

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARIO CASTILLO Y FELICILDA, ALLAN ESPLANA Y BONCODIN, OLIVER VAIDAL Y ALMOGEN, AND PABLITO JAVIER JR. Y CASTRO, ACCUSED-APPELL...

G.R. No. 131200. February 15, 2002

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On appeal is the decision[1] of the Regional Trial Court of Pasay City, Branch 109, in Criminal Cases Nos. 97-9946 and 97-9947 involving gang rape. Appellants Mario Castillo, Allan Esplana, Oliver Vaidal and Pablito Javier, Jr., were found guilty beyond reasonable doubt of two counts of rape, and each was sentenced to suffer the penalty of reclusion perpetua.

Two charges of rape were brought against them under two separate informations, which read:

Crim. Case No. 97-9946

That on or about the 25th day of February, 1997, in Pasay, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, MARIO CASTILLO Y FELICILDA, in conspiracy with his co-accused ALLAN ESPLANA Y BONCODIN, OLIVER VAIDAL Y ALMOGEN and PABLITO JAVIER, JR., Y CASTRO, while under the influence of liquor, by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with the complainant, MA. CHALET (sic) AGUSTIN Y ADUYUGAN, a minor 15 years of age, against her will.

Contrary to law.[2]

Criminal Case No. 97-9947

That on or about the 25th day of February, 1997, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, ALLAN ESPLANA Y BONCODIN in conspiracy with his co-accused MARIO CASTILLO Y FELICILDA, OLIVER VAIDAL Y ALMOGEN, and PABLITO JAVIER JR. Y CASTRO, while under the influence of liquor, by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with the complainant, MA. CHANET AGUSTIN Y ADUYUGAN, a minor 15 years of age, against her will.

Contrary to law.[3]

When arraigned on April 21, 1997, appellants pleaded not guilty[4] to both charges. Hence, trial on the merits ensued.

The prosecution's version of the facts are based largely on the testimony of private complainant, 15-year-old MA. CHANET AGUSTIN. According to her, on February 25, 1997, at around 7:00 P.M., she was walking home along Yakal St., Mulawin, Maricaban, Pasay City, when she chanced upon appellants Allan Esplana and Oliver Vaidal

in front of the store of appellant Mario Castillo.[5] Oliver invited her to a drinking spree which the latter accepted, since she knew appellants and trusted Allan who was her boyfriend of five months.[6] They proceeded to a place located near her house alongside a river and began to drink a bottle of Tanduay Gold rum with Pop Cola as chaser. They were joined by appellant Pablito Javier, Jr., whose house was nearby.

After finishing one bottle of which she drank five shots,[7] according to her, Allan began kissing her on the cheeks and lips. She told Allan to stop but the latter persisted.[8] While drinking a second bottle, Allan continued kissing her, touched her breasts and other parts of her body. She tried to remove his hands but Allan would not stop.[9] Subsequently, Allan held her by the right arm and took her to the back of a pigpen, eight to ten meters away. In a standing position, Allan resumed kissing her[10] and then requested her to lie down on a large cardboard spread on the ground.[11] She repeatedly told Allan to stop. But as they lay on the cardboard, Allan lowered her denim pants and underwear, and also his own shorts. Thereafter, he inserted his penis into her vagina. She said that she tried to fight and push Allan away for ten minutes,[12] but she was too weak to slap nor kick Allan, nor shout for help, because she was too drunk and her voice would not come out.[13] Allan's carnal lust was satisfied in 30 minutes.

