

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOVITO LOSANO Y NACIS ACCUSED-APPELLANT.

G.R. No. 127122. July 20, 1999

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PER CURIAM:

Despite the growing number of individuals in Death Row for incestuous rape of minors, the number of these corrupt perverts hardly seems to have diminished. Before us yet again is another loathsome example of a man's lechery so depraved, it exposes him to be nothing more than a ravenous beast masquerading as a man.

On March 13, 1996, accused-appellant Jovito Losano y Nacis was charged with the despicable crime of raping his own daughter under the following information:

That sometime in may, 1995, in Barangay Alipangpang, Municipality of Pozorrubio, Province of Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there, willfully, unlawfully and feloniously (sic) have carnal knowledge of private complainant, ROWENA LOSANO, daughter of accused, then being only 6 years of age, all against her will and without her consent.

CONTRARY to Law.[1]

Upon his arraignment on August 26, 1996, accused-appellant entered a plea of not guilty. Trial thereafter ensued, with the prosecution presenting as its witnesses the victim, Rowena Losano, and her grandmother, Veronica Losano. Their testimonies show the following:

Rowena is the daughter of accused-appellant and Rosita Losano, their third child a brood of four. At the time of the alleged rape, Rowena was only six years old, having been born on April 17, 1990. Veronica Losano, on the other hand, is the grandmother of Rowena, accused-appellant being her son. Veronica testified that on September 25, 1995, while they were in Baguio City, Rowena told her that her father had mashed her breast and removed her panties. Upon further questioning, Rowena added that her father had inserted his penis inside her. To verify whether or not Rowena was telling the truth, Veronica and her daughter Priscilla Fetalino, brought Rowena to the Baguio City office of the NBI to have her examined. Dr. Ronald Bandonill, an NBI medico-legal officer, conducted the medical examination on October 3, 1995. The medical certificate issued by Dr. Bandonill states that 1) at the time of the examination, there were no extra-genital physical injuries on Rowena's body; and 2) that her physical virginity was preserved. It did, however, remark that:

The presence of congestion and inflammation at the vestibular mucosa and the hymenal area coupled with intense pain and tenderness indicates the probability of attempted penetration of the area by the hard erect male organ which was not successful, since it would produce massive genital injury.[2]

Veronica stated that the alleged rape incident took place at her house in Barangay Alipangpang, Pozorrubio, Pangasinan. On cross-examination, Veronica admitted not having personal knowledge of the alleged rape, having only been informed thereof by her granddaughter. She also said that Rowena's mother was in Kuwait, having gone there in 1995, and that up to the time of the trial, the latter had not yet returned.

When put on the witness stand, Rowena testified that while she was staying at their house in Barangay Alipangpang, she remembered her father removing her dress and panties, fondling her breasts and getting on top of her. She remembered seeing his sex organ and having it inserted inside her. She said she felt pain when he did so. Rowena testified that her father told her not to tell anybody, otherwise he would kill her. On further questioning, she said her father inserted his penis inside her everyday.

On cross-examination, Rowena testified that her father had raped her at nighttime. She said that while she was sleeping with her sister Maricel, and their grandmother Veronica, in a room on the second floor of their house, her father carried her outside and raped her. She said her grandmother woke up when she was carried outside the room by her father.

Testifying in his own behalf, accused-appellant said that he loved his children and that he could not have raped Rowena, the latter being his daughter. He claimed that the charge of rape was filed to discredit him and that he was the victim of a frameup. Accused-appellant stated that his mother Veronica and his sister Priscilla held a grudge against him, thus, their filing of the rape case. In elaboration, accused-appellant claimed that Priscilla wanted to buy from him a karaoke, a Walkman, and several watches, items that he had brought back from Saudi Arabia, at a very low price. He, however, declined. Instead, he sold these items to a third person for a higher price. From then on, according to accused-appellant, bad blood ran between him and Priscilla. Accused-appellant further testified that Veronica and Priscilla had asked him to sign a document selling their land, which request he had not acceded to. He also explained that his mother and sister claimed the money that his wife sent him every month.

On cross-examination, accused-appellant admitted that his daughter Rowena was six years of age. Likewise, he testified that his wife had gone to Kuwait in 1993. Lastly, accused-appellant admitted that his other daughter Maricel, age 11, had filed a criminal case for acts of lasciviousness against him. Sometime during the proceedings, accused-appellant's counsel adopted the medical certificate issued by Dr. Bandonill as their Exhibit "1" to prove the absence of spermatozoa in the sex organ of Rowena.

