

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FELIMON ALIPAYO Y TEJADA, DANILO MACABALITAO Y ROMUALDEZ, JELLIE LIPA Y RUDIKE, AND VIRGILIO TAMAYO Y ZALMAZAN, ACCUSED-APPELL...

G.R. No. 122979. February 02, 2000

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PER CURIAM:

Accused-appellants Felimon Alipayo y Tejada, Danilo Macabalitao y Romualdez, Jellie Lipa y Rudike and Virgilio Tamayo y Zalmazan were charged with Robbery with Rape under the following Information[1] -

That on or about the 13th of February 1994, in Quezon City, Philippines, the above-named accused, conspiring, confederating with and mutually helping with one another, by means of violence and intimidation against person/s did then and there, willfully, unlawfully and feloniously rob the persons of ORNELIA GELLONGOS Y PIALA and ALEXIS BARRIENTOS Y DACASIN, in the following manner, to wit: on the date and in the place aforementioned while said complainants were walking along A. Bonifacio Avenue near St. Joseph Church, this City, accused pursuant to their conspiracy and armed with bladed weapons appeared from behind and at knife (sic) points, took, robbed and carried away the following, to wit:

ORNELIA GELLONGOS Y PIALA

One (1) pair of 18 karat gold earrings

P2,000.00

One (1) Lady's wristwatch stainless.....

1,000.00

ALEXIS BARRIENTOS Y DACASIN

One (1) men's wrist watch SEIKO goldplated.....

350.00

One (1) pair of leather shoes Two (2) pilot sign pens P45.00 @

90.00

Leather wallet containing cash money

200.00

all valued in the total amount of P3,640.00, Philippine Currency, and that on the occasion (sic) of the said robbery, the said accused by means of force and intimidation took turns in sexually abusing Ornella Gellongos y Piala, 16 years of age, a minor, against her will and consent, to the damage and prejudice of said offended parties.

CONTRARY TO LAW.

When arraigned on March 21, 1994, all the accused pleaded not guilty to the crime charged.[2]

The prosecution presented six (6) witnesses: private complainants Ornella Gellongos[3] and Alexis Barrientos[4] SPO2 Romeo Arcenas[5] PO3 Jerry Cervantes[6] barangay official Alfredo Cabrito[7] and the medico-legal officer Dr. Louella Nario.[8]

It appears that on February 13, 1994 at around 8:45 p.m., Ornella and Alexis were walking home after coming from the house of a classmate who lived along North Diversion Road. When they reached the front of St. Joseph Church on A. Bonifacio Avenue, accused-appellants, all armed with knives, approached them from behind and announced a hold-up. Virgilio Tamayo, Danilo Macabalitao and Jellie Lipa accosted Alexis while Felimon Alipayo poked a knife at Ornella's neck. They were then brought to the nearby mini-park and there, Felimon Alipayo took Ornella's Seiko wrist watch. At the same time, Virgilio Tamayo divested Alexis of his Seiko wrist watch while the other accused took his two pilot sign pens, wallet containing P200.00 in cash and pair of shoes. Danilo Macabalitao then took Ornella's 18-karat gold earrings. After robbing private complainants of their valuables, Felimon Alipayo and Danilo Macabalitao dragged Ornella about four meters away from Alexis and forced her to lie down on the grass or else they would kill her. They then pulled up her skirt and removed her panties. While Danilo Macabalitao poked a jagged-edged knife at Ornella's neck with one hand and mashed her breasts with the other, Felimon Alipayo raped Ornella. After this, the two exchanged places. This time, Felimon Alipayo held an icepick to Ornella's neck while Danilo Macabalitao raped her. While all of these were happening, Alexis pleaded with the accused to stop what they were doing to Ornella. When Danilo finished, Virgilio Tamayo, who was guarding Alexis, approached Ornella, pulled down his pants and also raped her while Felimon Alipayo continued to poke his icepick at Ornella's neck.

