

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SENEN PRADES, ACCUSED-APPELLANT.

G.R. No. 127569. July 30, 1998

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PER CURIAM:

Before the Court for automatic review is the August 13, 1996 judgment of the Regional Trial Court of Iriga City, Branch 36, in Criminal Case No. IR-3666, finding accused-appellant Senen Prades guilty of rape and sentencing him to suffer the supreme penalty of death. The judgment likewise ordered appellant to pay private complainant P50,000.00 by way of moral damages, as well as the costs.[1]

The information in Criminal Case No. IR-3666 alleges:

That on or about the 24th day of March, 1994, at about 12:00 o'clock midnight, as San Vicente Ogbon, Nabua, Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the said accused, armed with a handgun, by means of force and intimidation and with lewd design, did then and there willfully, unlawfully and feloniously have sexual intercourse with the said Emmie R. Rosales against the latter's will, and that the accused perpetrated the offense charged at the dwelling of herein complainant and with the use of a firearm in threatening complainant, to the latter's damage and prejudice in such amount as may be proven in court.[2]

With the assistance of counsel de oficio, appellant pleaded not guilty to the charge.[3] The defense waived the pre-trial[4] and the case proceeded to trial in due course.

The private complainant and the physician who conducted a medical examination on her were presented in the trial court to establish the case for the People. After the physician had testified as the first witness, appellant absconded. The records of the case reveal that appellant escaped from his escort guard while he was being transported from a hearing at the Regional Trial Court of Iriga City to the Tinangis Penal Farm in Pili, Camarines Sur on March 29, 1995.[5] Trial accordingly continued in absentia.

Private complainant Emmie R. Rosales was seventeen years old when the dastardly outrage befell her on March 24, 1994. She testified that she and her younger sister, Melissa, were asleep in a room in their house and were then the only persons at home because their grandfather, who lived with them, was in the hospital at that time.[6]

At around midnight, complainant suddenly awoke as she felt a heavy weight pressing down upon her. She thereupon realized that a man, clad only in his underwear, lay on top of her. She was about to shout when he poked a gun at her neck and warned her not to create any noise or he would kill her.[7]

Although the house lights were off, moonlight streamed through the sawali door of the room, enabling complainant to see the intruder.[8] She recognized him as appellant Senen Prades, her barriomate. It appears that he gained entry into the house through a passageway in the kitchen.[9]

Appellant attempted to remove complainant's pants and underwear even as he continued to jab the gun at her neck. Complainant resisted him and struggled for twenty to thirty minutes until she was overcome by his strength.[10] He knelt on her knees and succeeded in removing her clothing.[11] He then spread her legs apart,

forcibly inserted his penis into her vagina,[12] and bodily pinned her down. He fondled her breast and private parts and made push and pull movements with his genital organ for about two minutes.[13] Complainant was resultantly in pain as she felt blood ooze out of her vagina.[14] She continued to struggle against appellant but to no avail.

After satisfying his lust, appellant pulled away from complainant and once again nudged her with the gun. He warned her not to tell anyone about the event or he would kill her and her family.[15] Appellant left complainant stunned and in tears. She did not inform anyone about the incident.

Several days later, complainant received two letters from appellant.[16] She saw appellant hand the first letter to her grandmother who later gave it to her.[17] The other letter was given by appellant to complainant through the latter's sister.[18] Aggrieved by all these circumstances, complainant decided to disclose to her grandfather the sexual assault that transpired on March 24.

Complainant and her grandfather forthwith reported the matter to the Barangay Captain who advised them to proceed to the police headquarters of Nabua, Camarines Sur.[19] After filing a report with the police, complainant underwent physical examination at a rural health center in Sto. Domingo.[20] She then instituted a complaint for rape against appellant.

Pursuant to a warrant of arrest issued by the Municipal Circuit Trial Court of Nabua, Camarines Sur,[21] appellant was arrested and detained at the municipal jail of Nabua. He filed a motion for bail but the same was denied by the lower court.[22] Trial commenced in Branch 36 of the Regional Trial Court on December 14, 1994.

