

THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. KAKINGCIO CAÑETE, APPELLANT.*G.R. No. 142930. March 28, 2003*

Ponente: CALLEJO, SR., J.

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Before the Court on automatic review is the Decision[1] of the Regional Trial Court of Leyte, Branch 36, in Criminal Case No. 2523, convicting appellant of rape, imposing on him the death penalty and ordering him to pay damages to the victim in the amount of P50,000.

Evidence of the Prosecution

The spouses xxxx and xxxx had three children, one of whom was AAA, who was born on March 24, 1983. In 1986, the spouses decided to live separately. xxxx resided in Pook West, Cubala, Biliran, with some of her children by xxxx. The latter decided to live in Basey, Samar, and brought AAA with him. Thereafter, xxxx decided to live with his older brother, Kakingcio Cañete, and the latter's common-law wife, xxxx, whom AAA called Yaya xxxx, and their two children, five and four years old, respectively, in Barangay xxxx, Capoocan, Leyte. After some years, xxxx and AAA decided to return to and live in Basey, Samar. In the meantime, xxxx became blind and a paralytic. In January 1996, Kakingcio had xxxx and AAA fetched from Basey, Samar, and brought to Barangay xxxx, Capoocan, Leyte, to live with him and his family. By then, AAA was already twelve years old. She noticed that her uncle Kakingcio was nice and amiable to her.

On February 1, 1996, xxxx visited her daughter in Montebello, Kananga, Leyte, leaving behind Kakingcio and their two young children and xxxx and AAA. At about 8:00 p.m., AAA was already asleep. xxxx was sleeping near her feet. The house was dark. Momentarily, AAA was awakened when she felt someone caressing her. When she opened her eyes, she saw her uncle Kakingcio who was wearing a pair of short pants but naked from waist up. He was beside her with his left palm touching her forehead, down to her face, hand and feet. She could smell liquor from his breath. He poked an 8-inch long knife on her neck and whispered to her: "Ma, don't tell your yaya because I will do something to you." Kakingcio then removed his short pants, lifted her skirt and pulled down her panties. He threatened to kill her if she made a sound. AAA was terrified. Kakingcio then inserted his private organ into AAA's vagina and made a push and pull movement of his body. AAA felt pain in her private part and could do nothing but cry as Kakingcio ravished her. In the process, AAA lost consciousness. When she regained consciousness, it was already 6:00 in the morning of February 2, 1996. She was weak and could hardly stand up. She noticed blood in her vagina. By then, Kakingcio had already left the house. AAA could do nothing but cry.

Kakingcio arrived back home after lunch time. AAA hid from her uncle.

On February 3, 1996, at 8:00 in the evening, AAA was asleep in the sala of their house. She was awakened when she felt her pants being pulled down. She was aghast when she saw Kakingcio beside her pulling down her pants. She resisted and ran out of the house to escape from Kakingcio. She rushed to the house of a neighbor Ka Caring

to whom AAA revealed that her uncle raped her and that he was about to rape her again. Caring advised AAA not to return to their house. AAA slept in the house of Caring. AAA returned to their house the next day, February 4, 1996. By then, Kakingcio was no longer in the house.

On February 5, 1996, xxxx went up the hill to gather camote tops. She was then armed with a bolo. AAA followed xxxx to the hills and revealed to her that Kakingcio raped her on February 1, 1996. xxxx was livid with rage. She rushed back to the house and confronted Kakingcio with the charge of AAA. xxxx and Kakingcio quarreled. She berated him for having taken advantage of his own flesh and blood. She told him to leave the house. Kakingcio agreed on the condition that he would bring his personal belongings with him. After Kakingcio left, xxxx accompanied AAA to the barangay captain and complained against Kakingcio. The Barangay Captain wrote a letter to the local police authorities requesting assistance to xxxx and AAA. On February 9, 1996, Dra. Bibiana A. Cardente, the Municipal Health Officer of Capoocan, Leyte, examined AAA. The doctor prepared and signed a medico-legal certificate on her examination of AAA which contains her findings:

“Physical Examination Findings:

Breast: normal, no abrasions, no lacerations, no hematoma

Abdomen: normal

Extremities: normal

Pelvic Examination: scanty pubic hair noted

External Genitalia: grossly normal

Internal & Speculum Examination Findings:

Introitus: non-parous, admits 2 fingers with slight difficulty

Cervix: pinkish, soft hymenal healed old lacerations at 6 o'clock and 9 o'clock

Discharges: scanty brownish discharges

Uterus: small

Adnexa: negative for masses and tenderness”[2]

AAA was entrusted to the Lingap Center in Pawing Palo, Leyte.

