

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. VIRGILIO FLORES Y AQUINO, APPELLANT.

G.R. Nos. 145309-10. April 04, 2003

Ponente: CORONA, J.

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CORONA, J.:

Before us on automatic review is the Decision[1] of the Regional Trial Court, Branch 166, Pasay City, in Criminal Cases Nos. 111100-H to 111101-H, finding appellant, Virgilio A. Flores, guilty of two counts of rape and sentencing him to suffer the penalty of death in each case.

In her Sinumpaang Salaysay dated September 10, 1996,[2] then 8-year-old Loribelle Ruth D. Flores charged her own father, Virgilio A. Flores, with rape on at least 20 occasions from April 1995 to August 1996. Despite the numerous accusations, however, only two separate Informations were filed in court, viz:

In Criminal Case No. 111100-H[3]

That sometime in April 1995 in Pasig, Rizal and within the jurisdiction of this Honorable Court, the above-named accused, by taking advantage of his moral ascendancy and paternal relationship as father of the offended party Loribelle Ruth D. Flores, did then and there wilfully, unlawfully and feloniously have carnal knowledge with Loribelle Ruth D. Flores, at his mother-in-law's house, repeating the same sexual abuse throughout the period of April 1995 to August 1996, with the use of force, threats, or intimidation, against said minor's will and consent, to her damage and prejudice.

Contrary to law.

In Criminal Case No. 111101-H[4]

That sometime in August 1996 in Pasig, Rizal and within the jurisdiction of this Honorable Court, the above-named accused, by taking advantage of his moral ascendancy and paternal relationship as father of the offended party Loribelle Ruth D. Flores, did then and there wilfully, unlawfully and feloniously have carnal knowledge with Loribelle Ruth D. Flores, at his mother-in-law's house, repeating the same sexual abuse throughout the period of April 1995 to August 1996, with the use of force, threats, or intimidation, against said minor's will and consent, to her damage and prejudice.

Contrary to law.

Upon arraignment on December 4, 1996, appellant

Virgilio A. Flores pleaded "not guilty" to both charges.[5]

The prosecution presented the following as its witnesses: the victim herself, Loribelle Ruth D. Flores, Angelica Somera, Dr. Ida Daniel and Dalisay Dueñas, the victim's grandmother.

Loribelle Ruth D. Flores was born on October 24, 1986, as evidenced by her birth certificate issued by the Local Civil Registrar of Binangonan, Rizal.[6] She used to live with her maternal grandmother, Dalisay Dueñas, in

Santolan, Pasig City. Loribelle testified that, sometime in April 1995, her father, Virgilio A. Flores, together with her mother, Lorraine, and four siblings paid her a visit at her grandmother's house.[7] That evening, the whole family slept in one room, side by side in one bed, except for her grandmother. Later that night, she was roused from sleep by the weight of her father who was on top of her. She was shocked to find out that she had no more underwear and shorts. Appellant started kissing her cheeks, neck and lips. Thereafter, he pulled down his pants and let Loribelle hold his penis against her vagina. When she refused, appellant forcibly pressed his penis against her private part but failed to fully penetrate because she felt pain and cried. Thereafter, the appellant ejaculated and warned her not to tell her mother. Fearing that her parents might quarrel, Loribelle decided not to disclose what transpired. Nevertheless, her mother discovered what happened when the latter noticed the following day that she was not wearing any underwear. But she merely confronted the appellant and the controversy somehow died down.

Sometime in August 1996, the appellant fetched Loribelle from school and brought her to her grandmother's house. As she was about to watch TV, the appellant sat beside her. At first she thought that appellant was also going to watch but, to her surprise, he forced her to lie down on the floor and went on top of her. He then kissed her on the cheeks, lips and neck. Thereafter, the appellant removed her shorts and underwear, before pulling down his own shorts and briefs. Again, there was no complete penetration of her private part because of the intense pain. Loribelle informed her mother of this incident when she visited the latter in Binangonan, Rizal. While her mother was saddened, the latter did nothing.

Loribelle disclosed that, she and her three sisters, Sarah Joy, Hazel and Catherine Grace, who also filed charges of sexual molestation against the appellant, were staying at the Reception and Study Center for Children, Department of Social Welfare and Development (DSWD).

