

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOLITO ORANZA Y LOYOLA, ACCUSED-APPELLANT.

G.R. No. 127748. July 25, 2002

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PER CURIAM:

Before us is an automatic review of the decision dated October 15, 1996 rendered by the Regional Trial Court (Branch 27) of Tandag, Surigao del Sur in Criminal Case No. 3435, the dispositive portion of which reads:

“WHEREFORE, finding accused Jolito Oranza y Loyola GUILTY beyond reasonable doubt of the crime of ROBBERY WITH RAPE under Paragraph 1 of Article 294 of the Revised Penal Code, as amended by Section 9 of Republic Act No. 7659, aggravated by dwelling and nighttime, without any mitigating circumstance to offset the same, the Court hereby sentences him to suffer the supreme penalty of DEATH; to pay private complainants Teresa, Remedios and Biolo Guardo the sum of Eleven Thousand Three Hundred (P11,300.00) Pesos as actual or compensatory damages, and Teresa Guardo the sum of Fifty Thousand (P50,000.00) Pesos as moral damages and Fifty Thousand (P50,000.00) Pesos as Exemplary damages, without subsidiary imprisonment in case of insolvency, and without prejudice to his demanding from his co-accused the latter’s proportionate shares of the damages; and to pay the cost.

“x x x x x x x x”[1]

The Information filed against accused-appellant Jolito Oranza y Loyola reads:

“The undersigned prosecutor hereby accuses LAPE MARTINEZ, DONDON SUAREZ, JOLITO ORANZA and ROSFIL MONTERO of the crime of ROBBERY IN BAND with RAPE, committed as follows:

That on the 6th day of February 1995 at about 8:00 o’clock in the afternoon, more or less, at barangay Baras, municipality of San Miguel, province of Surigao del Sure, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, all armed with firearm and bladed weapons, conspiring, confederating and mutually helping one another, did, then and there, willfully, unlawfully and feloniously enter the residence of Remedios Guardo and once inside, with intent to gain and by means of violence upon person, did, then and there, willfully, unlawfully and feloniously take, steal and carry away the following items, to wit:

Necklace

P4,500.00

Wrist Watch (Gold plated)

2,700.00

Wrist Watch

1,500.00

(undetermined cash and other personal belongings)

with a total value of P11,375.95; and on the same occasion, the above-named accused, helping one another, by means of force and intimidation, did, then and there, willfully, unlawfully and feloniously have carnal knowledge upon Teresa Guardo, against the will of the latter, to the damage and prejudice of the victim in the amount of P50,000.00; or to their damage and prejudice in the total amount of P61,375.95.

CONTRARY TO LAW. (In violation of paragraph 2, Article 294 of the Revised Penal Code).[2]

His co-accused Lape Martinez and Dondon Suarez are at-large. Accused-appellant Jolito Oranza and his co-accused, Rosfil Montero were duly arraigned to which they pleaded “not guilty”. Trial ensued. After the testimonies of the victim Teresa Guardo and her mother, Remedios Guardo, accused-appellant Oranza escaped from jail.[3] Trial proceeded in his absence.

After the prosecution rested its case, the trial court allowed accused Rosfil Montero to plead guilty to the lower offense of simple Robbery under Article 294 (5) of the Revised Penal Code and rendered a decision dated February 26, 1996 convicting accused Rosfil Montero of the simple crime of Robbery.

Despite ample time given to the Public Attorney’s Office (PAO), as counsel for accused-appellant, it failed to present evidence for the defense as Oranza remained at-large, thereby constraining the trial court to consider the case submitted for decision.

Hence, the herein RTC decision subject of automatic review.

The facts of the case as found by the trial court are as follows:

“x x x on February 6, 1995, at about 8:00 o’clock in the evening, Teresa Guardo, together with her parents and brother Renato alias “Dodong”, were in their house at Barangay Baras, San Miguel, Surigao del Sur. Teresa was in the kitchen taking her supper, while her parents and brother Dodong were already resting. Just then, Teresa and her mother Remedios heard their neighbor Rosfil Montero calling Dodong, at the same time knocking at the door downstairs. Rosfil wanted to buy medicines (tabletas). At the instruction of Remedios, Dodong opened the window and flashlighted Rosfil, who asked the former to open the door. Moments later, Dodong called them, asking them to go downstairs. Sensing something was wrong, they went down together with Remedios’ husband, Biolo Guardo. Then and there, they saw Dodong already hogtied outside their house. Behind the post of their house, they saw Rosfil who tried to hide himself. They also saw Lape Martinez, Dondon Suarez and Jolito Oranza. Lape ordered Jolito to tie Teresa. He complied and hogtied her. He also got her necklace and wrist watch, after which he took her upstairs. Lape then ordered Remedios and Bio to hit the ground face against it. They obeyed him.