On April 26, 1996, an Information was filed with the Regional Trial Court of Leyte, Branch 36, charging Kakingcio with rape, thus:

“That on or about the 1[st] day of February, 1996, in the Municipality of Capoocan, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent and with lewd designs and by use of force and intimidation then armed with the short bladed weapon, did then and there wilfully, unlawfully and feloniously have carnal knowledge with AAA, a minor (12 years old) against her will to her damage and prejudice.

CONTRARY TO LAW.[3]

When arraigned on September 18, 1996, Kakingcio, assisted by counsel, pleaded not guilty to the crime charged.

When he testified, Kakingcio denied having sexually assaulted AAA. He interposed the defense of alibi. He claimed that he was a farmer. He planted root crops such as banana. On February 1, 1996, he went to the house of Romulo Lukaba located at Barangay xxxx, Capoocan, Leyte, about three kilometers from his house, for the purpose of accompanying and helping Rolly Lukaba, the son of Romulo, gather coconuts in the coconut plantation of Romulo in the mountains. It took Kakingcio thirty minutes to reach the place. At about 9:00 in the evening, Kakingcio, Rolly and Romulo drank tuba. By 10:00 in the evening, Rolly and Kakingcio went to sleep. Romulo, however, left the two. The next day, Rolly and Kakingcio went back to the mountains and gathered

coconuts.

Kakingcio returned to their house on February 7, 1996.

Kakingcio testified that he was not aware of any reason why his wife and AAA would charge him with rape.

On February 4, 2000, the trial court rendered a decision finding Kakingcio guilty beyond reasonable doubt of rape and imposing on him the penalty of death in view of the presence of the special qualifying circumstance of the minority of private complainant AAA and her relationship to Kakingcio and the special aggravating circumstance of use of a deadly weapon and without any mitigating circumstance in the commission of the crime.

In his appellant's brief, appellant Kakingcio assails the decision of the trial court contending that:

I

THE TRIAL COURT ERRED IN PARTICIPATING DIRECTLY AND ACTIVELY IN THE PRESENTATION AND RECEPTION OF THE PROSECUTION'S EVIDENCE THEREBY FAILING TO UPHOLD THE "COLD NEUTRALITY OF AN IMPARTIAL JUDGE."

II

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF RAPE DESPITE WANT OF CLEAR, POSITIVE AND CONVINCING IDENTIFICATION.

III

THE TRIAL COURT ERRED IN GIVING UNDUE WEIGHT AND CREDENCE TO THE INCREDIBLE TESTIMONY OF THE PRIVATE COMPLAINANT AND IN DISREGARDING THE EVIDENCE ADDUCED BY THE DEFENSE.

IV

ON THE ASSUMPTION HOWEVER THAT THE ACCUSED-APPELLANT IS GUILTY OF RAPE, THE TRIAL COURT ERRED IN IMPOSING UPON HIM THE PENALTY OF CAPITAL PUNISHMENT DESPITE THE FACT THAT THE QUALIFYING CIRCUMSTANCE OF RELATIONSHIP WAS NOT ALLEGED IN THE INFORMATION, HENCE, THE APPROPRIATE PENALTY SHOULD ONLY BE RECLUSION PERPETUA.[4]

On the first three assignments of errors, the appellant avers that the prosecution had a difficulty proving that the appellant raped the private complainant in light of her testimony that when the appellant mounted her, he still had his short pants on. When the prosecution tried to elicit from the offended party how appellant's penis could have been inserted into her vagina with his pants still on and the appellant's counsel objected to the question, the presiding judge himself took the cudgels for the prosecution and propounded questions on the private complainant. Worse, the presiding judge posed leading questions to the private complainant. The presiding judge was biased and partial to the prosecution. To buttress his contention, the appellant's counsel cited a portion of the transcript of the stenographic notes taken during the trial on September 17, 1997:

PROS. PERIDA:

Q So, after he laid himself over you with his trouser what else happened?

A His penis was inserted into my vagina, sir.

Q Where did he let his penis exit considering that he is then wearing a short pants?

ATTY. DILOY:

Objection your Honor! It is leading.

COURT:

Q How did he manage to have his penis inserted to your vagina?

