

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANTONIO ARIZALA Y FLORES @ TONY, ACCUSED-APPELLANT.

G.R. No. 59713. March 15, 1982

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

ANTONIO ARIZALA y FLORES was convicted of rape by the Court of First Instance of La Union and sentenced to suffer "an indeterminate penalty of SIX (6) YEARS and ONE (1) DAY of prision mayor, as minimum, to TWELVE (12) YEARS and ONE (1) DAY of reclusion temporal, as maximum; to pay the complainant, Trinidad Baladad, the sum of P5 ,000.00 as moral damages; and to pay the costs."

ARIZALA appealed his conviction to the Court of Appeals which found him guilty of the crime charged in a comprehensive decision wherein the evidence was analyzed and the law involved was discussed. The Court of Appeals made the following conclusion: "There being one aggravating circumstance of dwelling which is offset by the mitigating circumstance of voluntary surrender, We are of the opinion that the penalty of reclusion perpetua should be, as it is hereby, imposed upon the appellant." However, judgment was not entered and the case with its entire record was elevated to us for review pursuant to Rule 124, Sec. 12 of the Rules of Court, and *People vs. Daniel*, L-40330, November 20, 1978, 86 SCRA 511, 532, *People vs. Ramos*, L-49818, February 20, 1979, 88 SCRA 486.

A verified complaint for rape was filed by Trinidad Natividad Vda. de Baladad with the Municipal Court of Bauang, La Union, on August 12, 1974. The complaint reads:

"The undersigned OFFENDED PARTY, upon being duly sworn to in accordance with law, hereby accuses ANTONIO ARIZALA Y FLORES alias "TONY" of the crime of RAPE committed as follows, to wit:

"That on or about the 17th day of JUNE, 1974, in the Barrio of Quinavite, Municipality of Bauang, Province of La Union, Philippines, and within the juris-diction of this Honorable Court, the above-named accused, with lewed designs did then and there, willfully, unlaw-fully and feloniously by means of violence and force, having hit and delivered a blow that rendered the under-signed unconscious, succeeded in having sexual inter-course with the undersigned while she was thus rendered in the state of unconsciousness, without her consent to the damage and prejudice of the undersigned.

"That the felony was committed with the aggravating circumstance of dwelling of the offended party.

"CONTRARY TO ARTICLE 335 of the Revised Penal Code as amended."

On the same day, Municipal Judge Simeon V. Caces conducted a preliminary investigation and finding probable cause he issued a warrant for the arrest of Antonio Arizala which was served likewise on the same day. Contrary to the decisions of both the trial court and the Court of Appeals, there is nothing in the expediente nor in the testimony of the witnesses which indicates that Arizala surren-dered voluntarily.

Arizala waived the second stage of the preliminary investiga-tion so the case was elevated to the Court of First

Instance for trial on the merits. The Assistant Provincial Fiscal in charge of the case submitted a manifestation that he was adopting the criminal complaint filed in the municipal court instead of filing an information.

The People's version of the case is as follows:

"The complainant in this case is Trinidad Baladad, who at the time of the criminal incident, was 46 years old and a widow with ten (10) children (p. 3, tsn., Sept. 17, 1974). On the other hand, the accused-appellant Antonio Arizala was then 48 years old a tricycle driver and a neighbor of the complainant in Barangay Quinavite, Bauang, La Union (p. 2, tsn., Dec. 4, 1975).

"At about 10:30 o'clock in the evening of June 17, 1974, the complainant was arranging some clothes inside the room on the ground floor of her house. At the time, her 8-year old daughter Edna who shared the complainant's room, was already asleep. The bedroom was lit by a 40-watt fluorescent lamp from the sala (a door curtain separated the room from the sala). The front door and windows were locked, but the kitchen door was not because her son, Arthur, used this door when arriving late at night from work (pp. 3-14, tsn., Sept. 17, 1974).

"Then complainant heard the sound of a door being opened. She was not alarmed by this, thinking that it was her son, Arthur, who was entering the house. The door curtain was pushed aside. When the complainant turned to look, she saw, and recognized, the accused (pp. 15-16, tsn., id.).

