

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FELIZARDO GONZALES Y ALTARES, ACCUSED-APPELLANT.*G.R. No. 133859. August 24, 2000*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-133859/>**PER CURIAM:**

This case illustrates how parental neglect could sometimes lead children to tragic ends. The victim in this case, a 12-year old girl, was forced to live with her father's relatives when her parents succumbed to social pressure. Her father was in jail for peddling narcotics; her mother worked as a domestic helper in some foreign land. And in their absence, her very own uncle took advantage of her youth and naivete'. He is now on the verge of death, as society seeks to preserve itself from inner devastation.

On 3 March 1998, a decision[1] was rendered in Criminal Case No. 97-18570 by the Regional Trial Court of Bacolod City, Branch 50, finding herein accused-appellant Felizardo Gonzales y Altares (hereafter FELIZARDO) guilty of the crime of rape and sentencing him to suffer the ultimate penalty of death.

The following facts, proved by the prosecution and culled from the records of the case, demonstrate how the case found its way to this Court for automatic review.

Katherine M. Gonzales (hereafter KATHERINE) was born on 10 October 1984 to the spouses Leopoldo Gonzales and Remedios Makilan.[2] At the time of the first incident, she had just turned twelve (12) years old and was in the graduating elementary class of the Negros Occidental High School (NOHS) in Murcia, Negros Occidental. Two years prior to the incident, she and her five elder brothers began living with their paternal grandmother, Herminia Gonzales, at Alunan-Yulo Street, Bacolod City, because their father Leopoldo was serving a prison sentence at the National Penitentiary on a drug conviction, while their mother Remedios was in Qatar, working as a domestic helper. They shared the house with their uncle FELIZARDO, Leopoldo's younger brother, and cousin Joan, the illegitimate daughter of their Aunt Titing. They also shared one room at the ground floor of Herminia's house. KATHERINE, Joan, and their "Mama Minyang" occupied the biggest bed, a "matrimonial" bed with only a mat for a mattress. About one arm's length away, her, brothers Rensol and Richard slept on a smaller bed with FELIZARDO. Her two other brothers, Ruel and Reggie, occupied the other bed, which is behind the cabinet ("aparador") serving as a divider.[3]

The first incident occurred on 29 October 1996. Herminia woke up KATHERINE at around 4:00 a.m., as she usually did, so that the latter could close the door and turn off the lights when she left for the Libertad Market to shop for goods to be peddled. After complying with her grandmother's instructions, KATHERINE went back to their room. She was surprised to see her "Uncle Zardo," who was holding a flashlight in the dark room. Thereupon, FELIZARDO asked her if she really had a tattoo on her breast and pushed her to the bed where Joan was sleeping. FELIZARDO moved Joan to the edge of the bed, then went on top of KATHERINE, holding her hands together. She struggled and tried to shout, but FELIZARDO covered and squeezed her mouth, at the same time threatening to kill her and her brothers. He took off her T-shirt (chemise), shorts, and panty. With KATHERINE naked, FELIZARDO spread her legs, focused the light on her vagina before licking it, and sucked her nipples. Moments later, FELIZARDO removed his shorts and briefs, again straddled KATHERINE, inserted

his penis into her vagina, then performed the sexual act for about five minutes. She felt excruciating pain in her organ and begged him to stop; which he did, but only after he had ejaculated. KATHERINE felt something slippery run down her vagina. His nefarious deed accomplished, FELIZARDO stood up, trained the flashlight on KATHERINE's organ, then ordered her to wash.[4]

KATHERINE distinctly remembered her first ordeal not only because it happened two days after the birthday of her brother and cousin Joan, but because she experienced her first menstruation the day after, October 30th.[5]

Such violation was repeated on the 5th, 6th, and 9th of April 1997.[6] Likewise, KATHERINE clearly remembered these dates because she graduated from elementary on 3 April 1997. He employed the same modus operandi each time: when Patricia had left for the market and KATHERINE, had gone back to sleep after closing the door and turning off the light, FELIZARDO would crawl toward her. First, he would move Joan aside, then he would undress KATHERINE, suck her nipples, lick her vagina, and rape her. He never kissed her lips.[7] Her brothers never woke up whenever FELIZARDO performed his evil acts because they were "heavy sleepers." [8]

