

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SILVINO (SILVERIO) SALARZA, JR. ACCUSED-APPELLANT.*G.R. No. 117682. August 18, 1997*

Ponente: BELLOSILLO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-117682/>**BELLOSILLO, J.:**

DEATH, the punishment in extremis, was imposed on Silvino Salarza Jr. for rape. We now review his conviction.

Zareen Smith, British, was 30, single, a television and stage actress. Sometime in 1994 she came to the Philippines and chose Boracay in Aklan and Port Barton in Palawan for her vacation retreats. In Port Barton she met Enrico de Jesus, Filipino, 26, caretaker of Elsa's Place, a resort owned by his parents. Soon enough a mutual attraction developed between them which ripened into an intense love affair that they would have sex almost every night.

On 30 April 1994 Enrico brought Zareen to Mary's Cottage in Sitio Sabang, Bgy. Cabayugan, and introduced her to his granduncle Rogelio Marañon and grandaunts Nenita Marañon and Maria Ausan who collectively owned and managed the resort. Enrico and Zareen occupied Cottage No. 1. They spent the day at the beach where they drank and swam. They were later joined in by Enrico's friend Silvino Salarza Jr., a tourist guide, a press relations officer and a fisherman.

In the evening Enrico and Zareen went to Sabang Centro together with Silvino, Julio Morales and a certain Tonton to attend a dance. The dance however was canceled so they proceeded to Coco Grove Restaurant and drank a bottle of rum. Zareen did not drink as she preferred red wine which was not available. At eleven o'clock the group returned to Mary's Cottage where Enrico awakened his grandaunt Nenita and asked her for two (2) more bottles of rum, after which, they went back to the beach and continued drinking. This time Zareen opted for a bottle of beer. After a while Zareen said she felt tired and sleepy so she excused herself and retired to the cottage. She was accompanied by Enrico who left her there to sleep. Back at the beach Enrico asked his friends to go spearfishing. Although Silvino went with them he later returned to the beach because he could not stand the cold and was feeling dizzy. From this point on the prosecution and the defense presented varying versions.

According to the prosecution, at two o'clock in the morning of 1 May 1994 Zareen woke up when she felt somebody take off her underwear.[1] The room was dark as the resort management switched off the lights at ten o'clock. Zareen said she did not stop the man from removing her panties as she thought it was Enrico, her boyfriend, and she was half-asleep. The man in turn removed his briefs and placed himself on top of her, spread her legs, penetrated her and executed push-and-pull movements. Later, the man softly whispered: "Zareen, it's not Ricky; it's Jun. I love you." According to Zareen, when she heard those words, she pushed him aside. She cried and became hysterical. She went to the bathroom and washed herself, at the same time telling Silvino, "Why? Why did you do that to me? You have ruined everything. You know that Ricky and I are trying to have a baby of our own, what will happen now? I might get impregnated by what you did to me." Silvino however assured her that pregnancy was out of the question as he did not ejaculate.

Maria Ausan heard Zareen cry so she awakened Nenita. Thinking that Enrico was forcing himself on Zareen, Nenita went near Cottage No. 1 and pleaded, "Rico, please naman, kung ayaw huwag mong pilitin." But she did not enter the cottage. At this moment she noticed a lighted petromax approaching. It was Enrico with Julio and Tonton coming from the beach. Enrico hurriedly walked to the cottage. He saw Silvino coming out. At once he assumed that Silvino must have molested Zareen. Upon nearing Silvino, Enrico punched him even before Zareen could narrate what happened to her. Rogelio Mara on and Julio Morales then reported the incident at the police station and Patrolmen Eleazar and Rodillo immediately responded.

On the other hand, Silvino claims that it was Zareen who was flirting with him. His version is that while at Coco Grove Restaurant, whenever Enrico was not looking, Zareen would whisper to him and place her arm on his shoulder. She would talk to him about her stay in Boracay with her sister Lucila and the men she met there. In turn, he spoke to her about his former girlfriends. When Enrico invited him to go spearfishing he went with the group but after a while he returned to the beach saying he was feeling cold and dizzy having imbibed one too many. He even stumbled and fell on the sand. As a result, he got sand all over his body so he proceeded to the public restroom for a shower. On the way to get his t-shirt and cigarettes he saw Zareen lying on the hammock. She asked him for a cigarette and insisted that he take his shower inside her cottage instead of the public restroom which was about a hundred meters away. He hesitated for a while but finally acceded.

After emerging from his shower he was surprised to see Zareen on the bed. She pulled him towards her and asked him to make love to her. She embraced him tightly and kissed him lustfully. He was surprised with the turn of events and felt uncomfortable because of Enrico whom he did not wish to offend, much less betray, so he pushed her away. In her exasperation she shouted, "Sh---t you, you are stupid!" Then she rushed to the bathroom and washed herself.

He heard the voice of Nenita Mara on coming from outside Cottage No. 1 calling for Enrico and inquiring what was happening, apparently thinking it was her grandnephew with Zareen having a lover's quarrel. So Silvino answered, "This is not Ricky, Tiya, this is me, Jun." He informed her that he had just taken his shower inside. While Silvino and Nenita were talking, Zareen was simply keeping quiet. As he went out of the cottage he met Enrico on the way. Nenita shouted, "Jun, Ricky is coming; you're dead!" True enough Enrico boxed Silvino. Tonton and Julio ganged up on him, beat him, poured pepper on his body and pulled him towards the river. Fearful that they would eventually kill him, Silvino crawled towards the coconut grove and upon reaching the road leading to Sabang Centro he walked to the police station to lodge his complaint. On his way, he met Policemen Eleazar and Rodillo. Rodillo brought him to the police station while Eleazar continued his way towards Mary's Cottage to conduct an investigation.