A No, sir, because when he placed himself on top of me he pulled down his shorts and thereafter he inserted his penis into my vagina.

Q At that time what was your apparel going up from your vagina?

A I was wearing then a t-shirt and skirt, sir.

Q About your skirt?

A He pulled up my skirt, sir.

Q What about your t-shirt?

A He did not do anything about my t-shirt.

Q After placing his penis on your vagina, what else transpired?

A He keeps on kissing me sir.

Q At that time he keeps on kissing you, where was his penis in relation to your vagina?

A It was inside my vagina sir.[5]

The appellant further stresses that when AAA was raped it was nighttime and the place where she was molested was dark. She could not have recognized and identified the appellant as her rapist. Furthermore, AAA failed to report the rape immediately to the police authorities.

The Court does not agree with the appellant's submission. In *People v. Ancheta*,^[6] this Court emphasized that a presiding judge enjoys a great deal of latitude in examining witnesses within the course of evidentiary rules. The presiding judge should see to it that a testimony should not be incomplete or obscure. After all, the judge is the arbiter and he must be in a position to satisfy himself as to the respective claims of the parties in the criminal proceedings. In *People v. Zheng Bai Hui*,^[7] this Court reiterated that:

In any case, a severe examination by a trial judge of some of the witness for the defense in an effort to develop the truth and to get at the real facts affords no justification for a charge that he has assisted the prosecution with an evident desire to secure a conviction, or that he had intimidated the witnesses for the defense. The trial judge must be accorded a reasonable leeway in putting such questions to witnesses as may be essential to elicit relevant facts to make the record speak the truth. Trial judges in this jurisdiction are judges of both the law and the facts, and they would be negligent in the performance of their duties if they permitted a miscarriage of justice as a result of a failure to propound a proper question to a witness which might develop some material bearing upon the outcome. In the exercise of sound discretion, he may put such question to the witness as will enable him to formulate a sound opinion as to the ability or the willingness of the witness to tell the truth. A judge may examine or cross-examine a witness. He may propound clarificatory questions to test the credibility of the witness and to extract the truth. He may seek to draw out relevant and material testimony though that testimony may tend to support or rebut the position taken by one or the other party. It cannot be taken against him if the clarificatory questions he propounds happen to reveal certain truths which tend to destroy the theory of one party.

In this case, the relevant direct-examination questions posed by the public prosecutor of the private complainant and her corresponding answers, the objections thereto by the appellant's counsel and the questions propounded by

the trial court were as follows:

Q

After taking off your panty or underwear (sic) what else transpired?

A

He placed himself on top of me sir.

Q

Please describe to us your uncle at that moment when he placed himself over your body!

A

He placed himself on top of me in a prone position.

Q

What was he wearing at that time when he was carressing (sic) your face down to your arm?

A

He was just wearing a short pants sir.

Q

What about the upper portion of his body?

A

None sir.

Q

At the time he put himself over you on a prone position, what about his short pants, was it still there?

ATTY. DILOY:

We request Your Honor that the question not be made in a leading manner!

COURT:

Place of record the comment!

PROS. PERIDA:

I withdraw that Your Honor!

Q

Where was the short pants which your uncle originally wearing that time?

ATTY. DILOY:

He was wearing it Your Honor as described by the witness!

PROS. PERIDA:

At this moment now, when he was already on top of the victim!

ATTY. DILOY:

It was answered by the witness! According to the witness, accused was wearing short pants but the upper part of his body the accused had nothing worn!

PROS. PERIDA:

That is agreed Your Honor. Now my question is, at the time Kakingcio Cañete was already on top of AAA where was this short pants!

ATTY. DILOY:

It was being worn by the accused!

PROS. PERIDA:

Let the witness answer that Your Honor!

ATTY. DILOY:

We submit Your Honor!

COURT:

Q

What were your uncle, when your uncle placed himself on top of your body as you said, in a prone position, was he wearing clothes or none?

A

He was still wearing Your Honor.

Q

What clothes?

A

Short pants Your Honor.

Proceed Fiscal!

PROS. PERIDA:

Q

So, after he laid himself over you with his trouser, what else happened?

A

His penis was inserted into my vagina sir.

Q

Where did he let his penis exit considering that he is then wearing a short pants?

ATTY. DILOY:

Objection Your Honor! It is leading!

COURT:

Q

How did he manage to have his penis inserted to your vagina?

