

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JERRY ABALDE, ACCUSED-APPELLANT.

G.R. No. 123113. March 31, 2000

Ponente: PARDO, J.

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PARDO, J.:

Accused Jerry Abalde appeals from the decision[1] of the Regional Trial Court, Branch 25, Koronadal, South Cotabato finding him guilty beyond reasonable doubt of statutory rape[2] and three (3) counts of rape[3] and sentencing him to four (4) terms of reclusion perpetua, with all accessory penalties provided by law and to pay the costs. The trial court further ordered accused to pay complainant Ervie Tonelete moral damages in the amount of P50,000.00, in each case, with legal interest from finality of judgment until full payment.[4]

On August 23, 1991, First Assistant Provincial Prosecutor Isaac Alvero V. Moran of South Cotabato filed eight (8) separate informations[5] with the Regional Trial Court, Branch 25, Koronadal, South Cotabato, charging Jerry Abalde with rape, as follows:

Criminal Case No. 701

"That one day in the month of September, 1990, in the evening thereof, at Barangay Albagan, Municipality of Tampakan, Province of South Cotabato, Philippines, and within the jurisdiction of this Honorable Court, the said accused, while being armed with a knife, and by means of force, violence and intimidation, did then and there wil[l]fully, unlawfully and feloniously have carnal knowledge of the complainant ERVIE TONELETE, then under twelve (12) years of age, against her will.

"CONTRARY TO LAW."[6]

Criminal Case No. 702

"That on or about the 4th day of March, 1991, at about 11:00 o'clock in the evening thereof, at Barangay Albagan, Municipality of Tampakan, Province of South Cotabato, Philippines, and within the jurisdiction of this Honorable Court, the said accused, while being armed with a knife, and by means of force, violence and intimidation, did then and there wil[l]fully, unlawfully and feloniously have carnal knowledge of the complainant ERVIE TONELETE, then under 12 years of age, against her will.

"CONTRARY TO LAW."[7]

Criminal Case No. 708

"That on or about the 26th day of April, 1991, in the evening thereof, at Barangay Albagan, Municipality of Tampakan, Province of South Cotabato, Philippines, and within the jurisdiction of this Honorable Court, the said accused, while being armed with a knife, and by means of force, violence and intimidation, did then and there wil[l]fully, unlawfully and feloniously have carnal knowledge of the complainant ERVIE TONELETE, against her will.

"CONTRARY TO LAW."[8]

On September 16, 1991, Second Assistant Provincial Prosecutor Florentino B. Tugas of South Cotabato filed another information for rape[9] with the Regional Trial Court, Branch 25, Koronadal, South Cotabato against accused Jerry Abalde, committed as follows:

Criminal Case No. 714

"That in or about the 3rd of March 1991, in Barangay Albagan, Municipality of Tampakan, Province of South Cotabato, Philippines, and within the jurisdiction of the honorable Court, the said accused armed with a knife, by means of force and intimidation, did then and there wil[l]fully, unlawfully and feloniously have carnal knowledge of ERVIE TONELETE against her will, and in her own house.

"CONTRARY TO LAW."[10]

Upon arraignment on October 1, 1992, in all the cases, accused Jerry Abalde pleaded not guilty. He waived pre-trial. Thereafter, a joint trial of all the nine (9) cases ensued.

The facts are as follows:

Complainant Ervie Tonelete, the second child of spouses Vedala and Ernesto Tonelete, was born on February 17, 1979.[11] Ervie, her parents and two (2) other siblings, Ervin and Ermie, lived in Barangay Albagan, Tampakan, South Cotabato, a dead-end place lying in the mountains, some twenty (20) kilometers away from the town proper of Tampakan.[12] Her elder brother Ernest stayed with a relative in General Santos City where he studied.

Sometime in June 1989, accused Jerry Abalde, Vedala's nephew by her first cousin,[13] arrived at the Tonelete household from Manticao, Misamis Oriental to work on a portion of their land.[14] He lived at the house of the victim, and during the night he slept at the sala while Ervie and her family slept in the only room of the house.[15] Considering that he was a relative, the children of Vedala and Ernesto, including Ervie, called him uncle.[16]

On weekdays, Ervie's parents worked in the farm while Ervie and her siblings went to school. Every Saturday, her parents go to the poblacion of Tampakan to sell their produce for the week in time for the market day the following day, Sunday. Since Albagan is some twenty (20) kilometers away from Tampakan town proper, and due to the scarcity of public transportation, Vedala and Ernesto spent Saturday nights at the public market. Ervie and her two (2) younger siblings would be left alone at the house in Barangay Albagan, Tampakan, South Cotabato. Since the accused's arrival in June or July, 1989, the children were left with him.

