

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CARLOS ESCAÑO, ACCUSED-APPELLANT.

G.R. Nos. 140218-23. February 13, 2002

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PER CURIAM:

For automatic review is the decision of the Regional Trial court, Branch 39, Lingayen, Pangasinan, per Judge Eugenio G. Ramos, finding accused-appellant Carlos Escañó guilty beyond reasonable doubt of six counts of rape, five of which were committed against Mergie Raoet Macam and another one against Zenaida Raoet Macam, and sentencing him in each case to suffer the penalty of death and to indemnify each of the victims in the amount of P75,000.00 and P100,000.00 as moral damages with costs.

Six cases[1] for rape were filed against accused-appellant.

In Criminal Case No. 5830, the information alleged -

"That on or about the 14[th] day of January 1998, in the afternoon, at Dorongan, Municipality of Lingayen, Province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then the stepfather of the complainant, armed with a balisong and by means of force and intimidation, did then and there willfully, unlawfully, and feloniously have sexual intercourse with the complainant Mergie Raoet Macam, a minor, fourteen (14) years and five (5) months old, against her will and consent, to her damage and prejudice.

"CONTRARY to Art. 266-A of the Revised Penal Code, as amended."

In Criminal Case No. 5831, the information charged -

"That on or about the 12[th] day of February 1998, in the morning, at Don Vicente Solis St. Poblacion, Municipality of Lingayen, Province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then the stepfather of the complainant, armed with a knife and by means of force and intimidation, did then and there willfully, unlawfully, and feloniously have sexual intercourse with the complainant Mergie Raoet Macam, a minor, [fifteen] (15) years and five (5) months old, against her will, to her damage and prejudice.

"CONTRARY to Art. 266-A of the Revised Penal Code, as amended."

In Criminal Case No. 5832, the information averred -

" That on or about the 16[th] day of February 1998, in the afternoon, at Don Vicente Solis St. Poblacion, Municipality of Lingayen, Province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then the stepfather of the complainant, armed with a knife [and] by means of force and intimidation, did then and there willfully, unlawfully, and feloniously have sexual intercourse with the complainant Mergie Raoet Macam, a minor, [fifteen] (15) years and five (5) months old, against her will, to her damage and prejudice.

"CONTRARY to Art. 266-A of the Revised Penal code, as amended."

In Criminal Case No. 5833, the information alleged -

"That on or about the 22nd day of February 1998, in the morning, at Don Vicente Solis St. Poblacion, Municipality of Lingayen, Province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then the stepfather of the complainant, by means of force and intimidation, did then and there willfully, unlawfully, and feloniously have sexual intercourse with the complainant Zenaida Raoet Macam, a minor who was only thirteen (13) years old when sexually abused against her will, to her damage and prejudice.

"CONTRARY to Art. 266-A of the Revised Penal Code, as amended."

In Criminal Case No. 5834, the information charged -

"That on or about the 23rd day of February 1998, in the afternoon, at Don Vicente Solis St. Poblacion, Municipality of Lingayen, Province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then the stepfather of the complainant, by means of force and intimidation, did then and there willfully, unlawfully, and feloniously have sexual intercourse with the complainant Mergie Raoet Macam, a minor, fourteen (14) years and five (5) months old, against her will, to her damage and prejudice.

"CONTRARY to Art. 266-A of the Revised Penal Code, as amended."

In Criminal Case No. 5835, the information averred -

"That on or about the month of March 1997, in Barangay Dorongan, Municipality of Lingayen, Province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then the stepfather of the complainant, armed with a knife, by means of force and intimidation, did then and there willfully, unlawfully, and feloniously have sexual intercourse with the complainant Mergie Raoet Macam, a minor, [thirteen] (13) and seven (7) months old, against her will, to her damage and prejudice.

"CONTRARY to Art. 266-A of the Revised Penal Code, as amended."

The cases were consolidated and jointly tried. Then accused-appellant was arraigned, during which he pleaded not guilty to the charges. Thereafter, trial was held. During the pendency of the case, the trial court granted a petition^[2] of the Department of Social Welfare and Development (DSWD) for custody of the complainants and their sister Jessica.

Per their birth certificates (Exhs. "A" and "H"),^[3] Mergie Raoet Macam was born on August 5, 1983, while Zenaida Raoet Macam was born on October 27, 1984. They have two siblings, Jessica and Jestoni, aged 9 and 5, respectively. They are children of the spouses Jesus Macam and Mercedes Raoet Macam. A year after the death of their father in 1993, their mother and accused-appellant Carlos Escaño started cohabiting in the house of their maternal grandfather, Macario Raoet, in Dorongan, Lingayen, Pangasinan.

The prosecution presented five witnesses, namely: complainants Mergie R. Macam and Zenaida R. Macam; two neighbors, Emiliano Abalos and Veronica Reyes; and Dr. Luisa Fernandez Cayabyab.

Testifying in her behalf, Zenaida told the court that at about 4:00 a.m. of February 22, 1998, she was awakened as she found accused-appellant on top of her and raping her. She did not tell her mother what had happened although the latter was sleeping beside her because accused-appellant threatened to kill her if she did.^[4]

On the other hand, Mergie, narrating how she was abused by accused-appellant, testified as follows:^[5]

At about 1:00 p.m., in March 1997, while she was washing clothes, her mother called her and told her to go upstairs because accused-appellant wanted to tell her something. When Mergie went to see accused-appellant, the

latter pulled her towards him and forced her to lie down. Then he raped her. Mergie said she felt pain in her private parts while accused-appellant was forcing his penis into her vagina. She was crying and resisting accused-appellant, but her resistance proved to be futile. She could not shout as accused-appellant threatened her with a balisong. After the rape, she sat in a corner of the room and cried, and later went back to her work washing clothes.

Again, at about 2:00 p.m. on January 14, 1998, while she was alone in the house cooking food, she was raped by accused-appellant. He threatened her with a knife if she did not yield to him. Complainant's mother was then in the market selling fish. Her younger sisters were in school while her younger brother was playing.

At about 11:00 a. m. of February 12, 1998, on the occasion of the third rape, complainant was alone in the house, her sister Jessica and her brother Jestoni having gone to their neighbors' houses to play while their mother was away. Complainant was washing clothes when accused-appellant called her. As she was approaching, accused-appellant immediately pulled her towards him and forced her to have sexual intercourse with him. Accused-appellant left the house thereafter, leaving Mergie crying. When Mergie took a bath, she felt a sticky substance inside her vagina.