A

No sir, because when he placed himself on top of me he pulled down his shorts and thereafter he inserted his penis into my vagina.

Q

At that time what was your apparel going up from your vagina?

A

I was wearing then a T-shirt and skirt sir.

Q

About your skirt?

A

He pulled up my skirt sir.

Q

What about your t-shirt?

A

He did not do anything about my t-shirt.

Q

After placing his penis on your vagina, what else transpired?

A

He keeps on kissing me sir.

Q

At that time he keeps on kissing you, where was his penis in relation to your vagina?

A

It was inside my vagina sir.

Q

While his penis was inside your vagina and the accused keeps on kissing you what else transpired?

A

(witness weeping in tears as been directly examined by the Public Prosecutor).

COURT:

Place it of record that the child witness is crying in the witness stand!

PROS. PERIDA:

May we ask for suspension Your Honor! I move for suspension considering the condition of the victim witness Your Honor! He's already crying!

COURT:

We can come back tomorrow.[8]

The Court finds nothing improper in the questions posed by the trial court. Neither are the questions prejudicial to the appellant or suggestive of any partiality of the trial court. It bears stressing that from the testimony of the private complainant, the appellant was wearing his short pants before he mounted her and even when he was already on top of her and managed to penetrate her sexual organ with his penis. The public prosecutor wanted the private complainant to explain to the court how the appellant could have inserted his penis into her vagina considering that he was still wearing his short pants. Although crudely and ungrammatically phrased, the question of the public prosecutor "where did he let his penis exit considering that he is then wearing a short pants" was not leading. The trial court should have overruled the objection and allowed the private complainant to answer the question. However, the trial court was not precluded from asking questions to avoid further wrangling between the public prosecutor and the appellant's counsel which may frightened or unnerved the private complainant, a minor and who was unused to judicial proceedings. After all, the trial court was mandated to discover the truth. As it turned out, the private complainant cried profusely as she testified impelling the trial court to order a continuance. Even the counsel of the appellant agreed to a continuance.

Parenthetically, under Sections 19 to 21 of the Rule on Examination of a Child Witness which took effect on December 15, 2000, child witnesses may testify in a narrative form and leading questions may be allowed by the trial court in all stages of the examination if the same will further the interest of justice. Objections to questions should be couched in a manner so as not to mislead, confuse, frighten and intimidate the child:

Sec. 19. Mode of questioning. – The court shall exercise control over the questioning of children so as to (1) facilitate the ascertainment of the truth, (2) ensure that questions are stated in a form appropriate to the developmental level of the child, (3) protect children from harassment or undue embarrassment, and (4) avoid waste of time.

The court may allow the child witness to testify in a narrative form.[9]

While it may be true that it was dark when the appellant ravished the private complainant in his house, it cannot, however, be gainsaid that the private complainant could have sufficiently identified the appellant as the culprit. The appellant was the uncle of the private complainant. She and her father xxxx had been living with the appellant and his family off and on for years before she and her father were brought back with appellant in January 1996 to Capoocan, Leyte, to live anew with the appellant and his family. The private complainant was thus familiar not only with the physical build of the appellant but also with his voice and peculiar smell. A person may be identified by these factors. Once a person has gained familiarity with another, identification is quite an easy task.[10] In this case, the appellant poked a knife on her neck and whispered to the private complainant before she raped her: "Ma, ayaw pagsumat kan imo yaya kay may-ada ako ha imo bubuhaton" (Ma, don't tell to your yaya because I will do something to you.) "Ma" was the nickname of AAA, the private complainant. "Yaya" was xxxx, the common-law wife of the appellant.[11] Moreover, as testified to by the private complainant, the only persons left in the house in the evening of February 1, 1997 were the appellant and his two young children, xxxx, who was blind and an invalid, and the private complainant:

PROS. PERIDA:

Q

You stated that on February 1, there was no light at the place where you were raped. How did you recognize with certainty that it was Kakingcio Cañete who raped you?

ATTY. DILOY:

I object to that Your Honor. It should have been taken during the direct examination.

PROS. PERIDA:

No, Your Honor. We are already talking about lights Your Honor.

COURT:

Well, at least for purposes or in the interest of the trial, let the witness answer!

WITNESS:

A

Because we were the only one staying in the house, and besides I can detect his smell.

PROS. PERIDA:

Q

Why? What was his smell?