One Saturday evening in September 1990, while Ervie's mother was in Tampakan public market selling the week's produce and her father was attending a church seminar, also in Tampakan,[17] Ervie was left in the house with her younger siblings and the accused Jerry Abalde. That evening, Ervie slept on the floor, in between her younger siblings, while accused slept in the sala. She was awakened, however, when she noticed somebody crawling towards her. Though their room has a door, it could not be locked or securely closed from the inside.

Ervie recognized the intruder as accused Jerry because there was a moon that night. She immediately stood up and moved away from the accused, but did not leave the room. Accused then transferred her sleeping siblings to the other side of the room.

Armed with a knife, accused forced Ervie to lie down on the floor. He held her by the hand and undressed her, removing her skirt and panty. Ervie tried to move her body to avoid the sexual assault, but accused overpowered her. Accused was able to spread her legs apart and insert his penis into her vagina. After the sexual congress, accused left the complainant crying and her sexual organ painful and bleeding.[18]

The following morning, as was her normal routine, she woke up early and cooked breakfast. When Ervie saw the accused coming from the farm after grazing the animal, she became afraid. She ate breakfast with him in

silence.[19] When Ervie's parents arrived, she did not tell them about what happened to her the previous night out of fear that accused would kill her if she told them.

As of September 1990, Ervie was eleven (11) years and seven (7) months old, while Ervin was seven (7) years and eight (8) months and Ermie was four (4) years and five (5) months old.

On March 3, 1991, spouses Vedala and Ernesto left for Manticao, Misamis Oriental to attend the burial of Vedala's mother. They tagged along with them Ervie's youngest sister, Ermie. They returned only in the afternoon of March 9, 1991.[20] Hence, from March 3 until March 9, 1991, Ervie and her younger brother Ervin were left with the accused in their house at Barangay Albagan, Tampakan, South Cotabato.

In the evening of March 3, 1991, Ervie was awakened when she saw accused Jerry crawling towards her. Accused took hold of her arms and threatened to kill her if she would not submit to his desires, or would tell her mother about it. She noticed that like the first time accused abused her, her brother was no longer beside her and had been moved some distance away from her, but still inside the same room.[21]

Accused embraced Ervie and forced her to lie down. He forcibly removed her panty and had sexual intercourse with her against her will. Though she struggled against accused's advances, the latter was stronger and bigger than she was. After satisfying his lust, accused hurriedly left the room.[22]

The sexual assault was repeated, every night thereafter, on March 4, 5, 6, 7, 8 and 9, 1991. The assaults happened almost under the same circumstance; the victim was asleep in her room with her younger brother and the accused would creep into the room and sexually abuse her. Accused would leave the room after every sexual act, and the victim would be left bleeding and crying.

The last sexual assault happened on the night of April 26, 1991 when the victim's parents went to Tampakan town proper to sell vegetables. As usual, the victim was left in the house with the accused and her younger siblings. That night, accused Jerry took advantage of the absence of the victim's parents and raped the victim.[23]

On April 29, 1991, accused Jerry sold his pig for P600.00, left the Tonelete household, and brought all his clothes with him.[24]

The following day, or on April 30, 1991, Ervie told her mother about her ordeal. It took her this long before she could tell her mother that accused Jerry raped her because she was threatened by the accused that he would kill her if he told anyone about it. When Ernesto learned about the rape, he pursued the accused, with the assistance of the Albagan Brgy. Capt. Rogelio Guadaltiguir.[25] They caught up with the accused in Tampakan and they turned him over to the police authorities in Tampakan, South Cotabato.

Because of the sexual abuse committed against her, Ervie was embarrassed and her entire family was put to shame.[26] She denied that accused courted her or became her boyfriend.[27]

For his part, accused Jerry Abalde did not deny that he arrived at Tampakan, South Cotabato in July 1989 and lived with Ervie's family while working on a portion of their land.

