

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FREEDIE LIZADA @ FREDIE LIZADA, ACCUSED-APPELLANT.

G.R. Nos. 143468-71. January 24, 2003

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is an automatic review of the Decision[1] of the Regional Trial Court of Manila, Branch 54, finding accused-appellant Freddie Lizada guilty beyond reasonable doubt of four (4) counts of qualified rape and meting on him the death penalty for each count.

I. The Charges

Accused-appellant[2] was charged with four (4) counts of qualified rape under four separate Informations. The accusatory portion of each of the four Informations reads:

“That sometime in August 1998 in the City of Manila, Philippines, the said accused, with lewd designs, did then and there willfully, unlawfully and feloniously, by means of force, violence and intimidation upon the person of one AAA, by then and there embracing her, kissing and touching her private parts, thereafter removing her skirt and panty, placing himself on top of her and trying to insert his penis into her vagina and succeeded in having carnal knowledge with the said AAA, against her will and consent.

Contrary to law.

X X X

That on or about November 5, 1998, in the City of Manila, Philippines, the said accused, with lewd designs, did then and there willfully, unlawfully and feloniously, by means of force, violence and intimidation upon the person of one AAA, by then and there embracing her, kissing and touching her private parts, thereafter removing her skirt and panty, placing himself on top of her and trying to insert his penis into her vagina and succeeded in having carnal knowledge with the said AAA, against her will and consent.

Contrary to law.

X X X

That on or about October 22, 1998, in the City of Manila, Philippines, the said accused, with lewd designs, did then and there willfully, unlawfully and feloniously, by means of force, violence and intimidation upon the person of one AAA, by then and there embracing her, kissing and touching her private parts, thereafter removing her skirt and panty, placing himself on top of her and trying to insert his penis into her vagina and succeeded in having carnal knowledge with the said AAA, against her will and consent.

Contrary to law.

X X X

That on or about September 15, 1998, in the City of Manila, Philippines, the said accused, with lewd designs,

did then and there willfully, unlawfully and feloniously, by means of force, violence and intimidation upon the person of one AAA, by then and there embracing her, kissing and touching her private parts, thereafter removing her skirt and panty, placing himself on top of her and trying to insert his penis into her vagina and succeeded in having carnal knowledge with the said AAA, against her will and consent.

Contrary to law.”[3]

The four (4) Informations were docketed as Criminal Cases Nos. 99-171390, 99-171391, 99-171392 and 99-171393, respectively.

Accused-appellant was arraigned on April 15, 1999, assisted by counsel de parte and entered a plea of not guilty to each of the charges.[4] A joint trial then ensued.

II. Evidence of the Prosecution[5]

xxxxxxxxxxxxx and his wife, xxxxxxxxxxxxxxxx, natives of xxxxxxxxxxxx, xxxxxxxxxxxx, had three (3) children, namely: AAA, who was born on December 18, 1985;[6] xxxxxxxxxxxx, who was 11 years old, and xxxxxxxxxxxx, who was nine years old. However, the couple decided to part ways and live separately. xxxxxxxxxxxx left Bohol and settled in Manila with her young children. She worked as a waitress to make both ends meet.

In 1994, xxxxxxxxxxxx met accused-appellant. They decided to live together as husband and wife at No. 1252 Jose Abad Santos Street, Moriones, Tondo, Manila. In 1996, xxxxxxxxxxxx resigned from her job as a waitress. She secured a loan, bought a truck and used it for her business.

In the meantime, xxxxxxxxxxxx secured a loan anew and used the proceeds thereof to put up a video shop in her house. She sold Avon products from house to house to augment her income. Whenever she was out of their house, xxxxxxxxxxxx and AAA took turns in tending the video shop and attending to customers.

Sometime in 1996, AAA was in her room when accused-appellant entered. He laid on top of her, removed her T-shirt and underwear. He then inserted his finger in her vagina. He removed his finger and inserted his penis in her vagina. Momentarily, she felt a sticky substance coming out from his penis. She also felt pain in her sex organ. Satiated, accused-appellant dismounted but threatened to kill her if she divulged to anyone what he did to her. Accused-appellant then returned to his room. The incident lasted less than one hour. Petrified by the threats on her life, AAA kept to herself what happened to her.[7]

Sometime in August 1997, accused-appellant entered again the room of AAA, placed himself on top of her and held her legs and arms. He then inserted his finger into her sex organ (“fininger niya ako”). Satiated, accused-appellant left the room. During the period from 1996 to 1998, accused-appellant sexually abused private complainant two times a week.

On November 5, 1998, at about 3:00 p.m., AAA was in the sala of their house studying her assignments. Accused-appellant was also in the sala. xxxxxxxxxxxx tended the video shop while his mother was away. AAA went into her room and lay down in bed. She did not lock the door of the room because her brother might enter any time. She wanted to sleep but found it difficult to do so. Accused-appellant went to his room next to the room of AAA. He, however, entered the room of AAA. He was wearing a pair of short pants and was naked from waist up. AAA did not mind accused-appellant entering her room because she knew that her brother, xxxxxxxxxxxx was around. However, accused-appellant sat on the side of her bed, placed himself on top of her, held her hands and legs and fondled her breasts. She struggled to extricate herself. Accused-appellant removed her panty and touched her sex organ. Accused-appellant inserted his finger into her vagina, extricated it and then inserted his penis into her vagina. Accused-appellant ejaculated. AAA felt pain in her sex organ. Momentarily, xxxxxxxxxxxx passed by

the room of AAA after drinking water from the refrigerator, and peeped through the door. He saw accused-appellant on top of AAA. Accused-appellant saw xxxxxxxxxxxx and dismounted. Accused-appellant berated xxxxxxxxxxxx and ordered him to go to his room and sleep. xxxxxxxxxxxx did. Accused-appellant then left the room. AAA likewise left the room, went out of the house and stayed outside for one hour. xxxxxxxxxxxx arrived home at 6:00 p.m. However, AAA did not divulge to her mother what accused-appellant had just done to her.

On November 9, 1998, at about 3:00 p.m., xxxxxxxxxxxx left the house. Accused-appellant was in the sala of the house watching television. AAA tended the video shop. However, accused-appellant told AAA to go to the sala. She refused, as nobody would tend the video shop. This infuriated accused-appellant who threatened to slap and kick her.

