

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. JESUS MACAPAL, JR., RESPONDENT.

G.R. No. 155335. July 14, 2005

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

On review is the conviction of appellant, Jesus Macapal, Jr., for the rape of 23 year old mentally retarded Ligaya Sarino (the victim).

The Information filed against appellant in the Regional Trial Court (RTC) of Butuan City alleged the rape to have been committed as follows:

That on or about the evening of June, (sic) 1996, in Barangay Manapa, Buenavista, Agusan del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of one Ligaya R. Sa[r]ino, a 23-year old illiterate who appears to be mentally retarded, against her will.[1]

On arraignment, appellant entered a plea of not guilty.[2]

From the account of the victim, the following facts transpired one evening in June 1996 at Barangay Manapa, Buenavista, Agusan del Norte. While she was walking on her way home after she bought kerosene from the nearby store of appellant's father, Jesus Macapal, Sr., appellant suddenly appeared and waylaid her. Holding both her arms, appellant dragged her to an isolated grassy area where he ordered her to lie down. Although she wanted to shout, she froze with fear, appellant having poked a knife at her abdomen and threatened to kill her if she would shout or resist. Appellant thereafter succeeded in having sexual intercourse with her.[3]

From the rest of the prosecution evidence, the following are gathered: On December 23, 1996, when the victim visited her sister Vilma Sarino Salazar (Vilma), Vilma noticed the victim's stomach bulging, prompting her to inquire what happened. While the victim initially refused to answer, she was later prevailed upon to answer upon her (Vilma's) insistence and assurance that she would not be harmed. The victim then revealed what their neighbor, herein appellant, did to her.[4] When Vilma asked her when the incident happened, the victim answered "when you just left for Manila" which was, by Vilma's account, on June 3, 1996.

Vilma thus invited to her house appellant's father, the purok leader of the barangay. In the presence of Vilma's three brothers and her husband, the victim narrated to appellant's father how his son ravaged her in a grassy area in their barangay. On hearing the victim's account, appellant's father requested the Sarinos not to report the incident to the authorities until he had spoken to appellant. Vilma paid no heed to the request, however, and reported the incident to the barangay captain and then to the town police[5] before which the victim's sworn statement was taken on December 30, 1996.[6]

A complaint for rape bearing the victim's thumbmark was accordingly filed on January 2, 1997 against appellant before the Municipal Trial Court of Buenavista.[7]

Meanwhile, on the request of appellant and his parents, First Assistant Provincial Prosecutor Orlando Doyon summoned the complainant and her relatives for a possible settlement of the case. The parties did appear before the prosecutor on January 30, 1997 during which the victim, her father Jesus B. Sarino, and her sister Vilma on one hand, and appellant and his parents on the other, forged a Sworn Agreement[8] whereby the victim and her kins agreed to withdraw the complaint in consideration of appellant's and his parents' commitment "to shoulder one-half (½) of the expenses to be incurred . . . in connection with the delivery . . . of the child of [the victim]."

An Affidavit of Desistance[9] was in fact executed by the victim stating that "after mature deliberation and consultation with [her] father and other relatives," she was withdrawing her accusation against appellant.

On March 19, 1997, the victim gave birth to a boy.[10]

On March 25, 1997, the victim, assisted by her father, filed before the Provincial Prosecutor's office an "EX-PARTE MOTION TO RESCIND AND NULLIFY AMICABLE SETTLEMENT [AND] TO REVIVE THE CASE AND TO ORDER THE REARREST OF [APPELLANT]"[11] alleging:

X X X

- That the undersigned were forced to enter into such agreement as they were duped and harassed by some policemen in Buenavista, Agusan del Norte;
- That even if they were not the victims of trickery and harassment, they respectfully believe that they can revive the case as there was nothing in said agreement that would bar them from asking for said revival;

X X X

Appellant having failed to submit his counter-affidavit and controverting evidence, the Prosecutor's Office, finding the complaint uncontroverted, filed the information against appellant on May 2, 1997.