Angelica Somera, an agent of the National Bureau of Investigation (NBI), testified that she, together with a colleague, Cynthia Mariano, took the statements of Loribelle Flores on September 10, 1996 and her sister, Hazel Flores, the next day. Both girls declared that their father, appellant Virgilio A. Flores, sexually abused them. When she took Loribelle's statement, the latter appeared sick and indisposed.

NBI medico-legal officer, Dr. Ida Daniel, M.D., testified that she conducted a physical examination on Loribelle. In her medical report, the following findings appear: (1) no evident sign of extra-genital physical injury noted on the body of the subject at the time of examination; (2) hymen, intact and its orifice small (1.0 cm. in diameters) as to preclude complete penetration by the average sized adult, Filipino male organ in full erection without producing any genital injury.[8] Dr. Daniel likewise declared that, despite the fact that the hymen remained intact, the same did not preclude the possibility of labial penetration.

Dalisay Dueñas testified that she learned of appellant's sexual molestations of her granddaughter sometime in August 1996 when her daughter, Lorraine, narrated the circumstances surrounding these cases to her. She later confirmed the same from Loribelle herself. Consequently, Dalisay and Lorraine decided to report the matter to the NBI.

For his defense, appellant Virgilio A. Flores vehemently denied that he raped his own daughter. During the trial, appellant testified that, from April 1995 to August 1996, he was a mission pastor at the Buhangin United Methodist Church. He claimed that the accusation was instigated by his mother-in-law who harbored a personal grudge against him for kissing his sister-in-law, not to mention the monetary benefits she stood to gain from the filing of these cases.

Lorraine was presented by the defense on June 3, 1998 to refute the allegations of her own mother, Dalisay, and daughter, Loribelle. She testified that, since April 6, 1998, she had been staying with her in-laws after she was

driven away by her mother for declining to support the latter's allegations of rape against her husband, the appellant. She denied reporting, with her mother, the rape of her daughter to the NBI as there was no truth to the charge. She learned of her mother's scheme against her husband only on September 18, 1996 when NBI agents, accompanied by her mother, went to their house and arrested her husband. Her mother even told her not to interfere, otherwise, she would also be incarcerated.

Lorraine also testified that it was her mother and some relatives who forced her to be interviewed on "Balitang K," "Magandang Gabi Bayan" and "Firing Line". After each interview, she received financial assistance from the TV stations but the money went to her mother who allegedly claimed that the same would not have been possible had it not been for her. She also declared that her mother implicated the appellant out of dislike for him. She revealed that her mother wanted to have a house of her own and she saw this as her opportunity to raise the necessary funds. Her daughters were under the custody of the DSWD when she testified in court.

On March 19, 1999, the trial court rendered its decision convicting the appellant, Virgilio A. Flores, of two counts of rape. The dispositive portion reads:

WHEREFORE, the Court finds accused VIRGILIO FLORES Y AQUINO GUILTY beyond reasonable doubt of the crime of RAPE on two (2) counts as charged in the Informations, and is hereby sentenced to suffer the supreme penalty of Death in each case and indemnify the private complainant Loribelle Ruth Flores Fifty Thousand (P50,000.00) Pesos, also in each case, plus the costs of suits.

Hence, this appeal.

Appellant raises the following assignments of error:

I

THE COURT A QUO ERRED IN GIVING DUE WEIGHT AND CREDENCE TO THE UNRELIABLE AND UNCORROBORATED TESTIMONY OF THE COMPLAINING WITNESS, THEREBY CASTING GRAVE DOUBT AS TO THE CRIMINAL CULPABILITY OF THE ACCUSED-APPELLANT.

II

THE TRIAL COURT ERRED IN NOT GIVING CREDENCE AND WEIGHT TO THE OPINION OF AN EXPERT WITNESS THAT NO PENETRATION OCCURRED WHETHER EXTERNAL OR INTERNAL ON THE PART OF THE VICTIM TO PRECLUDE THAT RAPE WAS COMMITTED AGAINST THE COMPLAINANT.