On the fourth occasion Mergie said she was raped at about 12:00 noon of February 16, 1998. Her mother and her sister Zenaida had gone to the market, while her other siblings were playing in the neighbor's house. She was alone in the house taking a nap when she was awakened by accused-appellant, who tried to remove her clothes and forced her to have sexual intercourse again. Because of his threats, Mergie said she yielded to accused-appellant's advances. He left her crying.

Finally, at about 1:00 p.m. of February 23, 1998, while complainant was taking a bath, accused-appellant entered the bathroom and grabbed her towards him. When her mother saw her resisting, she told her to give in to the demands of accused-appellant, telling her that he was the provider of the family. Her mother watched as accused-appellant had sexual intercourse with her. Then, accused-appellant made her watch as he and her mother performed sexual intercourse.

The following day, February 24, 1998, at about 8:00 a.m., Mergie found her sister Zenaida crying. Zenaida told her that she had been raped by accused-appellant. Mergie confided to Zenaida that she too had been raped several times by accused-appellant. The sisters embraced each other and cried together. Their neighbors, Emiliano Abalos (Kuya Emy) and Veronica Reyes (Atchi Bing), who happened to pass by their house, saw them crying and asked them what had happened. After learning that the two had been raped, Abalos and Reyes confronted the children's mother and accused-appellant about the matter, but both refused to talk as they went back inside the house. Abalos and Reyes later came back and accompanied the sisters to the DSWD and, later, to the Gov. Teofilo Sison Memorial Hospital in Dagupan City, where they were examined. The sisters later went to the police station where they gave their sworn statements.[6] That afternoon, February 24, 1998, the police arrested accused-appellant. On that day, Mergie and Zenaida filed their respective criminal complaints[7] for rape against accused-appellant.

On February 24, 1998, Dr. Luisa Fernandez-Cayabyab, Medical Officer III of the Gov. Teofilo Sison Memorial Hospital in Dagupan City, examined Zenaida and Mergie. She issued to Mergie a medico-legal certificate (Exh. "K"),[8] which reads:

February 25, 1998

"To whom it may concern:

This is to certify that MERGIE MACAM, 14 years of age, female, single, Filipino, and a resident Solis St., Poblacion, Lingayen, Pangasinan, has been attended in this hospital on February 24, 1998 at 5:00 p.m. for:

- GO : Menarche = Jan. 14, 1997 (5 days)
- LMP : Jan. 13 - 16, 1998
- PMP : Dec. 7, 1997 (6 days)
- Conscious, coherent, ambulatory
- BP = 90/70 ; CR = 96/min.
- HEENT : Pinkish palpebral conjunctivae
- Perineum : No sign of external injury
- Hymen : With fresh superficial laceration at 3 o'clock position,
With healed laceration at 11 o'clock position
- I.E. : Vagina admits 1 finger with ease
- Cervix, close; Uterus, small; adnexae, free; bleeding, none
- Cervico vaginal smear for presence of spermatozoa
- Result : Negative for spermatozoa"

On the other hand, the medico-legal certificate of Zenaida (Exh. "L")[9] reads:

February 25, 1998

"To whom it may concern:

This is to certify that ZENAIDA MACAM, 13 years of age, female, single, Filipino, and a resident Solis St., Poblacion, Lingayen, Pangasinan, has been attended in this hospital on February 24, 1998 at 5:00 p.m. for:

- GO : Menarche = Jan. 12, 1998 (1 week)
- Conscious, coherent, ambulatory
- BP = 100/60 ; CR = 95/min.
- HEENT : Pinkish palpebral conjunctivae
- Perineum : No sign of external injury
- Hymen : With healed superficial laceration at 3, 9 o'clock position
- [I. E. :] Vagina admits 1 finger with ease
- Cervix: close
- Uterus: small
- Adnexae: free
- Bleeding: none
- Cervico vaginal smear for presence of spermatozoa
- Result : Negative for spermatozoa"

Dr. Cayabyab subsequently testified and explained her findings.[10]

On the other hand, the defense presented five witnesses: Jessica Macam, the younger sister of the two complainants; Corazon Bandong, a fish vendor in Barangay Galarin, Urbiztondo, Pangasinan; Perla Ursua, a resident of Barangay Galarin and a utility worker in the municipal government of Urbiztondo, Pangasinan; Mercedes Macam, the mother of the two complainants and the common-law wife of accused-appellant; and accused-appellant himself. The defense theory was that Mergie had been raped not by accused-appellant but by Mergie's maternal grandfather, Macario Raoet.

Jessica Macam, then 10 years old, testified that at about 1:00 p.m. of March 17, 1997, she saw her grandfather Macario Raoet and her sister Mergie, both naked, having sexual intercourse in Macario's bedroom. She saw Mergie panting and crying. She was warned by Macario not to report the incident to anybody but she reported the same to her mother on July 9, 1998.[11]

Corazon Bandong claims that she saw accused-appellant in the Urbiztondo Public Market in the mornings of

January 14, 1998, February 16, 1998 and February 23, 1998 and saw him leave the market at about 4:00 p.m.[12]

Perla Ursua stated that accused-appellant was awarded on January 5, 1998 a stall in the Urbiztondo Public Market. She said she saw accused-appellant in the afternoons of January 20 and February 16 and 23, 1998 tending to his store.[13]

Mercedes Macam testified that she and accused-appellant had been living together since October 5, 1995. On the dates in question, she claimed that accused-appellant was elsewhere: in March 1997, she and accused-appellant were in the market selling fish; from 6:00 a.m. to 3:00 p.m. of January 14, 1998, they were in the Urbiztondo market selling fish; on February 12, 1998, they were in Basista, Pangasinan selling fish; on February 16, 1998, Urbiztondo from 7:00 a.m. to 3:30 p.m.; at about 11:00 p.m. of February 21, 1998, accused-appellant left the house to buy fish and she later followed him and they stayed in Urbiztondo from 4:00 a.m. to 2:30 p.m. of February 22, 1998 and later proceeded to a derby in Bayambang; and on February 23, 1998, they were in Urbiztondo selling fish from 6:00 a.m. to 2:00 a.m.[14]

