PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CONSTANCIO MERINO AND ARNULFO SIERVO, ACCUSED-APPELLANTS.

G.R. No. 132329. December 17, 1999

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

In affirming the conviction of herein appellants, we reiterate these well-settled principles: a) the trial court's assessment of the credibility of witnesses is generally accorded great respect on appeal; b) in a conspiracy, the act of one is the act of all; and c) nocturnity, to be appreciated as an aggravating circumstance, must have purposely been sought to facilitate the commission of the crime or to prevent recognition of the perpetrator.

The Case

Constancio Merino and Arnulfo Siervo appeal the February 18, 1997 Decision[1] of the Regional Trial Court (RTC) of Quezon City (Branch 215) in Criminal Case No. Q-94-55419, which convicted them of robbery with rape and sentenced them to reclusion perpetua.

On March 9, 1994, an Information[2] was filed by Assistant Prosecutor Enrico P. Bringas charging Siervo and Merino as follows:

> "That on or about the 13th day of February, 1993, in Quezon City, Philippines, the above-named accused, conspiring together, confederating with and mutually helping other persons whose true names, identities and whereabouts have not as yet been ascertained, with intent to gain and by means of violence and/or intimidation upon persons, did, then and there, willfully, unlawfully and feloniously rob the residence of one ERNESTO D. PAGADUAN located at Block 212 Lot 10, Phase III, North Fairview, this City, in the manner as follows: on the date and in the place aforementioned, the said accused, pursuant to their conspiracy, armed with handguns and bladed weapons, poked a gun at said Ernesto D. Pagaduan who was about to enter his residence and forcibly entered said residence and once inside, accused hog-tied all the members of his family and thereafter, took, robbed and carried away assorted valuables amounting to P 300,000.00 Philippine Currency; that on the occasion of said robbery, accused with lewd designs and by means of force, violence and intimidation and at the point of bladed instruments, did, then and there, willfully, unlawfully and feloniously had carnal knowledge upon the persons of JEHAN PAGADUAN and JACQUELINE PAGADUAN, 16 and 15 years of age, respectively both minors, all done against their will and without their consent, to the damage and prejudice of the said offended parties."

When arraigned on April 4, 1994, appellants, with the assistance of counsel,[3] entered a plea of not guilty. Trial ensued. On August 8, 1994, upon discovery that another case on the same incident was pending before another judge, the trial court issued an Order enjoining the defense to file the necessary motion.[4] However, no such motion was submitted. Instead, Siervo's counsel filed a Demurrer to Evidence[5] with leave of court,[6] which was denied in a Resolution dated June 6, 1995.[7] Subsequently, both appellants proceeded to present their respective sets of evidence. Thereafter, the lower court rendered its assailed Decision,[8] the dispositive part of

which reads:

> "Upon the evidence, the Court finds the accused Arnulfo Siervo and Constancio Merino guilty as charged, the prosecution having proven their guilt beyond reasonable doubt.
>
> "Considering that the crime was committed during nighttime, the accused taking advantage of the darkness for the more successful consummation of their plan to prevent their being recognized so that the crime may be perpetrated unmolested so that they could escape more thoroughly as what actually happened in this case, both accused are sentenced to suffer the penalty of reclusion perpetua in accordance with Article 294, paragraph 2 of the Revised Penal Code.
>
> "The two (2) accused are jointly and severally ordered to pay Jehan Pagaduan and Jacqueline Pagaduan the sum of Two Hundred Fifty Thousand Pesos (P250,000.00) each as and for civil damages. Likewise, both accused are ordered to pay the private complainants the sum of Twenty Thousand Pesos (P20,000.00) each as and for civil damages and to indemnify Ernesto Pagaduan Three Hundred Thousand Pesos (P300,000.00) for the personal properties taken by the accused during the incident."[9] (citations omitted)

Siervo filed a Notice of Appeal[10] and an Appellant's Brief. Although Merino did not file any notice of appeal, he subsequently submitted a Brief. In the interest of substantial justice,[11] we will review the case and resolve the arguments raised by both appellants.[12]