“Soon after Teresa and Jolito took to the second floor of the house, it started to rain. Remedios, Biolo and Dodong were allowed to take shelter at the ground floor but were kept under guard by Lape and Dondon, who were pointing their guns at them.

“Upstairs, Jolito searched the room and found P500.00 inside the Cabinet and took it. He then tried to make love to Teresa, who however resisted and pleaded to him not to do it. He desisted and allowed Teresa to leave the room. But Lape met her as she was going out of the room, forced her back inside, ordered her to lie down, undressed her and when she resisted his advances, boxed and pointed a gun at her. He succeeded in ravishing

her, after which he left the room and went downstairs. Teresa tried to follow but was blocked by Dondon who took her back to the room and raped her. Jolito then took his turn in raping her.

“After the three were through with her, Teresa was untied. Dodong too was untied. The three then went inside the Store located at the ground floor and feasted on the drinks, bread and cigarettes on display. They even broke some bottles when they apparently got tipsy, and then gathered the more expensive goods on display. Before they left, they flashlighted their faces and asked their victims whether the latter recognized them. Out of fear, the Guardos answered that they did not.

“Complainants estimated the cost of the loot, consisting of cash, necklace, two wrist watches, T-shirts, shoes, dresses and other items on display at the Store at P11,300.00 plus.

“The following morning, accompanied by her mother, Teresa submitted herself for medical examination at the Adela Serra Ty Memorial Hospital at the Provincial Capital of Tandag. Dr. Wilhelmina Ang, M.D., the examining physician, issued a Medical Certificate (Exhibit “A”) which shows inter alia “linear abrasion right anterior neck” and “hematoma left shoulder contusion left wrist” (Exhibit “A-3”), “hymenal laceration 6:00 o’clock position posterior” (Exhibit “A-2”) and “vaginal smear of the presence of spermatozoa - positive for spermatozoa” (Exhibit “A-4”).”[4]

The PAO filed the appeal brief for accused-appellant Jolito Oranza.

As admitted by the PAO, accused-appellant remains a fugitive from justice. However, the Court shall proceed with the review of the decision of the trial court as the penalty imposed is death, which, under Section 10, Rule 122 of the Rules of Court, calls for automatic review by the Supreme Court.[5]

Appellant anchors his appeal on the following assigned errors:

“I

“THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME OF ROBBERY WITH RAPE AS PENALIZED UNDER ARTICLE 294(1) OF THE REVISED PENAL CODE AS AMENDED BY REPUBLIC ACT NO. 7659.

“II

“THE COURT A QUO GRAVELY ERRED IN IMPOSING UPON THE ACCUSED-APPELLANT THE CAPITAL PENALTY OF DEATH.

“III

“THE COURT A QUO GRAVELY ERRED IN ORDERING THE ACCUSED-APPELLANT TO PAY ELEVEN THOUSAND THREE HUNDRED PESOS (P11,300.00) AS ACTUAL AND COMPENSATORY DAMAGES, THE SUM OF FIFTY THOUSAND PESOS (P50,000.00) AS MORAL DAMAGES AND FIFTY THOUSAND PESOS (P50,000.00) AS EXEMPLARY DAMAGES.”[6]

Appellant assails the credibility of the identification made of him by Teresa Guardo and her mother, Remedios Guardo, as one of the perpetrators of the crime of Robbery with Rape. He points out that Teresa admitted on the witness stand that it was dark inside their house; that she did not recognize Lape Martinez, Dondon Suarez and appellant Jolito Oranza while they were taking turns raping her; that she recognized appellant only because all the accused including appellant, “flashlighted their faces and asked us if we knew them”; that she recognized appellant as the one who raped her because he was fat; that Remedios admitted that she did not know appellant.