"Suddenly the accused punched complainant on the stomach. The latter instantly lost consciousness, unable to shout or seek help. When she regained consciousness, the accused was no longer there. She was lying on her back on the cement floor with her 'duster' (a loose kind of dress) raised to her waist, her legs apart, her panties removed and placed near the wall. Seminal fluid was oozing from her vagina. As the mother of ten children, these circumstances made her realize that she had been abused (pp. 16-21, 41, tsn., id.).

"Complainant did not undergo medical examination, fearful of the reaction of her older children and of her brother on the knowledge of the incident. The next-day, however, complainant went to her neighbor, a policeman named Milan Corpus. She narrated the incident and sought his advice on what action to take without her relatives knowing about it. She was advised to file a complaint. At first, she refused, not wanting any of her relatives to know what had befallen her. Finally, on July 25, 1974 with anguish and mental torture bearing down on her, complainant decided to tell all of it to her brother, Julio Natividad. (pp. 21, 42-47, tsn., id.).

"Accompanied by her brother Julio, complainant gave her sworn statement at the office of the National Bureau of Investigation in San Fernando, La Union. Subsequently she filed the complaint for rape against the accused.

"There were several instances when the Arizalas pleaded with the complainant not to file any charges and/or sought forgiveness. About one week after the incident, the Arizalas came to complainant's house in the morning, requesting her not to file any case against the accused. Again, in the early morning of July 25, 1974, they came again to plead with her and that they should settle the case, saying that all of them would only suffer embarrassment. Again, at 1:00 o'clock in the afternoon of the same day, the Arizalas came and asked forgiveness from the complainant for the incident of June 17, 1974 and for the latter not to file charges. Complainant refused because she wanted justice. At 5:00 o'clock in the afternoon of the same date, when complainant's daughter Crisanta arrived from her teaching job, the Arizalas returned, and complainant told them she would await the decision of her brother, Julio, and her son, Vivencio, who was still in Baguio at the time (pp. 55-68 tsn., id.).

"Then, again at the office of the National Bureau of Investigation in San Fernando, La Union where complainant and Crisanta gave their statements, the accused knelt before Vivencio pleading 'Forgive me son, for what I have done to your mother.' The accused was the sponsor at Vivencio's wedding (pp. 4-6, No. 5 file of tsn., id.)." (Brief, pp. 2-5.)

The appellant's version paints a totally different picture as follows:

"The complainant Trinidad Baladad and the accused-appellant Antonio Arizala are neighbors in the same barrio of Quinavite, Bauang, La Union and their houses are only about 30 to 40 meters apart. They have known each other since childhood (TSN, 12/4/75, p. 3) and their relationship as such became closer with the appellant acting as sponsor during the wedding and confirmation of complainant's two sons, Dinong and Vivencio, respectively (IBID, 5/11/76, p. 6). With this admittedly close relationship existing even long before the date of the alleged incident complained of, that is, on June 17, 1974, the complainant used to fetch water from and bathe near the well belonging to and in the yard of the appellant (IBID, 10/1/75, p. 3), watch night TV programs in appellant's house and join the latter and members of his family in having some snacks therein (IBID, 2/19/75, p. 8; IBID, 10/1/75, p. 11). In short, the complainant was always welcome in the appellant's house where the former sometimes render unsolicited household chores (IBID, 10/1/75, p. 12).

"But, sometime during the later part of January, or early February, 1974, the relationship between complainant and the appellant came to a twist when the former asked from the latter a loan of P5.00 and, a few days thereafter, another loan of P10.00 (IBID, 12/4/75, pp. 5-6; IBID, 5/11/76, pp. 3-4), without the first loan having as yet then settled. The appellant was reluctant to give the second loan of P10.00 but for complainant's remark: 'Anyway we are sweethearts' (IBID, 12/4/75, p. 6). With the first and second loans, totalling P15.00, still unsatisfied, the complainant again pestered the appellant for a third loan of P10.00. The appellant again obliged as he was emotionally moved by complainant's statement: 'Come on sweetheart give me' (IBID, p. 9). On this third loan, the appellant handed a twenty-peso bill but the expectation for the return of the ten-peso change was in vain (IBID, p. 10).