She recalled that Mario, Oliver, and Pablito stood by, watching and laughing at a distance of four to five meters while she was being abused by Allan. Then, after Allan finished having intercourse with her, Mario lowered his pants and pulled out his penis. He sucked her breasts for half an hour while lying on top of her. She tried to push Mario away with her hands, but he got off her only when she vomited.[14]

She remembered she asked Allan for help and the latter went to her, wiped her mouth and raised her underwear and pants. Afterwards, Oliver left, followed by Mario and Pablito. Allan stayed awhile and helped her sit up. Not long after, Allan's mother arrived and ordered Allan to go home. She was left alone under one of the houses. By then, it was already 10:00 o'clock in the evening.[15]

ANGELINA ADUYUGAN-AGUSTIN, mother of Chanet, testified that her daughter was fifteen (15) years old. Her birth certificate showed she was born on August 24, 1981.[16] According to her, she became worried when Chanet, her youngest daughter, did not come home on time. She looked for her and inquired where she could be from her classmates and teacher.[17]

It was Chanet's sister, ELIZABETH AGUSTIN-BONSO,[18] who found Chanet in a semi-catatonic state. A neighbor told her of her sister's whereabouts. Chanet told her that Allan and Mario raped her. Elizabeth brought her sister home and asked a neighbor to help bring Chanet to the police station.[19]

The neighbor who told Elizabeth about Chanet's whereabouts was 13-year-old JERWIN CANTERO.[20] Jerwin testified that he was dumping garbage in the river at 8:30 P.M. on February 25, 1997, when he saw Chanet and appellants drinking by the riverside. When he returned to the place minutes later, he saw Allan already completely naked and lying on top of Chanet, who also did not have any clothes on. Mario was also undressed. According to Jerwin, Mario went on top of Chanet after Allan had finished with her. He said he did not notice Chanet move nor do anything since she appeared unconscious. Jerwin said that he also saw Oliver kiss Chanet on the cheeks and lips. At this moment, he saw her feet moving. Soon after, Allan noticed him and pointed toward his direction. He scampered away and called Elizabeth. They found Chanet crying, dizzy, and drunk under one of the houses.[21]

SPO3 RODOLFO SOQUIÑA[22] testified that on the evening of February 25, 1997, Chanet, her sister, and a male companion arrived at the Maricaban police station. Chanet named Mario, Allan, Oliver, and Pablito as her abusers. With the assistance of Benjamin Clariza, the barangay captain of the neighboring barangay, SPO3 Soquiña found the appellants and invited them for questioning.[23]

SPO3 MILAGROS CARRASCO and SPO2 Emma Valenzuela, policewomen assigned at the Women's Desk, took the sworn statement of Chanet on the rapes. Chanet recalled what happened to her. SPO3 Carrasco testified that she told Chanet to proceed to the National Bureau of Investigation (NBI) for medical examination.

DR. ANABELLE SOLIMAN of the National Bureau of Investigation (NBI) testified that she found "superficial fresh laceration at 5:00 o'clock position superimposed upon a notch," which indicated that Chanet was a virgin prior to the incident. There were spermatozoa in the vaginal canal,[24] but no external injuries were found on the victim's body. Semen was also present in the crotch area of Chanet's denim pants.[25]

PET BYRON BUAN, NBI forensic biologist, testified that he conducted biological examination on the blouse, panty and maong pants of Chanet. He testified that the denim pants gave positive result for the presence of seminal stain, while the panty and blouse were negative.[26]

After the testimonies of the private complainant and other prosecution witnesses were completed, the defense presented its evidence.

Appellant OLIVER VAIDAL testified that he and Allan were at the store of Mario playing the guitar, when Chanet passed by at around 2:00 P.M.. She stayed for around 30 minutes, confiding to Allan that her family was being ejected from the house they were renting, and it meant that she would no longer be able to see him.[27] Chanet then offered Allan money to buy some liquor. Allan refused and told her that he did not want to drink with a girl. Hence, according to Oliver, she gave the money to Oliver and he accompanied her to a nearby store. They returned with a bottle of Tanduay Gold and Pop Cola.[28]

According to Oliver, Allan initially suggested that they drink in the house of one Noel Bersola in Bayanihan. However, Noel was still at work and so they ended up at the riverside on the suggestion of Chanet.[29]

At 6:00 P.M., according to Oliver, Mario Castillo joined them. Pablito Javier, Jr., who lived nearby, arrived later. After finishing one bottle, they pitched in some amount to buy another bottle of rum because Chanet wanted to drink some more. Before they were through with the second bottle, Allan stated in his testimony, Pablito went home.[30]

Mario Castillo and Oliver Vaidal claimed that after they finished the second bottle, they left Allan and Chanet to themselves.[31] Pablito and Oliver both denied Chanet's allegation that they watched Allan and Mario have sexual intercourse with her. Mario likewise denied ever touching Chanet.

