PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. IRENEO ALCOREZA Y MARCELINO, ACCUSED-APPELLANT.

G.R. Nos. 135452-53. October 05, 2001

Ponente: PUNO, J.

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PUNO, J.:

Barely in their teens, MARY JOY MANILA and ESTRELLA MANILA experienced repeated sexual molestation in the hands of their stepfather --- the man who was supposed to secure their future and protect them from harm. They bore their sufferings in silence. After agonizing for several years over the unceasing sexual assaults, the girls finally found the courage to reveal their sad fate to their mother who merely turned a deaf ear and a blind eye.

Accused IRENEO ALCOREZA y MARCELINO was charged with rape by his 14-year old stepdaughter ESTRELLA MANILA and two (2) counts of statutory rape by his 11-year old stepdaughter MARY JOY MANILA.

He was charged in an Information in Criminal Case No. 388-M-98,[1] thus:

> "That on or about the 28[th] day of October, 1996, in the municipality of Sta. Maria, province of Bulacan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused did then and there wilfully, unlawfully and feloniously, by means of force, intimidation and with lewd design have carnal knowledge of his stepdaughter, Estrella Manila, 14 years of age, against her will and without her consent.
>
> "Contrary to law."

Except for the date, the two (2) Informations[2] for statutory rape (Criminal Case No. 401-M-98 and Criminal Case No. 402-M-98) similarly charged the accused, thus:

> "That on or about the 21[st] (and 27[th]) day of September, 1997, in the municipality of Sta. Maria, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there wilfully, unlawfully and feloniously, by means of force, intimidation and with lewd design have carnal knowledge of his stepdaughter, Mary Joy Manila, 11 years of age, against her will and without her consent.
>
> "Contrary to law."

The prosecution evidence disclose that MELITA GONZALES y ALCOREZA bore five children in her marriage to Benito Manila, Sr., namely: Fernanda, Estrella, Elena, Mary Joy and Benito, Jr. After her husband died, Melita married accused IRENEO ALCOREZA.

On September 21, 1997, at about 7:00 a.m., 11-year old MARY JOY was left in their house with the accused. Her siblings were then in church. The accused called Mary Joy into the bedroom. When she entered, accused wasted no time and forcibly took off her shorts and panty. He then removed his shorts. He pushed Mary Joy on the bed and mounted her. He kissed and embraced her and inserted his penis into her organ. She wriggled in pain. She desperately tried to extricate herself from underneath the accused but could not resist his lecherous advances as

his heavy weight pinned her on the bed. She could not shout as the accused threatened to kill her if she did. All she could do was cry. After satisfying his lust, the accused removed his penis. Mary Joy felt a mucus-like, slippery substance come out of the accused's organ.[3]

Barely a week later, on September 27, 1997, at about noon, Mary Joy again found herself alone in the house with the accused. Her siblings attended a funeral, while her mother was in the poblacion working as a manicurist. The accused called Mary Joy into the bedroom. When she entered the room, the accused approached her and took off her shorts and panty. He laid her down, hurriedly took off his clothes and kissed her. When the accused mounted her, his penis touched her organ but he failed to insert it as he heard her 8-year old brother, Benito, arrive. The accused immediately pushed her away and put on his clothing. Benito, however, still saw Mary Joy naked on the bed. Appalled, Benito immediately ran away. Mary Joy could only cry while putting back her undies. Before the accused left, he warned her that if anyone should ask, she should never reveal what he did to her.

The following day, September 28, 1997, after the accused left their house, Mary Joy sought the assistance of her sister Fernanda and revealed to her the sexual ordeal she suffered in the hands of the accused. Fernanda then accompanied Mary Joy to the house of their grandfather BENITO GONZALES. Benito proceeded to Mary Joy's house to confront the accused but the latter was nowhere to be found. Benito accompanied Mary Joy to the police station where they executed their statement. The next day, September 29, 1997, they were referred to the provincial hospital for physical examination. Benito then assisted Mary Joy in filing his complaint with the MTC of Sta. Maria, Bulacan.[4]