But the trial court was not persuaded by Silvino's story. It pronounced him guilty of rape and imposed upon him the supreme penalty of death. The court threw out his declaration that Zareen had been flirting with him earlier and was the one who even proposed that they engage in sex that night. It found incredible that Zareen would fall for Silvino and substitute him for Enrico, rationalizing that Zareen was 30 years old, Enrico 26, and Silvino already 35, and that Enrico was 5'8" tall, handsome, with a well-shaped face and nose, while Silvino was not generously endowed and standing only at 5'2". Besides, it argued that a woman would not charge a person with the heinous crime of rape if it were not true, for she would not allow the examination of her private parts and subject herself to a public trial which are both embarrassing if her accusation was merely fabricated. It quoted *People v. Selfaisan*,^[2] where it was held that it was difficult to believe that the complainants, who were young and unmarried, would tell a story of defloration, allow the examination of their private parts and thereafter permit themselves to be the subject of a public trial if they were not motivated by an honest desire to have the culprits apprehended and punished. Obviously the court did not find it pertinent that Zareen was already 30, a stage and

television actress, by her admission had several boyfriends in the past with whom she had sexual relations, and was possessed with a vigorous appetite for sex as she was indulging in intercourse with Enrico almost every night without benefit of marriage.

Quite interestingly, the Information alleges that Silvino had carnal communication with Zareen while she was asleep, with the use of force, against her will and without her consent.

We do not find the facts substantiating the Information. We must acquit.

Under Art. 335 of the Revised Penal Code, as amended by Sec. 11, RA 7659, rape is committed by having carnal knowledge of a woman under any of the following circumstances: (a) by using force or intimidation; (b) when the woman is deprived of reason or otherwise unconscious; and, (c) when the woman is under twelve (12) years of age or is demented. The facts of this case do not by any means show the existence of any of these circumstances; thus we cannot see how the trial court could have convicted and, worse, sentenced the accused to die.

First, the complaining witness was not below twelve (12) years of age at the time of the alleged commission of the offense. She was already thirty (30) years old. Neither was she demented.

Second, the Information avers use of force but the evidence negates any use of force, nay, not even intimidation, in the commission of the offense charged. In fact, as discussed hereunder, the sexual advances of the accused were done with the consent of the complaining witness although she claimed she thought that the man who laid with her was her boyfriend Enrico. Here it may be argued that consent to the sexual act was given by Zareen only because of her erroneous belief that the man on top of her was Enrico, thus implying that had she known it was someone else she would have resisted.

The explanation is not persuasive. The evidence shows that this mistake was purely a subjective configuration of Zareen's mind - an assumption entirely contrived by her. Our impression is that Silvino had nothing to do with the formulation of this belief; he did nothing to mislead or deceive Zareen into thinking that he was Enrico. In fact, Silvino precisely, and confidently, told her, "Zareen, it's not Ricky; it's Jun. I love you." It is thus obvious that whatever mistake there was could only be attributable to Zareen - and her inexcusable imprudence - and to nobody else. Clearly, the fault was hers. She had the opportunity to ascertain the identity of the man but she preferred to remain passive and allow things to happen as they did. Silvino never used force on her and was even most possibly encouraged by the fact that when he pulled down her panties she never objected; when her legs were being parted she never objected; and, when he finally mounted her she never objected. Where then was force?

Third, Zareen was not deprived of reason or otherwise unconscious when the accused had intercourse with her. Her lame excuse was that she was half-asleep. However she admitted that in the early morning of 1 May 1994 she woke up to find someone removing her underwear. Thuswise it cannot be said that she was deprived of reason or unconscious. She knew, hence was conscious, when her panties were being pulled down; she knew, hence was conscious, when her legs were being parted to prepare for the sexual act; she knew, hence was conscious, when the man was pulling down his briefs to prepare himself likewise for the copulation; she knew, hence was conscious, when the man mounted her and lusted after her virtue. Her justification was that she never objected to the sexual act from the start because she thought that the man was her boyfriend with whom she was having sex almost every night for the past three (3) weeks as they were getting married and wanted already to have a baby. In other words, her urge could not wait for the more appropriate time.

The prosecution would have the accused convicted of rape under its hypothesis that the complaining witness was half-asleep, ergo unconscious, when the sexual assault took place. Obviously, it had in mind the doctrine

enunciated in 1929 in *People v. Corcino*,^[3] and later in 1935 in *People v. Caballero*.^[4] These cases however do not apply because the offended parties there were unquestionably fast asleep - and not just half-asleep as in the instant case - when the act was perpetrated. Consequently, there was no opportunity for them to either object or give their consent as they were in deep slumber at the time of the coition. It was only some time after they woke up that they realized that the men having sex with them were not their husbands they thought them to be. In convicting the accused, this Court held, as the trial courts did, that the crime of rape had already been consummated even before the offended parties woke up from their sleep. In *Caballero* it was found that -

x x x when Consorcia, the offended party, awoke the appellant had already introduced his organ into her genitals and in fact he was already having sexual intercourse with her. We mention this fact on account of a certain doubt arising from the offended party's testimony during the direct examination relative to this detail, but in the attempt of the attorney for the defense to clarify this point during his cross-examination, the offended party categorically affirmed that she had been unaware when the appellant introduced his organ into hers x x x when the offended party awoke, the crime of rape committed by the appellant was already consummated, having had carnal knowledge with the offended party while she was unconscious for being asleep. The offended party's consent to the act was subsequent thereto and it was given on the belief that the man lying with her was her own husband (underscoring supplied).^[5]

The import of this pronouncement is that it was no longer relevant, much less significant, that after waking up the offended party continued to have sex with the man she thought was her husband. Her "consent" to the act was subsequent to the rape, or after the crime was already committed; the fact that the consent - even if only implied - was given on the belief that the man was her spouse, was inconsequential. In the case of Zareen, her "consent" was given prior to the carnal act, i.e., the act was done because of her passivity, if not consent.

The record abounds with indicia to discredit the theory of the prosecution that Zareen was dead drunk when the alleged rape took place. Having consumed only a small quantity of rum during the day, according to her, and a bottle of beer in the evening on a normal pace, she could not have been so drunk as to be deprived of reason or otherwise rendered unconscious. When she returned to her cottage she immediately fell asleep as she was tired and remained so for some time. When she was supposedly molested at around two-thirty the following morning she must have already been, as we believe she was, in full possession of her mental and physical faculties. Whatever intoxicating effect the rum and beer might have had on her would have already worn off.

Zareen herself claimed that she woke up when she felt someone removing her panties. This means she was fully conscious when somebody approached her bed, removed her panties, spread her legs "although not far apart but just enough to get her underwear off," and then proceeded to perform coital movements with her. Her testimony that she knew that the "intruder" removed his own briefs; that his penis was already erect; that no effort at foreplay was made before penetrating her in his first attempt; that the man did not kiss her nor touch her breasts; that she did not even guide his penis into the trough of her femininity; and, that he "pushed-and-pulled" on top of her for approximately less than a minute, all validate our conviction that she was fully conscious - not asleep nor even half-asleep - of what was being done to her from the beginning. She was also aware that there was no light as the gas lamp inside the cottage was not lighted and the electricity was already shut off.