It was at this point that Alexis was able to escape. Alexis ran and cried for help but no one answered him. It was only when he reached a store that he met a barangay tanod who asked him what happened. They called the barangay tanod's companions and together went to the park.

In the meantime, after Virgilio finished and stood up, the last accused, Jellie Lipa, also hurriedly raped Ornella. During her entire ordeal, Ornella felt pain in her private part and was bleeding.[9] When Jellie Lipa finished, he stood up and all of the accused ran away. Ornella then forced herself to stand up and walk but had to sit on a park bench after a few steps. It was here where Alexis and the barangay tanod found her. The barangay tanod and his companions tried to look for the accused-appellants in the vicinity but could not find them. He then advised Ornella and Alexis to go back to the barangay outpost after six (6) hours to see if the accused had been arrested. Ornella was brought home by Alexis because she had difficulty walking.

Alexis then proceeded to the church where he saw Ornella's uncle, Rodolfo Taguio, and narrated the incident to him. They proceeded to the barangay ,outpost as advised and there, Alexis identified the accused Danilo Macabalitao and Jellie Lipa.

When Ornella and Alexis arrived at the Camachile police substation to report the crime the following day, February 14, 1994, they were asked to identify the accused among four (4) persons detained in a cell. They pointed out the accused Danilo Macabalitao and Jellie Lipa, who had been transferred to the station. After one hour, accused Virgilio Tamayo as brought to Ornella and Alexis and they also identified him as one of their attackers. Ornella then proceeded to the National Bureau of Investigation (NBI) to have herself medically examined. After her medical examination, Ornella returned to the police station where she was once more asked to look inside the detention cell to identify any other accused. This time, she pointed to the accused Felimon Alipayo, whom Alexis had earlier identified. Thereafter, they filed their complaints in writing.

Prosecution witness Jerry Cervantes, a policeman assigned at the Camachile substation, testified that accused Danilo Macabalitao and Jellie Lipa accompanied him and police officer Roberto San Miguel to look for and arrest the two other accused. Accused Virgilio Tamayo was pointed out by Danilo and Jellie in the Balintawak park as their companion in the crime. Likewise, accused Felimon Alipayo, whom they chanced upon acting as jeepney barker, was pointed out by the three accused, Danilo, Jellie and Virgilio, as their other companion in the crime. When accosted, both Virgilio Tamayo and Felimon Alipayo did not resist their arrest.

All the accused-appellants took the witness stand, raising the defense of alibi. They also presented four (4) additional witnesses. Manuel Pazol, Jr.,^[10] a barangay tanod of Unang Sigaw, Balintawak, Quezon City, where the crime took place, testified that when the accused Danilo Macabalitao and Jellie Lipa were brought to the barangay outpost on the night of February 13, 1994, he asked them to undress to check if there were bloodstains in their underwear, but he saw nothing. Gregorio "Ogie" Lopez,^[11] the employer of accused Danilo Macabalitao, corroborated Danilo's story that at around 7:00-8:00 p.m. of February 13, 1994, Danilo was in his house delivering his daily collections. Rodolfo Ocampo,^[12] a Metro Aide and barangay tanod assigned to the area of the crime, claimed that when he talked to Ornella right after the incident, she told him that they were held up and that two men raped her. Lastly, Norma Alcazar,^[13] longtime neighbor of Danilo Macabalitao's family, testified that she saw a struggle between five decently dressed men and a woman on the day of the crime on the bridge near the Balintawak Market.

The Regional Trial Court of Quezon City, Branch 215, rejected the accused-appellant's defense of alibi and, on August 28, 1995, rendered a Decision^[14] finding all four of them guilty as charged. The trial court ruled, viz:

Upon the evidence the court finds that accused Felimon Alipayo y Tejada, Danilo Macabalitao y Romualdez, Jellie Lipa y Rudike and Virgilio Tamayo y Zalmazan guilty as charged, the prosecution having proven their guilt beyond reasonable doubt.

