

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. WARLITO TOLENTINO Y LAQUIN, APPELLANT.

G.R. No. 139351. February 23, 2004

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

For automatic review is the decision,[1] dated June 3, 1999, of the Regional Trial Court of Santiago City, Isabela, Branch 35, in Criminal Case No. 35-2076. Its dispositive portion reads:

WHEREFORE, finding the accused WARLITO TOLENTINO GUILTY beyond reasonable doubt of the crime of RAPE with the use of deadly weapon punishable under Article 335 of the Revised Penal Code as amended by Republic Act No. 7659, the Court sentences him [to suffer] the penalty of DEATH and ordering [sic] him to pay the victim the amount of P200,000.00 as exemplary damages.

SO ORDERED.[2]

In the Information filed by the Provincial Prosecutor of Isabela, appellant Warlito Tolentino y Laquin was charged of rape, allegedly committed as follows:

That on or about 6:00 o'clock in the evening of February 06, 1996, at Barangay Namnama, Batal, City of Santiago, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused by means of violence and intimidation and with lewd design, did then and there willfully, unlawfully and feloniously have carnal knowledge of the complainant MYLENE R. MENDOZA, a 7 year old girl against her will.

CONTRARY TO LAW.[3]

On May 29, 1996, Tolentino was arraigned. With assistance of counsel, he pleaded not guilty to the charge. The parties opted to forego the pre-trial conference, and the case was then set for continuous trial.

The prosecution presented four (4) witnesses: the victim, Mylene[4] Mendoza; her mother, Carmelita Mendoza; Joseph Colbongan, the barangay captain of Batal, Santiago City, Isabela; and Dr. Ramon Hilomen of the Southern Isabela District Hospital.

Mylene Mendoza testified that at around six o'clock in the evening of February 6, 1996, her father, Carlos Mendoza,[5] sent her to the house of her Lola Asiang to tell the latter that he could not report for work the following day as he needed to repair their kitchen.[6] Mylene declared that her Lola Asiang was not around when she arrived at the latter's house.[7] Mylene then noticed that there was a man standing at the terrace of the adjacent house looking at her. Mylene later identified this man in open court as herein appellant Warlito Tolentino.[8] Mylene further testified that the appellant then approached her and took her to his house.[9] Once they were inside the house, appellant brought her to the living room where he violently struck her on the head, rendering her unconscious.[10]

Mylene's mother, Carmelita Mendoza, declared on the stand that she was cooking supper that afternoon of

February 6, 1996, when her husband, Carlos, arrived.[11] As their kitchen was in a state of disrepair, Carmelita asked Carlos not to report for work on the following day so he could do the necessary repairs. Carmelita further declared that after Carlos acceded to her request, Carlos sent their daughter, Mylene, to inform her Lola Asiang that he could not come to pasture the ducks the next day.[12] Mylene left but did not return that evening.

Carmelita went on to testify that when it was already dark, she went out with her sister, Virgie de la Cruz, to look for Mylene.[13] They found Mylene lying unconscious on the street some 50 meters away from the barrio store, or some 10 meters away from the appellant's dwelling.[14] Carmelita declared that she and Virgie brought Mylene to a midwife, but when the midwife failed to revive Mylene, they took her to a hospital.[15] Carmelita further stated that when Mylene regained consciousness the following day, Mylene disclosed that she was brought inside a house where she was clobbered. She also said she could easily identify that house.[16]