On cross-examination, Mercedes claimed that the charges against accused-appellant had been trumped up to discourage her plan of divulging that when she was then 12 years old, she was raped by her father (Macario Raoet); that Mergie had confided to her that she (Mergie) was also raped by Macario in July and December of 1997; and that her sister Rosalinda Casaclang had disclosed to her that she too had been raped by Macario.[15]

Accused-appellant Carlos Escaño said that he and Mercedes, the mother of the two complainants, had been living in common-law relationship since November 1995. He maintained that he could not have raped Mergie and Zenaida as he was either in the market of Urbiztondo or Basista selling fish on the dates subject of the rape. He denied raping Mergie in March 1997 as he was then staying in Camiling, Tarlac.[16]

On cross-examination, accused-appellant claimed that he learned on December 18, 1997 that Mergie had been raped by her grandfather Macario Raoet and confronted Macario about it. He said he went to Macario's house and cursed him and vowed to file charges against Macario. He suspected Emiliano Abalos to be behind the filing of the charges against him because he was close to the two complainants.[17]

On rebuttal, the prosecution presented Rosalinda Casaclang, the sister of Mercedes Macam; Nadie Muro, a social worker; and complainant Mergie Macam.

Rosalinda M. Casaclang denied that she was raped by her father Macario Macam. She said that her sister Mercedes and accused-appellant lived in the house of her father for seven months and he (accused-appellant) was in fact designated as a barangay tanod of Dorongan, Lingayen. She denied that her father had raped Mercedes. She said that Mercedes pleaded with her to withdraw the criminal complaints against accused-appellant but she turned her down.[18]

Nadie Muro testified that Jessica Macam, the younger sister of the two complainants, was also placed under the custody of the DSWD and that Jessica disclosed to her during one of the sessions that Mercedes told her that she would drown herself (magpapakalunod siya sa dagat) if accused-appellant was convicted. Because of this, Jessica agreed to testify that her grandfather (Macario) raped her sister Mergie.[19]

Complainant Mergie Macam was recalled to the stand. She denied that her grandfather had raped her. She said that the testimonies of her mother and accused-appellant that they were both either in Basista or Urbiztondo on the dates subject of the rape, were not true and that there were times when only her mother sold fish in the market.[20]

On July 23, 1999, the trial court rendered a decision finding accused-appellant guilty of six counts of rape. The

dispositive portion of its decision reads:

"WHEREFORE, the Court finds the accused guilty beyond reasonable doubt of the crimes of rape, and accordingly:

In Criminal Case No. 5830, the death penalty is hereby imposed [upon the accused] and [for him] to indemnify Mergie Raoet Macam in the amount of P75,000.00;

In Criminal Case No. 5831, the death penalty is hereby imposed upon the accused and for him to indemnify Mergie Raoet Macam [in] the amount of P75,000.00;

In Criminal Case No. 5832, the death penalty is hereby imposed upon the accused and for him to indemnify Mergie Raoet Macam [in] the amount of P75,000.00;

In Criminal Case No. 5833, the death penalty is hereby imposed upon the accused and for him to indemnify Zenaida Raoet Macam [in] the amount of P75, 000.00;

In Criminal Case No. 5834, the death penalty is hereby imposed upon the accused and for him to indemnify Mergie Raoet Macam in the amount of P75,000.00;

In Criminal Case No. 5835, the death penalty is hereby imposed upon the accused and for him to indemnify Mergie Raoet Macam [in] the amount of P75,000.00;

and to pay moral damages in the amount of P100,000.00 to each of the [complainants], without subsidiary imprisonment in case of insolvency with the accessory penalties provided by law. The accused is also ordered to pay the costs in each case.

"SO ORDERED." [21]

Hence, this appeal.

First. Accused-appellant contends that the informations filed against him are defective because they failed to allege filial relationship between him and the victims. Indeed, Article 335 of the Revised Penal Code, as amended by Section 11 of R.A. No. 7659, provides that the death penalty shall be imposed in cases of rape if the victim is under eighteen (18) years of age and the offender is the parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.

The minority of the victim and her relationship to the offender are thus qualifying circumstances which increase the penalty, as distinguished from a generic aggravating circumstance, which affects only the period of the penalty. As such, it should be alleged in the information as a requirement of the accused's constitutional right to be informed of the nature and cause of the accusation against him [22] These special qualifying circumstances must also be proved with certainty; otherwise, the penalty of death cannot be imposed upon the accused. Thus, should the information fail to allege any of these two qualifying circumstances of minority and relationship, the correct imposable penalty would be reclusion perpetua.

In these cases, while the informations alleged the exact ages of the two complainants at the time of the incidents, i.e., in all instances, below eighteen (18) years of age, the allegation of accused-appellant's relationship to them as their stepfather was erroneous. This is because accused-appellant is not the stepfather of the complainants, he and their mother never having been married and being merely engaged in a common-law relationship. The error in the designation of accused-appellant as the "stepfather" of the complainants is due to their mistaken belief that the fact the accused-appellant had been living with their mother made him "the husband of [our] mother." [23] Complainants' mother in fact testified that she and accused-appellant, a widower, decided not to get married even if they were capacitated to marry each other. She said this as a witness for the defense.

On the other hand, the trial court, although knowing accused-appellant to be merely "the common-law spouse of the parent of the victim," probably thought that, as in popular parlance, a common-law husband can be considered the stepfather of the children of his common-law wife. This is of course error because in law the term "stepparent" refers to an accused who is legally married to one of the parents of the victim.

Nevertheless, we hold that the penalty of death imposed in Criminal Case Nos. 5830, 5831, 5832, and 5835 by the trial court is proper. As earlier explained, the concurrence of both relationship and minority, partaking in the nature of special qualifying circumstances, must be alleged in the information and proved during the trial so that the death penalty can be imposed. When either one of the said circumstances is omitted or lacking, that which is pleaded in the information and proven by the evidence, like the minority of the complainants in these cases, may be considered as a generic aggravating circumstance.[24] Under Article 335 of the Revised Penal Code, whenever the crime of rape is committed with the use of a deadly weapon, the penalty shall be reclusion perpetua to death. The informations in the aforesaid cases alleged that in the commission of the rapes, accused-appellant was "armed with a balisong" (in Criminal Case No. 5830) or "armed with a knife" (in Criminal Case Nos. 5831, 5832, and 5835). These allegations were sufficiently proven during the trial. Under Article 63 of the Revised Penal Code, in all cases in which the law prescribes a penalty composed of two indivisible penalties, and the crime was committed with the presence of one aggravating circumstance, the greater penalty shall be applied. Considering the presence in these cases of the aggravating circumstance of minority of the complainants, the proper penalty is death.

