

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. RUBEN GUSMO Y CAÑELAS, APPELLANT.

G.R. No. 144974. February 13, 2004

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PER CURIAM:

For automatic review is the Decision[1] dated June 27, 2000 of the Regional Trial Court of Daet, Camarines Norte, Branch 41, in Criminal Case No. 8633 convicting appellant Ruben Gusmo of qualified rape, sentencing him to suffer the supreme penalty of death and ordering him to pay the victim, six-year-old Jonalyn Cobita, the sum of P50,000 as moral damages and P20,000 as exemplary damages.

The Indictment

The appellant was charged with qualified rape, the accusatory portion of which reads:

That on or about 10:00 o'clock in the evening of the 29th day of August, 1995 at Sitio Lubhang, Barangay Calangkawan Sur, municipality of Vinzons, province of Camarines Norte and within the jurisdiction of this Honorable Court, the above-named accused urged by sexual lust and by means of force, unlawfully, feloniously, and criminally, did then and there, commit sexual intercourse with one Jonalyn Cobita, a minor girl of 6 years old thereby causing hymenal laceration, hymenal avulsion, vaginal laceration, median perineal laceration on her genital organ to her damage and prejudice.

CONTRARY TO LAW.[2]

Upon arraignment, the appellant, with the assistance of his counsel de oficio, pleaded not guilty to the charge.[3] Trial thereupon ensued.

The Case for the Prosecution[4]

Jonalyn Cobita was born on September 16, 1988.[5] In August of 1995, she was barely seven years old, and was in grade one.[6] She lived with her widowed maternal grandmother Emilia S. Avila at Sitio Lubhag, Barangay Calangkawan Sur, Vinzons, Camarines Norte.[7]

On August 29, 1995, the eve of the barangay fiesta of Calangkawan Sur, a dance was staged at the barangay multi-purpose hall.[8] Emilia went to see the dance with her granddaughter in tow.[9] Jonalyn was wearing a pair of short pants and a t-shirt. At about 10:00 p.m., Jonalyn asked permission from her grandmother to watch television in a nearby house. Emilia acceded but did not admonish Jonalyn not to go too far.[10] Jonalyn was alone when she watched television outside the house. Suddenly, appellant Ruben Gusmo came from out of nowhere and forcibly grabbed her from behind.[11] The appellant then dragged her to a secluded grassy place, and turned her around. In the process, she noticed that the appellant was of medium height, with curly eyelashes, sporting a crewcut hairstyle and wore a blue-colored t-shirt.[12] The appellant, who was merely one or two feet from her, boxed her on the stomach rendering her unconscious.[13]

Meanwhile, Emilia was watching the merrymaking in the hall while seated within its periphery. She was so engrossed that she forgot about her granddaughter.[14]

Jonalyn regained consciousness and discovered that the appellant was gone.[15] She felt intense pains in her stomach,[16] most specially in her vagina.[17] She noticed blood on her shirt and short pants[18] She cried helplessly.[19] Her pain notwithstanding, she instinctively ran towards the dance hall and told her grandmother that a man brought her to a grassy place.[20] Surmising that Jonalyn was raped because of the blood that oozed from her shorts, Emilia asked Jonalyn who was the culprit. Jonalyn answered that she did not know his name. Jonalyn nonetheless described the culprit as of medium height, maiksi ang buhok na parang kalbo.[21]

Thereafter, Emilia hurriedly looked for a policeman. After finding one on a beat patrol, she reported the incident. As suggested by the policeman, she and Jonalyn boarded a tricycle and went to the Vinzons Police Station where they had the incident entered in the police blotter.[22] Thereupon, Emilia brought Jonalyn to the Camarines Norte Provincial Hospital where she underwent medical examination.[23] Dr. Marcelito Abas conducted the medical examination and prepared the Medico-Legal Certificate which indicated the following findings:

Hymenal laceration, 1:00, 2:00, 3:00 o'clock;
Hymenal avulsion, lower half, right, lower third, left;
Vaginal laceration, second degree, 2.5 inches, 5:00 o'clock, 1 inch, 7:00 o'clock;
Median perineal laceration, second degree, 1 inch.[24]

As a result of her injuries, Jonalyn was confined in the hospital for about a week.[25]

In the meantime, policemen of the Vinzons Police Station learned that the suspect was “semi-kalbo.” The incident and the description of the suspect were relayed to the other police stations.

