellant is null and void;

Second, that the plea of guilt made by the appellant is likewise null and void;

Third, some prosecution evidence, offered independently of the plea of guilt of the appellant, were inadmissible, yet were considered by the trial court in convicting the appellant.

I strongly disagree.

II

THERE WAS SUBSTANTIAL, IF NOT FULL COMPLIANCE WITH EXISTING RULES ON ARRAIGNMENT AND PLEA.

A thorough review of the record reveals that there was full compliance with existing rules on arraignment and plea.

It is plainly obvious from an examination of the appropriate rules and the record of the case that: 1) there is absolutely nothing on the record which would warrant a finding the information was not read in the language or dialect known to the appellant; 2) the rule on arraignment and plea does not absolutely require that the same be indicated in the record of every criminal case; 3) Rule 116 Section 1 contains nothing requiring trial courts to indicate in the record the fact that the information was read in the language or dialect known to the defendant, even if the same was in fact actually complied with by the lower court.

The rule on arraignment, Rule 116 provides the following:

Section 1: Arraignment and plea; how made. - (a) The accused must be arraigned before the court where the complaint or information has been filed or assigned for trial. The arraignment must be made in open court by the judge or clerk by furnishing the accused a copy of the complaint or information with the list of witnesses, reading the same in the language or dialect known to him and asking him whether he pleads guilty or not guilty. The prosecution may, however, call at the trial witnesses other than those named in the complaint or information.

(b) The accused must be present at the arraignment and must personally enter his plea. Both arraignment and plea shall be made of record, but a failure to enter of record shall not affect the validity of the proceedings.

(c) If the accused refuses to plead, or makes a conditional plea of guilty, a plea of not guilty shall be entered for him.

x x x

Section 3: Plea of guilty to capital offense; reception of evidence. When the accused pleads guilty to a capital offense, the court shall conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea and require the prosecution to prove his guilt and the precise degree of culpability. the accused may also present evidence in his behalf.

When an accused is arraigned in connection with a criminal charge, it is the duty of the court to inform him of its nature and cause so that he may be able to comprehend the charges against him as well as the circumstances attendant thereto. When the charge is of a serious nature, it becomes the imperative duty of the lawyer present not only to assist the accused during the reading of the information but also to explain to him the gravity and consequence of his plea.[9]

Trial judges are enjoined to refrain from accepting with alacrity the accused's plea of guilty. While justice demands speedy administration, judges are duty bound to be extra solicitous in seeing to it that when an accused pleads guilty, he fully understands the meaning of his plea and the import of an inevitable conviction.[10]

Consequently, three things need to be accomplished after the accused in a criminal case enters a plea of guilty to a capital offense:

(1) the court should conduct a searching inquiry into the voluntariness and full comprehension of the consequences of the accused's plea;

(2) the lower court should require the prosecution to prove the guilt of the accused and the precise degree of his culpability; and

(3) the court should inquire whether or not the accused wishes to present evidence on his behalf and should allow him to do so if he so desires. A judge who fails to observe this requirement commits a grave abuse of discretion.

These requirements have been complied with in this case, which the following pertinent portions of the appellant's arraignment, quoted from the record support:

Prosecutor Edwin Fama?

Appearing as public prosecutor.

Atty. Rogelio Antiquiera?

For the accused, Your Honor. Ready for arraignment.

Interpreter:

(Reading the information to the accused for arraignment and pre-trial.)

Note:

(After reading the information to the accused, accused pleads guilty.)

Court:

Question of the court to the accused.

Q: Considering that this is a crime and under the amended law is a heinous crime, because of your plea of guilty without the consent or even against the discretion of the court, the court will give you a mandatory death penalty because of the crime charged, do you understand that?

Accused:

Yes, Your Honor.

Q: Did you enter a plea of guilty on your own voluntary will or without any force or intimidation from any one or whatever.

Accused:

None, Your Honor.

Q: Are you sure?

Accused:

Yes, Your Honor.

Q: Or maybe because you were manhandled or maltreated by anyone and that will just be the consideration for you to plead guilty?

Accused:

No, Your Honor.

Court:

Were you not manhandled, please let us see your body?

Note:

(Accused raised his prison uniform or shirt and showed to the court his body from waist up.)

Accused:

No, Your Honor.

Court:

You were not maltreated in the jail?

Accused:

No, Your Honor.

Court:

Please let us see whether you have bruises so that you will be examined by a physician to the order of the court?

Accused:

No, Your Honor.

Court:

If you plead guilty to the crime charged there will be some effects on your civil rights but not until the decision will be affirmed by the Supreme Court.

Accused:

Yes, Your Honor.[11]

Again, before the prosecution presented its evidence on July 11, 1994, the trial judge once more asked appellant if he was sure of his plea.

Fiscal Fama:

Appearing as the public prosecutor, ready, Your Honor.

