

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANTHONY ESCORDIAL, ACCUSED-APPELLANT.

G.R. Nos. 138934-35. January 16, 2002

Ponente: MENDOZA, J.

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MENDOZA, J.:

These cases are before this Court for review from the decision,[1] dated February 26, 1999, of the Regional Trial Court, Branch 53, Bacolod City, finding accused-appellant Anthony Escordial guilty of robbery with rape and sentencing him to death and to pay private complainant Michelle Darunday the amounts of P3,650.00 representing the amount taken by him, P50,000.00 as moral damages, P30,000.00 as exemplary damages, and the costs.

In Criminal Case No. 97-18117, the information against accused-appellant charged him with the crime of rape committed as follows:

That on or about the 27[th] day of December, 1996, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused armed with a deadly weapon, a knife, by means of force, violence and intimidation, did, then and there willfully, unlawfully and feloniously have carnal knowledge of the complainant Michelle Darunday y Jintula, against the latter's will.

All contrary to law and with the aggravating circumstance that the said offense was committed in the dwelling of the said party during nighttime while [she] was asleep inside her room.

Act contrary to law.[2]

In Criminal Case No. 97-18118, the information charged accused-appellant with robbery with rape as follows:

That on or about the 27[th] day of December, 1996, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the said accused, armed with a deadly weapon, a knife, with intent of gain and by means of violence and intimidation on the person, did, then and there willfully, unlawfully and feloniously take from Michelle Darunday y Jintula the sums of P3,650.00, belonging to said offended party and [on] the occasion thereof have carnal knowledge with the complainant Michelle Darunday y Jintula, against her will, and inside her room wherein she was temporarily residing as a boarder.

All contrary to law and with aggravating circumstance that the said offense was committed inside the dwelling of the offended party and during nighttime the latter not having given provocation for the offense.

Act contrary to law.[3]

When arraigned on February 25, 1997, accused-appellant pleaded not guilty to the charges, whereupon the two cases were jointly tried.

The prosecution presented eight witnesses, namely, Jason Joniega, Mark Esmeralda, Erma Blanca,[4] Dr. Joy Ann Jocson, PO3 Nicolas Tancinco, Leo Asan, Ma. Teresa Gellaver, and Michelle Darunday. Their testimonies are as

follows:

Jason Joniega and Mark Esmeralda testified that at around 8 o'clock in the evening of December 27, 1996, they and Mark Lucena were playing inside a jeepney parked in front of a boarding house owned by Pacita Aguillon[5] at No. 17 Margarita Extension, Libertad St., Purok Amelia 2, Barangay 40, Bacolod City. As one of them hit his head on the rails of the jeepney, the boys were told by a man sitting inside the jeepney to go home lest they would meet an accident. The man was later identified by Jason Joniega and Mark Esmeralda as accused-appellant.[6]

Living in a boarding house in front of which the jeepney was parked were Michelle Darunday, Erma Blanca, and Ma. Teresa Gellaver. They stayed in a bedroom on the ground floor. That same night, December 27, 1996, Teresa went to sleep at around 9:30 p.m., while Michelle and Erma watched television for a while before going to bed. They slept beside each other on two beds placed side by side, with Teresa nearest the wall, Michelle in the middle, and Erma on the other side.

While the three were asleep, Erma was awakened by the presence of a man. The man had his head covered with a t-shirt to prevent identification and carried a knife about four inches long. He warned Erma not to shout or he would kill her. He then asked Erma where her money was, and the latter pointed to the wall where she had hung the bag which contained her money. Michelle, who by then was already awake, told Erma to give the man her money so he would leave. Erma gave the man P300.00, but the latter said to give him all her money. He told Erma that he would look for more money and, if he found more, he would kill her. For this reason, Erma gave the rest of her money. Afterwards, she was told to lie on her side facing the wall. The man then turned to Michelle and Teresa. Michelle gave him her money, but Teresa said her money was in the other room. However, she was not allowed to leave the bedroom. The man was able to get P500.00 from Erma and P3,100.00 from Michelle.

After getting their money, the man gave a t-shirt to Erma to blindfold Teresa and another to Michelle to blindfold Erma. He blindfolded Michelle himself and then began touching her in different parts of her body. He ordered her to take off her t-shirt, threatening to kill her if she did not do as he commanded. He then went on top of Michelle and tried to insert his penis into her vagina. As he had difficulty doing so, he instead inserted his two fingers. He tried once more to insert his penis, but again failed. The man then rose from the bed and took some soapy water, which he proceeded to insert into Michelle's vagina. He finally succeeded in inserting his penis into Michelle's vagina. Michelle felt great pain and pleaded with the man to stop, but the man paid no heed, and only stopped after satisfying his lust.

Michelle said that although she was blindfolded and could not see, she could feel that the man had no cover on his face when he was raping her. She felt that his chest was rough and had some scars. When he placed her hands on his nape, she felt that it was also rough.

On the other hand, Erma claimed she was able to see through her blindfold and that she saw the man's face because of the light coming from the lamp post outside the boarding house. Their bedroom window had panes through which the light filtered in.

After he had finished raping Michelle, the man sat on the bed and talked to the three women. He told Michelle that he used to make catcalls at her and called her a beautiful girl whenever she passed by his place but Michelle had ignored him. He told them that he was from Hinigaran, but later took back his statement when Teresa told him that she was from Binalbagan, which was near Hinigaran. Michelle then told him that she worked at the City Engineer's Office and graduated from the Central Mindanao University. The man cursed when he learned that Michelle was from Mindanao. As he spoke to Michelle, he leaned over the bed and mashed the breasts of Erma and Teresa.

After a while, the man told Michelle he wanted to have sex with her again. Michelle pleaded with him, but the man threatened to call his companions and said it would be worse for her if his companions would be the ones to rape her. He ordered Michelle to lie on her stomach and then inserted his penis into her anus. When he was through, he gave Michelle a blanket to cover herself and returned to her a pair of earrings which he had taken from her. He then left, but not before warning the women not to report the matter to anyone or he would kill them.[7]

Mark Esmeralda testified that he was in his bedroom on the second floor of their house, toying with a flashlight, when he saw from his bedroom window a man wearing denim shorts coming out of the boarding house. It was around 12:30 in the morning then. The man was nibbling something. Mark saw the man jump over the fence. After 30 minutes, Mark went down from his room and told his parents what he had seen. His parents then went out to check what had happened. Mark identified accused-appellant as the man he saw that night.[8]

Michelle, Erma, and Teresa were so frightened that they were not able to ask for help until 30 minutes after the man had left. They told their neighbor, Tiyo Anong, that a man had come to the house and robbed them. They also called up Allan Aguillon, the son of the owner of the boarding house, who in turn reported the incident to the police. When the policemen arrived, they asked Michelle to describe the assailant, but she told them that she could only identify his voice and his eyes. Accompanied by the police, the three women looked for the man around the Libertad area, but they did not find him. Michelle, Erma, and Teresa were taken to the police station at Bac-Up 6 for investigation. But, at Michelle's request, Erma and Teresa did not tell the others that Michelle had been raped by their attacker.

