RULES OF EVIDENCE

RULE 128

General Provisions

Section 1. *Evidence defined*. ? Evidence is the means, sanctioned by these rules, of truth respecting a matter of fact. (1)

Section 2. *Scope*. ? The rules of evidence shall be the same in all courts and in all trials and hearings, except as otherwise provided by law or these rules. (2a)

Section 3. *Admissibility of evidence*. ? Evidence is admissible when it is relevant to the issue and is not excluded by the law of these rules. (3a)

Section 4. *Relevancy*; *collateral matters*. ? Evidence must have such a relation to the fact in issue as to induce belief in its existence or non-existence. Evidence on collateral matters shall not be allowed, except when it tends in any reasonable degree to establish the probability or improbability of the fact in issue. (4a)

BASIC CONCEPTS

Evidence - It is the means, sanctioned by the Rules of Court, of ascertaining in a judicial proceeding the truth respecting a matter of fact.

TWO PRINCIPAL PROBLEMS IN EVIDENCE:
1. How to determine which evidence is admissible; and
2. Having determined that the evidence is admissible, how to present that evidence in a manner that would make the court admit it once it is offered.

SOURCES:
Rules of Court, Rule 128-133
Constitution
Special Laws (e.g.Anti-Wiretapping Act)
Revised Penal Code, Civil Code, etc.

Every evidential question involves the relationship between the **factum probans** and the **factum probandum**.

FACTUM PROBANDUM - the ultimate fact sought to be established.

It may be ascertained in:
1. pleadings submitted by the parties
2. pre-trial order
3. issues which are tried with the express or implied consent of the parties. (**Sec. 5, Rule 10**)

NOTE: If fact is admitted, there is no more factum probandum because there is no fact in issue.

FACTUM PROBANS - the material evidencing the proposition. It is the fact by which the factum probandum is established.

Factum probandum	Factum probans
"ultimate facts"	"intermediate facts"
Proposition to be established	Material evidencing the proposition
Hypothetical	Existent

Q: What are the four component elements?

A:
1. *Means of ascertainment* – includes not only the procedure or manner of ascertainment but also the evidentiary fact from which the truth respecting a matter of fact may be ascertained
2. *Sanctioned by the rules* – not excluded by the Rules of Court
3. *In a judicial proceeding* – contemplates an action or proceeding filed in a court of law
4. *The truth respecting a matter of fact* – refers to an issue of fact and is both substantive (determines the facts needed to be established) and procedural (governs the manner of proving said facts).

Q: Why is evidence required?
A: It is required because of the presumption that the court is not aware of the veracity of the facts involved in a case. It is therefore incumbent upon the parties to prove a fact in issue thru the presentation of admissible evidence *(Riano, Evidence: A Restatement for the Bar, p. 2, 2009 ed.).*

ALVIN TUASON y OCHOA, petitioner,
vs.
COURT OF APPEALS and PEOPLE OF THE PHILIPPINES, respondents.1995 February 23
2nd Division
G.R. Nos. 113779-80 D E C I S I O N

PUNO, J.:
The first duty of the prosecution is not to prove the crime but to prove the identity of the criminal. For even if the commission of the crime can be established, without proof of identity of the criminal beyond reasonable doubt there can be no conviction. In the case at bench, the identification of the petitioner cannot rest on an assured conscience. We rule that petitioner is entitled to a mandatory acquittal.

Petitioner Alvin Tuason y Ochoa, John Doe, Peter Doe, and Richard Doe were charged before the Regional Trial Court of Quezon City 1 with Robbery 2 (Article 294, paragraph 5 of the Revised Penal Code) and Carnapping 3 (republic Act No. 6539).

Of the four (4) accused, only petitioner was apprehended. The other three (3) are still at-large.

Upon arraignment, petitioner pleaded not guilty to both charges and was tried.

We come to the facts.

Complainant CIPRIANA F. TORRES is a public school teacher of Kaligayahan Elementary School, Novaliches. Her work requires her to leave her maid, JOVINA MADARAOG TORRES, alone in her house at Block 45, Lot 28, Lagro Subdivision, Novaliches, Quezon City. Her husband is in Australia while her children go to school.

The incident transpired at around 8:45 in the morning of July 19, 1988. Somebody knocked at the gate of the Torres residence pretending to buy ice. As the maid Madaraog handed the ice to the buyer, one of the robbers jumped over the fence, poked a gun at her, covered her mouth, and opened the gate of their house. 4 The ice buyer and his companions barged in. Numbering four (4), they pushed her inside Torres' house and demanded the keys to the car and the safety vault. 5 She told them she did not know where the keys were hidden. 6 They tied up her hands and dragged her to the second floor of the house. Petitioner was allegedly left downstairs as their lookout. 7

On order of the accused, Madaraog sat on Torres' bed, her body facing the bedroom door with her back on the vault. They also gagged her mouth and ransacked Torres' room. One of the accused stumbled upon a box containing keys. They used the keys to open drawers and in the process found the car key. Petitioner was then summoned upstairs and given the car key. He tried it on the car and succeeded in starting its engine.