"Because of the manifestly romantic gesture of complainant when she asked for the third loan the appellant proposed to complainant, saying: 'Sweet, let me come tonight then' and to which the complainant readily agreed, saying: 'That only' (or, in Pilipino, 'Iyan lang pala') (IBID, p. 10). Hence, an understanding was reached whereby the complainant should wait in her house in the evening, between 10:00 p. m. and 12:00 midnight, and to unlock the door for appellant to enter unnoticed by others (IBID, pp. 11-12). That was in the evening of Feb. 14, 1974, a memorable date commemorating the feast of St. Valentine and a day primarily destined for people and their loved ones. On this unforgettable day, the first sexual act between complainant and the appellant was consummated, followed later by frequent sexual contacts (IBID, 1/6/76, pp. 11, 14; IBID, 5/11/76, pp. 7, 12).

"After the first intercourse, the relationship between complainant and the appellant became the more intimate, with the former frequenting the house of the latter on the pretext of watching therein the night TV programs. Even complainant's youngest and 8-year old child, Edna, shared the love and affection resulting from her mother's illicit relationship with the appellant who used to give money to both mother and child (IBID, 5/8/75, p. 13; IBID, 1/21/76, p. 25), at the expense of appellant's immediate members of his family (IBID, 5/8/75, pp. 13-14).

"In the evening of June 17, 1974, the date of the alleged incident complained of, the complainant informed the appellant of the interruption and/or delay in the former's menstrual flow and she advised appellant to consult the authorities on family planning (IBID, 1/6/76, p. 25; IBID, 6/7/76, p. 3). So, on the following day, June 18, 1974, the appellant saw and consulted Mrs. Leonora Manantan, the Registered Midwife working at the Rural Health Unit in Bauang, La Union (IBID, 6/19/75, p. 17). The records in the office of Mrs. Manantan (Exh. 3 & Exh. 3-A) disclose and confirm the consultations made by the appellant on June 18, 1974 when he was even handed a family planning pamphlet (Exh. 4) on which appears the illustration of the rhythm method of family planning as explained by Mrs. Manantan to the appellant (Exh. 4-A; TSN, 6/19/75, p. 9; IBID, 1/6/76, p. 12; IBID, 6/7/76, p. 17) and during his ailment the complainant made almost daily visits (IBID, 1/6/76, p. 13), bringing with her some expensive cakes and medicines for the appellant who was in bed alone in his room (IBID, p. 16; IBID, 2/19/75, p. 14). Even appellant's 20-year old daughter, Nelmie (she was 21 years old when she testified on Feb. 19, 1975), saw complainant going in and out of appellant's room (IBID, 2/10/75, p. 13).

After recovering from his sickness the appellant and the complainant resumed their sexual orgy under the same circumstances as was done before.

"Because of the actuations of both complainant and the appellant, consisting in their intimate conversations, the unsolicited household services rendered by complainant in appellant's house and the latter's special treatment of complainant's daughter, Edna, not to mention the reduction in appellant's earnings (IBID, 10/1/75, pp. 11-12) brought about by his giving money to and free tri-cycle rides to complainant and her daughter, Edna (IBID, 5/8/75, pp. 13-14) - all these taken together generated suspicion on the part of appellant's wife, Cleofe Arizala, who forced on the appellant, in the evening of July 2, 1974, a confrontation about the suspicion she entertained that her husband had as his paramour the complainant. It was in this confrontation that the appellant admitted his extra-legal adventures with complainant, but with the admonition for appellant's wife and their daughter not to quarrel with the complainant (IBID, 5/8/75, p. 24; IBID, 10/1/75, p. 7; IBID, 1/6/76, p. 32). Accordingly, an arrangement was made for appellant's wife to call for the complainant the following morning for the three of them to settle matters over (IBID, 5/8/75, p. 7; IBID, 1/6/76, p. 32).

"So, on July 3, 1974 the complainant, the appellant and his wife, Cleofe, talked in appellant's house where both he and the complainant admitted their illicit relationship. This, notwithstanding, the appellant's understanding wife forgave and pardoned him and the complainant for as long as such relationship ended right then and there (IBID, 10/1/75, p. 9; IBID, 1/6/76, pp. 35-36). The complainant even pleaded that her relationship with the appellant be kept a secret in order not to reach the knowledge of complainant's children, brothers and sisters (IBID, 10/1/75, pp. 9-10; IBID, 1/6/76, pp. 36-37). Despite the pardon for their misdeeds, however, the complainant and the appellant continued and resumed their morally reprehensible amorous relations by indulging in the same sexual orgy as often, if not oftener, than before (IBID, 1/21/76, pp. 6-7, 21).