It is further gathered from the evidence for the prosecution that Dr. Cheryl T. Zalsos, a psychiatrist at the Northern Mindanao Medical Center who conducted a psychiatric evaluation of the victim on November 25, 1998, found that "the patient is suffering from Mental Retardation, mild to moderate . . . characterized by significantly sub-average intellectual functioning (IQ 70 or below) accompanied by significant limitations in adaptive functioning, with an onset below the age of 18." [12] And the doctor opined that while the mental capacity of the victim is comparable to that of a child between 9 to 12 years old, [13] she could testify in court but under closed door and leading questions should be avoided "as retarded people may be suggestible and wish to please others." [14]

It is gathered furthermore that when Dr. Benjamin B. Selim, Jr. (Dr. Selim), Medical Officer III of the Butuan Provincial Hospital, examined the victim on January 13, 1997, he found her to be in a pregnant state and that her hymen was not intact. On the basis of the ultrasound examination, he opined that she "had conception probably third to the last week of June 1996." [15]

On the other hand, appellant, denying the accusation, claimed as follows: He came to know for the first time of the charge on December 21, 1996 when he appeared before the barangay captain [16] during which the victim's sister, Vilma, did most of the talking, she informing that the alleged rape was committed on even date, December 21, 1996. At said meeting, the victim who had a boyfriend named Edsel was asked who raped her, but she was mum.

To lend credence to appellant's innocence and his suggestion that her boyfriend could have impregnated the victim, Mansueto Pande, a neighbor of the victim, related that one afternoon in August 1996, he witnessed the victim and Edsel having sexual intercourse in the house of Nelson Gultiano where Edsel was then visiting. [17]

And Sebastian Bermudez (Bermudez), barangay captain of Magsaysay, Jabonga, Agusan del Norte, ventured the opinion that appellant could not have committed the rape in June 1996 as appellant was from May 22 to August 17, 1996[18] in barangay Magsaysay, in the farm of his (Bermudez's) uncle, working as a helper in the operation of a turtle tractor.

Rebutting the defense evidence, the prosecution presented Nelson Gultiano (Gultiano), the owner of the house where defense witness Mansueto Pande allegedly saw the victim and a certain Edsel having sexual intercourse. Gultiano denied that the victim's alleged boyfriend Edsel was ever in his house in August 1996.[19]

As surrebuttal witness, the defense presented Edgar Labata who declared that he was a purok president in barangay Mayapa and he knew that the victim's boyfriend Edsel was living with Gultiano in 1996.[20]

Finding for the prosecution, Branch 2 of the RTC of Butuan City convicted appellant by decision of August 30, 2000, the dispositive portion of which reads:

"WHEREFORE, the Court hereby finds accused JESUS MACAPAL, JR. y JACA GUILTY beyond reasonable doubt for the crime of rape as charged, defined and penalized under Article 335 of the Revised Penal Code. In the absence of any aggravating or mitigating circumstance and it appearing that the accused is not disqualified from enjoying the benefits of the Indeterminate Sentence Law, the Court hereby sentences said accused JESUS MACAPAL, JR. y JACA to suffer an indefinite prison term of twelve (12) years and one (1) day of Reclusion Temporal as minimum to Reclusion Perpetua as maximum. The accused is ordered to pay the victim/private complainant the sum of PhP50,000.00 as actual and compensatory damages and to recognize the child as his illegitimate child whom the accused sired as the natural consequence of his criminal act.

The accused, in the service of his sentence, shall be credited with the period of his preventive imprisonment he has undergone pursuant to RA 6127.

SO ORDERED.[21] (Underscoring supplied)

Aggrieved, appellant elevated the case to the Court of Appeals which affirmed his conviction but modified the penalty imposed upon him by the trial court in this wise:

"WHEREFORE, the appealed decision is MODIFIED in that the straight penalty of reclusion perpetua is imposed on the accused-appellant who is further ordered to pay the offended party the sum of P50,000.00 as moral damages. In all other respects, the same decision stands. Costs against the appellant.

Pursuant, however, to the last paragraph of Section 13, Rule 124 of the 2000 Revised Rules of Criminal Procedure, this Court refrains from entering the judgment and, instead, certifies and orders the immediate elevation of the records to the Supreme Court for review.

SO ORDERED."[22] (Emphasis and underscoring supplied)

As the dispositive portion of the appellate decision states, the case was certified to this Court pursuant to Section 13 of Rule 124 of the Revised Rules of Court.[23]

Appellant argues that the victim, a mental retardate, is incompetent to establish his identity for, so he contends, it is not easy to ascertain the identity of a rapist when the victim is deprived of reason.[24] Besides, appellant continues, there was completely no evidence presented to prove that the incident occurred in June 1996 as the victim could not recall the year, the time and the day[25] of the alleged offense.