When they returned to the house, Benito learned that the accused had also been molesting his other granddaughter ESTRELLA MANILA since the latter was eight years old. Her story of sexual abuse: On October 28, 1996, at about 10:00 p.m., Estrella was sleeping in their bedroom together with her 3 siblings: Benito, Jr. (then 8 yrs. old), Elena (15 years old) and Mary Joy. They kept their bedroom door open as the accused forbade them to lock it. Suddenly, Estrella sensed the presence of the accused in their room when he laid down beside her. She was then an arm's length away from her siblings who were also sleeping. Fear swept her body. She tried to tinker with the door to call the attention of Melita, her mother, who was sleeping in the next room. This angered the accused. He kicked Estrella and warned her not to make a noise. The accused then repeatedly tried to remove her shirt and lower her shorts but she resisted. The movement awakened Melita who was sleeping in the other room. Sensing that he might be caught, the accused hurriedly stood up. Melita then entered the bedroom and asked the accused what he was doing there. The accused got mad and they quarrelled. In the heat of their argument, Melita threatened to sue the accused. When Estrella revealed to Melita that the accused had been molesting her since she was eight, Melita refused to believe her. Instead, Melita directed Estrella not to tell her siblings about her ordeal.

Estrella turned to her grandfather Benito for help as Melita did not make good her threat to report the rape incidents to the police authorities. Estrella also learned that the accused was also raping her younger sister Mary Joy.[5] Benito assisted Estrella in filing a complaint for rape and accompanied her to the hospital for medical examination.

As per the letter-request of the Sta. Maria police station, DR. MANUEL AVES, the medico-legal officer of the Bulacan Provincial Hospital, conducted a gynecological examination of Mary Joy and Estrella. His examination revealed that both Mary Joy and Estrella were in a non-virgin state. Mary Joy had a healed laceration and abrasion on her hymen while Estrella's hymen sustained 4 healed lacerations.[6]

The accused, a 49-year old jeepney dispatcher, simply denied the rape charges of Estrella. He claimed that on October 28, 1996, at about 10:00 p.m., he was sleeping with his wife in their house, while Estrella and her siblings were sleeping in the other room. Nothing unusual happened that night.[7] He claimed that the alleged victims

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could have filed the cases against him as he would spank them once in a while. He theorized that Benito Gonzales, Melita's father, could have also plotted against him and used his granddaughters to file trump up charges of rape. He alleged that Benito was opposed to his marriage to Melita as he was poor. It could also be that Benito harbored ill-feelings against him when he ceased to give him financial support.

As to the rape charge of Mary Joy, the accused proferred an alibi. He claimed that on September 21, 1997, he was out of the house collecting funeral contributions from the jeepney drivers to be given to one of their members.[8]

The defense presented the accused's wife, MELITA GONZALES y ALCOREZA, to the stand. She disclaimed knowledge about the sexual assaults on Mary Joy as she was not in their house on those two dates. Mary Joy did not approach her or ask her help in filing the case. She came to know about Mary Joy's rape charges only after the complaint was filed in court. However, Estrella confided to her that the accused had been molesting her. She was shocked by the revelation. Her daughters then sought the assistance of her father Benito in filing the complaint. She did not intervene and left the matter to her parents. Neither did she try to dissuade her daughters from filing the cases. She did not talk to her husband or do anything to help him after he was incarcerated. She could not think of any reason that could have motivated her daughters to file the rape charges against the accused.[9]

After the trial, the court a quo rendered judgment finding the accused guilty only of attempted rape in the case of Estrella and sentenced him to an indeterminate penalty. However, on the two counts of statutory rape filed by Mary Joy, the accused was found guilty and sentenced to suffer the supreme penalty of death. The dispositive portion reads:[10]