In twenty (20) minutes, accused were able to loot the vault and other valuable items in the house. They then tied Madaraog's hands and feet to the bed's headboard and escaped using Torres' car.

Still gripped with fear, Madaraog loosened her ties with her fingers, hopped to the stairs and cried for help. 8 Her neighbor Semia Quintal responded and untied her. They also sought the help of Angelina Garcia, another neighbor. It was Garcia who informed Torres that her house was burglarized.

Torres reported the robbery to the police authorities at Fairview, Quezon City and the National Bureau of Investigation (NBI). On July 25, 1988, Madaraog and Quintal described the physical features of the four (4) robbers before the NBI cartographer. One of those drawn by the artist was a person with a large mole between his eyebrows. 9 On August 30, 1988, petitioner was arrested by the NBI agents. The next day, at the NBI headquarters, he was pointed to by Madaraog and the other prosecution witnesses as one of the perpetrators of the crimes at bench.

SEMIA QUINTAL 10 averred that she saw petitioner allegedly among the three (3) men whiling away their time in front of Alabang's store some time before the crimes were

committed. Quintal is a neighboring maid.

MARY BARBIETO 11 likewise declared that she saw petitioner allegedly with several companions standing by at Torres' house that morning of July 19, 1988. She is a teacher and lives within the block where the crimes were committed.

Petitioner ALVIN TUASON, 12 on the other hand, anchored his defense on alibi and insufficient identification by the prosecution. he has lived within the neighborhood of the Torres family since 1978. He averred that on July 19, 1988, he was mixing dough and rushing cake orders from 7:00 o'clock in the morning till 1:00 o'clock in the afternoon at his sisters' TipTop Bakeshop in Antipolo Street, Tondo, Manila. It takes him two (2) hours to commute daily from Lagro, Novaliches to Tondo.

He was arrested more than one (1) month after the robbery. On August 30, 1988 at about 8:00 o'clock in the evening, he was in their house watching a basketball game on T.V. and went out to buy a cigarette. On his way back, a person accosted him and asked his name. After he identified himself, 13 a gun was poked at his right side, a shot was fired upward, and five (5) men swooped on him without any warrant of arrest. He asked them if he could wear t-shirt as he was naked from waist up. They refused. They turned out to be NBI agents of one of whom a certain Atty. Harwin who lived in Lagro, Novaliches. He was shoved into the car and brought to the NBI headquarters. 14 He was surprised when an NBI agent, whose identity was unknown to him, pointed to him as one of the suspects in the robbery in the presence of Madaraog and the other prosecution witnesses.

Petitioner's sister ANGELI TUASON, 15 part-owner of TipTop Bakeshop corroborated his story. She testified that on July 17, 1988 she asked her sister Mary Ann to remind petitioner to work early on July 19, 1988 since Mondays, Tuesdays, and Wednesdays are busy days as she caters to schools.

The trial court in a Joint Decision convicted petitioner of the crimes charged and sentenced him as follows:

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"In Q-88-396 (carnapping) or an indeterminate term of SEVENTEEN (17) YEARS and FOUR (4) MONTHS as minimum and TWENTY (20) YEARS as maximum; and in Q-88-397 (robbery) for a term of ONE (1) YEAR, SEVEN (7) MONTHS and ELEVEN (11) DAYS as minimum and TWO (2) YEARS, TEN (10) MONTHS and TWENTY (20) DAYS as maximum.

On the civil aspect, the court hereby orders Alvin Tuason y Ochoa as follows:

1. In Q-88-396 (carnapping) to return to Mrs. Cipriana Torres and her husband the carnapped Toyota Corona Sedan, Model 1980 with Plate No. NPZ 159 or to pay its value of P180,000.00 which the court finds to be the reasonable value of said car; and.

2. In Q-88-397 (robbery) to return to Mrs. Cipriana Torres and her husband the stolen items mentioned in the information filed in said case and hereinabove stated or pay the corresponding values thereof or a total of P280,550.00 which the court finds to be the reasonable values.

The civil liability is joint and solidary with the co-conspirators of accused Alvin Tuason.

In case of appeal, the bail bonds are fixed at TWO HUNDRED EIGHTY THOUSAND PESOS

(P280,000.00) fro criminal case No. Q-88-396 and ONE HUNDRED THOUSAND PESOS (P100,000.00) for criminal case No. Q-88-397.

Costs against the accused.