Dr. Stephen A. Beltran,[23] the Rural Health Physician of Nabua, Camarines Sur, testified that he conducted a physical examination on complainant on April 8, 1994 and found indications of sexual intercourse.[24] The medical certificate issued by said physician revealed the following:

FINDINGS: VAGINAL EXAMINATION

- (+) Hymenal laceration scar at 6:00 o'clock
- (-) Gross blood
- (-) (S)eminal fluid

IMPRESSION: VAGINAL PENETRATION, COMPLETE.[25]

As earlier noted, appellant escaped from confinement before the prosecution had completed the presentation of its evidence. A general warrant of arrest was issued for his apprehension and it was ordered that he be included in the list of wanted criminals.[26] Appellant, however, has not been recaptured up to now.

Fearing for her life and for the safety of her family members, complainant left her home in San Vicente, Nabua, Camarines Sur, and moved to Naga City.[27] All she hoped for was to begin a new life, away from the stigma created by the crime on her name and her family, and away from the dread of possibly being killed by appellant who was at large and, perhaps, lurking in the shadows.

After the presentation of its evidence, the prosecution rested its case. Because appellant had taken flight, he was deemed to have waived his right to adduce evidence hence counsel for the defense was unable to introduce evidence to dispute the charge.[28]

In its decision dated August 13, 1996, the court a quo found appellant guilty beyond reasonable doubt of the crime of rape, aggravated by the circumstance of dwelling, and imposed upon him the penalty of death. The lower court issued another warrant of arrest for the capture of appellant.[29] It has not been served to date as he remains at large, a fugitive from justice. Because appellant was condemned to suffer the principal penalty of death, his

conviction is now before the Court on automatic review.

As its lone assignment of error, the defense alleges that the court below erred in finding appellant guilty beyond reasonable doubt of the crime of rape. It is contended that the testimony of complainant on the identity of appellant as the author of the crime is doubtful not only because there was insufficient lighting in the room of the complainant, where the alleged act of rape took place, but also because complainant had never been face to face with appellant prior to the incident.[30]

The Court has exhaustively reviewed and objectively analyzed the records of this case, especially so because a capital offense is involved, and sees no cogent reason to depart from the findings and conclusions of the court below. We consequently affirm the conviction of appellant.

The contention that the identity of appellant has not been established deserves exiguous consideration because it is undisputed that appellant was known to the victim long before the assault. They lived in the same barrio[31] and the wife of appellant was the goddaughter of complainant's grandmother.[32] Appellant also used to periodically pass by the house of complainant.[33]

The defense adverts to the fact that on the night of the occurrence, there were no lights in the room where the rape took place. It is further claimed that it was impossible for moonlight to penetrate the sawali door and enable complainant to identify her assailant because the spaces in the sawali were "as small as the diameter of a mungo bean x x x (a)nd these small spaces are set wide apart between the slats." [34]

This contention must fail. The evidence shows that the crime scene was not in total darkness. As already stated, complainant was able to identify appellant because the room was lit by moonlight that filtered through the sparse, woven bamboo slats of the sawali door. The amount of light emitted by the moon is relative. While there are evenings of pitch darkness, there are moonlit nights when the brightness of the moon is sufficient to enable one to see distinct details of objects.

In addition to this consideration, the house of complainant was a typical provincial home made of bamboo,[35] usually consisting of bamboo stilts, interwoven slats of bamboo forming walls of sawali, and similar materials. Such constructional pattern naturally allowed light to penetrate into the house and this fact reasonably induces the conclusion that complainant was truthful in claiming that there was sufficient illumination in the room which permitted her to identify her aggressor.

Furthermore, complainant had an extended and adequate look at the features of appellant during the assault, with ample opportunity to recognize him. As this Court has repeatedly held, a man and a woman cannot be physically closer to each other than during the sexual act.[36] Not surprisingly, therefore, complainant readily and positively identified appellant in court during the trial as the man who raped her on March 24, 1994.