> "WHEREFORE, all premises considered, in Criminal Case No. 388-M-98, the Court resolves that the prosecution has failed to establish the guilt of accused Ireneo Alcoreza Y Marcelino for consummated Rape. He is, however, found Guilty of Attempted Rape. With the application of the Indeterminate Sentence Law, said accused is hereby sentenced to suffer the indeterminate prison term of ten (10) years and one (1) day of prision mayor as maximum to fifteen (15) years of reclusion temporal/medium.
>
> Inasmuch as the civil aspect of this case is deemed to be instituted in this case, the accused is further directed to indemnify the complainant Estrella Manila in the amount of P25,000.00 as moral damages.
>
> x x x x x x x x x
>
> In both Criminal Cases Nos. 401-M-98 and 402-M-98, the Court resolves that the prosecution has successfully undertaken its burden to prove the guilt of accused Ireneo Alcoreza Y Marcelino beyond reasonable doubt. For having violated Article 335 of the Revised Penal Code, as amended by Republic Act 7659 with the attendant circumstance that "the victim is under eighteen (18) years of age and the offender is x x x stepfather, x x x or the common-law spouse of the parent of the victim," the accused Ireneo Alcoreza Y Marcelino is hereby found guilty of the crime of Statutory Rape as charged. By virtue hereof, in both these cases, he is sentenced to suffer the supreme penalty of Death by lethal injection.
>
> In line with established jurisprudence, the said accused is hereby ordered to indemnify the offended party Mary Joy Manila in the sums of P50,000.00 for moral damages in each of the two cases.
>
> With costs against the accused.
>
> SO ORDERED."[11] (emphasis supplied)

On automatic appeal, the appellant assigns the following errors:

> I
>
> THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN FINDING THE ACCUSED GUILTY OF

STATUTORY RAPE IN CRIMINAL CASES NO. 401-M-98 AND 402-M-98 AND ATTEMPTED RAPE IN CRIMINAL CASE NO. 388-M-98 DESPITE THE INSUFFICIENCY OF EVIDENCE TO WARRANT CONVICTION BEYOND REASONABLE DOUBT.

II

THE TRIAL COURT GRAVELY ERRED IN IMPOSING THE DEATH PENALTY DESPITE THE ERRONEOUS ALLEGATION OF THE QUALIFYING CIRCUMSTANCE OF RELATIONSHIP IN THE INFORMATION.

We shall discuss the two issues jointly.

On the charge of statutory rape committed on September 21, 1997 (Criminal Case No. 401-M-98), appellant contends that Mary Joy's testimony is far from credible. He points out that during her direct testimony, Mary Joy declared that the accused forced her to lie down on the floor but changed her story on cross-examination and said she was made to lie down on the bed. Appellant also charges that her testimony regarding the rape incident on said date was sketchy as she merely declared that the accused "tried to push inside my private part his penis."

We disagree. The alleged inconsistency in the testimony of Mary Joy regarding the September 21, 1997 rape incident is too flimsy and trivial to merit serious consideration. Indeed, it is not unnatural to find minor discrepancies in the testimony of a rape victim, especially that of a child. She cannot be expected to remember every minute detail of her ordeal. Going over the records, we find her recount of the sexual assault clear, brief and convincing. It had a ring of truth that can come only from the lips of an innocent child victim. Thus:

"Q.

On September 21, 1997, between 7:00 and 8:00 A.M., do you remember your whereabouts?

A.

I was at home, sir.

Q.

Did you have companions in your house at that time?

A.

None, I was alone with my stepfather, sir.

Q.

Can you tell us why your stepfather was there? Was he not working at that time?

A.

No, sir.

x x x x x x x x x

Q.

While you were alone together with your stepfather on that date and time in your house in Parada, was there any unusual incident that happened?

A.

Yes, sir.

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Q.

What was the unusual incident that happened?

A.

He called me and told me to undress, sir.

Q.

Were you not in school on that date?

A.

It was a Saturday, sir.

Q.

Who called you and told you to undress?

A.

My stepfather, sir.

Q.

And did you oblige?

A.

No, he forced me, sir.

Q.

How did your stepfather force you?

A.

He was the one who removed my dress, sir.

Q.

What were you wearing that time?

A.

I was wearing shorts and t-shirt, sir.

Q.

Did you have panty (sic) at that time?

A.

Yes, sir.

Q.

How about bra?

A.

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Only sando, sir.

Q.

What were the apparel removed from you?

A.

My shorts and panty, sir.

Q.

So your sando remained (sic) with you?

A.

Yes, sir.

Q.

Where were you at that time when your stepfather removed your shorts and panty?

A.

Inside the bedroom, sir.

Q.

You said that it was a Saturday, where were your other siblings?

A.

They went to church, sir.

Q.

How about your mother?