However, he denied that he sexually molested Ervie in September 1990. He said that he courted her in December 1989 and she accepted his offer of love on February 17, 1991.

As regards the incidents between the dates of March 3 to 9, 1991, as well as that of April 26, 1991, accused admitted that he had sexual intercourse with the victim out of mutual love and desire. He said that everything happened at nighttime while the victim's parents were away.

Accused Jerry said that on three (3) occasions he and the victim went out together, with the knowledge of the

victim's parents, to attend the festivities in the barangay. Complainant often visited him in the fields where he worked and brought him food.

Remedios Gutana, Jerry's aunt, corroborated his testimony and said that the two were lovers. On March 4, 1991, she said that in her presence, the victim and the accused kissed and embraced each other at the balcony of her house. The three (3) of them were then eating guavas, when Ervie suddenly pulled down the shorts of the accused. Afterwards, she went to tend her store downstairs, while the victim and the accused went upstairs and she did not see what happened.[28]

On April 28, 1991, after he sold his pig, Jerry told Ervie that he would leave for Manticao, Misamis Oriental for vacation. Though Ervie did not agree, accused still went on and brought all his clothes with him.

On April 30, 1991, Ervie was physically examined by Dr. Arlene Anayon Cardos in her clinic at Tampakan, South Cotabato. The examination showed that there were old lacerations in the victim's hymen and her vagina easily admitted two fingers. Dr. Cardos opined that the lacerations could have been caused by severe physical exercise, masturbation, and possibly, by sexual intercourse.[29]

On May 2, 1994, during the pendency of the criminal cases against him, accused sent a letter to the mother of the victim and asked for forgiveness for the wrong he committed.[30]

On May 10, 1995, the trial court rendered decision the dispositive portion of which reads as follows:

"ACCORDINGLY, in Criminal Cases Nos. 701, 714, 702, and 708, accused JERRY ABALDE is hereby declared guilty beyond reasonable doubt of the felony of rape defined and penalized under Article 335 of the Revised Penal Code in each case, as principal, and there being no aggravating or mitigating circumstances which may affect the penalty, said accused is hereby sentenced to suffer the penalty of reclusion perpetua imprisonment, to suffer all the accessory penalties provided for by law, and to pay the costs, in each of the said cases.

"The period during which accused has undergone his preventive imprisonment for failure to post bail for his provisional liberty shall be computed and credited in his favor conformably to the provisions of Article 29, as amended, of the Revised Penal Code.

"Accused is further adjudged to pay private complainant Ervie Tonelete moral damages amounting to P50,000.00 in each case, with legal interest thereon reckoned from the finality of the judgment until fully paid.

"In Criminal Cases Nos. 703, 704, 705, 706, and 707, accused on grounds of reasonable doubt is hereby acquitted.

"SO ORDERED.

"GIVEN this 10th day of May, 1995 at Koronadal, South Cotabato, Philippines.

"(s/t) FRANCISCO S. AMPIG, JR.

"J u d g e"[31]

The trial court said that the sexual intercourse in September 1990 and on March 3 and 4, and on April 26, 1991, were not consensual, but done through force and intimidation. Considering the tender age of the victim and the moral ascendancy that accused had over her,[32] Ervie submitted to the carnal desires of accused. She was cowered into silence by his threat that he would kill her if she informed her parents about it.

With regard to the other complaints for rape, the trial court absolved accused from criminal liability due to the prosecution's failure to prove his guilt beyond reasonable doubt. The trial court noted that the testimony of the victim regarding the sexual assaults on March 5-9, 1991 lacked the details, which would make her allegations of

force and violence convincing.

On August 9, 1995, accused Jerry Abalde filed a notice of appeal.[33]

In his appeal, accused interposed the lone assignment of error that the trial court gravely erred in finding him guilty of rape in Criminal Cases Nos. 701, 702, 708 and 714 despite the contradicting and improbable testimony of the victim, thereby putting in question the credibility of the latter. He contends that the trial court failed to take into consideration the fact the he and Ervie were lovers. Thus, the sexual intercourse that took place on the dates in question, except the September 1990 incident, were consensual. On the other hand, the Solicitor General submits that there is no reason to deviate from the findings of the trial court and prays for an affirmation in toto of the trial court's judgment of conviction for all four (4) counts of rape committed by accused.