In the wee hours of the next morning, the police authorities of the nearby town of Talisay nabbed five suspects, including the appellant[26] and turned them over to the Vinzons Police Station. Only two of the suspects had a crewcut hairstyle. SPO3 Joel Guinto inspected the appellant’s underwear but found no bloodstains on it. After an investigation, three of the suspects were released, leaving the appellant and Rudy Cañelas. They were booked and detained pending proper identification by the victim.[27]

At about 8:00 a.m. of the same day, SPO3 Joel Guinto and SPO4 Pablo Maralit were ordered to bring the appellant and Cañelas to the Camarines Norte Provincial Hospital where Jonalyn was confined for identification purposes.[28] The policemen had the appellant and Cañelas stand behind each other and three others in front of Jonalyn. SPO4 Maralit asked Jonalyn who was the one who raped her. Jonalyn looked at the men in front of her and pointed to the appellant as the culprit. Thereafter, the police released Cañelas while the appellant was again put behind bars.[29]

The Case for the Appellant[30]

The appellant testified that he was married, then 32 years old and lived in Purok 3, Barangay I, Mercedes, Camarines Norte. He eked out a living as a fisherman.[31] In the afternoon of August 29, 1995, Dalisay Cañelas, his aunt, paid him a visit and invited him to her place at barangay Calangkawan Sur, Vinzons, to attend the fiesta and her child’s baptism the next day.[32]

At around 5:00 p.m., the appellant, after soaking 53 bañeras (tubs)[33] of fish, boarded his pedicab and went to the house of Cañelas.[34] He was accompanied by Rudy, Victor, Edwin, all surnamed Cañelas, Marco Antonio Rivera, Juan Alliciera, Ruben Almogera, and Juan Alliciera.[35] They arrived at Cañelas’ house at Barangay Calangkawan Sur at around 7:30 p.m. After resting for a while, they had dinner. After dinner, the group chatted with each other until 8:30 p.m. when they called it a night. All the guests slept at the porch of the house.[36]

The following morning, the appellant and a majority of his companions rose up very early at about 1:00 a.m. to return home. They wanted to make sure that they arrived home in good time, for their soaked fish should be

hauled and set for drying before the sun arose. After bidding their host farewell, the appellant and some of the visitors, Marco Antonio Rivera, Rudy Cañelas, Ruben Almogera and Edwin Cañelas left^[37] on board pedicabs and bicycles. Upon reaching the town of Talisay, they were flagged down by three policemen and brought to the nearby police station. When they asked why they were at the police station, they were told that two of them fit the description of the suspected rapist from Barangay Calangkawan Sur. The police ordered them to strip down, and after examining their respective clothes and genitals, they were ordered to dress up.^[38] After a while, a police mobile patrol from Vinzons' Police Station arrived. Five of them including the appellant were turned over by the Talisay police to the policemen from Vinzons.^[39] Subsequently, upon their arrival at the Vinzons Police Station, the suspects were once again ordered to strip naked. Their clothes and genitals were again examined by the police investigators, after which, three of their companions were ordered released.^[40] The appellant and Rudy Cañelas were booked and detained as they fit the physical description of the rapist.^[41]