Most significantly, Zareen was acutely aware of the manner by which Silvino identified himself - "Zareen, it's not Ricky; it's Jun" - because she testified that "x x x it was not preceded by a question. It was as if Jun wanted to wake me up fully."^[6] To repeat, all these details vividly recalled and recounted by her ineluctably indicate that she was awake all the time and capable of comprehending the nature of the sexual act and of exercising her own free will as to yield to or resist a Lothario's libido.

Zareen had known Enrico for three (3) weeks and since then had been making love with him almost every night.

It strains credulity and understanding that she could have mistaken Silvino for Enrico. Their constant lovemaking and togetherness would have already made her familiar with the physical attributes of Enrico and accustomed to his fornicating peculiarities. Zareen even asserted that Enrico was not inclined to sexual intercourse when drunk and would usually indulge in foreplay before actual copulation. These oddities are cues which reasonably engender suspicion that the man she was having carnal communication with was not her lover but someone else. She had the moral responsibility not only to herself but to society itself to ascertain first the identity of her "ravisher" before yielding completely to him. It can hardly be said that she was not imprudent, reckless and irresponsible in giving in to her own sexual impulses. Moreover, being almost a stranger in the place, Zareen should have been leery of her surroundings especially at night. In this regard, she should not have left her cottage door unlocked as much as she did leave pregnable and unshielded the portals of her womanhood.

In *People v. Bacalzo*,^[7] the accused boxed his victim into unconsciousness. When the victim regained her consciousness she felt the flaccid penis of her ravisher still inside her vagina and that thereafter he removed his sexual organ. He then warned her not to divulge what had happened or else she and her family would be killed. Force, which was used to knock the victim into unconsciousness, was employed before the act was done to ensure its consummation. In *People v. Corcino*^[8] the complaining witness was totally asleep and when she woke up the organ of the accused was already inside her genitalia. In *People v. Caballero*^[9] the victim was fully asleep when the accused had carnal communication with her, such that when she woke up the crime of rape was already consummated. The same was true in *People v. Inot*.^[10] In *People v. Dayo*,^[11] the rapist's organ was already in the vagina of the offended party when she woke up, so she pushed him away and screamed. But the accused pulled out his revolver and threatened to kill her if she made any further outcry. She fainted, and the accused continued having sex with her. In fine, in all these cases rape was already consummated before the offended parties could even exercise their volition to grant or deny access to erotic consortium.

Under the circumstances we cannot help entertaining serious doubts on the culpability of the accused. Rape is a charge easy to make, hard to prove and harder to defend by the party accused, though innocent. Experience has shown that unfounded charges of rape have frequently been proffered by women actuated by some sinister, ulterior or undisclosed motive. Convictions for such crime should not be sustained without clear and convincing proof of guilt. On more than one occasion it has been pointed out that in crimes against chastity the testimony of the injured woman should not be received with precipitate credulity. When the conviction depends on any vital point upon her uncorroborated testimony, it should not be accepted unless her sincerity and candor are free from suspicion. A little insight into human nature is of utmost value in judging matters of this kind.^[12]

But even from the narration of Zareen, the elements of the crime of rape are, regrettably, miserably wanting. There was no force nor intimidation; Zareen was not deprived of reason nor otherwise unconscious; and, she was not below twelve nor demented.

WHEREFORE, the decision appealed from is REVERSED and SET ASIDE and accused-appellant SILVINO SALARZA JR. is ACQUITTED of the crime charged; consequently, he is ordered immediately RELEASED from confinement unless held for some other lawful cause. Costs de oficio.
SO ORDERED.

Narvasa, C.J., Puno, Kapunan, and Hermosisima Jr., JJ., concur.

Padilla, Romero, Melo, and Panganiban, JJ., joined the dissenting opinions of Justices Regalado and Davide, Jr. Regalado, and Davide, Jr., JJ., See Dissenting Opinion.

Vitug, J., voted for acquittal not for anything attributable to complainant but simply because of a failure of proof beyond reasonable doubt.

Mendoza, J., joined in the majority opinion of Justice Josue N. Bellosillo and in the concurring opinion of Justice

Ricardo J. Francisco.

Francisco, J., See concurring opinion.

Torres, Jr., on leave.

[1] TSN, 31 May 1994, p. 19.

[2] No. L-14732, 28 January 1961, 1 SCRA 235.

[3] 53 Phil. 234 (1929).

[4] 61 Phil. 900 (1935).

[5] Ibid.

[6] TSN, 31 May 1994, p. 35.

[7] G.R. No. 89811, 22 March 1991, 195 SCRA 565.

[8] See Note 3.

[9] See Note 4.

[10] No. L-36790, 29 May 1987, 150 SCRA 322.

[11] 51 Phil. 104 (1927).

[12] Aquino, Ramon C., The Revised Penal Code, 1966 ed., p. 1575.

DISSENTING OPINION

DAVIDE, JR., J.:

After reading the well-crafted ponencia of our colleague, Mr. Justice Bellosillo, the appealed decision and the transcripts of the stenographic notes of the witnesses, I am more than convinced that accused-appellant should not be allowed to go scot-free. He should be convicted of rape. I beg then to dissent

The core issues in this case are (a) whether accused Silverio Salarza, Jr. had carnal knowledge of complainant, Zareen Smith; and (b) whether he did so under circumstances which made him liable for rape.

Zareen testified that accused had carnal knowledge of her while she was half-sleep and in the belief, in all good faith, that it was her boyfriend Enrico de Jesus (Ricky) who penetrated her. When she found out that it was the accused, she immediately pushed him aside and confronted the accused: "Why? Why did you do it to me? You have ruined everything. You know that Ricky and I are trying to have a baby of our own, what will happen now? I might get impregnated by what you did to me". Then crying hysterically, she went to the bathroom to wash, with Nenita Maranon, caretaker of Mary's Cottage, having heard her cries.

The trial court gave full faith to her story, holding:

The testimony of the complaining witness herein is very credible. It is natural, simple, straightforward, convincing and consisted with human nature and the run of things in this world. It has all the earmarks of truth and verity. (OR, 71).