In the morning of July 8, 1974, the appellant was caught writing a letter (Exhs. 2 & 2-A) addressed to the complainant (IBID, pp. 809) and an unusual incident transpired when a scuffle ensued for the possession of said letter among appellant, his wife and their daughter, Nelmie. In the process, the appellant maltreated and laid hands on his wife (IBID, pp. 10-11, 14-16; IBID, 10/1/75, p. 14; IBID, 5/8/75, pp. 29-30). Appellant's sister, Nemesia Cacdac, who just arrived in appellant's house from the Notre Dame Hospital in Baguio City where she underwent a surgical operation (IBID, 6/25/75, pp. 5-), was also present during the scuffle for the letter (Exh. 2) and it was she who picked the same up and later handed it to appellant's wife (IBID, pp. 6, 9-11).

"After the incident involving the letter (Exh. 2) was over, Nemesia Cacdac went to complainant's house to return the thermos bottle that the former used while in the hospital (IBID, p. 11). On this occasion, the complainant inquired about the cause of the trouble between appellant and his wife (IBID, p. 12) but appellant's sister pretended not to know. Thereafter, though, the complainant confided her illicit relationship with the appellant (IBID, p. 14) but the complainant disclosed her intention to reverse the situation by the filing of charges against the appellant if the latter's wife did not stop quarreling with said appellant (IBID, p. 16).

"The continuing, immoral and illegal affair between complainant and the appellant had inflamed the ire of the latter's wife when, on July 25, 1974, a heated confrontation that almost resulted in a tragic encounter erupted between complainant and appellant's wife (IBID, 5/8/75, pp. 33-34, 37-38; IBID, 11/11/75, p. 6; IBID, 1/21/76, pp. 27, 28, 30). After this incident, the complainant left but was joined by the appellant to whom the former revealed her intention of filing the corresponding charges against the latter's wife as a result of said incident. Appellant's wife also followed and caught up on the way (IBID, 1/21/76, p. 33) and the three proceeded to the public market where the appellant left the two women behind (IBID, p. 34; IBID, 11/11/75, p. 6). From the public market, the complainant and the appellant's wife went to the municipal building (IBID, 11/11/75, p. 7). Coming out from the municipal building the two women again left together and, while outside, the complainant saw and informed her brother, Julio Natividad, that the appellant was always in her house every night and that he had taken her womanhood but said Julio Natividad merely shrugged off the information by telling his sister, the complainant, that he (Julio) would take care of the matter (IBID, p. 9) and the complainant

and the appellant's wife left together for home.

"In the afternoon of July 25, 1974, the appellant and his wife went to complainant's house to ask forgive-ness for what appellant's wife did earlier in the day when she quarreled with the complainant (IBID, 11/11/75, p. 23; IBID, 2/24/76, p. 8).

"But, on July 27, 1974 the complainant's brother, Julio Natividad, went to appellant's house and advised the latter not to leave since the quarrel between his (appellant's) wife and the complainant two days before would be settled (IBID, 11/11/75, pp. 12-13; IBID, 1/21/76, pp. 40-41). And, after lunch of the same day, Julio Natividad returned to appellant's house to fetch the latter. When they (Julio Natividad, the appellant and his wife) were about to leave, three men arrived and introduced themselves as members of the National Bureau of Investigation (NBI) [IBID, 11/11/75, p. 14]. Thereafter, all of them left and they proceeded to the office of the NBI in San Fernando, La Union (IBID, p. 15) where both appellant and his wife were made to sign an already prepared document in affidavit form (Exh. C). The contents of said document were not made known to appellant and his wife but they were made to understand by the NBI that the same is the settlement of the quarrel that occurred on July 25, 1974 and involving the complainant and the appellant's wife (IBID), pp. 16-17; IBID, 2/24/76, pp. 4-5). After the appellant and his wife had affixed their signatures on said document (Exh. C) they were even obliged to contribute one (1) case of beer to be brought to the house of Julio Natividad in celebration of such settlement and the appellant complied (IBID, 11/11/75, p. 24; IBID, 2/24/76, pp. 12-13).