On September 27, 1996, the trial court rendered a decision, the dispositive portion of which reads as follows:

WHEREFORE, the Court finds the accused, JOVITO LOSANO y NACIS, GUILTY beyond reasonable doubt of the crime of RAPE defined and penalized under Republic Act No. 7659, the offense having been committed with the attendant aggravating circumstances of "when the woman is under twelve years old" and "when the victim is under eighteen (18) years of age and the offender is a parent", (sic) hereby sentences him to suffer the supreme penalty of DEATH to be executed pursuant to Rep. Act No. 8177 known as the Lethal Injection Law, to pay the complainant, ROWENA LOSANO in the amount of P50,000.00 as damages, and to pay the costs.

And the word of the law, it is said:

"Dura lex, sed lex", interpreted as: "The law is harsh (sic) but that (sic) is the law."

SO ORDERED.[3]

The penalty of death having been imposed, the decision is now before us for automatic review, pursuant to Article 47 of the Revised Penal Code and Section 1(e), Rule 122 of the Rules of Court. The Free Legal Assistance Group (FLAG) Anti-Death Penalty Task Force submitted a brief on behalf of the accused-appellant. In seeking a reversal of the September 27, 1996 decision, it raises the following as errors of the trial court:

- THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF AN OFFENSE NOT CHARGED IN THE INFORMATION;
- THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE TESTIMONY OF THE PRIVATE COMPLAINANT AND IN DISREGARDING ITS INCONSISTENCIES;

- THE TRIAL COURT MANIFESTED BIAS, THEREBY DEPRIVING THE ACCUSED-APPELLANT OF HIS RIGHT TO A FAIR AND IMPARTIAL TRIAL AND VIOLATING HIS RIGHT TO BE PRESUMED INNOCENT, WHEN IT LED THE ACCUSED-APPELLANT TO ADMIT A MEDICO-LEGAL EXAMINATION REPORT THAT IT LATER USED TO CONVICT HIM;

- THE TRIAL COURT GRAVELY ERRED IN FINDING THAT THE ACCUSED-APPELLANT HAD THE PROPENSITY TO SEXUALLY ABUSE HIS CHILDREN ON THE BASIS OF A PENDING CASE OF ACTS OF LASCIVIOUSNESS FILED AGAINST HIM BY ANOTHER CHILD, AND IN USING SAID FINDING TO CONVICT THE ACCUSED-APPELLANT.

After a thorough and painstaking review of the evidence on record, as well as of the arguments advanced by the FLAG Anti-Death Penalty Task Force and by the Solicitor General, we resolve to affirm the judgement of conviction.

In support of his allegation that he was convicted of an offense not charged in the information, accused-appellant notes that he was charged with having committed rape "sometime in May 1995, in Barangay Alipangpang, Municipality of Polyzoarium, Pangasinan." He, however, asserts that the prosecution failed to prove that he had committed rape sometime in May 1995. If ever accused-appellant raped his daughter, he claims that this did not occur in May but much later. In support of his argument, accused-appellant points to the medico-legal report, which puts the time of commission of the alleged rape at sometime in August 1995. Furthermore, accused-appellant alleges that "the congestion and inflammation at the vestibular mucosa and the hymenal area coupled with intense pain and tenderness" mentioned in the medico-legal report would have long disappeared if the rape had occurred sometime in May, four months before the medical examination. Lastly, accused-appellant points to the testimonies of the prosecution witnesses themselves as indicative that the alleged rape took place much later than May 1995.

Veronica Losano:

Q: Now, Madam Witness, between the period of September 25, 1995 can you recall if there was anything unusual that happened?

A: Yes, sir.

Q: What was that unusual incident about, Madam Witness?

A: My granddaughter told me that her breasts were mashed and her panties were removed, sir.

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Q: Now, what else did your granddaughter, Rowena, tell you aside from telling that the accused Jovito Losano, her own father, mashed her breasts and remove her panties?

A:

My granddaughter told me that after the accused mashed her breasts he inserted his penis in the organ of my granddaughter, sir.[4]

Rowena Losano:

Q:

How many times did your father insert his penis to your vagina?

A:

Everyday, sir.

Q: And after the length or rather after the last time that he did that to you you informed your grandmother about it?