Appellant further argues that the trial court erred in assuming jurisdiction over the case despite the absence of evidence to prove the place of the incident.[26] At all events, he claims that the trial court unduly deprived him of his right to fully defend himself.[27]

The appeal is bereft of merit.

In rape cases, the victim's credibility is crucial to the determination of the accused's culpability as the crime generally involves two persons only and usually perpetrated in seclusion. While it may be difficult to determine the credibility of one who is a mental retardate, it can still be attained by deducing from the manner he or she testifies in court as to the surrounding facts of the crime committed.

As long as a witness' testimony is straightforward, candid and unflawed by inconsistencies or contradictions in its material points, and his or her demeanor is consistent with one who has been victimized to thus bolster credibility with the verity born out of human nature and experience,[28] as in the herein victim's case, credibility can be accorded to him or her.

Consider the following testimony of the victim which was punctuated with her crying as she recalled the victim threatening to kill her and the bulging of her stomach.

PROS. GADANI:

Q

You said you are Ligaya Sarino, do you know who is this Ligaya Sarino who is the private complainant in this case?

WITNESS:

A

I, Ma'am.

Q

Will you tell the Hon. Court why you file[d] this case against Jesus Macapal, Jr. alias "Alot"?

A

Because he raped me.

ATTY. CHAVEZ:

May I request that the word "Tamastamasan" be quoted, your Honor.

COURT:

Q

Will you please clarify the word "Tamastamasan"?

A

He raped me.

PROS. DAGANI:

Q

Will you tell the Honorable Court, Ligaya, how you were raped by Jesus Macapal, Jr. alias "Alot"?

A

I can.

(Witness when answering usually close[s] her eyes.)

Q

Please tell the Court?

A

I was made to do an errand by my father to buy a (sic) Kerosene, and after I bought Kerosene, on my way home he waylaid me and brought me to a grassy area; he made me lie down and he pointed a knife at me and threatened me that if I would tell my father and siblings he would kill me.

Q

After he told you that he would kill you, what happened next?

(Witness is crying.)

A

My stomach bulged and then it was after that I told my Ate Vilma Salazar.

COURT:

Q

You said you were raped, will you please tell the court how you were raped?

WITNESS:

A

He took off my short pants and my panty, and he inserted his penis into my vagina.[29] (Emphasis and underscoring supplied)

Consider too the victim's identification of appellant as the malefactor.

PROS. DAGANI:

Q

Now, you made mention that the person who was responsible in raping you is Jesus Macapal, Jr., alias Alot, do you know this person before he raped you?

A

Yes, Ma'am.

Q

Why do you know him?

A

Because he was once our neighbor.

Q

Where were you neighbor with Jesus Macapal?

A

In Manapa, Buenavista.

Q

If this Jesus Macapal, Jr. alias Alot is in court, will you be able to identify him?

A

Yes, Ma'am.

Q

Is he in court?

A

He is in court.

Q

Will you please point to him?

(Witness pointing to a lone person seated on the gallery who is the accused Jesus Macapal, Jr. alias "Alot").[30]

(Emphasis and underscoring supplied)

The straightforward narration of the victim of what transpired, accompanied by her categorical identification of appellant as the malefactor, sealed the case for the prosecution.

A litany of cases echoes the rule that great respect on the findings of the trial court on the credibility of witnesses and their testimonies is accorded. For the trial judge observes the behavior and demeanor of the witness in court. His evaluation or assessment of the credibility of witness and of testimony acquires greater significance in rape cases because from the nature of the offense, the only evidence that can oftentimes be offered to establish the guilt of the accused is the victim's testimony.[31] It is only in exceptional circumstances that this rule is brushed aside, such as when the court's evaluation was reached arbitrarily, or when the trial court overlooked, misunderstood or misapplied certain facts or circumstances of weight and substance which could affect the result of the case.[32]

Mental retardation per se does not affect credibility. A mentally retarded may be a credible witness.[33] The acceptance of his or her testimony depends on the quality of his or her perceptions and the manner he or she can make them known to the court. So this Court held in *People v. Guillermo*[34]