Upon returning home, Michelle found her aunt and uncle. She embraced her aunt and told her about her ordeal. Michelle was again taken to the police headquarters, where she was referred to the Women's Desk to report the rape. They were able to go home to the house of Michelle's aunt at around 5 to 6 o'clock in the evening.[9]

PO3 Nicolas Tancinco, one of the policemen who responded to the report shortly after the commission of the crime, also testified for the prosecution. He said that the assailant was described to him as wearing long hair and having a rough projection on the back of his neck, small eyes, a slim body, and a brown complexion. Later on, Michelle Darunday, accompanied by Allan Aguillon, returned to the police station to report the rape committed against her. Tancinco entered her complaint in the police blotter and referred Michelle to the Women's Desk.

In the morning of December 28, 1996, Tancinco returned to the boarding house. He found that the intruder was able to gain entry to the house through the window of the bathroom. He noticed that the room beside those of the three women had been ransacked, with the cabinets opened and the clothes in disarray.

The following day, on December 29, 1996, Tancinco went around Margarita Extension and learned about the children playing on the street around the time the intruder entered the boarding house. He was told by Mark Esmeralda and Jason Joniega that they saw a man inside the jeepney where they were playing at the time of the incident. Tancinco was likewise informed by Esmeralda that the person he saw inside the jeepney was the same person he saw coming out of the boarding house later that night. According to Tancinco, the children said that they could identify the man if he was shown to them. At around 8 o'clock that evening, Tancinco questioned a certain Tiyo Anong and Ramie about the identity of the suspect. Ramie said that the description of the suspect fitted that of a worker at a café called Coffee Break Corner, about two houses away from the boarding house.

Thus, on January 2, 1997, Tancinco and some companions proceeded to the Coffee Break Corner and interviewed the security guard, who told them that a certain Fidel Hinolan owned the café. When interviewed by Tancinco and his companions, Fidel Hinolan told them that accused-appellant was his helper and that the latter had gone home on December 27, 1996 to Barangay Miranda, Pontevedra, Negros Occidental.

Based on the information furnished by Hinolan, Tancinco and his fellow police officers, Michelle Darunday, Allan Aguillon, and Pacita Aguillon went to Barangay Miranda, Pontevedra, Negros Occidental at around 10 o'clock in the morning of January 3, 1997 and asked the assistance of the police there to locate accused-appellant. PO2 Rodolfo Gemarino asked one of his colleagues at the Pontevedra police to accompany Tancinco and his companions. They found accused-appellant at the basketball court and "invited" him to go to the police station for questioning.[10]

Michelle Darunday remained at the Pontevedra police station. When accused-appellant was brought there, he saw Michelle and blushed. Michelle looked at him and recognized him as the man who had robbed and raped her on December 27, 1996. Accused-appellant was asked to take off his t-shirt. Michelle said that she just kept quiet while accused-appellant tried to talk to her. However, according to Tancinco, Michelle confirmed to him that accused-appellant was the man who had attacked her, identifying him through a rough projection, or a keloid, on the back of his neck and his voice. At the time of his arrest, accused-appellant had a short haircut. He was transferred to the Bacolod police station for further investigation.[11] Allan Aguillon took a picture of accused-appellant (Exh. F) at the Pontevedra police station.[12]

At the Bacolod police station, Erma Blanca, Ma. Teresa Gellaver, Jason Joniega, and Mark Esmeralda were asked whether accused-appellant was the same person they saw on the night of the incident. They were taken one by one to the jail cell and asked to point to the person that they had seen that night. They picked accused-appellant out of four people who were inside the jail cell.[13]

Michelle Darunday executed an affidavit, dated January 4, 1997, identifying accused-appellant as the person who had robbed and raped her.[14] She testified that she and her friends had gone to the Coffee Break Corner sometime in September or October 1996. On the way home, she was approached by accused-appellant. He asked Michelle what her name was, and she gave it to him, albeit reluctantly. She usually passed by the said caf? when going home and accused-appellant would often whistle at her and call her a beautiful girl. Michelle had simply ignored him and gone on her way.[15]

Dr. Joy Ann C. Jocson, Medical Officer IV of the Bacolod City Health Department, examined Michelle Darunday and made the following findings and remarks:

- Abrasions noted on the right and left Labia Minora and on the posterior fourchette.
- New Lacerations noted on the hymenal ring on the following location 1 o'clock position, 3 o'clock position, and 9 o'clock position.
- Vaginal introitus admits 2 fingers but with pain.
- Presently, patient with menstruation.

In my opinion, the patient would need a urinalysis (since she complains of pain upon urination) and possible Medical treatment if necessary, for about 7 to 10 days. And if necessary, psychiatric evaluation & management is also recommended.[16]

Testifying in court, Dr. Jocson said there was penetration of the victim's vagina as shown by the fact that the hymenal rim had lacerations at the 1, 3, and 9 o'clock positions. Since the edges of the lacerations were sharp, she concluded that these lacerations were less than a week old at the time of the examination. According to Dr. Jocson, these were caused by abrasions due to force or pressure applied on the vaginal area. When asked during cross-examination whether the victim had abrasions or contusions on her body at the time of her examination, Dr. Jocson said that she could not remember. She could not remember either whether there was sperm in the victim's vagina when she examined the latter. She said that no sperm specimen had been taken from the victim. She

testified that it could not be determined how many times the victim had previously engaged in sexual intercourse because this would depend on the elasticity of the victim's hymen. She opined, however, that it would be less than 10 times in the case of the victim. Dr. Jocson stated it was possible the victim agreed to have sexual intercourse voluntarily based on the lack of marks of violence on the latter, although it was also possible that she was merely forced to have sex because she was threatened. On re-direct examination, she stated it was possible that seminal fluid was not found on the victim's private parts because the victim was having her monthly period. She said the lacerations on the victim's vagina would result whether the sexual intercourse was voluntary or involuntary on the part of the victim.[17]

Leo Asan, an employee at the City Health Office in Bacolod, testified that the medical certificate presented by the prosecution, which was undated, was a faithful reproduction of what was written by Dr. Joy Ann Jocson on January 3, 1997 in the logbook.[18]

The defense presented as its witnesses Elias Sombito, Aaron Lavilla, PO2 Rodolfo Gemarino, Ricardo Villaspen, Nestor Dojillo, accused-appellant Anthony Escordial, Jerome Jayme, and Lucila Jocame. These witnesses gave a different account of the events that led to the arrest of accused-appellant. Their version is as follows:

Accused-appellant testified that he was employed by Fidel Hinolan on January 21, 1996. He said he started on August 6, 1996 as a dishwasher and was later made cashier. Accused-appellant said that he went home to Pontevedra, Negros Occidental on December 24, 1996, arriving there at 2 o'clock in the afternoon. Hinolan paid him P500.00, which he gave to his mother as his Christmas gift. He dropped by the house of Aaron Lavilla. At 5:30 p.m., he returned to Coffee Break Corner in Bacolod City.

In the evening of December 26, 1996, accused-appellant asked permission from Hinolan to go home to Pontevedra to stay there until January 1997 as the restaurant would be closed anyway during this period. Hinolan gave accused-appellant his permission and paid the latter his salary of P600.00 as well as a P200.00 bonus. Hence, at 2 o'clock in the afternoon of December 27, 1996, accused-appellant took the bus home, arriving in Barangay Miranda, Pontevedra, Negros Occidental an hour later. He went straight home to his mother and gave her P600.00, telling her to use P400.00 for New Year's Day.[19]

Accused-appellant also saw Elias[20] Sombito, who told him to look for Aaron Lavilla because a cockfight derby was being held that day in their barangay. Accused-appellant, therefore, looked for Aaron Lavilla and found him at the basketball court. Aaron's mother asked accused-appellant to help her bring to the cockpit some cases of beer which she planned to sell there. Accused-appellant obliged.

