

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. BOY DOMINGO, JOEL TEMPORAL (AT LARGE), BENEDICTO PEDRO (AT LARGE), HEHERSON RIVERA (AT LARGE), AND JESSING VALDEZ (AT LARGE), ACCUSED.

G.R. No. 143660. June 05, 2002

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Appellant's alibi cannot prevail over the positive identification made by credible witnesses. Absent any plausible imputation of ill motive on their part to falsely accuse or implicate him, their candid and consistent testimonies should be given full faith and credit.

The Case

Boy Domingo appeals the January 5, 2000 Decision[1] of the Regional Trial Court (RTC) of Santiago City (Branch 36)[2] in Criminal Case No. 36-2321, finding him guilty of robbery with multiple rape. The Decision disposed as follows:

“WHEREFORE[,] in light of the foregoing considerations[,] the Court finds the accused Boy Domingo GUILTY beyond reasonable doubt of the crime of robbery with multiple rape and hereby sentences him to the penalty of reclusion perpetua. He is also ordered to pay the spouses Valentin Gabertan and Clara Gabertan the total sum of [e]leven [t]housand [t]wo [h]undred [p]esos (P11,200.00) representing the value of the things stolen, plus one [h]undred [t]housand [p]esos (P100,000.00) as moral damages.”[3]

In the Information[4] dated January 27, 1997, appellant and his co-accused -- Joel Temporal, Benedicto Pedro, Heherson Rivera and Jessing[5] Valdez -- were charged in these words:

“That on or about October 23, 1993, at Sitlo Malasin, Barangay Balintocatoc, Municipality of Santiago, (now a city) Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, conniving, confederating with each other and mutually helping one another with intent of gain and with violence against or intimidation of person, armed with a piece of bamboo, 2x2 piece of wood, ipil-ipil posts and bolo, did then and there wilfully, unlawfully and feloniously attack, assault, str[i]ke and hit one VALENTIN GABERTAN and then and ther[e] take, steal and carry away the following properties, belonging to VALENTIN GABERTAN and Clara Gabertan, to wit:

Cash of P5,350.00;
One (1) ladies gold seiko with valued at P2,000.00;
Nine (9) turkeys valued at P3,600.00; and
Two (2) chickens valued at P200.00.

or of a total of P11,150.00 against their will, and by reason of or during commission of the robbery, the said Valentin Gabertan suffered injuries, to wit: 2 (cm) hematoma on (L) cheek area, tenderness on (R) anterior auxilliary area and multiple fracture on 8th and 9th rib (r) side, and also on the occasion of the robbery, the

above-named accused with lewd design and by means of force and intimidation conspiring, confederating, conniving and mutually helping one another, did then and there, wilfully, unlawfully and feloniously take turn in having carnal knowledge [of] Clara Gabertan, against her will.”[6]

During his arraignment on August 13, 1998, appellant, assisted by his counsel,[7] pleaded not guilty.[8] After pretrial and trial proper, the RTC rendered the assailed Decision.

The Facts

Prosecution’s Version

In its Brief,[9] the Office of the Solicitor General (OSG) presents the prosecution’s version of the facts as follows:

“Around 11:00 p.m. of October 23, 1993, private complainant Valentin Gabertan [‘Valentin’] was lounging outside x x x his house while his children [lay] asleep, when he heard the incessant barking of dogs in the compound.

“The Gabertan compound, located at Sitio Malasin, Balintocotoc, Santiago, Isabela, consist[s] of two (2) main houses; one, where the children and a young houseboy stay and sleep and the other, where Valentin and his wife, Clara [‘Clara’] retire for the evening. There are also several barns to house the cows, goats and domestic fowls.

“Clara, who was then reposed on the bed, heard the barking at the same time. Instinctively, Clara stood up and took out a flashlight. She immediately gave it to her husband, who was then armed with a bolo [‘panabas’], to aid him in checking out the disturbance.

“Valentin ha[d] not walked far from the house when three (3) men suddenly entered the compound while two (2) others stayed outside. The men, initially identifying themselves as members of the New People’s Army (NPA), ferociously asked Valentin for money. Turned off by the demand, Valentin at once retorted that they could not be members of the NPAs as NPAs do not ask for money.