Accused admitted that he had sexual intercourse with the victim on the dates subject of the indictment in Criminal Cases Nos. 702, 708 and 714. However, accused claimed that they all happened with the consent of the victim Ervie, who had been his sweetheart since February 17, 1991. With regard to the September 1990 rape, he denied it and said that this was maliciously filed to ensure his conviction for statutory rape.

There is no merit in the appeal for reasons to be discussed hereunder.

In the disposition of rape cases, the Court is guided by the following principles: "(1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (2) in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution, and (3) the evidence for the prosecution must stand or fall on its own merits and cannot draw strength from the weakness of the evidence of the defense." [34]

At the outset, accused Jerry put in issue the credibility of the victim Ervie Tonelete, upon whose testimony he was convicted. However, "it is well settled that the assessment by a trial court of the credibility of witnesses and their testimonies is entitled to the highest respect, because it heard the witness and observed their behavior and manner of testifying. Absent any showing that it overlooked some facts or circumstances of weight and substance that would affect the result of the case, its factual findings will not be disturbed on appeal." [35] Considering that "the crime of rape is essentially one committed in relative isolation or even secrecy, hence it is usually the victim who can testify with regard to the fact of the forced coitus." [36]

We have carefully reviewed the testimony of the victim and we are convinced that accused raped the victim on the dates subject of the instant appeal. Accused contends that Ervie's testimony was replete with inconsistencies and contradictions. When initially asked what accused did to her upon entering her room on the night she was raped, Ervie said that accused immediately raped her. But upon further questioning, she said that accused first transferred her younger siblings to the other side of the room and thereafter, went towards her, held her hands and raped her. Because of these alleged contradictory statements, accused claimed that the victim was a coached witness.

The complainant's testimony in a rape case must "be considered and calibrated in its entirety, and not by truncated portions or isolated passages thereof." [37] "Errorless testimony cannot be expected of a rape victim for she may not be able to remember and recount every ugly detail of the harrowing experience and appalling outrage she went through, especially so since she might in fact be trying to recall the same, as they are too painful to remember." [38] In the instant case, Ervie testified in a categorical, straightforward, spontaneous and frank manner.

The hatred and anger that the victim felt against accused was very evident in her testimony on September 2, 1992:

"PROSECUTOR LECHONSITO:

Q: What did he tell you, if he told you anything?

A: He told me that if I will tell my mother, he is going to kill me.

Q: And because of this threatening words, what did you feel?

A: I was afraid and I did not know what to do.

Q: Did he succeed in having sexual intercourse with you?

x x x

A: Yes, sir.

PROSECUTOR LECHONSITO:

Q: And after having sexual intercourse with you, what did the accused do?

A: He just immediately left the room and then I remained crying.

Q: You were crying because of what?

A: I was so worried and I felt the pain because he had abused me and I am no longer a virgin. I want that person to be imprisoned. I don't want to see him in our place. He has caused me and my family so much trouble (Witness crying heartily).

COURT:

Tomorrow? That is enough Ervie.

WITNESS:

.....When he was about to leave our place, he even told me that he would bring me along but I did not want to go. He abused me several times and I felt the pain deeply. (Witness keep on crying)."[39]

"If her story had only been contrived, she would not have been so composed and consistent throughout her entire testimony in the face of intense and lengthy interrogation."[40]

Accused failed to attribute any ill motive on the part of the victim to testify falsely and impute against him the commission of a grave offense such as rape. To the contrary, the trial court observed that the victim lived in place "more rural than most rural villages"[41] in the country, and was still "unaffected by the worldly ways of urban life."[42] "It is highly inconceivable for a young barrio lass, inexperienced with the ways of the world, to fabricate a charge of defloration, undergo a medical examination of her private parts, subject herself to public trial, and tarnish her family's honor and reputation unless she was motivated by a potent desire to seek justice for the wrong committed against her."[43]

Accused Jerry's defense that he and Ervie were lovers deserves scant consideration. Other than his self-serving statement, "no documentary evidence of any sort, like a letter or a photograph or any piece of memento, was presented to confirm a romantic liaison between accused-appellant and the complainant."[44] Ervie categorically denied having any relationship with the accused, whom she respected and called uncle.