At the cockpit, Elias Sombito asked him to take care of his cocks. Accused-appellant asked Aaron Lavilla to go with him to the cockpit, but the latter continued playing basketball and only proceeded to the cockpit after the game was finished. The derby ended at around 9 o'clock in the evening.

At about 10 o'clock that night, accused-appellant and Aaron Lavilla went to the latter's house and slept there. The following day, December 28, 1996, accused-appellant helped Aaron Lavilla's mother with the household chores, cutting the grass and feeding the cocks. He stayed in Barangay Miranda until January 3, 1997.[21] Accused-appellant's testimony as to his whereabouts from December 27, 1996 to January 3, 1997 was corroborated by Elias Sombito[22] and Aaron Lavilla.[23]

As to the circumstances of accused-appellant's arrest, PO2 Rodolfo Gemarino and Ricardo Villaspen testified that at around 11 o'clock in the morning of January 3, 1997, three members of the Bacolod police, led by PO3 Nicolas Tancinco, went to the headquarters of the Pontevedra police to ask for help in locating a person named Anthony Escordial, said to be a resident of Barangay Miranda, Pontevedra, Negros Occidental, who was wanted

in connection with a case for robbery with rape. Although Tancinco and his companions showed their mission order to Gemarino, they did not show a warrant for accused-appellant's arrest. Nonetheless, Gemarino told PO2 Gella of the Pontevedra police and Ricardo Villaspen, the tanod commander of Barangay Miranda, to help the Bacolod policemen look for accused-appellant. The group left the police station, although Tancinco's other companions, Michelle Darunday and Pacita Aguillon, stayed in the headquarters.[24]

The arresting party, composed of Tancinco, PO2 Gella, and Villaspen, proceeded to the house of accused-appellant in Barangay Miranda, but the latter was not there. They found accused-appellant at the basketball court watching a game. After informing him that he was a suspect in a robbery case, the group invited accused-appellant to go with them to the police headquarters.

Nestor Dojillo, the barangay captain of Barangay Miranda, was at the police station. He testified that when accused-appellant, together with Tancinco and his companions, arrived at the police station, he (Nestor Dojillo) followed them to the investigating room. Inside the room were Michelle Darunday, three members of the Bacolod police, Villaspen, and Gemarino. Gemarino asked Michelle if she could identify accused-appellant as her attacker, but the latter said that she could do so only if she could see a lump on his back. Gemarino told accused-appellant to take off his t-shirt. When accused-appellant did as Gemarino ordered, Michelle looked at his back for identifying marks, while Allan Aguillon took his photograph. Gemarino then asked Michelle whether accused-appellant was her attacker, but she replied that she was not sure because the attacker was wearing a mask when she was raped. The Bacolod policemen requested Gemarino to allow them to bring accused-appellant to Bacolod City as they still had some witnesses who could identify the suspect there. Accused-appellant was allowed to go with them after Dojillo and Gemarino asked the Bacolod policemen not to harm him.[25] Dojillo's testimony was corroborated by the testimonies of PO2 Rodolfo Gemarino,[26] Ricardo Villaspen,[27] and accused-appellant.[28]

Accused-appellant further testified that on the way to Bacolod City, PO3 Tancinco began beating him and hitting him with the butt of a shotgun to force him to admit liability for the crime. Because accused-appellant refused to do so, he was taken by Tancinco and his companions to a lodging house where he was subjected to torture. Accused-appellant was told to take off his clothes and to lie down. PO3 Tancinco and his companions then proceeded to hit him with a belt. Afterwards, they covered his mouth and took him to the bathroom. Tancinco put a knife to his neck, telling him that he would be killed if he refused to admit that he was the culprit. As he continued to deny liability for the crime, accused-appellant was subjected to further torture. Later on, the driver entered the room and brought with him a child, whose head was covered, who was instructed to identify accused-appellant. The child, however, did not react upon seeing accused-appellant, who was thus brought back to the headquarters where he was again maltreated. Accused-appellant said that he was left alone in his cell and tied to a chair. He also said that at around 8 o'clock that evening, two of the complainants arrived and the police told them to identify accused-appellant as their attacker. But these two complainants just kept looking at accused-appellant and even asked the policemen if he was the suspect.

After the two women had left, PO3 Tancinco took accused-appellant to a house so that he could be identified by another complainant. But this complainant likewise said that he was not the assailant, as the latter had a heavier build and longer hair. Accused-appellant was returned to the police headquarters.

At the headquarters, PO3 Tancinco talked to accused-appellant and told him that he would help him if accused-appellant confessed to the crime. But accused-appellant again refused because he said he had not done anything wrong. The police then began beating him up again. PO3 Tancinco burnt accused-appellant's lips and tongue with a lighted cigarette.[29]

At around 12:00 noon of January 6, 1997, Gemarino, Dojillo, and Villaspen, together with accused-appellant's grandfather, a certain Inspector Tamayo, and reporters from Bombo Radyo, went to the Bacolod police station to visit accused-appellant. They found him tied to a chair. When they entered the cell, accused-appellant, thinking that they were members of the Bacolod police, held up his hands and asked for pity. The visitors assured accused-appellant that they would not hurt him. Accused-appellant had a limp because his feet were injured. For this reason, Dojillo and his companions asked the Bacolod police to let them take accused-appellant to the hospital for treatment. Accused-appellant was thus brought to the provincial hospital in Bacolod for x-ray and medical treatment. He was taken back to the police station thereafter.[30]

Lucila Jocame, Records Officer of the Corazon Locsin Montelibano Memorial Regional Hospital (CLMMH), identified in court[31] the medical certificate (Exh. 12) issued by the said hospital, showing the injuries sustained by accused-appellant, to wit:

5 CM LINEAR ABRASION WITH CONTUSION HEMATOMA LEFT SCAPULAR AREA.

1 CM LINEAR ABRASION RIGHT SCAPULAR AREA.

4 x 2 CM CONTUSION HEMATOMA LEFT LATERAL CHEST LEVEL OF T12.

2 x 2 CM CONTUSION HEMATOMA M/3 RIGHT LEG ANTERIOR ASPECT.

2 x 4 CM CONTUSION HEMATOMA RIGHT KNEE LATERAL ASPECT.

3 x 3 CM SWELLING AND TENDER LEFT ANKLE.

1 x 1 CM CONTUSION HEMATOMA D/3 RIGHT LEG POSTERIOR ASPECT.

1 x 1 CM CONTUSION HEMATOMA M/3 RIGHT THIGH POSTERIOR ASPECT.

2 x 2 CM CONTUSION HEMATOMA RIGHT PERI AURICULAR AREA.

X-RAY # 280 dated January 6, 1997: SKULL APL: CHEST BUCKY RIGHT THIGH: APL: RIGHT AND LEFT FOOT APO.