AAA ignored the invectives and threats of accused-appellant and stayed in the video shop. When xxxxxxxxxxxx returned, a heated argument ensued between accused-appellant and AAA. xxxxxxxxxxxx sided with her paramour and hit AAA. This prompted AAA to shout. "Ayoko na, ayoko na." Shortly thereafter, AAA left the house on board the motorcycle driven by her mother in going to Don Bosco Street, Moriones, Tondo, Manila, to retrieve some tapes which had not yet been returned. When xxxxxxxxxxxx inquired from her daughter what she meant by her statement, "ayoko na, ayoko na," she told her mother that accused-appellant had been touching the sensitive parts of her body and that he had been on top of her. xxxxxxxxxxxx was shocked and incensed. The two proceeded to Kagawad Danilo Santos to have accused-appellant placed under arrest. On November 10, 1998, the two proceeded to the Western Police District where AAA gave her Affidavit-Complaint to PO1 Carmelita Nocum in the presence of SPO2 Fe H. Avindante. She related to the police investigator that accused-appellant had touched her breasts and arms in August, 1998, September 15, 1998, October 22, 1998 and on November 5, 1998, at 3:00 p.m. AAA then submitted herself to genitalia examination by Dr. Armie Umil, a medico-legal officer of the NBI. The medico-legal officer interviewed AAA, told him that she was raped in May, 1997 at 3:00 p.m. and November 5, 1998 at 3:00 p.m.[8]

Dr. Umil prepared and signed a report on "Living Case No. MO-98-1265" which contained her findings during her examination on AAA, thus:

"x x x

Fairly nourished, conscious, coherent, cooperative, ambulatory subject. Breasts, developed, hemispherical, firm. ---, brown, 3.0 cms. in diameter. Nipples brown, protruding, 0.7 cms. in diameter.

No extragenital physical injuries noted.

GENITAL EXAMINATION:

Pubic hair, fully grown, moderate. Labia majora and minora, coaptated. Fourchette, tense. Vestibular mucosa, pinkish. Hymen, tall, thick, intact. Hymenal orifice measures, 1.5 cms. in diameter. Vaginal walls, tight. Rugosities, prominent.

CONCLUSIONS:

- 1). No evident sign of extragenital physical injuries noted on the body of the subject at the time of examination.
- 2). Hymen, intact and its orifice small (1.5 cms. in diameter) as to preclude complete penetration by an average-sized adult Filipino male organ in full erection without producing any genital injury."[9]

Subsequently, AAA told her mother that "mabuti na lang iyong panghihipo lang ang sinabi ko." When

xxxxxxxxxx inquired from her daughter what she meant by her statement, AAA revealed to her mother that accused-appellant had sexually abused her. On December 15, 1998, AAA executed a “Dagdag na Salaysay ng Paghabla” and charged accused-appellant with rape.[10]

III. The Defenses and Evidence of Accused-Appellant

Accused-appellant testified in his defense. He declared that after a month of courtship, he and xxxxxxxxxxxx agreed in 1994 to live together as husband and wife. He was then a utility worker with the Navotas Branch of the Philippine Banking Corporation. xxxxxxxxxxxx, on the other hand, was a waitress at the Golden Bird beer house at Rizal Avenue, Manila.

Accused-appellant denied having raped AAA. He claimed that he loved the children of xxxxxxxxxxxx as if they were his own children. He took care of them, as in fact he cooked and prepared their food before they arrived home from school. At times, he ironed their school uniforms and bathed them, except AAA who was already big. AAA was hard-headed because she disobeyed him whenever he ordered her to do some errands. Because of AAA’s misbehavior, accused-appellant and xxxxxxxxxxxx oftentimes quarreled. xxxxxxxxxxxx even demanded that accused-appellant leave their house. Another irritant in his and xxxxxxxxxxxx’s lives were the frequent visits of the relatives of her husband.

Sometime in 1997, accused-appellant was retrenched from his employment and received a separation pay of P9,000.00 which he used to put up the VHS Rental and Karaoke from which he earned a monthly income of P25,000.00. While living together, accused-appellant and xxxxxxxxxxxx acquired two colored television sets, two VHS Hi-fi recorders, one VHS player, one washing machine, one scooter motor, two VHS rewinders, one sala set, one compact disc player and many other properties.

Accused-appellant ventured that xxxxxxxxxxxx coached her children AAA and xxxxxxxxxxxx to testify against him and used them to fabricate charges against him because xxxxxxxxxxxx wanted to manage their business and take control of all the properties they acquired during their coverture. Also, xxxxxxxxxxxx was so exasperated because he had no job.

IV. The Verdict

On May 29, 2000, the trial court rendered judgment against accused-appellant finding him guilty beyond reasonable doubt of four (4) counts of rape, defined and penalized in the seventh paragraph, no. 1, Art. 335 of the Revised Penal Code, and meted on him the death penalty for each count. The dispositive portion of the decision reads:

“From all the evidence submitted by the prosecution, the Court concludes that the accused is guilty beyond reasonable doubt of the crime charged against him in these four (4) cases, convicts him thereof, and sentences him to DEATH PENALTY in each and every case as provided for in the seventh paragraph, no. 1, Article 335 of the Revised Penal Code.

SO ORDERED.”[11]

V. Assigned Errors of the Trial Court

Accused-appellant assailed the decision of the court a quo and averred in his brief that:

“THE TRIAL COURT GRAVELY ERRED IN NOT MAKING A FINDING OF FACT IN ITS DECISION AND SUCH FAILURE IS A REVERSIBLE ERROR.”[12]

X X X

“THE TRIAL COURT GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT OF FOUR (4) COUNTS OF RAPE DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[13]

VI. Findings of the Court

On the first assignment of error, accused-appellant contends that the decision of the trial court is null and void as it failed to comply with the requirements of Section 14, Article VIII of the 1987 Constitution and Section 1, Rule 36 of the 1997 Rules of Civil Procedure, as amended. He avers that the court a quo made no findings of facts in its decision. The trial court merely summarized the testimonies of the witnesses of the prosecution and those of accused-appellant and his witnesses, and forthwith set forth the decretal portion of said decision. The trial court even failed to state in said decision the factual and legal basis for the imposition of the supreme penalty of death on him. The Solicitor General, on the other hand, argues that there should be no mechanical reliance on the constitutional provision. Trial courts may well-nigh synthesize and simplify their decisions considering that courts are harassed by crowded dockets and time constraints. Even if the trial court did not elucidate the grounds as the legal basis for the penalties imposed, nevertheless the decision is valid. In any event, the Solicitor General contends that despite the infirmity of the decision, there is no need to remand the case to the trial court for compliance with the constitutional requirement as the Court may resolve the case on its merits to avoid delay in the final disposition of the case and afford accused-appellant his right to a speedy trial.