"Utilizing the statements of complainant and her witnesses, re-inforced by the already accomplished affidavit (Exh. C) the contents of which the appellant and his wife knew all the time to have embodied the settlement of the quarrel between complainant and appellant's wife, the prosecution hastily filed the charge of rape against the appellant." (Brief, pp. 1-8.)

The appellant claims that the trial court committed the follow-ing errors:

"I

THE LOWER COURT ERRED IN GIVING CREDENCE TO THE VERSION OF THE PROSECUTION (COMPLAINANT).

"II

THE TRIAL COURT ERRED IN NOT CONSIDERING THE FACTS AND CIRCUMSTANCES THAT NEGATE THE EXISTENCE OF THE CRIME CHARGED (RAPE).

"III

THE LOWER COURT ERRED IN NOT ABSOLVING AND/OR ACQUITTING THE ACCUSED-APPELLANT."

The third assignment of error is but a formal one, resulting from the first two assignments of error which can be re-stated and capsulized as follows: which is the more credible version, that of prosecution or that of the accused?

In resolving the question, We have to recall the cardinal rule that:

"On matters of credibility, this Court has accorded the highest degree of respect for the findings of the trial judge because he had the opportunity to see, hear and observe the witnesses testify and to weigh their testimonies. The trial judge's findings of fact shall not be disturbed unless it appears from the record that facts or circumstances of weight or influence were overlooked, their significance misinterpreted, or there were inherent weaknesses in the supporting evidence." (People vs. Bautista, L-31900, August 6, 1979, 92 SCRA 465; see also People vs. Caramonte, L-31866, November 7, 1979, 94 SCRA 150; People vs. Tigulo, L-34334, November 7, 1979, 94 SCRA 183; People vs. Ramos, L-35063, December 27, 1979, 94 SCRA 842; People vs. Mercado, L-39513, April 28, 1980, 97 SCRA 232.)

Evidently the trial court found the complaining witness to be more credible and in line with the rule above stated We do not believe that the record of the case will warrant a reversal of the decision.

Exhibit C which is an affidavit executed by the appellant on July 27, 1974, and verified before NBI Agent Eladio C. Velasco is strong evidence against him. The affidavit reads:

"I, ANTONIO ARIZALA Y FLORES, of legal age, residing B. Quinavite, Bauang, La Union and married to CLEOFE ESTEPA, after having been sworn in accordance to law, depose and say:

"1 . That I am the same Antonio Arizala y Flores, who is denounced for a case of alleged rape committed on the person of one MRS. TRINIDAD NATIVIDAD VDA. DE BALADAD of Bo. Quinavite, Bauang, La Union;

"2 . That because of this denunciation and charge I and my wife went to the house of said Mrs. Trinidad Natividad Vda. de Baladad in the afternoon of Thursday, July 25, 1974 asking for forgiveness and begging from said Mrs. Trinidad Natividad Vda. de Baladad to have the case settled amicably and out of Court so that the authorities concerned will not be informed anymore;

"3 . That a daughter of Mrs. Trinidad Natividad Vda. de Baladad named Crisanta N. Baladad, a high school teacher was present at the time that we talked of this forgiveness;

"4 . That no final action was arrived at because according to Mrs. Trinidad Natividad Vda. de Baladad and her daughter Crisanta, the matter must have to be consulted first with her eldest son named VIVENCIO and some other close relatives;

"5. That here and now in the presence of the eldest son Vivencio and an uncle of Vivencio named Julio Natividad as well as in the presence of Mrs. Trinidad Natividad Vda. de Baladad and her daughter Crisanta, and in your presence as investigator of this case, I again would like to ask for forgiveness and pray that this case will not reach the Courts; and

"6 . Finally the forgiveness that I am begging is in connection with that incident which happened in the house of Mrs. Trinidad Natividad Vda. de Baladad on the night of June 17, 1974.

"7 . Affiant further sayeth naught."

The appellant claims that he signed the affidavit without reading it. He insinuates that he could not comprehend English. But the decision of the trial court categorically states that, "The accused could read English, as was demonstrated in Court when he read aloud the beginning of the statement in question, 'I, Antonio Arizala, etc...' and the name at the bottom over which he affixed his signature, 'Antonio F. Arizala.' Hence, he knew that he was the main executing party, and not his wife, who signed said document after him, her name only appearing below her husband's signature." (p. 14, decision.) And the claim of the appellant that Exhibit C was executed in order to settle a quarrel or spat between his wife and the complainant must be rejected because the document does not mention of any quarrel between the two. On the contrary it tells of the incident on June 17, 1974, when the rape took place.