The last incident, which is the subject of this case, occurred on 15 August 1997. On this, KATHERINE made the following narration:

Q. After April 9, was there any other incidents?

A. Yes, sir.

Q. When was that?

A. On August 15, 1997, the last incident.

Q. Will you please tell this Honorable Court why were you able to know this date, August 15, 1997?

A. Because that was a Friday and the following Monday, that was the time when I complained to somebody.

Q. On August 15, 1997, what time did the accused rape you?

A. Same time, 4:00 a.m.

Q. Do you want to convey to this Honorable Court that the accused used to rape you at 4:00 a.m.?

A. Yes, sir.

Q. Also on October 29, 1996, April 5, 6, 9 and August 15, 1997?

A. Yes, sir.

Q. This incident happened while your grandmother Herminia was out because she was going to the market?

A. Yes, sir.

Q. And your Lola Menyang used to wake you up whenever she goes to the market?

A. Yes, sir.

Q. Were you always the one who was tasked to close the door whenever she left the house?

A. Yes, sir

COURT:

Q. So, what happened on August 15, 1997, would you narrate?

A. The same.

FISCAL ESQUILLA:

Q. What happened, when you said the same thing happened?

A. The same, he would crawl towards me and raped (sic) me.

COURT:

Q. The August 15 incident is the subject matter of this case. You tell us everything that happened. Do not touch on any other dates.

A. On August 15, I was sleeping then when I noticed that somebody was putting aside Joan but I did not mind because I fall (sic) asleep again. Before I knew it, I was surprised when he was already at my feet.

FISCAL ESQUILLA:

Q. Whom are you referring to that he was at your feet?

A. Felizardo Gonzales.

COURT:

Q. How do you call him?

A. Tito Zardo.

FISCAL ESQUILLA:

Q. So, please narrate to this Court after that when the accused was at your feet?

A. Before he would do anything, he would tell me not to shout or make any noise because he will kill my brothers. So, the same thing, what he had done to me previously, he did it again on that day.

Q. After the accused told you not to shout for if you shout he will kill your brothers, what did the accused do after that?

A. He undressed me again, he pulled off my short pants and panty and spread my legs.

Q. After that, what happened next?

A. He licked my vagina.

Q. How about your breast?

A. He sucked my breast.

COURT:

Q. He did this [sic] to you one at a time, alternately or what?

A. First, he licked my vagina, and mashed my breast.

Q. And after that on that particular morning, on August 15, 1997, after the accused mashed your breast, licked your vagina, what did the accused further do to you?

A. He was on top of me and made a motion of push and pull and forced his penis to insert in my vagina.

Q. Did you feel that penis of the accused penetrated [sic] your vagina?

A. Yes, sir.

Q. If you know, and what you feel, the entire penis was inside your vagina?

A. Yes, the entire length of his penis.

Q. What did you do?

A. I was struggling.

Q. How long did he stay on top of you while moving this push and pull?

A. Not less than five (5) minutes.

Q. So, you said that after he completely have [sic] a sexual intercourse with you, what happened next?

A. No more.

Q. What did he tell you, if any?

A. After that, he instructed me to dress up? [sic][9]

On 18 August 1997, KATHERINE finally found the will and courage to relate to somebody what FELIZARDO had done to her. She narrated her harrowing experience to her classmates, Claire Vingco and Rosemary Quiatchon. In turn, Rosemarie relayed the information to her mother Gilda, who happened to be a teacher and, in fact, was KATHERINE's adviser at the NOHS. Gilda brought KATHERINE to the GABRIELLA[10] Center. Gilda and a certain Yolly Macaya of GABRIELLA accompanied KATHERINE to the house of her maternal grandmother, Patricia Makilan, located at Barangay Minoyan, Murcia, Negros Occidental. They informed her that KATHERINE had been raped by her uncle FELIZARDO. KATHERINE's case was then referred to the Women's and Children's Desk of the Bacolod City Police Office (BCPO).[11]