Our first witness is Dr. Tito Doromal, Your Honor.

Atty. Antiquiera:

For the accused, Your Honor.

Court:

Before the court will proceed with the reception of evidence by the prosecution, Arnel Alicando, please come here. (At this juncture, Arnel Alicando, come near to the court)

The court is warning you again that this is reception of evidence by the prosecution after you plead guilty to the crime charged at, do you understand?

A: Yes.

Q: Do you still affirm and confirm to your plea of guilty of your rape with homicide?

A: Yes, Your Honor.

Q: Do you still insist that your plea of guilty is voluntary without force, intimidation or whatsoever?

A: Yes.

Q: The Court is warning you that after reception of evidence, the imposable penalty is mandatory death?

A: Yes, Your Honor.

Q: Despite of that, you still insist of your plea of guilty?

A: Yes, Your Honor.

Court:

Okey, proceed.[12]

It is crystal clear, from the above-quoted portions of the transcript of the appellant's arraignment that the trial judge made every effort to ascertain the voluntariness of the plea, and that he repeatedly warned the defendant of the consequences of his plea. In other words -

A) The above-quoted proceedings satisfy the requirement of a searching inquiry.

There is no hard and fast rule requiring judges to conduct their searching inquiry in the detailed manner suggested by the majority opinion, although judges should ideally strive to conduct as detailed an inquiry as would be reasonable under the circumstances. In *People v. Dayot*[13] we held that:

A searching inquiry ... compels the judge to content himself reasonably that the accused has not been coerced or placed under a state of duress — and that his guilty plea has not therefore been given improvidently — other by actual threats of physical harm from malevolent quarters or simply because of his, the judge's, intimidating robes.

x x x x x x x x

While there can be no hard and fast rule as to how a judge may conduct searching inquiry, as to the number and character of questions he may put to the accused, or as to the earnestness with which he may conduct it, since each case must be measured according to its individual merit, taking into consideration the age, educational attainment, and social status of the accused confessing guilt, among other things, the singular barometer is that the judge must in all cases, fully convince himself that: (1) the accused, in pleading guilty, is doing so voluntarily, and (2) he, in so doing, is truly guilty, and that there exists a rational basis for a finding of guilt, based on his testimony. This Court leaves to judges, considering their training, ample discretion, but expects them at the same time, that they will be true to their calling and be worthy ministers of the law.

The purpose of a searching inquiry is to satisfy the judge that the defendant's plea was entered into voluntarily and that the defendant understood the consequences of his plea. . There is no hard and fast rule, as the Dayot case states, as to the number and character of the questions propounded. Judges are not required to go into obsessive detail about the psychological, educational and sociological background of the accused if from a reasonable inquiry conducted through a reasonable number of questions he is fully convinced a searching inquiry has been met. There is a world of difference between a fastidious attention to detail which furthers the end of justice and an attention to detail and minutiae bordering on obsessiveness which ultimately obstructs justice and defeats the purpose of the law. Apopos to this there is-

B) No evidence that the information was not read in a language or dialect known to the appellant.

The records in an overwhelming number of criminal cases brought before us contain informations written in the English language without any indication, whatsoever, that the same was translated from a language or dialect known to the defendant. And yet, even in Metro Manila alone, one observes that the bulk of proceedings in our trial courts, including the process of arraignment, is conducted in the vernacular. On the record of these cases normally printed in English, courts hardly bother to point out those sections of the trial conducted in the vernacular and translated into English. Because of this widespread practice, which the section on arraignment in the Rules of Court does not proscribe - the presumption of regularity ought to apply. Otherwise, we should compel ourselves to review the criminal cases decided by this Court since the imposition of the 1985 Revised Rules on Criminal Procedure and see whether there was any indication that the arraignment of these criminal cases were, the records therein then ought to show, conducted in a language known to the defendants. The absurdity of this argument by the defense then becomes apparent, because it would be fairly obvious to all of us that most of these proceedings were actually conducted in the vernacular, but the fact was never put on record. In fact, Section 1 (b) of Rule 116 even states that while the arraignment and plea be made of record failure to enter (the same) of record shall not affect the validity of the proceedings. Even the rule on placing the arraignment and plea on record is not absolute, and I cannot see how we can be too strict about indicating on record whether proceedings were made in the vernacular in cases where in fact the proceedings were so conducted. The argument that the information was not read in the language or dialect known to appellant merely grasps on straws and ought to be dismissed for being so inconsequential as to be bereft of merit.