Second. Accused-appellant claims that the prosecution failed to prove his guilt beyond reasonable doubt and that the trial court erred in giving full weight and credence to the testimonies of complainants Mergie and Zenaida despite the fact that these were inconsistent and contradictory.

This contention has no merit. The conclusions of the trial court with respect to the credibility of the witnesses are in the first place generally accorded great respect by this Court because of the trial court's unique position which enables it to observe the demeanor of the witness on the stand. Only if it is shown that its evaluation is arbitrary or that it has overlooked, misunderstood, or misapplied facts or circumstances of weight and substance which, if properly considered, would affect the outcome of the case would its findings be overturned.[25] This is not the case here.

The defense presented the Preliminary Examination[26] of Mergie, conducted by Judge Hermogenes C. Fernandez of the Municipal Trial Court of Lingayen, Pangasinan, to show discrepancies in the specific dates mentioned as to when she was raped, thus:

"Q:

How many times did he rape you?

A:

Five (5) times, sir.

Q:

Do you recall the dates when he raped you?

A:

Yes, sir. The first time was on January 27, 1997 at the house of my grandmother [in] Dorongan, Lingayen,

Pangasinan, the second time was on February 14, 1997 in the other house of my grandmother also located in Dorongan, Lingayen, the third time was on December 28, 1997, in our house located at Barangay Baay, Lingayen, Pangasinan, the fourth time was on January 16, 1998, [in] our house at Don Vicente Solis Street, Lingayen, and the fifth time was on February 13, 1998, also at Don Vicente Solis Street, Lingayen.

Q:

Why is it [that] you can remember [these] date[s]?

A:

Because I wrote the dates whenever my stepfather raped me.

Q:

Do you still have the notes?

A:

No more, sir, because my mother discovered my notes and threw it away." [27]

As alleged in the information, the prosecution, through Mergie's testimony, proved that the accused-appellant committed rape on the following dates: March 1997, January 14, 1998, February 12, 1998, February 16, 1998, and February 23, 1998. Apparently, the dates given during the preliminary examination were inaccurate. The public prosecutor who eventually filed the information was able to obtain the correct dates which he later alleged and proved.

Be that as it may, what is important is that the prosecution was able to prove that accused-appellant had carnal knowledge of the complainant five times without her consent.[28] Any discrepancy between the dates given during the preliminary examination and those given during the trial concerns minor matters and does not detract from the credibility of complainant Mergie. As we have ruled in other cases,[29] discrepancies in details which are irrelevant to the elements of the crime, such as the exact time of the commission of the crime, are not grounds for acquittal.

Nor is Mergie's statement regarding her educational attainment (that in March 1997, she was a first year high school student, which she later clarified during cross-examination to mean that she was then a grade VI student) of any consequence. There is little difference between the two statements. Likewise, the failure of Mergie to state in her sworn statement that the rapes were committed with the "use of a knife" did not render fatal the appreciation of this aggravating circumstance during the trial nor was it considered a discrepancy. What is necessary is that this fact was alleged in the information and duly proved during the trial. It is noteworthy that at some point during her testimony, Mergie broke down and cried.[30] Her emotional conditions is evidence of the veracity of her claim.[31] Otherwise, both Mergie and Zenaida remained steadfast throughout their testimonies despite being subjected to intense and lengthy interrogation.[32] Thus, the perceived discrepancies in the testimonies of the two complainants are inconsequential. Indeed, inconsistencies of this nature can be expected of young girls who are required to recall their harrowing experiences.[33] They tend to buttress, rather than weaken, their credibility, since they indicated that the testimony was not contrived.[34] Indeed, victims of rape hardly retain in their memories the dates, number of times, and manner they were violated. There is greater reason for believing such testimonies when corroborated by medical findings of hymenal lacerations.

As regards the Preliminary Examination[35] of Zenaida, also conducted by Judge Fernandez, accused-appellant points out the following portions:

"Q:

Who were your companion in your house when this incident happen[ed]?

A:

My mother and my sister Mergie, Jessica, and my brother Jestoni." (Exh. "3-b")

xx xx xx xx

Q:

Did you not wake up your mother and sisters?

A:

No, sir, because I did not want to disturb their sleep but when I was crying, my mother woke up and asked me why but I did not answer her." (Exh. "3-c") [36]

Accused-appellant contends that if Zenaida was awakened when he lay on top of her, she could have done something to wake up the other members of the household. Zenaida's reaction was not unusual. Accused-appellant threatened to kill her if she shouted for help. In truth, as has been held, rape is no respecter of time and place. It is known to be committed in places ordinarily considered as unlikely. The scene of the rape is not always nor necessarily isolated or secluded.[37] Rape can be committed in places where people congregate, in parks, along the roadside, within school premises, inside an occupied house, and even in a room where other members of the family are also sleeping.[38] Among couples with large families who live in cramped quarters, the presence of other members of the family is not necessarily a deterrent to the commission of the crime.[39] In this case, it was not impossible for accused-appellant to have access to Zenaida, who was then sleeping beside him together with her other siblings.

Accused-appellant says that Mergie's delay in reporting the rape incidents to her relatives, school guidance counselor, police authorities, and her mother casts doubt on the truthfulness of her allegations. It has likewise been held, however, that delay in reporting the rapes does not prove that they have not been committed.[40]

Indeed, complainant Mergie's narration of her ordeal is straightforward. We reproduce here her testimony so that it can be fully appreciated:

"FISCAL CHIONG:

Q

When was this incident when the accused allegedly raped you at the house of your grandfather at Dorongan, Lingayen, Pangasinan?

A

March of 1997, sir.

Q

Do you recall the particular date in March, 1997?

A

I could no longer recall, sir.

Q

Why? Where were you at the time when your stepfather raped you?

A

I was at home, sir.

xx xx xx xx

Q

Will you please tell us at what time you were first raped according to you?