Doctrinally, the credibility of a rape victim is augmented when, as in the instant case, she has no motive to testify against the accused or where there is absolutely no evidence which even remotely suggests that she could have been actuated by such motive.[37] We are thus convincingly assured that the lower court prudently fulfilled its obligation as a factual assessor and a legal adjudicator. We accordingly give due respect to the evaluation of the trial court on the credibility of the complaining witness.

Rape is committed by having carnal knowledge of a woman by, inter alia, force or intimidation. The degree of the force or intimidation required is relative. It need not be overpowering or irresistible because all that is necessary is that it is sufficient to consummate the purpose which appellant had in mind.[38]

It is indubitable that complainant put up a struggle when appellant forced himself upon her. She was inevitably

subdued by his strength and she ultimately succumbed to his vengery. Even assuming *arguendo* that complainant did not repel the physical aggression of appellant, this does not preclude a finding that she was raped. It is well settled that physical resistance need not be established in rape when intimidation is exercised upon the victim and the latter submits herself, against her will, to the rapist's advances because of fear for her life and personal safety.[39]

In the case now before us, although complainant had a companion who was asleep in the room when she was attacked by appellant, she could not have dared risk her life by screaming for help because appellant pressed a handgun at her neck and threatened to kill her and her family if she would resist him or report the incident. The evidence establishes that the sexual intercourse between appellant and complainant was consummated through force and intimidation and ineluctably constituted the crime of rape. The fact that it was committed in a room where there was another occupant does not rule out the crime.[40]

In addition, and virtually foreclosing further chicanery by appellant, it is conceded that after the rape, he sent complainant two letters in which he implored her forgiveness and offered to leave his wife so that he could be with her. In fine, appellant sealed his own fate by admitting his crime under the seal of a virtual confession in fact, if not in law.

In criminal cases, except those involving quasi-offenses or those allowed by law to be settled through mutual concessions, an offer of compromise by the accused may be received in evidence as an implied admission of guilt.[41] For this rule to apply, it is not necessary that a complaint be first filed by the victim because all that is required is that after committing the crime, appellant or his representative makes an offer to compromise and such offer is proved.[42]

Evidently, no one would ask for forgiveness unless he had committed some wrong and a plea for forgiveness may be considered as analogous to an attempt to compromise.[43] The letters of appellant containing an appeal for condonation of his acts cannot but be construed as an implied admission of his guilt.

The Court is persuaded that appellant sent complainant the letters introduced in evidence by the prosecution and that said letters contained an admission of his guilt, thus confirming his culpability. If appellant did not forcibly rape complainant on the night of March 24, 1994, complainant may possibly have accepted appellant's offer to live with her. At the very least, she would not have revealed her misfortune so as not to expose the despoliation of her virtue. That complainant chose to divulge the incident and subject herself to the disgrace of public scrutiny and scandal buttresses the charge that she had been criminally ravished by appellant.

Further, because no evidence was presented by the defense to discredit this affirmation of guilt derived from the contents of the letters, the authenticity of said letters is no longer open to question. The letters thus bolster and corroborate complainant's testimony on the identity and guilty of appellant.[44]

Another factor supporting appellant's conviction is his flight. By escaping from confinement during trial and failing to turn himself in despite his subsequent conviction by the trial court, and despite the standing warrant of arrest, appellant has become a fugitive from justice.

Flight is the evasion of the course of justice by voluntarily withdrawing oneself in order to avoid arrest, detention or the institution or continuance of criminal proceedings.[45] It is considered an indication of guilt.[46] A "fugitive from justice," on the other hand, is one who flees after conviction to avoid punishment, as well as one who, after being charged, flees to avoid prosecution.[47] By his flight and thereafter becoming a fugitive, appellant waived his right to adduce evidence and consequently denied himself the opportunity to dispute the charge against him.