Moreover, it is a matter of common practice that in every court, especially in the provinces, an interpreter is always at hand to translate to the parties all questions propounded to them in the language or dialect known to them. It is also common practice that the transcript of stenographic notes submitted to the court only reflect the

court proceedings conducted in the English language. While again, the records do not categorically indicate that the information was read in the language or dialect known to the defendant or that the questions asked were mandated in the vernacular or dialect understood by him it is presumed, as we have actually done in many cases before this, that such duty was regularly performed in the absence of any evidence to the contrary.[14] In the face of this common practice, the burden now lies on the defense to prove the contrary. Under the principle of equal application of laws, we cannot have varying degrees of fastidiousness in the enforcement of procedural rules based on the gravity of the penalty.

THE PLEA OF GUILTY IN THE CASE AT BENCH WAS CLEARLY NOT IMPROVIDENT.

In the case before us, when the appellant pleaded guilty in open court on June 28, 1994, appellant was clearly assisted by counsel. The court took pains to repeatedly remind him of the grave consequences of a plea of guilty, which appellant said he understood. On every such occasion, he had every opportunity, through his counsel, to ask the court for clarification.

The trial court, on its own, in fact went out of its way to repeatedly inform the defendant of the nature of his plea and the implications of the plea he was making. On July 11, 1994, before the presentation of evidence for the prosecution, he was once again asked by the court if he was sure of his plea. At this time, appellant had more than sufficient time or about thirteen days to reflect on all the possible consequences of his plea. If indeed it was not voluntarily made during his arraignment, he had enough time and opportunity with the assistance of his lawyer to recant or at least express reservations about the same. However, in spite of several warnings given by the trial court on different occasions, appellant stood pat with his judicial admission.

Significantly, the records fail to indicate that appellant questioned his plea of guilty at any stage of the trial. He had the opportunity to cross-examine the witnesses for the prosecution. He did not put up any defense nor denied the inculpatory testimonies, documents and real evidence presented against him (in fact, it was appellant himself who directed the police investigators to the location of the various physical evidence, e.g. green slippers, earrings[15]).

Appellant's silence as to the accusations made against him in open court from the time of his arraignment and during his entire trial therefore assumes a great deal of significance in the context of the majority's insistence that herein appellant's plea of guilty was improvident and therefore void. In the face of the seriousness of the accusations against him, his reticence was eloquent. As the Court held in *People vs. Pillones*:

Silence is assent as well as consent, and may, where a direct and specific accusation of crime is made, be regarded under some circumstances as a quasi-confession. An innocent person will at once naturally and emphatically repel an accusation of crime, as a matter of self-preservation and self-defense, and as a precaution against prejudicing himself. A person's silence, therefore, particularly when it is persistent, will justify an inference that he is not innocent. (Underhill's Criminal Evidence, 4th Ed., p. 401.)[16]

The absence of an extrajudicial confession does not detract from the efficacy or validity of appellant's plea of guilty, it does not affect the requirement compelling the prosecution to prove the guilt of the accused and the precise degree of his culpability. Nowhere in the rules does it state that an extrajudicial confession is a prerequisite for a conviction based on a plea of guilty. While the constitutional infirmities that attended the custodial investigation of the appellant were serious and should not be glossed over, his conviction was based mainly on his plea of guilt made in open court and not on the extrajudicial confession, which formed but a small aspect of the prosecution's case. An extrajudicial confession only serves to confirm or substantiate a plea of guilty entered in open court. As between an extrajudicial confession and a judicial admission, the latter significantly is given evidentiary weight. Even assuming the extrajudicial confession in this case could not be given evidentiary

weight because of mistakes committed by authorities in conducting their custodial investigation and in their gathering evidence, his plea of guilty on arraignment, his repeated admissions to the same in spite of repeated warnings of the trial judge of the consequences of his plea and the presence of ample corroborating testimony from a credible eyewitness to the crime establish appellant's guilt beyond reasonable doubt.

The essence of the plea of guilty in a trial is that the accused admits his guilt freely, voluntarily and with full knowledge of the consequences and meaning of his act, and with a clear understanding of the precise nature of the crime charged in the complaint or information.[17] A plea of guilty, when formally entered on arraignment is sufficient to sustain a conviction charged in the information without need of further proof.[18] This, notwithstanding, (in line with the pronouncement of the Court in several cases[19]) the trial court received evidence to determine if the appellant erred in admitting his guilt. Independent of such plea, there was more than sufficient evidence adduced to prove that appellant indeed committed the acts charged.

THE PHYSICAL EVIDENCE OBJECTED TO FALLS UNDER ONE OF THE EXCEPTIONS TO THE EXCLUSIONARY RULE

Objections were vigorously raised by the defense regarding certain pieces of evidence obtained by law enforcement authorities following the uncounseled custodial investigation of the accused in the case at bench. These objections have been thoroughly threshed out and weighed against the other factual material obtained at trial in order to determine whether or not, on the balance, the accused's conviction ought to be sustained, modified in favor of a lesser penalty, or altogether thrown out. I shall discuss them in the interest of thoroughness.