The contention of accused-appellant is well-taken. Article VIII, paragraph 14 of the 1987 Constitution provides that “no decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based.” This requirement is reiterated and implemented by Rule 120, Section 2 of the 1985 Rules on Criminal Procedure, as amended, which reads:

“SEC. 2. Form and contents of judgment.—The judgment must be written in the official language, personally and directly prepared by the judge and signed by him and shall contain clearly and distinctly a statement of the facts proved or admitted by the accused and the law upon which the judgment is based.

If it is of conviction, the judgment shall state (a) the legal qualification of the offense constituted by the acts committed by the accused, and the aggravating or mitigating circumstances attending the commission thereof, if there are any; (b) the participation of the accused in the commission of the offense, whether as principal, accomplice, or accessory after the fact; (c) the penalty imposed upon the accused; and (d) the civil liability or damages caused by the wrongful act to be recovered from the accused by the offended party, if there is any, unless the enforcement of the civil liability by a separate action has been reserved or waived.”[14]

The purpose of the provision is to inform the parties and the person reading the decision on how it was reached by the court after consideration of the evidence of the parties and the relevant facts, of the opinion it has formed on the issues, and of the applicable laws. The parties must be assured from a reading of the decision of the trial court that they were accorded their rights to be heard by an impartial and responsible judge.[15] More substantial reasons for the requirement are:

“For one thing, the losing party must be given an opportunity to analyze the decision so that, if permitted, he may elevate what he may consider its errors for review by a higher tribunal. For another, the decision if well-presented and reasoned, may convince the losing party of its merits and persuade it to accept the verdict in good grace instead of prolonging the litigation with a useless appeal. A third reason is that decisions with a full exposition of the facts and the law on which they are based, especially those coming from the Supreme Court, will constitute a valuable body of case law that can serve as useful references and even as precedents in the resolution of future controversies.”[16]

The trial court is mandated to set out in its decision the facts which had been proved and its conclusions culled therefrom, as well as its resolution on the issues and the factual and legal basis for its resolution.[17] Trial courts should not merely reproduce the respective testimonies of witnesses of both parties and come out with its decretal conclusion.

In this case, the trial court failed to comply with the requirements under the Constitution and the Rules on Criminal Procedure. It merely summarized the testimonies of the witnesses of the prosecution and of accused-appellant on direct and cross examinations and merely made referral to the documentary evidence of the parties then concluded that, on the basis of the evidence of the prosecution, accused-appellant is guilty of four (4) counts of rape and sentenced him to death, on each count.

The trial court even failed to specifically state the facts proven by the prosecution based on their evidence, the issues raised by the parties and its resolution of the factual and legal issues, as well as the legal and factual bases for convicting accused-appellant of each of the crimes charged. The trial court rendered judgment against accused-appellant with the curt declaration in the decretal portion of its decision that it did so based on the evidence of the prosecution. The trial court swallowed hook, line and sinker the evidence of the prosecution. It failed to explain in its decision why it believed and gave probative weight to the evidence of the prosecution. Reading the decision of the trial court, one is apt to conclude that the trial court ignored the evidence of accused-appellant. The trial court did not even bother specifying the factual and legal bases for its imposition of the supreme penalty of death on accused-appellant for each count of rape. The trial court merely cited seventh paragraph, no. 1, Article 335 of the Revised Penal Code. The decision of the trial court is a good example of what a decision, envisaged in the Constitution and the Revised Rules of Criminal Procedure, should not be.

The Court would normally remand the case to the trial court because of the infirmity of the decision of the trial court, for compliance with the constitutional provision. However, to avert further delay in the disposition of the cases, the Court decided to resolve the cases on their merits considering that all the records as well as the evidence adduced during the trial had been elevated to the Court.[18] The parties filed their respective briefs articulating their respective stances on the factual and legal issues.

In reviewing rape cases, this Court is guided by the following principles: (1) to accuse a man of rape is easy but to disprove it is difficult though the accused may be innocent; (2) considering the nature of things, and only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; (3) the evidence for the prosecution must stand or fall on its own merits and not be allowed to draw strength from the weakness of the evidence of the defense.[19] By the very nature of the crime of rape, conviction or acquittal depends almost entirely on the credibility of the complainant's testimony because of the fact that usually only the participants can testify as to its occurrence. However, if the accused raises a sufficient doubt as to any material element of the crime, and the prosecution is unable to overcome it with its evidence, the prosecution has failed to discharge its burden of proving the guilt of the accused beyond cavil of doubt and hence, the accused is entitled to an acquittal.

Anent the second assignment of error, we will resolve the same for convenience, as follows:

Re:

CRIMINAL CASES NOS. 99-171392 and 99-171393 (covering the crime of rape committed on or about October 22, 1998 and on or about September 15, 1998)

Accused-appellant avers that the prosecution failed to adduce the requisite quantum of evidence that he raped the private complainant precisely on September 15, 1998 and October 22, 1998. Moreover, the medical findings of Dr. Armie Umil show that the hymen of the private complainant was intact and its orifice so small as to preclude

complete penetration by an average size adult Filipino male organ in full erection without producing any genital injury. The physical evidence belies private complainant's claim of having been deflowered by accused-appellant on four different occasions. The Office of the Solicitor General, for its part, contends that the prosecution through the private complainant proved the guilt of accused-appellant for the crime charged on both counts.