SO ORDERED." 16

Petitioner appealed to respondent Court of Appeals. On December 16, 1993, the Eleventh Division of the appellate court gave no credence to the exculpatory allegations of petitioner and affirmed in toto the assailed Decisions. 17 On February 4, 1994, petitioner's Motion for Reconsideration was denied for lack of merit. 18

In this petition for certiorari, petitioner contends that respondent appellate court erred:

A.
[I]N WRONGLY APPLYING TO THE CASE AT BAR THE PRINCIPLE THAT FINDINGS OF TRIAL COURTS ARE GENERALLY NOT DISTURBED ON APPEAL, PARTICULARLY CONSIDERING THAT THE FINDINGS OF THE TRIAL COURT IN THIS CASE ARE BASED ON CERTAIN REFUTABLE REASONS EXPRESSLY STATED IN ITS DECISION.

B.
[I]N WRONGLY APPLYING TO THE TESTIMONY OF HEREIN PETITIONER THE CONCEPT AND ATTENDING INFIRMITY OF "SELF-SERVING EVIDENCE."

C.
[I]N WRONGLY APPLYING TO THE TESTIMONY OF HEREIN PETITIONER THE CONCEPT AND ATTENDING INFIRMITY OF "NEGATIVE EVIDENCE."

D.
[F]OR IGNORING OR DISREGARDING THE GLARING AND FATAL INFIRMITIES OF THE TESTIMONIES OF PROSECUTION WITNESSES, SPECIALLY AS IDENTIFICATION, AS WELL AS TO THE PALPABLE IMPROBABILITY OF HEREIN PETITIONER HAVING BEEN A SUPPOSED PARTICIPANT IN THE OFFENSES CHARGED, THE ERROR BEING TANTAMOUNT TO GROSS MISAPPREHENSION OF THE RECORD.

E.
[I]N AFFIRMING THE CLEARLY REVERSIBLE DECISION OF THE TRIAL COURT.

We reverse.

Time and again, this Court has held that evidence to be believed, must proceed not only from the mouth of a credible witness but the same must be credible in itself. 19 The trial court and respondent appellate court relied mainly on the testimony of prosecution witness Madaraog that from her vantage position near the door of the bedroom she clearly saw how petitioner allegedly participated in the robbery. After a careful review of the evidence, we find that the identification of petitioner made by Madaraog and Quintal is open to doubt and cannot serve as a basis for conviction of petitioner.

Firstly, it must be emphasized that of the four (4) prosecution witnesses, only the maid Madaraog actually saw petitioner in the act of committing the crimes at bench. Witnesses Quintal and Barbieto testified they only saw petitioner at the vicinity of the crimes before they happened. There is, however, a serious doubt whether Madaraog and Quintal have correctly identified petitioner. At the NBI

headquarters, Madaraog described petitioner as 5'3" tall and with a big mole between his eyebrows. 20 While Quintal also described petitioner as 5'3" and with a black mole between his eyebrows. 21 On the basis of their description, the NBI cartographer made a drawing of petitioner showing a dominant mole between his eyes. 22 As it turned out, petitioner has no mole but only a scar between his eyes. Moreover, he is 5'8 1/2" and not 5'3" tall. There is a big difference between a mole and a scar. A scar is a mark left in the skin by a new connective tissue that replaces tissue injured. 23 On the other hand, a mole is a small often pigmented spot or protuberance on the skin. 24 If indeed Madaraog and Quintal had a good look at petitioner during the robbery, they could not have erroneously described petitioner. Worthy to note, petitioner was not wearing any mask in the occasion. Madaraog's attempt to explain her erroneous description does not at all convince, viz.:

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"Q: We come now to the third person 'iyong namang isa ay mga 28 o 29 ang edad, mga 5'2" o 5'3" ang taas, payat, medyo kulot ang buhok at maiksi at mayroong malaking bilog na nunal sa pagitan ng kilay sa noo. Mahaba at malantik ang pilikmata,' who is that?

Interpreter:
Witness referring to Exhibit "J-3."

Q: Madam witness where is that round mole that appears in the two eyebrows of the person?
A: It is probably the cartographer that made a mistake.

Q: I am referring to you now Exhibit "J". I call your attention to that black rounded figure at the middle of the bridge of the nose between the two eyebrows, what was that represent?
A: A mole, sir." 25

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"Q: Among the four drawings prepared by the cartographer section of the NBI, you will agree with me Madam Witness that it is only on Exhibit "J" when that rounded mole appear?
A: No sir, it is the third one." 26

xxx xxx xxx

"Q: You did not call the attention of the NBI that the third one whom you identified as Exhibit "J-3" did not bear that rounded mole as mentioned by you, did you?
A: I did not remember.

