

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
HENRY LAGARTO Y PETILLA AND ERNESTO CORDERO Y
MARISTELA @ “BOOSTER,” ACCUSED-APPELLANTS.**

G.R. Nos. 118828 & 119371. February 29, 2000

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PER CURIAM:

On 31 January 1995, the Regional Trial Court of Manila, Branch 47, per Judge Lorenzo B. Veneracion, handed down a judgment in Criminal Case No. 94-138071 and Criminal Case No. 94-138138, finding accused-appellants Henry Lagarto y Petilla (hereafter LAGARTO) and Ernesto Cordero y Maristela (hereafter CORDERO) guilty beyond reasonable doubt of raping and slaying seven-year old Angel Alquiza y Lagman (hereafter Angel) in the early hours of 2 August 1994. They were initially sentenced to suffer the penalty of reclusion perpetua in each case with damages. In our Decision of 12 October 1995 in G.R. Nos. 119987-88 (319 Phil. 364), a special civil action for certiorari filed by the Office of the Solicitor General (OSG) questioning the propriety of the sentence imposed, we ordered the trial court to impose the correct penalty prescribed by law in light of its findings of and facts and conclusions, i.e., the death penalty, subject to automatic review by us at the proper time.

Conformably with the decision in G.R. Nos. 119987-88, Judge Veneracion issued on 22 May 1996 an Order correcting the sentence in criminal Case No. 94-138071 and Criminal Case No. 94-138138 and imposing the penalty of death. The Order was read in open court at the National Penitentiary.

Thereafter, the records of these cases were forwarded to us for automatic review, in accordance with Article 47 of the Revised Penal code, as amended, and Section 10, Rule 122 of the Rules of Court.

The pertinent facts follow:

At 5:10 p.m. on 2 August 1994, PO3 Edgardo E. Ko of the Western Police District command, Directorate for Investigation, Crimes Against Persons Division, Philippine National Police, Manila, received an information from PO3 Mabilisan of Station 11 that a dead body in a sack was found at around 4:30 p.m. floating in the flooded street of Del Pan near the corner of Lavizares St., Binondo, Manila. Residents discovered the corpse wrapped in a round yellow tablecloth tied with a nylon cord inside a sack. The responding policemen – PO3 Ko, SPO1 Edgardo Manuel, and PO3 Rosalie Fernandez - noticed the victim's feet and left hand protruding from the sack and round yellow tablecloth. They untied the sack and nylon cord and saw the victim, a young girl, wearing nothing but her duster with gaping wound and on the left ear and chin, her genitals lacerated, her eyes missing, and her head bashed in. They immediately brought the body to the police morgue at Tres Amigos Memorial Chapel.[1]

A certain Romezen Alquiza called the police station, inquiring about the body recovered from Del Pan, Tondo, Manila, whose description matched his sister Angel who had been missing since the night of 1 August 1994. He was advised to proceed to the Tres Amigos Memorial Chapel. Together with his mother Zenaida and some family members, Romezen went to said mortuary to look at the body. Indeed, it was Angel Alquiza.[2] He then requested the National Bureau of Investigation (NBI) Medico-Legal Office to autopsy Angel's body.[3] Said Office also issued a Certificate of Identification of Dead Body,[4] which was signed by Romezen. The autopsy was

conducted by NBI Medico-Legal Officer Ludivino J. Lagat, who concluded that Angel Alquiza died due to multiple stab wounds and traumatic injuries. The severity of her injuries were vividly described in Autopsy Report No. N-94-1553,[5] thus:

POSTMORTEM FINDINGS

Pallor, generalized.

Both eyes, missing.

Hematoma: 5.0 x 9.0 cms., and 5.0 x 17.0 cms., right and left inguinal area.

Abrasion: 4.0 x 5.0 cms., and 4.0 x 4.0 cms., periorbital area, right and left respectively; 12.0 x 4.0 cms., left thigh; 19.0 x 20.0 cms., posterior chest wall.

Contused – hematoma: 10.0 x 9.0 cms., left side of the neck to the clavicular area.

Incised wounds: 14.0 cms, left pre-auricular area up to the temple; 21.0 cms, vagina, to the anus then to the sacral area with evisceration of the intestines, 2.0 cm. Knee.

Fractures: Axial fractures of the skull, open, compound; mandibular bone; right femur, upper third; 1st to the 10th ribs, anteriorly right and left.

Dislocation, left hip joint.

Liver – multiple lacerations.

Stab wounds: all elliptical, clean-cut edges, with a sharp and a blunt extremities in different orientations.

1)

2.5 cms., forehead, right side; directed backwards, involving the soft tissues; fracturing the frontal bone; then to the right cerebral hemisphere; with a depth of 7.0 cm.

2)

2.0 cms., temple, left side; directed medially; involving the soft tissues; fracturing the temporal bone; then to the left cerebral hemisphere; with a depth of 5.0 cm.

3)

3.0 cms.; mandibular area, left side; fracturing the mandibular bone

Hemothorax, 500 c.c.

Hemoperitoneum, 1,100 c.c.

Brain – Hemorrhagic with minor portion missing.

Visceral organs, pale.

Stomach, empty.

CAUSE OF DEATH:

- MULTIPLE STAB WOUNDS, TRAUMATIC INJURIES.

REMARKS: - Vaginal swab submitted to chemistry division for examination.

PO3 Ko's Advance Information,[6] which was based on his investigation of Zenaida Alquiza, Rosalina Puno, Alicia de la Vega, Ligaya Cordero, Mario Blorencia, and Eliseo Sendiego, disclosed that at around 9:30 on the

night of 1 August 1994, Angel, a seven-year old Grade 2 student of the Rosario Almario elementary School and a resident of 1200 Sunflower St., Tondo, Manila, went out to buy champorado from a store at nearby Kagitingan St. When she did not return after some time, the members of her family searched for her in the neighborhood, but they did not find her. At around 1:25 p.m. of 2 August 1994, they reported her missing to the police. Rosalina Puno, the owner of the store at 1144 Kagitingan St., said that Angel did drop by her store at around 9:30 p.m. to buy champorado and ate it there before heading home via Bougainvillea[7] St. Said street is adjacent to Sunflower St. and leads to Tagumpay St., a dimly lit area used by CORDERO and his wife Ligaya as a parking space for their pedicabs.[8]

One of said pedicabs, "No. 14," was driven by a certain Abundio Lagunday on 1 August 1994 but was found the following day abandoned and covered with cartons and plastics at the corner of Kagitingan and Salvacion Sts., near the junk shop of the late Mang Gorio (Mauro Gregorio). Because of this, Ligaya Cordero was invited by the police on 3 August 1994 to answer some questions.[9] Mario Blorechia, a scavenger and a friend of Lagunday, said the latter, who appeared nervous (balisa), came to him at around 6:30 p.m. on 3 August 1994, left the pedicab to his care (kasi nagkakahulihan), and immediately departed after covering the pedicab with scraps of carton and plastic. They both used to work at the junk shop of Mang Gorio, which was later converted into a warehouse.[10]

Follow-up investigation disclosed that around 9:30 p.m. on 1 August 1994, a certain Jose Soraino of 1155 Kagitingan St. was buying a cigarette at Rosalina Puno's store when he saw Angel with Lagunday (akay ni Lagunday) at the corner of Bougainvillea and Kagitingan Sts. He did not think she was in any trouble because he knew Lagunday sometimes picked up Angel from school.[11]

Based on these pieces of information, Lagunday was arrested on 4 August 1994 as the primary suspect in the case. During custodial investigation, and after he was apprised of his constitutional rights, Lagunday admitted his culpability and pointed to two other men as his cohorts, namely, @ "boboy" and @ "Boyot." In the ensuing investigation, Lagunday also positively identified LAGARTO as one of his companions on that fateful night.[12]

A major breakthrough in the case was provided by a 50-year old widow and laundry woman by the name of Herminia Barlam, who was accompanied to the Homicide Section on 4 August 1994 by SPO2 Enrico Miranda, a neighbor and occasional laundry client. She allegedly saw three men molest and kill a little girl inside the warehouse of Mang Gorio during a downpour in the early hours of 2 August 1994. When asked if she could recognize these men from a police line-up, she positively identified Lagunday and LAGARTO as two of the men who raped and killed the girl.[13] Her sworn statement, taken by PO3 Ko with the aid of SPO2 Miranda, who acted as interpreter between the investigator and the hearing impaired Barlam, is hereunder substantially reproduced:

03.

T.:

Noong isang araw, petsa 2 ng Agosto 1994... ano ang nakita mo?

S.:

Nakita kong bata saksak... takip ilong at wala panty.

04.

T.:

Sino ito bata iyo kita?

S.:

Hindi kilala pero liit lang.

05.

T.:

Saan mo kita bata saksak at takip bibig at ilong?

S.:

Doon marami lata at saka plastic.

06.

T.:

Kanino ito lugar o sino may ari?

S.:

Gorio.

07.

T.:

Saan ito lugar?

S.:

Kagitingan.

08.

T.:

Ano pa iyo kita o dinig?

S.:

Kita ko bata takip ilong, at tali bibig, sigaw siya, saksak sa leeg.

09.

T.:

Kita mo ba kung sino ang gawa nito sa bata?

S.:

Tatlo.

10.

T.:

Kilala mo sila?

S.:

Oo.

11.

T.:

Asan sila ngayon?

S.:

Declarant was pointing to and positively identifying ABUNDIO LAGUNDAY and HENRY LAGORTE.

12.

T.:

Ano gawa nitong si Abundio sa batang babae?

S.:

(declarant was demonstrating her fingers in a pumping motion and covering her mouth)

13.

T.:

Ito isang turo mo, ano gawa sa batang babae?

S.:

Saksak leeg batang babae (declarant was demonstrating with her right index finger pointing to her neck.)

14.

T.:

Kilala mo ba ito dalawang turo mo?

S.:

hindi kilala, pero isa Lando[*] takas, wala ipen.

15.

T.:

Ano gawa Lando sa bata babae?

S.:

Palo ulo bata kahoy kapal.

16.

T.:

Ano gawa mo bago ikaw kita sila?

S.:

Ihi ako sa tabi bodega, kita ko sila butas.

17.

T.:

Asan na batang babae?

S.:

Patay na suot puti damit ganda.

18.

T.:

Ikaw silip sa butas, ano iyo kita?

S.:

Bata babae saksak at kantot tatlo lalaki, at iyak iyak sigaw pa.

19.

T.:

Sino kita mo kantot bata babae?

S.:

Iyon sampal ko kanina (declarant was referring to ABUNDIO LAGUNDAY who was slapped by the declarant during the line up)

20.

T.:

Ano oras mo kita ito?

S.:

Alas 2 umaga, lakas ulan.

21.

T.:

Ano pa iyo kita?

S.:

Bata patay at tali nila sako.

22.

T.:

Ano iyo gawa?

S.:

Sigaw ako lakas at palo nila ako kahoy.

23.

T.:

Sino palo sa iyo kahoy?

S.:

Siya (declarant was pointing to and positively identified HENRY LAGARTO)

24.

T.:

Ano yari ng ikaw sigaw lakas?

S.:

Wala pansin akin, at ako iyak.

25.

T.:

Ano pa iyo kita sa loob bodega?

S.:

Iyak iyak bata tapos tigil na, patay na.

26.