It is a fundamental rule that criminal cases rise and fall on the strength of the evidence of the prosecution and not on the weakness or, as in this case, the absence of evidence of the defense. We emphasize that the flight of appellant, by itself, does not sustain his conviction because the law requires therefor no less than the proof of guilt beyond reasonable doubt. In the case before us, however, complainant's testimony and positive identification of appellant were sufficiently corroborated by the testimony of the physician who examined her, the medico-legal report, and the letters of appellant in which he acknowledged his guilt and sought complainant's mercy. These considerations convince the Court that appellant was the perpetrator of the crime. His flight and status as a fugitive from the law merely dispel any remaining shred of doubt on his guilt.

Incidentally, to obviate any question as to the propriety of the course of action we have taken in this case, that is, of subjecting the judgment of conviction of the trial court to automatic appellate review despite the fact that appellant was partially tried and convicted by said court in absentia, and is and has been a fugitive from justice since then and up to the present, we draw upon our ruling in *People vs. Esparas, et al.*[48] which declared:

x x x On August 20, 1996, we issued an extended resolution upholding the power of this Court to review all death penalty cases regardless of the escape of the accused from confinement prior to the judgment of the trial court, thus:

"We hold, however, that there is more wisdom in our existing jurisprudence mandating our review of all death penalty cases, regardless of the wish of the convict and regardless of the will of the court. x x x. Ours is not only the power but the duty to review all death penalty cases. No litigant can repudiate this power which is bestowed by the Constitution. x x x."

On the question as to whether or not the Court can validly promulgate this judgment in the case at bar, the answer is in the affirmative. As graphically elucidated in *Florendo vs. Court of Appeals, et al.*:[49]

The last paragraph of Section 6 of Rule 120* is a new provision introduced by the 1985 Rules on Criminal Procedure, which provides for the promulgation of judgment in absentia (*Gupit Jr., Rules of Criminal Procedure* 362-363 [1986]). The amendment was intended to obviate the situation in the past where the judicial process could be subverted by the accused jumping bail to frustrate the promulgation of judgment. In explaining the amendment, Justice Florenz D. Regalado commented:

"Without this amendatory provision, the ends of public justice would be set at naught and, where the civil liability ex delicto was instituted with the criminal action, the offended party could not enforce either the primary liability of the accused or any subsidiary liability, where proper and involved in the case, as no judgment could be promulgated. Since both the 1973 and 1987 Constitutions only require prior arraignment as an indispensable requisite and the trial may thereafter proceed in the absence of the accused, the judgment in this case being merely the procedural culmination of the trial, the promulgation thereof can justifiably be made in absentia in the manner set out in this section" (*II Regalado, Remedial Law Compendium* 369, [6th ed., 1989]).

If, for any reason, it should be claimed that the provision under discussion is intended to be the procedure in the trial courts, the simple rejoinder is that there is no reason why, on considerations of its rationale and procedural expediency, the same should not apply to the same factual situation in the appellate courts. In the Supreme Court and the Court of Appeals, the judgment is promulgated by merely filing the signed copy thereof with the Clerk of Court who causes true copies of the same to be served upon the parties,[50] hence the appearance of the accused is not even required there as his presence is necessary only in the promulgation of the judgments of trial courts.[51] Thereafter, when the judgment of the appellate court becomes executory, the records of the case together with a certified copy of the appellate court judgment are returned to the court a quo for execution of the judgment.[52] On this issue, however, one member of this Court has submitted a separate opinion.

At this juncture, we also note that when the rape was committed the governing law was Article 335 of the Revised Penal Code, as amended by Republic Acts Nos. 4111 and 7659,[53] under which the use of a deadly weapon in committing the felony of rape was, as it still is, punished by reclusion perpetua to death.

Reclusion perpetua and death are indivisible penalties and Article 63 of the Revised Penal Code provides the rules for their application, one of which, pertinent to this case, is that when in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.

Two aggravating circumstances were alleged in the information, namely, nocturnity and dwelling. We agree with the court below that nocturnity cannot be appreciated as an aggravating circumstance in this case because although the crime was committed late that night, the evidence does not positively establish that nighttime facilitated the commission of the crime, or that it was especially sought by the offender to ensure its commission, or that the offender took advantage thereof for impunity. It cannot, therefore, be considered herein under either the so-called objective or subjective tests for determining the existence of this circumstance.