WITNESS:

A

Smells like a smoker.[12]

When xxxx confronted the appellant on February 5, 1997, with the claim of the private complainant that he raped the latter and demanded that the appellant leave the house, the appellant did not deny the charge and even agreed to leave the house on condition that he be allowed to take his personal belongings with him:

PROS. PERIDA:

Q

On the following day, that was Monday, February 5, 1996, what did you do if any?

WITNESS:

A

That morning – Monday, my auntie Yaya xxxx went up the hill and I followed them and I told them about my ordeal that I was raped by my Yayo Kaking.

PROS. PERIDA:

Q

Who was the companion of your Yaya xxxx who went up the hill?

WITNESS:

A

Her daughter Ate Belen.

PROS. PERIDA:

Q

What is her real name?

WITNESS:

A

Belen Pepito.

PROS. PERIDA:

Q

Was he already married?

WITNESS:

A

That her family name is the surname of her mother.

PROS. PERIDA:

Q

When you told your Yaya xxxx , how did she react to your information?

WITNESS:

A

Upon learning about the rape incident she was very angry and she reacted angrily and carried with her the camote tops and went down proceeding towards their house bringing with her a long bolo, in our dialect it is used for farming and cutting grass and a long pointed bolo, a sharp instrument, and upon reaching their house they have a quarrel with my uncle.

PROS. PERIDA:

Q

How about you, did you follow your Yaya in going home?

WITNESS:

A

Yes, sir.

PROS. PERIDA:

Q

After they quarrel, what transpired?

WITNESS:

A

My auntie, Yaya xxxx told my uncle Yayo Kaking to leave the house because he ate his own blood, and Yayo Kaking answered in the affirmative, saying Yes, I will leave the house so long I will bring with me all my belongings.[13]

The credibility of the private complainant was not degraded by her and xxxx 's reporting the sexual assault to the police authorities only on February 5, 1996. The evidence shows that the private complainant was only twelve years old when she was raped by the appellant. She and her father, who was completely blind and a paralytic, were living in the house of the appellant. The latter threatened to kill her if she revealed what he did to her. It was thus easy for the appellant to fulfill the threat if she divulged the violation of her honor.[14] The private complainant could do nothing but cry. When the appellant tried in the evening of February 3, 1996 to violate her again, she ran to a neighbor, Ka Caring, divulged to her that the appellant tried to rape her anew and sought her help. In fact, the private complainant slept in the house of Ka Caring that evening and went back home only the next morning on February 4, 1996. On February 5, 1996, the private complainant revealed to her Yaya xxxx , the wife of the appellant, that the latter had raped her. In *People v. Bea*,[15] this Court held that it is not uncommon for a young girl at the tender age of sixteen years to be intimidated into silence and conceal the sexual assault on her by the appellant.[16]

When cross-examined by the public prosecutor, the appellant unabashedly admitted that he did not know any improper or ill-motive on the part of the private complainant for charging him with rape, and on the part of his wife xxxx for reporting the sexual assault on the private complainant by the appellant to the police authorities:

Q

The complainant here testified in Court that she was raped by you at 9:00 o'clock in the evening of February 1, 1996. Are you aware of that?

A

No, sir.

Q

In fact the victim here testified that it was your very own wife who accompanied her to report this matter to the barangay (sic) Chairman of Barangay xxxx , and likewise reported this matter to the PNP of Capoocan. Are you aware of that?

A

No, sir.

Q

Do you know of any reason or reasons why your own wife would report this rape incident against your person?

A

I don't know sir what is her reason.

Q

And you don't know likewise of any reason or reasons why your own niece, a twelve (12) year old child would accuse you of rape, right?

A

I don't know also, sir.[17]

The records show that the private complainant lived in a rural area, unaffected by the worldly ways of urban life. It is thus incredible that the private complainant would weave a story of defloration and undergo a medical examination of her private parts and charge the appellant with rape for which, if convicted, he could be meted the penalty of either reclusion perpetua or death. As this Court held:

Accused failed to attribute any ill motive on the part of the victim to testify falsely and impute against him the commission of a grave offense such as rape. To the contrary, the trial court observed that the victim lived in place "more rural than most rural villages" in the country, and was still "unaffected by the wordly ways of urban life." "It is highly inconceivable for a young barrio lass, inexperienced with the ways of the world, to fabricate a charge of defloration, undergo a medical examination of her private parts, subject herself to public trial, and tarnish her family's honor and reputation unless she was motivated by a potent desire to seek justice for the wrong committed against her." [18]

In contrast to the positive and straightforward testimony of the private complainant, the appellant's denial of the charge, which is merely a negative self-serving evidence, cannot prevail. Equally undeserving of merit is his defense of alibi. Appellant failed to prove with clear and convincing evidence that it was physically impossible for him to have been in his house at the time when the private complainant was raped.[19] The only evidence adduced by the appellant to prove alibi was his own testimony. By his own admission, the appellant's house was barely a thirty-minute walk to the house of Romulo Lukaba. It was thus not physically impossible for the appellant to have been in his house at 8:00 in the evening of February 1, 1996, when the private complainant was raped.