A

1:00 o'clock in the afternoon, sir."[41]

"FISCAL CHIONG:

Q

What did your mother tell you, if any?

A

She said, you go upstairs and your stepfather is going to send you or do something.

Q

And what did you do when your mother told you to go upstairs?

A

I went upstairs and entered the room and asked my stepfather what [he] is going to tell me.

Q

When you reached the room, what happened there?

A

My stepfather pulled me.

Q

Where did the accused pull you?

A

Inside the room, sir.

Q

What transpired next?

A

Then [he] laid me down, sir.

Q

As the accused was doing this, when he was trying to lay you down, what did you do, if any?

A

I cried very much.

Q

What happened next after that?

A

Then he undressed me and removed my panty.

Q

As he was trying to undress you, what did you do, if any?

A

None, sir.

Q

What transpired next when he was trying to undress you?"

A

He remove[d] his short pants and his brief, sir.

Q

After removing his pants and brief, what transpired next?

A

He went on top of me and he was forcing his penis to enter into my vagina, sir.

Q

When he was forcing his penis to enter or insert his penis inside your vagina, what did you feel?

A

Painful, sir.

Q

Why painful?

A

Because he was forcing it to be inserted.

Q

What did you do when you felt pain as he was forcing his penis to insert it into your vagina?

A

I cried very much, sir.

Q

What else aside from crying did you do, if any?

A

He said that if I am going to report, he will kill me, sir.

COURT:

You repeat the question.

FISCAL CHIONG:

Q

What else aside from crying did you do, if any?

A

I [kept] on biting him.

Q

Will you demonstrate how you were repeatedly biting or hitting the accused?

A

With my [fists] or my two hands hitting him.

Q

What part of the body of the accused was hit when you were hitting him?

A

His abdomen or b[e]lly, sir.

Q

[Did] you remember if you call[ed] for help?

ATTY. POSADAS:

Leading, Your Honor.

COURT:

Reform.

FISCAL CHIONG:

Q

What else did you do aside from hitting him?

A

I kick[ed] him several times, sir.

Q

What else aside from hitting and kicking him?

A

No more, sir.

Q

Why did you not shout for your mother to come?

A

He was holding a balisong, sir.

Q

What did he do with that balisong?

A

He pointed the same to me.

Q

Where?

A

In my b[e]lly, sir.

Q

How far from the room that you were is the place where your mother was at [that] time, if you know?

A

From my place up to the door, estimated to be nine (9) meters.

Q

Why did you not call for your mother who was nearby?

A

I was afraid because he (Carlos Escaño) threatened to kill me, sir."[42]

"PROS. CHIONG:

Q

x x x when you were asked about the second time that you were raped which you mentioned the day January 14, 1998 at about 2:00 o'clock p.m. at your house situated at Don Vicente Solis Street, Lingayen, Pangasinan. Now, at around this hour 2:00 o'clock in the afternoon of January 14, 1998, where were you particularly, if you can still recall?

A

I was at home, sir.

Q

What were you doing in your house?

A

I was cooking, sir.

xx xx xx xx

Q

What transpired next, if any, when you went near your stepfather?

A

He made me lie down, sir.

Q

What did you do, if any, when he made you lie down?

A

I cried, sir.

Q

Why did you cry?

A

He was laying me down and he was undressing me, sir.

XX XX XX XX

Q

After the accused undressed himself by removing his short pants and brief, what happened next?

A

He went on top of me and he was forcing his penis into my vagina, sir.

Q

What was [your] position when he went on top of you and trying to force his penis inside your vagina?

A

I was lying down, sir.

Q

What did you do, if any, when he was trying to force his penis inside your vagina?

A

I cried very much and [kept] on beating him.

Q

How were you beating him?

A

I used my fists.

(Witness raising her two arms with closed fists and crying).

Q

Why did you keep on beating him?

A

Because he was raping me.

Q

What else did you do aside from continuously beating him with your two fists as he was forcing his penis inside your vagina?

A

I [kept] on kicking him several times.

Q

Why did you kick him?

A

Because he was forcing his penis inside my vagina.

Q

What transpired next when he was forcing his penis inside your vagina?

A

He mashed my bust, sir.

Q

What more happened?

A

He kissed my vulva several times.

Q

What transpired next?

A

He kissed my face.

xx xx xx xx

Q

As he was forcing his penis inside your vagina, can you tell us how did you feel?

A

I felt pain, sir.

Q

What part of your body was painful as he was forcing his penis inside your vagina?

A

The opening of my vagina, sir."[43]

"PROS. CHIONG

Q

You said that you were raped for five (5) times. Now, when [was] this third time that you were raped? Can you tell us what day was that if you can still recall?

A

February 12, 1998, sir.

Q

Where was this third time when you were raped?

A

In our house, sir.

xx xx xx xx

Q

And where did you go when you approached your stepfather?

A

Inside our house, sir.

Q

What happened when you got near him?

A

He immediately pulled me, sir.

Q

How did he pull you?

A

He forcibly pulled me by holding my two hands, sir.

Q

As he was pulling you, what did you do if you did any?

A

I cried very much, sir.

Q

Why?

A

Because he was pulling me.

Q

What transpired next?

A

After that he made me lie down, sir.

Q

Where did he lay you down?

A

Inside our house, sir.

Q

What transpired next?

A

He removed my skirt and after that, my panty, sir.

Q

As he was removing your skirt and your panty, what did you do, if any?

A

I cried very much and asked him why is he doing that to me.

Q

And what, if any, did your stepfather tell you when you said that to him?(At this juncture the witness cannot speak because she was crying very much)

xx xx xx xx

Q

Now, please answer the question. What, if any, did your stepfather answer when you asked him why he was doing that to you?

A

Because he said if you could taste my hotdog, you will enjoy.

Q

And what transpired next?

A

He undressed me, sir.

Q

As he was undressing you, what did you do, if any?

A

I cried very much, sir.

Q

Why?

A

Because he was undressing me, sir.

Q

Did you not fight back?

A

I tried to fight back, sir.

Q

How did you fight back?

A

By hitting him sir.

Q

How did you hit him?

A

I used my two hands/fists in beating him.

(Witness demonstrating by raising her two arms and with closed fists.)

XX XX XX XX

Q

What transpired next after he went on top of you, if any?

A

He forced his penis inside my vagina.

Q

What did you do?