A.

My siblings attended a funeral while my mother is in Poblacion, sir.

Q.

After your stepfather removed your shorts and panty, what did he do?

A.

He went on top of me and kissed me, sir.

x x x x x x x x x

Q.

How about your stepfather, what was he wearing at that time?

A.

None, sir.

x x x x x x x x x

Q.

In (sic) what moment did he remove his clothes?

A.

After undressing me, he removed his clothings, sir.

Q.

What was he wearing at that time before he removed his clothes?

A.

He was wearing only shorts, sir.

Q.

After your stepfather lie (sic) on top of your (sic), what did he do?

A.

He inserted his penis inside my private part, sir.

Q.

What did he do after inserting his penis into your private part?

A.

He was kissing me, sir.

Q.

How long did your stepfather insert his private organ into yours?

A.

I don't know, sir.

Q.

Could it be an hour?

A.

No, sir.

Q.

How did the accused cease from abusing you that morning?

A.

He removed his penis, sir.

Q.

Did you feel anything coming out from his private organ?

A.

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Yes, sir.

Q.

Will you please describe that thing that you felt which came from his private organ?

A.

At (sic) appeared like mucus and it is (sic) slippery (madulas), sir."[12]

The above-quoted testimony, coupled with the medical findings, prove beyond doubt that the appellant was able to consummate the sexual assault of his hapless victim Mary Joy. We thus find no reason to disturb the trial court's assessment of her credibility.

In stark contrast, appellant's alibi that at the time of the incident he was out of the house collecting funeral contributions is vague, unsubstantiated and uncorroborated. First, he failed to mention what time he left the house that fateful day. Second, he did not present any witness to corroborate his alleged whereabouts on said date. Third, even assuming the truth of his allegation, appellant himself admitted that he was a mere three kilometers away from his house. Due to his proximity, he could have easily left his collection chores, return to his house and perpetrate the sexual assault on Mary Joy. Clearly, it was not impossible for him to have been in the locus criminis at the time of the commission of the crime.[13] Neither did the testimony of Melita help his cause. It only made clear the fact that she did nothing to assist her daughters in vindicating their honor and she left the matter completely to her parents. Neither did she lift a finger to help her husband, the appellant, during his incarceration.

Be that as it may, the accused can be convicted only of simple statutory rape and, accordingly, the penalty of death imposed against him should be reduced to reclusion perpetua. The Information alleged that the appellant raped his 11-year old stepdaughter Mary Joy. The qualifying circumstance of minority of Mary Joy was proved beyond reasonable doubt by the presentation of her birth certificate. However, the relationship between the appellant and Mary Joy was not established with the same degree of proof. Although the prosecution established that Mary Joy was the daughter of Melita, it failed to offer the marriage contract of the appellant and Melita which would establish that Mary Joy is the stepdaughter of the appellant. The testimony of Melita and even the admission of the appellant regarding their marriage do not meet the required standard of proof.[14] The Court cannot rely on the disputable presumption that when a man and a woman live together as husband and wife, they are presumed to be married. Relationship as a qualifying circumstance in rape must not only be alleged clearly. It must also be proved beyond reasonable doubt, just as the crime itself.[15] Neither can it be argued that without the marriage contract, a common-law relationship between the appellant and Melita was still proved and this should qualify the crime at bar. To be sure, what the Information alleged is that the appellant is the stepfather of Mary Joy. It made no mention of a common-law relationship between the appellant and Melita. Hence, to convict appellant with qualified rape on the basis of the common-law relationship is to violate his right to be properly informed of the accusation against him.

As to the second count of statutory rape allegedly committed on September 27, 1997 against Mary Joy (Criminal Case No. 402-M-98), we find that the trial court erred in convicting the appellant of consummated rape. Mary Joy's account of what transpired on said date clearly reveals that the appellant failed to insert his penis in her organ, thus:

"Q.

After undressing you, what did the accused do?

A.

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He laid me down.

Q.

After you were laid down by your stepfather, what did he do?

A.

He went on top of me.

x x x x x x x x x

Q.

After the accused laid on top of you, what did he do?

A.

He kissed me.

Q.

Was he wearing anything at that time when he placed himself on top of you?