As regards the vacillation of the victim in reporting to her parents the sexual abuses committed against her, "it is not uncommon for a young girl of tender age to be intimidated into silence by the mildest threat against her life."[45] Ervie admitted that she was cowered into silence by the threats made against her life by the accused. It was easy for accused to fulfill that threat, considering that they lived under the same roof and her every movement could not escape the watchful eyes of the accused. Moreover, accused had moral ascendancy over the victim. Upon cross-examination, the victim said:

"Q: Why would you obey him whenever he would send you for an errand?

A: If I will not obey him, my mother would learn about this, so we obey him. Sometimes he whips us.

Q: Who, the accused?

A: If we will not respect him, our mother will whip us.

x x x

Q: How do you consider the accused? Your elder, as an equal or as a househelp in your house?

A: He was taken by my mother and considered him as a child, so we respected him. Then he had taken advantage of me.

Q: So you considered him as an elder brother?

A: Yes Your Honor.

Q: Why do you call him as "Tiyo" when you can call him, "Manong" or "Kuya"?

A: Because he is older and he is the cousin of my mother."[46]

The victim was forced to submit to the carnal desires of the accused through force and intimidation. Not only was the accused armed with a deadly weapon when he raped the victim; he was far stronger and bigger than she was.

"Intimidation is said to be addressed to the mind of the victim. It is subjective and its presence cannot be tested by any hard-and-fast rule, but must be viewed in the light of the victim's perception and judgment at the time of the crime. It may be of the moral kind, such as the fear caused by threatening a woman with a knife. It is enough that it produces fear-- fear that if the victim does not yield to the bestial lust of the accused, something would happen to her at the moment thereafter, as when she is threatened with death if she reports the incident."[47]

Ervie had been paralyzed by fear due to the continuous threat made by the accused against her life and personal safety. "Though a man lays no hand on a woman, yet if by an array of physical forces, he so overpowers her mind that she does not resist, or she ceases resistance through fear of a greater harm, the consummation of the sexual act is recognized in jurisprudence as rape."[48] "She was too intimidated to offer serious resistance to the advances of appellant."[49]

The fact alone that the victim was raped while her younger siblings were inside the same room would not make the commission of rape impossible or improbable. "Lust is no respecter of places. Rape can be committed even in places where people congregate: in parks, along the roadside, within school premises, inside a house where there are several occupants and even in the same room where other members of the family are sleeping."[50]

As regards the September 1990 rape, there need not be the presence of force or intimidation in the commission of the crime. It was clearly established that at the time she was raped, Ervie was only eleven (11) years and seven (7) months old. Hence, accused's liability for statutory rape is conclusively proved and his conviction is certain.

The evidence having established the commission of one (1) count of statutory rape and three (3) counts of rape, we find the imposition of reclusion perpetua to be in accord with Article 335 of the Revised Penal Code.[51] Though it has been proven that the rape was committed with the use of a deadly weapon, a knife, the penalty of death cannot be imposed because at the time it was committed, the death penalty had been suspended by the 1987 Constitution.

Likewise, we affirm the award of moral damages in the amount of fifty thousand (P50,000.00) pesos for each count of rape, or a total of two hundred thousand pesos (P200,000.00). Consistent with present case law which treats the imposition of civil indemnity as mandatory upon the finding of rape,[52] accused is ordered to pay the amount of fifty thousand (P50,000.00) pesos civil indemnity ex delicto for each count of rape, or a total of two hundred thousand pesos (P200,000.00).

WHEREFORE, the Court AFFIRMS with modification the appealed decision of the Regional Trial Court, Branch 25, Koronadal, South Cotabato in Criminal Cases Nos. 701, 702, 708 and 714 finding accused Jerry Abalde guilty beyond reasonable doubt of one (1) count of statutory rape and three (3) counts of rape and sentencing him to reclusion perpetua, on each count, with all the accessory penalties of the law, and to pay the victim, Ervie Tonelete, the amount of fifty thousand pesos (P50,000.00) as civil indemnity and fifty thousand pesos (P50,000.00) as moral damages, for each count of rape.

With costs in all instances.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Ynares-Santiago, JJ., concur.

[1] In Criminal Cases Nos. 701-708 and 714, Decision dated May 10, 1995, Judge Francisco S. Ampig, Jr., presiding.

[2] Criminal Case No. 701.

[3] Criminal Cases Nos. 702, 708 and 714; Accused was acquitted in Criminal Cases Nos. 703-707.

[4] Regional Trial Court Decision, Rollo, pp. 106-131.