A" Yes, sir.[5] (*Italics accused-appellant's*)

From the foregoing, accused-appellant draws the conclusion that what the prosecution may have proved was a rape that occurred sometime in August or September, much later than May 1995, an offense he considers different from that which was alleged in the information. Drawing on the principle that an accused cannot be convicted for an offense not charged in the information, no matter how conclusive and convincing the evidence of guilt,[6] accused-appellant argues that his conviction should be reversed.

Accused-appellant's argument holds no water. Section 11 of Rule 110 of the Rules of Court provides:

Section 11. Time of the commission of the offense.- It is not necessary to state in the complaint or information the precise time at which the offense was committed except when time is a material ingredient of the offense, but the act may be alleged to have been committed at any time as near to the actual date at which the offense was committed as the information or complaint will permit.

Thus, early as 1903, this Court has ruled that while the complaint must allege a specific time and place when and where the offense was committed, the proof need not correspond to this allegation, unless the time and place is material and of the essence of the offense as a necessary ingredient in its description. Evidence so presented is admissible and sufficient if it shows 1) that the crime was committed at any time within the period of the statute of limitations; and 2) before or after the time stated in the complaint or indictment and before the action is commenced.[7]

Unfortunately for accused-appellant, the date of commission is not an essential element of the crime of rape,[8] what is material being the occurrence of the rape, not the time of commission thereof.[9] Hence, proof as to the time of rape need not correspond to the allegation in the information. Likewise, the rape was committed within the period provided by the statute of limitations. It may also be observed that while the rape proven occurred after the time stated in the complaint, the action was commenced after the rape incident had transpired.

Additionally, it is too late in the day for accused-appellant to object to his conviction on the basis of the erroneous date charged in the information. Sections 1 and 3(d) of Rule 117 of the Rules of Court provides:

Section 1. Time to move to quash. - At any time before entering his plea, the accused may move to quash the complaint or information.

Section 3. Grounds. - The accused may move to quash the complaint or information on any of the following grounds:

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d) That it does not conform substantially to the prescribed form;

xxx xxx xxx (Italics ours)

Likewise, Section 8 of Rule 117 provides:

Section 8. Failure to move to quash or to allege any ground therefor. - The failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the same in said motion shall be deemed a waiver of the grounds of a motion to quash, except the grounds of no offense charged, lack of jurisdiction over the offense charged, extinction of the offense or penalty and jeopardy, as provided for in paragraphs (a), (b), (f) and (h) of Section 3 of this Rule. (Italics ours)

Section 3(d) of Rule 117 refers to the formal parts of a complaint or information provided for in Sections 6 to 12 of Rule 110. These include, among others, the time of the commission of the offense. In accordance with the above-mentioned sections, accused-appellant should have filed a motion to quash the information on the ground that it alleged an erroneous date, before he entered his plea. Accused-appellant, however, did not file a motion to quash. Instead, he had himself arraigned, entering a plea of not guilty to the crime of rape. Such being the case, accused-appellant has waived his right to object to the information on the ground of an error as to the time of the alleged rape.

When there is a variance between the allegation of the information and the evidence of the prosecution with respect to the time when the crime was committed, and the accused interposed a timely objection to such variance and showed that it was prejudicial to his interest in that it deceived him and prevented him from having a fair opportunity to defend himself, the trial court may, in the exercise of sound discretion, order the information amended so as to set forth the correct date and may grant an adjournment for such a length of time as will enable the defendant to prepare himself to meet the variance in date which was the cause of his surprise. But if the accused himself offers no objection to such a variance and no relief is asked, and that in place of objection the accused accepts the issue and enters upon his defense and produces his witnesses, giving evidence with regard to the very transaction concerning which the prosecution's witnesses had offered their testimony, an objection raised for the first time in the appellate court based on such variance is untenable.[10]

It is likewise, erroneous for accused-appellant to claim that what the prosecution was able to prove was an offense different from that charged in the information. If the date of the commission of a crime is erroneously set forth in the information, the fact that the prosecution proves the correct date does not mean necessarily that an inference could legitimately be drawn that two crimes had been committed. If the accused himself offers no objection to such a variance it must be assumed that he is not prejudiced thereby and that the change in date has in no wise affected his ability or opportunity to defend himself. This is especially true where, in place of objection, the accused accepts the issue tendered by the evidence of the prosecution and proceeds to meet it with evidence of his own.[11] Accused-appellant may not, thus, allege that he was convicted of an offense different from that charged in the information.