On the witness stand, ALLAN ESPLANA admitted that he had sex with Chanet. He said that when Chanet became tipsy, she became talkative and started embracing him. According to Allan, she suggested they elope, but he told her that this was not possible because he still wanted to help his parents. She got angry.

When the others left, Chanet began touching Allan. He became aroused and had sex with her. After consummating their mutual lust, Allan volunteered to take her home. However, Chanet refused and insisted to stay. While convincing her to go, his mother arrived and ordered him to go home.

Allan added that at the time of the incident, he was madly in love with Chanet. He claims that Chanet became angry with him because he refused to run away with her. He added that he still had some affection for Chanet.[32]

In a decision dated October 3, 1997, the trial court rendered judgment convicting appellants. Its dispositive portion reads:

In view of all the foregoing, the Court finds that all four (4) accused Allan Esplana y Boncodin, Mario Castillo y Felicilda, Allan Vaidal y Almogen, and Pablito Javier Jr. y Castro guilty beyond reasonable doubt for the crimes of Rape as defined and penalized under Art. 335 of the Revised Penal Code as amended and hereby

sentences each of them to RECLUSION PERPETUA and there being evidence that the victim was gang raped by all the accused for each of them to pay civil indemnity in the amount of P150,000.00.

SO ORDERED.[33]

Hence, this appeal. Appellants now contend that THE TRIAL COURT:

I

ERRED IN DECIDING THAT THERE WAS RAPE COMMITTED. THE ACTS AS NARRATED BY THE COMPLAINANT HERSELF MA. CHANET AGUSTIN DO NOT CONSTITUTE THE CRIME OF RAPE AS DEFINED AND PENALIZED BY LAW.[34]

II

FAILED TO APPRECIATE THE EVIDENCE FOR THE PROSECUTION PARTICULARLY THE INCONSISTENCIES, CONTRADICTIONS AND EVEN LIES COMMITTED BY THE OFFENDED PARTY MA. CHANET AGUSTIN.[35]

The principal issue in this case is whether or not rape, as defined by Article 335[36] of the Revised Penal Code, had been committed by appellants beyond reasonable doubt.

Appellants contend that they must be acquitted because Chanet consented to the sexual act with Allan Esplana. Neither force nor coercion was present, according to them. They claim that private complainant offered no real struggle against or resistance to the sexual encounter with Allan. She did not shout for help, and her allegation that she dissuaded her boyfriend was not resistance considering that if she really resisted she could have gotten help since the place was a thickly-populated squatters' area.

As to the alleged rape by appellant Mario Castillo, appellants submit that Mario's sucking and fondling Chanet's breasts did not constitute rape. There was no penile penetration, according to them.

Appellants also contend that the trial court's observation that Chanet was drunk and weak at the time of the incident is not supported by the evidence. Chanet categorically admitted that she was in full control of her senses and was even able to give a detailed account of her alleged ordeal. Further, there were inconsistencies in Chanet's testimony. Thus, they vehemently deny Chanet's accusations of rape.

For the appellee, the Office of the Solicitor General (OSG) maintains that appellants' conviction should be sustained. The OSG contends that Chanet's weak resistance and failure to shout was because she was drunk. According to the OSG, penile penetration by Mario Castillo is clear from the victim's narration. The OSG asserts that the inconsistencies pointed out by appellants are inconsequential and do not detract from Chanet's credibility as a witness. It concludes that the appeal lacks merit and should be denied.