Its summary of Zareen's testimony and explanation as to its credibility are as follows:

The alleged victim and the vital witness presented by the prosecution to prove the heinous crime of Rape

charged in this case, Miss Zareen Smith, who is a British stage and TV actress, positively identified and pointed to the accused Silverio Salarza, Jr. alias Jun as the person who “very quickly penetrated” her and had sexual intercourse with her without her consent and against her will which happened at about 2:00 o’clock in the early in the morning of May 1, 1994 in Cottage no. 1, at Sabang, Cabayugan, Puerto Princesa City at the time she was half asleep and/or half awoke as she was drunk after taking liquor and tired and was merely asleep for about two (2) hours earlier. Someone was removing her underwear and she was half asleep and the room was dark, and so, she assumed he was her boyfriend, Ricky de Jesus. Very quickly the accused Jun Salarza was on top of her and penetrated her or had sexual intercourse with her which happened fast when she was still half asleep. The accused made in-and-out movements on top of her after he entered his penis into her vagina and then told her: “Zareen, it’s not Ricky, it’s Jun, I love you”. These words were uttered by the accused as if he wanted to wake her up. Upon hearing these words, the victim Zareen pushed the accused off her immediately and ran to the bathroom a few meter away to washed herself. While washing at the bathroom, she was screaming at the accused in a loud voice, saying: “Why Jun did you do this to me, you ruined everything. You know Ricky and I wanted to have a baby, why did you do this to me, why? Why?” Then the accused Salarza came to the door of the bathroom and tried to pacify her. He wanted her to be calm because she was hysterical. The accused Jun Salarza then told her/ “It’s alright, I did not finished”. The victim Zareen was crying as she was washing herself and she told him that her boyfriend would kill her to which the accused answered that he knows.

The rape victim reported this incident to the policemen at the Police Sub-Station in Sabang, Cabayugan and had herself medically examined by Dr. Jesselito De :Lara at the Sabang medical clinic with the help of Ricky de Jesus and his lola, Nenita Maraño. Then she formalized a complaint against the accused (Exhibits “B”, “B-1”, “B-2” and “B-3”) and executed a sworn statement in support thereof (Exhibits “D”, “D-1” and “D-3”).

The alleged rape incident was duly reported to the nearest policemen and accordingly entered in the blotter of the police sub-station of Sabang, Cabayugan, this City. The British victim with the help of her friends in the locality, lost no time in taking appropriate action against the accused after her womanhood and honor were violated and transgressed which is but a natural reaction of any aggrieved party who has a legitimate gripe to address against a felon.

It is notably significant that the complaining witness, Zareen Smith made loud cries, shouts and screams immediately after the accused sexually abused her. She angrily rebuked and scolded and sharply reprimanded the accused for his unwarranted act in entering his penis into her private organ. These are proofs enough that show the disapproves, rejects, disagrees, resents, abhors and did not like what the accused did to her. She looks decent enough to be sexually assaulted. (id., 69-70)

On the other hand, the trial court found incredulous the defense of the accused that he had no carnal knowledge of Zareen because, despite Zareen’s flirtatious ways, he was not provoked; and despite her vigorous efforts to excite his penis, it did not “harden;” hence, he was unable to insert his penis into Zareen’s private parts. For one, accused’s own witness, PO2 Rosauro Rodillo, testified that accused admitted having had sex with Zareen. On cross-examination Rodillo declared:

PROSECUTOR SENA:

Q: Is it not a fact that when you confronted Jun Salarza that he raped the victim Zareen Smith he admitted he used Zareen only he justified it that Zareen Smith loves him also?

A: yes, Sir.

COURT:

Q: What did the accused admit to you/

A: That he had sex with Zareen Smith because Zareen Smith loves him, Your Honor. (TSN, 8 June 1994,

22-23)

For another, and more specifically as to accused's claim that he was not sufficiently stimulated to achieve an erection, the trial court, which had the singular advantage of observing accused's deportment and manner of testifying and taking full use of all aids to arrive at a more accurate assessment of his credibility, declared:

The version of the accused on this score is unnatural, abnormal and contrary to human nature and experience. Only inanimate objects do not react. The accused looks normal and not otherwise as a human person. The court saw and observed him to be so. With his young age and status it is unlikely that his penis will not erect or harden if held and played by a woman younger than him but single like him, especially a foreigner. (id. 71)

The trial court must have borne in mind the fact that on two previous occasions, accused had carnal knowledge of two foreigners of the opposite sex at the same Mary's Cottage where Zarren claimed to have been raped by accused. On questions by the trial court, accused volunteered the information that he had sex with two foreigners, thus:

COURT:

xxx

Q: As caretaker of the cottage, have you had even one sexual intercourse with tourists, not necessarily Zareen Smith?

A: I have Your Honor.

Q: How many foreigners?

A: Two times, Your Honor.

Q: Both foreigners?

A: Yes, Sir.

Q: White?

A: Yes, Sir.

Q: Americans?

A: No, Sir.

Q: What are they?

A: They are from Netherlands, Your Honor. (TSN, 9 June 1994), 29-30).

Notably, accused likewise failed to convincingly refute the testimony of Enrico that at one time the accused went inside a cottage where a female foreigner was sleeping; although no rape happened, the latter cried and reported the incident to her sister. (TSN, 2 June 1994, 31-32).

The trial court correctly took note of these previous incidents, for under Section 34 of Rule 130 of the Rules of Court, they can be received "to prove a specific intent,...plan...scheme, habit...and the like." With those incidents as premises, relevant as they are in legal contemplation, the conclusion is inevitable that the accused is a woman molester, with lechery partial to Caucasians. His description of himself then as a "fisherman and public relation officer and a tourist guide at the Mary's Cottage," (TSN, 9 June 1994, 3) was nothing but a camouflage to conceal a satyr on the prowl.

There is, as well, no doubt in my mind that accused intentionally proceeded to Mary's Cottage to molest Zareen. If he merely wanted to go to the public restroom to wash off the sand on his body, he could have done so without passing by Mary's Cottage, as the communal restroom. That was more than one hundred meters away from Mary's Cottage. Moreover, it was not necessary for him to wash off the sand at the public restroom, he could

have simply returned to the sea nearby. He went to Mary's Cottage because he knew Zareen was there, Ricky having gone back to the beach without her.

