

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANTONIO GASTADOR Y WAGAS, ACCUSED-APPELLANT.

G.R. No. 123727. April 14, 1999

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Seldom are there eyewitnesses to a rape. Hence, a conviction must often rest on the credible testimony of the offended party. And appellate courts, not having participated in the trial and not having directly evaluated the demeanor of witnesses on the stand, depend to a large degree on the factual assessments of trial judges.[1]

The Case

Appellant Antonio Gastador seeks the reversal of the January 29, 1996 Decision[2] of the Regional Trial Court of Quezon City, Branch 82, which convicted him of rape and sentenced him to reclusion perpetua.

On May 5, 1994, Crisanta Balonzo-de Rosas[3] filed a Complaint[4] charging Antonio Gastador y Wagas with rape allegedly committed as follows:

"That on or about the 1st day of May, 1994, in Quezon City, Philippines, the said accused by means of force and intimidation, to wit: [did] then and there wilfully, unlawfully and feloniously at knife point, give her fistic blows on the stomach, causing her to lose consciousness and thereafter have carnal knowledge [of] the undersigned complainant against her will and without her consent." [5]

Upon the certification of Assistant City Prosecutor Leonil G. Reas, the Complaint was treated as the Information.

When arraigned on June 1, 1994, appellant, assisted by Counsel de Parte, Manuel Aclo, pleaded not guilty.[6] Trial proceeded in due course. Thereafter, the court a quo rendered its Decision, which disposed as follows:

"WHEREFORE, premises considered, the accused, ANTONIO GASTADOR Y WAGAS, is hereby found guilty beyond reasonable doubt of the crime of rape with which he is charged in the herein Complaint and is accordingly sentenced to the penalty of reclusion perpetua, together with all the accessory penalties imposed by law.

"As no evidence was presented to prove actual and/or moral damages, no award therefor can be made by this Court." [7]

Hence, this appeal direct to this Court.[8]

The Facts

Version of the Prosecution

In its Brief,[9] the Office of the Solicitor General[10] summarized the facts, as viewed by the prosecution, in this manner:

"Complainant Crisanta Balonzo-Derosas, her common-law husband Marlito Derosas (a.k.a. Marlon) and their

1 1/2 months old daughter Marissa reside at 245 Esteve Extension, Commonwealth, Quezon City.

"On May 1, 1994, at 1:00 o'clock in the afternoon, appellant, who is an uncle of Marlito, arrived at the said residence and inquired from Crisanta about Marlito. Crisanta informed him that Marlito had gone out for work in Bicutan early that day.

"After getting a negative reply, appellant entered the house, placed the 'halaan' he was carrying on the kitchen table and went outside. After a short while, appellant returned bringing with him a bottle of Tanduay E.S.Q., which he drank until 6:00 o'clock in the evening.

"Crisanta, on the other hand, went outside the house together with her baby and returned at about 6:00 o'clock in the evening. As she was about to lay her baby on the bed, appellant suddenly approached her, pointed a knife at her neck and told her, 'Babae ka lang at wala dito and asawa mo, kayang-kaya kita.' She resisted appellant's advances by fighting him back. However, appellant punched her at the stomach causing her to lose consciousness while her baby slipped from her arms and fell into the bed.

"When Crisanta regained consciousness, she found herself and appellant naked, with appellant on top of her doing the push and pull movement while pointing a knife at her neck. While appellant was raping her, Crisanta felt blood oozing from her vagina. She bled profusely and continued to bleed for three (3) more days after the incident.

"During the ordeal, Crisanta kept silent since she feared for her and her baby's life.

"After satisfying his lust, appellant warned Crisanta not to tell the incident to Marlito, otherwise, he [would] kill her and her family. Crisanta was left crying in anger and desperation.

"At around 7:00 o'clock in the evening, Marlito arrived from work and saw appellant in their house. He was not surprised to see appellant since appellant [was] a relative who had visited them in the past.