At the core of the instant review is the credibility of the alleged victim, Loribelle. Appellant assails her narration of the alleged sexual assaults as not worthy of belief for being contrary to human nature and experience. Appellant claims that the single bed where all the members of his family slept side by side that night in April, 1995 was soft. Hence, it was impossible for his wife and four children not to be roused from sleep by the constant movement since, per testimony of his daughter, she was allegedly evading him at the time he was attempting to insert his penis into her vagina.

When credibility is at issue, this Court generally defers to the findings of the trial court, considering that it was in a better position to pass judgment on the credibility of witnesses, having personally heard them when they testified and observed their deportment and manner of testifying. There are of course exceptions to this rule, such as when the evaluation was reached arbitrarily or when the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which, if considered, would affect the result of the case.[9]

After a careful consideration of the evidence, we affirm appellant's conviction. The uncorroborated testimony of Loribelle was sufficient to establish the guilt of the appellant beyond reasonable doubt. Her testimony was clear,

categorical and convincing, and therefore credible. We quote from her testimony:

ATTY. OCHAVE:

At the last hearing last March 5, 1997, you testified that you were raped by your father, the accused Virgilio Flores sometime on April 1995, is this correct?

A Yes, sir.

xxx xxx xxx

Q And, how did it happen?

A I was asleep but I was suddenly awakened when I felt that my father was on top of me.

Q What happened after you felt that your father was on top of you?

A He kissed my neck, the side of my lips.

Q What happened next after he kissed you?

A He touch (sic).

Q What did he touch?

A My flower.

Q What do you mean by flower?

A My “pek-pek”.

Q After he touched your “pek-pek,” what happened next?

A He was trying to insert his bird to my flower.

Q What do you mean by the word bird?

A “Ari.”

Q Was he able to enter you?

A No.

Q What happened? Why he was not able to enter you?

A Because I felt pain.

Q Where did you feel the pain?

A In my flower.

Q What cause (sic) the pain in your flower?

A Because he tried to insert his “ari” to my flower.

Q Was the “ari” able to touch your flower?

A Yes.

Q Can you describe to us exactly how it touched your flower?

A “Idinikit po niya”.

Q What was your reaction when you felt that his “ari” was touching your flower?

A I was trying to “umiilag po ako.”

Q Can you show to us how you were “umiilag”?

A I was trying to evade “umiiwas.”

Q After that what happened next?

A He stopped doing it.[10]

xxx xxx xxx

Q On your testimony on March 5, 1997, you also mentioned that sometime in August, 1996 when your father, according to your (sic) sexually abused you again?

A Yes, sir.

Q What happened in that particular incident?

A He fetched me from the school.

xxx xxx xxx

Q Upon reaching the house of your grandmother, what happened?

A I went to my room to change my clothes and I thought my father and I should watch “Sa Linggo Na Po Sila”.

Q Is this a TV program?

A Yes.

Q Where is your television set located in the house?

A In the living room, sir.

Q After you told your father that you just watch TV, what happened?

A I sat on one chair and my father on the other.

Q Where is this chair located?

A In the sala.

Q What happened when you and your father sat?

A He sat beside me.

Q What was your reaction when he sat beside you?

A I moved away.

Q And, then what happened after you moved away?

A When I moved a further away I reached the edge of the chair.

Q What happened after you reached the edge of the chair?

ATTY. ANTONANO:

Witness cannot answer immediately.

A He did again what he done (sic) before.

Q When you say “did what he did before,” what (sic) you mean by that?

A He kissed me again and went on top of me.

Q Where did he kiss you, what part of the body?

A Near the edge of my lips.

Q After kissing you at the edge of your lips what happened?

A He tried to insert his bird.

Q Incidentally where did he try to insert his bird?

A Into my flower.

Q And, was he able to enter your flower, his bird?

A No.

Q Why did he was (sic) not able to enter his bird into your flower?

A Because I told him that is enough because I felt pain.

Q Where did you feel pain?

A In my flower.

Q What cause the pain in your flower?

A “Pagpilit niya”.

Q What do you mean by “pagpilit niya”?

ATTY. ANTONANO:

May we put on record that the witness is hard in answering that question, Your Honor.

COURT:

The witness cannot answer.