"In *People v. Munar* (131 SCRA 44, 46[1984]), although the complainant therein was a 19-year old female, with a mental age of a 5-year old, we still held that she was a competent witness. We therein relied on the findings of the trial court that complainant's answer were intelligible enough to be understood. The complainant therein could convey her thoughts by words and signs. Furthermore, an examining physician from the National Mental Hospital was presented in that case who testified that the mental deficiency of the witness did not prevent her from recalling painful experiences. In *People v. Gerones*, (193 SCRA 263, 267 [1991]), we found, upon close examination of the records, that the victim managed to communicate her ordeal to the court clearly and consistently. The trial court found the victim therein to have the mental capacity of a ten-year old. Hence, we declared that we were convinced that a ten-year old girl could adequately narrate facts which show that she had been raped. The acceptance of a mental retardate's testimony, therefore, as in the case of other witnesses, must still depend on its nature and credibility or, otherwise put, the quality of the person's perceptions and the manner he can make them known to the court." (Underscoring supplied)

Thus, in *People v. Limio*,^[35] the complainant's low intelligence notwithstanding, this Court entertained no doubt in her testimony, it having categorically showed that "she had been subjected to a harrowing unspeakable experience, which left an indelible impression in her mind" as a rape victim.

In the case at bar, albeit the victim's testimony was tainted with inconsistencies,^[36] these are mere collateral and minor matters which would not compel this Court from discrediting her testimony, given her mental retardation. In fact, testimonial discrepancies, which could have been caused by the natural fickleness of memory, tend to strengthen, rather than weaken, credibility as they negate any suspicion of rehearsed testimony and do not destroy the substance of the victim's testimony.^[37]

As for the defense attack on the prosecution in having allegedly failed to prove the date and place of commission of the rape,^[38] the same fails.

The records show that when the victim executed a sworn statement before the police on December 30, 1996,^[39] she was categorical in furnishing the date and place of the commission of the rape.

x x x

Q:

Where and when did this incident happened (sic), if any?

LIGAYA

A:

That was sometimes (sic) in the month of June 1996, in the evening which I could not remember when the exact time and date, at a grassy portion of a human trail going to our house at Purok 4, Barangay Manapa, Buenavista, Agusan del Norte.^[40]

x x x (Emphasis and underscoring supplied)

And during the preliminary examination of the case on January 6, 1997 before Municipal Judge Pancracio N. Escañan, the victim gave the following account:

COURT

Q

Do you know Jesus Macapal Jr. alias Alot?

A

I know him, your honor.

Q

How long have you known him?

A

Long time ago, your honor.

Q

Are you neighbors with Alot

A

We are neighbors

Q

How far is your house to the house of Alot?

A

Our house is farther from the house of Alot.

Q

Do you recall meeting him last June/96 in the evening?

A

I remember, your honor.

Q

In what reason (sic) have you met him?

A

When I bought kerosene.

Q

Where?

A

At their store.

Q

What happened at the store of Alot?

A

Nothing.

Q

Even after June/96 nothing happen between you and A lot?

A

There was, your honor.

Q

When was that?

A

I cannot remember.

Q

Was it June/96?

A

No answer

Q

When you bought kerosene from the store of Alot, what happened?

A

He rape[d] me.

Q

Where?

A

At the isolated place.[41] (Emphasis and underscoring supplied)

Even Dr. Selim echoed the victim's account to him about the month and year of commission. Thus, on direct examination, the doctor declared:

PROS. DAGANI:

Q

When you earlier testified that you asked about the . . . DOI when you stated this in your certificate, DOI - meaning date of incident: June 1996, from whom did you get this date?

A

From the informant including the victim because she was there and they can only supply me this date.

Q

Are you saying doctor that both the patient and the informant told you about this date?

A

Yes, ma'am.[42] (Emphasis and underscoring supplied)

And on cross examination, he declared:

ATTY. CHAVEZ:

Q

Doctor, according to this medical certificate, you mentioned and indicated the DOI meaning date of incident. You indicated here June 1996, you made this indication because you based the age of pregnancy?

A

Not on the basis of the pregnancy. But I asked the patient on when meaning the time and the date of the incident. But the alleged victim can only recall the month and the year. But the exact date, she cannot.

Q

If the alleged victim supplied that information, why was there a need for the ultra sound?

A

To determine the exact date of the gestation of the fetus.[43] (Emphasis and underscoring supplied)

On the merits of the defense of denial and alibi, the same must be discredited.