A

I cried very much, sir.

Q

What else did you do, if any?

A

No more, sir.

Q

What did you feel when the accused tried to force his penis inside you vagina?

A

It was very painful, sir.

Q

What was painful?

A

My vagina, sir.

Q

What transpired next when the accused was forcing his penis inside you vagina?

A

He kissed my vulva several times, sir."^[44]

"PROS. CHIONG

Q

When was the 4th time that the accused allegedly raped you?

A

February 16, 1996, sir.

xx xx xx xx

Q

What time was this on February 16, 1998 when you were allegedly raped for the fourth time?

A

12:00 o'clock, sir.

Q

What were you doing about that time?

A

I was asleep, sir.

Q

Do you remember if your sleep was interrupted?

A

Yes, sir.

Q

Why? What happened when your sleep was interrupted?

A

I was awoken[ed] because [of what] my stepfather was doing [to] me, "Gagalawen to ak".

Q

What do you mean by that he was trying to do [to] me, "Gagalawen to ak".

A

He was undressing me, sir.

Q

What did you do when you woke up as your stepfather was undressing you?

A

I cried, sir.

Q

Why did you cry?

A

He was undressing me, sir.

XX XX XX XX

Q

After he removed his brief, what transpired next?

A

He removed my panty and went on top of me.

Q

When he went on top of you, what transpired next?

A

He forced his penis into my vagina.

Q

What did you do, if any, when he was forcing his penis inside your vagina?

A

I cried, sir, because he told me that if I am going to report, he is going to kill me.

Q

What else did you do?

A

I cried very much and I said, why are you doing this to me.

Q

After that, what transpired next?

A

He kissed my bust, sir.

Q

How did you feel when he kissed your bust?

A

I felt pain, sir.

Q

What part of your body was painful?

A

My nipple, sir.

Q

Why?

A

He kissed my nipple and suck[ed] the same, sir.

Q

What did you do when you felt pain?

A

I cried very much, sir.

Q

What else did you do?

A

No more, sir.

Q

What transpired next after he kissed your bust? And suck[ed] your nipples?

A

He kissed my vulva, sir, several times.

Q

How did you feel when he kissed your vulva?

A

I [feel] nausea[ted]. "Nandidiri ako."

Q

What transpired next?

A

After that, he was forcing his penis in my vagina that is why I felt pain.

Q

What part of your body was painful when he was forcing his penis inside your vagina?

A

In the middle portion of my vagina, sir."[45]

"PROS. CHIONG:

Q

And when was the fifth time when your stepfather allegedly raped you?

A

February 23, 1998, sir.

xx xx xx xx

Q

About what time was this?

A

1:00 o'clock, sir.

xx xx xx xx

Q

As you were taking a bath what happened, if any?

A

Suddenly, my stepfather entered the house.

Q

When your stepfather entered the house, what transpired next?

A

He pulled me, sir.

Q

What transpired next?

A

He made me lie down, sir.

Q

When he pulled you, what did you do?

A

I said why was he pulling me.

Q

And what was the answer, if any, of the accused?

A

He said, Don't keep on asking question, you know already that if you will be able to taste my hotdog, you will enjoy and keep on longing for it.

Q

What did you say, if any, when your stepfather told you that?

A

I cried again, sir.

Q

Why did you cry?

A

Because of what he told me, sir.

Q

What transpired next?

A

He undressed me, sir. And then he undressed himself.

Q

What transpired next?

A

He was forcing his penis inside my vagina, sir.

Q

So, you mean to say, that when you were taking a bath you were completely dressed?

A

Yes, sir.

Q

After he undressed you, what did he do?

A

He undressed himself, sir.

Q

What did you do when the accused undressed you, if any?

A

I cried, sir.

Q

Why?

A

Because he was undressing me, sir.

Q

After the accused also undressed himself what transpired next?

A

He went on top of me, sir.

Q

And then what happened next?

A

He was forcing his penis inside my vagina sir.

Q

What did you do when he was forcing his penis inside your vagina?

A

I felt pain because he was forcing his penis inside my vagina, sir.

Q

What transpired next?

A

After that, he went down, sir.

Q

As he was forcing his penis inside your vagina, what did you do?

A

I cried very much, sir.

Q

Why?

A

Because he was forcing his penis inside my vagina, sir.

Q

What else did he do aside from that?

A

He threatened to kill me, sir.

Q

What did he say in threatening you?

A

He told me that if I am going to report he is going to kill me, sir.

Q

Aside from you and the accused, who was at your house that fifth time that he allegedly raped you on February 23, 1998?

A

My mother, sir.

COURT:

The mother should be indicted also as an accessory.

Q

Where was your mother in what particular place inside the house when the accused was doing this to you?

A

She was watching me, sir."^[46]

Thus, every time accused-appellant abused Mergie, he threatened her with harm and warned her of dire consequences if she told anyone, especially her mother, of the incident.^[47] The intimidation was enough to produce fear in her, coming as it did from someone living with her family. There is no merit, therefore, in accused-appellant's claim that Mergie's failure to shout for help or to report the incidents at once places in doubt her credibility. In fact, the law does not even impose the burden of proving resistance on the part of the rape victim.^[48]

Mergie's helplessness was compounded by the fact that even her own mother, her supposed protector from the beastly acts of accused-appellant, urged her to give in accused-appellant's lust.

"COURT:

Q

Aside from watching you what else did she do there as the accused was allegedly raping you?

A

My mother said, you concede because you are able to get what you want from your stepfather.

PROS. CHIONG:

Q

Do you know the reason why your mother even want you to surrender to the desire of the accused?

XX XX XX XX

Q

Why did your mother tell you those, if you know?

A

My stepfather said, you ask your daughter if she consents.

Q

When you heard that remark from your stepfather, did you answer anything?

A

Yes, sir.

Q

What did you say?

A

I said why are you doing this to me.

Q

And what happened after you told that to them?

A

My mother said to me, you concede already my daughter because all what you want from your stepfather and everything that you want he will give.

Q

And what did you say, if any?

A

I said to my stepfather and my mother, why do you treat me like this?

Q

And after you told that to me, what transpired next?

A

My mother wants me to be raped by my stepfather.

Q

How far was your mother as your stepfather was allegedly raping you?