Central to these objections were the pieces of physical evidence allegedly obtained by law enforcement officers as a result of information volunteered by the accused during his uncounseled custodial investigation. Since the information obtained, it has been pointed out, was taken supposedly in violation of the Constitution, the pieces of evidence derivatively gathered should have been excluded by the court below, following the fruit of the poisonous tree doctrine.

The 1987 Constitution's exclusionary rules absolutely forbid evidence obtained from illegal searches and seizures or evidence resulting from uncounseled custodial investigations of accused individuals. The fruit of the poisonous tree doctrine extends these prohibitions to pieces of evidence derivatively flowing from illegal searches and seizures or from admissions made by accused individuals under conditions proscribed by the Constitution. However, the doctrine is not without its exceptions, and the evidence in dispute in the instant case falls within those exceptions.

The discovery of the victim's body near the house of the accused would have naturally led law enforcement authorities to undertake a more thorough investigation of the site, particularly in those areas where the victim was last seen. Assuming local police had enough logistical capabilities to form two teams to undertake two separate searches, one for physical evidence and other clues and one for the possible suspects, the evidence objected to would have been inevitably discovered with a thorough search of the site. Under the circumstances of this case where only one search was initially conducted (obviously because of logistical reasons), primarily for a suspect, it would have logically followed had a suspect not been found at the time, or, had the accused not made his voluntary, though uncounselled confession, that a search for evidence would have been undertaken, under conditions which would have validated a warrantless search, where the same physical evidence would have been inevitably discovered. In other words, with or without appellant's volunteered information, the pieces of evidence objected to -the blood-stained pillow, the T-shirt and the victim's earring- would have fallen into police hands by legal means which would have normally been undertaken by the authorities in any case.

Courts have generally approved the view that it is not necessary to hold that all evidence is fruit of the poisonous

tree. Under one of the recognized exceptions, the more appropriate question in such cases is whether the evidence to which the objection is made would not have been discovered at all but for the illegality or would have been discovered anyway by sources or procedures independent of the illegality. Another exception refuses to treat the doctrine as absolutely sacred if the evidence in question would have been inevitably discovered under normal conditions.

I submit, that under the peculiar circumstances of this case, the evidence objected to would have been inevitably discovered anyway. In a long line of cases, courts have recognized that evidence derived from information obtained illegally is not absolutely inadmissible under the fruit of the poisonous tree doctrine where it is shown that such evidence would have been inevitably gained even without the unlawful act.[20] The case of *U.S. vs. Seohnlein*, for instance, held the view that a confession by the accused in a bank robbery case was not fruit of the poisonous tree for the reason that the information which led to his confession, though the product of an illegal search would have been discovered in the absence of such illegality.[21] The Court in *Lockridge vs Superior Court* was of the opinion that where a witness is discovered as a result of illegal police conduct, his testimony is admissible if he would have been discovered in the normal course of a normally conducted investigation.[22] These and other recognized limitations to the fruit of the poisonous tree doctrine do not have the effect of diluting the effect of our exclusionary rules. Rather, they serve the purpose of the rule well by maintaining a reasonable balance between the need to deny evidence come by through the exploitation of an illegality on one hand and the need to minimize opportunity for the defendant in a criminal case to reap an undeserved and socially undesirable bonanza..[23] Certainly it could not be argued that with nothing in their hands, the police would not have gone back to the site for a better inspection.

THERE IS ENOUGH LEGAL EVIDENCE TO SUSTAIN THE TRIAL COURT'S CONVICTION OF THE ACCUSED WITH MORAL CERTAINTY

Assuming arguendo the validity of the defense's arguments over the pieces of evidence recovered by the police in the case at bench above-mentioned, a thorough review of the evidence utilized by the trial court leads us to the conclusion that the defendant's conviction would have been sustained, in any case, without the pieces of evidence objected to.[24] Lest we mistake the trees for the forest, a shifting of the pieces of evidence, and a separation therefrom of the physical evidence objected to would nevertheless still leave the prosecution with enough legal evidence to convict the accused with moral certainty. These include:

1. The defendant's own repeated admissions, in the presence of counsel and in open court that he committed the acts charged;
2. The essentially uncontradicted testimony of the prosecution's eyewitness, Luisa Rebada.

Having discussed the first point, I shall go directly to Rebada's testimony, which the majority opinion let pass without comment. For a better perspective of Rebada's testimony, allow me once again to quote from the transcript:

Q:

Can you recall where were you on June 12, 1994, at around 5:30 P.M.?

A:

Yes, Sir.

Q:

Where were you?

A:

I was at home.

Q:

Where is your house situated?

A

:Brgy. Rizal, Pala-pala, Zone I, Iloilo City.

Q:

Do you have any neighbor in that residence of yours at Rizal Pala-pala?

A:

Yes, Sir, Arnel Alicando.

Q:

How far is the house of Arnel Alicando from your house?