Considering that the crime was committed during nighttime, the accused taking advantage of the darkness for the more successful consummation of their plans, to prevent their being recognized, so that the crime may be perpetrated unmolested, or so that they could escape more thoroughly (U.S. v. Billedo, 32 Phil. 575, 579) as what actually happened in this case, the four (4) accused are sentenced to Death in accordance with Article 294, paragraph 1 of the Revised Penal Code, as amended by RA 7679.

The four (4) accused are jointly and severally ordered to pay the private complainant Ornella Gellongos the sum of P200,00.00 as and for civil damages; likewise, the accused are ordered to pay to the private complainant Alexis Barrientos the sum of P20,000.00 as civil damages; accused are also ordered to indemnify private complainants Ornella Gellongos P1,000.00 and Alexis Barrientos P640.00 for the loss of their personal belongings.

SO ORDERED.^[15]

In this automatic review, accused-appellants contend that the trial court erred in giving full credit to the declarations of the complainants despite glaring inconsistencies in their testimonies. They also fault the trial court for totally disregarding the testimonies in their defense.^[16]

Accused-appellants assail the identification made by private complainants, arguing that when they were asked at the police station whether the appellants were the ones who robbed them and raped Ornella, both of them could only answer "yata" (maybe). It appears that appellants based this argument on the testimony of police officer Jerry Cervantes narrating what happened after he apprehended accused Virgilio Tamayo and Felimon Alipayo, to wit:

Q Where did you bring them to?

A To our precinct, Camachile Station, sir.

Q What happened at Camachile Police Station?

A We turned them over to the police officer, sir.

Q Were the complainants present at Camachile Police Station after bringing them there?

A Yes, sir.

Q What happened when the private complainants confronted these suspects?

A They pointed "yata".

Q What do you mean by "yata"?

A I was not present everytime, sir.

Q Who was the investigator who was there present?

A SPO2 Arcenas, sir.

ASST. CITY PROSECUTOR

May we put on record that the identification is narrated in the salaysay of the two complaining witnesses in this case which was admitted by the defense counsel.

COURT

The two private complainants?

ASST. CITY PROSECUTOR

Yes, your honor. In the salaysay, the fact of identification was mentioned.[17]

A reading of the above testimony easily reveals that when witness Jerry Cervantes said, "they pointed 'yata'," he was expressing his uncertainty as to whether or not the complainants pointed or identified the appellants Virgilio Tamayo and Felimon Alipayo. Contrary to what appellants would like this Court believe, the word "yata" was not used by complainants but was used only by the witness. This is obvious from his answers when asked what he meant by "yata": ""I was not present every time, sir." Indeed, the trial prosecutor clarified the matter by saying that the fact of identification was already contained in the complaint-affidavit of the complainants.

We, therefore, reject accused-appellants' argument that their identification was not sufficiently established. The records are replete with facts identifying appellants as the perpetrators of the crime. Ornella and Alexis pointed out appellants Jellie Lipa and Danilo Macabalitao in the detention cell when they went to the police station on February 14, 1994.[18] When Virgilio Tamayo was brought to her, Ornella also identified him as one of her rapists.[19] When she returned to the police station later in the afternoon, she also pointed out Felimon Alipayo in the detention cell.[20] Alexis, on the other hand, further testified that when he went to the barangay outpost on the night of the crime, he confirmed that the two apprehended suspects, appellants Jellie Lipa and Danilo Macabalitao, were the ones who robbed them and raped Ornella.[21]

Accused-appellants argue that their identification by the complainants was doubtful. They stress that, the suspects approached the complainants from behind and that the scene of the crime was a dark place notorious for criminality such that positive identification could not have been possible. Again, we find no merit in this contention. After a perusal of the records of the case, we find that the identification made by Ornella and Alexis of accused-appellants is credible. While accused-appellants may have approached complainants from behind, their act of divesting the two of their personal belongings and of raping Ornella necessarily brought them face to face

with the complainants. Specifically, Ornella recognized Felimon Alipayo because while the latter was poking a knife at her and removing her wrist watch, she was staring at him.[22] She recognized Danilo Macabalitao by the scar on his face which she readily saw when he approached her.[23] As to Virgilio Tamayo and Jellie Lipa, Ornella saw their faces when they raped her.[24] Alexis, too, confirmed that because of their proximity, he recognized the accused-appellants.[25] We give credence to the identification made by the complainants considering that the most natural reaction of victims of violence is to strive to see the appearance of the perpetrators of the crime and observe the manner in which the crime is being committed.[26]