The appellant also claims that he could not possibly have gone to bed with the complainant on June 17, 1974, because on that day she had her monthly period. We take judicial notice of the fact that such a condition does not bar sexual union. Intercourse may be messy but it is not impossible. And to bolster his contention, the appellant claims that he even consulted Mrs. Leonora Mananta, the registered midwife at the Rural Health Unit in Bauang who gave him a pamphlet of the rhythm method of family planning (Exh. 3-A). But there is no showing that the complainant had asked the appellant to do what he did. Accordingly, his act cannot bind her.

The appellant harps on Exhibit 2 (Expediente, p. 159) to show that he and the complainant were having an affair.

Exhibit 2 is a self-serving evidence for it is a letter supposedly written by the appellant to the complainant which the latter never received. The conclusion of the trial court in respect of Exhibit 2 is well-founded. It says:

"The story about the letter, Exh. 2, is obviously concoction, which has overshot the realm of credibility, to say the least. It is absurd that the accused, who professed going almost nightly to rendezvous with the complainant, except when the latter was tired or had her menses, would still have to send money to her by ordinary mail and follow-up by another letter whether she had re-ceived the sum, when he could simply give the cash to her, personally, before or after the supposedly frequent love trysts. How can a communication by mail be resorted to in order to keep their up-to-then undiscovered relation-ship secret? A query sent by mail would logically be answered by the same medium, which return mail would actually invite an investigation by the cheated wife on what woman (from the handwriting on the envelope) was writing to her husband, and why.

"This constrains one to conclude that the only purpose of the elaborately fabricated tale by the accused, his sister, wife and daughter, was a desperate attempt to defend against the criminal charge at bar. However, these defense wit-nesses forget to synchronize their respective testimonies. Thus, the following inconsistencies/contradictions:

"1 . On the place where the accused wrote the letter. Exh. 2. - Nelmie Arizala - in his room (T.S. N., May 8, 1975); Nemesia Cacdac - in the sala (T.S.N., Sept. 2, 1975; Cleofe Arizala - in his room (T.S.N., Oct. 1, 1975).

"2 . On how the letter was passed around. - Nelmie - Auntie Nemesia got it when my father threw it away. She kept it, then showed it to us. She gave it to my mother who turned it over to me. (T.S.N., May 8, 1975). Nemesia, on direct examination - Tony (the accused) dropped the letter, I picked it up and read it. Afterwards, I gave it to Cleofe (T.S.N., June 25, 1975). However, on cross-examination, she said that she gave the letter first to Nelmie, who gave it to Cleofe (T.S.N., Sept. 2, 1975). Cleofe - It was given to me, and I gave it to Nelmie for safekeeping (T.S.N., Oct. 1, 1975).

"3 . On the aftermath of the incident regarding the letter. - Cleofe - Nelmie told me she had grabbed the letter, but her father had got it again. I went to his room and asked about it, why he would not show it. We argued until we were outside the house, and he hit me repeatedly (kinabilnak) (T.S N., Oct. 1, 1975). Nemesia - When Nelmie grabbed the letter, Tony (the accused was about to strike her, but Cleofe, herself, tried to grab the letter and failed. (T.S.N., June 25, 1975). Nelmie never mentioned that her father ever tried to hit her, or that he repeatedly struck her mother, while the women were supposedly trying to get the letter in question from the accused."

Rape is punished by reclusion perpetua which is an indivisible penalty. The appellant is not entitled to any mitigating circumstance. Hence, whether or not he voluntarily surrendered and whether or not his crime was aggravated by dwelling is immaterial. The penalty will still be reclusion perpetua.

WHEREFORE, the judgment of the court a quo is affirmed with the sole modification that the appellant shall undergo instead the penalty of reclusion perpetua. Costs de oficio.

SO ORDERED.

Barredo, (Chairman), Aquino, Concepcion, Jr., De Castro, Ericta, and Escolin, JJ.,concur.

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