“The men, however, were unmasked. Valentin instantly recognized their faces as that of appellant and his co-accused. It was easy for Valentin to recognize appellant, having known him for the past ten (10) years, as the latter usually pass[ed] by their house when he [went] fishing. Appellant and his co-accused were each armed with a piece of wood.

“Unruffled by Valentin’s response, appellant and his co-accused nonetheless persisted. They demanded x x x guns and documents or certificates for the large cattle and asked who the owner of the cows was.

“Valentin, however, attempted to ward off the impending danger now reposed [i]n him. He promptly hacked one of the men [identified as Joel Temporal] on his right arm. A struggle ensued. Valentin, however, was easily outnumbered by the intruders as the latter clubbed him at the same time. Valentin soon let go of his defense when the intruders attempted to hurt his son.

“At this time, Clara sensed an intense level of fear as she stood frozen beside a table where a kerosene lamp was lighted. It only took a few minutes when Joel Temporal barged in, struck the kerosene lamp and ominously threatened, ‘I will kill you if you will not give me what I want.’

“Joel Temporal thereafter pulled Clara out of the house where she was forcibly laid on the cogon grass.

“Meantime, Valentin could only watch his wife being pulled away as he was rendered weak and immobile at the clubbing he received at a moment’s resistance. Jessing Valdez and Heherson Rivera stood guard. His attempt to rescue his wife was overtaken by the necessity to protect the son he was now embracing lest the intruders vent their rage on him.

“Clara’s dress [duster] and panty were torn away. Her hands were held by appellant and her feet also held by Benedicto Pedro. Joel Temporal put himself on top of Clara and went inside her. After he consummated his lust, appellant came in next. Benedicto Pedro also took his turn. For his part, Jessing Valdez left Valentin and his son and rushed in to satiate, too, his carnal desire. Once finished, all four (4) men checked on Valentin but came back to see Clara, stepping on her vagina in the process. Agonized, Clara could only utter, ‘Don’t you have pity on me, you people from Bannawag?’

“Appellant and his co-accused thereafter left, bringing with them two (2) chickens and nine (9) turkeys which were carried around their necks.

“Valentin rushed to his wife’s side and could only embrace her. A few minutes, later, neighbors and friends Leonardo Palafox and Celestino Capa came to their succor. At this time, Valentin had difficulty breathing. He could not be rushed to the hospital immediately because there was no transport available.

“Valentin and Clara had to content themselves to await the dawn. Back at the house, however, money worth the amount of P5,350.00 and a Seiko gold-plated watch worth P2,000.00 [were] found missing [from] Clara’s bag.

“At 8:00 a.m. the following morning, Valentin was admitted [to] the Cagayan Valley Sanitarium and Hospital for multiple physical injuries secondary to mauling. His diagnosis revealed the following injuries:

- ‘1. 2 cm. Hematoma on R and L temporal area
2. 2 cm. Hematoma on L che[e]k area
3. [Multiple] Incomplete fracture of 8th and 9th ribs R side.’

“Clara, on the other hand, was examined at the Outpatient Department. She sustained ‘multiple scratch marks, inner thigh-bilateral, and multiple abraided areas per labia minora.’ The certification further indicated:

‘Specular exam. Introitus - Parous

Uterus - Not enlarged

Cervix - Hand & erosion at or [sic]

Adnexae - negative

Discharge - Whitish Mucoid’

x x x x x x x x.

“Both Valentin and Clara exhibited no qualms in identifying the perpetrators of the crime --- pinpointing their neighbors from Bannawag Norte, Santiago City --- Joel Temporal, Benedicto Pedro, appellant Boy Domingo, Heherson Rivera and Jessing Valdez.”[10] (Citations omitted)

Defense’s Version

Appellant, on the other hand, argues that his guilt was not proven beyond reasonable doubt. His statement of facts is as follows:

“The defense presented in evidence the testimony of accused Boy Domingo. He testified that [i]n the month of October 1993, he was harvesting palay somewhere in Barangay Salvador, Santiago City. On October 23, 1993, he started working at 7:00 o’clock in the morning up to 5:00 o’clock in the afternoon. Afterwards, he proceeded to the house of his sister. While in the house of his sister, he rested for [a while], ate supper at 8:00 o’clock in the evening and went to sleep. After finishing his work on October 31, 1993, he went home to the house of his mother in Bannawag, Santiago City. He was apprehended on July 27, 1998 while driving a tricycle.