Appellant argues that it is unusual for Teresa and Remedios to recognize him by means only of the thin radiance

of the flashlight; that since the face of the appellant was not illumined when Teresa's valuables were taken or when she was tied up and raped, he could not be held accountable for said acts because he could not be positively associated with said acts; that the fact that he was with his other co-accused does not necessarily imply that he committed the crime of Robbery with Rape.

We are not persuaded.

In rape cases, conviction or acquittal depends almost entirely on the credibility of the complainant's testimony.[7] And, when credibility is in issue, settled is the rule that the Court generally defers to the findings of the trial court considering that it is in a better position to decide the question, having heard the witnesses themselves and observed their deportment during trial.[8] The trial court's assessment of the credibility of the witnesses is accorded great respect and will not be disturbed on appeal unless a material or substantial fact has been overlooked or misappreciated, which if properly taken into account may alter the outcome of the case.[9]

While the testimonies of Teresa and Remedios seem to be incredible at first blush when they testified that they were able to see appellant because the accused including appellant showed their faces to them by means of the flashlight they got from the Guardos, the same does not denigrate their credibility. We agree with the trial court that the act of the accused in flashlighting their faces just before they left the house was obviously intended to intimidate and discourage the victims from reporting the incident to the police.[10]

After a careful examination of the records of the case, we find no compelling reason to disturb or set aside the conviction of appellant by the trial court, for the following reasons:

- The credibility of the testimony of Teresa should be assessed in its entirety and not just based on excerpts plucked from the transcripts of stenographic notes to support the claim of appellant.

Appellant did not mention that Teresa likewise testified that even before that fateful night, she knew accused Lape Martinez since childhood and accused Rosfil Montero was her neighbor;[11] that her brother Renato used a flashlight and saw Rosfil who ordered him to open the door;[12] that upon instruction of Lape, appellee tied her up and then took her necklace and wristwatch;[13] that appellant took her upstairs as his guide in his search for money.[14]

Victim Teresa further testified:

“Q. So you did not recognize them while they were raping you one after the other?

A. When they raped me I did not recognize them but after they raped me I recognize them.

Q. How did you know that it was Lape Martinez who first raped you?

A. Because of the built of his body.

Q. How did you know that the next one who raped you was Dondon Suarez?

A. Because he was just wearing a sando or undershirt.

Q. And how did you know that it was Jolito Oranza who was the third who raped you?

A. Because he was fat.

Q. So you recognized him by his physical built?

A. Yes, sir.

Q. Are you familiar with all these people even before the incident?

A. I only know Lape Martinez and I was not familiar with Dondon Suarez and Jolito Oranza. It is only now that I know Jolito Oranza.

Q. So that Court get ir (sic) right that you were only familiar with Lape Martinez and Rosfil Montero?

A. Yes, sir.”[15]

Further, Teresa testified that before she was raped, she heard accused Lape order appellant to tie her up. The sound of the voice of a person is an acceptable means of identification where it is established that the witness and the accused knew each other personally and closely for a number of years.[16] Consequently, after Teresa had recognized Lape who she had known for a long time, it is logical to conclude that she would know, by the simple process of elimination, as there were only three (3) who went inside their house, and robbed and raped her, namely: Lape Martinez, Dondon Suarez and Jolito Oranza, that it was appellant Oranza who tied her, took her necklace and wristwatch and raped her. The fact that appellant was fat easily distinguished him from Lape Martinez and Dondon Suarez, who also raped her. A man and a woman cannot be more physically close to each other than during a sexual act.[17] Victim of criminal violence naturally strive to know the identity of their assailants and observe the manner the crime was perpetrated, creating a lasting impression which may not be erased easily in their memory.[18]

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The fact that Teresa saw the face of appellant because of the flashlight is enough to identify him as one of the persons who robbed and raped her. The Court has held that the absence of illumination in the place of commission of the crime does not detract from the positive identification by the victim of the accused as her assailant - although visibility is an important factor in the identification of a criminal offender, its relative significance depends largely on the attending circumstances and the discretion of the trial court.[19] That the crime took place in a dark place does not prevent the identification of the criminals - wicklamps, flashlights, even moonlight and starlight may, in proper situations, be sufficient illumination, making the attack on the credibility of witnesses solely on this ground unmeritorious.[20]