Dr. Joy Ann Jocson, medico-legal officer at the Bacolod City Health Office, conducted a physical examination on KATHERINE. Her findings, contained in her medical report dated 18 August 1997, revealed that KATHERINE had incomplete lacerations at the 7 and 9 o'clock positions.[12] Her cervix admitted two (2) fingers and her hymen was partially lacerated, suggesting prior sexual intercourse. Dr. Jocson also said that during the examination, KATHERINE divulged that she had been raped "many times" between 29 October 1996 and 15 August 1997.[13]

SPO2 Evelyn M. Mabayag, who was assigned at the Women's Desk of the BCPO, confirmed the testimony of KATHERINE on the circumstances surrounding the rape charge.[14] After taking the statements of KATHERINE and Patricia, she was convinced that the crime charged was indeed committed. SPO2 Mabayag then prepared the complaint,[15] which was signed by KATHERINE and Patricia. On the strength of said complaint, FELIZARDO was apprehended on the same date at their house by a team composed of SPO2 Mabayag, SPO4 Carmencita Saliba, two investigators and a mobile group.[16] On 22 August 1997, SPO2 Mabayag conducted an ocular inspection of the place of the incident and found the arrangement of the beds at the ground floor of Patricia Makilan's house to be consistent with KATHERINE'S description.[17]

After due proceedings, a complaint[18] was filed with the Regional Trial Court of Bacolod City on 22 August 1997, charging FELIZARDO with rape allegedly committed as follows:

That on or about the 15th day of August, 1997, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, by means of force, violence and intimidation, did then and there wilfully, unlawfully and feloniously have incestuous carnal knowledge of his niece, the herein complainant, KATHERINE Gonzales y Makilan, 12 years of age, against the latter's will.

ACTS CONTRARY TO LAW.

The case, docketed as Criminal Case No. 97-18570, was raffled off to Branch 50 of the Regional Trial Court of Negros Occidental, Bacolod City.

During arraignment, FELIZARDO entered a plea of not guilty.

FELIZARDO denied the accusation against him and declared that he could not have raped or molested KATHERINE at 4:00 in the morning of 15 August 1997 because he was sleeping at the time. His mother Herminia usually woke him up after 5:00 a.m. KATHERINE's claim that he raped her at 4:00 a.m. was, therefore, false and incredible. He was not even aware of any reason why KATHERINE' would point to him as the culprit when, in fact, he had never touched her.[19]

Herminia Gonzales believed in her son's innocence and said FELIZARDO could never have committed such a thing. During the time the rape was allegedly committed, she was still in the house preparing their breakfast,

leaving only at around 5:30 to 6:00 each morning to do her marketing. She recalled, however, that one early morning, she and Richard saw KATHERINE in the company of a man in his early twenties. When KATHERINE did not return from her early morning jog, they even had to look for her.[20]

Further bolstering FELIZARDO's defense as well as Herminia's testimony, Richard Jude Gonzales, KATHERINE's brother, testified that he did not notice anything unusual in their house on 15 August 1997. After this case was filed, KATHERINE apparently revealed to him that she was actually raped by a certain Eric and not by their uncle FELIZARDO.[21]

Finally, the defense called on KATHERINE as a recanting witness. She declared that she had not been raped by her uncle FELIZARDO but by a certain Eric, a transient in their place. Sometime in the early morning of June or July, 1995, Eric befriended her while she was jogging. A week later, Eric raped her, first at the fishpond across the river of Magsungay, and again, after a week, at a camote plantation.[22] She did not report the incident for fear that she might be harmed by her relatives. To ensure her physical well-being, she decided to put the blame on her uncle FELIZARDO.[23]

In its decision[24] the trial court gave more weight and credence to the prosecution's evidence and convicted FELIZARDO despite KATHERINE's recantation. Thus:

The evidence more than sufficiently proved that the accused, by means of intimidation, have [sic] sexual intercourse, with KATHERINE Gonzales, his niece[,] under the circumstances as charged in the Information. The guilt of the accused having been proved beyond reasonable doubt, the court declares him GUILTY and imposes on him the penalty of DEATH.

The recantation of the offended party is equivalent to a waiver of her claim of [sic] civil indemnification. Accordingly, the Court makes no pronouncement with respect to the civil liability of the accused.[25]

As stated at the outset, in view of the penalty imposed, the case was brought to this Court for automatic review pursuant to Article 47 of the Revised Penal Code, as amended by Section 22 of Republic Act No. 7659.