Zareen's unhesitating admission of nightly sex with her boyfriend Ricky and sexual congress with her previous boyfriends should not have been taken against her, as the ponencia impliedly suggests; in fact, they were even earmarks of her truthfulness. She could have easily hidden those facts, there being no necessity for their revelation. It would then be irrelevant and thus impermissible to consider Zareen's behavior and conclude that she was sexually indiscriminate as the defense would make her out to be. Clearly, a distinction may be drawn between one who is sexually active, but monogamous, on one hand, and who engages in indiscriminate promiscuity, on the other hand. But even assuming otherwise, it must not be forgotten that even prostitutes may be a victim of rape (*people v. Rivera*, 242 SCRA 26, 37 [1995]), and the victim's unchaste character is neither a defense nor a mitigating circumstance in rape cases (*RAMON C. AQUINO*, *The Revised Penal Code*, vol. 3 [1988], 405-406).

With equal strength, it must not be overlooked that the character assassination employed by accused against Zareen is simply contrived and an afterthought. The accused forgot that his main thesis was that he was under the influence of liquor (*Tanduay*) or, as testified to by his witness PO2 Rodillo, the accused, was drunk, thus:

COURT:

Q: When you met Jun Salarza on the beach, Jun Salarza went on his way and proceeded to Mary's Cottage?

A: No, your Honor.

Q: What happened?

A: We detained him temporarily to rest and that because he was drunk, Your Honor.

Q: In your station.

A: Yes, Your Honor.

Q: So, because he was drunk you detained him not because of the reported rape?

A: For both reasons, Your Honor. (TSN, 8 June 1994, 21)

If indeed the accused was drunk, it would have been impossible for him to observe vividly, must less accurately recall what transpired.

Finally, Zareen's conduct immediately after discovering that the man who penetrated her was not Ricky, but the accused, further strengthened the credibility of her story that she was penetrated by the accused. She shouted at and confronted the accused, ran to the bathroom to wash, cried and became hysterical. Her cries were in fact heard by Nenita Marañon, caretaker of the Mary's Cottage, although Nenita was staying at a place which was 500 meters from Mary's Cottage (TSN, 1 June 1994, 8-9); she reported the incident to the police authorities and submitted herself to an investigation. Then she voluntarily submitted herself to a physical and medical examination by a physician who examined her private parts. These speak eloquently of her sincerity in obtaining justice and seeking redress for a wrong, and of the absence of any ulterior motive on her part.

Having thus shown that accused consummated his carnal knowledge of Zareen, the issue that remains to be resolved is whether that act constituted rape under the second circumstance of Article 335 of the Revised Penal Code. This Article pertinently provides as follows:

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

1. By using force or intimidation;

2. When the woman is deprived of reason or otherwise unconscious; and
3. When the woman is under twelve years of age or is demented.

The trial court held as it did because Zareen was half-asleep and believed in good faith that the accused was her boyfriend Ricky. The trial court did not use the word unconscious; it only ruled that she was “half-asleep or subconscious (sic)” in one instance (Decision, p. 17 OR, 68) or “half-asleep and semi-conscious” in another instance (id., 21; id., 72).

When a woman is “deprived of reason” or is “unconscious”, she is deemed to have “no will,” as distinguished from the first circumstance where force or intimidation is used, in which case her will “is nullified or destroyed”, or that it was committed against her will (AQUINO, op. Cit., 393).

Deprivation of reason need not be complete, as mere mental abnormality or deficiency is enough. (Id., 393-394) The crux of the matter then is the construction and interpretation of the word “unconscious.” I submit that since both “being deprived of reason” and “unconsciousness” are founded on absence of will to give consent intelligently and freely, the term “unconsciousness”, then, should not be tested by a mere physical standard, i.e., whether one is awake or asleep, conscious or alert. Rather, the inquiry should likewise determine whether the victim was fully informed of all considerations so as to make a free and informed decision regarding the grant of consent. It is only through this two-tiered test that a holistic appraisal of consent may be had.

In our jurisprudence, carnal knowledge of a sleeping woman is rape (People v. Dayo, 51 Phil. 102 [1927]; People v. Corcino, 53 Phil. 234 [1929]; People v. Caballero, 61 Phil. 900 [1935] and People v. Conde, 322 Phil. 757 [1996]), because in that state the woman is completely unconscious, both physically and mentally. Sleep, being the naturally or artificially induced state of suspension of sensory and motor activity (People v. Conde, supra, at 767), obviously deprives a woman of the ability to consent. However, to repeat, since it is “absence or lack of will” which is the primordial factor in the second circumstance of rape, then I submit that to construe the term “unconsciousness” exclusively in light of physical considerations would be unduly restrictive and fail to heed the gravamen of the offense, i.e., lack of consent.

The ponencia makes much of Zareen’s testimony that she was aware that someone pulled off her underwear and spread her legs, then concludes that she must have been fully conscious and could not have been mistaken as to her partner’s identity. However, to take this at face value would not serve the ends of justice. Plainly, despite Zareen’s awareness of what was being done to her, the question of who was doing it to her was a totally different matter. Her accession to the what was premised on the belief, in good faith, that it was her boyfriend who lay with her in bed. Her failure to ascertain the identity of her partner was a mistake in good faith for which she should not be faulted; neither should it result in the acquittal of accused-appellant.

In Zareen’s case, she was still “half-asleep” or drowsy when she was penetrated by the accused, having been awakened when he removed her underwear and mounted her, which she acceded to believing, in good faith, that it was her boyfriend Ricky, with whom she had nightly intercourse. When this belief turned out to be erroneous when accused announced, in the midst of the act, that he was not Ricky, but Jun (the accused), that was the only time that Zareen became fully aware of the totality of circumstances – critically, that of her partner’s identity – at which time she intelligently and freely exercised her will by immediately and unequivocally rejecting the accused.

I submit that an inquiry into whether or not Zareen was half-asleep does not suffice as regards the determination of an intelligent grant of consent; hence it may be said that in a sense, the grant of consent was likewise not free. Clearly, it is only when a woman is fully informed that consent may be intelligently given – which was absent in the instant case. Further, given that Zareen was newly awakened and still drowsy; that it was 2:30 a.m.; that she

was in her cottage; and that she had known only Ricky for the last three weeks, it was then not unreasonable for her to presume that the man who lay with her that night was no one else but Ricky.