"Crisanta did not reveal her ordeal to Marlito since she was afraid that appellant might kill them. Marlito, however, noticed Crisanta's swollen eyes and when he asked her about it, she just cried. Crisanta then stood up to cook. Marlito noticed the bloodstains on Crisanta's short pants and on their bedsheet and when he asked Crisanta about it, she replied that she was having her menstruation. He was, however, puzzled since she had just given birth to their daughter. Crisanta went on with her household work and prepared dinner but only Marlito and appellant dined together. At dinner, Marlito found it unusual that appellant was just silently staring at him and Crisanta.

"At bedtime, Marlito slept beside Crisanta. He noticed that she was profusely perspiring and although he became worried about her, he opted not to question her anymore.

"Appellant slept at the couple's house on that same day. During his slumber, Marlito heard him utter the words, 'Sige na Cris, isa lang,' three (3) times while doing a pumping motion. The next morning, appellant left the house. It was then that Crisanta told Marlito about the rape incident angrily saying, 'Bakit ganoon and tiyo mo, kahayop!' Marlito was stunned and unable to move.

"After regaining his composure, Marlito went to their landlord and borrowed money for Crisanta's medication. Upon learning of the unfortunate incident, the landlord accompanied Marlito and Crisanta to the barangay chairman, who referred them to police station 6 in barangay Batasan, Quezon City, where Crisanta executed her sworn statement.

"Thereafter, Crisanta was subjected to medico-legal examination by Dr. Cristina Freyra at Camp Crame, Quezon City on May 3, 1994. The examination yielded the following findings:

'Subject is in non-virgin state physically.

'There are no external signs of recent application of any form of violence.

'Vaginal and peri-ureth[r]al smears are negative for gram-negative diplococci and for spermatozoa.'

"In the evening of the same day, policemen arrived at Marlito's residence and asked his assistance in the arrest of appellant.

"Appellant was subsequently arrested at his workplace in Pasig." [11] (Citations omitted.)

Version of the Defense

In the Brief prepared by the Public Attorney's Office, [12] appellant set up the defense of denial and narrated the facts as follows:

"ANTONIO GASTADOR denied having raped Crisanta de Rosas. On May 1, 1994 at 1:00 o'clock in the afternoon, he was at the IPM Construction located at Pasig. He worked thereat from 7:00 o'clock in the morning up to 3:00 o'clock in the afternoon on May 1, 1994. After working, he rested for a while, took a bath and went home to their rented house at Manggahan. He was staying at Manggahan together with his son Jun-Jun, his nephew Marlon and the latter's wife Crisanta and their one and one half (1 1/2) month old daughter. He arrived home at 6:00 o'clock in the evening and thereat he saw Crisanta de Rosas and her daughter. He asked Crisanta for food and the latter obliged. He ate the food which he bought from the market. After eating, he was supposed to go to Villa Beatrice, but he met his son Jun-Jun and nephew Marlon at the door of their house. Marlon requested Crisanta to cook pork which he bought. While Crisanta was cooking, he had conversation with Jun-Jun and Marlon. When Crisanta finished cooking, all of them had dinner. After eating, they slept. Jun-Jun slept beside him while Marlon and Crisanta slept together. Marlon woke him up at 4:00 o'clock in the morning the following morning because he (Antonio) was going to work. He took a bath, had coffee and then went to work at IPM Construction at 5:00 o'clock in the morning. He worked thereat up to 9:00 o'clock in the evening. Thereafter, he was arrested by three (3) persons and was brought to Police Precinct No. 6. They asked him if he raped Crisanta de Rosas which he denied. When they reached Precinct No. 6, he was mauled by policemen which caused his ribs to be broken.