It is clear, however, that the aggravating circumstance of dwelling is attendant in the commission of the crime. Article 14(5) of the Revised Penal Code provides that this circumstance aggravates a felony where the crime is committed in the dwelling of the offended party, if the latter has not given provocation. In the instant case, the aforesaid circumstance of dwelling was definitely present in the commission of the crime of rape with the use of a deadly weapon. From all the foregoing considerations, the presence of this aggravating circumstance mandates that the supreme penalty of death be imposed.

The lower court, however, erred in classifying the award of P50,000.00 to the offended party as being in the character of moral damages. Jurisprudence has elucidated that the award authorized by the criminal law as civil indemnity ex delicto for the offended party, in the amount authorized by the prevailing judicial policy and aside from other proven actual damages, is itself equivalent to actual or compensatory damages in civil law.[54] For that matter, the civil liability ex delicto provided by the Revised Penal Code, that is, restitution, reparation and indemnification,[55] all correspond to actual or compensatory damages in the Civil Code,[56] since the other damages provided therein are moral, nominal, temperate or moderate, liquidated, and exemplary or corrective damages[57] which have altogether different concepts and fundaments.

We reiterate here that said civil indemnity is mandatory upon the finding of the fact of rape; it is distinct from and should not be denominated as moral damages which are based on different jural foundations and assessed by the court in the exercise of sound discretion.[58] Evidently, therefore, the lower court actually intended the award of P50,000.00 as indemnification to be paid to the victim.

On this score, we have to take note of a new policy adopted by the Court. The recent judicial prescription is that the indemnification of the victim shall be in the increased amount of P75,000.00 if the crime of rape is committed or effectively qualified by any of the circumstances under which the death penalty is authorized by the applicable amendatory laws.[59] Applying the foregoing policy, the civil indemnity to be awarded to the offended party in the case at bar is and should be P75,000.00.

One other cognate development in the case law on rape is applicable to the present disposition. The Court has also resolved that in crimes of rape, such as that under consideration, moral damages may additionally be awarded to the victim in the criminal proceeding, in such amount as the Court deems just, without the need for pleading or proof of the basis thereof as has heretofore been the practice. Indeed, the conventional requirement of *allegata et probata* in civil procedure and for essentially civil cases should be dispensed with in criminal prosecutions for rape with the civil aspect included therein, since no appropriate pleadings are filed wherein such allegations can be made.

Corollarily, the fact that complainant has suffered the trauma of mental, physical and psychological sufferings which constitute the bases for moral damages[60] are too obvious to still require the recital thereof at the trial by the victim, since the Court itself even assumes and acknowledges such agony on her part as a gauge of her credibility. What exists by necessary implication as being ineludibly present in the case need not go through superfluity of still being proven through a testimonial charade.

The People having established the guilt of appellant beyond reasonable doubt, his conviction and the penalty imposed by the court a quo is correct and must consequently be affirmed. Withal, four Members of this Court maintain their position that Republic Act No. 7659 insofar as it prescribes the death penalty is unconstitutional; but they nevertheless submit to the ruling of the majority that the law is constitutional and that the death penalty should be imposed in this case.

WHEREFORE, the judgment of the Regional Trial Court of Iriga City, Branch 36, in Criminal Case No. IR-3666 is hereby AFFIRMED, with the MODIFICATION that accused-appellant Senen Prades is ordered to indemnify the offended party, Emmie R. Rosales, in the amount of P75,000.00 as compensatory damages, and to pay the additional amount of P50,000.00 as moral damages, with costs in all instances.

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 the records of this case be forthwith forwarded to the Office of the President for possible exercise of the pardoning power.

SO ORDERED.

Narvasa, C.J., Regalado, Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Martinez, Quisumbing, and Purisima, JJ., concur.

Dissenting Opinion.

[1] Rollo, pp. 9-14; per Judge Orlando L. Espinas.

[2] Ibid., p.4.

[3] Original Record, pp. 24-25.

[4] Ibid., p.30.