In his second assignment of error, accused-appellant characterizes Rowena's testimony as coached, the same having been educed through leading questions propounded by the prosecution.

Fiscal Matro

Q: Are you the same Rowena Losano who is the complainant in this case?

A: Yes, sir.

Q: The one you (sic) accusing in this (sic) is Jovito Losano who is your own father?

A: Yes, sir.

Q: Can you recall what your father did to you which is now the subject of your complaint?

A: Yes, sir.

Q: What did your father Jovito Losano did (sic) to you?

Atty. Padilla

I would like to manifest, your Honor, that the witness cannot answer the question, despite reasonable time, your Honor.

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Fiscal Matro

Q: Do you remember that your father did something to you while you were in your house in Alipangpang, Pozorrubio, Pangasinan?

A: Yes, sir.

Q: Do you remember your father having removed your dress and panties?

A: Yes, sir.

Q: After your father removed your panties what did he do to you?

A: (No answer from the witness)

Q: Do you also remember your father fondling your breast?

A: Yes, sir.

Q: After your father fondled your breast, he made you lie down, is it not?

A: Yes, sir.

Q: Then he also removed his pants and his brief, do you remember that also?

A: Yes, sir.

Q:

And after that he went on top of you, is that correct?

A: Yes, sir.

Q: Do you remember having seen his sex organ?

A: Yes, sir.

Q: After he went on top of you do you still remember what he did to you?

A: Yes, sir.

Q: What did he do to you? Do you remember your father inserting his penis to (sic) your vagina?

A: Yes, sir.

Q: What did you feel after that?

A: It was painful, sir.

Q: Was he able to insert his penis in whole to (sic) your vagina?

A: Yes, sir.

Q: How long did he insert his penis to (sic) your vagina?

A:

Brief (sic), sir.

Q: After that what did your father tell you?

A:

He told me not to tell anybody otherwise he will kill me, sir.

Q: And after your father left the house, do you remember?

A: Yes, sir.

Q: How many times did your father insert his penis to your vagina?

A: Everyday, sir.[12]

As a general rule, leading questions are not allowed. When the witness is a child of tender years, however, it is proper for the court to allow leading questions,[13] as it is usually difficult for a child of tender years to state facts without prompting or suggestion. In the case at hand, Rowena is a child of tender years, being only seven years old at the time of her testimony. As we have held in *People v. Vargas*,[14] "[c]hildren are naturally meek and shy. They need patient and careful probing to encourage them to talk in public about a traumatic experience. Indeed, recounting an ordeal of rape in a courtroom is tremendously difficult and devastating even for an adult woman... Hence, we find nothing wrong when the trial judge propounded probing questions to (the victim) to coax truth out of her reluctant lips."

Accused-appellant also points to inconsistencies in the testimony of Rowena as proof that the alleged rape never took place. Accused-appellant juxtaposes Rowena's testimony saying that her grandmother was awakened when her father came to her room to get her with Veronica's testimony saying that she was in Baguio at the time her granddaughter was raped. Accused-appellant also claims that he could not have raped his daughter for if Rowena's grandmother was awake at the time of the alleged rape, she certainly would have heard the cries of pain of her granddaughter.

This Court has time and again ruled that the sole testimony of the victim in a rape case is sufficient to sustain a conviction if such testimony is credible.[15] By the very nature of rape cases, conviction or acquittal depends almost entirely on the credibility of the complainant's testimony, the fact being that usually only the participants thereto can testify as to its occurrence.[16] In the instant case, the trial court found the testimony of Rowena to be credible, possessing as they did "all the semblance of truth." We find no compelling reason to disturb the trial court's reliance on Rowena's testimony, it being hornbook doctrine that the findings of fact of the trial court is entitled to the highest respect, it being in the best position to determine questions of credibility of witnesses, having heard them and observed their deportment and manner of testifying.[17]

Furthermore, the alleged inconsistencies pointed out by accused-appellant pertain only to minor matters which strengthen rather than weaken the credibility of Rowena. In any case, the presence or absence of Veronica at the house where the alleged rape took place does not detract from the fact that Rowena's testimony points to accused-appellant as her assailant. When a woman, especially if she is a minor, says that she has been raped she says in effect all that is necessary to show that rape was committed.[18]

Likewise, whether or not Veronica awoke when accused-appellant took his daughter out of the room will not and cannot affect Rowena's credibility, as the same does not disprove that the rape was committed. And even if it were true that Veronica awoke at the time accused-appellant carried his daughter out of the room, no protest could have been forthcoming, as the former probably did not know that accused-appellant was out to rape his own flesh and blood. Again, the allegation that the rape could not have taken place due to the proximity of Veronica's presence holds no water. The nearby presence of people in a certain place is no guarantee that rape will not and cannot be committed,[19] it being no respecter of time and place.