For his part, Barangay Captain Joseph Colbongan testified that he was at home at around 6:00 p.m. on February 6, 1996, when Mario Espiritu, the Chief Tanod of Batal, Santiago City, reported that an unconscious child had been found near the residence of the appellant.[17] Colbongan declared that when he heard the report, he then gave instructions to the barangay officials to bring the victim to the hospital. Colbongan further stated that in the morning of the following day, February 7, 1996, he and the barangay officers of Batal went to the hospital to elicit information from the victim. After the victim regained consciousness, she informed him that she could not name her assailant because she did not know his name, but she stated that she could recall the face and appearance of her assailant as well as the house where she was brought to.[18] The barangay officers then brought Mylene to Sitio Namnama, Batal, where the incident allegedly happened. Upon reaching the vicinity of the Day Care Center in Namnama, and at a distance of 50 meters, Mylene pointed to appellant's house.[19] Mylene was then brought to another place in Namnama, some 20 meters away from the appellant's residence, and again asked to point to the house where the incident took place. Again, Mylene pointed to appellant's house.[20] Colbongan then requested for police assistance. Colbongan likewise declared that after Tolentino was taken into custody by the police and made to take part in a police line-up, Mylene unerringly pointed to him as her molester.[21]

The last witness for the prosecution was Dr. Ramon Hilomen, resident physician of the Southern Isabela District Hospital. Dr. Hilomen testified that he conducted an examination of the victim's private parts on February 6, 1996, and found that she had sustained vaginal lacerations at the 5, 7, and 9 o'clock positions, most likely caused by forcible phallic penetration.[22] Dr. Hilomen also found one (1) strand of pubic hair in the area between Mylene's vagina and her anus.[23]

When it was his turn to take the stand, the appellant interposed the defense of denial and alibi. The appellant claimed that on the night in question, he was in the house of his brother, George Tolentino, who also lived in Barangay Batal, near the Reolita Resort, or some distance away from his residence in Sitio Namnama.[24] The appellant averred that he went to his brother's house to watch a video show but because there was no video tape available, he just conversed with his brothers, George and Rogelio.[25] At around eight o'clock that evening, he decided to go home. The appellant declared that he ran across one Eddie Garcia and a certain Joel Solis on his way home, and they decided to walk together.[26] About 40 meters away from his house, near the store owned by a certain Mendoza, the appellant saw a group of people looking at something.[27] He decided to ignore the scene and went straight home where he lived alone, his family being in Baguio. The following day, he was invited by a police sergeant to the police station. The appellant claimed that at the police station an aunt of Mylene took hold of Mylene's hand and made Mylene point to him as her assailant.[28] The appellant insisted that he was falsely accused of rape by Mylene's family after he failed to lend money to Mylene's mother.[29]

The appellant presented his brother, George Tolentino, as his corroborating witness. George Tolentino testified that the appellant arrived at his house in Batal at around 5:00 p.m. of February 6, 1996, and left at 7:35 p.m. that

evening.[30] George claimed that the appellant went to his house to watch a video show, but since they failed to borrow a video tape, they just conversed with their father.[31] George further declared that he did not immediately go to the authorities to disclose the whereabouts of the appellant on the night in question since he had been told that a brother could not testify in favor of his brother.[32]

The trial court found the prosecution's evidence weighty and worthy of belief, and accordingly convicted appellant of the offense charged. In view of the imposition of the death penalty, the case is now before us on automatic review.

Before us, the appellant assigns the following errors:

A. THAT THE TRIAL COURT GRIEVOUSLY ERRED IN FINDING THE ACCUSE[D] GUILTY BEYOND REASONABLE DOUBT BASED ON ITS CONCLUSION THAT THE TESTIMONY OF THE VICTIM IS CREDIBLE, WHEN IN TRUTH AND IN FACT SUCH TESTIMONY CLEARLY APPEARS TO HAVE BEEN ORCHESTRATED, COACHED, AND PREVARICATED.

B. THAT THE PERPETRATOR OF THE CRIME HAS NOT BEEN IDENTIFIED, VIS-Ö°-VIS THAT T[H]E HEREIN ACCUSED WAS SLOPPILY AND PRECIPITATELY PINPOINTED AS THE SUSPECT ONLY AFTER HE WAS UNLAWFULLY ARRESTED AND/OR DETAINED FOR INVESTIGATION.