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Appellant’s flight after the offended parties testified in court is evidence of guilt. No reason can be deduced from the accused’s flight other than that he was driven by a strong sense of guilt and admission that he had no tenable defense.[21]

- Prosecution evidence is clear and convincing that there was conspiracy among the accused. It is established by prosecution evidence through the testimonies of Teresa and Remedios Guardo that appellant participated as principal in the commission of the crime of robbery and in raping Teresa after Lape Martinez and Dondon Suarez. In a conspiracy, the act of one is the act of all.[22] As aptly described by the trial court:

“From the foregoing facts and the evidence extant in the record, the Court is convinced that the guilt of accused Jolito Oranza of the offense charged has been established beyond reasonable doubt. That he participated both in the robbery and the accompanying rapes, the evidence is too compelling to have doubts about. He was in fact the most active participant albeit taking directions from co-accused Lape Martinez, who seemed to be the leader of the group. Thus, after hogtying Teresa Guardo, he got her necklace and wrist watch, took her to the second floor of her house, initially and purportedly, to get her to guide him in his search for the victims’ money but, ultimately, to have her satisfy his and his companions’ bestial lusts, as they did in fact take turns in ravishing her. Thereafter, he joined his two companions, Lape an Dondon, and feasted on the bread, soft-drinks, beer and cigarettes in victims’ store downstairs, after which they gathered and took away the more expensive goods on display thereat.”[23]

- The extrajudicial confession, Exhibit “B”,^[24] of appellant himself bolsters the finding that appellant is guilty as charged. Exhibit “B” is identified by SPO3 Mario C. Balan on the witness stand, he being present when appellant affixed his signature on the written confession.^[25] SPO3 Balan categorically testified that before appellant gave his extrajudicial confession, he was informed of all his constitutional rights, that appellant was duly assisted by Atty. Teofilo B. Manuel, Jr., District Public Attorney of the PAO, Department of Justice; and that appellant subscribed and swore to the voluntary execution of said confession before Municipal Trial Judge Jose M. Garcia.^[26] Under rules laid down by the Constitution, existing laws and jurisprudence, a confession to be admissible must satisfy all four fundamental requirements, namely: (1) the confession must be voluntary; (2) the confession must be made with the assistance of competent and independent counsel; (3) the confession must be express; and (4) the confession must be in writing.^[27] All the above requirements were complied with and therefore the extrajudicial confession of guilt is admissible in evidence against him. Defense was given the opportunity to confront and cross-examine said witness but appellant chose to be a fugitive from justice. His counsel objected to the admission of the extrajudicial confession for being hearsay but the trial court admitted the same as part of the testimony of prosecution witness Balan.^[28]

Notably, appellant did not attack the admissibility of Exhibit “B” in his Brief. But even if we discard Exhibit “B”, the testimony of Teresa and the other facts and circumstances heretofore enumerated are sufficient to sustain the conviction of appellant beyond reasonable doubt.

Appeal in a criminal proceeding throws the whole case open for review and it becomes the duty of the Court to correct any error as may be found in the judgment under review, whether or not it is made the subject of assignment of errors.^[29]

We have examined the propriety of the penalty of death imposed upon appellant and we find no cogent reason to disturb the same. It has been established beyond reasonable doubt that Teresa Guardo was raped by three (3) persons on the occasion of the commission of the crime of Robbery. Victim Teresa positively testified that both appellant and accused Lape pointed to her a pistol and a knife threatening her that they will kill her if she does not consent.^[30] The case of *People v. Cula* serves as a guideline in the imposition of the proper penalty:

“Under Article 335 of the Revised Penal Code (RPC), as amended by Republic Act No. 7659, the penalty shall be reclusion perpetua to death whenever the crime of rape is committed with the use of deadly weapon or by two or more persons. In the case at bar, two circumstances are present, namely: (1) use of deadly weapon and (2) two persons committing the rape. Both circumstances were alleged in the complaint and proved at the trial. In *People vs. Garcia*, 105 SCRA6 [1981], the Court had occasion to rule that where these two circumstances are present, there is no legal basis to consider one circumstance as a qualifying circumstance and the other as a generic aggravating circumstance, so as to impose the higher penalty of death. Under the law, either circumstance is always a qualifying circumstance and cannot be regarded as a generic aggravating circumstance for either is not among the aggravating circumstances enumerated in Article 14 of the Revised Penal Code.