ATTY. OCHAVE:

At the time that you felt pain in your flower, what was the position of his bird relative to your flower?

A Touching my flower.

Q What was your reaction when you felt that his bird was touching your flower?

COURT:

Witness cannot answer.

ATTY OCHAVE:

At the time that the bird of your father touched your flower, can you describe to us exactly how your father was clothed?

A He was wearing only T-shirt.

Q And, what were you wearing at that time?

ATTY. ANTONANO:

Witness cannot answer

A I cannot recall.[11]

The above testimony of the victim vividly described her harrowing experience at the hands of her own father. In this regard, we reiterate that a rape victim's testimony against her parent is entitled to great weight since Filipino children have a natural reverence and respect for their elders. These values are so deeply ingrained in Filipino families and it is unthinkable for a daughter to brazenly concoct a story of rape against her father, if such were not true.[12]

In *People vs. Ignacio*, [13] we took judicial notice of the fact that, among poor couples with big families cramped in small quarters, copulation does not seem to be a problem despite the presence of other persons. It is not true that rape can be committed only in seclusion. We have repeatedly declared that "lust is no respecter of time and place and rape can be committed in even the unlikeliest of places." [14]

While the appellant's wife Lorraine was presented by the defense to refute the allegations of the victim Loribelle and her mother Dalisay, her testimony does not inspire belief for being contrary to her candid and spontaneous statements during her television interview with Melanie Yason and Teddy Benigno of "Firing Line" regarding appellant's sexual perversity, thus:

ATTY. OCHAVE:

Is it not a fact madam witness that on September 23, 1996, you voluntarily go in the show Firing Line in Channel 7?

A

I did not want to go but I was forced to go.

xxx xxx xxx

Q

And do you remember what you said in that segment?

A

About our hardship in life and with regards to the black book.

xxx xxx xxx

Q

For the record – Melanie Yazon – “Kinakabahan nga si Misis ngunit hindi niya inisip na mangyari ito sa kanyang sariling anak”. And your answer, Mrs. Flores: “Before, sa ate ko, pinagtangkaan din niya. Pati sa mga friends namin na ka-close namin na minsan nakikitulog sa bahay, hindi alam ng mga kaibigan ko binabantayan ko sila. Magkatabi silang mag-aama sa kuwarte, siyempre hindi naman ako nag-iisip ng kung ano. Aba eh, bumabangon ang anak ko walang underwear. Naghahanap siya ng underwear,” sabi ko “o, sige hanapin mo muna.” Noong lumabas ako ng kuwarte, nakapag-isip ako, ba’t nga pala walang underwear ang anak ko. Balik uli ako sa kuwarte. Pagbalik ko nakaayos na siya. Tapos siya naman, pumunta ng banyo. Di sabi ko, “anak, halika nga muna”. Nagkakakutob na ako, “anong nangyari, ba’t wala kang suot? Wala ka bang suot kanina?” “Meron, mama.” “Ba’t wala ka ngayon?” Ang anak ko parang may ano na, may halong . . . Aanga-anga na ngang magsalita noon. “May ginawa ang tatay?” Ganyan lang siya (nods) Sabi ko noon, “anong nararamdaman mo?” “Masakit po.”

A

I did not say anything like that.

Q

And then going back to that, di ba sabi mo “anak halika nga muna” Nagkakutob ako. “Anong nangyari, ba’t wala kang suot? Wala ka bang suot kanina?” Do you affirm having said that?

A

Yes, sir.

xxx xxx xxx

Q

Teddy Benigno - “Yung ginagawa po sa kanila ng kanilang Tatay, nalalaman nila na masama ang ginagawa sa kanila o wala silang kamalay-malay na yung nangyayaring yon eh napakalaking krimen? Ano po ang kanilang reaksiyon?” And you answered “Nung una po eh wala. Basta nahalata ko sila na pagbangon sa umaga, siguro yung hindi ko alam ano, tulala o kaya nakatingin sa akin.” Do you affirm having said this?

A

I can not remember.