A:

One and a half (1 1/2) arm's length.

Q:

On that time at 5:30 P.M. have you seen Arnel Alicando?

A:

Yes, Sir.

Q:

Where was Arnel Alicando at that time?

A:

He was upstairs, inside the house of Romeo Alicando.

Q:

What is the relation of Romeo Alicando to Arnel Alicando if you know?

A:

Romeo is the uncle of Arnel.

Q:

Did Arnel Alicando have any companion while he was in the house of his uncle, Romeo Alicando?

A:

Khazie Mae was his companion.

Q:

You are referring to Khazie Mae Penecilla, the victim in this case?

A:

Yes, Sir.

Q:

Aside from them, the two of them, Arnel Alicando and Khazie Mae Penecilla, are there any person inside the house of Romeo Alicando at that time?

A:

No more, only the two of them.

Q:

Now, at that precise time at 5:30 of June 12, 1994, what have you observed if you observed any in the house of Romeo Alicando wherein Arnel Alicando and Khazie Mae Penecilla was at that time?

A:

I saw the child looking out in the window and I invited her for a yemas candy, and Arnel Alicando suddenly closed the window.

Q:

When Arnel Alicando you said closed the window, what did you observe after that if there is any?

A:

The child cried.

Q:

You are referring to the victim, Khazie Mae Penecilla when you said the child was crying?

A:

Yes, Sir.

Q:

And after that, after the child was crying, what have you observed at that time?

A:

And then she squealed.

Q:

After that, what did you do after hearing that and she, the child squealed, what did you do if there was any?

A:

So, I went down from the house to the house of Romeo Alicando, where I saw between an opening between the two slots. I went up two steps.

Q:

And then what did you do?

A:

And so, I peeped between the floor and the door because there was an opening.

Q:

Have you seen anything inside that house?

A:

Yes, Sir.

Q:

What have you seen if there is any?

A:

I saw Arnel Alicando who was naked/nude at that time lying on top of the child wherein his left hand was holding the neck of the child.

Q:

When you said child, you are referring to the victim, Khazie Mae Penecilla?

A:

Yes, Sir.

Q:

What did you do after seeing that?

A:

Because I was afraid at that time and I got nervous, so I went down from that house and went to my own house and gathered my children because I was afraid of Arnel Alicando.

Q:

When you went to your house, was there any person inside your house?

A:

My friend.

Q:

Who is the name of your friend?

A:

Ricardo Lagrana (Compare).

Q:

Have you talked to our compare, Ricardo Lagrana who was in your house? Have you told about the incident that you have seen in the house of Romeo Alicando wherein Arnel Alicando was at the top of the victim, Khazie Mae Penecilla, without clothes at all?

A:

Yes, Sir.

Q:

What action did your compare do if there was any?

A:

When I told the incident to my compare he also felt nervous and he went home.

Q:

How about on the same day of June 12, 1994, at around 6:00 P.M., where were you?

A:

I was inside the house.

Q:

And you have observed what is happening in your barangay at that time?

A:

Yes, Sir.

Q:

What have you observed?

A:

The parents of Khazie Mae Penecilla were looking for her.

Q:

When you have observed, have you known that the parents of Khazie Mae Penecilla were looking for her, it did not occur to your mind to report the incident to the parents of Khazie Mae Penecilla on what you have seen at that time?

A:

I did not go out of the house because I was afraid of Arnel Alicando.

Q:

Have you seen on the same day after that incident of 5:30 in the evening, have you seen again Arnel Alicando?

A:

Yes, Sir.

Q:

Where?

A:

I saw Arnel Alicando inside the house going around.

Q:

Did you talk to him?

A:

One June 12, 1994, at 10:45 in the evening, I told Arnel Alicando and asked him, what time did the child go down from the house.

Q:

Where were you at that time when you asked Arnel Alicando?

A:

I was inside my house.

Q:

Because you are very near neighbor to each other?

A:

Yes, Sir.

Q:

And it is one and a half (1 1/2) arm's length your house from Arnel Alicando's house?

A:

Yes, Sir.

Q:

Did Arnel Alicando answer you?

A:

He answered, I do not know because I was drunk at that time.

Q:

How about one June 13, 1994 in the morning at around 8:00 o'clock, what did you observe in your barangay?

A:

None.

Q:

You have not observed anything?

A:

None.

Q:

Do you know when the parents of the victim, Khazie Mae Penecilla found their daughter?

A:

Khazie Mae Penecilla was found at around 8:00 A.M.

Q:

Of what day?

A:

June 13, 1994.

Q:

Why do you know that this Khazie Mae Penecilla was only found by their parents?