The Facts

Prosecution's Version

In the Consolidated Appellee's Brief,[13] the Office of the Solicitor General narrates the facts, as viewed by the prosecution, in this wise:

> "Around 7:00 in the evening of February 13, 1993, the Pagaduans, namely: Lydia, Jacqueline, Vanessa and their grandparents, were having dinner at their residence at Blk. 212, Lot 10, Phase 8, North Fairview Subd., Quezon City. Not long after, Ernesto Pagaduan and Ian Pagaduan arrived in separate cars. Faustino Pagaduan opened the gate. Ian, who was with Mark Pagaduan and Jehan Pagaduan, a cousin and visitor of the Pagaduans, drove through the gate and parked his car in the garage. Ernesto Pagaduan followed. Right after parking their cars, six (6) men, two (2) of whom were identified later as appellants Arnulfo Siervo and Constancio Merino, alias `Kuta', barged into the premises. While Merino covered his nose and mouth with a handkerchief, the rest of the armed men did not hide their faces. Siervo ordered them to get out of their cars. Then appellants poked their guns and knives at them. The armed men entered the house through the kitchen. Once inside, Siervo announced a hold-up. They ordered the Pagaduans to lie on the floor face down. Because grandfather Faustino resisted, he was mauled and hit on the head with the butt of a gun. Mark Pagaduan shouted at the armed intruders telling them to stop beating his grandfather. A hysterical Jacqueline was slapped on the face by one of the armed men causing her to fall on the floor. The armed men then herded their terrified hostages to the sala.
>
> "In the sala, the armed men tied the Pagaduans with extension cords and told them to surrender their jewelry. Ernesto and Lydia were brought inside a room where they were hogtied and forced to lie on the floor face down. From time to time the malefactors kicked Ernesto, stepped on him and poked their guns at the Pagaduans. Siervo forced Lydia to tell him where she kept their jewelry. When she refused, Siervo and the rest of the gang ransacked the house. One of the men asked Jacqueline to accompany him to where the jewelry were kept. Not satisfied with the jewelry he had already scooped up, the armed man kept asking where he could get some more.
>
> "A little later, Siervo brought Jehan to the master's bedroom. Siervo told Jehan to undress. Because Siervo poked a fan knife on her chest, Jehan unwillingly obliged. Siervo then raped Jehan. After a while, Merino entered the room and said, `bilisan mo, baka may dumating na tao'.

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> "Back at the sala, which had a concrete divider, Jacqueline was accosted by one of the armed men whom she did not recognize and who asked her to switch off the light. Terrified, Jacqueline meekly obeyed. The man ordered Jacqueline to undress and lie down on the sofa. He started kissing Jacqueline, touched her breasts and asked her to spread her thighs. He kissed her private parts. Then, he raped her. When he was through, the man ordered Jacqueline to dress up. All this time, the man was armed with a knife. Another armed man whom Jacqueline failed to recognize and identify came. The first man told him `pare, baka gusto mo rin s'yang tikman.' The man sat beside Jacqueline, kissed her, ordered her to undress and spread her thighs. Not contented, he ordered Jacqueline to spread them some more threatening to kill her if she refused. As the man could not insert his organ, he ordered Jacqueline to do it for him but she refused. Finally, he succeeded in raping Jacqueline. Thereafter, he ordered her to dress up and join her relatives. She was hogtied again.
>
> "The armed men took with them money, appliances, perfumes, bottles of liquor, jewelry and clothes of the Pagaduans having a total value of about P300,000.00. Merino left a warning that no one should get out of the house because they had planted a bomb there. At that time, Merino's face was uncovered. After the robbers left, Lydia, who was able to free herself, untied the others. They asked help from their neighbors. They then proceeded to Station 5 in Lagro to report the incident. Later, they filed a complaint with the NBI.
>
> "On February 16, 1993, Jacqueline and Jehan were examined by Dr. Florante Baltazar, Medico-Legal Officer and Chief of the PNP-Crime Laboratory, CPD 4, Quezon City. The Medico-Legal Reports which Dr. Baltazar issued on Jacqueline and Jehan showed healed lacerations on their genitals and they were[in] `non-virgin state physically.'
>
> "About a year later, or on March 5, 1994, Mark Pagaduan saw and recognized Siervo when Mark bought fruits from Siervo's fruit stand in Balara. Mark, accompanied by Ian Pagaduan, relayed the information to the NBI. A team of NBI agents, headed by Atty. Artemio Sacaguing, arrested Siervo and later Merino.
>
> "The Pagaduans readily identified Siervo and Merino during a line-up at the NBI. They executed sworn statements before the NBI agents." (citations omitted)