Appellant is alleged by defense witness Sebastian Bermudez to have been, in June 1996, at barangay Magsaysay, Jabonga, Agusan del Norte of which he (Bermudez') was a resident,[44] working as helper in the operation of a turtle tractor on the farm of his (Bermudez') uncle. Bermudez' following testimony on cross-examination, quoted verbatim, does not, however, rule out appellant's presence on the date and place of the commission of the crime:

PROS. DAGANI:

Q

Now, you said that you saw Jesus Macapal, Jr. when was this that you saw him plowing the field of your uncle?

WITNESS BERMUDEZ

A

May 25, 1996.

COURT:

Q

On May 25, 1996, you saw Jesus Macapal, Jr., on the following day May 26, 1996?

A

They were on my rice land working.

Q

From May 25 up to what date did Jesus Macapal stay in your barangay?

A

I think it was on August 17 or 27 when I saw Jesus Macapal, Jr. and his aunt at the waiting shed because the waiting shed is located at the junction of the road going to my house.

Q

So, more or less, Jesus Macapal, Jr. arrived in your barangay in the month of May and he was there until August when he left, is that correct?

A

Yes, Your Honor.

COURT: Proceed.

PROS. DAGANI:

Q

Now, from that period, how many times were you able to actually see Jesus Macapal, Jr?

A

After I have him plowed in the ricefield and the turtle machine broke down, he stopped working but he again work[ed] for me after one week also when the turtle was repaired. I could not say how many times because it was intermittently and he lived in a place far from my house.[45] (Emphasis and underscoring supplied)

Alibi is a defense that places the defendant at the relevant time and in a place different from the commission of the crime, so removed therefrom as to render it impossible for him to be the guilty party.[46] For it to prosper, the following must thus be established: the presence of the appellant in another place at the time of the commission of the crime and the physical impossibility for him to be at the scene of the crime at the time of its commission.[47] The accused must not only prove that he was somewhere else when the crime was committed, he must also convincingly demonstrate the physical impossibility of his presence at the locus criminis at the time of the incident.[48]

In the case at bar, as earlier stated, the testimony of defense witness Bermudez did not rule out the presence of appellant on the date and place of the commission of the crime.

In any event, even assuming that appellant was in barangay Magsaysay from May 25 to August 25, 1996, the distance from barangay Manapa, Buenavista where the crime took place to barangay Magsaysay, Jabonga is about 75 kilometers, as the trial court found, with an average travel time of about three (3) hours only,[49] to thus render it not physically impossible for appellant to have been at the scene of the crime on the date and time of its commission.

Moreover, the positive identification by the victim of appellant as the culprit being categorical and consistent and devoid of any showing of ill motive on her part prevails over alibi and denial which, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving of weight in law.[50]

As for appellant's argument that he was deprived of his right to "fully" defend himself in light of the trial court's denial[51] of his "MOTION FOR DNA TEST"[52] wherein he raised as "main issue" - whether he fathered the victim's child - fails too. The identity of the father of a rape victim's child is non-issue in a charge for rape, the impregnation of the victim not being an element of the offense:

More importantly, it should be pointed out that these consolidated cases are criminal cases for rape, not civil actions for paternity or filiation. The identity of the father of the victim's child is a non-issue. Even her pregnancy is beside the point. What matters is the occurrence of the sexual assault committed by appellant on the person of the victim on four separate occasions . . . [53] (Emphasis and italics in the original)

One last word on appellant's plea of innocence. To the Court, appellant's act of committing, along with his parents, in the Agreement[54] forged with the victim while the case was on preliminary investigation before the Prosecutor's Office "to shoulder one-half (½) of the expenses to be incurred by [the victim] . . . in connection with the delivery" of her child is the coup de grace that dissipates any nagging doubts on his guilt.

Respecting the imposition by the Court of Appeals of a straight penalty of reclusion perpetua, the same is in order, such penalty being indivisible.[55]

WHEREFORE, the challenged October 1, 2002 decision of the Court of Appeals is hereby AFFIRMED.

Costs against appellant.

SO ORDERED.

Panganiban, (Chairman), Sandoval-Gutierrez, Corona, and Garcia, JJ., concur.