The penalty of reclusion perpetua to death is composed of two indivisible penalties. Article 63 of the RPC provides:

In all cases in which the law prescribes a penalty composed of two indivisible penalties the following rules shall be observed in the application thereof:

- When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.
- When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.

- When the commission of the act is attended by some mitigating circumstance and there is no aggravating circumstance, the lesser penalty shall be applied.
- When both mitigating and aggravating circumstances attended the commission of the act, the courts shall reasonably allow them to offset one another in consideration of their number and importance, for the purpose of applying the penalty in accordance with the preceding rules, according to the result of such compensation.”[31]

Although the qualifying circumstances of use of deadly weapon is not specifically alleged in the Information insofar as the commission of the crime of Rape is concerned, the qualifying circumstance that more than two (2) persons raped Teresa is alleged in the Information and proven. The presence of only one qualifying circumstance is sufficient for the crime to fall under R.A. 7659 which provides that the imposable penalty shall be reclusion perpetua to death.

The trial court erred in considering nighttime as aggravating circumstance inasmuch as prosecution evidence failed to establish that appellant and his co-accused purposely sought nighttime to perpetrate the crime. Their act of purposely showing their faces to the victims through the flashlight negates the conclusion that accused chose nighttime to facilitate the commission of the offense. The mere fact that the rape was committed at nighttime with nothing more than that does not make nocturnity an aggravating circumstance.[32]

However, considering that the aggravating circumstance of dwelling attends the commission of the complex crime of Robbery with Rape, the trial court correctly imposed the penalty of death under the Cula case and in accordance with the aforequoted Article 63 of the Revised Penal Code and paragraph 3, Article 14, to wit:

“ART. 14. Aggravating circumstances. - The following are aggravating circumstances:

x x x x x x x x

3. That the act be committed with insult or in disregard of the respect due to the offended party on account of his rank, age, or sex, or that it be committed in the dwelling of the offended party, if the latter has not given provocation.” (emphasis ours)

There is no evidence that the witness had given any provocation.

As to the damages awarded, appellant complains that the trial court gravely erred in ordering appellant to pay Eleven Thousand Three Hundred Pesos (P11,300.00) representing the actual and compensatory damages. Victim Teresa testified that appellant took her necklace worth Four Thousand Pesos (P4,000.00), Seiko wristwatch worth Two Thousand Five Hundred Pesos (P2,500.00), and cash in the amount of Five Hundred Pesos (P500.00).[33] Taking cognizance of the fact that it is a common and ordinary human conduct for persons not to keep receipts for jewelries of such value and considering that there is no countervailing evidence presented to refute the testimony of Teresa, we sustain the award of Seven Thousand Pesos (P7,000.00) in favor of Teresa. The trial court may take judicial notice of the value of the stolen jewelries because these are matters of public knowledge or are capable of unquestionable demonstration [34]

The testimony of Remedios that the accused took her Seiko wristwatch in the amount of One Thousand Seven Hundred Pesos (P1,700.00) is admissible for the same reason we accept Teresa’s claim. However, as to the rest of the claim of Remedios that “shoes, dresses, pants and four (4) T-shirts (wacky) and other things”[35] were also taken by the accused, the same could not be compensated as no value therefor was actually alleged in the Information or testified to in Court.

Hence, the trial court should have awarded a total of Eight Thousand Seven Hundred Pesos (P8,700.00) only for actual and compensatory damages.

As to the award of moral damages, we held in *People v. Carillo*,^[36] that the victim Teresa is entitled to moral damages in the amount of Fifty Thousand Pesos (P50,000.00) without further need of proof of mental and physical suffering.^[37] Further, upon finding of the fact of rape, it is mandatory that the offended party be awarded civil indemnity *ex delicto* in the amount of Fifty Thousand Pesos (P50,000.00).^[38]

In addition, considering that conspiracy is proven by the prosecution evidence, appellant is responsible not only for his unlawful acts but also for those of the other malefactors, and considering that Teresa was raped by three (3) men, appellant shall be liable for three (3) counts of rape.