Version of the Defense

In his Brief,[14] Appellant Siervo interposes denial and narrates his version of the facts as follows:

> "Arnulfo Siervo maintained that from 3 o'clock in the afternoon and the rest of February 13, 1993, he was home resting. In March 1994, several men apprehended him while he was in his stall. He was brought to the NBI where he was branded a robber and a rapist. He was interrogated without the assistance of counsel. He never pointed to Merino as his companion. He did not admit anything. At the NBI line-up, he noticed Atty. Sacaguing coaching witness to point at him. He never heard Merino utter anything. The NBI told him to hit Merino. The cartographic sketch of a man [did] not resemble him.
>
> "Constancio Merino maintained that he knew Ernesto and Lydia Pagaduan. He worked as a valve operator in Lagro, Quezon City. On February 13, 1993, between 2:00 o'clock in the afternoon up until 10:00 o'clock in the evening, he was at his place of work and never left the same. He [did] not know anything about the robbery incident. He was merely implicated because he refused to be a state witness. He and Siervo were not in good terms. At the NBI, Siervo punched him. Siervo thought he (Merino) was the one responsible for his apprehension. He could not retaliate because his hands were handcuffed.
>
> "Roderick Capellan confirmed that on February 13, 1993, Merino was on duty from 3:00 o'clock in the afternoon until 10:00 o'clock in the evening but could not tell if Merino went anywhere else between those hours." (citations omitted)

In his scant four-page Brief,[15] Appellant Merino mainly asserts that he was on duty at the MWSS Lagro station on February 13, 1993, and that he never left his post. Although he knew Appellant Siervo, he was not with him on that day. He also admits that he knew Danilo Pagaduan because they were erstwhile neighbors in Pansol, Balara.

The Trial Court's Ruling

Finding both Appellants Siervo and Merino guilty as charged, the lower court ruled:[16]

> "From the testimonies and documentary evidence presented by the prosecution, the Court is fully convinced that on the night of February 13, 1993, the private complainants were robbed by both accused Siervo and Merino [of] money, appliances, perfumes, liquor and jewelry. All private complainants who testified sufficiently narrated the facts and circumstances of the incident as well as established the identities of both accused. They all identified Siervo and Merino at the NBI when they were arrested. Not only that, this positive identification by the private complainants of the two accused was replicated in open court when they testified. There was no hesitation on their part to point to the accused as the culprits. The only question left is whether both accused raped Jehan Pagaduan and Jacqueline Pagaduan on the occasion of that robbery.
>
> "According to Jehan Pagaduan, she was raped by accused in the room. Accused Merino followed them in the said room and even told Siervo, `bilisan mo, baka may dumating na tao'. Mark and Ian Pagaduan testified that they saw Siervo take [their] cousin Jehan to the bedroom and saw Merino follow them. Mark heard as if Siervo was abusing Jehan and heard the latter crying. Both likewise saw Siervo take Jehan outside of the room later.
>
> "On the other hand, Jacqueline Pagaduan testified that she was also raped in the sala by Siervo whose face appears on Exh. B-1, which is the cartographic sketch of Siervo. She said she could not identify the second man who raped her. Mark and Ian Pagaduan saw a man take Jacqueline to the living room. Mark heard the same thing he heard when Jehan was taken by accused Siervo to the room. It was as if Jacqueline was [being] abused.
>
> "Exhibits F and G, the Medico-Legal Reports No. M-0277A-93 and M-276A-93, respectively, conclusively show that the abr[a]ded vulvar mucosa suggests that there was recent sexual intercourse.
>
> "The alibi put up by both accused does not inspire belief. Accused Siervo claims that he was home resting while his wife was preparing dinner, while accused Merino claims that he was on duty from 2:00 in the afternoon to 10:00 in the evening at Tank 5. However, on cross-examination, accused Siervo testified:
>
> `q: Did you meet your co-accused Constancio Merino in the evening of February 13, 1993?
>
> a: Yes, sir. We saw each other.
>
> q: In the evening of February 13, 1993?
>
> a: Yes, sir.'