It may also be observed that for his defense, accused-appellant could only deny having raped his daughter. Well-entrenched is the rule that denial is inherently weak and easily fabricated.[20] It becomes even weaker in the face of the positive identification by the victim, Rowena, of accused-appellant as her assailant.

We also reject accused-appellant's contention that the rape charge was due to the bad blood between him and his mother and sister. No sister would be so depraved as to condemn a brother to possible death for failure to sell a

karaoke, Walkman and watches at bargain basement prices. Neither would a mother be so callous as to seal her son's doom for his refusal to sell a piece of land. Lastly, it would be unlikely for Rowena, a seven-year old, to fabricate a story of rape which would put her own father on Death Row. As aptly stated by the trial court, "[v]eritas simplex oration est," the language of truth is simple, it can come from the mouth of a child and the lips of the poor, simple and unlettered."

In his third assignment of error, accused-appellant claims that the trial court judge was biased against him, allegedly because it peremptorily ordered his defense counsel to stipulate to the medico-legal report since the findings therein were "negative," thereby depriving him of a chance to cross-examine the doctor on the correctness of the latter's findings. Accused-appellant claims these findings were used by the trial court in convicting him, as follows:

It could now be deduced without contradiction that the accused had really inserted his sexual organ upon the pudenda of his daughter but he was hesitant to fully insert it considering the size of his erected penis to that vagina of his 5 years and 1 month old child as this would, according to the medical witness, 'produce massive genital injury.' Evidence would show that the accused's sex organ had penetrated slightly into his daughter's vagina because of the 'presence of congestion and inflammation at the vestibular mucosa and the hymenal area coupled with the intense pain and tenderness indicates the probability of attempted penetration of the area by the hard erect male organ which was not successful.[21]

The relevant testimony cited by accused-appellant to prove the trial court's alleged bias is as follows:

Court

Who is your next witness, Fiscal?

Fiscal Matro

The doctor, Your Honor.

Court

Can you stipulate on this whether you agree or not? Anyway, the finding there is negative. You stipulate now as to the existence of Exhibit "A." (Italics ours)

Atty. Padilla

Yes, Your Honor. We admit.

Court

Place on record that the Counsel for the accused is admitting the existence of Exhibit "A." [22]

While the trial court's denomination of the medico-legal report as negative may not have been judicial nor judicious, it can hardly be deduced from the above testimony that the court a quo peremptorily ordered defense counsel to stipulate on the medico-legal report. In fact, the Court was not addressing defense counsel but the fiscal. It was defense counsel, however, who admitted to the existence of the medico-legal report. In fact, not only did defense counsel admit the existence of such report, it would later on adopt the same as its own exhibit in order

to prove the absence of spermatozoa.[23] Accused-appellant cannot, thus, denounce the judge for bias for the improvidence of his counsel in adopting said medico-legal report.

Neither may accused-appellant repudiate the actions of his counsel, it being within the competence of the latter to stipulate on the existence of said medico-legal report, the same being a mere procedural question. Well-settled is the rule that such questions as what action or pleading to file, where and when to file it, what are its formal requirements, what should be the theory of the case, what defenses to raise, how the claim of defense may be proved, when to rest the case, as well as those affecting the competency of a witness, the sufficiency, relevancy, materiality or immateriality of certain evidence and the burden of proof are within the authority of the attorney to decide.[24] Whatever decision an attorney makes on any of these procedural questions, even if it adversely affects a client's case, will generally bind a client. More importantly, accused-appellant's conviction does not rest on this piece of evidence alone but on the testimony of the victim herself.

Lastly, accused-appellant scores the trial court for holding that he had the propensity to sexually abuse his children on the basis of a pending case for acts of lasciviousness filed against him by another child. Upon this particular, accused-appellant raises a valid point. The trial court, in its assessment of the evidence, found that accused-appellant had admitted that a case for acts of lasciviousness had been filed against him. Based on Section 34 of Rule 130[25] providing that similar acts may be received to prove a specific intent, plan, system, scheme, and the like, the trial court drew the conclusion that the accused-appellant had the propensity to prey on his daughters.