The contention of accused-appellant does not persuade the Court. The private complainant testified that since 1996, when she was only eleven years old, until 1998, for two times a week, accused-appellant used to place himself on top of her and despite her tenacious resistance, touched her arms, legs and sex organ and inserted his finger and penis into her vagina. In the process, he ejaculated. Accused-appellant threatened to kill her if she divulged to anyone what he did to her.[20] Although private complainant did not testify that she was raped on September 15, 1998 and October 22, 1998, nevertheless accused-appellant may be convicted for two counts of rape, in light of the testimony of private complainant.

It bears stressing that under the two Informations, the rape incidents are alleged to have been committed "on or about September 15, 1998" and "on or about October 22, 1998." The words "on or about" envisage a period, months or even two or four years before September 15, 1998 or October 22, 1998. The prosecution may prove that the crime charged was committed on or about September 15, 1998 and on or about October 22, 1998.

In *People vs. Gianan*,[21] this Court affirmed the conviction of accused-appellant of five (5) counts of rape, four of which were committed in December 1992 (two counts) and one each in March and April, 1993 and in November, 1995 and one count of acts of lasciviousness committed in December 1992, on a criminal complaint for multiple rape, viz:

"That sometime in November 1995, and some occasions prior and/or subsequent thereto, in the Municipality of Dasmariñas, Province of Cavite, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, taking advantage of his superior strength over the person of his own twelve (12) year old daughter, and by means of force, violence and intimidation, did, then and there, willfully, unlawfully and feloniously, have repeated carnal knowledge of Myra M. Gianan, against her will and consent, to her damage and prejudice." [22]

On the contention of accused-appellant in said case that his conviction for rape in December 1992 was so remote from the date (November 1995) alleged in the Information, so that the latter could no longer be considered as being "as near to the actual date at which the offense was committed" as provided under Section 11, Rule 110 of the Rules on Criminal Procedure, as amended, this Court held:

"Accused-appellant nevertheless argues that his conviction for rape in December 1992 is so remote from the date (November 1995) alleged in the information, so that the latter could no longer be considered as being "as near to the actual date at which the offense was committed" as provided under Rule 110, §11.

This contention is also untenable. In *People v. Garcia*, this Court upheld a conviction for ten counts of rape based on an information which alleged that the accused committed multiple rape "from November 1990 up to July 21, 1994," a time difference of almost four years which is longer than that involved in the case at bar. In any case, as earlier stated, accused-appellant's failure to raise a timely objection based on this ground constitutes a waiver of his right to object." [23]

Moreover, when the private complainant testified on how accused-appellant defiled her two times a week from 1996 until 1998, accused-appellant raised nary a whimper of protest. Accused-appellant even rigorously cross-examined the private complainant on her testimony on direct examination. The presentation by the prosecution, without objection on the part of accused-appellant, of evidence of rape committed two times a week from 1996 until 1998 (which includes September 15, 1998 and October 22, 1998) to prove the charges lodged

against him constituted a waiver by accused-appellant of his right to object to any perceived infirmity in, and in the amendment of, the aforesaid Informations to conform to the evidence adduced by the prosecution.

The barefaced fact that private complainant remained a virgin up to 1998 does not preclude her having been repeatedly sexually abused by accused-appellant. The private complainant being of tender age, it is possible that the penetration of the male organ went only as deep as her labia. Whether or not the hymen of private complainant was still intact has no substantial bearing on accused-appellant's commission of the crime.[24] Even the slightest penetration of the labia by the male organ or the mere entry of the penis into the aperture constitutes consummated rape. It is sufficient that there be entrance of the male organ within the labia of the pudendum.[25] In *People vs. Baculi*, cited in *People vs. Gabayron*,[26] we held that there could be a finding of rape even if despite repeated intercourse over a period of four years, the complainant still retained an intact hymen without injury. In these cases, the private complainant testified that the penis of accused-appellant gained entry into her vagina:

“Fiscal Carisma (continuing)

After your underwear was removed by the accused, what happened next?

Witness:

He laid himself on top of me, sir.

Q

What did he do while he was on top of you?

A

He inserted his finger (Finenger nya ako, ipinatong nya yong ano nya)

Q

Can you please describe more specifically what is this and I quote “Pinatong nya yong ano nya” and where did he place it?

A

His organ, sir.

Q

Where did he place his organ?

A

In my organ, sir. (sa ari ko po.)

Q

At this very juncture madam witness, what did you feel?

A

I felt pain, sir, and I also felt that there was a sticky substance that was coming out, sir.”[27] (Underlining supplied)

We agree with accused-appellant that he is guilty only of two counts of simple rape, instead of qualified rape. The

evidence on record shows that accused-appellant is the common-law husband of xxxxxxxxxxxx, the mother of private complainant. The private complainant, as of October 1998, was still 13 years old, and under Article 335 as amended by Republic Act 7659, the minority of the private complainant, concurring with the fact that accused-appellant is the common-law husband of the victim's mother, is a special qualifying circumstance warranting the imposition of the death penalty.[28] However, said circumstance was not alleged in the Informations as required by Section 8, Rule 110 of the Revised Rules on Criminal Procedure which was given retroactive effect by this Court because it is favorable to the accused.[29] Hence, even if the prosecution proved the special qualifying circumstance of minority of private complainant and relationship, the accused-appellant being the common-law husband of her mother, accused-appellant is guilty only of simple rape. Under the given law, the penalty for simple rape is reclusion perpetua. Conformably with current jurisprudence, accused-appellant is liable to private complainant for civil indemnity in the amount of P50,000.00 and moral damages in the amount of P50,000.00 for each count of rape, or a total of P200,000.00.

Re: Criminal Cases Nos. 99-171390 and 99-171391 (covering the crime committed on or about August 1998 and November 5, 1998)

Accused-appellant avers that (a) the Information in Criminal Case No. 99-171390 is defective because the date of the offense "on or about August 1998" alleged therein is too indefinite, in violation of Rule 110, Section 11 of the Revised Rules on Criminal Procedure which reads:

"Sec. 11. Date of commission of the offense.—It is not necessary to state in the complaint or information the precise date the offense was committed except when it is a material ingredient of the offense. The offense may be alleged to have been committed on a date as near as possible to the actual date of its commission. (11a)"[30]

Accused-appellant further asserts that the prosecution failed to prove that he raped private complainant in August 1998. Hence, he argues, he should be acquitted of said charge. The Office of the Solicitor General, for its part, argued that the date "on or about August 1998" is sufficiently definite. After all, the date of the commission of the crime of rape is not an essential element of the crime. The prosecution adduced conclusive proof that accused-appellant raped private complainant on or about August 1998, as gleaned from her testimony during the trial.