At about 8:00 a.m. of the same day, the police took the appellant and Cañelas to the hospital where Jonalyn was confined for identification.^[42] Arriving thereat, the police found Jonalyn in the ward accompanied by her grandmother. Beside them was another patient by the name of Luz Tayubana, a housekeeper from Barangay I, Mercedes, Camarines Norte, who knew the appellant since childhood.^[43] One of the police officers asked Jonalyn who between the two suspects had raped her. The question elicited no answer as Jonalyn just stared at the two. Emilia repeated the question, but Jonalyn kept silent and continued gazing at the two suspects. Emilia forthwith pointed to the appellant as the one who raped her granddaughter.^[44] Thereupon, one of the police officers put his arms around the appellant and brought him and Cañelas downstairs. As they made their way out of the hospital, a reported from a radio station asked the police who was identified by the victim and the police nonchalantly pointed to the appellant.^[45]

On June 27, 2000, the court rendered judgment finding the appellant guilty beyond reasonable doubt of qualified rape. The fallo of the decision reads:

WHEREFORE, IN VIEW OF THE FOREGOING FACTS AND CIRCUMSTANCES, accused Ruben Gusmo is hereby found guilty beyond reasonable doubt of the crime of rape defined and penalized under Article 335 of the Revised Penal Code as amended by R.A. No. 7659 otherwise known as "An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Code, and for other Purposes." Accordingly, accused Ruben Gusmo is hereby sentenced to suffer the maximum penalty of death and to pay the victim Jonalyn Cobita the sum of FIFTY THOUSAND (P50,000.00) PESOS as moral damages and the additional amount of TWENTY THOUSAND (P20,000.00) PESOS as exemplary damages and to pay the costs.

SO ORDERED.^[46]

In his brief, the appellant maintains his innocence and assigns the following errors committed by the court a quo:

I

THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE PROSECUTION HAD ESTABLISHED THE REAL IDENTITY OF THE CULPRIT THEREOF BEYOND REASONABLE DOUBT.

II

THE COURT A QUO GRAVELY ERRED IN FINDING THE HEREIN ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE UNDER ARTICLE 335 OF THE REVISED PENAL CODE, AS AMENDED.^[47]

The appellant contends that the trial court erred in finding that Jonalyn positively identified him as the person who

raped her.[48] He cites Jonalyn's testimony on cross-examination where she said that she did not see the face of the person who raped her; that the grassy area to which she was dragged was dark; and that she lost consciousness when the culprit boxed her on her abdomen. Thus,

ATTY. DIALOGO:

Q Ms. Witness, isn't it a fact that when you were snatched as you claim by a person whom you did not know at that time, you were snatched at your back because you were facing the T.V.

A Yes, sir.

Q And because you were snatched from your back you did not see the face of the person who snatched you, isn't it?

A Yes, sir.

Q And you were brought by that person to a grassy place which was dim at that time?

A Yes, sir.

Q And this place is far from the house where you were watching T.V. isn't it?

ATTY. DIALOGO :

And when you were brought to a dim and grassy place, this man was still holding you in such a way that your back was facing him, isn't it?

A Yes, sir.

Q And immediately after you were placed in that grassy area he boxed your stomach, isn't it?

A Yes, sir.

Q In fact, immediately before you were boxed you were not able to see the face of the man because it was very dark, isn't it? Did you see his face or not?

A No, sir.

Q

And after you were boxed in the stomach you lost consciousness?

A Yes, sir.

Q In fact you did not feel that you were being raped because you were unconscious?

A Yes, sir.

Q And when you regained consciousness you did not see the man anymore?

A No more. (TSN, March 14, 1996, pp. 16-17) (Underscoring supplied)[49]

The appellant asserts that absent any positive and conclusive evidence that he was the culprit, he should have been acquitted by the trial court. The prosecution was burdened to prove his guilt for the crime charged beyond reasonable doubt. The prosecution must rely on the strength of its evidence and not on the weakness of that of the accused.[50]

We affirm the conviction of the appellant.