"CIRILO DE ROSAS testified [that] on May 2, 1994 at 7:00 o'clock in the evening he was preparing to sleep at his residence at Villa Beatriz when four (4) persons arrived asking the whereabouts of Antonio Gastador. He told them that Antonio was at his work at the IPM Construction at Pasig. They requested him to accompany them to Antonio's place of work and thereat they arrested Antonio. They brought Antonio to Precinct No. 6 because a case for rape was filed against him by Marlon de Rosas. On May 3, 1994, he brought food for Antonio at Precinct 6. Thereat, he met Marlon who was asking Antonio to admit his guilt. Marlon told him that if they would give P20,000.00, then he would withdraw the case filed against Antonio. They did not agree because Antonio [was] not guilty so he would not pay a single centavo. Then Marlon offered that even for only P5,000.00 to be given to the policemen, they would withdraw the case, but still they did not agree.

"ANTONIO GASTADOR, JR. declared that on May 1, 1994 at about 1:00 o'clock in the afternoon, he arrived at their rented house located at Manggahan. Thereat, he saw Crisanta de Rosas taking care of her baby. He rested and while resting his cousin Marlon arrived. Marlon ate and then invited him to watch a movie. They watched a movie at Ever Commonwealth up to 5:45 in the afternoon. On their way home, they bought pork. They arrived home at around 6:30 o'clock in the evening when his father, Antonio, was about to go out to fetch them. When his father saw them, he returned to the house. Marlon requested his wife Crisanta to cook the pork which they bought while he had conversation with his father and Marlon. When Crisanta finished cooking, all of them ate together. Thereafter, he slept together with his father, while Marlon and Crisanta slept on the 'papag'. At 4:30 the following morning, he and his father woke-up. After taking coffee, they went to work at IPM construction." [13] (Citations omitted.)

Ruling of the Trial Court

Rejecting the appellant's denial, the court a quo gave credence to the victim's account. It ruled:

"Let it be stated that the testimony of the private complainant as to how the offense of rape was perpetrated by the accused, including its lurid and painful details, was clear, sincere, spontaneous and consistent. Whatever inconsistencies there may be therein refer only to minor and collateral matters which do not affect either the substance of her declaration or the weight of her testimony. Her demeanor on the witness stand further adds credence to her testimony, which was moreover supported and corroborated on material points by the testimonies of the other prosecution witnesses.

"In sum, this Court finds that the prosecution has fully discharged its burden of proving the accused guilty beyond reasonable doubt of the offense with which he is charged in the herein Complaint. The prosecution submits in its Memorandum that the aggravating circumstance of abuse of confidence (Art. 14 (4), Revised Penal Code) has also been proven to attend the commission of the offense. As the prosecution puts it:

'The commission of the crime of rape in the instant case was attended by the aggravating circumstance of relationship. The private complainant, it should be noted, has trusted the accused, he being an uncle-in-law, and had no inkling that he [would] rape her when [s]he allowed him entry into her house on the fateful afternoon of 01 May 1994. This abuse of trust and confidence facilitated the commission of the rape and the accused took advantage of the offended party's belief that the former would not abuse said confidence. In her testimony, private complainant allowed the accused entry into her house despite the absence of her husband (TSN, 22 June 1994, p. 5).'

"Undeniably, our jurisprudence is to the effect that an aggravating circumstance, even if not alleged in the Complaint or Information, may be proved over the objection of the defense, provided the same is generic in character. However, an aggravating circumstance should be proved as fully as the crime itself to increase the penalty. In the case of abuse of confidence, it is required that there be sufficient proof that the offended party had trusted the offender; that the offender had abused such trust by committing the offense; and that the abuse of confidence must be a means of committing the crime. From the evidence before it, this Court finds no sufficient proof of the third or last requisite. Evidently, it was not the first time that the accused was in the house of the private complainant on May 1, 1994. He used to visit the place before that date. He thus did not purposely utilize his relationship with the private complainant to commit the crime of rape on her. Although he apparently abused the confidence reposed [i]n him by the offended party, it cannot be definitely and positively concluded that he used said abuse of confidence to facilitate his criminal act. Accordingly, this Court finds that no aggravating or mitigating circumstances attended the commission of the offense.