As held in *People vs. Docdoc*,[37] the testimony of the offended party in a rape case should not be received with precipitate credulity for the charge can be easily concocted. In any prosecution for rape the testimony of the complaining witness if credible would be sufficient to convict the accused.[38] Hence, the greatest degree of care and caution must be exercised before full faith and credit is given to complainant's testimony. Basic is the rule that the testimonial evidence should come not only from the mouth of a credible witness but it should also be credible, reasonable, and in accord with human experience.[39]

In the present case, we find certain improbabilities and contradictory statements in complainant's testimony that prevent us from giving full credence to her complaint that she was gang raped.

First of all, the prosecution's evidence is insufficient to show that appellants employed force and intimidation, as

averred in the information, to ensure that Chanet would submit to their sexual designs. While apparently recalling every detail of her alleged ordeal, private complainant, surprisingly did not mention how she was forced by the group. Except for saying that she tried to push Allan Esplana and Mario Castillo away from her, she did not mention how she was forced, coerced, or subdued despite her resistance.

In regard to Criminal Case No. 97-9947, involving the charge of rape by Allan Esplana, she said in substance that after drinking the first bottle, Allan began kissing her and touching her private parts; that after the second bottle was finished, her boyfriend took her to the back of the pigpen where the latter again kissed her for ten minutes; that thereafter, Allan requested her to lie down on a cardboard laid on the ground, Allan removed her pants and underwear, and his shorts; Allan then inserted his penis into her vagina.

Thus, with particular reference to the alleged intercourse with Allan, Chanet testified as follows:

Q:

Would you kindly tell the Court what was that unusual incident while you were drinking Tanduay Gold together with the four male persons?

A:

There was an unusual incident after one bottle of Tanduay Gold Allan Esplana started to kiss.

Q:

What part of your body did Esplana kiss you?

A:

On my cheek.

Q:

And what did you do when Allan Esplana started kissing you?

A:

I told him not to do that.

Q:

What did Allan do?

A:

He still continued kissing me.

Q:

What did you do?

A:

I told him not to kiss me.

Q:

And again, what did Allan do?

A:

He still continued kissing me.

Q:

And this time where did he kiss you?

A:

On my cheek.

Q:

What happened afterwards?

A:

He brought me at the back of the pig pen.

Q:

What did you do when Esplana brought you at the back of the pig pen?

A:

He lowered my pants.

x x x

Q:

What did you do when Esplana lowered your pants?

A:

I told him not to lower my pants.

Q:

What did Esplana do?

A:

He still lowered my pants.

Q:

After Esplana lowered your pants, what happened next?

A:

He also lowered his shorts.

Q:

And after Allan Esplana lowered his shorts, what happened next?

A:

He inserted his penis on my private part.

Q:

What did you do when Esplana inserted his penis to your private part?

A:

I was fighting.

Q:

How?

A:

I was pushing him.

x x x

Q:

For how long a time did Esplana inserted his penis to your private part?

A:

About half an hour.

Q:

For how long a time you fight for him?

A:

I was fighting for him (sic) for ten minutes.[40]

Note, however, that private complainant did not describe or explain what “fighting” meant. During cross-examination, Chanet also testified that she did not stop or kick appellant Allan Esplana, whom she described as her boyfriend. She did not shout for help. In fact, she admitted appellant did not threaten her at all. Her testimony on cross-examination is replete with negations, thus:

Atty. Salcedo:

How did you go there to the back of the pig pen?

A:

Allan held me by the right arm and brought me at the back of the pig pen.

x x x

Atty. Salcedo:

You said that he was kissing you for around thirty minutes and all you told him is not to do it?

A:

Yes, ma’am, including the insertion of the penis.

Atty. Salcedo:

Are we made to understand you did not at all shout for help? You did not slap him, spank him on his face, you did not show any resistance on his kisses?

A:

I did not slap him nor kick him.

Atty. Salcedo:

Did you shout for help?