The appellant's sole reliance on Jonalyn's answers to questions propounded by his counsel on cross-examination to support his plea for acquittal is unacceptable. It is hornbook doctrine that a witness' testimony must be considered in its entirety and not by truncated portions or isolated passages.[51] In *People v. Ortega*, [52] we held that it is sound policy that self-contradictions in testimonies should be reconciled, if possible, contradictory statements should be considered in light of explanations and attending circumstances and whether inconsistencies result from misconceptions of an innocent witness or willful and corrupt misrepresentation. This Court has held that even the most candid of witnesses commit mistakes and even make confused and inconsistent statements. This is especially true with young witnesses who could be overwhelmed by the atmosphere of the courtroom and by grueling and daunting cross-examinations by counsel of the accused. Error-free testimony cannot be expected most especially when a young, inexperienced and shy witness is recounting the details of a harrowing experience.[53]

In this case, Jonalyn explained on redirect examination that she recognized her rapist. On clarificatory questions made by the trial court judge, she testified as follows:

COURT

The Court will ask one or two more questions.

Q Where were you boxed by the man?

A (Witness pointing to her stomach)

Here, your Honor.

Q When you were boxed by that man on the night in question, where was the man who boxed you? How was he positioned?

A He was in front of me, your honor.

Q In front?

A Yes, sir.

Q How near was the man from you when you were boxed by him?

A He was just near my feet, your Honor.

Q Is that distance about 1 foot or 2 feet from you, just like the Interpreter right now?

A Yes, your Honor, approximately the same distance.

Q Where were you looking when the man was about to box you?

A I was staring at him, your Honor.

Q When you stared at that man, were you able to recognize that man?

A Yes, your Honor.

Q Did you recognize him?

A Yes, sir.

Q What ere the distinguishing features of that man?

A Quite bald, your Honor.

Q What else did you notice in that man before he boxed you?

A He has curled (malantik) eyelashes, your Honor.[54]

When asked by the prosecutor to point to and identify the culprit from among those in the courtroom, Jonalyn positively and spontaneously pointed to the appellant:

PROSECUTOR:

Q: That person who took away and brought you to that grassy portion, have you seen him again?

A Yes, sir.

Q: When did you see him again?

A At the time when that man was brought to the hospital, sir.

Q: If you can see him again today, will you be able to identify him?

A: Yes, sir.

Q: Please look around the courtroom and please point at the man, if he is here, who you said got you on that night and whom you again saw at the CNPH.

A: He is inside the courtroom, sir.

Q: Will you please point at him.

COURT:

Escort the girl.

INTERPRETER:

Witness pointing to [a] man who, when asked, identified himself as Ruben Gusmo.

COURT:

Proceed.

PROSECUTOR:

Q: Is he the same person who took you while you were watching T.V.?

A: Yes, sir.[55]

Moreover, Jonalyn gave the physical description of her rapist to her grandmother Emilia immediately after she was ravished. Emilia, in turn, relayed to the police investigators the information she received from Jonalyn. This is borne out by Emilia's testimony:

CROSS EXAMINATION BY ATTY. DIALOGO:

Q In fact, you were not able to ask your grand ... child as to who was the person who raped her?

A I asked her, sir, but she told me that she can only recognize that man by his face, style of hair and built.

ATTY. DIALOGO:

Yes ...

Q In fact, you mentioned that in your affidavit which you just identified this afternoon?

A Yes, sir.

Q And in your answer to question No. 6 in your affidavit marked Exhibit C you stated, and which I quote: Question: “Nasabi ba sa inyo kung sino o ano ang ayos ng gumahasa sa kanya?” Sagot: “Ang sabi po niya ay maiksi and buhok na parang kalbo, kasiyanan ang taas.” Was that the description given to you by your granddaughter?

A

Yes, sir.[56]

Emilia’s testimony is proof of the victim’s conduct immediately after the rape. It shows that Jonalyn immediately revealed the rape incident to her grandmother and the identity of her defiler. Although she did know his name at the time, she was able to provide her grandmother and the police with an adequate description of the appellant. We have held that the conduct of the victim immediately following the alleged sexual assault is of utmost importance in establishing the truth or falsity of the charge of rape.[57]

Furthermore, hours after the crime when the details of the incident was still fresh in her memory, Jonalyn was able to identify the appellant because of his features. When she saw him that morning inside her room in the hospital, there was no doubt in her mind that he was indeed her assailant. She testified, thus:

PROSECUTOR:

...