While it may be true that the crime took place in a dark area, this does not prevent the identification of the criminals. As testified to by Alexis, vehicles were passing by, providing light to the area.[27] We have held that wicklamps, flashlight, even moonlight and starlight may, in proper situations, be sufficient illumination, making the attack on the credibility of witnesses solely on this ground unmeritorious.[28] In *People v. Gamboa*,[29] and in *People v. Pueblos*,[30] this Court ruled that the light of the moon is sufficient for a person to identify another. In *People v. Vacal*,[31] the light of the stars may provide fair visibility. Thus, we see no reason to reject the identification made by the complainants in this case.

We do not see any reason why the complainants would have pointed out accused-appellants as their attackers if the latter did not commit the crime against them. In fact, no malice or sinister motive have been imputed against the complainants by any of the accused-appellants.[32] Then, too, it would be unnatural for the complainants to impute the loathsome crime to appellants if they were innocent, exposing them to the ultimate penalty of death, and thereby allowing the real culprits to escape prosecution.[33] Especially insofar as Ornella is concerned, having been robbed of her virginity by the hideous gang-rape, her thirst for justice and retribution is expectedly high and it is very unlikely for her to accuse innocent men and stop the hunt for those who have truly violated and tainted her in body and spirit.

We also fail to see any error in the trial court's disregard of the testimonies of accused-appellants and their witnesses. Truly, the trial court is in a better position to assess the credibility of witnesses and their testimonies, as it has the opportunity to observe the witnesses firsthand and to note their demeanor, conduct and attitude while on the witness stand.[34] At any rate, even after carefully going over the testimonies of accused-appellants and their witnesses, we see no reason to uphold these over those of complainants.

Accused-appellant Danilo Macabalitao claims that at around 7:00 p.m. of February 13, 1994, he brought his day's collection as jeepney barker to his boss, Gregorio "Ogie" Lopez, who lived at Campo Uno, Tandang Sora, around fifteen (15) minutes away from Balintawak. After an hour, he left and walked to the highway for 20-30 minutes after which he had to wait another 10 minutes for a ride. He then took a 20-minute jeepney ride to Balintawak, arriving there at around 9:00 p.m. Danilo narrates that when he reached Balintawak, he went to a place located between Clover leaf Market and St. Joseph Church and there chanced upon Felimon Alipayo and Virgilio Tamayo with whom he ate dinner until 9:15 p.m. He also testified that they saw Jellie Lipa and invited him to have dinner with them but the latter refused. After dinner, Danilo alleged that he proceeded to a parked jeepney in the nearby terminal with Felimon Alipayo and spent the night there.

Accused-appellant Felimon Alipayo's version materially coincides with that of Danilo Macabalitao's. According to him, he was eating supper with Virgilio Tamayo, his wife and a dispatcher shortly before 9:00 p.m. of February 13, 1994 and before they could finish their dinner, accused Danilo Macabalitao arrived and joined them. He claims that it was almost 10:00 p.m. when they finished their supper. He also testified that after dinner, he went with Danilo Macabalitao to a parked jeepney and slept.

Interestingly, the testimonies of Danilo Macabalitao and Felimon Alipayo conflict with the testimonies of Virgilio

Tamayo and Jellie Lipa. More particularly, while Danilo and Felimon testified that only Virgilio Tamayo had dinner with them,[35] and that Danilo even saw Jellie Lipa sleeping in a pushcart and had invited the latter to dinner, which invitation he refused,[36] Virgilio and Jellie testified that they all had dinner together that fateful night and that Jellie was with them in Felimon's store.[37] This disharmony of what should have been a simple tale renders the narration of accused-appellants extremely doubtful.