T.:

Ikaw ba ay may asawa?

S.:

Patay na.

27.

T.:

Ano pangalan asawa mo?

S.:

Tony.

28.

T.:

Ilan anak mo?

S.:

Dalawa.

29.

T.:

Anong pangalan anak mo?

S.:

Junior at Totoy.

30.

T.:

Totoo ba sabi mo?

S.:

Totoo, hindi ako nanloloko.

31.

T.:

Susumpaan mo ba ito?

S.:

Oo.[14]

As the inquest continued, more suspects were brought in for questioning, namely, the following persons implicated by Lagunday: Rolando Manlangit y Mamerta @ "Lando," Richard Baltazar y Alino @ "Curimao," and Catalino Yaon y Aberin @ "Joel." Accused-appellant CORDERO @ "Booster" was not initially implicated by Lagunday; hence, he was not indicted under the first Information dated 8 August 1994. When they were in detention together, however, Lagunday tagged CORDERO as the mastermind[15] and pointed to Manlangit, Baltazar, and Yaon as their lookout. CORDERO was further linked to the crime by a certain laundry woman named Ofelia Lagman, who, having washed laundry for the Corderos several times, allegedly remembered seeing on top of their washing machine a round yellow tablecloth matching the one in which Angel's body was wrapped. She also confirmed that the Corderos had a round table with a glass top.[16] It further appeared that CORDERO had previously raped his two daughters although no case was filed against him.[17]

On the basis of these findings, criminal charges for rape with homicide were filed against the suspects by the City Prosecutor's Office of Manila. The first information, dated 8 August 1994, was filed on 10 August 1994 and was docketed as Criminal Case No. 94-138071, entitled *People of the Philippines v. Abundio Lagunday, a.k.a. "Jr. Jeofrey," and Henry Lagarto y Petilla*. It stated thus:

That on or about August 2, 1994, in the city of Manila, Philippines, the said accused, conspiring and confederating together with one alias "LANDO", and other persons whose true names, identities and present whereabouts are still unknown and helping one another, with treachery, taking advantage of their superior strength and nocturnity, and ignominy, and with the use of force and violence, that is, by taking ANGEL ALQUIZA Y LAGMAN into a pedicab, and once helpless, forcibly bringing her to a nearby warehouse, covering her mouth, slashing her vagina, hitting her head with a thick piece of wood and stabbing her neck, did then and there willfully, unlawfully and feloniously have carnal knowledge of the person of said ANGEL ALQUIZA Y LAGMAN, a minor, seven (7) years of age, against the latter's will and consent and on said occasion the said ABUNDIO LAGUNDAY, a.k.a. "Jr. Jeofrey", HENRY LAGARTO Y PETILLA, and one a.k.a. "LANDO" and others, caused her fatal injuries which were the direct cause of her death immediately thereafter.

CONTRARY TO LAW.[18]

The other information, dated 11 August 1994 and filed on 12 August 1994, and docketed as Criminal Case No. 94-138138, is entitled *People of the Philippines v. Ernesto Cordero y Maristela @ "Booster," Rolando Manlangit y Mamerta @ "Lando," Richard Baltazar y Alino @ "Curimao," and Catalino Yaon y Aberin @ "Joel."* Its accusatory portion reads:

That on or about the 2[nd] day of August, 1994, in the City of Manila, Philippines, the said accused conspiring and confederating with ABUNDIO LAGUNDAY Alias "JR. JEOFREY" and HENRY LAGARTO y PETILLA who have already been charged in the Regional Trial Court of Manila of the same offense under Criminal Case No. 94-138071, and helping one another, with treachery, taking advantage of their superior strength and nocturnity and ignominy, and with the use of force and violence, that is, by taking ANGEL ALQUIZA y LAGMAN into a pedicab, and once helpless, forcibly bringing her to a nearby warehouse, covering her mouth, slashing her vagina, hitting her head with a thick piece of wood and stabbing her neck, did then and there wilfully, unlawfully and feloniously have carnal knowledge of the person of said ANGEL ALQUIZA y LAGMAN, a minor seven (7) years of age, against the latter's will and consent and on said occasion the said accused together with their confederates ABUNDIO LAGUNDAY Alias "JR. JEOFREY" and HENRY LAGARTO y PETILLA caused her fatal injuries which were the direct cause of her death immediately thereafter.

CONTRARY TO LAW.[19]

Prior to arraignment, however, the court was informed by the prosecution that Lagunday had been shot and killed while trying to grab the gun of one of his police escorts on 12 August 1994.[20] Upon motion of the private prosecutor, Lagunday's name was dropped from the information. His co-accused in Criminal Case No. 138071, LAGARTO, and the other accused in Criminal Case No. 138138, all pleaded "not guilty" to the charges. Thereafter, upon motion of the prosecution,[21] the two cases were consolidated.[22]

The prosecution relied mainly on the statements and testimonies of PO3 Ko, Dr. Lagat, Herminia Barlam, Ofelia Lagman, and Rolando Javar.

The testimony of PO3 Edgardo Ko merely replicated the contents of his Advance Information dated 3 August 1994 (Exh. "K"), Progress Report 1 dated 5 August 1994 (Exh. "L"), and Progress Report 2 dated 9 August 1994 (Exh. "M") on which the criminal informations were based. He presented to the court some of the items recovered with the body of Angel, which were marked as evidence for the prosecution, namely, a yellow tablecloth (Exh. "F"), a sack (Exh. "I"), nylon cord (Exh. "H"), a piece of embroidered cloth or crocheted curtain (Exh. "J"), and a girl's duster (Exh. "G").[23]

Even as the trial judge deplored the sloppy handling of evidence by the police and their lack of control over the crime scene,[24] it was revealed during PO3 Ko's cross-examination that CORDERO was investigated and arrested on 8 August 1994 on the basis of Lagman's sworn statements before the NBI and the police, not on Lagunday's verbal confession.[25]

Dr. Ludivino Lagat, NBI Medico-Legal Officer, autopsied the body of Angel on 2 August 1994, after receiving a request for autopsy (Exh. "A") and examining the certificate of identification (Exh. "B"), both signed by Angel's brother Romezen.[26] His findings disclosed that Angel died due to multiple stab wounds and traumatic injuries. Both of her eyes were missing. Dr. Lagat found, among other injuries, two stab wounds on the head and one at the neck; a head fracture from which part of her brain was leaking out[27] severe head deformity due to force; an incised wound 21 centimeters long from the vagina to the anus up to the "sacral area with evisceration of the intestines" caused by a "sharp bladed weapon." [28]

On cross-examination, the defense, banking on a "possibility" that some of the injuries of Angel might have been

caused by other factors, suggested that Angel was ran over by a motor vehicle before she was stabbed.[29] When confronted about the absence of spermatozoa, Dr. Lagat said it "could be due to the soaking (of the body in floodwater). It could be washed out." And the body was, indeed, washed at the Tres Amigos Memorial Chapel. Moreover, no spermatozoa was found because "the area was expose(d) and there were some other things that were present in the area like the intestine,"[30] which spilled out of Angel's vagina.[31]

Ofelia Lagman, on whose statement CORDERO was initially arrested and investigated, testified that when she heard the news about a child found dead in their neighborhood, she inquired and learned that it was Angel, her husband's niece. Angel had been missing since the night of 1 August 1994. She learned that the body had been taken to the Tres Amigos Memorial Chapel so she immediately went there. The sight that greeted her sent shivers down her spine because the round yellow tablecloth where Angel's body was wrapped was familiar to her. She had seen one just like it in the house of CORDERO, a neighbor whom she had known for four years so that she was able to positively identify him in court,[32] and for whom she had done three-days' laundry work in the last week of July 1994. She saw it on top of their washing machine, folded the way round materials are folded. It was about a meter in diameter, made of a material like linoleum.[33] On 3 August 1994, she decided to share this information with the NBI. Five days later, on 8 August 1994, she made a similar statement to the police.

Another key witness, Rolando Javar, a mason and resident of 1190 Tagumpay St., said between 9:30 and 10:00 in the evening of 1 August 1994, as he was going home in a pedicab, he saw CORDERO and LAGARTO standing in front of the warehouse at Kagitingan St., as if waiting for somebody. When he alighted in front of his house at Tagumpay St., he saw Lagunday driving "Ernie Sidecar No. 14," with Angel as passenger.[34] He knew LAGARTO was one of the pedicab drivers of CORDERO.[35]

On cross-examination, Javar said that he first told his story to Angel's mother Zenaida on 12 September 1994. She is his neighbor, while Ernesto CORDERO is his neighbor and balae, the latter being the father of his son's wife. He was at first reluctant to tell Zenaida about what he knew because of his relationship with the Corderos.[36]

Prosecution witness Herminia[37] Barlam categorically pointed to CORDERO and LAGARTO as among the three men (the other one being the deceased Lagunday) she saw in the warehouse at Kagitingan St. at around 2:00 a.m. on 2 August 1994. She witnessed how they stabbed the face and genitals of Angel, hit her with a piece of wood, raped her as she bled, and eventually killed her. She saw how they tied her hands and feet, wrapped her lifeless form in a yellow tablecloth, and put her inside a sack. Because of her hearing impairment, however, the defense sought to disqualify her on the basis of incompetence and repeatedly requested that she be taken to the National Center for Mental Health (NCMH) to determine if she was competent to testify.[38] The court initially denied[39] said motion but eventually granted[40] it. Nevertheless, on 26 August 1994, prior to her psychiatric evaluation, the court heard the testimony of Barlam. In essence, she said she was at Kagitingan St. at around 2:00 a.m. on 2 August 1994. She saw three men and a child whose name, she later learned, was "Jingjing." One of the men saw her and asked her to be quiet. This man hit her. Another man, who wore glasses,[41] stabbed the child and tied the sack where the child's body was placed. She positively (and angrily) identified these two men as LAGARTO and CORDERO. The third man was already dead.[42]

On 27 September 1994, the NCMH submitted to the court its Report[43] on the psychiatric evaluation of Herminia (Marina) Barlam signed by Dr. Benjamin D. Vista and Dr. Isagani S. Gonzales. The following is a verbatim reproduction of its contents:

GENERAL DATA:

MARINA DELOS SANTOS, 53 years old, female, single, Filipino, Roman Catholic, unschooled, from 1267 Kagitingan St. Tondo, Manila brought for the first time to the National Center for Mental Health on August 26, 1994 for examination.

BACKGROUND HISTORY:

From collateral interviews with relatives and friends, the patient has been deaf since birth and has not been given any formal education. She has worked as a balut vendor and laundry woman to help support her family consisting of two sons. She has been noted to function well in areas of self care and daily living. No assaultiveness (sic), irritability nor destructiveness were reported. There was no history of previous psychiatric consultation and treatment, nor history of alcoholism and prohibited drug use.

MENTAL STATUS EXAMINATIONS:

Initial examination revealed an adult female, sthenic (sic), fairly kempt in a dress. Behaved and cooperative, but severe deafness was obvious and questions had to be repeated several times in a loud manner before she answered. She was able to state her personal data accurately. She was oriented to time, place and person. She related "kita, bata babae" and indicated the height of the child with her hand. "Sinaksak" and made a stabbing action with the forefinger at the throat of her companion, then she made slashing motions on each of her arms and groin. She pointed at her right eye., "tungal mata." She indicated that there were three men, one of them (she indicated eye glasses) stabbed the victim, and that another took the victim's earrings.