[5] Based on the written complaint dated April 30, 1991, signed by minor victim Ervie Tonelete and co-signed by her father Ernesto Tonelete.; Complaint, Regional Trial Court Record, Criminal Case No. 702, p. 6.

[6] Regional Trial Court Record, Criminal Case No. 701, p. 1.

[7] Regional Trial Court Record, Criminal Case No. 702, p. 1.

[8] Regional Trial Court Record, Criminal Case No. 708, p. 1.; Copies of Informations for Criminal Cases Nos. 703-707 are not available in the records forwarded to the Court.

[9] Based upon the complaint dated April 30, 1991, signed by minor victim Ervie Tonelete and co-signed by her father Ernesto Tonelete; Complaint, Regional Trial Court Record, Criminal Case No. 714, p. 3.

[10] Regional Trial Court Record, Criminal Case No. 714, p. 1.

[11] Exhibit "A", Regional Trial Court Record, Criminal Case No. 701, p. 115.

[12] Rollo, pp. 35-36.

[13] TSN, May 25, 1992, p. 7.

[14] TSN, *ibid*, pp. 21-22.

[15] TSN, May 25, 1992, p. 8.

[16] TSN, *ibid*, p. 10.

[17] TSN, *ibid*, pp. 5, 9.

[18] TSN, August 3, 1992, pp. 7-16.

[19] TSN, *ibid*, pp. 2-3.

[20] TSN, *ibid*, pp. 10-12.

- [21] TSN, September 1, 1992, pp. 3-8.
- [22] TSN, September 2, 1992, pp.6-7.
- [23] TSN, *ibid*, pp. 12-14.
- [24] TSN, May 25, 1992, p. 20.
- [25] In some part of Vedala Tonelete's testimony, Brgy. Capt. Guadaltiguir was called Brgy. Capt. Padalquiver.
- [26] TSN, September 3, 1992, p. 2.
- [27] TSN, *ibid*, p. 6.
- [28] TSN, February 24, 1994, pp. 4-6.
- [29] TSN, February 23, 1993, pp. 5-7.
- [30] Regional Trial Court Record, Criminal Case No. 701, pp. 165-166; Translation in English from Cebuano dialect, p. 167.
- [31] Rollo, pp. 130-131.
- [32] Accused Jerry is Ervie's second cousin and she calls him "Tiyo Jerry."
- [33] Rollo, p. 52.
- [34] *People vs. Aguinaldo*, G. R. No. 130784, October 13, 1999 citing *People vs. Burgos*, 345 Phil, 205, 213-214 (1997)
- [35] *People vs. Buendia*, G. R. No. 133949-51, September 16, 1999, citing *People vs. Miñano*, 220 SCRA 681 (1993)
- [36] *People vs. Sagun*, G. R. No. 110554, February 19, 1999, citing *People vs. de Guzman*, 265 SCRA 228, 240 (1996)
- [37] *People vs. Gaorana*, 289 SCRA 652, 662 (1998)
- [38] *People vs. Venerable*, 290 SCRA 15, 25 (1998)
- [39] TSN, September 2, 1992, pp. 13-14.
- [40] *People vs. Perez*, 296 SCRA 17, 27 (1998)
- [41] Regional Trial Court Decision, Rollo, p. 47.
- [42] *Ibid*, p. 48.
- [43] *People vs. Reynaldo*, 291 SCRA 701, 712-713 (1998); *People vs. Dacoba*, 289 SCRA 265, 272 (1998)
- [44] *People vs. Alfanta*, G. R. No. 125633, December 9, 1999.
- [45] *People vs. Villamor*, 297 SCRA 262, 272 (1998)
- [46] TSN, September 3, 1992, p. 10.
- [47] *People vs. Sagun*, *supra*, Note 36.
- [48] *People vs. Sagun*, *supra*.

[49] People vs. Lampaza, G. R. No. 138876, November 24, 1999.

[50] People vs. Lusa, 288 SCRA 296, 304 (1998)

[51] The crime was committed in 1990 and 1991 before the amendment of Article 335 of the Revised Penal Code by R. A. No. 8353, effective October 22, 1997.

[52] People vs. Apostol, G. R. No. 123267-68, December 9, 1999; People vs. Santiago, G. R. No. 129339, December 2, 1999; People vs. Lampaza, *supra*.

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