The Court does not agree with accused-appellant. It bears stressing that the precise date of the commission of the crime of rape is not an essential element of the crime. Failure to specify the exact date when the rape was committed does not render the Information defective. The reason for this is that the gravamen of the crime of rape is carnal knowledge of the private complainant under any of the circumstances enumerated under Article 335 of the Revised Penal Code, as amended. Significantly, accused-appellant did not even bother to file a motion for a bill of particulars under Rule 116, Section 9 of the Revised Rules on Criminal Procedure before he was arraigned. Indeed, accused-appellant was duly arraigned under the Information and entered a plea of not guilty to the charge without any complaint on the sufficiency of the Information. Accused-appellant even adduced his evidence after the prosecution had rested its case. It was only on appeal to this Court that accused-appellant questioned for the first time the sufficiency of the Information filed against him. It is now too late in the day for him to do so. Moreover, in *People vs. Salalima*,[31] this Court held that:

"Failure to specify the exact dates or time when the rapes occurred does not ipso facto make the information defective on its face. The reason is obvious. The precise date or time when the victim was raped is not an element of the offense. The gravamen of the crime is the fact of carnal knowledge under any of the circumstances enumerated under Article 335 of the Revised Penal Code. As long as it is alleged that the offense was committed at any time as near to the actual date when the offense was committed an information is

sufficient. In previous cases, we ruled that allegations that rapes were committed “before and until October 15, 1994,” “sometime in the year 1991 and the days thereafter,” “sometime in November 1995 and some occasions prior and/or subsequent thereto” and “on or about and sometime in the year 1988” constitute sufficient compliance with Section 11, Rule 110 of the Revised Rules on Criminal Procedure.

In this case, although the indictments did not state with particularity the dates when the sexual assaults took place, we believe that the allegations therein that the acts were committed “sometime during the month of March 1996 or thereabout,” “sometime during the month of April 1996 or thereabout,” “sometime during the month of May 1996 or thereabout” substantially apprised appellant of the crimes he was charged with since all the elements of rape were stated in the informations. As such, appellant cannot complain that he was deprived of the right to be informed of the nature of the cases filed against him. Accordingly, appellant’s assertion that he was deprived of the opportunity to prepare for his defense has no leg to stand on.”

The prosecution proved through the testimony of private complainant that accused-appellant raped her two times a week in 1998. As in Criminal Cases Nos. 99-171392 and 99-171393, accused-appellant is guilty only of simple rape.

As to the crime of rape subject of Criminal Case No. 99-171391, accused-appellant avers that he is not criminally liable of rape. We agree with accused-appellant. The collective testimony of private complainant and her younger brother xxxxxxxxxxxx was that on November 5, 1998, accused-appellant who was wearing a pair of short pants but naked from waist up, entered the bedroom of private complainant, went on top of her, held her hands, removed her panty, mashed her breasts and touched her sex organ. However, accused-appellant saw xxxxxxxxxxxx peeping through the door and dismounted. He berated xxxxxxxxxxxx for peeping and ordered him to go back to his room and to sleep. Accused-appellant then left the room of the private complainant. The testimony of private complainant on direct examination reads:

“Fiscal Carisma:

Q

In between 1996 and August 1997?

A

Yes, sir, sometimes two (2) times a week.

Q

In November of 1998, do you recall of any unusual experience that happened to you again?

A

Yes, sir.

Q

What was this unusual experience of yours?

A

He laid himself on top of me, sir.

Q

You said “he” whom are you referring to?

A

Freedie Lizada Jakosalem, sir.

Q

The same person you pointed to earlier?

A

Yes, sir.

Q

You said he placed himself on top of you in November, 1998, what did he do while he was on top of you?

A

He's smashing my breast and he was also touching my arms and my legs, sir.

Q

What else if any madam witness?

A

He was also touching my sex organ, sir.

Q

What else, if any?

Atty. Estorco:

May we take note of the same objection your honor, the prosecution - - -

Court:

Same ruling. Let the complainant continue considering that she is crying and still young.

Witness:

None else, sir.

Fiscal Carisma:

With what part of his body did he touch your sex organ?

Atty. Estorco:

Your Honor, that is - - -

Court:

May answer.

Fiscal Carisma:

I will re-propound the question, your honor. You said that he touched your sex organ, will you tell the court with what part of his body, did he touch your sex organ?

Witness:

With his hands, sir.

Q

What about after November 1998 - - was this the last incident, this unusual thing that you experienced from the hands of the accused was this that last time, the one you narrated in November 1998?

A

Yes, sir.”[32]

On cross-examination, the private complainant testified, thus:

“Atty. Balaba:

Q

Who was that somebody who entered the room?

A

My stepfather Freddie Lizada, sir.

Q

He was fully dressed at that time, during the time, is that correct?

A

Yes, sir, he was dressed then, sir.

Q

And he had his pants on, is that correct?

A

He was wearing a short pants, sir.

Q

Was it a T-shirt that he had, at that time or a polo shirt?

A

He was not wearing any shirt then, sir, he was naked.

Q

When you realized that somebody was entering the room were you not afraid?

A

No, sir, I was not afraid.

Q

What happened when you realized that somebody entered the room, and the one who entered was your stepfather, Freddie Lizada?

A

I did not mind him entering the room because I know that my brother was around but suddenly I felt that somebody was holding me.

Q

He was holding you, where were you when he held you?

A

I was in the bed, sir, lying down.

Q

You were lying down?

A

Yes, sir.

Q

What part of the body did the accused Freddie Lizada touched you?

A

My two arms, my legs and my breast, sir.

Q

Do you mean to tell us that he was holding your two arms and at the same time your legs, is that what you are trying to tell us?

A

He held me first in my arms and then my legs, sir.

Q

He held you first by your arms, is that what you are trying to tell us?

Fiscal Carisma:

Already answered your honor, he held the arms and then the legs.

Court:

Already answered.

Atty. Balaba:

Q

Your honor, I am just trying to - -

Court:

Proceed.

Atty. Balaba:

Q

He held your arms with his two hands?