A:

Because Leopoldo (Torong) Santiago, when he went down from their house and answered the call of nature, he found the child under their house.[25]

It is well-settled in this jurisdiction that the testimony of a lone witness, free from signs of impropriety or falsehood, is sufficient to convict an accused even if uncorroborated. In this case, Rebada's testimony was positive and straightforward. I see no reason why the same should not be given the credence and the weight that it deserves, without our ignoring established principles in the law on evidence. Such factual findings of the trial court on the issue of credibility of a witness are accorded great weight and respect on appeal, as it should have been in the instant case, because the trial court had the every available opportunity to observe the demeanor of the lone witness during the trial. Her belated reporting of the incident the next morning, to which the defense urged the lower court to accord great weight, is hardly out of the ordinary.

Individual reactions are motivated by varied and varying environmental factors. There is no standard norm of human behavioral response when one is confronted with a strange, startling or frightful experience.[26] Fear and self preservation are strong motivating factors. It is common for people to choose not to get involved when a crime is committed, otherwise there should only be a few unsolved crimes.[27] Rebada, in this case, was obviously terrified with what she saw. Self-preservation and fear of possible reprisals from the appellant would have initially overwhelmed any desire on her part to reveal what she had seen during the incident. She tried her best to remain as calm and casual as possible, and pretend that she did not see anything the instant she saw Alicando, when she asked appellant what time Khazi Mae got down from his house following the incident.[28] Given these factors, it would have been too much to expect Rebada in her mixed state of dread, fear, revulsion and instinctive self-preservation to harness superhuman reserves of courage to stop appellant when she saw him in that compromising position. Man's actions and reactions cannot be stereotyped.[29] Some individuals flee from an adverse stimulus, others confront it. Upon seeing the dead girl's distraught parents, and overcoming her fear with some prodding from her husband, Luisa Rebada was finally driven by conscience to reveal what she knew the following morning.

The minor inconsistencies in Rebada's testimony are understandable under these circumstances. However, it should be stressed here that the trial court's conclusions were founded principally on the direct, positive and categorical assertions made by Rebada as regards material events in the crime. It is worthy to stress, moreover, that Rebada never wavered in her oral testimony even on intense cross-examination from the defense. In her affidavit, she declared that she saw Khazi Mae at appellant's house; that appellant closed the window; and after hearing the child's cry and squeal, peeped into the opening and saw appellant on top of the victim. These were the very same declarations she made when she took the witness stand. While she may have wavered on a minor detail (as to whether it was the right or the left hand of the appellant which was used in choking the victim) these should not be sufficient to debunk her credibility.[30] She had no reason to falsely testify against the appellant and there were no possible motives alleged for her to do so. She is not in any way related to the Penecillas, and there was no

evidence adduced to show that she harbored any ill-feelings towards the appellant. In a sense, her credibility is even enhanced by the absence any improper motive.[31]

Together with the direct testimony of the eyewitness, Rebada, there is, I repeat, sufficient evidence corroborating and unmistakably pointing to the appellant as the author of the crime. Khazi Mae was last seen in the company of the appellant. Rebada testified that she saw appellant naked on top of Khazi Mae. Recovered from the latter's house were Khazi Mae's green slippers, pair of gold earrings, her dress, bloodied buri mat and pillow. The fact of shoddy police work in the recovery of these pieces of evidence does not escape us. But whether or not these pieces should have been admissible is on hindsight hardly relevant in the face of ample legally admissible evidence justifying the trial court's guilty verdict.

As a last resort, appellant would want to drive home the point that rape was not committed. He argues that 1) while Rebada saw him on top of Khazi Mae, she did not see him in a push and pull movement 2) the requested NBI report on the examination of Khazi Mae's underwear to show the presence or absence of the male semen was not presented; and 3) the autopsy report revealed that the proximate cause of death was asphyxiation by strangulation.

In the first place, witness PO3 Danilo Tan testified that when he arrived at the Pencilla's house to take a look at the dead body, he looked at Khazi Mae's underwear and saw that it was bloodied. The underwear was sent to the NBI Laboratory for examination. Considering, however, the inadequate facilities of the NBI Laboratory at Iloilo, the underwear was referred to Manila for examination. Since it will take time for the court to wait for the results from Manila, the trial court dispensed with it as this would only serve as corroborating evidence to the fact of rape.[32]

Moreover, rape is committed whenever there is penetration, no matter how slight into the genital organ of the victim.[33] The vaginal and anal findings of Dr. Tito Doromal revealed that the lacerated wound from the fourchette up to the dome of the rectum was caused by a forcible entry of an object. In view of settled jurisprudence to the effect that rape is committed by the mere touching of the male genital organ on the vagina, it hardly is relevant whether or not semen or sperm are present or absent. Absence of emission does not negate rape. Rebada's testimony that she saw appellant naked on top of the victim when she peeped through an opening between the floor and the door of appellant's house and the autopsy report revealing the laceration of the vagina eloquently testify to the crime committed and its authorship in the case at bench. As correctly observed by the Solicitor General, the corpus delicti was there for all to see. The trial court, therefore, did not err in dispensing with the results of the NBI laboratory examination of Khazi Mae's underwear to determine the presence of male semen, a fact of little relevance after the rape was established by definitive legal evidence..