“The next witness presented was Florentina Pingaron, the sister of accused Boy Domingo. She testified that

her brother Boy Domingo stayed at her place in Salvador, Santiago City from October 3, 199[3] in order to do some harvesting. Her brother stayed with her for about a month. On October 23, 199[3] at around 8:00 o'clock in the evening [her] brother was at home sleeping and did not leave the house. During the month [her] brother stayed with her, he did not leave the place at all except when he [went] to the farm to harvest.

"The next witness was Pepito Martin who corroborated the testimony of accused-appellant Boy Domingo that the latter worked in his farm from October 5, 1993 up to October 31, 1993. He claimed that the accused worked on his farm from 7:00 o'clock up to 11:00 o'clock in the morning and from 2:00 o'clock up to 5:00 o'clock in the afternoon. On October 24, 1993, he saw the accused-appellant harvesting on his farm the whole day.

"The next witness was Sonny Solomon. He testified that on October 23, 1993 as well as October 24, 1993 he saw the accused-appellant work [o]n the farm of Mr. Martin because they were together at that time.

"The last witness for the defense was Barangay Captain Rodante Angel. He testified that he ha[d] known the accused Boy Domingo Jr. since the latter was a child. According to him, the accused ha[d] no derogatory record at all. He issued a certification attesting to this fact."[11] (Citations omitted)

Ruling of the Trial Court

After careful study and judicious assessment of the evidence submitted by both parties, the RTC ruled that appellant was guilty of the special complex crime of robbery with multiple rape. It concluded that the principal intention of appellant and his co-accused was to rob complainants,[12] and that the rape was a mere afterthought.

The RTC also held that the alibi of appellant - that he was at his sister's house harvesting palay when the crime was committed -- could not prevail over the positive identification made by the victims.

Hence, this appeal.[13]

The Issue

Appellant assigns this sole alleged error for our consideration:

"The trial court erred in disregarding the defense of alibi interposed by accused-appellant Boy Domingo."[14]

The Court's Ruling

The appeal has no merit.

Sole Issue:

Defense of Alibi

Appellant argues that the RTC should not have disregarded his alibi because it was duly supported by testimonies of disinterested persons, not merely of his relatives.

We are not persuaded. We believe that the RTC did not err in its factual findings. Well-settled is the rule that the assessment by the lower court of the credibility of witnesses is accorded great respect because of its direct opportunity to observe their demeanor during trial.[15] The appellate court, on the other hand, has only the cold and impersonal records of the proceedings to rely upon.[16]

In the case at bar, the flight and the false alibi of Boy Domingo, as well as complainants' positive identification of him, convinced the trial judge of appellant's culpability of the crime charged.[17]

Likewise, complainants had a good look at their unmasked[18] assailants,[19] because there was moonlight on that fateful night.[20] It is the most natural reaction of victims of criminal violence to strive to look at the

appearances, particularly the faces, of their assailants and observe the manner in which the crime is committed.[21] Most often, the face and body movements of the latter create in the minds of the former lasting impressions that cannot be easily erased from memory.[22] Valentin Gabertan testified as follows:

Q.

At about 11:00 o'clock in the evening of October 23, 1993, do you recall what are you doing on that time?

A.

Yes sir.

Q.

Tell us what are you doing?

A.

I was sitting beside our house and when the dog barked I got my flashlight and I went out.

Q.

Aside from the flashlight, what else did you take if any when you went towards the door?

A.

Long bolo (panabas) sir.

Q.

Where did you go?

A.

In the yard.

Q.

When you were already in your yard with flashlight and with that bolo, tell us what happened?

A.

They went inside our house and they tell us that they are NPA.

Q.

How many were these persons who entered your house and claimed that they are NPA?

A.

Three (3) sir.

Q.

Where there other persons?

A.

Yes sir.

Q.

How many of them?

A.

Two (2) were staying outside.

Q.

Then what did these person do after that?

A.

They required us to bring out the documents of animals and two (2) of them pulled my wife outside.

Q.

What did you do when these persons entered your house?

A.

They want to hurt me but I was able to hacked one of them.

Q.

After you were able to hacked one of them, what did they do to you?

A.

They clubbed me, they hacked me but I defended myself but when I went to rescue my wife they turned their attention to my son and they intended to harm him but I embraced my son.