A

Only with one hand, sir.

Q

Which hand were you touched?

A

I do not know which hand, sir.

Q

Which arm of yours was held by Freddie Lizada?

A

I could not recall, sir.

Q

Which side of your body was Freddie Lizada at that time?

A

I cannot recall, sir.

Q

What was the position of Freddie Lizada when he held your arms?

A

He was sitting on our bed, sir.

Q

Which side of your bed was Freddie Lizada sitting on?

A

I do not know, sir. I cannot recall.

Atty. Balaba:

Can we take a recess your honor?

Court:

How long will it take you to finish your cross?

Atty. Balaba:

We will confront the witness with so many things your honor.

Court:

Yes, that's why I am asking you how long will it take you to finish your cross?

Atty. Balaba:

About another hour, sir.

Court:

So we will be finished by 11:15, proceed.

Atty. Balaba:

You cannot also remember which leg was held by Freddie Lizada?

A

I cannot recall, sir.

Q

When this happened, did you not shout for help?

A

I did not ask for help, I was motioning to resist him, so that he would go out, sir. I was struggling to free myself from him, sir.

Q

And you were not able to extricate yourself from him?

A

I was not able to extricate myself, sir.

Q

You were struggling with one arm of Lizada holding your arm, and the other hand was holding your leg, is that what you are trying to tell us?

A

No, sir, it's not like that.

Q

Could you tell us, what happened, you did not shout for help and you were trying to extricate yourself, what happened?

A

He suddenly went out of the room, sir.

Q

Now, he went - - -

Court:

You did not shout during that time?

A

No, your honor.”[33]

xxxxxxxxxxxx, the nine-year old brother of the private complainant corroborated in part his sister’s testimony. He testified on direct examination, thus:

“Fiscal Carisma: (continuing)

Q

Now, on November 2, 1998 do you recall where you were at about 3:00 o’clock?

A

I was outside our house, sir.

Q

Where was your house again, Mr. witness, at that time? Where was your house at that date, time and place? At that date and time?

A

1252 Jose Abad Santos, Tondo, Manila, sir.

Court:

Q

The same address?

A

Yes, sir.

Fiscal Carisma:

Q

On that date, time and place, do you recall where your sister AAA was?

A

Yes, sir.

Q

Where was she?

A

She was sleeping, sir.

Q

Now, on that date, time and place you said you were outside your house, did you stay the whole afternoon outside your house?

A

No, sir.

Q

Where did you go next?

A

Inside, sir.

Q

For what purpose did you get inside your house?

A

Because I was thirsty, sir.

Q

So you went to the fridge to get some water?

A

Yes, sir.

Q

And what happened as you went inside your house to get some water?

A

I saw my stepfather removing the panty of my sister and he touched her and then he laid on top of her, sir.

Q

Do you see your stepfather inside the courtroom now?

A

Yes, sir.

Q

Will you point to him?

A

He is the one, sir.

Court Interpreter:

Witness pointing to a male person who when asked answers to the name Freddie Lizada.

Fiscal Carisma:

Q

This thing that your father was – that your stepfather did to your elder sister, did you see this before or after you went to the fridge to get some water?

A

I already got water then, sir.

Q

What did you do as you saw this thing being done by your stepfather to your elder sister?

A

I was just looking at them when he saw me, sir.

Q

Who, you saw who? You are referring to the accused Freddie Lizada?

A

Yes, sir.

Q

So, what did you do as you were seen by your stepfather?

A He scolded me, he shouted at me, he told me something and after that he went to the other room and slept, sir."[34]

xxxxxxxxxxx testified on cross-examination, thus:

“Q

So you got thirsty, is that correct, and went inside the house?

A

Yes, sir.

Q

And you took a glass of water from the refrigerator?

A

Yes, sir.

Q

And it was at this time that you saw the accused Freddie Lizada touching your sister?

A

Yes, sir.

Q

Where was this refrigerator located?

A

In front of the room where my sister sleeps, sir.

Q

So the door of your sister's room was open?

A

Yes, sir.

Q

And --- okay, you said your sister was sleeping. What was the position of your sister when you said the accused removed her panty?

A

She was lying straight, but she was resisting, sir.

Q

Were you noticed by your sister at that time?

A

No, sir.

Q

And your sister did not call for help at that time?

A

No, sir.

Q

And all this time you saw the accused doing this, from the refrigerator where you were taking a glass of water?

A

Yes, sir.

Q

Did you not say something to the accused?

A

No, sir, I was just looking.

Q

So your sister was lying down when the accused removed her panty, is that what you are trying to tell us?

A

Yes, sir.

Q

And where was the - - - and the accused saw you when he was removing the panty of your sister?

A

Not yet, sir, but after a while he looked at the refrigerator because he might be thirsty.

Q

So---you said the accused was touching your sister. What part of her body was touched by the accused?

A

Here, sir.

Court Interpreter:

Witness pointing at the lower portion of the body.

Atty. Balaba:

Q

You saw with what hand was the accused touching your sister?

A

Yes, sir.

Q

What hand was he touching your sister?

A

This hand, sir.

Court Interpreter:

Witness raising his right hand.

Atty. Balaba:

Q

And which part of your sister's body was the accused touching with his right hand? Your sister's body was the accused touching with his right hand?

A

Her right leg, sir.

Q

How about his left hand, what was the accused doing with his left hand?

A

Removing her panty, sir.

Q

Removing her?

A

Panty, sir.

Q

Which hand of your sister was being removed with the left hand of the accused?

Court:

Which?

Atty. Balaba:

Which hand, which hand?

Fiscal Carisma:

The question is vague, your honor.

Atty. Balaba:

Because he said that removing the hand ---

Fiscal Carisma:

He said removing the panty.

Atty. Balaba:

Is that panty? I'm sorry.

Q

So, the accused was touching with his right hand the left thigh of your sister ---

Fiscal Carisma:

The right thigh.

Atty. Balaba:

Q

Rather the right thigh of your sister and with his left hand removing the panty, is that what you are telling to tell us?

A

Yes, sir.

Q

And your sister all the time was trying to ---was struggling to get free, is that not correct?

A

Yes, sir, she was resisting. (witness demonstrating)

Q

She was struggling --- was the accused able to remove the panty?