Finally, notwithstanding the fact that the proximate cause of death was asphyxiation by strangulation, it cannot be denied that Khazi Mae was raped and killed on the same occasion. As we observed in *People v. Yu*,[34] unity of thought and action in the criminal purpose of the accused cannot be altered by the circumstances that both the crime of rape and the crime of murder resulted. The accused had to choke and strangle the girl at the same time that he was satisfying his lust on her.[35]

Based on all of the foregoing, it is clear and inescapable that appellant committed the heinous crime or Rape with Homicide under Sec. 11 of R.A. 7659 which provides:

Article 335 of the same Code is hereby amended to read as follows:

Article 335. When and how rape is committed. - Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

X X X XXX XXX.

When by reason or on the occasion of the rape, a homicide is committed, the penalty shall be death.

The death penalty shall also be imposed if the crime of rape is committed with any of the following circumstances:

X X X XXX XXX.

(4) When the victim is a religious or a child below seven (7) years old.

X X X XXX XXX.

Having thoroughly evaluated the evidence utilized by the trial court in convicting the accused with the crime of rape with homicide and in imposing the penalty subject to our automatic review, it is painfully clear -even to those who have reservations about imposing the death penalty among us -that we have reached the point of moral certainty necessary to the imposition of the supreme punishment of death in this case.

Convictions for the crime of rape have been sustained by this Court in an overwhelming number of cases on uncorroborated evidence given almost exclusively by the complainant alone. Against this backdrop (of most cases of rape where reliance is placed solely on the victims allegations) the trial court, in the case at bench, arrived at its conclusions principally on the basis of two key pieces of testimonial evidence: 1) the accused's admission of guilt in not one but two occasions in open court (in the presence of his lawyer) even after being warned on both occasions by the judge of all the possible consequences of his admission the accused's admission of guilt; and 2) the essentially uncontradicted testimony of an eyewitness to the crime itself. Even with the relatively minor inconsistencies of the latter's testimony - which the defense spiritedly tried to magnify - the net effect of the same was to enhance, not diminish, the testimony of the lone eyewitness because minor incongruencies are on the whole indicative of honest and unrehearsed declarations and often amplify the credibility of such declarations.[36] Ordinarily, as stated earlier, convictions for rape have been obtained on the basis far less evidence. Parenthetically, either one of these testimonies, standing alone, would have been adequate to obtain the accused's conviction.

In fine, let me reiterate my position in *People vs Veneracion*, that the reimposition of the death penalty for specific offenses under Republic Act 7659 has left our courts with no choice but to impose the penalty for crimes clearly enumerated in the said law. If a court, after leaving no stone unturned, finds it necessary to impose the penalty, I believe that it does not do so as an infallible God exercising a divine right to give or take away human life, but as a fallible human institution recognizing the importance of according majesty to laws so indispensable to maintaining social order. In the instant case, after a thorough and searching review of the evidence and an evaluation of the procedural and constitutional objections adduced either in support of an acquittal or of imposing a less severe penalty it should be fairly obvious to us that the trial court committed no error in finding the accused guilty as charged. Recognizing our fallible nature, the quantum of evidence necessary to convict has never been absolute proof beyond any doubt but merely proof beyond reasonable doubt. The death penalty in the instant case was clearly imposed in conformity with the mandate of law and the Constitution.

[1] The Oxford Companion to the Supreme Court of the United States, pp. 125-126, 1992 ed.

[2] RA 7659 Enacted on December 13, 1994.

An Act to Impose the Death Penalty on Certain Heinous Crimes, amending for that purpose the Revised Penal Code, as amended, other special penal laws, and for other purposes.

WHEREAS, the Constitution, specifically Article III, Section 19 paragraph (1) thereof, states "Excessive fines shall not be imposed nor cruel, degrading or inhuman punishment inflicted. Neither shall death penalty imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it..."

WHEREAS, the crimes punishable by death under this Act are heinous for being grievous, odious and hateful offenses and which, by reason of their inherent or manifest wickedness, viciousness, atrocity and perversity are repugnant and outrageous to the common standards and norms of decency and morality in a just, civilized and ordered society;

WHEREAS, due to the alarming upsurge of such crimes which has resulted not only in the loss of human lives and wanton destruction of property but has also affected the nation's efforts towards sustainable economic development and prosperity while at the same time has undermined the people's faith in the Government and the latter's ability to maintain peace and order in the country.

WHEREAS, the Congress, in the interest of justice, public order and the rule of law, and the need to rationalize and harmonize the penal sanctions for heinous crimes, finds compelling reasons to impose the death penalty for said crimes.