We also note that Danilo Macabalitao's alibi that he delivered his collection for the day on the night in question to his boss Ogie is in itself of dubious credibility. Danilo himself testified that he already had his collections for the day by 4:00 p.m. At the same time, he also testified that Ogie was in the jeepney terminal and left at 4:30 p.m.[38] Thus, following their own observed system, Danilo should have simply turned over the collections of the day to Ogie at the jeepney parking area.[39] As to why Ogie insisted that Danilo deliver these to his house when he was already there to receive the day's collections is inconsistent with ordinary human behavior.

While Ogie took the witness stand to confirm Danilo's narration, his testimony only brought to the fore conflicting accounts which destroy the very credibility of Danilo's defense of alibi. Danilo testified that Ogie was in the jeepney terminal in the afternoon of February 13, 1994 and left at around 4:30 p.m. When questioned if he turned over the collections of the day to Ogie, Danilo answered that when he tried to give it to Ogie, the latter refused and asked him to bring the same to his house.[40] On the other hand, Ogie categorically testified that while he was at the Balintawak jeepney terminal everyday to collect from his barkers, including Danilo, he was not there on February 13, 1994, the reason why Danilo personally delivered the collection to his house.[41]

Not only are the testimonies of accused-appellants raising alibi conflicting and incredible, they fail to satisfy the twin requirements in order for such defense of alibi to be plausible. First, they must prove that they were nowhere in the vicinity of the crime at the time of its commission; they must prove that they were somewhere else instead. Second, they must prove that it was highly impossible for them to be present at the crime scene at the time of its occurrence.[42] We have already discussed how accused-appellants' version raises serious doubts, thereby falling short of the first requirement. Neither have they proven that it was highly impossible for them to be present at the crime scene at the time of its occurrence. Notably, the place where accused-appellants claim they were is just three or four minutes away from A. Bonifacio park where the crime took place.[43]

Also working against accused-appellants is the time-honored principle that alibi is an inherently weak defense and, unless supported by clear and convincing evidence, cannot prevail over the positive declaration of the victim who, in a natural and straightforward manner, convincingly identified the accused-appellants as those who sexually violated her.[44] This Court has held in a long line of cases that denial is a weak defense and it cannot prevail over a positive identification. Positive identification where categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying on the matter prevails over a denial which, if not substantiated by clear and convincing evidence, is negative and self-serving evidence undeserving of weight in law.[45] As discussed above, both Ornella and Alexis, who have not been shown to have any ill motive, have positively identified appellants as the authors of the crime. Thus, we are persuaded that accused-appellants are indeed guilty. The testimony of 16-year old Ornella, in particular, inspires belief. We have held that when the offended parties are young and immature girls from the ages of twelve to sixteen, courts are inclined to lend credence to their version of what transpired, considering not only their relative vulnerability but also the shame and embarrassment to which they would be exposed by court trial if the matter about which they testified is not true.[46] Ornella's credibility as a rape victim is enhanced considering that she has no motive to testify against the accused-appellants and there is absolutely no evidence on record which can even remotely suggest that she could have been actuated by any motive.[47]

Convinced of the culpability of the accused-appellants for the crime charged, we now come to the imposable

penalty. Inasmuch as the accused-appellants stand charged of the crime of Robbery with Rape which is punishable by reclusion perpetua to death under Article 294(1) of the Revised Penal Code, the appreciation of nighttime as an aggravating circumstance is material. Considering that the place where the crime took place was "notorious for hold-ups done at night, precisely to maximize the advantage of darkness,"[48] we cannot but agree with the trial court that nighttime was purposely sought by accused-appellants "for the more successful consummation of their plan, to prevent being recognized so that the crime may be perpetrated unmolested or so that they could escape more thoroughly."[49] All told, we are constrained to affirm the death penalty imposed by the trial court, but only insofar as three of the accused-appellants --- Felimon Alipayo, Danilo Macabalitao and Virgilio Tamayo --- are concerned.