"No Radiographic evidence of fracture in this examination."[32]

The last witness presented by the defense was Jerome[33] Jayme, General Manager of Royal Express Transport, Inc., who testified that the last bus trip from Kabankalan to Bacolod on December 27, 1996 left at 6 o'clock in the evening. The trip from Kabankalan to Barangay Miranda, Pontevedra, Negros Occidental would take one hour. On cross-examination, Jayme stated that the said bus would reach Bacolod City by 7:40 to 8:00 p.m. if it left Kabankalan at 6:00 p.m. His company's buses were not allowed to pick up passengers along the way to Bacolod City because of the incidence of highway robbery. Jayme identified in court a certification (Exh. 12-a) he issued which stated that the last bus trip of their company on December 27, 1996 was at 6:00 p.m.[34]

On February 26, 1999, the trial court rendered a decision, the dispositive portion of which stated:

WHEREFORE, it is the well-considered view of this court, after a thorough, painstaking and exhaustive review and examination of the evidence adduced in this case, that the accused ANTHONY ESCORDIAL y GALES, is GUILTY, beyond a reasonable doubt of the crime of Robbery with Rape, punished under Art. 294, paragraph 1 of the Revised Penal Code, as amended. The commission of the crime was attended by three aggravating circumstances of nighttime, that the crime was committed in the dwelling of the offended party, and that craft, fraud and disguise were employed by the accused in the commission of the crime under paragraphs 3, 6, and 14 of Art. 14 of the Revised Penal Code. There is no mitigating circumstance. Applying Article 63, paragraph 1, the accused is hereby sentenced to the maximum penalty of DEATH. He is also

condemned to pay private complainant the sum of P3,650.00, representing the money taken by the accused; P50,000.00 as moral damages, P30,000.00 as exemplary damages, and the costs.

SO ORDERED.[35]

Hence this appeal. Accused-appellant contends that:

- THE COURT A QUO ERRED IN DISREGARDING THE DEFENSE OF THE ACCUSED TO THE EFFECT THAT ANTHONY ESCORDIAL CAN NEVER BE THE ROBBER-RAPIST WHO RAVISHED MICHELLE DARUNDAY ON THAT FATEFUL NIGHT OF DECEMBER 27, 1996, AS THE FORMER (ESCORDIAL) DID NOT HAVE THE QUALITIES, CHARACTER AND EXPERTISE OF THE LATTER (ROBBER-RAPIST).

- THE COURT A QUO ERRED IN CONCLUDING THAT THE DESCRIPTION OF THE ASSAILANT AS DESCRIBED BY THE COMPLAINANT AND HER WITNESSES FIT WITH THAT OF HEREIN ACCUSED, THE TRUTH OF THE MATTER IS THAT THERE WAS NO DESCRIPTION OF THE ASSAILANT EVER MADE BY ANYBODY PRIOR TO THE "WARRANTLESS ARREST" OF THE ACCUSED. THE AFFIDAVITS OF THE COMPLAINANT AND HER WITNESSES WERE IN FACT DRAFTED, EXECUTED AND SIGNED ONLY SEVERAL DAYS AFTER THE ACCUSED WAS BROUGHT INTO THE CUSTODY OF THE BACOLOD POLICE.

- THE COURT A QUO ERRED IN DISREGARDING THE TESTIMONIES OF WITNESSES PO2 RODOLFO GEMARINO (DEP. CHIEF OF POLICE OF PONTEVEDRA), BRGY. CAPT. NESTOR DOJILLO (BRGY. CAPT. OF MIRANDA AND THEN MEMBER OF THE SANGGUNIANG BAYAN OF PONTEVEDRA), AND RICARDO VILLASPEN (THEN COMMANDER OF BARANGAY TANOD IN PONTEVEDRA) TO THE EFFECT THAT MICHELLE DARUNDAY FAILED TO IDENTIFY THE ACCUSED DURING THEIR ENCOUNTER IN PONTEVEDRA POLICE STATION.

- THE COURT A QUO ERRED IN NOT EXCLUDING ALL EVIDENCES, TESTIMONIAL AND DOCUMENTARY, OBTAINED BY THE PROSECUTION DURING THE WARRANTLESS ARREST OF THE ACCUSED AND THE LATTER'S SUBJECTION TO CUSTODIAL INVESTIGATION WITHOUT LETTING HIM KNOW OF HIS CONSTITUTIONAL RIGHTS, PARTICULARLY HIS RIGHT TO COUNSEL OF CHOICE.

- THE COURT A QUO ERRED IN CONCLUDING THAT PROSECUTION WITNESSES WERE ABLE TO POSITIVELY IDENTIFY THE ACCUSED IN A POLICE LINE UP DESPITE THE FACT THAT OF THE PERSONS BEING LINED UP ONLY THE ACCUSED WAS HANDCUFFED.

- THE COURT A QUO ERRED IN GIVING CREDENCE TO THE TESTIMONIES OF PROSECUTION WITNESSES TO THE EFFECT THAT THEY WERE ABLE TO IDENTIFY THE ASSAILANT BY FACE THAT VERY EVENING OF DECEMBER 27, 1996 AMIDST THE IMPOSSIBILITY OF DOING THE SAME, GIVEN THE DISTANCE, THE INTENSITY OF LIGHT, AND THE TERRIFYING SITUATION, WHICH ALL OBSCURE, IF NOT DESTROY, THE CLARITY OF HUMAN MEMORY AND PERCEPTION.

- THE COURT A QUO ERRED IN CONCLUDING THAT THE DEFENSE FAILED TO SHOW THE IMPOSSIBILITY OF ACCUSED TO GO TO BACOLOD THAT EVENING OF DECEMBER 27, 1996, DESPITE OVERWHELMING EVIDENCE SUBMITTED, BY SIMPLY RELYING ON THE POSSIBILITY OF THE ACCUSED TAKING A CARGO TRUCK FROM PONTEVEDRA TO BACOLOD.

- THE COURT A QUO ERRED IN CONCLUDING THAT ACCUSED ANTHONY ESCORDIAL HAD MOTIVE TO COMMIT THE CRIME CHARGED BASED ON A WRONG PREMISE THAT THE DEFENSE ALLEGEDLY DID NOT REFUTE THE ALLEGATIONS OF THE COMPLAINANT THAT ACCUSED ATTEMPTED TO BE ACQUAINTED WITH THE COMPLAINANT AND WHISTLED AT

THE LATTER SEVERAL TIMES.[36]

The issues raised by accused-appellant concern (1) the alleged violations of his constitutional rights and the consequent admissibility of the evidence against him and (2) the credibility of the prosecution witnesses.

I. Alleged Violations of Accused-appellant's Constitutional Rights

A. Accused-appellant questions the legality of his arrest without a warrant. Indeed, PO3 Nicolas Tancinco admitted that he and his companions had arrested accused-appellant without any warrant issued by a judge.[37] Art. III, §2 of the Constitution states:

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

To implement this provision, Rule 113, §5 of the Revised Rules of Criminal Procedure provides that a peace officer or a private person may, without a warrant, arrest a person only under the following circumstances:

(a)

When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

(b)

When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and

(c)

When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

The cases at bar do not fall under paragraphs (a) or (c) of the aforequoted rule. At the time of his arrest, accused-appellant was watching a game in a basketball court in Barangay Miranda, Pontevedra, Negros Occidental. He was not committing or attempting to commit a crime when he was arrested by the police on that day. Nor was he an escaped prisoner whose arrest could be effected even without a warrant.