Q And the following day, do you remember if you have seen that person who took you and brought you to that grassy place?

A Yes, sir.

Q Where did you see that person whom you identified a while ago?

A I saw him in the hospital, sir.

Q Who were his companions, if any?

A I do not know his companions, sir.

Q How many were his companions?

A Five, sir.[58]

...

Q But the policeman who accompanied them is not included in the five?

A He is no included, sir.

Q Did the policeman talk to you when you saw the five persons and that policeman in the hospital?

A Yes, sir.

Q And the policeman asked you who among the five boxed and brought you to that grassy place, and cause you to be unconscious?

A Yes, sir.

Q And the police also asked you if the person who boxed you in the night before was among those five?

A Yes, sir.

Q What was your answer?

A I pointed to the man, sir.

Q And you easily identified the man without being coaxed (sic) by anyone?

A Yes, sir.

Q And that person whom you identified a while ago as Ruben Gusmo was also the person whom you pointed to the police while in the hospital at that time?

A Yes, sir.

Q You said there were five, why did you pinpoint Ruben Gusmo, not the other four?

A Because Ruben Gusmo was the one who brought me to the grassy place, sir.[59]

It must be stressed that there was no showing that Jonalyn and her grandmother Emilia had any improper or self-seeking motive to incriminate the appellant in the present charge. The appellant himself did not know the two prior to the incident. Since no ill motive could be attributed to Jonalyn for imputing such a grave offense against the appellant, her identification of the latter should be given full faith and credit.[60]

We find it unnecessary to interfere with the trial court's judgment on the trustworthiness of Jonalyn's testimony. There is nothing on record which might have been overlooked or misapprehended by the court a quo in its evaluation of the testimonies of the witnesses. Without the need for citing authorities to that effect, we repeat the doctrinal rule that findings of trial courts are received on appeal with the highest respect because such courts have direct opportunity to observe the witnesses on the stand and determine if they are telling the truth or not.[61]

The appellant's alibi does not merit serious consideration. For alibi to prosper, it is not enough that the appellant proved that he was somewhere else when the crime was committed, but he must likewise demonstrate that he could not have been physically present at the place of the crime or in its immediate vicinity at the time of its commission.[62] Here, at the time of the incident, the appellant claims that he was sleeping at Dalisay's house located at Barangay Calangkawan Sur, Vinzons, Camarines Norte, which place, however, is the locus criminis. Clearly, there was no physical impossibility for the appellant to be present at the scene of the crime at the time of its commission. Likewise, the defense of alibi must be supported by credible corroboration, preferably from disinterested witnesses who will swear that they saw or were with the accused somewhere else when the crime was being committed.[63] Although the appellant's alibi was corroborated by Rudy Cañelas, Marco Antonio Rivera and Modesto Cañelas, such corroboration is not credible for the said witnesses cannot be considered as disinterested witnesses, they being the cousins of the appellant. Alibi is commonly regarded as weak if it is sought to be established wholly or mainly by the accused himself or his relatives.[64] But even if we consider Rudy and Antonio's testimonies, the same were not sufficient to establish the whereabouts of the appellant at the time of the alleged rape. They testified that on the night in question, they all went to sleep at around 8:00 p.m., and woke up very early the following morning at about 1:00 a.m. The crime was committed at about 10:00 p.m. It cannot, therefore, be declared with certainty that the appellant remained asleep at the house of Dalisay and did not go to the scene of the crime. Similarly unacceptable is the testimony of Modesto that he never slept a wink until the wee hours of the next morning because he was preparing food for the occasion, and that he saw the appellant and his group sleeping at the balcony until they woke up at around 1:00 a.m. It was impossible for Modesto to have watched over the appellant the entire time during the latter's alleged stay in his house. The trio's corroborating testimonies are not only biased for it is a natural desire for relatives to exculpate a kin from criminal liability; it is also inconclusive. Alibi is at best a weak defense and easy of fabrication especially between parents and children, relatives, and even those not so related.[65] For alibi to be credible, it must count with a strong corroboration. Moreover, the appellant's alibi, aside from being inherently weak, has been rendered inutile by the fact that he was conclusively identified by Jonalyn, his victim.[66] In *People v. Grefaldia*,[67] we reiterated the almost inflexible rule etched in out jurisprudential stone that alibi cannot prevail over the positive identification of the accused as the perpetrator of the crime.