In this connection, four Justices of the Court have continued to maintain the unconstitutionality of Republic Act No. 7659 insofar as it prescribes the death penalty; nevertheless they submit to the ruling of the majority to the effect that this law is constitutional and that the death penalty can be lawfully imposed in the case at bar.

Accused-appellant Jellie Lipa filed a separate Reply Brief[50] where he prayed that the death Penalty imposed upon him be reduced to reclusion perpetua on account of his minority at the time of the commission of the crime. While this issue was never raised below, nevertheless, it is a well-established rule in criminal procedure that an appeal in a criminal proceeding throws the whole case open for review and it becomes the duty of the appellate court to correct an error found in the appealed judgment.[51] Finding from the attached certified true copy of Jellie Lipa's Certificate of Live Birth[52] that he was born on March 13, 1976, making him only seventeen (17) years old at the time the crime was committed on February 13, 1994, we hold that the privileged mitigating circumstance of minority under paragraph 2, Article 68 of the Revised Penal Code should be appreciated in his favor.

ART. 68. Penalty to be imposed upon a person under eighteen years of age. --- When the offender is a minor under eighteen years and his case is one coming under the provisions of the paragraph next to the last of article 80[53] of this Code, the following rules shall be observed:

X X X X X X X X

- Upon a person over fifteen and under eighteen years of age the penalty next lower than that prescribed by law shall be imposed, but always in the proper period.

The penalty imposable for the crime of Robbery with Rape under Article 294(1) of the Revised Penal Code is reclusion perpetua to death. Following Article 68(2) of the Revised Penal Code, the penalty next lower than that prescribed by law shall be applied to Jellie Lipa. Article 61 of the Revised Penal Code, which applies in cases where there are privileged mitigating circumstances, states:

ART. 61. Rules for graduating penalties. --- For the purpose of graduating the penalties which, according to the provisions of articles 50 to 57, inclusive, of this Code, are to be imposed upon persons guilty as principals of any frustrated or attempted felony, or as accomplices or accessories, the following rules shall be observed:

X X X X X X X X

- When the penalty prescribed for the crime is composed of two indivisible penalties, or of one or more divisible penalties to be imposed to their full extent, the penalty next lower in degree shall be that immediately following the lesser of the penalties prescribed in the respective graduated scale.

X X X X X X X X.

Reclusion temporal is the penalty next lower in degree to reclusion perpetua, which is the lesser of the penalties prescribed in this case. Considering the aggravating circumstance of nocturnity, with no ordinary mitigating

circumstance to offset it, the penalty should be imposed in its maximum period.[54] The imposable penalty prescribed by law upon accused-appellant Jellie Lipa is, therefore, reclusion temporal in its maximum period. Applying the Indeterminate Sentence Law, we fix the minimum term of the sentence to be within the range of the penalty next lower to that prescribed for the offense,[55] which is prision mayor. In view of all these, this Court imposes upon accused-appellant Jellie Lipa the indeterminate sentence of ten (10) years and one (1) day of prision mayor, as minimum, to seventeen (17) years, four (4) months and one (1) day of reclusion temporal, as maximum.

We now come to the trial court's award of damages. The Solicitor General calls for the deletion of the P200,000.00 and P20,000.00 award of civil damages to Ornella and Alexis, respectively, for want of factual and legal basis. Instead, it suggests that each of the appellants be ordered to pay Ornella the amount of P50,000.00 as civil indemnity. Indeed, such civil indemnity is mandatory upon a finding of the fact of rape.[56]

Aside from the award of civil indemnity, we find that moral damages should also be awarded in favor of Ornella since it has also been held that in crimes of rape, moral damages may be additionally awarded to the victim without need for pleading or proof of the basis thereof.[57] This is because it is assumed that the offended party has suffered moral injuries entitling her to the award of such damages.[58] In cases where multiple rapes are committed against one victim, as in this case where Ornella suffered four rapes by four men, the victim should be awarded no less than the amount of P200,000.00 as moral damages.[59]

WHEREFORE, premises considered, the Decision of the Regional Trial Court of Quezon City, Branch 215, dated August 28, 1995 finding FELIMON ALIPAYO y TEJADA, DANILO MACABALITAO y ROMUALDEZ, and VIRGILIO TAMAYO y ZALMAZAN guilty beyond reasonable doubt of the crime of Robbery with Rape attended by the aggravating circumstance of nocturnity, and sentencing all of them to suffer the penalty of Death, is AFFIRMED.