She explained that this happened at 3:00 A.M. ("alas tres, umuulan") and then demonstrated that she was urinating at a bodega. She further demonstrated that one of the men hit her with a piece of wood on her left elbow and knee, and showed her scars. She was able to identify familiar objects, and was able to identify 2 peso coins, 10, 20, and 100 peso bills. She was able to do simple mathematic(al) operations. She related that she is no longer staying at their house "baka ako patayin." Mood was euthymic (sic), affect adequate.

She was next examined on August 29 and 31, 1994 when she was given a battery of psychological tests. On interview, she gave the same account of what she saw consistently, and expressed her irritation "paulit-ulit tanong." Attention span is short and patient tends to confabulate when she is unable to hear the question properly, hence gives inconsistent answer at times. She is friendly and toward familiarity with the interviewer, at times slapping the desk with her especially when embarrassed. She tends to be anxious when many people are around.

Patient was recommended to an ear specialist for assessment and fitting of a hearing aid, after which psychological examinations were repeated and the patient re-interviewed.

PHYSICAL AND NEUROLOGICAL EXAMINATIONS:

(B)ilateral deafness, all other findings within normal limits.

PSYCHIATRIC EVALUATION RESULTS:

Evaluation shows that patient is classified as having moderate mental retardation associated with deafness, which is characterized by a subaverage intelligence quotient (between 35-55), but may achieve self-maintenance in unskilled or semi-skilled work under sheltered conditions, but needs supervision and guidance when under social or economic stress.

At present, she may be deemed competent based on the following findings: no evidence of insanity or psychosis, a

consistency in relating her story, she appreciates the meaning of the oath she takes as a witness before the court, and is capable of cooperating with counsel.

REMARKS AND RECOMMENDATIONS:

Because of her deafness and associated mental retardation, this patient is prone to anxiety, panic and inconsistency when threatened by intimidation or a large crowd of people.

The accuracy of her testimony will depend much on the cooperation of the people who would examine her in court. Gudjonsson and Gunn (1982), as quoted in the Principles and Practice of forensic Psychiatry, state that "even a severely mentally handicapped person may be capable of giving reliable testimony on items of basic fact," but "may demonstrate a high degree of suggestibility when an individual was unsure of the facts." For example, such patients may agree that the color of a green leaf is pink when unsure of its real color, however, suggesting false perceptions that a pencil being held is getting increasingly hot may not be successful.

An accurate testimony, therefore will depend much on an environment free from distraction and intimidations. (Italics ours)

On the basis of the NCMH report, Barlam was fitted with a hearing aid and testified anew on 3 October 1994. Her examination was marked by countless objections, comments, and arguments of counsels. She began by saying that on the night of 1 August 1994, after drinking coffee, she went near the warehouse at Kagitingan St. to relieve herself. While there, she sensed some commotion inside so she peeped through a hole in the wall. She saw three men and a child. Two of these men were in the courtroom and she identified them as LAGARTO and CORDERO. The other one was already dead.[44]

Barlam was then shown six pictures of seven different girls (Exhibits "BB," "BB-1" to "BB-6"). She positively identified Angel Alquiza in one picture where Angel was seated beside another girl, both of them clad in "flower girl" attire.[45] She added that one of the men hit her knee and left elbow. The ordered her to leave, but she did not, so one of them hit her with a piece of wood. Another man gouged out the child's eyes, cut off her ear, removed her earrings, slashed her vagina, then raped her. She said this man wore eyeglasses, all the while pointing at CORDERO.[46] After the child was raped, a man hit her head while another stayed by the door. They tied her feet, wrapped her in some yellow material, then put her in a sack. She pointed to CORDERO as the man who wrapped the child in the yellow material. She even saw tears in the child's eyes when she lit a small candle.[47]

On cross-examination Barlam declared that she already knew Angel before the incident of 2 August 1994 because, at one time when she was washing some laundry, she had seen Angel eating porridge (lugaw). She noticed how pretty the girl was. On the other hand, she first saw CORDERO on that fateful day.[48] Barlam proceeded to narrate that she saw Angel on her knees, with CORDERO standing beside her while LAGARTO stood by the door. The man who was already dead, Lagunday, saw her, told her to leave, and when she refused, went outside and hit her with a piece of wood on the left knee and right elbow. CORDERO slashed the left side of Angel's face twice, then her vagina, gouged out her eyes, and took off her earrings. Both LAGARTO and Lagunday hit Angel's head with a piece of wood.[49]

On re-direct examination, Barlam maintained that CORDERO was the one who slashed Angel's vagina then raped her. ("Hiwa dito hiwa dito, anunta, anunta, hiwa kiki, tanda na hiwa pa kiki.")[50] When she was asked to identify the man who hit Angel with a thick piece of wood, she went straight to LAGARTO whom she slapped and boxed.[51] As the defense tried to derail this witness by confronting her with her sworn statement where she described the man who hit Angel with a piece of wood as a certain "Lando walang ipen," the prosecution clarified that while it is true that one of the accused, Rolando Manlangit @ "Lando," in fact had no front teeth (bungal), the

sworn statement was prepared by PO3 Ko during the investigation conducted when she was not yet wearing a hearing aid – a statement she never read because she was illiterate. In any case, the prosecution insisted that on the witness stand, Barlam was more than consistent in specifying the participation of Lagunday, CORDERO, and LAGARTO.[52] The court also observed that from a distance, LAGARTO looked as if his front teeth were missing.[53]

After the prosecution had rested its case, the court, upon motion of PAO lawyer Atty. Jesse Tiburan, and without opposition from the prosecution, discharged accused Manlangit, Yaon, and Baltazar in Criminal Case No. 94-138138 for insufficiency of evidence. LAGARTO and CORDERO, however, objected to the discharge of Manlangit on the ground that he was allegedly identified by Barlam. In view of such objection, the court reconsidered its order with regard to Manlangit, who, by counsel, waived the right to present evidence and prayed that the case against him be deemed submitted for resolution.[54]

The defense of CORDERO and LAGARTO consisted mainly of denial and alibi. LAGARTO even posed insanity as an alternative defense, but this failed to convince the trial court.[55]

CORDERO denied that he had anything to do with the rape-slay of Angel Alquiza. He maintained that around 7:30 p.m. on 1 August 1994, he was at home talking to a certain Gerardo Eriste, who was asking his help in borrowing money from an Indian moneylender. After Eriste left around 9:30 p.m., he ate, rested, watched a video on television with his children for about an hour before going to bed at about 11:00 p.m. He woke up at 7:00 a.m. the following day and began counting the pedicab boundary money which he would remit to the Indian moneylender. On 3 August 1994, around 11:00 a.m., police arrived at his house, saying he was being invited by Maj. Gacutan to the station. He denied any knowledge of the incident in question, but he was nevertheless instructed to stay in the office. In the afternoon, he accompanied Maj. Gacutan to his house to see their dining table which had a glass top instead of a tablecloth. Then, they went back to Station 2, where he stayed for about 12 hours, leaving around 1:00 or 2:00 in the morning of 4 August 1994. He was allowed to leave because, apparently, he did not know anything about the killing of Angel. On 7 August 1994, he was again invited to the police station. There, Maj. Gacutan said he would be brought to the Homicide Section at UN Avenue because they were being pestered by some members of the press. Maj. Gacutan even allegedly asked some money in exchange for his liberty. While in detention with Lagunday, Manlangit, Yaon, and Curimao, he learned that Lagunday implicated him upon the instance of two corpulent women who had visited the latter and banged his head on the wall. He was detained for about 12 hours and left the station around 1:00 or 2:00 p.m. on 8 August. On cross-examination, CORDERO said he was unaware of the warehouse at Kagitingan St., which is about ten blocks from his house at Sunflower St.[56] He also said that he did not know Lagunday prior to 8 August 1994, even if the latter was one of their pedicab drivers, because his wife was the one who dealt with them.[57]

CORDERO's alibi was corroborated by his daughter Emily[58] and Gerardo Eriste.[59]

Rebuttal witness Maj. Franklin A. Gacutan, however, claimed that on 4 August 1994, while CORDERO was being questioned in relation to the case of Angel Alquiza, he told CORDERO he could leave because they have not yet found any evidence against him. He also denied the allegation that CORDERO was arrested because of media pressure and the latter offered him a bribe.[60]

On cross-examination, Maj. Gacutan said Lagunday did not implicate CORDERO or LAGARTO,[61] and it was Barlam who pointed to CORDERO when the latter was already in detention.[62] And in the early hours of 4 August 1994, he and his men, accompanied by Lagunday, inspected the warehouse where the alleged crime took place. It was surrounded by houses and some street lights were on. They entered the dark warehouse but found no evidence. Peeping inside, nothing could be seen because of the darkness.[63]

SPO2 Enrico Miranda was summoned to testify on the veracity of the sworn statement of Barlam. Since they were neighbors and she laundered their clothes, they supposedly understood each other using crude sign language. In the investigation conducted by PO3 Ko on 4 August 1994, he acted as interpreter between the latter and Barlam. The defense sought to capitalize on said sworn statement, where Barlam did not mention either the name of LAGARTO or CORDERO.[64] Moreover, during the hearing of 17 August 1994, he allegedly saw Barlam outside the courtroom talking to another woman who was showing to her a newspaper and pointing to a picture of CORDERO, but he did not hear what they were talking about.[65] Another witness, Gloria Sigua, corroborated this point and added that she had an argument with the woman who was apparently coaching Barlam to point to CORDERO. The woman was a companion of Angel's mother Zenaida.[66]

To show further that Lagunday did not implicate either CORDERO or LAGARTO, the defense presented Vivencio Singalawa, who testified that on 5 August 1994, when he visited his friend Jr. Jeofrey (Lagunday's alias) shortly after lunch at Precinct 2, the latter allegedly confessed that he was the sole author of the crime under investigation. Lagunday also mentioned the names "Lando," "Joel," and "Curimao" (the aliases of CORDERO's co-accused in Criminal case No. 94-138138) who served as lookout. Lando was a worker of Mang Gorio, while Joel and Curimao were scavengers (nagtutulak ng kariton). Singalawa, a barangay tanod, knew the warehouse at Kagitingan St. where the crime was committed because he grew up in that place; yet, he claimed he did not know CORDERO, who lived in the same barangay.[67]

LAGARTO denied any involvement in the crime and claimed he was also at home at the time of its commission. At the hearing of 4 August 1994, his attorney moved that he be taken to the NCMH for examination. The court granted said motion, but as of the time LAGARTO was called to testify on 5 December 1994, the result of such assessment had not yet been submitted to the court.[68]

Under oath, LAGARTO said he was a garbage collector. On the night of 1 August 1994, he collected Rosita Besonia's trash, then asked rice from her as his customary "fee." He went home with a plate of rice, ate dinner, then slept on the floor by the door from 7:00 p.m. to 5:00 a.m. the following day. On 4 August 1994, while on his way to his cousin at Don Bosco, policemen in two vehicles - a car and an owner-type jeep - suddenly forced him into the jeep. A man in the car (Lagunday) was allegedly being compelled by the other policemen to point to him. In the evening, after spending some time at the Luneta detachment of the WPDC, he went home with the police because they were looking for a certain "Buboy Bungal." Although his brother's nickname was Buboy, the latter was not "bungal." In any event, they also brought Buboy to the Luneta detachment only to be released when it was confirmed that Buboy's front teeth were indeed intact. He denied the charges against him, as well as the allegation that he drove a pedicab for CORDERO.[69]

LAGARTO's neighbors, Rosita Besonia[70] and Janet Badilla,[71] and his mother Noriana Lagarto[72] confirmed his alibi. When cross-examined, however, LAGARTO admitted he was alone at home at 7:00 p.m. on 1 August 1994.[73]

In its Decision[74] of 31 January 1995, the trial court, per Judge Lorenzo B. Veneracion, gave full credit to the version of the prosecution and convicted CORDERO and LAGARTO for the crime of rape with homicide, but exonerated Rolando Manlangit for lack of evidence. The dispositive portion of the decision reads as follows:

WHEREFORE, premises considered, judgment is hereby rendered, dismissing the Information as against ROLANDO MANLANGIT for lack of evidence, and finding both accused HENRY LAGARTO Y PETILLA and ERNESTO CORDERO Y MARISTELA "guilty" beyond reasonable doubt of the crime of RAPE WITH HOMICIDE charged in the Information of these cases, and sentencing both accused (with) the penalty of reclusion perpetua with all the accessories provided for by law.