"Further, Siervo admitted that he and Merino used to be neighbors at Blk. 81, Lot 49, Lagro Subd., Novaliches, Quezon City and that they were friends back in Samar. He said Merino helped him in vending fruits in Nawasa. Although Roderick Capellan, accused Merino's witness, categorically testified that he saw Merino leave at 2:00 p.m. and at 9:45 p.m. at Tank 5, he did not know the whereabouts of Merino between 2:00 and 9:30 p.m. and whether he went somewhere else in the interim.

"For alibi to be given credence, the following requisites must be present:

> 1. that the accused was not at the scene of the crime at the time it was committed; and
> 2. that it was physically impossible for the accused to be at the scene of the crime at the time of its commission.

"It should be noted that these requisites are wanting in this case.

"Despite both accused's protestations of innocence there can be no detracting from the fact that they were positively identified by the private complainants. The Supreme Court held in several cases that positive

identification prevails over alibi.

"There is no question that both accused are liable as principals. Clearly, conspiracy has been proven beyond reasonable doubt. Both accused are the perpetrators with four other unidentified men who are still at large. They were the participants in this felonious and criminal misadventure." (citations omitted)

The Issues
Appellant Merino assails the trial court on the following grounds:

> "1. The lower court erred in convicting the accused-appellant despite failure of the prosecution to prove his guilt beyond reasonable doubt;
>
> 2. x x x [G]ranting for the sake of argument that accused-appellant was with accused Siervo[,] he was not responsible for the rape of Jehan and Jacqu[e]line Pagaduan"[17]

Appellant Siervo, in an equally anemic and disappointing effort, raises only two questions: the lower court's appreciation of the aggravating circumstance of nighttime and the award of civil damages.

> "I
> The trial court erred in appreciating the aggravating circumstance of nighttime.
>
> "II
> The lower court erred in ordering appellants to indemnify Ernesto Pagaduan and to pay Jehan and Jacqueline, both surnamed Pagaduan, exorbitant civil damages."[18]

In reviewing this case, the Court not only took into account the arguments raised by the defense, but also examined the entire records in order to ascertain the guilt of the appellants beyond reasonable doubt.

The Court's Ruling
The appeals are devoid of merit.

Main Issue:
Sufficiency of Prosecution Evidence
Appellant Merino argues that the prosecution witnesses were uncertain about his identity, because the complainants had filed another criminal case involving the same crime before the sala of a different judge against a different set of accused.

We are not persuaded. The fact that other persons were allegedly charged and subsequently acquitted in another case involving the same crime does not weaken the prosecution's case. The lower court gave both appellants the opportunity to clarify this particular point, but neither of them did so.[19] In any event, we note that the crime was allegedly committed by six felons, four of whom are still at large. More significant, there was no showing that the testimony of a particular witness in the other criminal case contradicted his or her testimony in the present case.

The records of this case clearly show that the prosecution witnesses positively identified appellants as among those who committed the crime charged. The following narration of Jehan Pagaduan best exemplifies the positive identification of appellants:

> "FISCAL:
>
> Q Will you tell the Honorable Court how the robbery happened?
>
> A At around about 7 o'clock p.m. on February 13, 1993, we just came from Pansol, Balara, sir.

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Q And after coming from said place, what happened?

A We were aboard on two (2) cars. I was first who entered our garage and then my uncle followed us, sir.