Q: Why did you not remember having called the attention of the NBI to that deficiency in the drawing?
A: I was not able to call the attention of the NBI (sic) because there were four of us who made the description." 27

Secondly, the trial court and the respondent appellate court unduly minimized the importance of this glaring discrepancy in the identification of the petitioner. The trial court resorted to wild guesswork. It ruled:

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"[T]he court has observed that Alvin has a prominent scar in between his two (2) eyebrows. It is not within the realm of improbability that Alvin covered up that scar with a black coloring to make it appear that he has a 'nunal' which was therefore the one described by Jovina and, which reinforces her testimony that she had a good eye view of Alvin from the start of the robbery to its conclusion." 28

This is a grave error. The trial court cannot convict petitioner on the basis of a deduction that is irrational because it is not derived from an established fact. The records do not show

any fact from which the trial court can logically deduce the conclusion that petitioner covered up his scar with black coloring to make it appear as a mole. Such an illogical reasoning cannot constitute evidence of guilt beyond reasonable doubt. This palpable error was perpetrated by respondent appellate court when it relied on the theory that this "fact" should not be disturbed on appeal because the trial court had a better opportunity to observe the behavior of the prosecution witnesses during the hearing. This is a misapplication of the rule in calibrating the credibility of witnesses. The subject finding of the trial court was not based on the demeanor of any witness which it had a better opportunity to observe. Rather, it was a mere surmise, an illogical one at that. By no means can it be categorized as a fact properly established by evidence.

And thirdly, corroborating witness Barbieto has serious lapses in her testimony that diluted her credibility, thus:

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"Q: I am showing to you Exhibit "M" and please point to this Honorable Court that portion where the accused (Alvin Tuason) allegedly asked from you the price of that plastic pack of ice.

A: I did not state it in my statement.

Q: Why did you say a moment ago that you place it there (Sinumpaang Salaysay)?

A: But that is the truth, sir.

Q: I am not asking you the truth or falsehood . . . I am only asking you why you said a moment ago that the portion of your testimony now is incorporated in Exhibit "M."

A: [B]ecause they asked the price of the ice." 29

xxx xxx xxx

"Q: After reading Exhibit "M", did you or did you not call the attention of the investigator that some of your narrations were not incorporated therein?

A: No, I did not because he did not ask me.

Q: [Y]ou did not come forward to volunteer that some portions of your narration were not incorporated therein?

A: [T]he investigator knew it.

Q: You mean to tell the Honorable Court that after reading Exhibit "M", the NBI investigator knew that there were some lapses or omissions in your statement?"

A: It's up to the investigator." 30

Barbieto is a school teacher and the kind of excuses she proffered does not enhance her credibility. Moreover, she and Quintal merely testified they saw petitioner within the vicinity where the crimes were committed. By itself, this circumstance cannot lead to the conclusion that petitioner truly committed the crimes at bench. Petitioner, we note, lives in the same vicinity as the victim. To use his words, he lives some six (6) posts from the house of Torres. His presence in the said vicinity is thus not unnatural.

The doubtful identification of petitioner was not at all cured by the process followed by the NBI agents when petitioner was pointed to by Madaraog and the other prosecution witnesses in their headquarters. Madaraog's identification of petitioner from a line-up at the NBI was not spontaneous and independent. An NBI agent improperly suggested to them petitioner's person. Petitioner thus testified:

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"Q: Mr. Witness (Alvin Tuason) do you know of any reason why these two witnesses in the persons of Jovina Madaraog Torres and Mary

Barbieto would be testifying in the manner that they did against you?
A: At the NBI, I saw them with the NBI agent. After the agent pointed at me, later on they also pointed at me." 31

On cross-examination, he declared:
xxx xxx xxx
"Q: Do you know the reason why they testified and pointed to you as one of the robbers of July 19, 1988?
A: Because when I was at the NBI, the NBI agent pointed at me.

Q: Did you see them at the NBI when they pointed at you?
A: They were outside a room where there was a glass window.

Q: So you can see those persons outside the room?
A: Yes, sir.

Q: When they pointed you and identified you were there other persons with you when you were lined up during that time?
A: In the second line I was in the line-up.

Q: When was the first time they pointed you as one of the suspects?
A: In the Office of the Chief Unit there, to the third floor of the NBI building." 32

This damaging testimony of the petitioner was not rebutted by the prosecution. The NBI agent present during the identification of petitioner was not presented to belie petitioner's testimony. Consequently, the identification of the petitioner in the NBI headquarters is seriously flawed. According to writer Wall, the mode of identification other than an identification parade is a show-up, the presentation of a single suspect to a witness for purposes of identification. Together with its aggravated forms, it constitutes the most grossly suggestive identification procedure now or ever used by the police. 33

The respondent appellate court, however, dismissed this claim of petitioner as self-serving. Again, the ruling misconstrues the meaning of self-serving evidence. Self-serving evidence is not to be literally taken as evidence that serves one's selfish interest. Under our law of evidence, self-serving evidence is one made by a party out of court at one time; it does not include a party's testimony as a witness in court. It is excluded on the same ground as any hearsay evidence, that is the lack of opportunity for cross-examination by the adverse party, and on the consideration that its admission would open the door to fraud and to fabrication of testimony. On the other hand, a party's testimony in court is sworn and affords the other party the opportunity for cross-examination. 34 Clearly, petitioner's testimony in court on how he was identified by the prosecution witnesses in the NBI headquarters is not self-serving.