A

Yes, sir.

Q

And all the time you were there looking with the glass of water in your hand?

A

Yes, sir.”[35]

In light of the evidence of the prosecution, there was no introduction of the penis of accused-appellant into the aperture or within the pudendum of the vagina of private complainant. Hence, accused-appellant is not criminally liable for consummated rape.[36]

The issue that now comes to fore is whether or not accused-appellant is guilty of consummated acts of lasciviousness defined in Article 336 of the Revised Penal Code or attempted rape under Article 335 of the said Code, as amended in relation to the last paragraph of Article 6 of the Revised Penal Code. In light of the evidence on record, we believe that accused-appellant is guilty of attempted rape and not of acts of lasciviousness.

Article 336 of the Revised Penal Code reads:

“Art. 336. Acts of Lasciviousness.—Any person who shall commit any act of lasciviousness upon other persons of either sex, under any of the circumstances mentioned in the preceding article, shall be punished by prision correccional.”[37]

For an accused to be convicted of acts of lasciviousness, the prosecution is burdened to prove the confluence of the following essential elements:

- “1. That the offender commits any act of lasciviousness or lewdness.
2. That it is done under any of the following circumstances:
 - By using force or intimidation; or
 - When the offended party is deprived of reason or otherwise unconscious; or
 - When the offended party is under 12 years of age.”[38]

“Lewd” is defined as obscene, lustful, indecent, lecherous. It signifies that form of immorality which has relation to moral impurity; or that which is carried on a wanton manner.[39]

The last paragraph of Article 6 of the Revised Penal Code reads:

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

The essential elements of an attempted felony are as follows:

- “1. The offender commences the commission of the felony directly by overt acts;
2. He does not perform all the acts of execution which should produce the felony;
3. The offender’s act be not stopped by his own spontaneous desistance;
4. The non-performance of all acts of execution was due to cause or accident other than his spontaneous desistance.”[40]

The first requisite of an attempted felony consists of two elements, namely:

- “(1) That there be external acts;
- (2) Such external acts have direct connection with the crime intended to be committed.”[41]

An overt or external act is defined as some physical activity or deed, indicating the intention to commit a

particular crime, more than a mere planning or preparation, which if carried out to its complete termination following its natural course, without being frustrated by external obstacles nor by the spontaneous desistance of the perpetrator, will logically and necessarily ripen into a concrete offense.[42] The *raison d'être* for the law requiring a direct overt act is that, in a majority of cases, the conduct of the accused consisting merely of acts of preparation has never ceased to be equivocal; and this is necessarily so, irrespective of his declared intent. It is that quality of being equivocal that must be lacking before the act becomes one which may be said to be a commencement of the commission of the crime, or an overt act or before any fragment of the crime itself has been committed, and this is so for the reason that so long as the equivocal quality remains, no one can say with certainty what the intent of the accused is.[43] It is necessary that the overt act should have been the ultimate step towards the consummation of the design. It is sufficient if it was the "first or some subsequent step in a direct movement towards the commission of the offense after the preparations are made." [44] The act done need not constitute the last proximate one for completion. It is necessary, however, that the attempt must have a causal relation to the intended crime.[45] In the words of Viada, the overt acts must have an immediate and necessary relation to the offense.[46]

Acts constitutive of an attempt to commit a felony should be distinguished from preparatory acts which consist of devising means or measures necessary for accomplishment of a desired object or end.[47] One perpetrating preparatory acts is not guilty of an attempt to commit a felony. However, if the preparatory acts constitute a consummated felony under the law, the malefactor is guilty of such consummated offense.[48] The Supreme Court of Spain, in its decision of March 21, 1892, declared that for overt acts to constitute an attempted offense, it is necessary that their objective be known and established or such that acts be of such nature that they themselves should obviously disclose the criminal objective necessarily intended, said objective and finality to serve as ground for designation of the offense.[49]

There is persuasive authority that in offenses not consummated as the material damage is wanting, the nature of the action intended (*accion fin*) cannot exactly be ascertained but the same must be inferred from the nature of the acts executed (*accion medio*).[50] Hence, it is necessary that the acts of the accused must be such that, by their nature, by the facts to which they are related, by circumstances of the persons performing the same, and by the things connected therewith, that they are aimed at the consummation of the offense. This Court emphasized in *People vs. Lamahang*[51] that:

"The relation existing between the facts submitted for appreciation and the offense which said facts are supposed to produce must be direct; the intention must be ascertained from the facts and therefore it is necessary, in order to avoid regrettable instances of injustice, that the mind be able to cause a particular injury." [52]

If the malefactor does not perform all the acts of execution by reason of his spontaneous desistance, he is not guilty of an attempted felony.[53] The law does not punish him for his attempt to commit a felony.[54] The rationale of the law, as explained by Viada:

"La Ley, en efecto, no hiere sino a pesar suyo; prefiere impedir el crimen que castigarlo. Si el autor de la tentativa, despues de haber comenzado a ejecutar el delito por actos exteriores, se detiene, por un sentimiento libre y espontaneo, en el borde del abismo, salvo esta. Es un llamamiento al remordimiento, a la conciencia, una gracia un perdon que concede la Ley al arrepentimiento voluntario." [55]

As aptly elaborated on by Wharton:

"First, the character of an attempt is lost when its execution is voluntarily abandoned. There is no conceivable overt act to which the abandoned purpose could be attached. Secondly, the policy of the law requires that the offender, so long as he is capable of arresting an evil plan, should be encouraged to do so, by saving him

harmless in case of such retreat before it is possible for any evil consequences to ensue. Neither society, nor any private person, has been injured by his act. There is no damage, therefore, to redress. To punish him after retreat and abandonment would be to destroy the motive for retreat and abandonment.”[56]

It must be borne in mind, however, that the spontaneous desistance of a malefactor exempts him from criminal liability for the intended crime but it does not exempt him from the crime committed by him before his desistance.[57]

In light of the facts established by the prosecution, we believe that accused-appellant intended to have carnal knowledge of private complainant. The overt acts of accused-appellant proven by the prosecution were not mere preparatory acts. By the series of his overt acts, accused-appellant had commenced the execution of rape which, if not for his spontaneous desistance, will ripen into the crime of rape. Although accused-appellant desisted from performing all the acts of execution however his desistance was not spontaneous as he was impelled to do so only because of the sudden and unexpected arrival of xxxxxxxxxxxx. Hence, accused-appellant is guilty only of attempted rape.[58] In a case of similar factual backdrop as this case, we held:

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

The penalty for attempted rape is prision mayor which is two degrees lower than reclusion perpetua.[59] Accused-appellant should be meted an indeterminate penalty the minimum of which should be taken from prision correccional which has a range of from six months and one day to six years and the maximum of which shall be taken from the medium period of prision mayor which has a range of from eight years and one day to ten years, without any modifying circumstance. Accused-appellant is also liable to private complainant for moral damages in the amount of P25,000.00.