The question is whether these cases fall under paragraph (b) because the police officers had personal knowledge of facts and circumstances that would lead them to believe that accused-appellant had just committed a crime. The phrase "personal knowledge" in paragraph (b) has been defined in this wise:

Personal knowledge of facts in arrests without a warrant under Section 5(b) of Rule 113 must be based upon "probable cause" which means "an actual belief or reasonable grounds of suspicion." The grounds of suspicion are reasonable when, in the absence of actual belief of the arresting officers, the suspicion that the person to be arrested is probably guilty of committing the offense is based on actual facts, i.e., supported by circumstances sufficiently strong in themselves to create the probable cause of guilt of the person to be arrested. A reasonable suspicion therefore must be founded on probable cause, coupled with good faith on the

part of the peace officer making the arrest.[38]

In these cases, the crime took place on December 27, 1996. But, accused-appellant was arrested only on January 3, 1997, a week after the occurrence of the crime. As the arresting officers were not present when the crime was committed, they could not have “personal knowledge of the facts and circumstances of the commission of the crime” so as to be justified in the belief that accused-appellant was guilty of the crime. The arresting officers had no reason for not securing a warrant.

However, the records show that accused-appellant pleaded not guilty to the crimes charged against him during his arraignment on February 25, 1997 without questioning his warrantless arrest.[39] He thus waived objection to the legality of his arrest.[40] As this Court has held in another case:

[The accused] waived objections based on the alleged irregularity of their arrest, considering that they pleaded not guilty to the charges against them and participated in the trial. Any defect in their arrest must be deemed cured when they voluntarily submitted to the jurisdiction of the court. For the legality of an arrest affects only the jurisdiction of the court over the person of the accused. Consequently, if objections based on this ground are waived, the fact that the arrest was illegal is not a sufficient cause for setting aside an otherwise valid judgment rendered after a trial, free from error. The technicality cannot render subsequent proceedings void and deprive the State of its right to convict the guilty when all the facts on record point to the culpability of the accused.[41]

B. Accused-appellant invokes Art. III, §12(1) of the Constitution which provides that “[a]ny person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.” He contends that he was subjected to custodial interrogation without being informed of his right to remain silent and to have independent counsel preferably of his choice. Hence, he contends, the trial court erred in not excluding evidence obtained from him during such interrogation for violation of accused-appellant’s rights under this provision.

While it cannot be denied that accused-appellant was deprived of his right to be informed of his rights to remain silent and to have competent and independent counsel, he has not shown that, as a result of his custodial interrogation, the police obtained any statement from him – whether inculpatory or exculpatory - which was used in evidence against him. The records do not show that he had given one or that, in finding him guilty, the trial court relied on such statement. In fact, accused-appellant testified that at no point, even when subjected to physical torture, did he ever admit committing the crime with which he was charged. In other words, no uncounseled statement was obtained from accused-appellant which should have been excluded as evidence against him.

C. Of greater significance is the fact that accused-appellant was never assisted by counsel, whether of his own choice or provided by the police officers, from the time of his arrest in Pontevedra, Negros Occidental to the time of his continued detention at the Bacolod police station. Although accused-appellant made no statement during this time, this fact remains important insofar as it affects the admissibility of the out-of-court identification of accused-appellant by the prosecution witnesses, namely, Michelle Darunday, Erma Blanca, Ma. Teresa Gellaver, Mark Esmeralda, and Jason Joniega.

As a rule, an accused is not entitled to the assistance of counsel in a police line-up considering that such is usually not a part of the custodial inquest.[42] However, the cases at bar are different inasmuch as accused-appellant, having been the focus of attention by the police after he had been pointed to by a certain Ramie as the possible perpetrator of the crime, was already under custodial investigation when these out-of-court identifications were

conducted by the police.

An out-of-court identification of an accused can be made in various ways. In a show-up, the accused alone is brought face to face with the witness for identification, while in a police line-up, the suspect is identified by a witness from a group of persons gathered for that purpose.[43] During custodial investigation, these types of identification have been recognized as “critical confrontations of the accused by the prosecution” which necessitate the presence of counsel for the accused. This is because the results of these pre-trial proceedings “might well settle the accused’s fate and reduce the trial itself to a mere formality.”[44] We have thus ruled that any identification of an uncounseled accused made in a police line-up, or in a show-up for that matter, after the start of the custodial investigation is inadmissible as evidence against him.[45]

Here, accused-appellant was identified by Michelle Darunda in a show-up on January 3, 1997 and by Erma Blanca, Ma. Teresa Gellaver, Jason Joniega, and Mark Esmeralda in a police line-up on various dates after his arrest. Having been made when accused-appellant did not have the assistance of counsel, these out-of-court identifications are inadmissible in evidence against him. Consequently, the testimonies of these witnesses regarding these identifications should have been held inadmissible for being “the direct result of the illegal lineup ‘come at by exploitation of [the primary] illegality.’”[46]

Be that as it may, as the defense failed to object immediately when these witnesses were presented by the prosecution or when specific questions regarding this matter were asked of them, as required by Rule 132, §36 of the Rules on Evidence, accused-appellant must be deemed to have waived his right to object to the admissibility of these testimonies.[47]

Furthermore, the inadmissibility of these out-of-court identifications does not render the in-court identification of accused-appellant inadmissible for being the “fruits of the poisonous tree.”[48] This in-court identification was what formed the basis of the trial court’s conviction of accused-appellant. As it was not derived or drawn from the illegal arrest of accused-appellant or as a consequence thereof,[49] it is admissible as evidence against him. However, whether or not such prosecution evidence satisfies the requirement of proof beyond reasonable doubt is another matter altogether.

II. Credibility of the Prosecution Witnesses

Accused-appellant contends that: (1) he does not possess the character, qualities, and expertise of the assailant who robbed and raped Michelle Darunday, Erma Blanca, and Ma. Teresa Gellaver; (2) the records are bereft of any description of the assailant made by these prosecution witnesses prior to his arrest as the affidavits of Darunday, Blanca, Joniega, and Esmeralda were executed only after his arrest; (3) the testimonies of the defense witnesses, namely, PO2 Rodolfo Gemarino, Barangay Captain Nestor Dojillo, and Ricardo Villaspen, show that Michelle Darunday failed to identify accused-appellant when the latter was presented to her at the Pontevedra police station; (4) Tancinco’s testimony that Michelle Darunday properly identified accused-appellant at the Pontevedra police station could not be believed as the said witness had motive to testify falsely against accused-appellant; (4) the identification of accused-appellant at the Bacolod police station was tainted because only accused-appellant was handcuffed among the persons presented to the prosecution witnesses; and (5) it was highly improbable for the prosecution witnesses to identify the assailant by face considering the distance, the intensity of light, and the circumstances at the time of the commission of the crime.

A. Jason Joniega[50] and Mark Esmeralda[51] pointed to accused-appellant as the man they saw on the night of December 27, 1996 and the person they identified inside a jail cell at the Bacolod police station. Erma Blanca, on the other hand, testified that she saw through her blindfold accused-appellant raping Michelle Darunday. She identified accused-appellant in court as their assailant and as the man whom she saw inside the jail cell at the

Bacolod police station.[52] Ma. Teresa Gellaver[53] and Michelle Darunday[54] identified accused-appellant as the suspect brought before them at the Bacolod police station and the Pontevedra police station, respectively.