[5] Ibid., pp.47, 51-57.

[6] TSN, August 17, 1995, pp.4, 14-15.

[7] Ibid., id., pp.5-6.

[8] Ibid., id., p.18.

[9] Ibid., id., p.17.

[10] Ibid., id., p.7.

[11] Ibid., id., pp.20-21.

[12] Ibid., id., pp.7, 23.

[13] Ibid., id., p.7.

[14] Ibid., id., p.8.

- [15] Ibid., id., Id.
- [16] Ibid., id., pp.9-11; Exhibits B, B-1, B-2 and B-2-A; Original Record, pp.78-79.
- [17] TSN, August 17, 1995, pp.25-26.
- [18] Ibid., id., id.
- [19] Ibid., id., p.11.
- [20] Ibid., id., p.12.
- [21] Original Record, p.10.
- [22] Ibid., p.17.
- [23] The witness is also referred to as Dr. Estephen A. Beltran in the record.
- [24] TSN, December 14, 1994, p.9.
- [25] Exhibits A, A-1 and A-2; Original Record, p.6.
- [26] Original Record, p.47.
- [27] TSN, August 17, 1995, p.13.
- [28] Original Record, p.76.
- [29] Ibid., p.93.
- [30] Rollo, pp.29-30.
- [31] TSN, August 17, 1995, p.3.
- [32] Ibid., id., p.24.
- [33] Ibid., id., p.25.
- [34] Rollo, p.29.
- [35] TSN, August 17, 1995, p.17.
- [36] People vs. Dela Torre, et al., G.R. No. 83326, May 27, 1997, 272 SCRA 615; People vs. Castañeda, G.R. No. 114972, January 24, 1996, 252 SCRA 247.
- [37] People vs. Leoterio, G.R. Nos. 119405-06, November 21, 1996, 264 SCRA 608; People vs. Echegaray, G.R. No. 117472, June 25, 1996, 257 SCRA 561; People vs. Matamorosa, et al., G.R. Nos. 104996-98, March 28, 1994, 231 SCRA 509.
- [38] People vs. Corea, G.R. No. 114383, March 3, 1997, 269 SCRA 76; People vs. Bayani, G.R. No. 120894, October 3, 1996, 262 SCRA 660; People vs. Gecomo, G.R. Nos. 115035-36, February 23, 1996, 254 SCRA 82.
- [39] People vs. Rabosa, G.R. Nos. 119362 and 120269, June 9, 1997, 273 SCRA 142; People vs. Quiamco, et al., G.R. No. 96249, February 19, 1997, 268 SCRA 516; People vs. Salazar, G.R. Nos. 98121-22, July 5, 1996, 258 SCRA 55.
- [40] See People vs. Gementiza, G.R. No. 123151, January 29, 1998; People vs. Devilleres, G.R. No. 114387, March 14, 1997, 269 SCRA 716; People vs. Burce, G.R. Nos. 108604-10, March 7, 1997, 269 SCRA 293; People

vs. Talaboc, G.R. No. 103290, April 23, 1996, 256 SCRA 441.

[41] Section 27, Rule 130, Rules of Court.

[42] People vs. Yparaguirre, G.R. No. 117702, February 10, 1997, 268 SCRA 35.

[43] People vs. De Guzman, G.R. No. 117217, December 2, 1996, 265 SCRA 228.

[44] See People vs. Soriano, G.R. No. 114901, May 29, 1997, 272 SCRA 760.

[45] U.S. vs. Alegado, 25 Phil. 510 (1913).

[46] People vs. Igdanes, G.R. No. 105804, May 5, 1997, 272 SCRA 113; People vs. Vallador, et al., G.R. No. 116071, June 20, 1996, 257 SCRA 515; People vs. Javier, G.R. No. 104729, February 3, 1994, 229 SCRA 638; People vs. Martinado, et al., G.R. No. 92020, October 19, 1992, 214 SCRA 712; People vs. Garcia, G.R. No. 69581, May 21, 1992, 209 SCRA 164; U.S. vs. Alegado, supra, Fn.45.