C. THAT THE TRIAL COURT ERRED IN HOLDING THAT THE ACCUSED BROUGHT THE VICTIM BY FORCE INSIDE HIS HOUSE, CLOBBERED THEN RAPE[D] HER; AND IN ORDER THAT HE WILL NOT BE RECOGNIZED, THREW HER OUTSIDE HIS HOUSE; THIS IS NOT SUPPORTED BY EVIDENCE.

D. THAT THE TRIAL COURT ERRED IN NOT ACQUITTING THE ACCUSED FOR FAILURE OF THE PROSECUTION TO PROVE THE GUILT OF THE ACCUSE[D] BEYOND REASONABLE DOUBT.[33]

In sum, we find the issues pertinent for our resolution to be: (1) the credibility of the prosecution's chief witness; (2) the correctness of the identification of the accused at the police line-up; (3) the sufficiency of the prosecution evidence to prove appellant's guilt with moral certainty; and (4) the correctness of the penalty imposed.

On the first issue, the appellant insists that a careful scrutiny of the testimony of Mylene Mendoza would show that it is so riddled with inconsistencies, improbabilities, and discrepancies of such nature as to render her testimony unworthy of belief and credence.[34] For one, her story as to what transpired when she reached the house of her Lola Asiang is conflicting. On direct examination, she testified that nobody was home when she reached her Lola Asiang's house, but there was a man standing near the terrace who approached her, took her to his house, and once inside the living room, "clobbered" her on the head. On cross-examination, she testified that on reaching the house of her Lola Asiang, she watched TV with her Uncle Ricky, and that it was when she was about to go home that the man approached her, and took her to his house, where he knocked her unconscious.[35]

For the appellee, the Office of the Solicitor General (OSG) counters that the inconsistencies the appellant stresses refer to minor matters, which are trivial and have nothing to do with the elements of the crime. The Solicitor General asks us to note that the principal witness is a child of tender years, who, for that reason, could not be expected to give a perfectly tailored testimony. He adds that a look at the transcripts of stenographic notes would clearly show that the prosecutor asked Mylene leading questions on direct examination, giving her no chance to give further details as to what transpired when she reached her Lola Asiang's residence. Hence, there is really no inconsistency in her account as appellant insists. She merely elaborated on cross-examination the details which were not asked of her during the direct examination. The OSG stresses that Mylene is an immature girl who could not be expected to give a completely detailed account in one instance as the appellant would have it.[36]

On this point, we agree that the inconsistency appellant points to in Mylene's testimony is too trivial to impair the integrity of her testimony taken as a whole. It does not affect significantly the veracity or the weight of her testimony. Whether appellant approached her after she had knocked at the door of her Lola Asiang's house and found the house empty, or he approached her after she had watched TV with her Uncle Ricky and was already then on her way home, has nothing to do with the essential elements of the offense of rape with which he stands charged. So, too, are the alleged inconsistencies bearing on the time Mylene regained consciousness.

We reiterate that the findings of fact and the assessment of the credibility of witnesses is a matter best left to the trial court because of its unique opportunity to observe the witness's deportment on the stand while testifying, an opportunity denied the appellate court.[37] In the instant case, no compelling reason exists to disturb the trial court's conclusion upholding the credibility of Mylene's testimony.

Appellant's claim that Mylene's family falsely charged him with rape because of his failure to lend money to Mylene's mother is unconvincing. Time and again, this Court has stated that it would take a certain perversity on the part of a parent, especially a mother, to concoct a false charge of rape and then use her daughter as an instrument to settle a grudge.[38] We note that the appellant failed to present credible evidence to indicate that Mylene and her family harbored any ill-motive that prompted her to falsely testify against him. It is farfetched for a young woman to charge a man she barely knew with so grave a crime as rape and then unnecessarily open herself to public scrutiny if she was not really subjected to the sexual indignity complained of.[39] Otherwise stated, the absence of any improper motive on Mylene's part to testify for the prosecution strongly tends to sustain the conclusion that no such improper motive existed at the time she testified and her testimony is worthy of full faith and credit.[40]