"However, this Court finds that the crime of rape was committed by the accused with the use of a deadly weapon, more particularly a knife. This is indubitably established by the testimony of the offended party who said that the accused had a knife pointed to her neck while perpetrating the dastardly act in order to cow her and obviate her resistance. Under Article 335 of the Penal code (as amended by R.A. No. 7659), the penalty therefor is reclusion perpetua to death. Thus, the Indeterminate Sentence law is not applicable. Since there are neither mitigating nor aggravating circumstances in the commission of the rape, the lesser penalty shall be applied. (Art. 63, Penal Code)."[14]

Assignment of Errors

In the Appellant's Brief prepared by the Public Attorney's Office, the defense imputed the following errors to the trial court:

"I. The trial court gravely erred in convicting accused-appellant not on the basis of the strength of the prosecution's evidence but rather on the weakness of the evidence for the defense.

"II. The trial court gravely erred in convicting accused-appellant of the crime charged despite failure of the prosecution to prove his guilt beyond reasonable doubt."[15]

The Aclo Brief, on the other hand, alleged the following errors:

"I - The trial court erred in preparing the decision based on the 'memorandum' (for the prosecution);

"II - The trial court erred in not finding that complainant's testimony is weak, inconsistent, and is therefore not credible; and finally,

"III - The trial court erred in convicting the appellant [of] the crime of rape based on insufficient evidence, and not evidence beyond reasonable doubt." [16]

In sum, appellant questions (1) the credibility of witnesses and (2) the sufficiency of the prosecution's evidence. He also challenges the validity of the trial court's Decision, which he claims was based entirely on the prosecution's memorandum.

This Court's Ruling

The appeal is without merit.

Preliminary Matter:

Validity of the Trial Court's Decision

The defense argues that the assailed Decision is not valid because it was based on the prosecution's memorandum, not on the trial court's own determination of the facts. We are not convinced. The assailed Decision sufficiently complies with Section 14 (1), Article VIII of the 1987 Constitution; [17] and Section 2, Rule 120 of the Rules of Court. [18] Both of these provisions require that decisions clearly state how the court reached its conclusion in light of the applicable law and the facts established. [19] True, the trial court quoted the facts narrated in the prosecution's memorandum, but it did make its own findings. After assessing the evidence presented, it agreed with the prosecution's evaluation of the case. This is sufficient compliance with the Constitution and the Rules of Court. In any event, we hold that the conclusions of the trial court are supported by the evidence on record.

First Issue

Credibility of Witnesses

Appellant describes the testimonies of Prosecution Witnesses Crisanta de Rosas and Marlito de Rosas as "incredible, fantastic and inconsistent." [20]

We disagree. As a general rule, the lower court's assessment of the witnesses' credibility will not be disturbed on appeal, unless some fact or circumstance of substance has been overlooked. [21]

Crisanta's testimony was clear, consistent and straightforward. [22] Breaking into sobs on the witness stand, she narrated her fate in the hands of Appellant Gastador in this wise:

"ATTY BERBERABE:

Q. What time did you enter your house?

A. At around six in the evening.

Q. You said that Mr. Gastador finished his drinking at around six p.m. What did he do if any?

A.

He suddenly [came] near me on our bed, ma'am. And he pointed a knife on my neck and told me that, 'Babae ka lang at wala dito [ang] asawa mo, kayang-kaya kita.'

Q. And when he pointed a knife[, w]hat did he do if any?

A. I did fight him but he suddenly punched me on my stomach and I lost my consciousness.

Q. Where was Marissa Derosas at this time?

A. She was on my side.

Q. During this time that Mr. Gastador punched you in your stomach, where was your little daughter?

A. The baby fell from my arms and she fell on bed.

Q. When you regain[ed] consciousness, what did you see if any?

A.

I saw him on top of me naked and I was also naked. And he pointed a knife on my neck and his organ was inside me.

Q. What do you mean when you said that his organ was inside you?

A.