A:

I did not shout for help.

x x x

Atty. Salcedo:

Did Allan Esplana ever threatened (sic) you that evening?

A:

No, ma'am.

Atty. Salcedo:

After he kissed you on the cheeks which you said took place for about thirty minutes, you stated that you saw Allan Esplana lower his pants, is that correct?

A:

It was not a long pants, it was a short pants after kissing me for half an hour.

Atty. Salcedo:

After he lowered his shorts he then lowered your maong pants, is that correct?

A:

Yes, ma'am.

Atty. Salcedo:

And when he lowered his pants what were his hands doing at that time?

A:

His hands were on my pants that he is lowering.

Atty. Salcedo:

While he was doing this, Miss Agustin, you never shouted for help?

Witness:

No, ma'am. I did not shout for help.

Court:

Why did you not shout for help?

A:

No voice came out of me.

Court:

Why?

A:

I did not shout for help as I have no voice anymore as I feel weak already.

Atty. Salcedo:

How long was that? How long was that when his penis was inside your private part?

A:

About ten minutes.

Atty. Salcedo:

Now therefore, Miss Agustin, you were then in full control of your senses considering you were able to calculate the length of time Allan Esplana kissed your lips and you were able to calculate the length of time his penis was in your vagina. You were in full control of your senses?

A:

Yes, I was in full control of my senses.

Atty. Salcedo:

And likewise you also notice the three other accused were just looking at you?

A:

Yes, ma'am.[41]

x x x

Atty. Larracas:

While you were drinking with Allan and the group and before he invited you near the pig pen, what did Allan do? Did Allan kiss you only several times, that's the only thing he did to you?

A:

Aside from kissing me he was touching my breast and body.

Atty. Larracas:

For how long was he touching your body?

x x x

A:

I cannot recall how long he touch (sic) my body because I removed his hands.

Court:

That is all you do, just remove his hand?

A:

Yes, Your Honor.

Court:

You did not stop him or slap him for touching your body?

A:

No, I did not.

Court:

Neither did you run away when he started touching you in your body, you did not run away?

A:

No, Your Honor, I did not.[42]

Nothing in private complainant's testimony indicates positively that she was forced or intimidated to have sex with Allan Esplana. Although she tried to stop Allan from touching her, it was apparently half-hearted. She did shove Allan away, but this was already after they had consummated the sex act. The act itself was done, according to complainant, while she had full control of her senses. [43]

While the prosecution claimed that appellants took advantage of Chanet's inebriated state, she in fact remembered every minute detail of the sex act. She recalled even the ten minutes to half hour that Allan's penis was inside her.[44] To our mind, if she were truly drunk as to be effectively taken advantage of, her recollection would not be as sharp as demonstrated by her testimony.

The testimony of prosecution witness Jerwin Cantero did not persuasively corroborate Chanet's version of the rape charge. Jerwin claimed that he saw Chanet lying unconscious, "doing nothing", [45] while Allan and Mario were successively on top of her. This account contradicted the victim's claim that she tried to shove each of them away. Jerwin also declared that Chanet, Mario, Allan and Oliver were completely naked when he saw them at the back of the pigpen.[46] But the victim claimed that individually Allan and Mario merely lowered their pants as well as hers.[47]

For the charge of rape in Criminal Case No. 97-9947, we hold that appellants' guilt was not proved with moral certainty. It appears that Chanet did not offer any real resistance to the advances made by Allan, who was admittedly her boyfriend.[48] She stated that Allan kissed her for 30 minutes before he lowered his shorts and then her pants.[49] Chanet could have resisted and left within those 30 minutes, particularly since it did not appear that she was forced or threatened by Allan.[50] This she did not do.