We note that the victim in this case was only 7 years old at the time of the incident,[41] and was only 8 years old when she testified in court. She was unused to judicial proceedings. The trial court in fact took note of the fact that she was very shy when she testified.[42] Ample margin of error and understanding should be accorded to her who would naturally be gripped with tension due to the novelty of the experience of testifying in court.[43] Of course, this condition arising from her youth and immaturity should not be taken against her. As a rule, testimonies of child victims of rape are given full weight and credit,[44] for youth and immaturity are badges of truth.[45] A young girl's revelation that she had been raped, coupled with her voluntary submission to medical examination and her willingness to undergo public trial where she could be compelled to narrate the details of the assault upon her dignity, cannot be dismissed as a mere concoction.

Rape is a traumatic experience, and the shock concomitant with it may linger.[46] It is an understandable human frailty not to be able to recount with facility all the details of a dreadful and harrowing experience, and minor lapses in the testimony of a rape victim can be expected.[47] After all, rape is a painful experience which is sometimes not remembered in detail,[48] and the victim cannot be expected to immediately remember with accuracy every ugly detail of her harrowing experience, especially so when she might, in fact, have been trying not to remember the event.[49] Thus, inaccuracies and inconsistencies are to be expected in the rape victim's testimony.

Lastly, appellant cannot make hay from minor inconsistencies to be found in the private complainant's testimony. Such inconsistencies tend to bolster, rather than demolish, her credibility, for they show that her testimony was neither contrived nor rehearsed.[50]

Appellant also contends that a comparison of the victim's declarations in her testimony in open court and her sworn statement[51] clearly show that the complainant is not even sure where she was raped. In her testimony, she claimed she was raped inside the appellant's house, while in her sworn statement, she said she was brought to

a “grassy area” at the back of the house. On cross-examination, she averred that her sworn statement was correct. Clearly, according to appellant, the victim cannot be believed in view of such inconsistency.[52]

As a rule, discrepancies or inconsistencies between the affidavit of a witness and testimony in open court do not impair credibility, since affidavits are often taken ex parte and tend to be incomplete or inaccurate for lack or absence of searching inquiries by the investigating officer.[53] Appellant cannot capitalize on Mylene’s admission on cross-examination that what she told the police as to the place where the crime was committed was the correct account. A closer reading of the declaration in question shows that said statement was meant merely to confirm the presence of her Uncle Ricky at her Lola Asiang’s house. Mylene testified:

Atty. Changale:

Earlier, I quoted to you paragraph 5 of your statement which I will again repeat and I quote:

Q: Will you please narrate how the incident happened?

A: On February 6, 1996 at 6:00 o’clock in the evening I was ordered by my father to go to the house of my uncle Ricky to tell the latter that my father could not attend his work as duck raiser as he will repair our house. When I arrive(d) at the house of uncle Ricky nobody was there but I saw an old man standing at the terrace. Said old man approach me (sic) and immediately pull (sic) my right hand and brought me at the back of his house and there where I am standing the old man remove(d) his pant(s) and brought me to the grassy area and laid me down. When I’m already lying on my back he struck my head with the used (sic) of stone that make (sic) me unconscious.

Q: Do you remember if you made that statement?

A: Yes Sir.

Q: Now, in your direct examination, you stated that you viewed TV with your Uncle Ricky, now, in the sworn statement you stated that your Uncle Ricky was not in their house which is correct?

A:

What I have given to the Police.[54]

As the foregoing shows, there is no inconsistency in the victim’s sworn statement and her testimony in open court as to where she was actually abused.

In sum, we find that appellant has not raised a plausible and sufficient reason for us to discount the veracity and credibility of Mylene’s testimony. We are not prepared to disbelieve her testimony on its vital points substantiating the circumstances of time and place of the offense charged against appellant.