Said accused are further ordered to indemnify, jointly and severally, the private complainant the sum of P100,000 for the death of the victim, ANGEL ALQUIZA; the sum of P500,000 for moral damages; and the amount of P52,000 for actual damages representing expenses incurred for the wake and funeral of the victim. They are further ordered to pay the costs of these suits.

SO ORDERED.

Disagreeing with the penalty imposed, the City Prosecutor of Manila filed on 8 February 1995 a motion for reconsideration^[75] of the Decision, and asked that it by imposing the proper penalty of death instead of reclusion perpetua. In its Order dated 10 February 1995,^[76] the trial court did not take cognizance of the motion on the belief that "the accused Lagarto and Cordero have complied with the legal requirements for the perfection of an appeal." This prompted the Office of the Solicitor General to elevate the matter to this Court by certiorari. The petition, docketed as G.R. Nos. 119987-88, was unanimously granted by the Court en banc on 12 October 1995, thus:

WHEREFORE, PREMISES CONSIDERED, the instant petition is GRANTED. The case is hereby REMANDED to the Regional Trial Court for the imposition of the penalty of death upon private respondents in consonance with respondent judge's finding that the private respondents in the instant case had committed the crime of Rape with Homicide under Article 335 of the Revised Penal Code, as amended by Section 11 of Republic Act No. 7659, subject to automatic review by this Court of the decision imposing the death penalty.

SO ORDERED.^[77]

Accordingly, on 22 May 1996, Judge Veneracion promulgated an Order in open court at the National Penitentiary, imposing the proper penalty of death upon the accused.^[78]

In his Appellant's Brief filed on 9 September 1997, LAGARTO pointed out that the trial court seriously erred:

1. In rendering a judgment of conviction on accused Henry Lagarto apparently by conclusions or assumptions without considering the fact that there is no conclusive evidence to show that Angel Alquiza was really raped and killed by somebody;
2. In failing to consider that there was no credible and acceptable identification which is free from doubt that anyone of the accused and more particularly Lagarto committed or participated in the commission of the crime charged. The prosecution witnesses were coached and (this) was very apparent constraining even the court to warn to (sic) private prosecutor regarding his coaching of the witnesses. Witness Barlam had changed her testimony several times and her general appearance would not merit belief against the constitutional presumption of innocence of the accused.
3. In failing to consider that by physical evidence, the bodega could not have been the situs of the crime disproving thereby the claim that the victim was raped and killed inside it not only because no evidence or traces of evidence was found inside it but also because the bodega which is not big – simply an uninhabited house, is within the heart of the community and surrounded by houses and an unusual commotion or noise would certainly invite attention.
4. In failing to consider that Henry Lagarto demonstrated his innocence before the court and was supported by witnesses.

For his part, after several extensions, CORDERO filed on 29 September 1997, through counsel, his Appellant's Brief. He claims therein that the trial court committed grave and reversible error in the following:

- In rendering the order dated May 22, 1996 and in considering the same as the promulgation of the penalty of death against accused-appellant Ernesto M. Cordero.

- In failing to hold that the prosecution failed to prove the corpus delicti.
- In failing to hold that the evidence of the prosecution and defense both points (sic) to the fact that accused-appellant Ernesto M. Cordero is completely innocent of the offense charged.
- In not finding as a fact that the testimony of prosecution's (sic) witness Major Franklin Gacutan is adverse against the prosecution and points to the fact that the accused-appellant Ernesto M. Cordero is innocent of the offense charged.
- In failing to hold that prosecution's (sic) witness Herminia Barlam is not qualified to become a witness.
- In taking into account of, and according evidentiary value to the finding and recommendation of (the) psychiatrist from (the) National center for Mental Health.
- In not finding as a fact that it is highly impossible and improbable for witness Herminia Barlam to have seen what had (sic) supposedly happened in the subject warehouse on August 2, 1994.
- In not finding as a fact that the testimony of prosecution's (sic) witness Herminia Barlam is full of discrepancies and self contradictions.
- In not finding as a fact that the testimony of prosecution witness Herminia Barlam is highly improbable and contrary to human experience.
- In not finding as a fact that prosecution witness Herminia Barlam is a perjured, biased and rehearsed witness.
- In failing to hold that the adverse result against the prosecution of the ocular inspection is a proof that the accused-appellant Ernesto M. Cordero is innocent of the offense charged.
- In not finding as a fact that the testimonies of the other witnesses for the prosecution are unworthy of belief.
- In failing to hold that conspiracy is (sic) not proven beyond reasonable doubt by the prosecution and that therefore criminal liability is individual, not collective, and thus exempts the herein accused-appellant from the offense charged.
- In not finding as a fact that the late Abundio Lagunday was the sole author of the offense charged.
- In failing to hold that the defense of alibi assumes importance where the evidence for the prosecution is weak and came (sic) from (a) source that cannot be characterized as fully unbiased and disinterested.
- In failing to hold that accused-appellant Ernesto M. Cordero was illegally arrested and not accorded the right to preliminary investigation.
- In holding (that) the accused-appellant Ernesto M. Cordero is liable to private complainant for damages.

As the issues raised by LAGARTO are covered by CORDERO's assignment of errors, we will concurrently dispose of them.

CORDERO claims that the trial court never amended or modified its Decision of 31 January 1995, as mandated by us in *People v. Veneracion* (G.R. Nos. 119987-88). He argues that the trial court merely "ordered that its Order pursuant to the Decision of this Honorable Court be promulgated by reading to both accused the same Order in the language known and understood by both of them" and did not state that the penalty being imposed was death.

CORDERO's apprehension is unwarranted because the trial court issued two orders in open court at the National Penitentiary on 22 May 1996. The first was made in compliance with our ruling in *People v. Veneracion*:

Pursuant to the Decision of the Honorable Supreme Court in G.R. No. 119987-88 directing the imposition of the penalty of death upon the herein accused in consonance to (sic) the findings that they had committed the

crime of rape with Homicide under Article 335 of the Revised Penal Code, as amended by Section 11 of Republic Act No. 7659, the penalty imposed to (sic) the herein accused, HENRY LAGARTO Y PETILLA and ERNESTO CORDERO Y MARISTELA shall, as it is hereby imposed, be the penalty of death.

Pursuant further to the aforesaid Decision, after this Order is duly promulgated, let the entire record of these cases be returned to the Honorable Supreme Court for automatic review.

SO ORDERED.[79]

while the other dealt with its promulgation:

When these cases were called, both accused appeared assisted by counsel de oficio, Atty. Jovito Salvador, PAO lawyer of Muntinlupa, Metro Manila, who was appointed counsel de oficio.

In view of the failure of counsel on record Atty. Miguel Badando for accused Henry Lagarto and Atty. Paterno Esmaguel for accused Ernesto Cordero to appear despite notice. (sic) Private prosecutor Pete Prinsipe interposed no objection to the promulgation of the Order in the absence of counsel on record.

Thereafter, the Court ordered that the Order of this court pursuant to the Decision of the Honorable Supreme Court be promulgated by reading to both accused the same Order in the language known and understood by both of them.

Thereafter, the order for the transmittal of the entire records of these cases to the Honorable Supreme Court for automatic review is hereby reiterated.

SO ORDERED.[80]

Both LAGARTO and CORDERO claim that the prosecution failed to prove the fact of death of Angel Alquiza because her death certificate was not proffered in evidence. Instead, the prosecution presented the Autopsy Report (Exh. "C"), which allegedly cannot be considered as proof of the fact of death of Angel "because there was no proper and sufficient identification of the victim that was mentioned in said autopsy Report." [81]

This issue, however, is answered in CORDERO's Brief itself: "The said Autopsy Report states that the body of the supposed victim, Angel Alquiza, was identified by a certain Romezen Alquiza, a brother of the victim." [82] The records show that Romezen submitted to the NBI a request for autopsy and the NBI issued a Certificate of Identification of Dead Body which he also signed. [83] These were essential for the autopsy which was eventually made by Dr. Lagat. In any case, there is no rule that specifies who may identify a victim. It is enough that such person knows the one being identified. Certainly, a brother of the victim can recognize his own sister even with her manifest physical injuries. The prosecution cannot be faulted for not presenting other witnesses to verify Romezen's identification, the choice of witnesses being a matter of legal strategy and prerogative. Neither was CORDERO denied any opportunity to cross-examine him regarding such fact because the Autopsy Report is an official document the authenticity of which is presumed. Its validity, therefore, cannot be collaterally attacked by putting Romezen on the witness stand.

As to the alleged failure of the prosecution to prove the cause of Angel's death, LAGARTO and CORDERO maintain that the fact of stabbing – which, according to the post-mortem findings of Dr. Lagat, was the cause of death of the victim – was not adequately established. Dr. Lagat said that there might be other causes of death, such as Angel being hit by a motor vehicle. But then, this is a mere probability. If we were to stretch this line of reasoning further, other possibilities may be apparent: Angel could have still been alive when she was ran over by the motor vehicle, as suggested by the defense; on the other hand, she could have already been dead at the time. Preliminary police findings showed that the sack wherein Angel's body was placed was found along a truck route. In the flooded street, it could have easily been hit by a truck, thus, producing the cranial injury which the

defense suggests might be the true cause of Angel's death. Or, it is also likely that she could have been severely hit on the head by a hard object. This last scenario, being supported by the testimony of prosecution witness Barlam, seems more plausible. It is worth mentioning that Angel suffered numerous injuries which could not all have been caused by a motor vehicle. Neither could the defense explain why or how the body could be wrapped in a round yellow tablecloth, then put inside a sack, if Angel was still alive at the time. CORDERO even stresses that his table has a glass top, instead of a mantle. He fails to consider the implication of this fact: The round yellow tablecloth seen in his house by Ofelia Lagman in July 1994 was the one used in wrapping Angel's body because said tablecloth was no longer there after the incident in question. The prosecution, for its part, offered convincing and logical answers to these questions, based on the testimonies of its witnesses.