Q.

You said they hacked you, were you hit?

A.

I was able to evade the hacking.

Q.

By the way, what weapon were these persons carrying during that time?

A.

Bolo and a piece of wooden club.

Q.

Now, you said that three (3) persons entered your house, what did these three (3) persons do in your house if you know?

A.

They want[ed] to fight me.

Q.

When these three (3) persons entered your house where were you?

A.

I was already outside the house.

x x x x x x x x

Q.

What else did these persons do inside your house?

A.

After clubbing me and I was immobilized they started ransacking the house.

Q.

What were taken in your house?

A.

Money, chicken, turkey and watch.

Q.

How much money was taken?

A.

More than Five Thousand Pesos (P5,000.00).

Q.

And where was it taken, that money?

A.

From inside the handbag of my wife.

Q.

You said that your wife was also pulled outside your house, what did they do to your wife?

A.

They sexually abused my wife.

x x x x x x x x

Q.

While Joel Temporal was sexually abusing your wife where were you?

A.

I was near her but I was very weak.”[23]

The RTC also found the testimony of Clara Gabertan to be candid, straightforward, spontaneous and frank.[24]
She testified how appellant and his co-accused had raped her:

“Q.

Now, what happened after your husband went out?

A.

What happened after, sir, is that, after my husband went out, a man suddenly came in and [struck] the light.

Q.

What kind of light was this that was [struck by] a man who suddenly came in?

A.

A kerosene lamp, sir.

Q.

Where [was] this kerosene lamp when it was [struck]?

A.

[O]n a table like this, sir.

(Witness pointing to the lawyer's table.)

Q.

And where [was] that table found?

A.

In the kitchen, sir.

Q.

How long after your husband went out from the kitchen did you notice a man [enter] and [strike] the kerosene lamp [o]n the kitchen table?

A.

Not more than ten (10) minutes, sir.

Q.

And where were you when a man [struck] this kerosene lamp placed [o]n the table inside the kitchen?

A.

I was just near the light, sir.

[A.]

When I heard the barking of the dogs, sir, I stood up feeling afraid, standing beside the light [o]n the table, sir.

Q.

How did the man enter the kitchen?

A.

He suddenly pushed the door, sir.

x x x x x x x x

Q.

Tell us what happened after the kerosene lamp was [struck] by that man who entered?

A.

He told me, 'I will kill you if you will not give me what I want', and then he pulled me outside, sir.

Q.

Were you able to identify who this man [was] who pulled you outside?

A.

It was Joel Temporal, sir.

Q.

Where did Joel Temporal bring you when you said he pulled you out?

A.

He brought me out not far from where we [were] sleeping, sir.

Q.

And [to] what specific place did he bring you?

A.

He brought me outside to a place with grass and cogon, Sir.

Q.

What did you do when he pulled you while you were still inside the kitchen?

A.

He pulled me out forcibly when I did not give in to what he asked of me, sir.

Q.

How did he pull you?

A.

This way, sir.

(Witness demonstrating by using [both her] hands and [making] a pulling motion.)

Q.

What part of your body was pulled by this person?

A.

My hands, sir.

Q.

Now, what did you do when he was pulling your hands?

A.

I followed, sir, although I refused but I was feeling very nervous.

Q.

When you were already outside after he pulled you there in that grassy area, tell us what happened?

A.

When we were already at that place, sir, he laid me down, that man, Joel Temporal.

Q.

Then what did the man do?

A.

He went on top of me, sir.

Q.

Then what did he do?

A.

When he went on top of me, sir, he got all [t]hat he want[ed], including my womanhood.

Q.

What kind of dress were you wearing that time?

A.

I was wearing 'daster', sir.

Q.

What did the man do with your 'daster' after he pulled you outside?

A.

After pulling me outside, sir, that was the time he tore my panty and he also tore my 'daster', sir.

Q.

While the man was on top of you, tell us what happened?

A.

When Joel Temporal was on top of me, sir, he got all [t]hat he wanted to get from me, including my womanhood. Then came next x x x Boy Domingo who also took my womanhood, then came next x x x Benedicto Pedro who also took my womanhood, then they went to my husband and then they went back again to me and they even stepped on my private part, my vagina, that was when I shouted and told them, 'Don't you have [pity] on me, you people from Bannawag?'