A

She was just near, sir."^[49]

When Mergie was asked why she and Zenaida did not ask their mother's help and instead preferred to be under the custody of the DSWD, Mergie said that her mother did not believe her story because her mother loved accused-appellant so much that she took sides with him.^[50]

All told, the defense of denial and alibi interposed by accused-appellant cannot prevail over his positive identification^[51] by the two complainants. It is a lame excuse on the part of accused-appellant that he was at the market selling fish during the subject dates when the rapes happened. Not even the corroborating testimonies of the other defense witnesses could help his cause. A bare denial, if unsupported by clear and convincing evidence, is self-serving and cannot be given greater evidentiary weight than the positive declarations of the complainants.^[52] For the defense of alibi to prosper, the accused must prove not only that he was somewhere else when the crime was committed but also that it was physically impossible for him to be at the locus criminis at the time of the alleged crime.^[53] Accused-appellant failed to establish that it was physically impossible for him to be at home at the subject dates when the rapes were allegedly committed. We find it incredible for defense witnesses, Corazon Bandong and Perla Ursua, to vividly remember the dates when they saw him in the market, i.e., January 14, February 16 and 23, 1998, to show that accused-appellant could not have committed the rapes.

Third. Accused-appellant makes much of the fact that, in Criminal Case No. 5830, the information did not state the time when the rape was allegedly committed. It merely alleged it was committed in the afternoon of January 14, 1998. Accused-appellant claims this is a violation of his constitutional right to be informed of the nature and case of the accusation against him.

The precise time of the crime has no substantial bearing on its commission. As such, it is not essential that it be alleged in the information with ultimate precision.^[54] Section 11 of Rule 110 of the Rules on Criminal Procedure provides that it is not necessary to state in the complaint or information the precise time at which the offense was committed except when time is a material ingredient of the offense, but that the act may be alleged to have been committed at any time as near to the actual date at which the offense was committed as the information or complaint will permit.

For the same reason, in Criminal Case No. 5835, it is not essential to allege the specific date when the crime was committed. It is sufficient to state that it was committed "in the month of March 1997." The exact date of the commission is not an essential element of the crime of rape, for the gravamen of the offense is carnal knowledge of a woman without her consent.^[55] In this case, the fact of sexual intercourse by accused-appellant against the will of Mergie sometime in March 1997 was adequately proven by the prosecution.

Fourth. With regard to the civil indemnity, the trial court awarded P75,000.00 to each of the complainants for

each count of rape in view of the imposition of the penalty of death on accused-appellant. It also awarded P100,000.00 as moral damages to each of the two complainants.

The awards should be modified. As held in *People vs. Victor*,^[56] if rape is committed or qualified by any of the circumstances which authorize the imposition of the death penalty, civil indemnity shall not be less than P75,000.00. In addition to such indemnity, the victim is also entitled to recover moral damages, pursuant to Article 2219 of the Civil Code, in such amount as the court deems just, without the necessity of pleading or proof of the basis thereof other than the fact of the commission of the offense.^[57] As regards exemplary damages, it was held in *People vs. Catubig*^[58] that if there is an aggravating circumstance, whether ordinary or qualifying, exemplary damages may be awarded to the offended party pursuant to Article 2230 of the Civil Code. Consequently, an award of P25,000.00 as exemplary damages is proper.

Thus, in Criminal Case Nos. 5830, 5831, 5832, and 5835, since accused-appellant is sentenced to suffer the penalty of death, the complainant, Mergie Raoet Macam, should be indemnified in the amount of P75,000.00, or the total amount of P300,000.00, for each count of rape. Moreover, for each count of rape, the additional amounts of P50,000.00, or the total amount of P200,000.00, as moral damages and P25,000.00, or the total amount of P100,000.00, as exemplary damages should be awarded to her.

On the other hand, since in Criminal Case Nos. 5833 and 5834, accused-appellant is guilty only of simple rape, not in its qualified form, he should be sentenced to suffer the penalty of reclusion perpetua in each case and ordered to pay the offended parties, Zenaida Raoet Macam and Mergie Raoet Macam, the amount of P50,000.00 each, as civil indemnity, and the additional amount of P50,000.00 each, as moral damages.

WHEREFORE, the decision of the Regional Trial Court, Branch 39, Lingayen, Pangasinan, finding accused-appellant Carlos Escañó guilty beyond reasonable doubt of the crimes charged in Criminal Case Nos. 5830, 5831, 5832, 5833, 5834, and 5835, is **AFFIRMED** with the following **MODIFICATIONS**:

(1) In Criminal Case Nos. 5830, 5831, 5832, and 5835, accused-appellant is found guilty of qualified rape and is hereby sentenced to suffer in each case the penalty of death and ordered to pay the offended party, Mergie Raoet Macam, for each count of rape, the amount of P75,000.00 (or the total amount of P300,000.00) as civil indemnity, the additional amounts of P50,000.00 (or the total amount of P200,000.00) as moral damages, and P25,000.00 (or the total amount of P100,000.00), as exemplary damages; and

(2) In Criminal Case Nos. 5833 and 5834, accused-appellant is found guilty only of simple rape and is accordingly sentenced to suffer the penalty of reclusion perpetua in each case and ordered to pay each of the offended parties, Zenaida Raoet Macam and Mergie Raoet Macam, the amount of P50,000.00 as civil indemnity and the additional amount of P50,000.00 as moral damages.

In accordance with Section 25 of R.A. No. 7659, amending Article 83 of the Revised Penal Code, upon finality of this decision, let the records of these cases be forthwith forwarded to the Office of the President for the possible exercise of the pardoning power.

SO ORDERED.

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

[1] Rollo, pp. 10-15.

[2] RTC Records (Crim. Case No. 5830), pp. 41-42.

[3] Id., pp. 71-72.

[4] TSN, Oct. 6, 1998, pp. 2-4; TSN, Oct. 8, 1998, pp. 2-5; Sworn Statement of Zenaida Raoet Macam, dated February 24, 1998 (Exh. "I"), RTC Records (Crim. Case No. 5833), p. 3

[5] TSN, Aug. 24, 1998, pp. 4-10; Sworn statement of Mergie Raoet Macam, dated February 24, 1998 (Exh. "B"); RTC Records (Crim. Case No. 5831), pp. 4-5.