In his Appellant's Brief, FELIZARDO posits this single assignment of error:

THE TRIAL COURT ERRED IN NOT FINDING THAT THE TESTIMONY OF PRIVATE COMPLAINANT WAS PUNCTURED WITH MATERIAL IMPROBABILITIES THEREBY CASTING GRAVE DOUBTS ON THE CRIMINAL CULPABILITY OF THE ACCUSED-APPELLANT.

In support of the assigned error FELIZARDO first harps on the fact that, as testified by KATHERINE, she was violated "inside a one-room affair, 5 x 6 meters wide," on an old matrimonial bed where she, her grandmother Herminia, and her cousin Joan slept. Two of her four brothers slept on one side of the bed, while the other two slept with FELIZARDO on the other side of the same bed.

FELIZARDO also questions the alleged delay in the reporting of the rape, and relies heavily on the recantation of KATHERINE buttressed by the testimony of Herminia and Richard.

Finally, FELIZARDO cites the absence of intimidation or physical struggle or resistance to signify KATHERINE's vehement and utmost refusal. Thus, without in the least admitting that sexual liaison took place, it could be said that whatever happened between them was done through mutual consent.

We are not persuaded by FELIZARDO's arguments.

It is well settled that when a woman says that she has been raped, she says in, effect, all that is necessary to show that she has indeed been raped.[26] A victim of rape would not come out in the open if her motive were anything other than to obtain justice. Her testimony as to who abused her is credible where she has absolutely no motive to

incriminate and testify against the accused.[27] A lass of tender age would not concoct a tale of defloration unless she, in fact, had been raped, for it would be instinctive for her to protect her honor.[28]

In the instant case, there is absolutely no showing that KATHERINE was actuated by any sinister motive to falsely charge her own uncle with such a serious crime. If she admitted the ignominy she had undergone, allowed her private parts to be examined, exposed herself to the trouble and inconvenience of a public trial, and endured the embarrassment and humiliation attached to the revelation of that which ought to be suffered in silence, we are convinced that she had nothing in mind except to obtain justice.[29]

Neither is this Court convinced with FELIZARDO's argument that it is physically impossible to commit the rape in such a small room where KATHERINE's four brothers also slept. We have long adhered to the rule that it is not necessary for the rape to be committed in an isolated place, for rapists bear no respect for locale and time when they carry out their evil deed.[30] In fact, it can be committed in places where people congregate, in parks, along the roadside, within school premises, inside an occupied house, and even in the room where other members of the family are also sleeping.[31] Thus, it is not totally impossible for FELIZARDO to have raped KATHERINE even when the other members of the household were present. Again, there is no rule to the effect that a woman can only be raped in seclusion.[32]

Anent the silence of KATHERINE for ten months, we have held time and again that the silence of the offended party in a case of rape, or her failure to disclose her defilement without loss of time to persons close to her and to report the matter to the authorities, would not perforce warrant a conclusion that she was not sexually molested and that her charges against the accused are all baseless, untrue or fabricated. Other relevant facts and circumstances must be considered. In this case, KATHERINE kept silent about the incident because of FELIZARDO's threat to kill her brothers. Moreover, she continued to live in the same house with FELIZARDO. KATHERINE cannot then be blamed for her seeming vacillation, for the initial reluctance of a rape victim to come forward and report that she had been, sexually abused is itself a natural reaction. Nothing less can be expected from a victim of such a tender age.[33] This is especially true in this case, where the malefactor is the victim's uncle.[34] As observed by the trial court:

The accused is the uncle of Katherine and they lived in the same house and occupy the same room. Since Katherine's parents are not in the house, the father is in prison while the mother is abroad, it is without doubt that the accused exercised moral ascendancy and influence over his 12-year old niece. In rape committed by a close kin, moral ascendancy substitutes for violence and intimidation.[35]