He was on top of me naked and his sex organ was inside of my organ. And his organ was going in and out of my organ.

Q. And during this time when he was on top of you, where was your daughter?

A. She was beside me, ma'am.

Q. How far was your little daughter from you?

A. She was just beside me.

x x x x x x x x

Q

You said [a while] ago that Mr. Gastador's sex organ was going in and out of your sex organ and while the knife was pointed on your neck. What did you do if any?

A.

Because I [was] so afraid, I did not move because my baby was on my side. And I was afraid that he might kill my baby.

Q. Did you notice [with which] xxx hand Mr. Gastador was holding the knife?

A. Right hand.

Q. Where did Mr. Gastador [point] the knife at you?

A. On my neck.

Q. What part? Right or left?

A. On the left side of my neck.

Q. And did you notice what his left hand was doing?

A. His left hand was on my right shoulder ma'am while he was doing 'karumal-dumal sa akin.'

COURT:

You said that the accused was doing something 'karumal-dumal' to you. What do you mean by 'karumal-dumal'?

A. His act of raping with his penis going in and out of my organ.

ATTY. BERBERABE:

Q. Mrs. Witness, do you know who inserted the sex organ of Mr. Gastador to you?

A. Antonio Gastador.

Q. How long was his sex organ inside your sex organ?

A. It lasted around five minutes.

Q. And during this time that Mr. Gastador's sex organ was going in and out of your sex organ[, w]hat did you feel if any?

A. I felt pain [in] my organ and the blood oozing from my organ.

ATTY. BERBERABE:

Q. After he inserted his sex organ into your sex organ, what did Mr. Gastador do next if any?

A.

After he was through with what he did, he warned me not to tell xxx my husband, otherwise, he [would] kill all of us. Me, my husband and my daughter." [23]

No woman in her right mind will cry rape, allow an examination of her private parts or subject herself and her family to the humiliation concomitant to the prosecution of the case, unless the story is true. [24] Besides, her credible and positive testimony prevails over the negative assertion of the accused. [25]

The defense likewise submits that it was physically impossible for her to "see" the private part of the appellant "going in and out" of her sexual organ. [26] It is scarcely necessary to address this argument. Suffice it to say that the victim, a married woman, did not need to rely on her sense of sight alone to know that her sexual organ was in contact with that of the appellant.

The defense also posits that rape is negated by the medical finding that "[t]here are no external signs of recent application of any form of violence" and that the "[v]aginal and peri-urethral smears are negative for gram-negative diplococci and for spermatozoa." [27]

This argument is without merit. First, the absence of spermatozoa does not negate rape. [28] The felony is consummated when the penis touches the pudendum, however slightly. [29] Ejaculation is not an element of the crime. Second, medical authorities attest that no mark of violence may be detected if the blow is delivered to the abdomen. [30] Thus, the absence of hematoma does not disprove the victim's claim that the appellant punched her.

Appellant also states that rape was not possible because the locus criminis was not a secluded place. In several cases, however, this Court has recognized that lust is no respecter of time and place, and that rape can be perpetrated even where people congregate. [31] Thus, rape can be committed even in "the parks, the roadside, the school premises, and even inside a house where there are other occupants or where other members of the family are also sleeping." [32]

We do not agree with the contention of the defense that, to corroborate the testimony of Crisanta, the prosecution should have presented the knife as well as the blood-stained panty, shorts and blanket. This kind of evidence is not essential to the prosecution of rape cases. [33] The victim's credible testimony, standing alone, is sufficient basis for the conviction of appellant. [34]

There is no merit to the claim of the appellant that he was arrested without warrant and that no preliminary investigation was conducted. Prior to entering his plea, he should have raised this objection to the warrantless arrest [35] and lack of preliminary investigation. [36] As he did not do so at the proper time, such defenses are now deemed waived. Moreover, his allegation that he was mishandled by the police is not supported by the evidence on record.