Q Upon entering your garage, followed by your uncle, what happened?

A Somebody shouted `dumapa kayo, huwag kayong lilingon' and I saw my uncle who was being poked with a knife, sir.

Q More or less how many persons were there?

A I saw six (6) of them, sir.

Q

After announcing what you said and poking [a] knife at your uncle, what happened after that?

A We were brought to our kitchen and we were asked to lie down face down and they brought us again [to] the hallway, sir.

Q All of you?

A Yes, sir.

Q So, after bringing all of you to the sala, what happened?

A They took [the] extension wire which they used in tying us except for my uncle and auntie, sir.

Q Who among you were tied?

A My grandfather, may grandmother, my three cousins and my younger sister, sir.

Q What about you?

A I was also tied, sir.

Q

So, after tying you, what happened next?

A One of the men took me inside a room and he was asking me where the money was with a Visayan accent, sir.

Q You said you were brought to a room, where is this room located?

A Near my uncle's bedroom, sir.

Q This person who took you into that room you said, spoke Visaya, did you recognize him?

x x x x x x x x x

A Yes, sir.

Q Is he present in Court?

A He is not here, sir.

Q

After bringing you to that room and spoke that Visayan accent you said, what happened, what did he do?

A He took me back to the hallway and another one brought me inside another room next to the first room where I was brought and asked me where the money was, sir.

Q Did you recognize this second guy?

A Yes, sir.

Q This second guy, is he present in Court?

A Yes, sir.

Q Will you point to him?

INTERPRETER:

Witness stepped down from the witness stand and in an arms-length pointed to accused inside the Court room who when asked answered that he is Arnulfo Siervo.

Q

What did he do to you?

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A He told me to undress, sir.

Q And did you accede to his demand?

A He pointed a fan knife at my chest, sir.

Q After pointing the knife on your chest, what did he do next, if any?

A He raped me, sir.

Q Did you recognize him very well?

A Yes, sir.

Q So, after raping you as you said, what happened next?

A Another man entered the room and said `bilisan mo, baka may dumating na tao' [be quick about it because somebody might arrive], sir.

Q

Did you recognize this guy who went into that room and said be quick, somebody might come up?

A Yes, sir.

Q Will you point to him?

A There he is, sir.

INTERPRETER:

Witness pointed to a person beside Siervo and who when asked his name answered that he is Constancio Merino."[20]

The foregoing testimony was corroborated by Mark,[21] Ian,[22] Lydia,[23] Ernesto,[24] and Jacqueline,[25] all surnamed Pagaduan, thereby proving beyond reasonable doubt the presence of Appellants Siervo and Merino at the locus criminis, as well as their participation in the crime.

We must emphasize that the trial court found the prosecution witnesses credible. The well-settled rule is that the assessment of the trial court on this point is generally binding on this Court, absent any showing that circumstances of weight and substance, which if considered would materially affect the result of the case, have been overlooked, misunderstood or misinterpreted. In the present case, appellants failed to show any reason for this Court to depart from this rule. Verily, they did not present any evidence to show that the prosecution

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witnesses had any motive to testify falsely against them.

Appellant Merino argues that his guilt was not proven beyond reasonable doubt because he was not immediately implicated or arrested. He theorizes that since the complainants knew him or was at least familiar with him, they should have immediately moved for his arrest.

We are not convinced. Not every witness to a crime can be expected to act uniformly and conformably with the expectations of mankind. Hence, a delay in revealing the identities of the malefactors does not necessarily taint the credibility of witnesses.