Q.

You mentioned several names: Joel Temporal, Boy Domingo, and Benedicto Pedro. Why do you know their names?

A.

I know these persons, sir, because Heherson Rivera has relatives at Sitio Malasin. And [this person], Jesing Valdez is their gangmate and this Benedicto Pedro is their relative, sir.

Q.

You mentioned x x x the name Heherson Rivera, what did Heherson Rivera do?

A.

He was guarding my husband, sir.

Q.

You also mentioned Jesing Valdez, why, what did he do there?

A.

He was the fourth one who abused me, sir.

Q.

Let us get this clear. Who was the person who first rape[d] you?

A.

Joel Temporal, sir.

Q.

And then who followed next?

A.

Boy Domingo, sir.

Q.

And then who was the third?

A.

Benedicto Pedro, sir.

Q.

And the fourth, who?

A.

Jesing Valdez, sir.

Q.

While Joel Temporal was on top of you, do you know where [were] Boy Domingo, Benedicto Pedro, Heherson Rivera and Jesing Valdez?

A.

While Joel Temporal was on top of me, sir, Boy Domingo was holding my hands and Benedicto Pedro was holding my feet.

Q.

What about Jesing Valdez and Heherson Rivera that time while Joel Temporal was on top of you, do you know what were they doing?

A.

They were guarding my husband, sir.

Q.

Do you know where was your husband when Joel Temporal was on top of you?

A.

He was near our house, sir, I was not very far from [the] place.

Q.

You said that the second person who raped you was Boy Domingo. When Boy Domingo was on top of you, do you know where x x x Joel Temporal, Benedicto Pedro, Heherson Rivera and Jesing Valdez were?

A.

When Boy Domingo was on top of me, sir, they went again to my husband.

Q.

Can you tell us the distance between the place where you were b[e]ing raped [and] the place where your husband was being guarded by Heherson Rivera and Jesing Valdez, when you were being raped by Joel Temporal?

A.

The distance [was] five (5) meters, sir.

Q.

After you were raped by the fourth man, Jesing Valdez, tell us what happened?

A.

When Jesing Valdez was through, my husband came and embraced me and there was a light coming, sir.

Q.

Before you noticed a light from a distance coming, do you know what did these five (5) persons do after they raped you?

A.

I saw them carrying chickens and turkey, sir.

Q.

Where did these persons, who were carrying chickens and turkey, go after you saw th[e]m in that situation?

A.

They were going out and left, sir.”[25]

Time-tested is the principle that when a woman says she has been raped, she says in effect all that is necessary to show that she has been so raped.[26] A woman will not expose herself to the humiliation of a trial, with its

attendant publicity and the morbid curiosity it would arouse, unless she has been truly wronged and seeks atonement for her abuse.[27]

On the other hand, appellant insists that the testimonies of the defense witnesses, Pepito Martin and Sonny Solomon, sufficiently proved the impossibility for him to be at the place where the crime was committed and be able to report for work the next day.[28]

We are not convinced. Well-settled is the rule that alibi is always viewed with suspicion, because it is inherently weak and unreliable.[29] The defense of alibi assumes significance or strength when it is amply corroborated by a credible witness.[30] For alibi to prosper, the accused must be able to (a) prove his presence at another place at the time of the perpetration of the offense and (b) demonstrate that it was physically impossible for him at that time to have been at the scene of the crime.[31]

In the case at bar, the alibi of appellant failed to meet these requisites.[32] First, while the two defense witnesses established that he was in Barangay Salvador harvesting palay, both failed to show or to preclude any doubt about the physical impossibility for him to be in complainants' house or its immediate vicinity.[33] on that fateful night.[34] Although the place where he claimed to be at the time of the commission of the crime was nine (9) kilometers away from Barangay Balintocotoc, the possibility of being physically present at the crime scene or its immediate vicinity was still there.[35] As correctly pointed out by the RTC, both barangays were easily accessible to tricycle and other motor vehicles.