In addition, the appellant's other defense of denial, like his alibi, cannot be believed in the light of the fact that he was positively identified by the victim as the perpetrator of the crime. The case in point is *People v. Musa*: [68]

Denial, if unsubstantiated by clear and convincing evidence, is a negative and self-serving evidence which deserves no weight in law and cannot be given greater evidentiary value over the testimony of credible witness who testify on affirmative matters. Between the consistent and categorical positive identification by the victim of the accused as her assailant and the latter's bare denial, the former generally prevails.

Under Article 335, paragraph 7, No. 4,[69] of the Revised Penal Code, as amended by Republic Act No. 7659, the crime of rape upon a child below seven (7) years old is punishable by death.

It has been held that the victim's age, being a qualifying circumstance which could raise the penalty to the supreme penalty of death, must be proved with equal certainty and clearness as the crime itself.[70] We also said in *People v. Pruna*[71] that the best evidence to prove the age of the offended party is an original or certified true copy of the latter's certificate of live birth.

In this case, the prosecution without question established that Jonalyn Cobita was below seven (7) years old when she was raped. The certified true copy of her certificate of live birth[72] shows that she was born on September 16, 1988 making her exactly six (6) years, eleven (11) months, and eighteen (18) days old when she was deflowered by the appellant. Her age was also corroborated by her grandmother's testimony.[73] Hence, all the

elements of the offense were properly proven beyond reasonable doubt, and the trial court did not err in imposing the death penalty.

It is necessary, however, to modify the amount of damages awarded by the trial court. Under prevailing jurisprudence, if the commission of the crime of rape is effectively qualified by any of the circumstances under which the death penalty may be imposed, the civil indemnity for the victim shall be P75,000.[74] The trial court's award of P50,000 as moral damages should be increased to P75,000 pursuant to current jurisprudence on qualified rape.[75] Lastly, the exemplary damages awarded by the trial court should also be increased to P25,000, in line with current jurisprudence, and by way of public example, to protect the young from sexual abuse.[76]

Three Justices of the Court maintain their position that R.A. No. 7659 is unconstitutional insofar as it prescribes the death penalty. Nevertheless, they submit to the ruling of the majority that the law is constitutional, and that the death penalty can be lawfully imposed in the case at bar.

WHEREFORE, the assailed Decision dated June 27, 2000 of the Regional Trial Court of Daet, Camarines Norte, Branch 41, in Criminal Case No. 8633 finding appellant Ruben Gusmo guilty beyond reasonable doubt of qualified rape and imposing upon him the death penalty is AFFIRMED. The appellant is also ordered to pay the victim, Jonalyn Cobita, the amount of P75,000 as civil indemnity; P75,000 as moral damages; and P25,000 as exemplary damages.

In accordance with Section 25 of Republic Act No. 7659, amending Article 83 of the Revised Penal Code, upon finality of this decision, let the records of this case be forthwith forwarded to the Office of the President for possible exercise of the pardoning power.

SO ORDERED.

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

[1] Penned by Judge Jose G. Dy.

[2] Records, p. 1.

[3] Id. at 9.

[4] The prosecution presented as its witnesses Jonalyn Cobita, Emilia Avila, SPO3 Joel Guinto, and SPO4 Pablo Maralit.

[5] Exhibits "E" and "E-1," Records, p. 27.

[6] TSN, 14 March 1996, p. 3.

[7] Ibid. On the witness stand, Jonalyn called Emilia "mother."