Existence of Conspiracy

We agree with the lower court that conspiracy has been sufficiently proven.[26] All six of the offenders acted in concert to consummate the robbery. In the course of the robbery, some of them, particularly Siervo, succumbed to lustful desires by taking advantage of the situation and sexually assaulting Jehan Pagaduan. Not one of them tried to prevent the rape of the two young girls. As shown in Jehan's testimony quoted above, Merino was aware of the dastardly act being done by Siervo, but he merely told the latter to hurry. Clearly, both of them acted as one in their greed and lust.[27] As we held in People v. Rostata Jr.:[28]

> "All told, this Court is convinced that the appellants and their co-accused conspired and confederated together to rob the spouses Calixtro and Aprosa Rosario. There is also no doubt that its commission was accompanied by the rape, on two (2) counts, of Gemma Rosario, and the infliction of less serious physical injuries on Calixtro Rosario. Said injuries are only less serious because per the doctor's findings, the same "will heal in ten (10) days, barring complications." Conspiracy having been sufficiently established, all the accused are equally liable for the robbery, rape and physical injuries despite the fact that only Rostata, Jr. and Rotap committed the rape and Devio inflicted the injuries. Where conspiracy is established, the act of one is the act of all."

(citations omitted)

Denial and Alibi

Appellants raise denial and alibi in their pleadings as well as in their testimonies. We need not belabor this point. It is enough to say that these defenses are weak and cannot prevail over the positive and unwavering identification of Merino and Siervo as participants and co-conspirators in the robbery and the rape.[29] Thus, in People v. Pareja,[30] we said:

> "As regards appellant's alibi, the Court has time and again ruled that alibi is the weakest of defenses because it is easy to fabricate but difficult to prove. It cannot prevail over the positive identification of the accused by witnesses. For the defense to prosper, the requirements of time and place (or distance) must be strictly met: It is not enough to prove that the accused was somewhere else when the crime was committed; he must also demonstrate by clear and convincing evidence that it was physically impossible for him to have been at the scene of the crime during its commission." (citations omitted)

As correctly pointed out by the solicitor general, even if we were to assume that both appellants were in the places where they claim to be, "the possibility of their being at the crime scene cannot be totally discounted considering that they were all residing at Lagro which is adjacent to North Fairview, where the incident took place."[31]

Nocturnity

We agree with Appellant Siervo's argument that the court a quo erred in appreciating nocturnity. Nighttime as an aggravating circumstance must have specially been sought to consummate the crime, facilitate its success or prevent recognition of the felon. The prosecution failed to show any of these.[32] In People v. Ferrer,[33] wherein this particular point was an issue, we ruled:

"However, the trial court improperly considered nocturnity as a separate aggravating circumstance. While it correctly stated that nighttime must be deliberately sought in the perpetration of the crime, a close examination of the records shows no factual support that the appellants indeed deliberately considered the cover of darkness as an indispensable factor in assaulting Agtang. The prosecution established no more than the simple fact that the crime was committed at night."

As in Ferrer, no evidence was presented to show that appellants specially sought the cover of darkness to perpetuate the crime.

Crime and Punishment
All in all, we agree with the trial court that appellants were guilty of robbery with rape and that they should be sentenced to reclusion perpetua.[34] Article 294 (2) of the Revised Penal Code, in effect at the time, provided that "when the robbery accompanied with rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death." The trial court was correct in not imposing the death sentence, for the Death Penalty Law (RA 7659) was not yet in effect at the time;[35] besides, the prosecution failed to prove any aggravating circumstance.

We hold that the award of damages by the lower court, particularly the actual damages in the amount of P300,000, was sufficiently established by the testimonies of the complainants. Jacqueline Pagaduan testified that some of the goods stolen were two betamax machines, three television sets, some cash, perfumes, wines and several pieces of jewelry -- watches, earrings, bracelets, necklaces and the like.[36] Mark Pagaduan assessed the amount of all the stolen items at P300,000.[37]

We must point out that the appellants did not object to these testimonies despite the opportunity to do so. Moreover, to require the complainants to show receipts to support their claim would be unreasonable, since most of these items had been purchased in Saudi Arabia by Ernesto Pagaduan's spouse. Ironically, Appellant Siervo even made an itemized listing of the stolen properties.[38]

However, in line with jurisprudence, we lower to P50,000 each the award of damages ex delicto in favor of Jehan and Jacqueline.[39] We also grant them moral damages of P50,000 each, pursuant to current doctrines.[40]

WHEREFORE, the DECISION of the Regional Trial Court is AFFIRMED with modifications in the civil aspects as follows: appellants shall pay Jehan and Jacqueline jointly and severally indemnity ex delicto of P50,000 each plus another P50,000 each as moral damages, in addition to actual damages of P300,000. Costs against appellants.