However, should there be any further debate on the issue of Zareen's physical condition and consequences thereof, i.e., she was "awake" thus fully conscious, I assert that Zareen's failure to detect that it was not Ricky who lay with her that night, was not only unreasonable, but perfectly understandable, in light of human nature and as recognized by the medical profession. "Consciousness" has been described by medical practitioners as denoting a state of awareness of one's self and one's environment;^[1] conversely, whether a person is disoriented is measured by one's degree of alertness and awareness of the environment, considering the circumstances of time, place and person.^[2]

What matters for purpose of this opinion is that the medical profession recognizes a spectrum of impaired or depressed consciousness and orientation in persons who are nevertheless deemed "awake". The terms used in this regard are obtundity, somnolence and stupor.^[3] While we wish not to dabble in areas where we admittedly do not possess the requisite expertise, at bottom, given the circumstances of time and place, Zareen was clearly, in layman's language: disoriented, drowsy or confused,^[4] thus cannot be held culpable for her failure to immediately recognize that it was not Ricky, nor her failure to ascertain Jun's identity, not even her assumption that it was Ricky who lay with her:

This orientation as to person, place, and time depends on the ongoing sensory impressions. Have you ever awakened from a deep sleep to find that momentarily you did not know the day, the hour, or even where you were? Weren't your mental functions impaired until you became oriented, until all the pieces of the puzzle suddenly fell into place? xxx ^[5] (underscoring supplied)

Returning to the legal front, what is material here is that any semblance of consent given was clearly and painfully a mistake in good faith, as Zareen was not fully aware of the totality of the circumstances, thus rendering her, for all legal intents and purposes, unconscious and unable to give consent freely and intelligently. All told, this instance of reverse error in personae, clearly a material factor in the grant of consent by the victim, resulted in total absence which accused-appellant should be held criminally liable for as charged.

On a final note, however, the penalty thereof should not be death, as erroneously ruled by the trial court, Under Article 335 of the Revised Penal Code, as amended by R.A. No. 7659, death is imposable only under any of the following circumstances, none of which obtain here:

When the crime of rape is committed with the use of deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death.

When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be death.

When the rape is attempted or frustrated and a homicide is committed by reason or on the occasion thereof, the penalty shall be reclusion perpetua to death.

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 attendant circumstances:

1. When the victim is under eighteen (18) years old and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law-spouse of the parent of the victim.
2. When the victim is under the custody of the police or military authorities.

3. When the rape is committed in full view of the husband, parent, any of the children or other relatives within the third degree of consanguinity.
4. When the victim is a religious or a child below seven (7) years old.
5. When the offender knows that he is afflicted with Acquired Immune Deficiency Syndrome (AIDS) disease.
6. When committed by any member of the Armed Forces of the Philippines or the Philippine National Police or any law enforcement agency.
7. When by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation. (As amended by Sec. 11, RA 7659).

WHEREFORE, I vote to affirm the decision, subject to the modification of the penalty which should be reduced from death to reclusion perpetua.

[1] Raymond D. Adams, Coma and Related Disturbances of Consciousness, in KURT J. ISSELBACHER, RAYMOND D. ADAMS, EUGENE BRAUNWALD, ROBERT G. PETERSDORF AND JEAN D. WILSON (eds.), HARRISON'S PRINCIPLES OF INTERNAL MEDICINE, AT 114 (Chapter 20, 9d., 1980) (hereinafter Adams); and WILLIAM E. DEMEYER, TECHNIQUE OF THE NEUROLOGIC EXAMINATION, at 383, Chapter 11 (1994) (hereinafter DEMEYER).

[2] See JOHN GILROY AND JOHN STIRLING MEYER, MEDICAL NEUROLOGY at 3 (3d., 1979) (hereinafter GILROY AND MEYER).

[3] Obtundity is when the subject can be aroused by stimuli and will then respond to question or commands. The subject remains aroused as long as the stimuli are applied. During arousal, the subject responds but may be confused, in GILROY AND MEYER. id.

Somnolence is when the person arouses spontaneously at times or after normal stimuli but drifts off inappropriately. The sensorium functions adequately when aroused, in DEMEYER, at 419.

Stupor is when one appears asleep but arouses to vigorous verbal stimuli. May awaken spontaneously for brief periods, but sensorium clouded. Shows some spontaneous movements and follows some brief commands, id.

[4] Denoted as the inability to think customary speed and coherence, in Adams, at 115.

[5] DEMEYER, at 383.

CONCURRING OPINION

FRANCISCO, J.:

By her own account, complainant was half-asleep when accused-appellant took off her underwear, removed his briefs, placed himself on top of her, spread her legs, penetrated her and executed push and pull movements. Thinking that it was her boyfriend, complainant did not do anything until accused-appellant softly whispered to her "Zareen, it's not Ricky; it's Jun. I love you." After which, she pushed him aside.

Complainant's tale of rape is unconvincing. It is quite puzzling that a supposed rapist, who having accomplished with utmost ease his sinister intention to have carnal knowledge with an unsuspecting victim, would all of a sudden unexplainably blow his cover by revealing his identity. Instinctively, the attacker's natural reaction would be to shield himself from every possibility of being identified to avoid prosecution.

Even more baffling is complainant's immediate reaction after the alleged rape. Instead of fleeing from the clutches of her attacker, complainant proceeded to the bathroom and washed herself for fear of being impregnated. At the same time, she even talked to her attacker and asked him why he did such thing to her. Undoubtedly, her reaction was too casual for somebody who was supposed to have undergone a harrowing experience of rape.

On this score, I find it hard to give credence to complainant's testimony bearing in mind that "evidence, to be believed, must not only proceed from a mouth of a credible witness, but it must be credible in itself – such as the common experience and observation of the mankind can approve as probable under the circumstances." Complainant's testimony does not jibe with the normal reactions commonly exhibited by persons placed under the same situation. Thus, her version is simply incredible.

I therefore concur with the opinion of Justice Bellosillo and vote for the acquittal of herein accused-appellant.

DISSENTING OPINION

REGALADO, J.:

I find the presentation and analysis by Mr. Justice Davide of the case for the People to be both objective and sustained by the evidence, hence I adopt the position he has taken, with some observations in amplification.