It is further argued that the prosecution failed to prove the fact of rape because the Autopsy Report did not categorically state that Angel was, in fact, raped. Dr. Lagat's examination revealed that Angel's genital injury was caused by a sharp-bladed weapon. Ultimately, CORDERO concludes, "the testimony of witness Barlam regarding the rape in question cannot prevail over the aforesaid finding and autopsy report of Dr. Lagat." This is non sequitur. The finding that the incised wound on Angel's genitals was caused by a sharp-bladed instrument does not necessarily mean that she was not raped. Barlam, whose competence and credibility as a witness was upheld by Judge Veneracion based on the NCMH report and on his own observation of her deportment during the three days she testified in court, swore that she saw Angel being raped in the early hours of 2 August 1994.

CORDERO also claims he was never properly identified as one of the perpetrators of the crime charged. Jose Soriano said he saw Angel with Lagunday on the night of 1 August 1994 and they "appeared normal." Barlam's sworn statement of 4 August 1994 mentioned Lagunday, LAGARTO, and a certain Lando, but not CORDERO, a fact confirmed by PO3 Ko and SPO2 Miranda. Maj. Gacutan said they had no evidence against CORDERO, so they allowed him to go home after he was initially invited to the police station. Vivencio Singalawa claimed Lagunday admitted sole authorship of the crime. And because he was not properly identified by the State's prime witness, CORDERO suggests that Barlam was merely coached by the family of Angel to implicate him.

We are not convinced. Jose Soriano could not have seen CORDERO with Angel that night because CORDERO was somewhere else at the time. Prosecution witness Rolando Javar saw CORDERO and LAGARTO between 9:30 and 10:00 p.m. on 1 August 1994 standing by the warehouse at Kagitingan, as if they were waiting for someone (palinga-linga). Javar is even related to CORDERO by affinity, his son being married to CORDERO's daughter, so there appears no plausible reason for him to lie, especially in this case where his balae is faced with a death sentence. On the other hand, whatever Lagunday revealed to Singalawa is purely hearsay, since Lagunday died even before arraignment.

As stated earlier, Barlam's sworn statement of 4 August 1994 was taken by PO3 Ko with the assistance of SPO2 Miranda. Since she is illiterate and at the time had not yet been equipped with a hearing aid, it is highly probable that the true essence of her narration was not captured in the translation and transcription. In any event, even if she did not name CORDERO in her sworn statement, she undoubtedly and consistently pointed to him and LAGARTO in open court, even slapping and boxing them at times to demonstrate her indignation. We agree with the trial court that by her words and actions, Barlam had sufficiently and convincingly identified CORDERO and LAGARTO as two of the men who raped and killed Angel on 2 August 1994.

The manner in which Barlam testified in court betray not a single hint that anyone had coached or coaxed her to implicate CORDERO. Defense witnesses Gloria Sigua and SPO2 Miranda supposedly witnessed how a companion of Zenaida Alquiza showed Barlam a newspaper with CORDERO's picture in it. Sigua allegedly argued with this woman after hearing her say, "ito ba, isama mo ito sa pagturo."^[84] Yet, SPO2 Miranda, who was standing beside Barlam at the time, heard nothing.^[85] What is even more telling is he believed there was nothing

wrong with Barlam, save for her hearing impairment, and that she was telling the truth.[86]

For his part, Maj. Gacutan supposedly did not arrest CORDERO because they had no evidence against him. The information supplied by prosecution witnesses Lagman and Javar, linking CORDERO to the crime, was sufficient to the police a reason to arrest him. Ultimately, CORDERO's role in the crime was duly established when he was positively identified in court by Barlam as the cohort of Lagunday and LAGARTO.

From the moment Barlam surfaced as an eyewitness to the crime, accused-appellant LAGARTO and CORDERO, through counsel, have desperately tried to disqualify her on ground of incompetence. Obviously aware of the futility of any objection to Barlam's testimony on account of the psychiatric finding by the NCMH, after three examinations, that "she may be deemed competent," the defense attacked instead the damaging contents of the NCMH psychiatric evaluation report anchored on the following grounds: (1) said report is hearsay because the doctors who prepared and issued the same were not presented in court; and (2) it was not offered in evidence by the prosecution.

This argument fails to consider the very nature of the NCMH report. Having been made upon order of the trial court, such report is in the nature of an official document in aid of judicial determination. It is not evidence for the prosecution or against the defense but a document – a specific report – prepared and issued by an entity totally removed from the criminal proceedings, hence, indifferent, objective, and impartial. To be utilized by the trial court, it need not be offered in evidence by the prosecution because the court may take judicial notice of its existence and composition. It is also for this reason that its contents cannot be rejected on account of being hearsay.

The fate of accused-appellant LAGARTO and CORDERO depends greatly on the credibility of Barlam as a witness. The trial court also recognized this, such that it propounded numerous clarificatory questions throughout the hearings of 3 and 4 October 1994, when Barlam was testifying on the witness stand after her psychiatric examination, just to elucidate her responses amid the sea of queries unleashed by the lawyers. It is in cases like this where we find ourselves adhering more to the principle that factual findings of the trial court must be accorded respect and even finality on appeal because the trial judge had every opportunity to question the witness, hear her testify, and observe her demeanor and deportment.[87] Exceptions to this rule exist, such as when the trial court's evaluation was arbitrarily made, or when some substantial fact or circumstance which might affect the result of the case has been overlooked, misunderstood, or misapplied, but no such peculiarity is apparent in the case at bar.[88] The trial court has "keenly observed (Barlam) during her testimony and is convinced that she is speaking the truth." [89] After poring over the voluminous records of this case and scrutinizing the assailed Decision of 31 January 1995, we see no reason to depart from this conclusion.

We agree with the observation of the trial court that Barlam was referred to the NCMH precisely upon the repeated motion of defense counsels. Because of her damaging testimony, her disqualification was the best ploy for the defense. Barlam, however, adequately met the minimum requirements for qualifying as a witness under Sections 20 and 21, Rule 130 of the Revised Rules on Evidence, thus:

SEC. 20. Witnesses; their qualifications. – Except as provided in the next succeeding section, all persons who can perceive, and perceiving, can make known their perception to others, may be witnesses.

Religious or political belief, interest in the outcome of the case, or conviction of a crime, unless otherwise provided by law, shall not be a ground for disqualification.

SEC. 21. Disqualification by reason of mental incapacity or immaturity. – The following persons cannot be witnesses:

(a)

Those whose mental condition, at the time of their production for examination, is such that they are incapable of intelligently making known their perception to others;

(b)

xxx.

Barlam could certainly perceive and make known her perception to others. Even if she is deaf, she saw what happened on 2 August 1994. She related what she saw to the police on 4 August 1994; to the psychiatrists who examined her at NCMH on 26, 29, and 31 August 1994; and to the trial court on 26 August, 3 and 4 October 1994. Did she "intelligently" make known her perception to others, especially when she testified in court? Certainly, she did. Everybody understood her even if some of her statements on minor points were inconsistent. A perusal of the transcript of stenographic notes would readily reveal that counsels for the defense attempted in vain to confuse her on relevant facts, even confronting her with her sworn statement – a clear indication that she connected with them intelligently."

Because of Barlam's "deafness and associated mental retardation," the defense harped that she should be disqualified from testifying. The disquisition above, notwithstanding, we have ruled that even a mental retardate or a feeble-minded person could qualify as a competent witness.[90]

Instead of finding Barlam unfit to be a witness, the NCMH even bolstered her credibility by declaring her to be competent and consistent in her recollection and narration of the events she witnessed on 2 August 1994. Barlam was ordered by the court to undergo psychiatric tests because she exhibited some aberrant behavior. Her speech was fragmented, at times unintelligible or incongruous, but this was due in most part to her congenital deafness and anxieties. The fact remains that the thrust of her testimony regarding the circumstances surrounding the events that transpired on 2 August 1994 never varied. Against the recommendation of the NCMH that her examination in court should be free from distraction and intimidation, defense counsels literally tried every trick in the book to badger and confuse her, derail her testimony by confronting her with her sworn statement, and otherwise cast doubt on her capacity to testify. Yet, her testimony held.

When Barlam testified on 26 August 1994, prior to her psychiatric examination, she declared thus:

ATTY. PRINSIPE (Private Prosecutor):

Q

On August 2, 1994 at around 2:00 in the morning, will you tell the Court where were you?

Will you (the interpreter) please whisper to the right ear (of the witness) because this is a vital witness and we (the prosecution) will request repeatedly.

WITNESS:

Kalsada

ATTY. ESMAQUEL (Counsel de parte for Cordero):

At this juncture, may we manifest that the answer of the witness is not responsive. The only question is - - - (cut short)

COURT:

She answered "kalsada".

ATTY. PRINSIPE:

Q

Where is that street you mentioned?

A

Kagitingan.

Q

And will you kindly tell the Honorable Court whether there was an unusual incident that happened on that date and time?

A

It's Monday - - - (cut short)

ATTY. ESMAQUEL:

May we manifest that the answer is not responsive to the question. The question is whether there was an unusual incident that happened on that date and time.

A

Oh, hindi ako nanloloko, peks man.

ATTY. PRINSIPE:

Please related (sic) it to the Court.

A

"Mama na naka salamin - - -"

ATTY. ESMAQUEL:

May we request that the answer be stricken out of the record for not being responsive.

ATTY. BADANDO (Counsel de parte for Lagarto):

Your honor, I would like to make an observation on record that I could not see any man wearing an eye glasses.

COURT:

Sige.

WITNESS:

"The man wearing eye glasses – sinaksak and bata."

COURT:

Go down from where you were and go to the person whom you said - - (cut short)

ATTY. PRINSIPE:

Before that your honor, I just want to make an important observation that immediately after the witness pointed, that man Cordero, he removed his eye glasses, your honor.

INTERPRETER:

Please make it of record that the witness step(ped) down from the witness stand and she is now going to the place - - - (cut short)

COURT:

Point to the man.

INTERPRETER:

- - - and she is now pointing to a man, and when asked to identify himself, he claims that he is Ernesto Cordero – and the other one is Henry Lagarto.

ATTY. PRINSIPE:

The witness is very angry your honor, in pointing to the accused.[91]

X X X

You pinpointed Cordero a while ago, why did you pinpoint him?

A

"Iyan and nakita ko. Iyan tali sako tapos tapon Moriones".

Q

You stated that somebody was hogtied or tying a sack, do you know whether there was (anyone) inside, that sack.

A

"Marami sako, maraming tali, damit ng bata sira-sira na."

XXX

ATTY. PRINSIPE:

You were stating that you saw Cordero tying the sack, were there any other person present during that tying of the sack?

A

"Wala ngang tao. Lima kami, iyan, iyan, isa patay na. Anim iyon, patay na ang isa."

ATTY. BADANDO:

The first thing she said was "siya, ako at siya."

ATTY. ESMAQUEL:

Yes, let it be on record.

ATTY. BADANDO:

Which means three including herself.

ATTY. PRINSIPE:

You said three?

A

"Iyong isa patay na."

ATTY. PRINSIPE:

Will you please look around and see whether the two whom you are referring to are inside the courtroom?

Will you please step down from the witness stand and approach the two, tap them on the shoulder.

INTERPRETER:

The witness step(ped) down from the witness stand and she is now going to the two men, who, when asked to identify themselves claim(ed) that they are (sic) Ernesto Cordero and Henry Lagarto.

ATTY. PRINSIPE:

Q

You said that you saw Cordero tying the sack, why do you know, do you know the reason why he was tying that sack?