Petitioner's main defense is alibi. He professed that on July 19, 1988 he was mixing dough at TipTop Bakeshop from 7:00 o'clock in the morning till 1:00 o'clock in the afternoon. With the usual traffic jam, it takes him two (2) hours to commute from Lagro to Tondo. It was thus physically impossible for him to be at the locus criminis. He said he learned about the robbery thru his neighbor three (3) days thereafter. He did not flee. He was arrested by the NBI agents more than one (1) month after the crimes were perpetrated.

Angeli Tuason's corroborative testimony

established that her brother had an eye examination on July 17, 1988 35 and she reminded him to work early on July 19, 1988 which he did.

Judges should not at once look with disfavor at the defense of alibi. Alibi should be considered in the light of all the evidence on record for it can tilt the scales of justice in favor of the accused. 36 In People vs. Omega, 37 we held:

"Although alibi is known to be the weakest of all defenses for it is easy to concoct and difficult to disprove, nevertheless, where the evidence for the prosecution is weak and betrays lack of concreteness on the question of whether or not the accused committed the crime charged, the defense of alibi assumes importance."

The case at bench reminds us of the warning that judges seem disposed more readily to credit the veracity and reliability of eyewitnesses than any amount of contrary evidence by or on behalf of the accused, whether by way of alibi, insufficient identification, or other testimony. 38 They are unmindful that in some cases the emotional balance of the eyewitness is disturbed by her experience that her powers of perception becomes distorted and her identification is frequently most untrustworthy. Into the identification, enter other motives, not necessarily stimulated originally by the accused personally - the desire to requite a crime, to find a scapegoat, or to support, consciously or unconsciously, an identification already made by another. 39

IN VIEW THEREOF, the Decision of December 16, 1993 is REVERSED and SET ASIDE and petitioner Alvin Tuason is ACQUITTED. No costs.

SO ORDERED.

Narvasa, C.J., Bidin, Regalado and Mendoza, JJ., concur.

Q: Distinguish Evidence in Civil Cases from Evidence in Criminal Cases.

A: Civil Cases	Criminal Cases
The party having the burden of proof must prove his claim by a preponderance of evidence	The guilt of the accused has to be proven beyond reasonable doubt
An offer of compromise is not an admission of any liability, and is not admissible in evidence against the offeror	An offer of compromise by the accused may be received in evidence as an implied admission of guilt
The concept of presumption of innocence does not apply	The accused enjoys the constitutional presumption of innocence

WHEN EVIDENCE IS NECESSARY

Evidence is the means of proving a fact. It becomes necessary to present evidence in a case when the pleadings filed present factual issues. Factual issues arise when a party specifically denies material allegations in the adverse party's pleading. These are the issues which the judge cannot resolve without evidence being presented thereon. Thus, whether a certain thing exists or not, whether a certain act was done or not, whether a certain statement was uttered or not, are questions of fact that require evidence for their resolution. Questions of fact exist when the doubt or difference arises as to the truth or falsehood of alleged facts.1 Other than factual issues, the case invariably presents legal issues. On the other hand, a question of law exists when the doubt or difference arises as to what the law is on a certain state of facts. Legal issues are resolved by simply applying the law or rules applicable, or interpreting the law applicable considering the facts of the case. Generally, no evidence need be presented on what the applicable law is. Everyone, including the judge, is presumed to know the law.

When the parties' pleadings fail to tender any issue of fact, either because all the factual allegations have been admitted expressly or impliedly (as when a denial is a general denial), there is no need of conducting a trial, since there is no need of presenting evidence anymore. The case is then ripe for judicial determination, either through a judgment on the pleadings2 or by summary judgment.3

Q: Distinguish proof from evidence.

A: Proof	Evidence
The effect when the requisite quantum of evidence of a particular fact has been duly admitted and given weight	The mode and manner of proving competent facts in judicial proceedings

The probative effect of evidence	The means of proof

_ KINDS OF EVIDENCE

1. Depending on its ability to establish the fact in dispute:
    a. Direct – that which proves the fact in dispute without the aid of any inference or presumption.
    _ Example: In case of arson, that the witness saw the defendant apply the torch which lighted the fire.
    b. Circumstantial – proof of facts from which, taken collectively, the existence of the particular fact in dispute may be inferred as a necessary or probable consequence.

_ Such evidence is founded on experience and observed facts and coincidences establishing a connection between the known and proven facts and the facts which are sought to be proved.

2. Depending on its weight and acceptability:
    a. Primary or Best Evidence – that which affords the greatest certainty of the fact in question.
    b. Secondary or Subtitutionary – that which is necessarily inferior to primary evidence and shows on its face that better evidence exists.