The finding that JELLIE LIPA y RUDIKE is likewise guilty beyond reasonable doubt of the crime of Robbery with Rape is AFFIRMED with the MODIFICATION that, in view of the privileged mitigating circumstance of minority and the aggravating circumstance of nocturnity, he is sentenced to suffer an indeterminate penalty of ten (10) years and one (1) day of prision mayor, as minimum, to seventeen (17) years, four (4) months and one (1) day of reclusion temporal, as maximum.

All of the four accused-appellants are ORDERED to jointly and severally pay Ornella Gellongos the sum of P200,000.00 as civil indemnity and the sum of P200,000.00 as moral damages.

In addition, all of the accused-appellants are ORDERED to indemnify private complainant Ornella Gellongos the sum of P1,000.00 and private complainant Alexis Barrientos the sum of P640.00, representing the loss of their respective personal belongings. The award by the trial court to Alexis Barrientos of P20,000.00 as civil damages is DELETED.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., JJ., concur.

[1] Prepared by Assistant Prosecutor Lilian H. Ramiro, dated February 16, 1994 docketed as Criminal Case No. Q-94-54674; Rollo, pp. 3-4.

[2] Records, Vol. 1, p. 16.

[3] T.S.N., 19 April 1994, pp. 3-53, Records, Vol. II, pp. 355-405.

- [4] T.S.N., 25 April 1994, pp. 2-29, Records, Vol. II, pp. 407-434.
- [5] T.S.N., 10 May 1994, pp. 3-4, Records, Vol. II, pp. 438-439.
- [6] Ibid., at pp. 8-29, Records, Vol. II, pp. 443-464.
- [7] T.S.N., 13 June 1994, pp. 2-33, Records, Vol. II, pp. 467-498.
- [8] T.S.N., 26 July 1994, pp. 2-11, Records, Vol. II, pp. 500-509.
- [9] This was confirmed by prosecution witness Alfredo Cabrito who narrated that there were plenty of bloodstains left in the place where the crime occurred; see T.S.N., 13 June 1994, p. 10, Records, Vol. II, p. 475.
- [10] T.S.N., 15 August 1994, pp. 6-37, Records, Vol. II, pp. 516-547.
- [11] T.S.N., 29 August 1994, pp. 2-22, Records, Vol. II, pp. 549-569.
- [12] T.S.N. 27 September 1994, pp. 3-14, 11 October 1994, pp. 2-22, Records, Vol. II, pp. 572-584, 586-606.
- [13] T.S.N., 24 July 1995, pp. 2-16, Records, Vol. II, pp. 767-781.
- [14] Records, Vol. I, pp. 333-348.
- [15] Ibid., at pp. 15-16; Records, Vol. I, pp. 347-348, penned by Judge Marcelino F. Bautista, Jr.
- [16] Appellant's Brief, p. 3; Rollo, p. 79.
- [17] T.S.N., 10 May 1994, pp. 12-13, Records, Vol. II, pp. 447-448.
- [18] T.S.N., 19 April 1994, p. 48, Records, Vol. II, p. 400; 25 April 1994, pp. 11-12 and 26, Records, Vol. II, pp. 416-417 and 431.
- [19] T.S.N., 19 April 1994, pp. 48-49, Records, Vol. II, pp. 400-401; 25 April 1994, p. 13, Records, Vol. II, p. 418.
- [20] T.S.N., 19 April 1994, p. 50, Records, Vol. II, p. 402; 25 April 1994, p. 13, Records, Vol. II, p. 418.
- [21] T.S.N., 25 April 1994, pp. 10 and 25, Records, Vol. II, pp. 415 and 430.
- [22] T.S.N., 19 April 1994, p. 15, Records, Vol. II, p. 367.
- [23] Ibid.
- [24] Ibid., at p. 16, Records, Vol. II, p. 368.
- [25] T.S.N., 25 April 1994, p. 27, Records, Vol. II, p. 432.
- [26] *People v. Pulusan*, G.R. No. 110037, 290 SCRA 353, 372 (1998), citing *People v. Apawan*, 235 SCRA 355 (1994) and *People v. Dolor*, 231 SCRA 414 (1994)
- [27] T.S.N., 25 April 1994, p. 17, Records, Vol. II, p. 422.
- [28] *People v. Villaruel*, G.R. No. 105006, 261 SCRA 386, 395 (1996)
- [29] G.R. No. 73463, 145 SCRA 289 (1986)
- [30] G.R. No. 32859, 127 SCRA 746 (1984)
- [31] G.R. No. 20913, 27 SCRA 24 (1969)