Neither can FELIZARDO be allowed to make much of the fact that the recantation of KATHERINE should have earned him an acquittal. We have said in so many cases that retractions are generally unreliable and are looked upon with considerable disfavor by the courts.[36] Like any other testimony, it is subject to the test of credibility based on the relevant circumstances and, especially, on the demeanor of the witness on the stand.[37] In this case, it is quite incredible that, after going through the process of having FELIZARDO arrested by the police, positively identifying him as the person who raped her, enduring the humiliation of physical examination of her private parts, and then repeating her accusations in open court by recounting her anguish, KATHERINE would suddenly turn around and declare that "after a careful deliberation of the case she now realizes that her conscience would not permit her to send an innocent man to jail." As we observed in *People v. Ulbina*: [38]

xxx Similarly, it would be a dangerous rule for courts to reject testimonies solemnly taken before courts of justice simply because the witnesses who had given them later on change(d) their mind for one reason or another, for such rule would make solemn trials a mockery and place the investigation of truth at the mercy of unscrupulous witnesses. x x x The rule should be that a testimony solemnly given in court should not be lightly set aside and that before this can be done, both the previous testimony and the subsequent one be carefully

compared, the circumstances under which each given carefully scrutinized, the reasons or motives for the change carefully scrutinized--in other words, all the expedients devised by man to determine the credibility of witnesses should be utilized to determine which of the contradictory testimonies represents the truth.

In this case, the trial court described KATHERINE's testimony for the defense as nothing more than a rehearsed testimony. The trial court stated that:

The testimony of Katherine when she testified as the complainant, is forthright and honest. It is very credible and should be given weight. There is no indication whatsoever that her declaration was contrived, coached or stage-managed. Moreover, there is absolutely no reason why she should charge her own uncle of a heinous crime if such is not the truth.

x x x

When Katherine took the witness stand as a defense witness and recanted her first testimony, it was an entirely different story. This time her testimony was loose and vague. This time the Court could readily discern that her testimony was contrived. She would answer spontaneously anticipated questions but those which appears unexpected, she was hesitant and evasive. There is no doubt at all in the mind of the Court that the young girl was pressured into changing her testimony to save her uncle.[39] (*Italics supplied*)

Furthermore, as consistently held by this Court, when the issue is one of credibility of witnesses, appellate courts will generally not disturb the findings of the trial court, considering that the latter is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during trial, unless it has plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case.[40]

As to intimidation, the evidence discloses that FELIZARDO forced KATHERINE to lie on the bed and removed her shorts and panty against her will; and when she struggled to free herself and to shout for help, he covered and squeezed her mouth and threatened to kill her and her brothers.

We are convinced with moral certainty that FELIZARDO raped KATHERINE on 15 August 1997. The penalty therefor is death because KATHERINE was less than 18 years at the time of its commission and FELIZARDO is her uncle, a relative by consanguinity within the third civil degree. A niece is defined as the female child of a brother or sister,[41] or the daughter of one's brother or sister, or of one's brother in law or sister in law.[42] Under Article 335 of the Revised Penal Code, as amended by Section 11 of R.A. No. 7659, the death penalty shall be imposed if the victim is under eighteen (18) years old and its offender is, among others, a relative by consanguinity or affinity within the third civil degree.

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

The Court notes, however, that the trial court made no pronouncement as to FELIZARDO's civil liability on the ground that KATHERINE recanted her testimony. This was erroneous. Notwithstanding her recantation, KATHERINE is by law entitled to an award of indemnity, which current jurisprudence fixes at P75,000,[43] as well as to moral and exemplary damages.

Moral damages are imposed in rape cases involving young girls between thirteen (13) and nineteen (19) years of age, taking into account the immeasurable havoc wrought on their youthful feminine psyche.[44] It is also settled that moral damages should be automatically awarded in rape cases without need of proof, for it is assumed that the complainant has suffered moral injuries entitling her to such an award.[45] Thus, the award of P50,000 as

moral damages is in order without any proof of its basis.

Lastly, exemplary damages in the amount of P50,000 is likewise imposed upon FELIZARDO, not to punish him or to enrich KATHERINE, but to serve as a deterrent against or as a negative incentive to curb socially deleterious actions.”[46]

WHEREFORE, the decision of 3 March 1998 of the Regional Trial Court of Bacolod City, Branch 50, in Criminal Case No. 97-18570, finding accused-appellant FELIZARDO GONZALES y ALTARES guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the supreme penalty of DEATH, is hereby AFFIRMED with the modification that accused-appellant is ordered to pay the offended party, Katherine M. Gonzales, the amounts of P75,000 as civil indemnity, P50,000 as moral damages, and P50,000 as exemplary damages.