The test is whether or not the prosecution was able to establish by clear and convincing evidence that the in-court identifications were based upon observations of the suspect other than the line-up identification.[55] As held in *United States v. Wade*:[56]

We think it follows that the proper test to be applied in these situations is that quoted in *Wong Sun v. United States*, 371 US 471, 488, 9 L ed 2d 441, 455, 83 S Ct 407, “[W]hether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint.’ *Maguire, Evidence of Guilt* 221 (1959).” See also *Hoffa v United States*, 385 US 293, 309, 17 L ed 2d 374, 386, 87 S Ct 408. Application of this test in the present context requires consideration of various factors; for example, the prior opportunity to observe the alleged criminal act, the existence of any pre-line-up description and the defendant’s actual description, any identification prior to lineup of another person, the identification by picture of the defendant prior to the lineup, failure to identify the defendant on a prior occasion, and the lapse of time between the alleged act and the lineup identification. It is also relevant to consider those facts which, despite the absence of counsel, are disclosed concerning the conduct of the lineup.

We now consider whether the testimonies of the prosecution witnesses meet the test as laid down in that case.

1. Michelle Darunday testified that her assailant’s face was covered with cloth when he entered the room and that she was blindfolded when she was raped.[57] She could thus only see the assailant’s eyes, which Michelle described as chinito (chinky).[58] although she testified that she could also identify his voice.[59] Otherwise, Michelle did not see her attacker. Yet, she testified that she immediately recognized accused-appellant as the assailant when she saw him at the Pontevedra police station. Michelle stated:

PROS. CARDINAL:

Madam Witness, a few days thereafter, can you recall any development of your case?

WITNESS:

That was in January 3, when somebody told us to identify a suspect in the City Hall of Pontevedra.

PROS. CARDINAL:

Who was with you when you went to Pontevedra?

WITNESS:

My aunt and my uncle and the police investigators.

....

PROS. CARDINAL:

Upon arrival at Pontevedra, what happened?

WITNESS:

We waited for a while because they will find the suspect and I was there in the room of the police sitting.

....

PROS. CARDINAL:

So, you stayed behind and the policemen pick up the suspect?

WITNESS:

I and my aunt waited in the police of the policemen, and then later the suspect arrived.

PROS. CARDINAL:

When that suspect arrived inside the room where you were, can you tell us what was the reaction of the suspect?

WITNESS:

When the suspect arrived, at first, he was not able to see me because I was behind the desk after the door, and then he was so fresh saying that he was a good man, but when he saw me he blushed and moving his head asking, "Ano ang sala ko sa imo? (What did I do to you?), I did not do anything." But when I looked at his eyes and heard his voice, I was sure that he was the man.

PROS. CARDINAL:

When that person said, what did I do to you, I did not do anything, what was [your] reaction?

WITNESS:

I just looked at him and he was so fresh that he has not done anything, but the policeman said that his case is

rape. Then, he was asked to take off his t-shirt and I just looked at him and then later, the policeman asked to borrow the man for investigation and while the policeman was recording, that suspect approached me and told me that, "You do not know me.", and asked, "Do you know me?"

PROS. CARDINAL:

What was your reaction?

WITNESS:

I just [kept] quiet but my aunt reacted by saying, "You think you cannot be identified because you covered yourself?"

PROS. CARDINAL:

And then what did he answer?

WITNESS:

He just stand outside while we went ahead to go back to our home.[60]

A show-up, such as what was undertaken by the police in the identification of accused-appellant by Michelle Darunday, has been held to be an underhanded mode of identification for "being pointedly suggestive, generat[ing] confidence where there was none, activat[ing] visual imagination, and, all told, subvert[ing] their reliability as [an eyewitness]."[61] In these cases, Michelle knew that she was going to identify a suspect when she went to Pontevedra. Upon seeing accused-appellant escorted by Tancinco and his colleagues in the Bacolod police, she knew that he was the suspect she was supposed to identify. When accused-appellant was thus shown to her, there could be no doubt as to what was expected of her. Further aggravating the situation were the reply of the policeman to accused-appellant's protestations of innocence that he was being held for rape and Michelle's aunt's obvious assumption of his guilt. Michelle's immediate conclusion, therefore, that accused-appellant was her attacker was understandable. As has been explained:

Social psychological influences. Various social psychological factors also increase the danger of suggestibility in a lineup confrontation. Witnesses, like other people, are motivated by a desire to be correct and to avoid looking foolish. By arranging a lineup, the police have evidenced their belief that they have caught the criminal; witnesses, realizing this, probably will feel foolish if they cannot identify anyone and therefore may choose someone despite residual uncertainty. Moreover, the need to reduce psychological discomfort often motivates the victim of a crime to find a likely target for feelings of hostility.

Finally, witnesses are highly motivated to behave like those around them. This desire to conform produces an increased need to identify someone in order to show the police that they, too, feel that the criminal is in the lineup, and makes the witnesses particularly vulnerable to any clues conveyed by the police or other witnesses as to whom they suspect of the crime. . .[62]

Coupled with the failure of Michelle to see the face of her assailant, the apparent suggestiveness of the show-up places in doubt her credibility concerning the identity of accused-appellant. The possibility that her identification of accused-appellant was merely planted in her mind both by the circumstances surrounding the show-up and her concomitant determination to seek justice cannot be disregarded by this Court.

Michelle's identification of accused-appellant is further rendered dubious by the disparity between her description of her attacker and the appearance of accused-appellant. In her affidavit, dated January 4, 1997, Michelle described her attacker as follows:

P -

Sadtong tinion nga ginahimoslan ikaw sining suspetsado nakita mo bala ang iya hitsura? (At the time that you were abused by the suspect, did you see what he looked like?)

S-

Wala, kay tungod nga may tabon ang akon mata, apang matandaan ko guid ang iya tingog, mata, ang iya malaka nga biguti, ang structure sang iya lawas, ang supat sang iya kamot, ang iya bibig, ang madamo nga "keloid" sa iya lawas kag ang iya baho. (No, because I was blindfolded but I can remember his voice, his eyes, his thin mustache, his body structure, the smoothness of his hands, his mouth, and the numerous keloids on his body, and his smell.)[63]

Michelle's affidavit clearly indicated that she felt the keloids on the back of her assailant when the latter was raping her. But, when she testified in court, Michelle admitted that she did not see keloids on accused-appellant although she said that his skin was rough.[64] This is corroborated by the testimony of PO2 Rodolfo Gamarino who said that he did not see any lump on the back of accused-appellant when he tried to look for it.[65] In fact, it would appear that accused-appellant had no such markings on his back but had only small patches which could not even be readily seen.[66]

In dismissing the disparity between accused-appellant's appearance and Michelle's description of her attacker, the trial court dwelt on the apparent roughness of accused-appellant's skin and the probability that Michelle might have felt only the arch of the spinal cord of her assailant.[67] However, mere speculations and probabilities cannot take the place of proof beyond reasonable doubt required by law to be established by the prosecution.[68] Michelle Darunday was a civil engineer in the City Engineer's Office in Bacolod City. Considering her educational attainment and professional status, it is improbable that she was mistaken as to what she felt on her attacker's back at the time she was raped. A mere protrusion on the back of the neck of the assailant could not possibly have been mistaken for keloids.