[3] TSN, July 12, 1994, pp. 28-32.

[4] TSN, July 11, 1994, pp. 14-19.

[5] Q: After you received that information, what did you do?

A:

We invited Arnel Alicando to the headquarters.

xxx.

Q:

When you invited him to go with you to the Police Station and when you arrived there, what did you do?

A:

I let the witness identify the suspect and the witness pointed to him.

Pros. Fama:

Q:

Do you know who is that witness?

A:

Yes, sir.

Q:

Who is that witness?

A:

Luisa Rebada.

xxx.

Q:

After the witness positively identified the suspect what action did you do?

A:

I immediately arrested him and then placed him on the police blotter.

Q:

You mean you arrested him at the Super Market at the meat section?

A:

Yes, sir, at Rizal-Palapala.

Q:

When you arrested him where did you bring him?

A:

I brought him to the Iloilo City Proper Police Station.

Q:

What did you do there?

A:

I entered the matter at the police blotter and I asked him further. I asked him who raped the child.

Q:

Did the suspect answer?

A:

Yes, sir.

Q:

What did he answer?

A:

He answered that he was the one.

Q:

Did you ask him what he did with the victim after raping?

A:

I further asked him why the child died and he answered that, killed her. (TSN, July 12, 1994, pp. 11-13.)

[6] Records, p. 79.

[7] Rollo, p. 5.

[8] Order dated June 28, 1994; Records, p. 12.

[9] *People v. Perete*, 1 SCRA 1290; *People v. Camay*, 152 SCRA 401 (1987).

[10] *People v. Saligan*, 54 SCRA 190 (1973); *People v. Aguilar*, 37 SCRA 115 (1971); *People v. Simeon*, 47 SCRA 129 (1972).

[11] TSN, pp. 2-3, June 28, 1994.

[12] TSN, p. 2, July 11, 1994.

[13] 187 SCRA 637 (1990).

[14] *People v. Evangelista*, 235 SCRA 247 (1994); *People v. Vivar*, 235 SCRA 257 (1994); *People v. de Guzman*, 229 SCRA 795 (1994).

[15] TSN, July 12, 1994, pp. 13-14.

[16] *People vs. Pillones*, 84 SCRA 167 (1978) at pp. 172-173

[17] *People v. Ariola*, 100 SCRA 523 (1980); *People v. Gabierrez, Jr.*, 113 SCRA 155 (1982).

[18] *People v. Laspardas*, 93 SCRA 638 (1979); *People v. Formentera*, 130 SCRA 114; *People v. Gonzaga*, 127 SCRA 158 (1984).

[19] *People v. Dayot*, 187 SCRA 637 (1990); *People v. Camay*, 152 SCRA 401 (1987); *People v. Domingo*, 68 SCRA 50 (1975); *People v. Sema*, 130 SCRA 550 (1984).

[20] *Somer vs. U.S.* 138 F2d 790 (1943); *Wayne vs. U.S.* 318 F2d 205 (1963); *Lockridge vs. Superior Court* 402 U.S. 910 (1970).

[21] *U.S. vs Seohnlein* 399 U.S. 913 (1970).

[22] See, *Lockridge*, supra, note 19.

[23] Maguire, *How to Unpoison the Fruit- the Fourth Amendment and the Exclusionary Rule*. 55 J Crim Law, Crim and Pol Sci 307 (1964) cited in Spivey, "Fruit of the Poisonous Tree" Doctrine Excluding Evidence Derived from Information Gained in Illegal Search, 43 ALR 3d, 385.

[24] Moreover, it would have been inevitable for police authorities to go back to the scene of the crime and ultimately discover the evidence, even without the accused's volunteered information. This "inevitable discovery" is one of the recognized limitations to the "fruit of the poisonous tree doctrine." See *Crispin Nix v. Robert Anthony Williams*, 467 U.S. 431.

[25] TSN, July 11, 1994, pp. 14-18.

[26] *People v. Arman*, 224 SCRA 37 (1993); *People v. Danico*, 208 SCRA 472 (1992).

[27] *People v. Lase*, 219 SCRA 584 (1993).

[28] TSN, July 11, 1994, p. 17.

[29] *People v. Salazar*, 221 SCRA 170 (1994).

[30] *People v. Bautista*, 147 SCRA 500 (1987); *People v. Ancheta*, 148 SCRA 178 (1987).

[31] *People v. Castor*, 216 SCRA 410 (1992); *People v. Ladrera*, 150 SCRA 113 (1987).

[32] TSN, July 15, 1994, p. 2.

[33] *People v. Palicte*, 229 SCRA 543 (1994).

[34] 1 SCRA 199 (1961).

[35] *Id.*

[36] *People vs. Reyes*, G.R. No. 79896, January 12, 1995.

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