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 forwarded to the Office of the President for possible exercise of pardoning power.

No pronouncement as to costs.

SO ORDERED.

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

[1] Per Judge Roberto S. Chiongson, Original Record (OR), 49-65; Rollo, 15-31.

[2] Exhibit “E,” OR, 35.

[3] TSN, 30 October 1997, 16-19, 35, 37, 53-54; OR, 116-119, 135, 137, 153-154; 6 February 1998, 4; OR, 229.

[4] TSN, 30 October 1997, 19-23; OR 119-123.

[5] Id., 25, 39; Id., 125, 139.

[6] Id., 26; Id., 126.

[7] Id., 24-28; Id., 124-128.

[8] Id., 42; Id., 143.

[9] TSN, 30 October 1997, 27-30; OR, 127-130.

[10] A non-governmental organization giving assistance to abused woman.

[11] TSN, 30 October 1997, 30-32; OR, 130-132.

[12] Exhibit “A” to “A-3,” OR, 30.

[13] TSN, 10 October 1997, 8-10; OR, 73-75.

[14] Ibid., 26-27, 31-32; OR, 91-92, 96-97.

[15] Exhibit “D,” OR, 34.

[16] TSN, 10 October 1997, 22-25; OR, 87-90; Exhibit “C,” OR, 33.

[17] Ibid., 28-29; OR 93-94.

[18] OR, 1.

[19] TSN, 30 January 1998, 26-28; OR, 197-199.

[20] TSN, 30 January 1998, 43-45; OR, 214-216.

[21] TSN, 6 February 1998, 4-6; Id., 229-231.

[22] TSN, 30 January 1998, 12-13; Id., 183-184.

[23] Ibid., 24; OR, 195.

[24] Supra note 1.

[25] OR, 64-65.

[26] People v. Cristobal, 252 SCRA 507, 516 [1996] ; People v. Tongson, 194 SCRA 257 [1991] .

[27] People v. Dabon, 216 SCRA 656 [1992] .

[28] People v. Gagto, 253 SCRA 455, 467 [1996] .

[29] People v. Corpuz, 222 SCRA 842, 858 [1993] ; People v. Patillan, 197 SCRA 354 [1991].

[30] People v. Leoterio, 264 SCRA 608, 615 [1996].

[31] People v. Batoon, G.R. No. 134194, 26 October 1999; People v. Gabayron, 278 SCRA 78, 94 [1997] ; People v. Devilleres, 269 SCRA 716, 728 [1997] ; People v. Agbayani, 284 SCRA 315, 340 [1998] .

[32] People v. Burce, 269 SCRA 292, 313 [1997]; People v. Talaboc, 256 SCRA 441 449 [1996] .

[33] People v. Junio, 237 SCRA 826, 832 [1994] ; People v. Yambao, 193 SCRA 571, 579[1991] .

[34] People v. Poñado, G.R. No. 130334, 28 July 1999. See also People v. Agbayani, supra note 31.

[35] Decision, 14, citing People v. Casil, 241 SCRA 284 [1995] .

[36] People v. Burce, supra note 32.

[37] People v. Davatos, 229 SCRA 651 [1994].

[38] 97 Phil. 515, 526 [1955] .

[39] Decision, 12-13.

[40] People v. Hubilla, Jr., 252 SCRA 471, 478 [1996]; People v. Gomez, 251 SCRA 455, 465 [1995]; People v. Bantasil, 249 SCRA 367, 376 [1995] .

[41] Jose Agaton Sibal, PHILIPPINE LAW ENCYCLOPEDIA, 1986 ed., 614.

[42] Black's Law Dictionary, Sixth ed., 1044.

[43] People v. Victor, 292 SCRA 186 [1998] ; People v. Prades, 293 SCRA 411 [1998].

[44] People v. Erese, 281 SCRA 316, 329 [1997]; People v. Sabellina, 238 SCRA 492, 502[1994] .

[45] People v. Prades, supra note 43.

[46] People v. Tamora, G.R. No. 129112, 23 July 1999; Del Rosario v. Court of Appeals, 267 SCRA 158 [1997] .

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