On the second issue, appellant avers that his identification by Mylene at the police line-up is unreliable since she was merely coached into pointing at him by her aunt. Appellant also harps on the fact that the victim could not give her abuser’s name when she regained consciousness.[55] He likewise contends that his constitutional rights were violated when the police required him to join the line-up.[56]

For the State, the Solicitor General submits that an application of the “totality of circumstances test” governing the admissibility of out-of-court identification, the identification of the appellant by the victim at the police station

must be sustained. It is irrelevant whether she knew or could not mention his name when she regained consciousness since persons are identified not solely through their names.[57] Nor can the appellant claim that he was denied the protection of the safeguards under the Bill of Rights when he was made to join the police line-up, since it is settled that a police line-up is not part of the custodial investigation.[58]

In determining whether an out-of-court identification is positive or derivative, we have adopted the totality of circumstances test wherein the following factors are taken into consideration: (1) the witness's opportunity to view the criminal at the time of the crime; (2) the witness's degree of attention at that time; (3) the accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and (6) the suggestiveness of the identification procedure.[59]

On those bases, we hold that the alleged irregularities cited by the appellant did not result in an erroneous identification of the offender. First, it must be stressed that the victim had an unobstructed view of the appellant's face at the time appellant approached her and took her to his house. We have scrutinized the records minutely and find no indication that anything had blocked or had obscured her view at the time of the incident. Second, there is also nothing on record which would show the presence of any distraction which would have disrupted her attention at the time of the incident and thus prevent her from having a clear view of the appellant's face and appearance. Third, after she regained consciousness, Mylene disclosed to her parents, in the presence of the barangay officials, that she could recognize the man who abused her. Her certainty was further demonstrated when she was taken to the place where the incident occurred and she pointed to appellant's house. Fourth, at the police station, Mylene did not hesitate in pointing to appellant as her abuser, notwithstanding that he had been made to line up with several other persons.

The appellant's insistence that Mylene's aunt improperly suggested to her to point to appellant is without basis. Nothing persuasive supports the appellant's contention that his identification at the police station was the result of unduly suggestive procedure.

Also without firm basis is appellant's claim that his rights under Article III, Section 12[60] of the Constitution were violated when he was made to join the police line-up. In *Gamboa v. Cruz*,[61] we held that a police line-up was not part of the custodial inquest, inasmuch as the accused therein was not yet being investigated and hence, the right to counsel had not yet attached. This ruling was affirmed in *People v. Loveria*,[62] and *People v. De Guzman*. [63] Both held that where the accused was not being investigated by the police, when the witness was in the process of identifying him, his right to counsel was not violated. The reason is that at this stage, he was not entitled to the constitutional guarantee invoked. Under the circumstances of this case, we see no reason to depart from these cited precedents.

Appellant attaches great emphasis on his identification at the police line-up. Yet, there is no law requiring a police line-up as essential to a proper identification.[64] In this case, any doubt as to his identification at the police line-up was dispelled by Mylene who identified in open court the appellant as the malefactor.

Appellant insists that Mylene failed to disclose the name of the person who raped her to her parents or to the barangay officers, so that his identification later should be considered dubious.[65] Identification of a person, however, is not solely through knowledge of his name. In fact, familiarity with physical features, especially those of the face, is the best way to identify a person, for one may be familiar with the face but not necessarily the name.[66] It does not follow, that to be able to identify a person, one must necessarily know his name.[67]

On the third issue, appellant argues that inasmuch as Mylene was unconscious and only regained consciousness the following morning, her failure to give any details at the time as to how she was raped, should be a bar to his

conviction for the crime of rape.

For the appellee, the Solicitor General points out the fact that the victim was unconscious when she was raped, and thus could not testify as to the actual commission of the crime, would not preclude conviction, since the prosecution may rely upon circumstantial evidence, provided that said evidence passes the “totality of circumstances test.”[68]

In the instant case, the record is bereft of details as to how the victim was raped. This is understandable, considering that the victim was unconscious during her ravishment and there were no eyewitnesses to the crime. Evidence to support a finding of rape here must necessarily be purely circumstantial.