[32] Danilo Macabalitao could point to no reason why Ornella would point to him as one of her rapists (see T.S.N., 24 January 1994, p. 5; Records, Vol. II, p. 645.

[33] See *People v. Daraman*, G.R. No. 126046, 7 August 1998; when queried by the trial court and cautioned to be very sure in his identification of the accused because the offense was very serious and if the latter was mistaken, the accused, if found guilty, would lie in the electric chair, Alexis still positively identified the appellants (see T.S.N., p. 27; Records, Vol. II, 25 April 1994, p. 432)

[34] *People v. Bersabe*, G.R. No. 122768, 289 SCRA 685, 692 (1988), citing *People v. Castromero*, G.R. No. 118992, October 9, 1997, pp. 9-10.

[35] T.S.N., 24 January 1994, p. 5, Records, Vol. II, p. 645; 30 January 1995, p. 5, Records, Vol. II, p. 761.

[36] T.S.N., 24 January 1994, p. 5, Records, Vol. II, p. 645.

[37] T.S.N., 10 April 1995, p. 4, Records, Vol. II, p. 706; 24 April 1995, p. 5, Records, Vol. II, p. 736.

[38] T.S.N., 8 December 1994, p. 7, Records, Vol. II, p. 625.

[39] T.S.N., 29 August 1994, p. 13; Records, Vol. II, p. 560.

[40] See note 38.

[41] See note 39.

[42] See *People v. Caisip*, G.R. No. 119757, 290 SCRA 451, 457 (1998)

[43] T.S.N., 8 December 1994, p. 10, Records, Vol. II, p. 628.

[44] *People v. Sumampang*, G.R. No. 117322, 290 SCRA 471, 476 (1998)

[45] *People v. Caisip*, supra, citing *People v. Ondalok and Mahinay*, G.R. Nos. 95682-83, May 27, 1997.

[46] *People v. Clopino*, G.R. No. 117322, 290 SCRA 432, 444-445 (1998) citing *People v. Molina*, 53 SCRA 495 (1973)

[47] *People v. Belo*, G.R. No. 109148, December 4, 1998.

[48] Appellants' Brief, p. 4; Rollo, p. 40.

[49] Decision, p. 15; Records, p. 347.

[50] Rollo, pp. 168-179.

[51] See *Obosa v. CA*, G.R. No. 114350, 266 SCRA 281, 296 and *People v. Calayca*, G.R. No. 121212, 20 January 1999.

[52] Rollo, p. 179.

[53] Repealed by Presidential Decree No. 603, Article 197.

[54] Article 64(3), Revised Penal Code.

[55] Sec. 1, Act No. 4103, as amended by Act No. 4225.

[56] *People v. Prades*, G.R. No. 127569, 30 July 1998.

[57] Ibid.

[58] People v. Malapo, G.R. No. 123115, 25 August 1998.

[59] See People v. Pulusan, G.R. No. 110037, 290 SCRA 353, 377 (1998)

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