Second issue

Sufficiency of Evidence

Rape is committed when a man has carnal knowledge of the victim with the use of force and intimidation. [37] From the evidence on record, it is clear that the prosecution proved that appellant had sexual congress with the victim, and that he accomplished this through force and intimidation.

We have consistently ruled that force and intimidation should be viewed from the perception or judgment of the victim at the time of the commission of the felony. [38] The amount of force that warrants a conviction of rape is that which is sufficient to bring about the desired result. [39] This element was sufficiently established in Crisanta's testimony, which we quote:

"ATTY. BERBERABE:

Q. After, Mr. Gastador told you that 'babae ka lang wala ang asawa mo, kayang-kaya kita' what did you do next, if any?

A. I fought him but he suddenly punched xxx my stomach and I [lost] my consciousness.

Q.

After the incident which you related to us[, in which] Mr. Gastador the accused in this case inserted his penis into your vagina what happened next, if any?

A.

After using [me] he warned me not to tell xxx my husband because if I did he [would] kill all of us including my daughter.

Q. After he threatened to kill you and your family [if you would tell] your husband what happened what did you do next?

ATTY. ACLO:

I object to that, Your Honor. because the witness did not say she was threatened. Again, she merely testif[ied] that she was allegedly told by Gastador that she [would] be killed. She did not use the word threatened.

COURT:

Q. Did you tell your husband about what happened?

A. Yes, Your Honor.

ATTY. BERBERABE:

I will repeat my earlier question.

Q. After he told you that 'papatayin ang anak mo at ang pamilya mo' what did you do if any?

ATTY. ACLO:

Already answered, Your Honor, she said she told her husband.

COURT:

Q. When did you tell your husband?

A. On the next day after my uncle Gastador left the house, Your Honor.

Q. When did you[r] husband come home?

A. At around 7:00 o'clock in the evening my husband arrived from his work.

Q. Was the accused still there when he arrived?

A. He stayed there and slept with us and did not leave us the whole night.

Q. Why did you not tell your husband about what happened that night?

A.

Because I was afraid of the warning of Uncle Tony that he [would] kill all of us.[40]

Damages

In view of prevailing jurisprudence, the victim is hereby granted indemnity ex delicto in the sum of P50,000 without need of proof other than the conviction of the accused for rape.[41] Further, in accordance with recent jurisprudence,[42] the victim is also entitled to an award of moral damages in the sum of P50,000. The prosecution was able to prove that, as a result of the crime, the victim lost weight, became sickly and suffered sleepless nights.[43]

WHEREFORE, the assailed Decision is hereby AFFIRMED with the MODIFICATION that appellant is ordered to pay the victim P50,000 as indemnity ex delicto and the additional amount of P50,000 as moral damages. Cost against the appellant.

SO ORDERED.

Romero, (Chairman), Vitug, Purisima, and Gonzaga-Reyes, JJ., concur.

[1] Panganiban, *Battles in the Supreme Court*, 1998 ed., p. 84.

[2] Rollo, pp. 16-26. Penned by Judge Salvador C. Ceguera

[3] This is also spelled as "Derosas."

[4] Rollo, pp. 8-9.

[5] Ibid.

[6] Records, p. 18.

[7] RTC Decision, p. 11; Rollo, p. 26; records, p. 222.

[8] The case was deemed submitted for resolution on November 27, 1998, when the Court received the Brief for Plaintiff-Appellee. The filing of a reply brief was deemed waived, as none was filed within the reglementary period.

[9] Rollo, pp. 154-176.

[10] The Brief for Plaintiff-Appellee was signed by Solicitor General Ricardo P. Galvez, Assistant Solicitor General Amparo M. Cabotaje-Tang, and Solicitor Cinchona C. Cruz-Gonzales.

[11] Brief for Plaintiff-Appellee, pp. 3-7; Rollo, pp. 159-163.