The RTC is correct in awarding the Guardo family the amount of Fifty Thousand Pesos (P50,000.00) for exemplary damages considering the presence of aggravating circumstance of dwelling^[39] so as to deter persons from unlawfully violating the sanctuary of a dwelling with impunity.

WHEREFORE, the decision of the Regional Trial Court of Tandag, Surigao del Sur (Branch 27) convicting accused Jolito Oranza y Loyola of the complex crime of Robbery with Rape, imposing upon him the supreme penalty of DEATH^[40] is AFFIRMED with MODIFICATIONS only as to the damages awarded to the offended parties in that accused Jolito Oranza y Loyola is ordered: to pay private complainant Teresa and Remedios Guardo the amount of Eight Thousand Seven Hundred (P8,700.00) as and for actual damages; to pay Teresa Guardo the sum of Fifty Thousand Pesos (P50,000.00) as civil indemnity in addition to the moral damages of Fifty Thousand Pesos (P50,000.00) awarded by the trial court, for each of the three (3) counts of rape, or, a total of Three Hundred Thousand Pesos (P300,000.00); and to pay Teresa, Remedios and Biolo Guardo the amount of Fifty Thousand Pesos (P50,000.00) as and for exemplary damages.

SO ORDERED.

Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, and Corona, JJ., concur.

Davide, Jr., C.J.,[*] on official leave.

Bellosillo, J., no part. Did not take part in deliberation.

[1] Original Records, p. 220.

[2] Original Records, p. 35.

[3] Original Records, pp. 215-216.

[4] Original Records, pp. 215-217.

[5] *People v. Cornelio*, 39 SCRA 435; *People v. Esparas*, 292 SCRA 332; *People v. Prades*, 293 SCRA 426.

[6] *Rollo*, p. 36.

[7] *People v. Ramos*, 345 SCRA 685.

[8] *People v. Navida*, 346 SCRA 821.

[9] *People v. Babena*, 332 SCRA 257.

[10] RTC decision, p. 6.

[11] TSN, July 21, 1995.

[12] *Ibid.*, pp. 6-7.

- [13] Ibid., pp. 7-8.
- [14] Ibid., p.9.
- [15] TSN, July 21, 1995, p. 25.
- [16] People v. Gayomma, 315 SCRA 639.
- [17] People v. Diopita, 346 SCRA 794.
- [18] Ibid.
- [19] People v. Cambi, 333 SCRA 305.
- [20] People v. Regala, 329 SCRA 707; People v. Alipayo, 324 SCRA 447.
- [21] People v. Mantung, 310 SCRA 819.
- [22] People v. de Vera, 312 SCRA 640.
- [23] Original Records, p. 217.
- [24] Original Records, p. 30.
- [25] TSN, January 9, 1996, pp. 9-10.
- [26] Original Records, Exhibit “B-1”, “B-2” and “B-3”, p. 31; TSN, January 9, 1996, p. 10.
- [27] People v. Gallardo, 323 SCRA 218, 229.
- [28] Original Records, p. 136.
- [29] People v. Listerio, 335 SCRA 40.
- [30] TSN, Hearing of July 21, 1995, pp. 13, 15.
- [31] 329 SCRA 101, pp. 117-118 [2002].
- [32] People v. Lomerio, 326 SCRA 530.
- [33] TSN, July 21, 1995, p. 8-10.
- [34] People v. Martinez, 274 SCRA 259, 273.
- [35] TSN, December 1, 1995, p. 10.
- [36] People v. Antonio, 336 SCRA 366, 375; People v. Martinez, 274 SCRA 259, 274.
- [37] People v. Antonio, 336 SCRA 366, 375; People v. Martinez, 274 SCRA 259, 274.
- [38] Ibid, at p. 375; People v. Omar, 327 SCRA 221.
- [39] People v. Mangompit, Jr., 353 SCRA 833, 353; People v. Balunting, 303 SCRA 558, 569.
- [40] Three members of the Court maintain their position that RA 7659, insofar as it prescribes the death penalty, is unconstitutional; however, they submit to the ruling of the Court, by majority vote, that the law is constitutional and that the death penalty should be imposed accordingly.
- [*]On official leave.

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