Second, we find incredible the testimony of Pepito Martin that it took 16 days for him and appellant to harvest palay from four-hectare farm. Thus, it cannot be discounted that it was very easy for appellant to have left Barangay Salvador on the evening of October 23, 1993 to commit the crime.[36]

Based on the foregoing, the alibi of appellant cannot prevail over the positive identification made by credible witnesses.[37] Absent any plausible imputation of ill motive on their part to falsely accuse or implicate him, their candid and consistent testimonies should be given full faith and credit.[38]

Crime and Punishment

However, we hold that the RTC should have convicted appellant of robbery with rape instead of robbery with multiple rape. In the special complex crime of robbery with rape, the true intent of the accused must first be determined, because their intent determines the offense they committed.[39] This felony contemplates a situation where the original intent of the accused was to take, with intent to gain, personal property belonging to another; and rape is committed on the occasion thereof or as an accompanying crime.[40] In other words, the offenders had an intent to take personal property belonging to another, and such intent preceded the rape.[41]

To sustain a conviction for robbery with rape, it is imperative that the robbery itself must be conclusively established.[42] To support a conviction therefor, proof of the rape alone is not sufficient.[43] Robbery with rape occurs when the following elements are present: (1) personal property is taken with violence or intimidation against persons, (2) the property taken belongs to another, (3) the taking is done with *animo lucrandi*, and (4) the robbery is accompanied by rape.[44]

In the case at bar, all the foregoing elements are present. The contemporaneous acts of appellant and his co-accused stress the fact that they were initially motivated by *animus lucrandi*. [45] They first demanded guns, moneys and animals from Valentin Gabertan. Apparently, it was only when they entered the house and saw his wife when they thought of raping her.[46] The prosecution likewise established that appellant and his co-accused took chickens, a watch and money from complainants through violence.[47]

Pursuant to Article 294, paragraph 2 of the Revised Penal Code[48] which was the applicable law at the time, when robbery with rape is committed with the use of a deadly weapon or by two (2) or more persons, the penalty is reclusion perpetua to death.

In the present case, the crime was committed by five (5) persons with the use of deadly weapons. However, since the crime was committed on October 23, 1993, prior to the enactment of RA No. 7659[49] and during the effectivity of the constitutional proscription[50] on the imposition of the death penalty, the RTC did not err in imposing reclusion perpetua.

The RTC, however, should have ordered appellant to pay actual damages to Spouses Gabertan in the amount of P11,150 - not P11,200 -- because this was the actual value of the things taken from them.[51] It should have also ordered him to pay Clara Gabertan P50,000 as indemnity ex delicto and P25,000 as exemplary damages, consistent with current jurisprudence.[52]

We also modify the award of moral damages, which should be reduced to P50,000 consistent with prevailing jurisprudence.[53]

WHEREFORE, the appeal is DENIED, and the RTC Decision is AFFIRMED, with the MODIFICATION that appellant is convicted of robbery with rape and shall pay P11,150 as actual damages, P50,000 as indemnity ex delicto, another P50,000 as moral damages and P25,000 as exemplary damages. Costs against appellant.

SO ORDERED.

Sandoval-Gutierrez, and Carpio, JJ., concur.
Puno, (Chairman), J., abroad, on official leave.

[1] Rollo, pp. 20-28; records, pp. 142-150.

[2] Penned by Assisting Judge Fe Albano Madrid, who formally took over the case on September 21, 1998, immediately prior to the pre-trial stage until the promulgation of the assailed Decision. The case had originally been assigned to Judge Efren A. Lamorena.

[3] Ibid., p. 9; rollo, p. 28.

[4] Signed by City Prosecutor Valentin G. Pelayo.

[5] Also spelled "Jesing" in the TSN.

[6] Rollo, pp. 5-6; records, pp. 1-2.

[7] Atty. Jose Romeo dela Cruz.

[8] Order dated August 13, 1998; records, p. 48. Appellant's co-accused: Joel Temporal, Benedicto Pedro, Heherson Rivera and Jessing Valdez are still at large.

[9] Appellee's Brief, pp. 1-15; rollo, pp. 75-91. The Brief was signed by Asst. Sol. Gen. Carlos N. Ortega, Asst. Sol. Gen. Roman G. del Rosario and Solicitor Ma. Theresa Dolores C. Gomez-Estoesta.

[10] Ibid., pp. 2-8, 78-84.

[11] Appellant's Brief, pp. 6-7; rollo, pp. 54-55. The Brief was signed by Attys. Arceli A. Rubin, Elpidio C. Bacuyag, and Maria G-Ree R. Calinawan -- all of the Public Attorney's Office.