Do you also affirm having said this when asked by Teddy Benigno – “Hindi naman po sila nasaktan, wala naman ho nung tinatawag na . . .” and you answered “meron po akong naano sa kanila.” Teddy Benigno – “mga contusions, ganon, sugat?” And you answered, “Before kiss mark. Tapos yung mga pag-aray po nila pag hinuhugasan ko sila ng flower, yung mga tulala ho sila minsan sa bahay. Tapos yung matamlay sila pagkagising sa umaga, yun ho ang mga napupuna ko sa kanila. Lately po, Kakaiba na, meron ng mga galit. May na-sesense akong galit sa kanila. Mga words nila sa pagdating sa tatay nila talagang.... Hangga’t maari... kahit na nga po ako nakikiusap na ‘ko, “anak, hindi ka ba naawa sa tatay?” Alam mo ba yong sinabi mo, puntos sa kanila yon. Talagang matigas ang kalooban nila, “na hindi pa rin Mama.” Do you affirm that?

Yes. Sir.

Appellant likewise imputes ill-motive to his mother-in-law for concocting the rape charges against him. If the charge had been merely concocted, the complainant would have invented the circumstances surrounding the rape in a more believable way, and not in a room where all the members of the family were sleeping side by side.

It should be emphasized that no member of a rape victim's family would dare encourage the victim to publicly expose the dishonor to the family unless the crime was in fact committed, more so in this case where the victim and the offender belong to the same family.[15] We find it highly unbelievable, in the absence of evidence to the contrary, for Dalisay Dueñas to be so morally bankrupt as to subject her granddaughter to the embarrassment and stigma of a rape trial if the charges were not true.

Lastly, appellant makes much of Dr. Daniel's finding during the examination of the victim that there was no labial penetration. A close scrutiny of the latter's declaration during the trial reveals, however, that the witness did not rule out the possibility of labial penetration, even as she admitted that there was no injury or sign of contusion in the labia.

We stress that, in the crime of rape, complete or full penetration of the complainant's private part is not at all necessary. Neither is the rupture of the hymen essential. What is fundamental is that the entry or at least the introduction of the male organ into the labia of the pudendum is proved. The mere introduction of the male organ into the labia majora of the victim's genitalia, even without the full penetration of the complainant's vagina, consummates the crime. Hence, the "touching" or "entry" of the penis into the labia majora or the labia minora of the pudendum of the victim's genitalia consummates rape.[16] In the present case, we give credence to Loribelle's unequivocal testimony that, when she refused to hold appellant's penis, the latter forcibly pressed his private part into her vagina but failed to fully penetrate as she cried due to the intense pain.

We ruled in *People vs. San Juan*[17] that, in crimes against chastity, the medical examination of the victim is not an indispensable element for the successful prosecution of the crime as the victim's testimony alone, if credible, is sufficient to convict the accused.

In contrast to complainant's credibility and consistent testimony, appellant could only offer the defense of denial. Denial is an intrinsically weak defense which must be supported by strong evidence of lack of culpability. It is a negative self-serving evidence which cannot be accorded greater weight than the testimony of a credible witness who testified on affirmative matters. Between the positive declarations of a prosecution witness and the negative statements of the accused, the former deserve more credence.[18] In view of the foregoing, the Court is satisfied with moral certainty that the prosecution has established the guilt of appellant beyond reasonable doubt.

Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, provides:

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

- By using force or intimidation;
- When the woman is deprived of reason or otherwise unconscious; and
- When the woman is under twelve years of age or is demented.

xxx xxx xxx

"The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

- When the victim is under eighteen (18) years of age and the offender is a 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 prosecution evidence adduced in these cases established that Loribelle was a minor at the time of the commission of the rape in April 1995 and August 1996. The birth certificate marked as Exhibit “B” for the prosecution clearly showed that she was born on October 24, 1986. She was thus only 8 years old when she was raped. Likewise, there is no doubt that Virgilio A. Flores is her biological father. Aside from the entry in said birth certificate of the victim attesting to such fact, appellant himself admitted in open court that, indeed, he is the father of the victim:

Atty. Antonano:

Mr. Witness you said that you are a Mission Pastor, where were you pastoring (sic) sometime in April of 1995 up to August 1996?

A

At Buhangin United Methodist Church.

Q

And where do you reside on that same period?