1. In the delictual setting of the rape case at bar, it is obvious that the ascertainment of the true factual version on its commission must have primacy in the inquiry. Here, as is often the situation, we have the word of complainant Zareen Smith that she was raped while half-asleep as against that of appellant Salarza denying the charge. The peculiarity in the latter's negation is that, aside from completely denying that he had ever sexually molested complainant, he adds that by her own enticements it would have been a consensual affair had he done so.

We must perforce assay their contending accounts along the fundamental principle that the prosecution must rely primarily on the strength of its evidence, but with the contrapuntal rule that affirmative assertions have greater evidentiary weight than bare denials. Also, while jurisprudence teaches that a rape charge is easy to make and hard to disprove, since generally only the complainant and the accused can testify on what actually happened, yet it is both a commonsensical and doctrinal rule that the weakness revealed by the false testimony of one strengthens pro tanto the credibility of the declarations of the other.

I fully agree with the discussion of Mr. Justice Davide that considerations of law and logic sustain the truth of the victim's assertion, with the accusing finger of prevarication pointing at appellant. Indeed, one is hard put to rationalize why complainant should charge appellant with such a heinous crime with its grave penalty apparently for no reason at all and without any perceivable motive for doing so. Appellant's proffered explanation for such an inexplicable conduct which he imputes to her is as bizarre as it is melodramatic.

In complainant's story, we have all the earmarks of truth consistent with the expectable reactions of a woman whose virtue has been sullied against her will. As further imprints of her credibility, not all her revelatory statements are self-laudatory nor tailored by exaggeration in order to subserve an unworthy purpose. Appellant, on the other hand, weaves a tale of fancied events which would project the sainted innocence he claims to have maintained against supposed erotic temptations.

Thus, for instance, complainant could very well have passed over in silence or explained away her past sexual experiences abroad, or her relations with her local boyfriend, Enrico de Jesus, just to strike a pitiable pose as a victim worthy of full sympathy. Instead of honestly admitting that she was half-asleep and slightly aware when the pre-coital acts were done on her person, she could have so easily dissembled without fear of contradiction that

she was fast asleep and totally insensible to everything until her discovery of what appellant was doing to her. Yet, she did not do so but, to her credit, she candidly answered all question's fielded to her by the investigators and the court in the manner in which they now appear of record, thereby even affording appellant the opportunity for a nitpicking defense.

Appellant, as earlier stated, assumed a different stance by reciting that complainant first induced him to go to her cottage; then after stripping to the nude, she first tried to manually stimulate him sexually; then when he did not react, she wanted to perform fellatio on him; and when he refused, she tried to have him engage in cunnilingus with her. All these sexual wiles and blandishments he claims to have stolidly rejected, such that complainant angrily berated for him for his stupidity.

That posture as a paragon of virtue which he affected was obviously to counter the prosecution's theory that, taking advantage of complainant's somnolence or drowsiness, he easily obtained physical access to and quickly commenced sexual congress with her but he was discovered as a lecherous impostor and the victim cried out her anguish and emotional revulsion. This was, therefore, the natural reaction of a woman who was wronged by a sexual imposition against her will. This is in contrast to appellant's pretense that she shouted at and cursed him for rebuffing her advances, which would be the conduct of a woman scorned by his indifference.

A mere comparison of the respective narrations of the parties readily exposes which one is evidently fabricated. Indulging appellant in his fabulous claim, one may then wonder why, with the cottage door open and her boyfriend expected to return any time, complainant would seek to have both normal and deviant sexual relations with appellant, despite the time that would be involved and without any precautions against discovery. Worse, after being thus spurned in her alleged desires, she is supposed to have scandalously shouted and cursed out her frustration for all to hear, instead of keeping silent so that the shameful episode would not be known by others.

Providentially, however, a third person was awakened by the unrestrained wailing of complainant over the outraged committed against her and what the former revealed in her testimony yields further light on the truth of complainant's version. Nenita Marañon, caretaker of the cottage rented by complainant and her boyfriend, confirmed inter alia that upon arrival at the cottage, she heard complainant crying. In fact, thinking that she was being forced to have sex by her boyfriend against her will, Marañon called out to him not to do so, only to realize shortly thereafter that truth of the caretaker's presence on that occasion, as well as the accuracy of what she recounted to the court.

Taken in concert with the findings and conclusions in the opinion of Mr. Justice Davide, I venture to state that only naivete' or gullibility would grant any cachet to appellant's defensive charade. In fact, my understanding is that even those sympathetic to his plea for acquittal concede that he did have sexual intercourse with the victim, thereby upholding her version and giving the lie to that of appellant. It is intransigently posited, however, that the blame for the assault against her chastity is ascribable to complainant, and that brings this opinion to a discussion of that extraordinary thesis.

2. I need not devote much space to the proposition that it was complainant's negligence, in not ascertaining the identity of the person who come in the dark to lie with her, which resulted in her ravishment. This would be equivalent to saying that the stealth of the rapist would be rewarded with absolution upon proof of negligence on the part of the victim in meticulously ascertaining any semblance of duplicity in the forbidding privacy of the bedroom. Complainant was expecting her boyfriend's momentary return, then she fell asleep; she was slightly aroused by the preliminaries for coitus which she and her boyfriend had been indulging in and, in the dark with nothing to warn her otherwise. In her drowsy state of mind she submitted to the person she thought was her boyfriend.

She is now faulted for not exercising that degree of diligence necessary to detect any strategy of an impostor, otherwise the latter shall be rewarded for his success. The responsibility for the sexual assault is laid at the door of the victim for not detecting and preventing it from happening, and not upon the felon who schemed and caused the event to happen. This appears to be the alarming import of the arguments offered in defense of appellant on this score, a cogitation which regretfully I cannot reconcile with any doctrinal rule I have learned in the law of crimes against chastity.

It is insisted, moreover, that the pertinent law contemplates the situation “(w)here the woman is deprived of reason or otherwise unconscious,”[1] and the cases so far decided in our jurisdiction involved as victims women who were fully asleep at the time the rape may be legally deemed consummated. Hence, the case at bar does not fall within the purview of such statutory and case law since the victim was only half asleep and supposedly admitted to some degree of awareness when her panties were being removed.