A.

None, sir.

Q.

At what moment did he remove his clothings?

A.

After he undress (sic) me.

Q.

After the accused had laid (sic) on top of you, what did he do next?

A.

He was inserting his penis.

Q.

Did he succeed in inserting his penis in your private parts (sic)?

A.

No, sir.

Q.

How did it happen that the accused failed to insert his penis in your private organs (sic)?

A.

Because my brother arrived.

Q.

You said that the accused failed to insert, did he attempt to insert his penis in your private organ?

A.

No, sir.

x x x x x x x x x

Q.

What did the accused do in (sic) his penis in trying (sic) to insert his penis into your private organ?

A.

It touched my private organ."[16]

The aforequoted testimony shows that the appellant failed to consummate the crime of rape as his penis merely touched Mary Joy's organ. In People vs. Campuhan,[17] the Court clarified that mere touching of the private organ of the victim should be understood "as inherently part of the entry of the penis into the labias of the femal organ and not mere touching alone of the mons pubis or pudendum. x x x Thus, touching when applied to rape cases does not simply mean mere epidermal contact, stroking or grazing of organs, a slight brush or a scrape of the penis on the external layer of the victim's vagina, or the mons pubis x x x. There must be sufficient and convincing proof that the penis indeed touched the labias or slid into the female organ and not merely stroked the external surface thereof for an accused to be convicted of consummated rape. As the labias are required to be "touched" by the penis, which are by their natural situs or location beneath the mons pubis or the vaginal surface, to touch with the penis is to attain some degree of penetration beneath the surface, hence the conclusion that touching the labia majora or minora of the pudendum constitutes consummated rape."

Applying the foregoing jurisprudence and taking into account Article 6 of the Revised Penal Code,[18] the appellant can only be convicted of attempted rape. He commenced the commission of rape by removing his clothes, undressing and kissing his victim and lying on top of her. However, he failed to perform all the acts of execution which should produce the crime of rape by reason of a cause other than his own spontaneous desistance, i.e., by the timely arrival of the victim's brother. Thus, his penis merely touched Mary Joy's private organ. Accordingly, as the crime committed by the appellant is attempted rape, the penalty to be imposed on him should be an indeterminate prison term of six (6) years of prision correccional as minimum to twelve (12) years of prision mayor as maximum.

As to the rape charge of Estrella (Criminal Case No. 388-M-98), the appellant argues that the trial court erred in convicting him of attempted rape as the evidence failed to establish the elements of the crime. Appellant contends that, as per the testimony of Estrella, the appellant only got as far as raising her shirt up to her abdomen for Estrella resisted his advances and caused Melita to awaken and enter the room. As Estrella's account of the incident showed that there was no real and immediate threat to her womanhood up to the time the appellant desisted from consummating the rape, he could not be found guilty of attempted rape.

We agree. A careful scrutiny of the records reveals that the prosecution evidence failed to prove that rape, at whatever stage, was committed. As recounted by Estrella, the appellant surreptitiously entered her bedroom and laid down beside her. He repeatedly tried to pull down her shorts and panty but he failed as she resisted. He also tried to remove her shirt but he was able to lift it only up to her abdomen as she would lower it again. The appellant touched her private parts. These acts, as described by Estrella, are insufficient to prove that the appellant intended to have carnal knowledge of Estrella. He did not lie on top of Estrella or even made the motion of removing his underwear. In fact, he kept his clothes on during the entire time that he was in the bedroom. Neither

does it appear that he tried to insert his finger or any object into the genital or anal orifice of Estrella. All that the appellant was able to do was touch her "private parts."[19] From the circumstances thus proved, the appellant can only be convicted of acts of lasciviousness.