Though appellants' defense of denial is intrinsically weak,[51] we are unable to convict beyond a shadow of doubt. The prosecution evidence must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.[52]

Coming now to the second assigned error, in regard to Criminal Case No. 97-9946, we agree with appellants that the records are bereft of evidence that could show that appellant Mario Castillo had carnal knowledge of complainant. Even admitting that Mario stroked and sucked her breasts, the records do not show that Mario forced, or attempted to force, his manhood on Chanet. Conviction of appellants could not be based on the alleged implication of intercourse to be gleaned from the over-all testimony of the victim. For conviction of the crime of rape to stand, there must be clear and convincing evidence to prove the allegation that the person charged had carnal knowledge of complainant against her will.[53]

What was proved by the prosecution beyond reasonable doubt in Criminal Case No. 97-9946, in our view, is the crime of acts of lasciviousness. This offense is necessarily included in the charge of rape.[54] Mario's act of touching and sucking Chanet's breasts is most certainly an act of lewdness that was downright unwelcome.

SPO2 Emma Valenzuela of the Pasay police interviewed Chanet when the latter and her mother filed a complaint with the police. SPO2 Valenzuela testified[55] that when Chanet confronted Allan at the police station, Chanet cried and told him she could not believe he would let other men abuse her.[56] The exchange went thus:

Q:

Did you notice anything unusual when she was confronted (by) accused Allan Esplana?

A:

Yes, she cried.

Q:

What did she say, if you still remember?

A:

The fact that Allan is her boyfriend she did not think that “papipilahan siya sa iba.”

While this is in the nature of hearsay testimony, we allow it in this case as part of the *res gestae* and thus an exception to the hearsay rule.[57] Chanet clearly did not want Mario’s sexual advances, and Mario succeeded only by forcing and taking advantage of her.

There is an allegation of conspiracy in the information charging Mario with raping Chanet. We find, however, no evidence of conspiracy in this case. Conspiracy must be shown as clearly and conclusively as the commission of the crime itself.[58] Here we find nothing in the records to support a finding that appellants were acting in concert and with a common design in molesting Chanet. That they watched the abuse take place is insufficient proof to show unity in purpose and action. Hence, since only Mario had been positively shown to have committed acts of lasciviousness on Chanet, only he should suffer the consequences.

Under Article 336 of the Revised Penal Code, the penalty for acts of lasciviousness is *prision correccional*. We impose the penalty in its medium period, there being no aggravating or mitigating circumstance proved. Applying the Indeterminate Sentence Law, the proper penalty imposable is from six months of *arresto mayor* as minimum, to four years and two months of *prision correccional* as maximum.

WHEREFORE, the decision of the Regional Trial Court of Pasay City, Branch 109, in Criminal Cases Nos. 97-9946 and 97-9947 is MODIFIED. In Criminal Case No. 97-9947, appellants Mario Castillo y Felicilda, Allan Esplana y Boncodin, Oliver Vaidal y Almogen, and Pablito Javier, Jr. y Castro are ACQUITTED of the charge of rape. In Criminal Case No. 97-9946, appellant Mario Castillo y Felicilda is declared GUILTY of ACTS OF LASCIVIOUSNESS, while appellants Allan Esplana y Boncodin, Oliver Vaidal y Almogen, and Pablito Javier, Jr. y Castro are ACQUITTED of the same charge. Appellant Mario Castillo y Felicilda is sentenced to suffer the penalty of imprisonment of from six months of *arresto mayor* as minimum, to four years and two months of *prision correccional* as maximum, and to indemnify the victim Ma. Chanet Agustin in the amount of P30,000.[59]

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

[1] Rollo, pp. 33-49.

[2] Id. at 13.

[3] Id. at 15.