Mr. Justice Davide has cited authoritative discussions demonstrating, from both physiological and neurological considerations, that a person who is half asleep and therefore in a stupor of drowsiness or semiconsciousness, is not capable of giving full, informed, intelligent and voluntary consent. This refutes and exposes the essence of appellant’s evasive tactics, that is, since it is beyond cavil that he did sexually penetrate her, the fallback alternative is to argue that it was with her consent even if she was then half asleep.

This is a legal gambit, passing under the guise of novelty, but which has been analyzed and disposed of long ago since it is a matter of common and ordinary human experience. A woman who is half asleep being only half conscious, or in a state of drowsiness hence not fully conscious, is not capable of completely giving that consent contemplated as valid in law which would bar a prosecution for rape upon the defense of consensuality in the sexual act.

Thus, as pointed out by one of our early commentators on the Revised Penal Code, Judge Guillermo B. Guevarra, “He who lies with a woman, while the latter is in a state of unconsciousness or drowsiness, is guilty of rape.”[2] Drowsiness is defined as the state of being drowsy, that is, ready to fall asleep or half asleep.[3]

This echoes the writings of a spanish commentator on this mode of commission of rape as embodied in the Spanish Penal Code of a vintage contemporary with ours, that is, ElCodigo de 1932, which provides that rape is committed “que este privada la mujer de razon o de sentido”. He explains:

“b) Que dentro de la frase privada de sentido cabe comprender tambien equellas situaciones en que puede encontrarse la mujer en las que, bien por accidentes exteriores, bien por hallarse en un estado crepuscular, entienda que no debe resistir. Es el caso x x x de la suplantacion del marido (oscuridad, timbre de voz, semisueno, etcetera). La jurisprudencia francesa siempre ha considerado estos casos como de violacion. En nuestra patria el Tribunal Supremo asi lo estimo en un caso en que la mujer se encontraba dormida (31 de enero de 1902). Entendemos debe apreciarse igual doctrina en las otras hipotesis.”[4] (Italics supplied).

Parenthetically, the conjoined word “semisueno,” which we shall meet again, is the legal term used by Spanish commentators to denote a person who is half asleep, “semi” being the prefix meaning “half” or “partly,” and “sueno” being “sleep, sleeping, drowsiness.”[5]

Of more familiarity and direct application to the present case is the work of Viada on the Spanish Penal Code of 1870,[6] the principal source of our Revised Penal Code, where he cites and discusses a cause almost on all fours with that before us, the only difference being that it was the husband there, and the boyfriend here, who was supplanted by the rapist. Involved therein was Article 453 of said Code which pertinently provided: “Se comete violacion yaciendo con la mujer en cualquiera de los casos siguientes: x x x 2. Cuando la mujer sa hallare privada de razon o de sentido por cualquiera causa”.

The illustration given therein, which is substantially identical with the situation in the case at bar, is as follows:

“CUESTION 6. El que aprovechandose de semisueno de una mujer, penetre en su lecho fraudulentamente, y yace con ella haciendola creer que es su marido, sera responsable del delito de violacion?-El Tribunal Supremo de casacion frances ha resuelto la afirmativa: ‘Considerando, dice, que el crimen de violacion consiste en el hecho de yacer con una mujer contra su voluntad, ya provenga la falta de consentimiento de la violencia fisical o moral que de se ejercicio sobre ella, ya del cualquier otro medio que consista en cohibirla o soprenderla para conseguir, sin la voluntad de la victima, el objeto el autor del acto: Considerando que de los hechos probados en esta causa resulta que valiendose Dubas de enganosos artificios con objeto de hacerse pasar por Laurent, se ha introducido en el cuarto y en el lecho de la mujer de este, y aprovechandose del semisueno en que se hallaba sumida, ha logrado yacer con la expresada mujer, la que estaba tan distante de consentir el acto ejecutado por Dubas, que al concebir sospechas de que no era realmente su marido la agraviada para auxiliarla contra el violador, que al ver descubierto el fraude apelo precipitadamente a la fuga: Considerando que semejantes hechos contienen los elementos constitutivos del crimen de violacion, etc.’ (S. de 31 de diciembre de 1858, Bull. Crim., pag. 539) Creemos que nustos Tribunales habrian de resolver el caso en igual sentido, ya que comprendiendo el num. 2 del articulo, como caso de violacion, el de yacer con una mujer cuando esta se halla privada de razon o de sentido, por cualquiera causa, habrian de estimar como causa de privacion de sentido ses semisueno durante el cual no funcionan sino incompletamente las facultadas del alma”. [7] (Emphasis supplied).

With the confluence of all the foregoing indicia and dicta on his guilt, it is pointless for appellant to latch on to the ignis fatuus of reasonable doubt for acquittal. For, as important as the rule that innocence shall not suffer is the societal imperative that guilt shall not escape. The trial court, in my view, acted correctly in pronouncing a verdict of guilty in light of the proven facts; unfortunately, it imposed an erroneous penalty, in point of law.

Appellant has been sentenced to death, the court below invoking as its authority therefor the provisions of Article 335 of the Revised Penal Code, as last amended by Republic Act No. 7659. Yet nowhere in the records is there a showing that any of the circumstances which would warrant the imposition of the capital punishment, as successively introduced by amendments to Article 335,[8] obtain in this case. For that matter, the trial court does not specify either or even intimate what circumstance it relies on for the death penalty. This is, therefore, a case of simple rape punishable only by reclusion perpetua, yet the death penalty has been inexplicably imposed through a serious judicial error for which the judge a quo should be made to account.

I, therefore, vote for the affirmance of the conviction of accused-appellant Silverio Salarza, Jr. for the felony of simple rape, and that the lower penalty of reclusion perpetua be imposed on him.

[1] Art. 335 (2), Revised Penal Code, as amended by R.A. No. 7659.

[2] Commentaries on the Revised Penal Code, 4th ed., 714, citing Viada, 3 Cod. Pen., 121-122.

[3] Webster's Third New International Dictionary (1966), 695.

[4] Federico Puig Peña, Derecho Penal, Tomo IV, Parte Especial, 28-29.

[5] See Appleton's New Cuyas Dictionary (1966), 5th ed., 496, 514; New Revised Velasquez Spanish and English Dictionary, 1959 ed., 598, 618.

[6] Salvador Viada y Villaseca,Codigo Penal Reformado de 1870, Quinta Edicion, revised and updated by Salvador Viada y Rauret, tomo V.

[7] Op. Cit., 223.

[8] R.A. Nos. 2632, 4111 and 7659.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.