Another circumstance casting doubt on the credibility of Michelle's identification is her lack of reaction upon seeing accused-appellant at the Pontevedra police headquarters. Defense witnesses PO2 Rodolfo Gamarino,[69] Ricardo Villaspen,[70] and Nestor Dojillo[71] testified that Michelle failed to see any identifying marks on accused-appellant and that she showed hesitation in pinpointing the latter as the culprit. With Gamarino being a policeman, Villaspen a barangay tanod, and Dojillo a barangay captain, these witnesses were all, in one form or another, connected with law enforcement. The prosecution having failed to ascribe any ill motive on the part of these defense witnesses, who are without doubt respectable members of the community, their testimonies that Michelle showed no reaction in seeing accused-appellant at the show-up in Pontevedra police station deserve greater credence than the testimony of Tancinco that Michelle confirmed to him that accused-appellant was her attacker. The defense evidence established that Tancinco was an abusive policeman who had made up his mind as to accused-appellant's guilt and who had no compunction in doing whatever means necessary, legal or illegal, to ensure his conviction. We note further that the testimonies of these defense witnesses coincide with Michelle's

testimony that she kept quiet when she saw accused-appellant at the Pontevedra police station on January 3, 1997. This being so, her reaction to the show-up at the Pontevedra police station upon seeing accused-appellant, the man who supposedly raped her twice in an ignominious manner, is contrary to human nature.[72] It may be that she was filled with rage so that upon seeing accused-appellant she was unable to show any emotion. But it is equally possible that, as defense witnesses Gemarino, Villaspen, and Dojillo testified, Michelle did not immediately recognize accused-appellant as her attacker and only pointed to him as her assailant upon promptings by the police and her companions. “[W]here the circumstances shown to exist yield two (2) or more inferences, one of which is consistent with the presumption of innocence, while the other or others may be compatible with the finding of guilt, the court must acquit the accused: for the evidence does not fulfill the test of moral certainty and is insufficient to support a judgment of conviction.”[73]

For the foregoing reasons, we find both the out-of-court and in-court identification of Michelle Darunday to be insufficient to establish accused-appellant as the person who robbed and raped her and her companions on the night of December 27, 1996.

2. Erma Blanca testified that she saw through her blindfold the assailant when he was raping Michelle Darunday. She identified accused-appellant in open court as the person whom she saw that night.[74] Certain circumstances in these cases lead us to believe, however, that Erma Blanca did not really see the assailant and that her testimony otherwise was a mere afterthought. These are:

First, the police blotter, dated December 28, 1996,[75] prepared by PO3 Nicolas Tancinco, referred to an “unknown suspect” who allegedly entered the boarding house of Pacita Aguillon and robbed Ma. Teresa Gellaver and Michelle Darunday. This casts doubt on Erma’s credibility because she testified that she had known accused-appellant for a long time prior to December 27, 1996. During her testimony, Erma claimed that accused-appellant approached her and Michelle sometime in September or October 1996 to ask for the name of the latter. In addition, Erma said she had seen accused-appellant whenever he passed by their boarding house or stayed in her Tiyo Anong’s store nearby.[76] It would thus seem that Erma was familiar with accused-appellant. But, if she had actually seen him on that night of the robbery, why did she not report this to the police immediately? Being a victim herself, Erma had every motive to reveal the identity of the robber that same night the crime was committed. But she did not do so. We are therefore left with the conclusion that the police blotter referred to an unknown suspect because the identity of the assailant had not been determined at the time the crime was reported to the police.

Second, Erma was not the one who accompanied the Bacolod police when the latter sought accused-appellant in Pontevedra, Negros Occidental. PO3 Tancinco testified that he took Michelle Darunday along with his other companions when they went to Pontevedra, Negros Occidental so that she could identify if the suspect was the person who had raped her. But Michelle admitted that she did not see the face of the assailant. Erma Blanca, who claimed she recognized accused-appellant, was not taken along by the police to Pontevedra, Negros Occidental. Why not? Why did they bring instead Michelle Darunday?

Third, the affidavit of Erma Blanca[77] was prepared on January 4, 1997, a day after the arrest of accused-appellant. This delay belies Erma’s claim that she saw the assailant through her blindfold on the night of the incident. For the normal reaction of one who actually witnessed a crime and recognized the offender is to reveal it to the authorities at the earliest opportunity.[78] In these cases, the crime took place on December 27, 1996, but Erma Blanca executed her affidavit only on January 4, 1997, more than a week after the occurrence of the crime. Delay in reporting the crime or identifying the perpetrator thereof will not affect the credibility of the witness if it is sufficiently explained.[79] But here, no explanation was given by the prosecution why Erma Blanca executed her affidavit one week after the crime took place and one day after accused-appellant’s arrest.

The most likely explanation for such lapse is that Erma Blanca was used merely to corroborate what would otherwise have been a weak claim on the part of Michelle Darunday. The same may be said of the testimonies of Jason Joniega and Mark Esmeralda.

B. Accused-appellant's testimony that he was at the cockpit in Barangay Miranda, Pontevedra, Negros Occidental on December 27, 1996 is corroborated by Aaron Lavilla,[80] Elias Sombito,[81] and Nestor Dojillo.[82] Considering the improbabilities and uncertainties surrounding the testimonies of the prosecution witnesses, the defense of alibi by accused-appellant deserves credence.[83]

To summarize, we find that the prosecution failed to meet the degree of proof beyond reasonable doubt required in criminal cases. The acquittal of accused-appellant is thus in order.

WHEREFORE, the decision of the Regional Trial Court, Branch 53, Bacolod City, finding accused-appellant guilty of robbery with rape and sentencing him to death, is hereby REVERSED and accused-appellant is ACQUITTED on the ground of reasonable doubt. Accused-appellant is ordered immediately released unless there are other legal grounds for his continued detention.

The Director of Prisons is directed to implement this Decision and to report to the Court immediately the action taken hereon within five (5) days from receipt hereof.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Panganiban, Quisumbing, Pardo, Buena, Ynares-Santiago, De Leon, Jr., Sandoval-Gutierrez, and Carpio, JJ., concur.

[1] Per Judge B. Gellada.

[2] Records, p. 1.

[3] Id., p. 41.

[4] Also referred to as Irma Blanca or Erma Blanco in the transcript of stenographic notes.

[5] Referred to as Tia Pasing in the transcript of stenographic notes.

[6] TSN (Jason Joniega), pp. 6-11, July 29, 1997; TSN (Mark Esmeralda), pp. 6-13, July 31, 1997.

[7] TSN (Erma Blanca), pp. 5-44, 62-67, Aug. 7, 1997; TSN (Ma. Teresa Gellaver), pp. 6-34, Oct. 8, 1997; TSN (Michelle Darunday), pp. 7-36, Oct. 13, 1997.

[8] TSN (Mark Esmeralda), pp. 17-23, July 31, 1997.

[9] TSN (Erma Blanca), pp. 54-59, Aug. 7, 1997; TSN (Ma. Teresa Gellaver), pp. 34-39, Oct. 8, 1997; TSN (Michelle Darunday), pp. 36-43, Oct. 13, 1997.

[10] TSN (PO3 Nicolas Tancinco), pp. 3-43, Sept. 19, 1997.

[11] TSN (Michelle Darunday), pp. 43-50, Oct. 13, 1997; TSN (PO3 Nicolas Tancinco), pp. 44-48, Sept. 19, 1997.

[12] TSN (Allan Aguillon), p. 5, Nov. 6, 1997.

[13] TSN (Jason Joniega), pp. 12-13, July 29, 1997; TSN (Mark Esmeralda), pp. 27-29, July 31, 1997; TSN (Erma Blanca), pp. 52-53, Aug. 7, 1997; TSN (Ma. Teresa Gellaver), pp. 40-43, Oct. 8, 1997.