- [4] Records, pp. 65-68.
- [5] TSN, May 2, 1997, pp. 22-23.
- [6] Id. at 16-17.
- [7] Id. at 18.
- [8] Id. at 5.
- [9] TSN, May 6, 1997, p. 56.
- [10] Id. at 37.
- [11] Id. at 46.
- [12] TSN, May 2, 1997, p. 7.
- [13] Id. at 38 & 42.
- [14] Id. at 11.
- [15] Id. at 8-9.
- [16] Records, p. 42.
- [17] TSN, May 8, 1997, pp. 39-41.
- [18] “Bunso” in other parts of the record.
- [19] TSN, May 16, 1997, pp. 3-5.
- [20] “Jeruel” in other parts of the record.
- [21] TSN, June 11, 1997, pp. 6-19.
- [22] “Soquena” in other parts of the record.
- [23] TSN, May 13, 1997, pp. 16-17.
- [24] Records, p. 343; TSN, May 6, 1997, pp. 7-9.
- [25] TSN, May 6, 1997, p. 26.
- [26] Id. at 15, 25.
- [27] TSN, July 1, 1997, p. 3.
- [28] TSN, June 30, 1997, pp. 11-13.
- [29] TSN, July 1, 1997, pp. 2-3.
- [30] Id. at 3-4
- [31] Id. at 10; TSN, July 4, 1997, p.10.
- [32] TSN, July 7, 1997, pp. 12-23.
- [33] Rollo, p. 49.
- [34] Id. at 63.

[35] Id. at 69.

[36] ART. 335. When and how rape is committed. - Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

- By using force and intimidation;
- When the woman is deprived of reason or otherwise unconscious; and
- When the woman is under twelve years of age or is demented.

The crime of rape shall be punished by reclusion perpetua.

x x x

[37] G.R. No. 134679, 327 SCRA 407, 414-415 (2000), citing *People vs. Medel*, G.R. No. 123803, 286 SCRA 567, 582 (1998).

[38] *People vs. San Juan*, G.R. No. 130969, 326 SCRA 786, 787 (2000), citing *People vs. Fundano*, G.R. No. 124737, 291 SCRA 356 (1998).

[39] *People vs. Atad*, G.R. No. 114105, 266 SCRA 262, 275-276 (1997), citing *People vs. Uson*, G.R. No. 101313, 224 SCRA 425 (1993) and *People vs. Obzunar*, G.R. No. 92153, 265 SCRA 547 (1996).

[40] TSN, May 2, 1997, pp. 5-7.

[41] TSN, May, 6, 1997, pp. 37-42.

[42] Id. at 57.

[43] Id. at 42.

[44] *Supra*, notes 40 and 41.

[45] TSN, June 11, 1997, pp. 8-11.

[46] Id. at 7-8.

[47] TSN, May 2, 1997, pp. 6-7 & 11.

[48] TSN, May 2, 1997, p. 16.

[49] TSN, May 6, 1997, pp. 38, 41.

[50] Id. at 41.

[51] *People vs. Maglente*, G.R. Nos. 124559-66, 306 SCRA 546, 575 (1999), citing *People vs. Burce*, G.R. No. 108604-10, 269 SCRA 293 (1997).

[52] See *People vs. Vidal*, G.R. No. 90419, 308 SCRA 1, 20 (1999), citing *People vs. Subido*, G.R. No. 115004, 253 SCRA 196, 208 (1996) and *People vs. Paloma*, G.R. No. 116595, 279 SCRA 352, 363 (1997).

[53] *People vs. Lamarroza*, G.R. No. 126121, 299 SCRA 116, 120 (1998).

[54] *People vs. Laguerta*, G.R. No. 132783, 344 SCRA 453, 463 (2000).

[55] TSN, May 13, 1997, p. 12.

[56] Chanet used the words, “papipilahan sa iba”.

[57] Rule 130, Sec. 42 of the Rules of Court provides:

SEC. 42. Part of the res gestae. -- Statements made by a person while a startling occurrence is taking place or immediately prior or subsequent thereto with respect to the circumstances thereof, may be given in evidence as part of the res gestae. So, also, statements accompanying an equivocal act material to the issue, and giving it a legal significance, may be received as part of the res gestae.

[58] People v. Reapor, et al., G.R. No. 130962, October 5, 2001, p. 10.

[59] People v. Velasquez, G.R. Nos. 132635, 143872-75, February 21, 2001; People v. Hinto, G.R. Nos. 138146-91, February 28, 2001.

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