[8] TSN, 18 April 1996, p. 4.

[9] Ibid.

[10] Sinumpaang Malayang Salaysay ni Gng. Emilia Avila, Records, p. 4.

[11] TSN, 14 March 1996, p. 4.

[12] Id. at 5.

[13] Id.

[14] Sinumpaang Malayang Salaysay ni Gng. Emilia Avila, Records, p. 4.

[15] TSN, 14 March 1996, p. 8.

[16] Ibid.

[17] Id. at 9.

[18] Id. at 8.

[19] Id.

[20] Id. at 9.

[21] TSN, 18 April 1996, p. 9.

[22] Id. at 5.

[23] Id. at 5-6.

[24] Records, p. 5.

[25] TSN, 14 March 1996, p. 10.

[26] TSN, 16 May 1996, p. 3.

[27] Id. at 3-4.

[28] Id. at 4; TSN, 19 June 1996, p. 4.

[29] TSN, 19 July 1996, p. 35.

[30] The defense presented as its witnesses Ruben Gusmo, Marco Antonio Rivera, Rudy Cañelas, Modesto Cañelas, Elvie Santiago, Luz Tayubana, and Wilma De Leon-Andan.

[31] TSN, 14 January 1998, p. 2.

[32] Id. at 6.

[33] Id. at 10.

[34] Id. at 7.

[35] Id.

[36] Id. at 8-9.

[37] Id. at 10-12.

[38] Id. at 13-15.

[39] Id. at 16.

[40] Id. at 17-18.

[41] Id. at 18.

[42] Id. at 19.

- [43] Id at 21.
- [44] Id. at 20-21.
- [45] Id. at 21.
- [46] Records, p. 129.
- [47] Rollo, p. 49.
- [48] Id. at 60.
- [49] Id. at 61-62.
- [50] Id. at 62-63.
- [51] People v. Mahinay, G.R. No. 139609, November 24, 2003.

[52] 360 SCRA 159 (2001).

- [53] People v. Tumala, Jr., 284 SCRA 436 (1998).
- [54] TSN, 14 March 1996, pp. 23-25.
- [55] Id. at 6-7.
- [56] TSN, 18 April 1996, p. 8-9.
- [57] People v. Lamarroza, 299 SCRA 116 (1998).
- [58] TSN, 14 March 1996, p. 11.
- [59] Id. at 12-13.
- [60] People v. Bolado, 226 SCRA 800 (1993).
- [61] People v. Fuertes, 296 SCRA 602 (1998).
- [62] People v. Jose, 250 SCRA 319 (1995).
- [63] People v. Yadao, 216 SCRA 1 (1992).
- [64] People v. Parica, 243 SCRA 557 (1995).
- [65] People v. Retuta, 234 SCRA 645 (1994).
- [66] People v. Sumallo, 307 SCRA 521 (1999).
- [67] G.R. No. 121637, April 30, 2003.
- [68] G.R. No. 143703, November 29, 2001.
- [69] ART. 335. When and how rape is committed. - . . .

The death penalty shall be imposed if the crime of rape is committed with any of the following circumstances:

1. When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.
2. When the victim is under the custody of the police or military authorities.

3. When the rape is committed in full view of the husband, parent, any of the children or other relatives within the third degree of consanguinity.
4. When the victim is a religious or a child below seven (7) years old.
5. When the offender knows that he is afflicted with Acquired Immune Deficiency Syndrome (AIDS) disease.
6. When committed by any member of the Armed Forces of the Philippines or the Philippine National Police or any law enforcement agency.
7. When by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation.

[70] *People v. Marahay*, G.R. Nos. 120625-29, January 28, 2003.

[71] G.R. No. 138471, October 10, 2002.

[72] Exhibit "E," Records, p. 27.

[73] TSN, 18 April 1996, p. 17.

[74] *People v. Pajo*, 348 SCRA 492 (2000).

[75] *People v. Sambrano*, G.R. No. 143708, February 24, 2003.

[76] *Ibid.*

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