- [14] Exh. L; Records, pp. 15-18.
- [15] TSN (Michelle Darunday), pp. 55-59, Oct. 13, 1997. See also TSN (Erma Blanca), pp. 46-48, Aug. 7, 1997.
- [16] Exhs. D or 5; Records, p. 499.
- [17] TSN (Dr. Joy Ann Jocson), pp. 6-16, 40-53, 57-58, Aug. 25, 1997.
- [18] TSN (Leo Asan), pp. 3-7, Oct. 3, 1997.
- [19] TSN (Anthony Escordial), pp. 8-14, May 25, 1998.
- [20] Referred to as Ely in the transcript of stenographic notes.
- [21] TSN (Anthony Escordial), pp. 14-19, May 25, 1998.
- [22] TSN (Elias Sombito), pp. 22-33, Dec. 9, 1997.
- [23] TSN (Aaron Lavilla), pp. 19-30, Jan. 16, 1998.
- [24] TSN (PO2 Rodolfo Gemarino), pp. 9-21, Feb. 3, 1998; TSN (Ricardo Villaspen), pp. 8-10, Feb. 5, 1998.
- [25] TSN (Nestor Dojillo), pp. 30-45, April 17, 1998.
- [26] TSN (PO2 Rodolfo Gemarino), pp. 24-33, Feb. 3, 1998.
- [27] TSN (Ricardo Villaspen), pp. 15-20, Feb. 5, 1998.
- [28] TSN (Anthony Escordial), pp. 21-25, May 25, 1998.
- [29] Id., pp. 26-32.
- [30] TSN (PO2 Rodolfo Gemarino), pp. 36-49, Feb. 3, 1998; TSN (Ricardo Villaspen), pp. 21-35, Feb. 5, 1998; TSN (Nestor Dojillo), pp. 46-57, April 17, 1998; TSN (Anthony Escordial), pp. 33-36, May 25, 1998.
- [31] TSN (Lucila Jocame), pp. 5-10, June 24, 1998.
- [32] Exh. 11; Records, p. 488.
- [33] Spelled as Gerome in the transcript of stenographic notes.
- [34] TSN (Jerome Jayme), pp. 73-86, May 26, 1998.
- [35] Decision, pp. 87-88; Records, pp. 794-795.
- [36] Brief for the Accused-Appellant, pp. 14-17; Rollo, pp. 167-170.
- [37] TSN (PO3 Nicolas Tancinco), p. 176, Sept. 19, 1997.
- [38] *Posadas v. Ombudsman*, 341 SCRA 388, 397 citing *People v. Doria*, 301 SCRA 668, 709 (1991).
- [39] Records, p. 76.
- [40] *People v. Pacistol*, 284 SCRA 520, 597 (1998).
- [41] *People v. Timon*, 281 SCRA 577, 597 citing *People v. Nazareno*, 260 SCRA 256, 263 (1996).
- [42] *De la Torre v. Court of Appeals*, 294 SCRA 196 (1998); *People v. Timple*, 237 SCRA 52 (1994).
- [43] *People v. Teehankee, Jr.*, 249 SCRA 54 (1995).

- [44] *United States v. Wade*, 388 U.S. 218, 224, 18 L.Ed.2d 1149 (1967).
- [45] *People v. Macam*, 238 SCRA 306 (1994).
- [46] *Gilbert v. California*, 388 U.S. 263, 272-273, 18 L.Ed.2d. 1178 (1967).
- [47] *People v. Hermoso*, 343 SCRA 567 (2000).
- [48] *People v. Salazar*, 277 SCRA 67 (1997); *People v. Pacistol*, 284 SCRA 520 (1998).
- [49] *People v. Manzano*, 248 SCRA 239 (1995).
- [50] TSN (Jason Joniega), pp. 11-12, July 29, 1997.
- [51] TSN (Mark Esmeralda), pp. 12, 23-24, 28, July 31, 1997.
- [52] TSN (Erma Blanca), pp. 31, 53, Aug. 7, 1997.
- [53] TSN (Ma. Teresa Gellaver), pp. 40-41, Oct. 8, 1997.
- [54] TSN (Michelle Darunday), pp. 49-50, Oct. 13, 1997.
- [55] *United States v. Wade*, 388 U.S. 218, 240, 18 L.Ed.2d. 1149, 87 S Ct 1926 (1967).
- [56] 388 U.S. 218, 241, 18 L.Ed.2d. 1149, 87 S Ct 1926 (1967) (emphasis added).
- [57] TSN (Michelle Darunday), p. 39, Nov. 4, 1997.
- [58] TSN (Michelle Darunday), p. 40, Oct. 13, 1997.
- [59] *Id.*, p. 39.
- [60] *Id.*, pp. 43-49 (emphasis added).
- [61] *People v. Niño*, 290 SCRA 155 citing *People v. Cruz*, 32 SCRA 181, 186 (1970).
- [62] Frederic D. Woocher, *Did Your Eyes Deceive You? Expert Psychological Testimony on the Unreliability of Eyewitness Identification*, 29 STAN. L. REV. 969 (1977). EXCERPTS REPRINTED IN CHRISTOPHER SLOBOGIN, *CRIMINAL PROCEDURE: REGULATION OF POLICE INVESTIGATION* 419-429, 428 (1993).
- [63] Exhs. L or 9; Records, p. 15 (emphasis added).
- [64] TSN (Michelle Darunday), p. 124, Nov. 4, 1997.
- [65] TSN (PO2 Rodolfo Gemarino), p. 88, Feb. 3, 1988.
- [66] TSN (PO3 Nicolas Tancinco), pp. 53-54, Sept. 19, 1997.
- [67] Decision, pp. 71-72; Records, pp. 778-779..
- [68] *People v. Padua*, 215 SCRA 266 (1992) citing *People v. Nicolas*, 204 SCRA 191 (1991).
- [69] TSN (PO2 Rodolfo Gemarino), pp. 28-31, Feb. 3, 1998.
- [70] TSN (Ricardo Villaspen), pp. 16-17, Feb. 5, 1998.
- [71] TSN (Nestor Dojillo), pp. 34-38, April 17, 1998.
- [72] *People v. Galera*, 280 SCRA 492 (1997).

[73] *People v. Sapal*, 328 SCRA 417 (2000).

[74] TSN (Erma Blanca), pp. 30-31, Aug. 7, 1997.

[75] Exhs. C and C-1; Records, pp. 496-497.

[76] TSN (Erma Blanca), pp. 47-50, Aug. 7, 1997.

[77] Exh. 2; id., p. 49.

[78] *People v. Delmendo*, 109 SCRA 350 (1981); *People v. Aquino*, 93 SCRA 772 (1979); *People v. Bulawin*, 29 SCRA 710 (1969); *People v. Baquiran*, 20 SCRA 451 (1967); *People v. Cunanan*, 19 SCRA 769 (1967).

[79] *People v. Arlalejo*, 333 SCRA 604 (2000).

[80] TSN (Aaron Lavilla), pp. 19-30, Jan. 16, 1998.

[81] TSN (Elias Sombito), pp. 22-33, Dec. 9, 1997.

[82] TSN (Nestor Dojillo), pp. 26-27, April 27, 1998.

[83] *People v. Padilla*, 177 SCRA 129 (1989).

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