Proper Penalty on Appellant

The trial court imposed the death penalty on the appellant on its finding that the appellant used a knife when committing the crime and that the private complainant was under eighteen years of age and the niece of the appellant and, hence, a relative of the private complainant within the third civil degree.

This Court agrees with the trial court that the appellant used a knife in committing the crime charged and that he is the uncle of the private complainant and, hence, her relative within the third civil degree. However, as to the latter, there is no allegation in the Information that the appellant is the uncle of the private complainant as required by Section 8 of Rule 110 of the Revised Rules of Criminal Procedure.[20] In *People v. Bernaldez*, [21] this Court held that the minority of the private complainant and her relationship to the appellant must be alleged in the Information because these circumstances are special qualifying circumstances for rape to warrant the imposition of the death penalty. Although this rule took effect on December 1, 2000, or before the crime charged in the Information was committed, the Court has consistently applied the rule retroactively. Thus, since the relationship of the private complainant and the appellant was not alleged in the Information, the appellant cannot be convicted of qualified rape, otherwise he would be deprived of his right to be informed of the nature of the charge against him. The appellant may only be convicted of simple rape with the special aggravating circumstance of use of a deadly weapon in the commission of the crime. Rape with use of a deadly weapon is punishable by reclusion perpetua to death under the third paragraph of Article 335 of the Revised Penal Code, as amended. Since the prosecution failed to prove any aggravating circumstance in the commission of the crime, the appellant may be meted only the penalty of reclusion perpetua conformably with Article 63 of the Revised Penal Code.

Civil Liability of Appellant

The trial court ordered the appellant to pay P50,000 as civil indemnity but failed to award moral damages and exemplary damages considering the tender age of the private complainant and of the uncle-niece relationship of

the appellant and the private complainant.[22] In light of recent case law, the Court must order the appellant to pay the private complainant the amounts of P50,000 as moral damages[23] and P25,000 as exemplary damages.

IN LIGHT OF ALL THE FOREGOING, the Decision of the Regional Trial Court of Leyte, Branch 36, in Criminal Case No. 2523, is hereby **AFFIRMED WITH MODIFICATION**. The appellant KAKINGCIO CAÑETE is found guilty beyond reasonable doubt, as principal, of simple rape under Article 335 of the Revised Penal Code, as amended, and is meted the penalty of reclusion perpetua, and ordered to pay to private complainant AAA the amounts of P50,000 as civil indemnity, P50,000 as moral damages and P25,000 as exemplary damages.

Costs de oficio.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Mendoza, Panganiban, Quisumbing, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, and Azcuna, JJ., concur.
Ynares-Santiago, J., on leave.

[1] Penned by Judge Francisco C. Gedorio.

[2] Exhibit "A."

[3] Records, p. 1.

[4] Rollo, pp. 44-45.

[5] Rollo, pp. 48-49.

[6] 64 SCRA 90 (1975).

[7] 338 SCRA 420 (2000).

[8] TSN, AAA, September 17, 1997, pp. 4-7.

[9] Supra.

[10] People v. Reyes, 309 SCRA 622 (1999).

[11] TSN, AAA, September 7, 1997, p. 4.

[12] TSN, AAA, September 18, 1997, p. 22.

[13] Id. at 10-12.

[14] People v. Abalde, 329 SCRA 418 (2000).

[15] 306 SCRA 653 (1990).

[16] See note 15.

[17] TSN, Kakingcio Cañete, January 12, 1999, pp. 7-8.

[18] See note 15.

[19] People v. Tejero, 308 SCRA 660 (1999).

[20] SEC. 8. Designation of the offense. – The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

[21] 322 SCRA 462 (2000).

[22] People v. Villanueva, Jr., G.R. No. 146106, December 16, 2001.

[23] People v. Bernaldez, *supra*.

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