[6] TSN (Mergie R. Macam), Sept. 8, 1998, pp. 3-10; TSN (Emiliano Abalos), Oct. 19, 1998 (morning session), pp. 2-5; TSN (Veronica Reyes), Oct. 19, 1998 (afternoon session), pp. 12-15.

[7] Exh. "G"; RTC Records (Crim. Case No. 5830), p. 3; Exh. "C"; RTC Records (Crim. Case No. 5831) p. 3; Exh. "D"; RTC Records (Crim. Case No. 5832), p. 3; Exh. "J"; RTC Records (Crim. Case No. 5833), p. 3; Exh. "E"; RTC Records (Crim. Case No. 5834), p. 4; and Exh. "F"; RTC Records (Crim. Case No. 5835), p. 3.

[8] RTC Records (Crim. Case No. 5834), p. 10.

[9] RTC Records (Crim. Case No. 5833), p. 8.

[10] TSN, Oct. 28, 1998, pp. 2-7.

[11] TSN, Dec. 2, 1998, pp. 2-9; TSN, Dec. 22, 1998, pp. 14-15.

[12] TSN, Feb. 9, 1999, pp. 2-9.

[13] TSN, March 9, 1999, pp. 2-11.

[14] TSN, March 23, 1999, pp. 2-16.

[15] TSN, April 20, 1999, pp. 3-6, 8.

[16] TSN, May 19, 1999, pp. 2-11.

[17] Id., pp. 11-18.

[18] TSN, May 27, 1999, pp. 6-10.

[19] TSN, June 3, 1999, pp. 2-5.

[20] Id., pp. 13-19.

[21] Rollo, pp. 51-52.

[22] People vs. Ariola, G.R. Nos. 142602-05, October 3, 2001; People vs. Fernandez, G.R. No. 137647, February 1, 2001; People vs. De Guzman, G.R. Nos. 134844-45, January 17, 2001; People vs. Fraga, 330 SCRA 669 (2000); People vs. Panique, 316 SCRA 757 (1999); People vs. Gallo, 315 SCRA 461 (1999); People vs. Lim, 312 SCRA 550 (1999); People vs. Ilao, 296 SCRA 658 (1998); People vs. Ramos, 296 SCRA 559 (1998); People vs. Garcia, 281 SCRA 463 (1997); People vs. Acala, 307 SCRA (1999); People vs. Maglente, 306 SCRA 546 (1999); People vs. Manggasin, 306 SCRA 228 (1999); People vs. Cantos, 305 SCRA 787 (1999).

[23] TSN(Mergie R. Macam), Aug. 24, 1998, p. 3; TSN (Zenaida R. Macam), Oct. 6, 1998, pp. 3-4.

[24] People vs. Ramos, 296 SCRA 559 (1998), cited in People vs. Bayya, 327 SCRA 771 (2000).

[25] People vs. Bumidang, G.R. No. 130630, December 4, 2000.

[26] Exh. "2"; RTC Records (Crim. Case No. 5831), pp. 7-8.

- [27] RTC Records (Crim. Case No. 5831), p. 7.
- [28] People vs. Garcia, G.R. No. 117406, January 16, 2001.
- [29] People vs. Sancha, 324 SCRA 646 (2000); People vs. Maglente, 306 SCRA 546 (1999).
- [30] TSN, Aug. 24, 1998, p. 3; Aug. 27, 1998, pp. 4 and 8.
- [31] People vs. Carbonell, G.R. No. 140789-92, September 28, 2001; People vs. Ramos, 296 SCRA 559 (1998).
- [32] People vs. Perez, 296 SCRA 17 (1998).
- [33] People vs. Empante, 306 SCRA 250 (1999); People vs. Padilla, 301 SCRA 275 (1999).
- [34] People vs. Calayca, 301 SCRA 192 (1999).
- [35] Exh. "3"; RTC Records (Crim. Case No. 5833), p. 11.
- [36] RTC Records (Crim. Case No. 5833), p. 11
- [37] People vs. Sandico, 307 SCRA 204 (1999).
- [38] People vs. Batoon, 317 SCRA 545 (1999).
- [39] People vs. Geromo, 321 SCRA 355 (1999).
- [40] People vs. Santos, G.R. Nos. 138308-10, September 26, 2001.
- [41] TSN (Mergie R. Macam), Aug. 24, 1998, pp. 4-5 (emphasis supplied).
- [42] TSN, (Mergie R. Macam), Aug. 24, 1998, pp. 6-7 (emphasis supplied).
- [43] TSN (Mergie R. Macam), Aug. 27, 1998, pp. 2-5 (emphasis supplied).
- [44] TSN (Mergie R. Macam), Aug. 27, 1998, pp. 6-10 (emphasis supplied).
- [45] TSN (Mergie R. Macam), Aug. 27, 1998, pp. 11-13 (emphasis supplied).
- [46] TSN, (Mergie R. Macam), Aug. 27, 1998, pp. 14-16 (emphasis supplied).
- [47] TSN (Mergie R. Macam), Aug. 24, 1998, p. 9; Aug. 27, 1998, p. 5; Sept. 14, 1998, pp. 3, 5, and 12.
- [48] People vs. Cantos, 305 SCRA 786 (1999).
- [49] TSN (Mergie R. Macam), Aug. 27, 1998, pp. 16-18 (emphasis supplied).
- [50] TSN (Mergie R. Macam), Sept. 8, 1998, pp. 13-14.
- [51] People vs. Alay-ay, G.R. Nos. 137199-230, August 23, 2001
- [52] People vs. Ariola, G.R. Nos. 142602-05, October 3, 2001.
- [53] People vs. Hinto, G.R. Nos. 138146-91, February 28, 2001.
- [54] People vs. Narido, 316 SCRA 131 (1999).
- [55] People vs. Alba, 305 SCRA 811 (1999); People vs. Villamor, 297 SCRA 262 (1998); People vs. Bugarin, 273 SCRA 384 (1997).

[56] 292 SCRA 186 (1998).

[57] *People vs. Thamsey*, G.R. No. 144179, July 19, 2001; *People vs. Rafales*, 323 SCRA 13 (2000); *People vs. Silvano*, 309 SCRA 362 (1999); *People vs. Prades*, 293 SCRA 411 (1998).

[58] G.R. No. 137842, August 23, 2001, cited in *People vs. Nerio*, G.R. No. 142564, September 26, 2001.

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