The admission of the accused-appellant that he was facing a charge of acts of lasciviousness filed by his eleven-year old daughter only proves that such a case was filed and pending with the municipal court. It does not prove the propensity of the accused-appellant to crave for his children. The pendency of the case of acts of lasciviousness is not equivalent to evidence that the accused-appellant was guilty of the same. In equating the pendency of said case to his guilt thereof, the trial court ignored the constitutional presumption of innocence afforded to the accused-appellant.

The trial court's error on this point does not, however, obliterate the fact that the prosecution was able to prove that indeed, accused-appellant raped his daughter. In sum, we find no reason to disturb the finding of the trial court that the guilt of the accused-appellant has been proved beyond reasonable doubt.

As to the penalty imposed, Article 335, as amended by Republic Act No. 7659, provides that the death penalty shall be imposed if the rape victim is under eighteen years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or a common-law spouse of the parent of the victim. The case at hand is clearly within the ambit of Article 335, accused-appellant being the father of the victim. Rowena who was only six years of age at the time of the rape incident. The supreme penalty of death was, thus, properly imposed upon accused-appellant.

With regard to the civil indemnity, recent jurisprudence has held that where the crime of rape is committed or effectively qualified by any of the circumstances under which the death penalty is authorized, the civil indemnity to be awarded to the victim is increased to P75,000.00.[26] We also find it proper to award P50,000.00 as moral damages although proof of such entitlement was not presented.[27]

Four members of the Court maintain their position that Republic Act No. 7659, insofar as it prescribes the death penalty, is unconstitutional; nevertheless they submit to the ruling of the Court, by a majority vote, that the law is constitutional and that the death penalty should be accordingly imposed.

WHEREFORE, premises considered, the judgment of the trial court dated September 27, 1996 imposing the death

penalty on accused-appellant Jovito Losano y Nacis is hereby AFFIRMED, with the MODIFICATION that accused-appellant should indemnify the victim, ROWENA LOSANO, in the amount of P75,000.00 as civil indemnity and P50,000.00 as moral damages, respectively. Costs against the accused-appellant.

In accordance with Article 83 of the Revised Penal Code, as amended by Section 25 of Republic Act No. 7659, upon finality of this Decision, let a certified true copy thereof, as well as the records of this case be forthwith forwarded to the Office of the President for possible exercise of executive clemency.

SO ORDERED.

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

[1] Original Records, p. 1.

[2] Ibid., p. 11.

[3] Rollo, p. 28.

[4] TSN, September 18, 1996, pp. 4-5.

[5] Ibid., p. 16.

[6] Matilde, Jr. v. Jabson, 68 SCRA 456 (1975).

[7] U.S. v. Smith, 3 Phil 20 (1903).

[8] People v. Villamor, G.R. No. 124441, October 7, 1998.

[9] See People v. Ramos, G.R. No. 129439. September 25, 1998.

[10] FRANCISCO, Criminal Procedure, citing U.S. v. Bungaoil, 34 Phil 835 (1916).

[11] U.S. v. Bungaoil, 34 Phil 835 (1916).

[12] TSN, September 18, 1996, pp. 14-16.

[13] See Section 10, Rule 132, Rules of Court.

[14] 257 SCRA 603 (1996).

[15] People v. Bolatete, G.R. No. 127570, February 25, 1999.

[16] People v. Villaluna, G.R. 117666, February 23, 1999.

[17] People v. Correa, 285 SCRA 679 (1998).

[18] People v. Bolatete, *supra*.

[19] People v. Perez, G.R. No. 122764, September 24, 1998.

[20] People v. Cabiles, 284 SCRA 199 (1998).

[21] Rollo, p. 21.

[22] TSN, September 18, 1996, pp. 21-22.

[23] TSN, September 25, 1996, p. 18.

[24] Province of Bulacan v. CA, G.R. No. 126232, November 27, 1998.

[25] Section 34. Similar acts as evidence.- Evidence that one did or did not do a certain thing at one time is not admissible to prove that he did or did not do the same or a similar thing at another time; but it may be received to prove a specific intent or knowledge, identity, plan, system, scheme, habit, custom or usage, and the like.

[26] People v. Bation, G.R. No. 123160, March 25, 1999; People v. Robles, G.R. No. 124300, March 25, 1999.

[27] People v. Ilao, G.R. No. 129529, September 29, 1998.

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