- [1] Records at 1.
- [2] Rollo at 282. See also 186.
- [3] TSN, January 18, 1999 at 3-7.
- [4] Id., March 3, 1999 at 4-5.
- [5] Id. at 8-9.
- [6] Exhibit "1", Records at 4.
- [7] Id. at 3.
- [8] Exhibit "D", Id. at 36.
- [9] Exhibit "7", Id. at 34.
- [10] Id. at 437.
- [11] Id. at 31-32.
- [12] Exhibit "B"; Records at 172.
- [13] TSN, December 22, 1998 at 8-10.
- [14] Vide note 14.
- [15] TSN, December 4, 1998 at 66-69, Records at 208; vide Exhibit "A", Records at 170.
- [16] Records at 430-432. See also at 516-517.
- [17] Id., June 1, 1999 at 2-6.
- [18] Id., August 25, 1999 at 5-10.
- [19] TSN, October 20, 1999 at 2-9.
- [20] TSN, December 20, 1999 at 2-5.
- [21] Rollo at 74-75.
- [22] Id. at 304-305.
- [23] Sec. 13, Rule 124 of the Revised Rules of Court provides:

Sec. 13. Quorum of the court; certification of appeal of cases to Supreme Court. - Three (3) Justices of the Court of Appeals shall constitute a quorum for the sessions of a division. The unanimous vote of three (3) Justices of a division shall be necessary for the pronouncement of a judgment or final resolution, which shall be reached in consultation before the writing of the opinion by a member of the division. In the event that the three (3) Justices can not reach a unanimous vote, the Presiding Justice shall direct the raffle committee of the Court to designate two (2) additional Justices to sit temporarily with them, forming a special division of five (5) members and the concurrence of a majority such division shall be necessary for the pronouncement of a judgment or final resolution. The designation of such additional Justices shall be made strictly by raffle and rotation among all other Justices of the Court of Appeal.

Whenever the Court of Appeals finds that the penalty of death, reclusion perpetua, or life imprisonment should be imposed in a case, the court, after discussion of the evidence and the law involved shall render judgment imposing

the penalty of death, reclusion perpetua, or life imprisonment as the circumstances warrant,. However, it shall refrain from entering the judgment and forthwith certify the case and elevate the entire record thereof to the Supreme Court for review.

[24] Rollo at 117.

[25] Id. at 180.

[26] Id. at 180-181.

[27] Id. at 182.

[28] *People v. Esperida*, 395 SCRA 679, 685 (2003) citing *People v. De Guzman*, 343 SCRA 267, 274 (2000).

[29] TSN, January 18, 1999 at 3-5.

[30] Ibid. at 6-7.

[31] *People v. Fabian*, 405 SCRA 406, 412-413 (2003).

[32] *People v. Antolin*, 330 SCRA 656, 665 (2000) citing *People v. Cristobal*, 252 SCRA 507, 516 (1996); *People v. Balamban*, 264 SCRA 619, 629 (1996).

[33] *People v. Lumibao*, 421 SCRA 65, 77 (2004).

[34] 416 SCRA 87, 96 (2003).

[35] 429 SCRA 597, 609-611 (2004).

[36] While testifying during the preliminary examination, Ligaya could not exactly recall what happened on June 1996. See Records 15-17; TSN, January 6, 1997 at 2-4. During her cross-examination, she testified that in the filing of this case, she based her decision on her sister and father's decision. See also TSN, January 18, 1999 at 12.

[37] *People v. Esquila*, 254 SCRA 140, 146 (1996) citing *People v. Cayago*, 158 SCRA 586, 596 (1988) and *People v. Aragon*, 164 SCRA 78, 85 (1988).

[38] TSN, January 18, 1999 at 5.

[39] The sworn statement was executed before SPO4 Mario B. Hidalgo, Sr.

[40] Records at 6.

[41] Records at 15-17; TSN, January 6, 1997 at 2-4.

[42] TSN, December 4, 1998 at 15.

[43] TSN, December 4, 1998 at 11.

[44] Id., August 25, 1999 at 5-10, Record at 389.

[45] Ibid. at 8-9.

[46] *People v. Villaruel*, 261 SCRA 386, 396 (1996); *People v. Cañete*, 287 SCRA 490, 500 (1998); *People v. Acob*, 246 SCRA 715, 723 (1995).

[47] *People v. Alajay*, 408 SCRA 629, 635 (2003).

[48] People v. Limio, Supra at 611-612 (2004).

[49] Rollo at 73.

[50] People v. Alajay, 408 SCRA 629, 635 (2003).

[51] Order March 12, 1999, Records at 199.

[52] Id. at 164.

[53] People v. Mendoza, Jr., 407 SCRA, 563, 573 (2003) citing People v. Adora, 275 SCRA 459-460 (1997).

[54] Vide Note 8.

[55] Art. 63. Rules for the application of indivisible penalties. - In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

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