3. Depending on its NATURE:

    a. Object (real/physical) – that which is addressed to the senses of the court, as where the objects are exhibited for the personal observation of the judge. It is also called autopic proference (evidence of one's own senses). (5 Moran)
    b. Documentary – consists of writing, or any material containing letters, words, numbers, figures, symbols or other modes of written _expression offered as proof of their contents. (Sec. 2, Rule 130)
    _ supplied by written instruments or derived from conversational symbols and letters by which ideas are represented on material substances.
    c. Testimonial (oral/verbal) – consists of narration or deposition by one who has observed or has personal knowledge of that to which he is testifying.
    _ A witness is reliable when his answers are prompt, concise, responsive to interrogatories, outspoken and entirely devoid of evasion and any semblance of shuffling. (People vs. Francisco, 74 SCRA 158).
    1) Positive- when the witness affirms that a fact did or did not occur, it is entitled to greater weight since the witness represents of his personal knowledge the presence or absence of a fact.
    2) Negative – when the witness states that he did not see or know the occurrence of a fact there is total disclaimer of personal knowledge.

4. Depending on its DEGREE OF VALUE:
    a. Conclusive – that which is incontrovertible or one which the law does not allow it to be contradicted. It is insurmountable evidence.
    b. Prima facie – that which suffices for the proof of a particular fact, until contradicted and overcome by other evidence.
    _ If notice of non-payment by the drawee bank is not sent to the maker or drawer of the bum check, or if there is no other proof as to when such notice was received by the drawer, then the presumption of knowledge as provided in Section 2 of B.P. 22 cannot arise, since there would simply be no way of reckoning the crucial five-day period.(Rico vs. People, G.R. 137191, Nov. 18, 2002)
    c. Cumulative – additional evidence of the same kind bearing on the same point.
    _ Example: When testimony has been given by one or more witnesses as to an assault and other witnesses are produced to testify to the same state of facts and to no new fact, the evidence given by such witnesses is merely cumulative.
    d. Corroborative – additional evidence of a different kind and character tending to prove the same point.

_ While cumulative is additional evidence of the SAME kind and character, corroborative is also additional evidence but of

DIFFERENT kind and character.
(Jones on Evidence)

5. Depending on its QUALITY:
    a. Relevant – if it has any value in reason as tending to prove any matter provable in an action.
    _ Evidence is relevant when it has a tendency in reason to establish the probability or improbability of a fact in issue. (Sec. 4, Rule 128)
    b. Material – if it is directed to prove a fact in issue as determined by the rules of substantive law and pleadings. (Wigmore on Evidence)
    c. Admissible- if it is relevant to the issue and is not excluded by law or by the Rules of Court.
    d. Credible- if it is not only admissible but also believable and used by the court in deciding a case.

6. Depending on its FUNCTION:
    a. Rebuttal – that which is given to explain, repel, counteract or disprove facts given in evidence by the adverse party.
    b. Sur-rebuttal – that which is given to explain, repel, counteract or disprove facts introduced in rebuttal.

Quantum of Evidence
    a. Proof beyond reasonable doubt required

in criminal cases; does not mean such degree of proof as excluding possibility of error, and/or producing absolute certainty. Moral certainty is only required, or that degree of proof which produces conviction in an unprejudiced mind.
b. Preponderance of evidence required in civil cases; evidence which is of greater weight, or more convincing, than that which is offered in opposition thereto. (Sec. 2, Rule 133)
c. Substantial evidence- sufficient in administrative proceedings; that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. (Sec. 5, Rule 133)

ADMISSIBILITY OF EVIDENCE

The study of the law on Evidence involves two main problems, *viz*.: (1) determining whether a given piece of evidence is admissible; and (2) the proper presentation of that evidence so that the court will consider it in resolving the issues and deciding the case. Although evidence may, by itself, be admissible, the court may not admit or consider it in the resolution of the case unless the evidence was properly presented.

Axiom of Admissibility of Evidence

Evidence is admissible when it is relevant to the issues and is competent, *i.e*., it is not excluded by the law or the Rules of Court.4 Evidence is relevant if it tends in any reasonable degree to establish the probability or improbability of a fact in issue.5 It is of a lesser degree of reliability as evidence than material evidence. Material evidence directly proves a fact in issue. Thus, the testimony of an eyewitness to the commission of a crime is material; the evidence of motive or flight of the accused may be relevant. Evidence that is material or relevant must also be competent to be admissible. For example, although the testimony of the eyewitness may be material, it may be inadmissible if it is excluded by the marital disqualification rule.

Relevancy or materiality of evidence is a matter of logic, since it is determined simply by ascertaining its logical connection to a fact in issue in the case. It is therefore inadvisable for a judge to ask an objecting counsel why an offered piece of evidence is irrelevant or immaterial. By his inquiry, he shows his unfamiliarity with the issues in the case. A judge is expected to be aware of the issues which he was supposed to have defined and limited in his mandatory pre-trial order. On the other hand, the grounds for objection to the competency of evidence must be specified6 and are determined by the Rules or the law.