To sustain a conviction of an accused through circumstantial evidence, the following requisites must be satisfied: (1) there is more than one circumstance; (2) the inference must be based on proven facts; and (3) the combination of all circumstances produces a conviction beyond reasonable doubt of the guilt of the accused.[69]

In this case, the following unbroken chain of circumstances point to the appellant’s guilt:

- (1) The appellant approached Mylene while she was near the house of her Lola Asiang and then took Mylene to his house;
- (2) Once they were inside his house, the appellant struck a blow to Mylene’s head, rendering her unconscious;
- (3) Later, Mylene was found on the street near the appellant’s house still unconscious;
- (4) The medical examination done on Mylene at the hospital disclosed that she had suffered lacerations in her vagina in the 5, 7, and 9 o’clock positions. The examining physician likewise recovered between her vagina and anus a strand of pubic hair that did not belong to her, as she was only 7 years old and not of the age of puberty;
- (5) When Mylene regained consciousness, she declared that she had been raped and that she could identify the person who molested her.
- (6) When she was brought to the area where she was found, Mylene singled out the appellant’s house as the locus criminis; and
- (7) Mylene pinpointed appellant in the police line-up as her assailant.

The appellant has not debunked the examining physician’s finding of penile penetration as shown by the lacerations on the private complainant’s genitalia. Lacerations, whether fresh or healed, are the best physical evidence of forcible defloration.[70] Under the circumstances of this case, we hold that the essential requisites of statutory rape defined in Article 335, Paragraph 3[71] of the Revised Penal Code, as amended by Section 11 of Rep. Act No. 7659,[72] which was in force at the time of the rape, have been sufficiently established. That Mylene was only seven years old is clear from her authentic birth certificate[73] and the corroborating testimony of her mother.[74] Both establish that she was born on May 23, 1988.

The appellant’s alibi that he was at his brother’s house deserves scant consideration. It was correctly rejected by the court a quo for being inherently weak, unreliable, and easily fabricated. For the defense of alibi to prosper, it must be established by positive, clear, and satisfactory proof that it was physically impossible for the accused to have been at the crime scene at the time of its commission and not merely that he was somewhere else. Physical impossibility refers to the distance between the place where the accused was when the crime was committed and the place where it was committed, as well as the facility of the access between the two places.[75] In this case, the element of physical impossibility is absent, as the residence of appellant’s brother where he supposedly was at the time of the commission of the crime is located in the same barangay as the scene of the crime. Moreover, his alibi

must crumble in the face of the positive identification made by the private complainant of the appellant as her rapist.[76]

But did the trial court correctly impose the death penalty?

The Solicitor General submits that under Article 335 of the Revised Penal Code, as amended by R.A. No. 7659, the penalty of reclusion perpetua to death is prescribed where the crime of rape is committed with a deadly weapon. However, the information in this case is bare of any allegation as to the use of any deadly weapon. Nor was it established during trial that appellant used a deadly weapon to accomplish his bestial desires. Hence, according to the Solicitor General, there is no justification whatsoever for the imposition of the death sentence. [77]

The Court agrees with the Solicitor General. The Information in the present case does not state that the rape of Mylene was committed with the use of a deadly weapon. The prosecution also failed to come up with the requisite proof during the trial that the appellant did indeed use a deadly weapon at the time of the incident. Hence, such circumstance cannot be appreciated against the appellant. Accordingly, the appellant can only be convicted of statutory rape, as stated, for which the imposable penalty is reclusion perpetua under Art. 335 of the Revised Penal Code.

However, we find that modification of the civil liability imposed is called for. The trial court awarded P200,000 in exemplary damages and no other to the victim. Jurisprudence dictates that, upon a finding of the fact of rape, the award of civil indemnity ex delicto in the amount of P50,000 becomes mandatory.[78] In addition, private complainant is entitled to an award of P50,000 in moral damages, without need of proof or pleading, for the mental, physical, and psychological suffering undeniably sustained by a rape victim.[79] On exemplary damages, the amount of P25,000 is awarded when the victim of the crime is a young girl so as to set a public example against elders abusing and corrupting the youth.[80]

WHEREFORE, the decision of the Regional Trial Court of Santiago City, Isabela, Branch 35, dated June 3, 1999, in Criminal Case No. 35-2076, finding appellant WARLITO TOLENTINO guilty of the crime of rape is **AFFIRMED** with **MODIFICATION**. Appellant is found **GUILTY** of statutory rape and sentenced to suffer the penalty of reclusion perpetua. He is also **ORDERED** to pay private complainant Mylene Mendoza the amount of P50,000.00 as civil indemnity, P50,000.00 as moral damages, and P25,000.00 as exemplary damages. Costs de oficio.