ATTY. ESMAQUEL:

Incompetent to answer. The only thing is because the witness - - - he is asking about Cordero.

COURT:

Sustain.

ATTY. PRINSIPE:

Q

Why were you in that place you mentioned a while ago on that date and time?

A

"Iinom ako kape. Iiyak iyak bata. Nagugutom ako. Dinig sabi nang mama, huwag ka ingay. - - tapos pinalo ako, sabi ko bakit iyak bata, tapos sabi ko wala na patay na, ah aha ah."

FISCAL (Should be either Atty. Esmaque or Atty. Badando):

Do not allow her to be relating a story.

ATTY. PRINSIPE:

Who was the child you saw and you heard crying? What is the name?

ATTY. BADANDO:

Your honor, I object because she was (not) able to identify any child. What she stated (earlier) is a certain Tetchie, a mother of that woman. There is no basis.

COURT:

Answer.

ATTY. ESMAQUEL:

May I join the objection on the ground that earlier, she was asked - - - (cut short)

COURT:

Let the witness answer. Objection overruled.

A

"Batang sinaksak".

ATTY. PRINSIPE:

Q

Do you know the name of the child who was stabbed?

A

Oh oh.

ATTY. ESMAQUEL:

May we manifest that the witness failed to answer.

COURT:

In the interest of justice, repeat the question.

(Interpreter repeating)

A

Oho.

ATTY. PRINSIPE:

What is the name?

A

Jingjing.

Q

Why do you know that the name of the child is Jingjing?

A

"Dinig ko sa kalsada."

Q

If I will show you the picture of Jingjing, would you be able to recognize her?

A

Oho.[92]

On 3 October 1994, Barlam went back to court after being cleared by the NCMH to testify and after being fitted with a hearing aid. Excerpts from that day's hearing are hereunder quoted minus the objections, comments, and oral arguments of counsels. The questions were translated into Tagalog and her responses quoted verbatim by the court interpreter. The pages where they appear in the TSN are in parentheses. Fiscal Narciso J. Rosero, Jr. began

the examination by asking what Barlam was doing in the morning of 1 August 1994 (or evening of 2 August 1994).

A

"Inom ako kape. Lalaba. Iihi ako." (24)

"Iihi ako sa dulo. May tubig sa dulo. Doon ako huhugas." (25)

FISCAL:

Q

Were you able to finish washing?

A

"Oh".

Q

After you were able to finish washing, what did you observe, if any?

ATTY. BADANDO:

Very vague.

COURT:

Answer.

A

"Kita ko tatlo lalake, isa bata apat tao, tatlo lalake isa bata. Totoo sinasabi ko."

FISCAL:

Q

These three male persons who you saw that morning – these three male persons whom you saw together with the female child, would you be able to recognize these three male persons if you see them again? (27)

A

"Oho."

Q

Will you please look around inside the courtroom and find out whether they are all here?

INTERPRETER:

The witness step(ped) down from the witness stand and the witness now is slapping the face of one male person – two male persons, and when asked to identify themselves, they claimed that they are (sic) Ernesto Cordero and Henry Lagarto.

A

"Isa patay na."

FISCAL:

Q

How about the female child whom you saw in the company of these three male persons, if you see her again, would you be able to recognize her?

A

"Oho".(28)

At this point, Barlam was shown six pictures of seven different girls from which she correctly picked out the picture of Angel Alquiza.[93]

WITNESS:

"Sabi nila, alis na, alis na sabi. Sabi ko ayoko, patayin na ninyo ako, hindi ako aalis.

FISCAL:

Q

So what happened when you answered them that you will not leave, maski na patayin ka."

A

"Malayo ako doon, binato ako ng kahoy. Hindi ako loloko. Totoo yon."

Q

After you said one of these male persons hit you with a piece of wood on your left knee and on your left elbow, what did you do next after that?

A

"Aalis mata, aalis tenga, aalis hikaw, hiwa dito, hiwa kiki niya." Pag hindi totoo, ikukulong ako tapos." (32)

ATTY. BADANDO:

Let it be made of record that the witness is mentioning or motioning that after slashing the child including the private part, she motion(ed) "anunta, anunta". The witness is touching her index finger into her palm, and then pointing to her private part. That was aside from slashing.

FISCAL:

Q

Who, of these three male persons, who among them "anunta, anunta"?

ATTY. BADANDO:

Your honor, let it be reflected also on record that the witness said that there was a person who has an eyeglasses, but when we look(ed) around, there was no such person wearing an eyeglasses.

INTERPRETER:

The witness is pointing to the two accused, (33) which, when asked answered by the name of Ernesto Cordero.

ATTY. ESMAQUEL:

I would like to request, your honor, that the witness be admonished not to slap the accused.

FISCAL:

The actuation of the witness is merely a sign of her sincerity in conveying the truth to the Honorable Court.
(34)

XXX

FISCAL:

Q

Alright, aside from this "anunta, anunta", what did these two persons do next, if any?

A

"Isa palo ulo, isa alis diyan, isa pinto, diyan ka, sabi, diyan ka muna, isa palo ako tapos hikaw alis."

Q

(A)fter all those things, what next did these three persons do?

A

"Isa tali paa, pula, tapos isa dilaw, balot sako, kurtina, wala na, tapos na."

COURT:

Who was the one of the two accused who tie(d) the sack?

INTERPRETER:

The witness step(ped) down from the witness stand and (s)he is now going to the accused – (cut short) (41)

ATTY. ESMAQUEL:

May I manifest, your honor, that what has been pointed out by the witness is the accused Lagarto, your honor.

ATTY. BADANDO:

Let it be recorded that what has been stated earlier, the one pointed was Cordero. It is clear from the transcript of stenographic notes dated August 26, 1994 that when asked by (sic) the same question, the witness pointed to the accused Cordero as the one who tie(d) the sack.

FISCAL:

That is already on record.

ATTY. ESMAQUEL:

And now, the one pointed to was the accused Lagarto. (42)

COURT:

Who was the one who wrapped her with the yellow tablecloth?

Q

"Iyan.

COURT:

You go down again and point to the one who wrapped the child with the yellow material?

A

"Iyan tali." Iyan na nga ho."

COURT:

The witness pointed to the accused Cordero.

Q

You said that the eye was taken out, who remove(d) the eye?

A

Isa iyan."

ATTY. BADANDO:

And the witness was shouting yanyanyan."

COURT:

Ayan, ayan.

Q

You said that the face was slashed(ed), who slash(ed) the face? (43)

A

"Kalbo."

INTERPRETER:

The witness step(ped) down again to (sic) the witness stand and she is now pointing to the accused Lagarto.

COURT:

Who was the one who slashed the private part of the child?

A

"Iyan nga dalawa. Kulit mo kausap. Iihi ako, saan ako iihi ako"

FISCAL:

Q

You stated a while ago that you heard a child somewhere crying, when you heard somewhere a child crying, what did you do, if any?

A

"Sabi ko, kawawang bata, tapos hiwa dito, tangal mata. Totoo iyon, hindi ako nagsisinungaling." (44)

ATTY. BADANDO:

The witness, a while ago, is motioning that tears (were) flowing down from the eye of the child.

FISCAL:

Q

How did you come to know that tears were flowing from the eye of the the child?

A

"Sindi ako kandila, kita ko tulo."

INTERPRETER:

Witness referring to her two eyes.

WITNESS:

"Hina lang."

FISCAL:

Q

At the time you lighted the candle, how far were you from the child?

A

"Dito ako ihi, sa dulo, butas dito, dito bata."

ATTY. BADANDO:

We would like to stipulate as to the distance that that is only one arm(s)length. (45).

FISCAL:

About one arm(s)length or one and a half arm(s)length.

Q

Where was (sic) these three persons at the time you saw the child crying?

A

"Sa gilid. Dito kahoy, tapos tali sako, tapos balot dilaw, tali pula, tali paa."

INTERPRETER:

Witness is motioning to her feet.

WITNESS:

"Totoo ho, hindi ako nanloloko."

FISCAL:

Q

What was the attire of the child, if any, when you saw her crying, if any?

A

"Dilaw daster may manggas."

FISCAL:

Q

At the time the portion of her body was slashed, and the private part of the body was slashed (46) by the accused, what was her attire, was she still wearing that attire?

A

"Hindi na."

Q

What do you mean?

A

"Patay na siya. Wala nang damit." (47)

The following day, 4 October 1994, Barlam was cross-examined. Her testimony, as that on direct, are similarly quoted and paginated:

Q

Before the incident that you saw on August 2, 1994, did you already know Angel Alquiza?

A

Oo. Kakain ng lugaw.

Q

When for the first time did you meet Angel Alquiza before that incident on August 2, 1994?

A

Lima taon siya. Ito bahay, ito kalsada, ako lalaba. Ang ganda bata." (11)

xxx

ATTY. ESMAQUEL:

Q

Before the incident which you saw on August 2, 1994, have you already met or saw (sic) the accused Cordero? (15)

A

Hindi pa.

Q

So when for the first time did you see the man with an eye glasses?

A

"Noon nga, noong una doon. Tatlo iyan. Patay na isa."

Q

When you said "noon nga, what are you referring to?

A

Isa bata tatlo lalaki.

Q

And where did you see those three male(s) and one child?

A

Ihi ako dulo. Sindi ako kandila. Doon tubig huhugas ako, "uulan-ulan."

INTERPRETER:

Witness is motioning the size of the candle.

A

"Tapos ligo na ako. Ihi ako tapos dito rinig ko bata aray. Nihiwa na."

INTERPRETER:

Witness is motioning to the eye, the ears, (16) the throat, the private organ.

A

Ako nga palo kahoy. (17)

Barlam's erratic behavior became manifest as the hearing droned on, but so did the clarity and consistency of her narration. She pretended picking lice off the interpreter's head; she said her father's cousin was a tin can; she even allegedly exposed her private part to the defense counsels. There is no denying, however, that she saw Angel surrounded by these three men – one a pedicab operator with a history of abusing even his own daughters; the other two, scavengers and occasional pedicab drivers. CORDERO stood before her as she knelt on the floor. LAGARTO stayed by the door. Lagunday saw Barlam, shooed her away, then went after her and hit her with a piece of wood when she would not leave. The left side of Angel's face was slashed twice by CORDERO, who also gouged out her eyes and cut her vagina all the way to and beyond her anus. He even took her earrings. Angel's head was bashed in when she was hit with a piece wood by LAGARTO and Lagunday.[94]

Even on re-direct examination, Barlam was certain that it was CORDERO who slashed Angel's vagina and raped her. (Hiwa dito hiwa dito, anunta, anunta, hiwa kiki, tanda na hiwa pa kiki.")[95] The one who hit Angel with a thick piece of wood was LAGARTO, and Barlam identified him in dramatic fashion by slapping and boxing him.[96] When confronted with her sworn statement where she said that the man who hit Angel with a piece of wood was "Lando walang ipen," it was made clear by the prosecution that such sworn statement was made in connection with an investigation conducted by PO3 Ko when Barlam had not yet been fitted with a hearing aid. In fact, she did not and could not read such statement so it had to be "read" to her by SPO2 Miranda without her hearing aid. Barlam never deviated in relating to the court the complicity of Lagunday, CORDERO, and LAGARTO in the rape-slay of Angel. In the assailed decision, the trial court even observed that from afar, LAGARTO looked as if his front teeth were missing.[97]

Barlam's testimony, in our opinion, adequately established the liability of Lagunday, LAGARTO, and CORDERO for raping and killing Angel Alquiza. She not only proved to be competent but also truthful in her narration of what transpired on 2 August 1994. Her sworn statement might not entirely jibe with her oral testimony, but we have ruled that in case of conflict between the contents of a sworn statement and testimony in open court, the latter generally prevails since ex parte affidavits are often incomplete and inaccurate because by

their nature, they are ordinarily prepared by a person other than the affiant.[98] Barlam may have acted strangely at times, but such idiosyncrasy has no bearing on the consistency and veracity of her testimony. She repeatedly pointed to accused-appellants LAGARTO and CORDERO as she spoke, and slapped, boxed, and glowered at them when she was asked by the court to identify the malefactors. Neither can we discount the psychiatric report which gave Barlam a clean bill of mental health. For three days, she was examined by professional psychiatrists, but her story remained the same. It was the same story she narrated in court, albeit with some minor inconsistencies.