IN LIGHT OF ALL THE FOREGOING, the Decision of the Regional Trial Court of Manila, Branch 54, is SET ASIDE. Another judgment is hereby rendered as follows:

- In Criminal Case No. 99-171390, accused-appellant is hereby found guilty beyond reasonable doubt of simple rape under Article 335 of the Revised Penal Code as amended and is hereby meted the penalty of reclusion perpetua. Accused-appellant is also hereby ordered to pay private complainant AAA the amounts of P50,000.00 by way of civil indemnity and P50,000.00 by way of moral damages;
- In Criminal Case No. 99-171391, accused-appellant is hereby found guilty of attempted rape under Article 335 of the Revised Penal Code as amended in relation to Article 6 of the said Code and is hereby meted an indeterminate penalty of from six years of prision correccional in its maximum period, as minimum to ten years of prision mayor in its medium period, as maximum. Accused-appellant is hereby ordered to pay private complainant AAA the amount of P25,000.00 by way of moral damages; and,
- In Criminal Cases Nos. 99-171392 and 99-171393, accused-appellant is hereby found guilty beyond reasonable doubt of two counts of simple rape, defined in Article 335 of the Revised Penal Code as amended and is hereby meted the penalty of reclusion perpetua for each count. Accused-appellant is hereby ordered to pay to private complainant AAA the amount of P50,000.00 by way of civil indemnity and the amount of P50,000.00 by way of

moral damages for each count, or a total amount of P200,000.00.

SO ORDERED.

Davide, Jr., C.J., Puno, Vitug, Mendoza, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, and Azcuna, JJ., concur.
Bellosillo, J., on leave.

[1] Penned by Judge Manuel T. Muro.

[2] Accused-appellant was charged under the name “Freddie Lizada.”

[3] Original records, pp. 1-4.

[4] Id., at 73.

[5] The prosecution presented four witnesses, namely, AAA, xxxxxxxxxxxxxxxx, xxxxxxxxxxxxxxxx & Dr. Armie Umil.

[6] Exhibit “A.”

[7] Exhibit “2.”

[8] Exhibit “C.”

[9] Supra.

[10] Exhibit “2.”

[11] Records, p. 147. (The name of accused-appellant is erroneously stated as “Fredie” Lizada.)

[12] Rollo, p. 51.

[13] Id., at 53.

[14] Supra.

[15] Francisco vs. Permskul, et al., 173 SCRA 327 (1989).

[16] Vide Note 14.

[17] Hernandez vs. Hon. Colayco, et al., 64 SCRA 480 (1975).

[18] People vs. Bugarin, 273 SCRA 384 (1997).

[19] People vs. Sta. Ana, 291 SCRA 188 (1998).

[20] TSN, xxxxxxxxxxxx, June 3, 1999, pp. 8-28.

[21] 340 SCRA 481 (2000).

[22] Ibid., p. 489.

[23] Ibid., p. 488.

[24] People vs. Cabingas, et al., 329 SCRA 21 (2000).

[25] *People vs. Borja*, 267 SCRA 370 (1997).

[26] 278 SCRA 78 (1997).

[27] TSN, xxxxxxxxxxxx, June 3, 1999, pp. 11-12.

[28] *People vs. Torio*, 318 SCRA 345 (1999).

[29] *People vs. Alcala*, 307 SCRA 330 (1999).

[30] *Id.*, *supra*.

[31] 363 SCRA 192 (2001).

[32] TSN, xxxxxxxxxxxx, June 3, 1999, pp. 18-20.

[33] TSN, xxxxxxxxxxxx, June 7, 1999, pp. 39-45.

[34] TSN, xxxxxxxxxxxx, June 28, 1999, pp. 6-10.

[35] TSN, xxxxxxxxxxxx, June 28, 1999, pp. 13-20.

[36] *People vs. Campuhan*, 329 SCRA 270 (2000).

[37] *Id.*, *supra*.

[38] *Id.*, *supra*.

[39] *People vs. Tayag*, 329 SCRA 491 (2000).

[40] Reyes, Revised Penal Code, 1981, Vol. I, p. 98, *supra*.

[41] *Id.*, *supra*, p. 98.

[42] *Id.*, *supra*, pp. 98-99.

[43] *People vs. Miller*, 2 Cal. 2d., 527, 531-532, 42 P.2d. 308, 310, citing Wharton.

[44] *People vs. Gibson*, 94 Cal. App. 2d. 468.

[45] Wharton, Criminal Law, Vol. 1, 12 ed. 287.

[46] Vide Note 32, p. 47.

[47] Wharton, Criminal Law, *idem*, *supra*, p. 293.

[48] Reyes, Revised Penal Code, *supra*, p. 97.

[49] *People vs. Lamahang*, 62 Phil. 703 (1935).

[50] 1 Groizard, p. 99, cited in *People vs. M. Lamahang*, 61 Phil. 703 (1935).

[51] See note 48.

[52] *Ibid.*, p. 707.

[53] Spontaneous means proceeding from natural feeling or native tendency without external constraint; synonymous with impulsive, automatic and mechanical. (Webster, Third New International Dictionary, p. 2204).

[54] Reyes, *idem*, *supra*, p. 104.

[55] Aquino, Revised Penal Code, Vol. 1, 1987 ed.

[56] Wharton, Criminal Law, Vol. 1, pp. 307-308, *supra*.

[57] Reyes, Revised Penal Code, *supra*, p. 105.

[58] *People vs. Alcoreza*, G.R. No. 135452-53, October 5, 2001.

[59] Article 51, Revised Penal Code.

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