[47] Rodriguez vs. COMELEC, et al., G.R. No. 120099, July 24, 1996, 259 SCRA 296; Marquez, Jr. vs. COMELEC, et al., G.R. No. 112889, April 18, 1995, 243 SCRA 538.

[48] G.R. No. 120034, July 10, 1998.

[49] G.R. No. 110886, December 20, 1994, 239 SCRA 325.

* This paragraph provides: “The proper clerk of court shall give notice to the accused personally to through his bondsman or warden or counsel requiring him to be present at the promulgation of the decision. In case the accused fails to appear thereat the promulgation shall consist in the recording of the judgment in the criminal docket and a copy thereof shall be served upon the accused or counsel. If the judgment is for conviction, and the accused’s failure to appear was without justifiable cause, the court shall further order the arrest of the accused who may appeal within fifteen (15) days from notice of the decision to him or his counsel.”

[50] Section 9, Rule 51, in relation to Section 4, Rule 56 and Section 18, Rule 124; Alvarado, etc. vs. Director of Prisons, 87 Phil. 157 (1950).

[51] People vs. Sumilang, 77 Phil. 764 (1946).

[52] Section 17, Rule 124, in relation to Section 1, Rule 125; Alvarado, etc. vs. Director of Prisons, ante.

[53] Article 335 of the Revised Penal Code was amended by Republic Act No. 4111 on June 20, 1964 and, subsequently, by Republic Act No. 7659 effective December 31, 1993.

[54] People vs. Victor, G.R. No. 127903, July 9, 1998.

[55] Articles 104-107, Revised Penal Code.

[56] Articles 2194-2215, Civil Code.

[57] Articles 2216-2235, id.

[58] People vs. Gementiza, supra, Fn. 40; People vs. Caballes, et al., G.R. Nos. 102723-24, June 19, 1997.

[59] People vs. Victor, supra. The laws referred to are Republic Acts Nos. 4111 and 7659. Republic Act No. 8353, “The Anti-Rape Law of 1997,” is not being considered in this decision because the crime herein was committed in 1994.

[60] Article 2217 of the Civil Code speaks of physical suffering, mental anguish, fright, serious anxiety,

besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury.

SEPARATE OPINION

Appellant Senen Prades absconded before the prosecution finished presenting its evidence in the trial court. But trial proceeded and judgment was rendered in his absence.

In *People v. Esparas*,* the accused after her arraignment escaped from jail. Like the present appellant, she was tried in absentia, found guilty as charged and sentenced to the death penalty. Before requiring appellant to file an appeal brief, this Court was confronted with the issue of “whether or not it will proceed to automatically review her death sentence.”

Affirmative votes were cast by six (6) justices; namely, JJ. Davide Jr., Romero, Bellosillo, Kapunan, Hermosisima, and J. Puno who wrote that existing jurisprudence mandates a review of all death penalty cases regardless of the escape of the accused from confinement. Two (2) other justices, JJ. Vitug and Panganiban, joined only in the result, explaining that while the Court should not dismiss an appeal from a decision imposing the death penalty due to the escape of the accused, it cannot at the same time render judgment on him until after he is rearrested and thus becomes subject to the jurisdiction of the Court. Six (6) other justices — CJ. Narvasa and JJ. Padilla, Regalado, Melo, Mendoza and Torres — dissented, with J. Padilla stressing in his written dissent that when an appellant escapes from confinement or jumps bail or flees to a foreign country during the pendency of the appeal, the dismissal of such appeal is authorized under Section 8, Rule 124 of the Rules of Court.

While an escapee mocks the law and puts himself outside the protection of the judiciary, and while his appeal should not be automatically dismissed merely for that reason, still I believe that the Supreme Court should not deliberate on the appeal of the accused, much less render judgment thereon, until after he or she is rearrested or voluntarily submits to the jurisdiction of the Court.

In the present case, I therefore vote that the Court should not deliberate nor render judgment on the appeal until after the appellant is within the Court’s jurisdiction.

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