The opposites of the three requisites for admissibility of evidence, *viz*, irrelevancy, immateriality or incompetency, are the general grounds for objection. The first two are valid grounds for objection without need of specification or explanation. The third ground for objection, incompetency, if offered without further explanation, is not valid for being unspecific, except when invoked in reference to the lack of qualification of a witness to answer a particular question or give a particular evidence.

Q: Distinguish admissibility of evidence from probative value of evidence.

A: Admissibility	Probative Value
Question of whether certain pieces of evidence are to be considered at all.	Question of whether the admitted evidence proves an issue.

MANOLO P. FULE, petitioner,
vs.
THE HONORABLE COURT OF APPEALS, respondent.
1988 June 22 En Banc
G.R. No. 79094
D E C I S I O N
MELENCIO-HERRERA, J.:

This is a Petition for Review on Certiorari of the Decision of respondent Appellate Court, which affirmed the judgment of the Regional Trial Court, Lucena City, Branch LIV, convicting petitioner (the accused-appellant) of Violation of Batas Pambansa Blg. 22 (The Bouncing Checks Law) on the basis of the Stipulation of Facts entered into between the prosecution and the defense during the pre-trial conference in the Trial Court. The facts stipulated upon read:

"a) That this Court has jurisdiction over the person and subject matter of this case;

"b) That the accused was an agent of the Towers Assurance Corporation on or before January 21, 1981;

"c) That on January 21, 1981, the accused issued and made out check No. 26741, dated January 24, 1981 in the sum of P2,541.05;

"d) That the said check was drawn in favor of the complaining witness, Roy Nadera;

"e) That the check was drawn in favor of the complaining witness in remittance of collection;

"f) That the said check was presented for payment on January 24, 1981 but the same was dishonored for the reason that the said checking account was already closed;

"g) That the accused Manolo Fule has been properly identified as the accused party in this case."

At the hearing of August 23, 1985, only the prosecution presented its evidence consisting of Exhibits "A," "B" and "C." At the subsequent hearing on September 17, 1985, petitioner-appellant waived the right to present evidence and, in lieu thereof, submitted a Memorandum confirming the Stipulation of Facts. The Trial Court convicted petitioner-appellant.

On appeal, respondent Appellate Court upheld the Stipulation of Facts and affirmed the judgment of conviction. 1

Hence, this recourse, with petitioner-appellant contending that:

"The Honorable Respondent Court of Appeals erred in affirming the decision of the Regional Trial Court convicting the petitioner of the offense charged, despite the cold fact that the basis of the conviction was based solely on the stipulation of facts made during the pre-trial on August 8, 1985, which was not signed by the petitioner, nor by his counsel."

Finding the petition meritorious, we resolved to give due course.

The 1985 Rules on Criminal Procedure, which became effective on January 1, 1985, applicable to this case since the pre-trial was held on August 8, 1985, provides:

"SEC. 4. Pre-trial agreements must be signed. No agreement or admission made or entered during the pre-trial conference shall be used in evidence against the accused unless reduced to writing and signed by him and his counsel." (Rule 118)

By its very language, the Rule is mandatory. Under the rule of statutory construction, negative words and phrases are to be regarded as mandatory while those in the affirmative are merely directory (McGee vs. Republic, 94 Phil. 820 [1954]). The use of the term "shall" further emphasizes its mandatory character and means that it is imperative, operating to impose a duty which may be enforced (Bersabal vs. Salvador, No. L-35910, July 21, 1978, 84 SCRA 176). And more importantly, penal statutes whether substantive and remedial or procedural are, by consecrated rule, to be strictly applied against the government and liberally in favor of the accused (People vs. Terrado, No. L-23625, November 25, 1983, 125 SCRA 648).

The conclusion is inevitable, therefore, that the omission of the signature of the accused and his counsel, as mandatorily required by the Rules, renders the Stipulation of Facts inadmissible in evidence. The fact that the lawyer of the accused, in his memorandum, confirmed the Stipulation of Facts does not cure the defect because Rule 118 requires both the accused and his counsel to sign the Stipulation of Facts. What the prosecution should have done, upon discovering that the accused did not sign the Stipulation of Facts, as required by Rule 118, was to submit evidence to establish the elements of the crime, instead of relying solely on the supposed admission of the accused in the Stipulation of Facts. Without said evidence independent of the admission, the guilt of the accused cannot be deemed established beyond

reasonable doubt.

Consequently, under the circumstances obtaining in this case, the ends of justice require that evidence be presented to determine the culpability of the accused. When a judgment has been entered by consent of an attorney without special authority, it will sometimes be set aside or reopened (Natividad vs. Natividad, 51 Phil. 613 [1928]).

WHEREFORE, the judgment of respondent Appellate Court is REVERSED and this case is hereby ordered RE-OPENED and REMANDED to the appropriate Branch of the Regional Trial Court of Lucena City, for further reception of evidence.

SO ORDERED.