SO ORDERED.

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

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[1] Written by Judge Marcelino F. Bautista Jr.

[2] Records, pp. 1-2; rollo, pp. 7-8.

[3] Counsel de Oficio Juanito Collado.

[4] The other case was docketed as Criminal Case No. Q-93-42311 in Branch 104, RTC Quezon City. The accused therein were the following: Dominic Quiambao, Rogelio Snyder and Oliver Masim. They were eventually acquitted.

[5] Records, pp. 257-263.

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[6] Records, p. 249

[7] Records, p. 273.

[8] Rollo, pp. 54-65.

[9] Decision, p. 12; rollo, p. 65.

[10] Rollo, p. 32; signed by Atty. Harry R. Caldeno of the Public Attorney's Office.

[11] See People v. Pagsanjan, 221 SCRA 735, May 12, 1993.

[12] The case was deemed submitted for resolution on March 30, 1999, upon reciept by this Court of the Consolidated Appellee's Brief. The filing of a reply brief was deemed waived, as none was filed within the reglementary period.

[13] Consolidated Appellee's Brief, pp. 4-8; rollo, pp. 124-128. Signed by Assistant Solicitor General Carlos N. Ortega, Assistant Solicitor General Antonio L. Villamor and Solicitor Raul J. Mandin.

[14] Signed by Public Attorney IV Arceli A. Rubin, Public Attorney III Amelia C. Garchitorena and Public Attorney II Maria May Zafranco-Redor.

[15] Signed by Attorney Aida D. Dizon of the IBP Free Legal Aid Committee.

[16] Decision, pp. 10-12; rollo, pp. 29-31.

[17] Appellant Merino's Brief, p. 2; rollo, p. 51.

[18] Appellant Siervo's Brief, p. 1; rollo, p. 70.

[19] In its August 4, 1994 Order, the trial court even suggested that the two cases may be consolidated.

[20] TSN, June 13, 1994, pp. 5-8.

[21]TSN, May 31, 1994, pp. 5-14.

[22] TSN, June 6, 1994, pp.4-11.

[23] TSN, September 23, 1996, pp. 5-11.

[24] TSN, July 4, 1994, pp. 5-10.

[25] TSN, May 17, 1994, pp. 6-19

[26] Decision, p. 12; rollo, p. 31.

[27] See People v. Pugal, 215 SCRA 247, October 29, 1992; People v. Apawan, 235 SCRA 355, August 16, 1994.

[28] 218 SCRA 657, 678, February 9, 1993, per Davide Jr., J. (now CJ).

[29] See People v. Villaruel, 261 SCRA 386, September 4, 1996; People v. Fabula, 265 SCRA 607, December 16, 1996.

[30] 265 SCRA 429, 440, December 9, 1996, per Panganiban, J.

[31] Consolidated Appellee's Brief, p. 10; rollo, p. 130.

[32] People v. Tampon, 258 SCRA 115, July 5, 1996.

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[33] 255 SCRA 19, 35, March 14, 1996, per Panganiban, J. See also People v. Tampon, supra; People v. Garcia, 258 SCRA 411, July 5, 1996.

[34] People v. Rostata Jr., supra.

[35] The Death Penalty Law became effective on December 31, 1993; the crime in this case was committed earlier on February 13, 1993.

[36] TSN, May 17, 1994, pp. 17-18.

[37] TSN, May 31, 1994, p. 14.

[38] Appellant Siervo's Objection/Comments to the Prosecution's Formal Offer of Evidence dated January 16, 1995. (p. 225 of the Records)

[39] See People v. Rostrata Jr., supra.

[40] See People v. Ignacio, 294 SCRA 542, August 24, 1998; People v. Vergel, GR No. 128813, October 4, 1999.

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