SO ORDERED.

Davide, Jr., C.J., Puno, Vitug, Panganiban, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., Azcuna, and Tinga, JJ., concur.

[1] Records, pp. 190-198.

[2] Id. at 198.

[3] Id. at 1.

[4] In her sworn statement (Exh. "2") to the police investigators, she signed her name as "Maylene Mendoza." See Records, pp. 5-6.

[5] While Mylene did not state her father's name under both direct and cross-examination, her Certificate of Live Birth (Exh. "A") names her father as one "Carlos Mendoza." See Records, p. 51.

[6] TSN, 9 July 1996, p. 4 in relation to TSN, 5 November 1997, pp. 2, 8-9, 12-13.

[7] TSN, 9 July 1996, p. 4.

[8] Id. at 7. See also TSN, 5 November 1997, p. 17.

[9] Id. at 6.

[10] Id. at 6-7. See also TSN, 5 November 1997, pp. 9-10.

[11] Id. at 9.

[12] Id. at 10.

[13] TSN, 23 July 1996, pp. 4-5.

[14] Id. at 5.

[15] Id. at 6.

[16] Id. at 9.

[17] TSN, 30 July 1996, pp. 5-6.

[18] Id. at 7-8.

[19] Id. at 8-10.

[20] Id. at 9-10.

[21] Id. at 13.

[22] TSN, 6 August 1996, pp. 10-11, 13-16, 18.

[23] Id. at 27-28.

[24] TSN, 9 July 1998, pp. 3-4.

[25] Id. at 4-5.

[26] Id. at 6.

[27] Id. at 6-7.

[28] Id. at 10-12.

[29] Id. at 13.

[30] TSN, 11 August 1998, pp. 3-4.

[31] Id. at 4.

[32] Id. at 6.

[33] Rollo, p. 58.

[34] Rollo, p. 59.

[35] Id. at 59-61.

[36] Rollo, pp. 103-104.

- [37] *People v. Federico*, G.R. No. 146956, 25 July 2003, p. 6.
- [38] *People v. Funesto*, G.R. No. 143432, 9 April 2003, p. 10; *People v. Mendoza*, G.R. Nos. 143844-46, 19 November 2002, 392 SCRA 240, 266.
- [39] *People v. Labiano*, G.R. No. 145338, 9 June 2003, p. 15.
- [40] *People v. Jackson*, G.R. No. 131842, 10 June 2003, p. 19 citing *People v. Banela*, 361 Phil. 61, 70 (1999) and *People v. Sotto*, 341 Phil. 184, 198 (1997).
- [41] Records, p. 51; TSN, 9 July 1996, pp. 11-12.
- [42] TSN, 9 July 1996, p. 5.
- [43] See *People v. Ilius*, G.R. No. 145995, 20 March 2003, p. 14 citing *People v. Lomerio*, 383 Phil. 434, 443-444 (2000).
- [44] *People v. Panganiban*, 412 Phil. 98, 109 (2001).
- [45] *People v. Operario*, G.R. No. 146590, 17 July 2003, p. 6 citing *People v. Serado*, G.R. No. 138664, 6 August 2002, 386 SCRA 291, 299.
- [46] *People v. Ilagan*, G.R. No. 144595, 06 August 2003, p. 8.
- [47] *People v. Esperanza*, G.R. Nos. 139217-24, 27 June 2003, p. 15.
- [48] *People v. Manluctao*, G.R. Nos. 143760-63, 23 June 2003, p. 8 citing *People v. Luna*, G.R. No. 135241, 22 January 2003, p. 21.
- [49] *People v. Dizon*, G.R. No. 133237, 11 July 2003, p. 22 citing *People v. Cesista*, G.R. Nos. 131589-90, 6 August 2002, 386 SCRA 233, 250.
- [50] See *People v. Sandig*, G.R. No. 143124, 25 July 2003, p. 9 citing *People v. Gonzales, Jr.*, G.R. Nos. 143143-44, 15 January 2002, 373 SCRA 283, 300.
- [51] See Exh. "2," Records, p. 5.
- [52] Rollo, p. 61.
- [53] *People v. Dizon*, supra, note 49 citing *People v. Villadares*, G.R. No. 137649, 8 March 2001, 354 SCRA 86, 96.
- [54] TSN, 5 November 1997, pp. 12-13.
- [55] Rollo, pp. 61-62, 64.
- [56] *Id.* at 64-66.
- [57] *Id.* at 110.
- [58] *Id.* at 109.
- [59] *People v. Sinco*, G.R. No. 131836, 30 March 2001, 355 SCRA 713, 722; *People v. Meneses*, 351 Phil. 331, 350 (1998); *People v. Teehankee, Jr.*, G.R. Nos. 111206-08, 6 October 1995, 249 SCRA 54, 95.
- [60] Sec. 12 (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own

choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

(2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited.

(3) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him.

(4) The law shall provide for penal and civil sanctions for violations of this section as well as compensation to and rehabilitation of victims of torture or similar practices, and their families.

[61] L-56291, 27 June 1988, 162 SCRA 642, 648.

[62] G.R. No. 79138, 2 July 1990, 187 SCRA 47, 62.

[63] G.R. Nos. 98321-24, 30 June 1993, 224 SCRA 93, 101.

[64] *People v. Perez*, G.R. No. 142556, 5 February 2003, p. 11.

[65] *Rollo*, p. 64.

[66] *People v. Gallego*, G.R. No. 130603, 15 August 2000, 338 SCRA 21, 37; *People v. Barrientos*, 349 Phil. 141, 158 (1998).

[67] *People v. Verzosa*, 355 Phil. 890, 904 (1998); *People v. Reception*, G.R. No. 94127, 01 July 1991, 198 SCRA 670, 677.

[68] *Rollo*, p. 110.

[69] *People v. Guihama*, G.R. No. 126113, 25 June 2003, p. 15 citing *People v. Mendez*, G.R. No. 147671, 21 November 2002, p. 23.

[70] *People v. Montemayor*, G.R. Nos. 124474 & 139972-78, 28 January 2003, p. 15 citing *People v. Belen*, G.R. Nos. 137991-92, 10 June 2002, 383 SCRA 314, 323; *People v. Acala*, 366 Phil. 797, 813 (1999); *People v. Espinoza*, 317 Phil. 79, 87 (1995).

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

1. By using force or intimidation;
2. When the woman is deprived of reason or other wise unconscious; and
3. When the woman is under twelve years of age or is demented.

The crime of rape shall be punished by reclusion perpetua.

Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death.

...

[72] *Death Penalty Law*.

[73] *Records*, p. 51.

[74] *TSN*, 9 July 1996, pp. 11-12.

[75] *People v. Evina*, G.R. Nos. 124830-31, 27 June 2003, p. 16 citing *People v. Appegu*, G.R. No. 130657, 01 April 2002, 379 SCRA 703, 714.

[76] *People v. Alajay*, G.R. Nos. 133796-97, 12 August 2003, p. 8.

[77] *Rollo*, pp. 114-115.

[78] *People v. Servano*, G.R. Nos. 143002-03, 17 July 2003, p. 24.

[79] *People v. Sandig*, G.R. No. 143124, 25 July 2003, p. 12 citing *People v. Gabawa*, G.R. No. 139833, 28 February 2003, p. 19.

[80] *Supra*, note 78.

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