It must also be noted that Barlam absolutely has no motive to falsely testify against LAGARTO and CORDERO. The absence of evidence of any improper motive actuating her as the principal witness of the prosecution strongly tends to sustain the conclusion that no such improper motive existed at the time she testified and her testimony is worthy of full faith and credit.[99]

LAGARTO and CORDERO deny the allegations against them and said they were sleeping in their respective homes at the time the crime was supposedly committed. By itself, alibi is a relatively weak defense; it is further emasculated in the absence of any showing that it was physically impossible for the accused to have been at the crime scene or its immediate vicinity at the moment it was being perpetrated.[100] CORDERO's home is merely ten blocks from the warehouse at Kagitingan St. He denied any knowledge of its existence, which is highly dubious considering that it is a roadside structure. His daughter Emily and Eriste supported his alibi, but only up to the time that he supposedly slept at around 11:00 p.m. on 1 August 1994. LAGARTO, on the other hand, lived with his family at Parola Area D, Tondo, Manila, which is a jeepney and tricycle ride from the warehouse at Kagitingan St. His neighbors, Besonia and Badilla, and mother Noriana corroborated his story that he slept at around 7:00 p.m. on 1 August 1994 until 5:00 a.m. the following day. But on cross-examination, he admitted he was all alone in their house when he slept.

The fact that LAGARTO and CORDERO were at home in the evening of 1 August and in the morning of 2 August is no indication that they were there the whole time. They were both placed at the crime scene by two witnesses. Javar saw them in front of the warehouse between 9:30 and 10:00 on 1 August 1994, as if waiting for someone. Barlam saw them inside the warehouse around 2:00 a.m. on 2 August 1994. CORDERO was the one who stabbed Angel in the face, slashed her organ, raped her, and tied her feet. LAGARTO hit Angel on the head. Together with Lagunday, the three wrapped her in a yellow tablecloth identical with the one Lagman saw at CORDERO's house, put her in a sack which they tied with a nylon cord, then, under a mantle of heavy rain, set her adrift in murky floodwater. Incidentally, CORDERO raises in issue the delay in which Javar reported to the authorities what he knew about Angel Alquiza's case. This was properly addressed by Javar when he said that he did not initially want to report the matter to anyone because CORDERO was his *balae*. [101] In the end, his conscience convinced him to shun family ties in order to help bring justice to Angel.

Besides, LAGARTO and CORDERO were positively identified by prosecution witness Barlam as the authors of the crime charged. Their denial and alibi cannot prevail over the positive identification and assertions of Barlam.[102]

LAGARTO and CORDERO make much of the perceived impossibility of committing the crime in the warehouse of Mang Gorio. Maj. Gacutan visited the place on 4 August 1994 and found its perimeter adequately lit and surrounded by residential houses, but its interior was so dark that anyone who peeped from the outside would not have seen anything inside. He did not even find any evidence in the dark bodega.

This argument is untenable. It is established that rape is no respecter of time or place. It can be committed in small, confined places, like a one-room shack and in the presence of other family members,[103] or a small hut on

a raft (alang).[104] The same can be said of any other crime that accompanies and compounds the rape. In the case at bar, even if there were houses around the warehouse and there was a lamppost nearby, there is no dispute that Angel was assaulted therein at 2:00 in the morning during a heavy downpour. Under the condition then prevailing, the desolation of the warehouse and its immediate vicinity provided a perfect cover for the atrocities perpetrated against Angel. On the other hand, when the court conducted an ocular inspection of the warehouse on 22 November 1992, it was noted that the holes through one or more of which Barlam had witnessed the crime have been patched up. The protestations of CORDERO and LAGARTO cannot be given serious consideration because the trial court gathered "from the Barangay Captain and other residents that there had been alterations in the warehouse; that the opening had been covered, so much so that the actual conditions of the warehouse at the time of the commission of the offense are no longer obtaining during the ocular inspection." [105] LAGARTO and CORDERO likewise question the wisdom of this observation because there is allegedly no evidence, testimonial or otherwise, which would support it. The ocular inspection was, however, conducted with the assistance of the Barangay Captain and some residents. The conclusion of the court, therefore, is not conjectural but based on information supplied by the escorts who were more familiar with the physical condition of the warehouse.

As regards Maj. Gacutan's investigation, which allegedly yielded no evidence against LAGARTO and CORDERO, the trial court correctly observed that this is to be expected because Maj. Gacutan "did not take with him any (forensics) expert or any instrument to recover any physical evidence." [106] Nonetheless, his failure to obtain any evidence from the crime scene does not ipso facto eliminate the fact that a crime was committed therein, especially in view of the damning testimonies of the prosecution witnesses.

The next crucial question to be resolved is whether LAGARTO and CORDERO, together with deceased Lagunday, conspired to rape and kill Angel.

The following undisputed facts must be taken into consideration and read in connection with Barlam's testimony:

1. On the night in question, Angel was last seen being led by the hand by Lagunday. Javar saw Angel riding "Ernie Sidecar No. 14" which was driven by Lagunday. Ligaya, wife of CORDERO, confirmed that on 1 August 1994, Lagunday drove "sidecar No. 14" which was part of their fleet of pedicabs.
2. LAGARTO was arrested by the police after Lagunday implicated him along with accused Manlangit, Baltazar, and Yaon.
3. Eyewitness Barlam positively identified Lagunday and LAGARTO from a police line-up as two of the three men she saw raping and killing a girl in the abandoned warehouse of Mang Gorio at Kagitingan St.
4. Lagunday and his co-accused Manlangit both used to work for Mang Gorio at the latter's junk shop, which is the abandoned warehouse where the crime took place.
5. Lagman told the NBI and the police that the yellow tablecloth where Angel's body was wrapped was the one she saw at the CORDERO residence.
6. Javar saw CORDERO and LAGARTO in front of the warehouse on the night in question as if they were waiting for somebody.
7. During detention, Lagunday pointed to CORDERO as the alleged mastermind.
8. Barlam saw CORDERO slash Angel's face and genitals before raping her, while LAGARTO stood by the door. Lagunday and LAGARTO both hit Angel's head with a piece of wood. When Angel was dead, they tied her feet, wrapped her in a round yellow tablecloth possibly owned by CORDERO, placed her in a sack, then set adrift in the floodwater of Del Pan.

All these demonstrate that the prosecution established beyond reasonable doubt that LAGARTO, CORDERO, and Lagunday shared a common design to rape and kill Angel Alquiza. Although there is no direct proof of such unity of purpose, conspiracy was properly appreciated in these premises by the trial court because their individual acts, taken as a whole, showed that they were acting in unison and cooperation to achieve the same unlawful objective.[107] Under these premises, it is not even necessary to pinpoint the precise participation of each of the accused, the act of one being the act of all.[108] thus, the trial court correctly observed that "conspiracy is established by the concerted action of the accused in the commission of the crime as well as in their concerted efforts after the commission of the crime,"[109] as when they attempt to dispose of the body of the victim to hide their misdeed. In the case at bar, the trial court found that CORDERO, LAGARTO, and Lagunday acted in concert to slay the victim and thereafter conceal her body by wrapping it in a round yellow tablecloth, putting it in a sack, and leaving it in the flooded street of Del Pan. Jurisprudence constantly points out that the conduct of the accused before, during, and after the commission of the crime may be considered to show an extant conspiracy.[110] Even if by Barlam's testimony it would appear that only CORDERO raped Angel, LAGARTO is still liable for the crime of rape with homicide because where conspiracy is adequately shown, the precise modality or extent of participation of each individual conspirator becomes secondary. The applicable rule, instead, is that the act of one conspirator is the act of all of them.[111]

CORDERO insists that the trial court erred in failing to hold that he was illegally arrested and was not accorded the right to a preliminary investigation.

This argument has no merit. CORDERO voluntarily entered a plea of "not guilty" when he was arraigned on 22 August 1994.[112] By so pleading, he submitted to the jurisdiction of the trial court, thereby curing any defect in his arrest, for the legality of an arrest affects only the jurisdiction of the court over his person.[113] Besides, his act of entering a plea when arraigned amounted to a waiver of the right to question any irregularity in his arrest.[114] It is too late for CORDERO to protest his arrest because a valid information had been filed against him, he was properly arraigned, trial commenced and was terminated, and a judgment of conviction had been rendered against him.[115] Besides, his illegal arrest, if such was the fact, did not have any bearing on his liability since an allegation of an invalid warrantless arrest cannot deprive the state of its right to prosecute the guilty when all the facts on record point to his culpability.[116] Any irregularity in his arrest will not negate the validity of his conviction duly proven beyond reasonable doubt by the prosecution.[117]

LAGARTO and CORDERO were charged with and convicted of the special complex felony[118] of rape with homicide, defined and penalized under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, viz.:

Art. 335. When an how rape is committed. – Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. x x x;
2. x x x;
3. When the woman is under twelve years of age or is demented.

x x x

When by reason or on occasion of the rape, a homicide is committed, the penalty shall be death.

x x x

It having been established beyond any shadow of a doubt that LAGARTO and CORDERO raped Angel and killed

her on the occasion of the rape, the mandatory penalty of death is inescapable. Four Justices have continued to maintain their stand that R.A. No. 7659 is unconstitutional insofar as it prescribes the death penalty; nevertheless, they submit to the ruling of the majority to the effect that the law is constitutional and the death penalty can be lawfully imposed in the case at bar.

In view of the foregoing, it may no longer be necessary to consider if any of the qualifying and generic aggravating circumstances alleged in the informations had been proven or if any mitigating circumstances had been established. Article 63 of the Revised Penal Code, as amended, provides that 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. However, for determining the civil liability, an appreciation of one aggravating circumstance – the cruelty that attended the rape and killing of Angel – may be in order. Angel was a seven-year old child. Her captors and tormentors were grown-up men. The Autopsy Report (Exh. "C") listed her injuries: numerous hematomas, abrasions, contused-hematomas, incised wounds, fractures, lacerations, and stab wounds. Both of her eyes were missing,. Her vagina was sliced, producing an incised wound 14 centimeters long that went beyond her anus and causing disembowelment. This was done presumably so that her underdeveloped organ could accommodate the organs of the assailants. She was bleeding to death, her intestines spilling out, when CORDERO raped her in the presence of LAGARTO and Lagunday. Her head was hit so hard that part of her brain began to leak through the fracture. Angel Alquiza suffered through all these. She did not die instantaneously. The cruelty inflicted was too much and could only come from persons turned beasts.