[12] Assailed Decision; pp. 8-9; rollo, pp. 68-69.

[13] This case was deemed submitted for resolution on November 7, 2001, when the Court received appellant's Manifestation in Lieu of Reply Brief. Appellant's Brief was received by the Court on April 16, 2001, while that of appellee on August 20, 2001.

[14] Appellant's Brief, p. 1; rollo, p. 49. Original in upper case.

[15] *People v. Garces Jr.*, 322 SCRA 834, 846, January 20, 2000.

[16] *People v. Taño*, 331 SCRA 449, May 5, 2000.

[17] Assailed Decision, p. 8; rollo, p. 27.

[18] TSN, December 7, 1998, p. 23.

[19] *People v. Navales*, 337 SCRA 436, August 8, 2000.

[20] TSN, December 1, 1998, p. 19.

[21] *People v. Dolar*, 231 SCRA 414, March 24, 1994.

[22] *Ibid.*

[23] TSN, November 24, 1998, pp. 8-14.

[24] *People v. Taño*, *supra*.

[25] TSN, December 7, 1998, pp. 7-15.

[26] *People v. Cristobal*, 252 SCRA 507, January 29, 1996.

[27] *People v. Cañada*, 253 SCRA 277, February 6, 1996.

[28] Appellant's Brief, p. 10; rollo, 58.

[29] *People v. Navales*, 337 SCRA 436, August 8, 2000.

[30] *People v. Amestuzo*, GR No. 104383, July 22, 2001; citing *People v. Alib*, 322 SCRA 93, January 18, 2000.

[31] *People v. Napud*, GR No. 123058, September 26, 2001, citing *People v. Villanos*, 337 SCRA 78, August 1, 2000; *People v. Aranjuez*, 285 SCRA 466, January 29, 1998.

[32] *People v. Cristobal*, *supra*.

[33] *People v. Andres*, 296 SCRA 318, September 25, 1998; *People v. Tolop*, 289 SCRA 316, April 21, 1998; *People v. Pallarco*, 288 SCRA 151, March 26, 1998.

[34] *People v. Arellano*, GR No. 125442, September 28, 2001.

[35] *People v. Cristobal*, *supra*.

[36] Assailed Decision, p. 8; rollo, p. 2.

[37] *People v. Kulais*, 292 SCRA 551, July 16, 1998.

[38] *People v. Abrecinoz*, 281 SCRA 59, October 17, 1997.

[39] *People v. Naag*, 351 SCRA 694, February 15, 2001.

[40] *People v. Taño*, supra; *People v. Barrientos*, 285 SCRA 221, January 28, 1998; *People v. Faigano*, 254 SCRA 10, February 22, 1996.

[41] *People v. Navales*, supra.

[42] *People v. Seguis*, 349 SCRA 547, January 18, 2001.

[43] Ibid.

[44] Id.

[45] *People v. Candelario*, 311 SCRA 475, July 28, 1999.

[46] Assailed Decision, p. 9; rollo, p. 9.

[47] *People v. Arellano*, GR No. 125442, September 28, 2001.

[48] “Art. 294. Robbery with violence against or intimidation of persons - Penalties. -- Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

xxx xxx xxx

‘2.

The penalty of reclusion temporal in its medium period to reclusion perpetua, when the robbery shall have been accompanied by rape or intentional mutilation, or if by reason or on occasion of such robbery, any of the physical injuries penalized in subdivision 1 of Article 263 shall have been inflicted; Provided, however, That when the robbery accompanied with rape is committed with the use of a deadly weapon or by two or more persons the penalty shall be reclusion perpetua to death.”

xxx xxx xxx

[49] Approved on December 13, 1993, this was an act imposing the death penalty on certain heinous crimes, amending for that purpose the Revised Penal Code and other special penal laws; namely, Dangerous Drugs Act; Crime of Plunder, and Anti-Carnapping Act.

[50] Section 19(1), Article III of the 1987 Constitution.

[51] See *People v. Dulot*, 350 SCRA 591, January 30, 2001; *People v. Repollo*, 331 SCRA 375, May 4, 2000.

[52] *People v. Napud Jr.*, GR No. 123058, September 26, 2001.

[53] *People v. Manalayan*, GR No. 137255, November 15, 2001.

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