On a last note, appellant's theory that Mary Joy, Estrella and Benito were motivated by ill-feelings in filing the rape charges against him does not merit serious consideration. His claim that the filing of the cases is an act of vengeance on the part of the children as he used to spank them once in a while is not persuasive. Parental punishment is never a valid reason for a victim to cry rape against the man in the house who she looks up to as her father,[20] especially where, as in this case, the victims were children who had not been exposed to worldly ways. We also find it hard to believe that Benito will utilize his grandchildren to hit back at the appellant for ceasing to give him financial support. No grandfather would expose his grandchildren to shame and humiliation were it not for the purpose of vindicating the wrong committed on them. Moreover, as explained by Benito on rebuttal, the appellant was so poor he could not have been in a position to provide him financial assistance. The appellant did not earn enough. It was Benito who even assisted the appellant in looking for jeepneys he could drive for his livelihood. Benito merely intervened in filing the rape charges as his granddaughters ran to him for assistance.[21]

IN VIEW WHEREOF, the impugned Decision is modified as follows:

In Criminal Case No. 388-M-98, appellant IRENEO ALCOREZA y MARCELINO is adjudged guilty of acts of lasciviousness under Article 336 of the Revised Penal Code. He is hereby sentenced with the indeterminate penalty of six (6) months of arresto mayor as minimum to six (6) years of prision correccional as maximum, and to indemnify the victim Estrella Manila in the amount of five thousand pesos (P5,000.00) as moral damages and two thousand pesos (P2,000.00) as exemplary damages;

In Criminal Case No. 401-M-98, the appellant is found guilty of simple statutory rape and is sentenced to suffer the penalty of reclusion perpetua and to pay the complainant Mary Joy Manila the sum of fifty thousand pesos (P50,000.00) by way of indemnity, the additional sum of fifty thousand pesos (P50,000.00) as moral damages and twenty-five thousand pesos (P25,000.00) as exemplary damages; and

In Criminal Case No. 402-M-98, the appellant is found guilty of attempted rape. He is sentenced to an indeterminate prison term of six (6) years of prision correccional as minimum to twelve (12) years of prision mayor as maximum, and to indemnify Mary Joy Manila the sum of twenty-five thousand pesos (P25,000.00) as moral damages.

SO ORDERED.

Davide, Jr., CJ., Bellosillo, Melo, Vitug, Mendoza, Panganiban, Quisumbing, Pardo, Buena, Ynares-Santiago, De Leon, Jr., and Sandoval-Gutierrez, JJ., concur.
Kapunan, J., on official leave.

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[1] Rollo, p. 6.

[2] Original Records, pp. 8-9.

[3] June 17, 1998 TSN, Mary Joy Manila, Original Records, pp. 44-48.

[4] June 24, 1998 TSN, Mary Joy Manila, Original Records, pp. 55-60; July 1, 1998 TSN, Mary Joy Manila, Original Records, pp. 79-88; July 13, 1998 TSN, Benito Gonzales y de Jesus, Original Records, pp. 115-121.

[5] July 6, 1998 TSN, Estrella G. Manila, Original Records, pp. 97-103.

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[6] July 17, 1998 TSN, Dr. Manuel Aves, Original Records, pp. 135-139.

[7] July 22, 1998 TSN, Ireneo Alcoreza y Marcelino, Original Records, pp. 169-172.

[8] July 27, 1998 TSN, Ireneo Alcoreza y Marcelino, Original Records, pp. 178-181.

[9] August 3, 1998 TSN, Melita Gonzales y Alcoreza, Original Records, pp. 196-200.

[10] Penned by RTC Judge Cesar M. Solis, Third Judicial Region, Malolos, Bulacan, Branch 21.

[11] Rollo, pp. 66-77.

[12] June 17, 1998 TSN, Mary Joy Manila, Original Records, pp. 45-47.

[13] People vs. Baybado, 335 SCRA 712 (2000).

[14] People vs. Tabanggay, 334 SCRA 575 (2000).

[15] People vs. Padilla, G.R. No. 137648, March 30, 2001.

[16] June 24, 1998, Mary Joy Manila, Original Records, pp. 57-58.

[17] 329 SCRA 270 (2000), citing People vs. De la Peña, 233 SCRA 573 (1994).

[18] ART. 6. Consummated, frustrated, and attempted felonies. -- x x x

There is an attempt when the offender commences the commission of a felony directly by overt acts, and does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance.

[19] July 6, 1998 TSN, Estrella Manila, Original Records, pp. 100-102.

[20] People vs. Baybado, 335 SCRA 712 (2000).

[21] August 5, 1998 TSN, Benito Gonzales on rebuttal, Original Records, pp. 206-209.

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