[12] This was signed by Attys. Arceli Adan-Rubin, Amelia C. Garchitorena and Elpidio C. Bacuyag. Another Appellant's Brief (hereafter, the Aclo Brief) was also filed by Atty. Manuel C. Aclo, the former defense counsel who had been fined by this Court for failure to file the Brief within the reglementary period. In fact, the Public Attorney's Office filed an Entry of Appearance upon the representation of the appellant's wife that Atty. Aclo had not yet filed the required brief. Both briefs were read and taken into account by the Court during its deliberation on this case.

[13] Rollo, pp. 109-110.

[14] Decision, pp. 9-11; Rollo, pp. 24-26.

[15] Rollo, p. 111. (All caps, in the original.)

[16] Rollo, p. 62. (All caps in the original.)

[17] It states: "No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based."

[18] "SEC. 2. Form and contents of judgment. - The judgment must be written in the official language, personally and directly prepared by the judge and signed by him and shall contain clearly and distinctly a statement of the facts proved or admitted by the accused and the law upon which the judgment is based.

"If it is of conviction, the judgment shall state (a) the legal qualification of the offense constituted by the acts committed by the accused, and the aggravating or mitigating circumstances attending the commission thereof, if there are any; (b) the participation of the accused in the commission of the offense, whether as principal, accomplice, or accessory after the fact; (c) the penalty imposed upon the accused; and (d) the civil liability or damages caused by the wrongful act to be recovered from the accused by the offended party, if there is any, unless the enforcement of the civil liability by a separate action has been reserved or waived.

x x x x x x x x"

[19] *Bernabe v. Geraldez*, 65 SCRA 96, 98-99, July 15, 1975.

[20] Aclo Brief, pp. 26-27; Rollo, pp. 74-75.

[21] *People v. Oliver*, GR No. 123099, February 11, 1999; *People v. Barredo*, GR No. 122850, October 7, 1998; *People v. Gaddi*, 170 SCRA 649, February 27, 1989; *People v. Pascual*, 204 SCRA 618, December 5, 1991; *People v. Naparan*, 225 SCRA 714, August 30, 1993; *People v. Deopante*, 263 SCRA 691, October 30, 1996; and *People v. Escandor*, 265 SCRA 444, December 9, 1996.

[22] TSN, June 22, 1994, pp. 2-10; July 4, 1994, pp. 2-10; July 6, 1994, pp. 2-8; July 13, 1994, pp. 4-16; July 19, 1994, pp. 2-11; July 20, 1994, pp. 2-8; July 27, 1994, pp. 3-6; August 8, 1994, pp. 2-8; and August 15, 1994, pp. 2-6.

[23] TSN, June 22, 1994, pp. 7-10.

[24] *People v. Oliver*, GR No. 123099, February 11, 1999; *People v. Mamalayan*, 280 SCRA 748, 760, October 16, 1997; and *People v. Cristobal*, 252 SCRA 507, 516, January 29, 1996.

[25] *People v. Panlilio*, 255 SCRA 503, March 29, 1996; *People v. Ferrer*, 255 SCRA 19, March 14, 1996; *People v. Banal*, 254 SCRA 659, March 13, 1996; *People v. Trilles*, 254 SCRA 633, March 12, 1996; *People v. Juan*, 254 SCRA 478, March 7, 1996; and *People v. Patrolla Jr.*, 254 SCRA 467, March 7 1996.

[26] First Brief for Appellant, p. 19; Rollo, p. 67.

[27] Medico-Legal Report No. M-0668-94; Rollo, p. 138.

[28] *People v. Andan*, 269 SCRA 95, March 3, 1997; *People v. Soriano*, 272 SCRA 760, May 29, 1997; *People v. Caballes*, 274 SCRA 83, June 19, 1997; *People v. Barrera*, 262 SCRA 63, 77-78, September 19, 1996; *People v. Gabris*, 258 SCRA 663, 674, July 11, 1996; and *People v. Cañada*, 253 SCRA 277, 284, February 6, 1996.