The presence of the aggravating circumstance of cruelty^[119] warrants the award of exemplary damages,^[120] which we hereby fix at P100,000.

The award of P500,000 as moral damages, which no longer requires proof per current case law,^[121] has to be reduced to P100,000.

Current jurisprudence^[122] has fixed at P 100,000 the indemnity in cases of rape with homicide.

WHEREFORE, the judgment of the Regional Trial Court of Manila, Branch 47, as modified in the Order of 22 May 1996, in Criminal Case Nos. 94-138071 and 94-138138 dated 31 January 1995, imposing the death penalty on accused-appellants HENRY LAGARTO y PETILLA and ERNESTO CORDERO y MARISTELA is AFFIRMED, with the MODIFICATION that said accused-appellants are hereby ordered, jointly and severally, to pay the heirs of the victim, Angel L. Alquiza, the amounts of P100,000 as indemnity, P100,000 as moral damages, and P100,000 as exemplary damages, in addition to the P52,000 awarded by the trial court as actual damages.

In accordance with Article 83 of the Revised Penal Code, as amended by Section 25 of Republic Act No. 7659, upon finality of this decision, let the records of these cases be forwarded to the Office of the President for possible exercise of executive clemency.

Costs against accused-appellants.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., JJ., concur.
Buena J., on leave.

[1] Advance Information dated 3 August 1994, Exhibit "K," Original Record, Vol. II (OR 2), 143-145; TSN, 24 August 1994, 7-9.

- [2] Advance Information dated 3 August 1994, Exhibit "K," Original Record, Vol. II (OR 2), 143-145; TSN, 24 August 1994, 7-9.
- [3] Exhibit "A," OR2, 138.
- [4] Exhibit "B," OR2, 139.
- [5] Exhibit "C," OR2, 140.
- [6] See note 1.
- [7] Repeatedly misspelled in the records as "Bongavilla."
- [8] Sworn Statement of Rosalina Puno dated 3 August 1994, OR2, 14; TSN, 30 August 1994, 34-39.
- [9] Sworn Statement of Ligaya Cordero dated 3 August 1994, OR2, 15.
- [10] Sworn Statement of Mario Blorechia dated 5 August 1994, Exhibit "U," OR2, 159-160; TSN, 30 August 1994, 6-9.
- [11] Sworn Statement of Jose Soriano dated 5 August 1994, OR2, 25-26; TSN, 23 August 1994, 11-12, 18.
- [12] Progress Report 1 dated 5 August 1994, Exhibit "L," OR2, 146-148.
- [13] Id.
- [14] Sworn Statement of Herminia Barlam dated 4 August 1994, OR2, 23-24.
- [15] See TSN, 25 August 1994, 10-11.
- [16] Sworn Statements of Ofelia Lagman given to the NBI on 3 August 1994 and to the police on 8 August 1994, respectively, Exhibits "V" and "W," OR2, 161-164.
- [17] Progress Report 2 dated 9 August 1994, Exhibit "M," OR2 149-150.
- [18] OR2, 1; Rollo, 14-15.
- [19] OR 1, 1; Rollo, 16-17.
- [20] Memorandum of Police Inspector Pedro R. Angulo dated 12 August 1994 regarding a Spot Report on the shooting of Abundio Lagunday at around 6:45 a.m. of said date; OR2, 31.
- [21] OR1, 29.**
- [22] Order dated 19 August 1994, OR1, 30. See also OR2, 42.
- [23] TSN, 24 August 1994, 19.
- [24] Id., 9-19, 24-27; Decision of 31 January 1995 (hereafter, RTC Decision), 21, Rollo, 67.
- [25] TSN, 25 August 1994, 29-33.
- [26] TSN, 23 August 1994, 35-36.
- [27] Id., 48-49.
- [28] Id., 58-60. See note 5.
- [29] Id., 66-67.

[30] Id., 74-77.

[31] Exhibit "Y-5," OR2, 172.

[32] TSN, 31 August 1994, 50-51.

[33] Id., 15-31.

[34] TSN, 15 September 1994, 6-14, 33.

[35] Id., 30-31.

[36] Id., 17-18, 42.

[37] Marina in the Report of the National Center for Mental Health, OR2, 111-113.

[38] TSN, 26 August 1994, 13, 38, 41.

[39] Id., 14.

[40] Id., 42.

[41] Opposing counsels made separate observations, which the court duly noted: Atty. Badando, counsel for LAGARTO, said he could not see any one in the courtroom wearing eyeglasses; private prosecutor Atty. Prinsipe, on the other hand, said that after Barlam pointed to CORDERO, the latter removed his eyeglasses.

[42] TSN, 26 August 1994, 15-18, 21-27.

[43] OR2, 111-113.

[44] TSN, 3 October 1994, 24-28.

[45] Exhibits "BB" and "BB-1," OR2, 174.

[46] Id., 32-34.

[47] Id., 41-47.

[48] TSN, 4 October 1994, 11-16.

[49] Id., 17-31.

[50] Id., 58.

[51] TSN, 4 October 1994, 59-60.

[52] Id., 71-76.

[53] Id., 74; RTC Decision, 24, Rollo, 70.

[54] Rollo, 64.

[55] Id., 73.

[56] TSN, 16 November 1994, 5-22.

[57] Id., 38, 40.

[58] Id., 21-25.

[59] TSN, 14 November 1994, 4-5.

[60] TSN, 15 December 1994, 6-13.

[61] Id., 23, 28.

[62] Id., 31-33.

[63] TSN, 15 December 1994, 36-38.

[64] TSN, 27 October 1994, 12-23.

[65] Id., 9-10.

[66] TSN, 28 October 1994, 7-9, 13-14.

[67] Sworn Statement of Vivencio Singalawa dated 5 August 1994, Exhibit "10," OR2, 17-18; TSN, 4 November 1995, 9, 12-15, 25, 27.

[68] TSN, 4 August 1994, 78, 88.

[69] TSN, 5 December 1994, 9-21.

[70] TSN, 28 November 1994, 7-10.

[71] Id., 26-27.

[72] TSN, 1 December 1994, 4-11.

[73] TSN, 5 December 1994, 22-23.

[74] Rollo, 46-74

[75] OR3, 546-550.

[76] Id., 551-552.

[77] *People v. Veneracion*, 249 SCRA 244, 254 [1995].

[78] Rollo, 116.

[79] Rollo, 16.

[80] Rollo, 117.

[81] Brief for CORDERO, 23; Rollo, 273.

[82] Id., 24; Id., 274.

[83] See notes 3 and 4.

[84] TSN, 28 October 1994, 14.

[85] TSN, 27 October 1994, 9-10.

[86] Id., 25, 37-38.

[87] *People v. Geromo*, G.R. No. 126169, 21 December 1999, citing *People v. Leoterio*, 264 SCRA 608, 617 [1996]; *People v. Barera*, 262 SCRA 64 [1996].

[88] *People v. Patriarca*, G.R. No. 132748, 24 November 1999, citing *People v. Leoterio*, supra note 86; *People v. Excija*, 258 SCRA 424, 439 [1996]; *People v. Cristobal*, 252 SCRA 507, 515-516 [1996]; *People v. Lao*, 249 SCRA 137, 146 [1995]; *People v. Malunes*, 247 SCRA 317, 324 [1995].

[89] *Rollo*, 530.

[90] *People v. Palma*, 144 SCRA 236 [1986]; *People v. Rizo*, 189 SCRA 265 [1990]; *People v. Gerones*, 193 SCRA 263 [1991]; *People v. Padilla*, 301 SCRA 265 [1999].

[91] TSN, 26 August 1994, 15-18.

[92] TSN, 26 August 1994, 21-27.

[93] Exhibits "BB" and "BB-1," OR2, 174.

[94] TSN, 4 October 1994, 17-31.

[95] *Id.*, 58.

[96] *Id.*, 59-60.

[97] *Id.*, 71-76; RTC Decision, 24, *Rollo*, 70.

[98] *People v. Manuel*, 236 SCRA 545 [1994]; *People v. Cruza*, 237 SCRA 410 [1994]; *Eugenio v. Court of Appeals*, 239 SCRA 207 [1994]; *People v. Banela*, 301 SCRA 84 [1999], citing *People v. Lazaro*, 249 SCRA 234 [1995]; *People v. Layno*, 264 SCRA 558 [1996]; *People v. Pontilar, Jr.*, 275 SCRA 338 [1997].

[99] *People v. Villafuerte*, 232 SCRA 225 [1994], citing *People v. Bodozo*, 215 SCRA 33 [1992]; *People v. Banela*, supra note 98, citing *People v. Sotto*, 275 SCRA 191 [1997]; *People v. Casil*, 241 SCRA 285 [1995]; *People v. Tabao*, 240 SCRA 758 [1995].

[100] *People v. Torio*, G.R. Nos. 132216 and 133479, 17 November 1999, citing *People v. Alshaika*, 261 SCRA 637 [1996] and *People v. Maqueda*, 242 SCRA 565 [1995]; *People v. Geromo*, supra, note 87, citing *People v. Alshaika*, supra; *People v. Laurente* 255 SCRA 543, 565 [1996]; *People v. Maqueda*, supra.

[101] See note 37.

[102] *People v. Villafuerte*, supra note 99; *People v. Miraday*, 242 SCRA 620 [1995]; *People v. Mendoza*, 254 SCRA 61 [1996]; *People v. Banela*, supra note 98.

[103] *People v. Geromo*, supra, note 87, citing *People v. Talaboc*, 256 SCRA 441 [1996] and *People v. Gecom*, 254 SCRA 85 [1996].

[104] *People v. Torio*, supra note 100, citing *People v. Agbayani*, 284 SCRA 315 [1998] and *People v. Manuel*, supra note 98.

[105] RTC Decision, 26, *Rollo*, 72.

[106] *Id.*

[107] *People v. Layno*, supra note 98; *People v. Sumalpong*, 284 SCRA 229 [1998].

[108] *People v. Obello*, 284 SCRA 79 [1998]; *People v. Pulusan*, 290 SCRA 353 [1998]; *People v. Medina*, 292 SCRA 436 [1998]; *People v. Chua*, 297 SCRA 229 [1998].

[109] RTC Decision, 27, *Rollo*, 73.

- [110] *People v. Gungon*, 287 SCRA 618 [1998].
- [111] *People v. De Roxas*, 241 SCRA 369 [1995]; *People v. Lising*, 285 SCRA 595 [1998].
- [112] Order dated 22 August 1994, OR2, 49.
- [113] *People v. Nazareno*, 260 SCRA 256 [1996].
- [114] *People v. Nitcha*, 240 SCRA 283 [1995].
- [115] *People v. Llenaresas*, 248 SCRA 629 [1995].
- [116] *People v. Silang*, 254 SCRA 491 [1996].
- [117] *People v. Manzano*, 248 SCRA 239 [1995].
- [118] Reclassified from a complex crime by virtue of Republic Act No. 2632, as amended by Republic Act No. 4111.
- [119] Article 14, Revised Penal Code.
- [120] Article 2230, Civil Code.
- [121] *People v. Prades*, 293 SCRA 411 [1998].
- [122] *People v. Tahop*, G.R. No. 125330, 29 September 1999.

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