A

In Brgy. Buhangin Talim Island.

Q

With whom are you staying with while residing thereat?

A

My wife and my five children.

Q

Now who were these five children of yours?

A

Loribelle Ruth, Sarah Joy, Hazel, Cathy and Eric.

Q

Now this Loribelle was there a time that she was not staying with you?

A

Yes mam.

Q

When was that?

A

When she was staying in Santolan when my mother-in-law took her.[19] (underscoring ours)

The concurrence of the minority of Loribelle, and her relationship to the appellant, who is her father, would have ordinarily justified the imposition of the death penalty in these two cases. We, however, decline to do so on account of the prosecution's failure to specifically allege in the two Informations the age of the victim at the time of the commission of the crimes pursuant to our ruling in *People vs. Panganiban*,[20] thus:

While we concede that MARIO's guilt was proven beyond reasonable doubt, we do not, however, concur with the trial court's imposition of the death penalty in Criminal Cases Nos. 97-158615 and 97-158616. It imposed the death penalty in these cases because it considered the special qualifying circumstances of relationship of MARIO to REGINA and the latter's age as provided under Art. 335 of the Revised Penal Code, as amended by Section 11 of R.A. 7659. xxx As to Criminal Case No. 97-158616, the information fails to allege the qualifying circumstance of age and relationship. We have declared that the circumstances under the amendatory provisions of Section 11 of R.A. No. 7659, the attendance of which could mandate the imposition of the single indivisible penalty of death, are in the nature of qualifying circumstances which cannot be proved as such unless alleged in the information, and even if proved, the death penalty cannot be imposed. To impose the death penalty on the basis of a qualifying circumstance which has not been alleged in the information would violate MARIO's constitutional and statutory right to be informed of the nature and cause of the accusation against him. Consequently MARIO can only be held liable for simple rape, which is punishable by reclusion perpetua.

Jurisprudence dictates that, upon the finding of the fact of rape, the award of civil indemnity ex delicto in the amount of P50,000 becomes mandatory. In addition, she is entitled to the amount of P50,000 as moral damages, without need of proof, and another P25,000 as exemplary damages for each count of rape to set an example for the public good.[21]

WHEREFORE, the appealed decision of the trial court, finding appellant, Virgilio A. Flores, GUILTY beyond reasonable doubt of the crimes charged is AFFIRMED with the MODIFICATION that the penalty is reduced to reclusion perpetua and the appellant is ordered to pay complainant, Loribelle Ruth Flores, P50,000 as civil indemnity, P50,000 as moral damages and P25,000 as exemplary damages for each count of rape.

SO ORDERED.

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

[1] Penned by Judge Jesus G. Bersamira, Rollo, pp. 19-24.

[2] Exhibit "A-6," Original Records, p. 96.

[3] Original Records, pp. 1-2.

[4] Original Records, pp. 32-33.

[5] Original Records, p. 39.

[6] Exhibit "B".

[7] TSN, February 11, 1998, p. 3.

[8] Original Records, p. 98.

[9] *People vs. Bayona*, 327 SCRA 192, 197-198 [2000].

[10] TSN, November 19, 1997, pp. 3-5.

[11] TSN, November 19, 1997, pp. 8- 11.

[12] *People vs. Panganiban*, 359 SCRA 509, 519 [2001].

[13] 233 SCRA 3, 7 [1994].

[14] *People vs. Bernabe*, G.R. No. 141881, November 21, 2001.

[15] *People vs. Santos*, G.R. No. 137993, April 11, 2002.

[16] *People vs. Velasquez*, G.R. Nos. 142561-62, February 15, 2002.

[17] 270 SCRA 693, 709 [1997], cited in *People vs. Maceda*, 353 SCRA 227, 247 [2001].

[18] *People vs. Bares*, 355 SCRA 435, 453-454 [2001].

[19] TSN, October 29, 1998, p. 4.

[20] 359 SCRA 509, 523 [2001], citing *People vs. Lopez*, 344 SCRA 756 [2000]; *People vs. Bartolome*, 323 SCRA 836, 842 [2000].

[21] *People vs. Solmoro, Jr.* G.R. Nos. 139187-94, November 27, 2002.

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