[29] *People v. Oliver*, GR No. 123099, February 11, 1999; *People v. De La Peña*, 276 SCRA 564, July 31, 1997; *People v. Castromero*, 280 SCRA 421, October 9, 1997; *People v. Evangelista*, 282 SCRA 37, November 17, 1997; *People v. Caballes*, 274 SCRA 83, June 19, 1997; *People v. Andan*, 269 SCRA 95, March 3, 1997; and *People v. Masagana*, 259 SCRA 380, July 26, 1996.

[30] Solis, *Legal Medicine*, 1987 ed., p. 258; *People v. Mercado*, 275 SCRA 581, July 17, 1997 and *People v. Renojo*, 132 SCRA 365, September 28, 1984.

[31] *People v. Gabayron*, 278 SCRA 78, August 21, 1997; *People v. Tabalesma*, 277 SCRA 536, August 18, 1997; *People v. Bugarin*, June 13, 1997; *People v. San Juan*, 270 SCRA 693, April 4, 1997; *People v. Burce*, 269 SCRA 293, March 7, 1997; and *People v. Cabillan*, 267 SCRA 258, January 30, 1997.

[32] *People v. Dones*, 254 SCRA 696, March 13, 1996, per Kapunan, J.

[33] *People v. Traverro*, 276 SCRA 301, July 28, 1997; and *People v. Gumahob*, 265 SCRA 84, November 28, 1996.

[34] *People v. Pontilar Jr.*, 275 SCRA 338, July 11, 1997; *People v. Butron*, 272 SCRA 352, May 7, 1997; *People v. Edualino*, 271 SCRA 189, April 11, 1997; *People v. Corea*, 269 SCRA 76, March 34, 1997; *People v. Quitarano*, 266 SCRA 373, January 20, 1997.

[35] *Padilla v. Court of Appeals*, 269 SCRA 402, March 12, 1997; *People v. Salvatierra*, 276 SCRA 77, July 24, 1997; *People v. Mahusay*, 282 SCRA 80, November 18, 1997; *People v. Hernandez*, 282 SCRA 387, December 4, 1997.

[36] *People v. Lagao Jr.*, 271 SCRA 51, April 8, 1997; *Gonzales v. Court of Appeals*, 277 SCRA 518, August 18, 1997; *People v. Lapura*, 255 SCRA 85, March 15, 1996.

[37] Paragraph 1, Article 335, Revised Penal Code. See also *People v. Salarza Jr.*, 277 SCRA 578, August 18, 1997; *People v. Erardo*, 277 SCRA 643, August 18, 1999; *People v. Salem*, 280 SCRA 841, October 16, 1997; *People v. Erese*, 281 SCRA 316, November 5, 1999; *People v. Escobar*, 281 SCRA 498, November 6, 1999.

[38] *People v. Edualino*, 271 SCRA 189, April 11, 1997; *People v. Gumahob*, 265 SCRA 84, November 28, 1996; *People v. Oarga*, 259 SCRA 90, July 17, 1996; *People v. Villanueva*, 254 SCRA 202, February 28, 1996.

[39] *People v. Oliver*, GR No. 123099, February 11, 1999; *People v. Traverro*, 276 SCRA 301, July 28, 1997; *People v. Adora*, 275 SCRA 441, July 14, 1997; *People v. Edualino*, *supra*; *People v. De Guzman*, 265 SCRA

228, December 2, 1996.

[40] TSN, July 4, 1994, pp. 3-4.

[41] *People v. Betonio*, 279 SCRA 532, September 26, 1997; *People v. Adora*, 275 SCRA 441, July 14, 1997; *People v. Caballes*, 274 SCRA 83, June 19, 1997; and *People v. Dones*, 254 SCRA 696, March 13, 1996.

[42] *People v. Prades*, GR No. 127569, July 30, 1998.

[43] See prescription form marked Exhibit "C" for the prosecution; records, p.139. See also TSN, June 22, 1994, p.9; July 4, 1994, pp.5 and 9; and July 6, 1994, p.3.

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