Yap (C.J.), Fernan, Narvasa, Cruz, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Cortes, Griño-Aguino and Medialdea, JJ., concur.

Proper Presentation Of Evidence

Every piece of evidence, regardless of its nature, requires certain processes of presentation for its admissibility and admission.

1. Object evidence

Object evidence must generally be marked (Exhibit A, B, etc. for the plaintiff; Exhibit 1, 2, 3, etc. for the defendant) either during the pre-trial or during its presentation at the trial. It must also be identified as the object evidence it is claimed to be. This requires a testimonial sponsor. For example, a forensic chemist identifies marijuana leaves as those submitted to him in the case for examination. Further, object evidence must be formally offered after the presentation of a party's testimonial evidence.

2. Oral evidence

Oral evidence is presented through the testimony of a witness. Under the 1989 Rules on Evidence, oral evidence must be formally offered at the time the witness is called to testify.8 Objections may then be raised against the testimony of the witness. If the objection is valid, as when the witness' testimony is barred by the hearsay rule or the opinion rule, the witness will not be allowed to testify. If the witness is otherwise allowed to testify, he shall be sworn in, either by taking an oath or making an affirmation.9 It is essential that the proper foundation for the testimony of a witness must be laid. An ordinary witness must be shown to have personal knowledge of the facts he shall testify to; otherwise, his testimony will be hearsay, or he will be incompetent to answer the questions to be asked of him. An expert witness must be specifically qualified as such; otherwise, he cannot validly give his opinion on matters for which he may have been summoned as a witness.

However, the requirement of qualifying an expert witness may be dispensed with if:

> (a) the adverse counsel stipulates on the expert's qualification; or
>
> (b) the court takes judicial notice of the witness' expertise, because the judge happens to be aware thereof on account of the judge's judicial functions.

3. Documentary evidence

Documentary evidence is (1) marked; (2) identified as the document which it is claimed to be (as when the witness asserts that the document presented to him is the same contract which he claims was executed between the two parties); (3) authenticated, if a private document, by proving its due execution and genuineness; and (4) formally offered after all the proponent's witnesses have testified.

Rule 132, Sec. 34 provides that the court shall consider no evidence which has not been formally offered, and that the purpose for which the evidence is offered must be specified. In this connection, it has been asked whether it would be proper for the judge to disregard a witness' direct testimony given without the prior formal offer thereof which Rule 132, Sec. 35 requires, and corollarily, whether the adverse party may be required to cross-examine that witness. In *People v. Marcos*,11 the Supreme Court ruled that if a witness has given unoffered direct testimony without objection from the adverse party, the latter is estopped from raising that objection which he is deemed to have waived; hence, although not formally offered, the testimony may be considered by the court.

The view can be advanced, however, that although the aforesaid testimony was not expressly formally offered, it was nonetheless formally offered, albeit impliedly and automatically, the moment each question was propounded to elicit an answer. This view is premised on two related provisions in Rule 132, Sec. 36, *i.e.*, that *'Objection to evidence offered orally must be made immediately after the offer is made,'* and that '*Objection to a question propounded in the course of the oral examination of a witness shall be made as soon as the grounds therefor shall have become reasonably apparent.'* Clearly, the purpose of the express formal offer of oral evidence before the witness testifies is merely to determine, on the basis of the stated substance of the testimony and its purpose, whether the witness shall be allowed to testify. Once the witness is allowed to testify, each question propounded to elicit specific oral evidence may still be objected to as soon as a ground for objection becomes reasonably apparent. But it is fundamental that an objection to evidence can be validly raised only after an offer is made. Thus, every question asked of a witness especially on direct examination presupposes a formal offer of the answer, the oral evidence, sought to be elicited. It would seem therefore that unlike documentary and object evidence which are

formally offered only after all the witnesses of a party have testified, oral evidence is offered twice: once, expressly, before the witness testifies, and again, with each question propounded to the witness.

C. Formal Offer Of Evidence; Need For Statement Of The Purpose Of Evidence

Evidence not formally offered will not be considered by the court in deciding the case.

A party makes a formal offer of his evidence by stating its substance or nature and the purpose or purposes for which the evidence is offered.13 Without a formal offer of evidence, and hence without a disclosure of its purpose, it cannot be determined whether it is admissible or not. This is so because it is the intended purpose of a piece of evidence which determines what rule of evidence will apply for its admissibility. A piece of evidence may be admissible if offered for one purpose but may be inadmissible if offered for another. For example, the testimony of a witness, in a libel case, that he heard the defendant call the plaintiff a liar and a crook is certainly inadmissible for being hearsay, if offered to prove the truth of the perceived statement. However, the same testimony is perfectly admissible if offered simply to prove that the statement was uttered. For that purpose, the witness would be the only person qualified to testify on, and prove, what he heard defendant say. Similarly, the declaration of a dying person made without consciousness of his impending death will not qualify as a dying declaration, although it may be admissible if offered as part of the *res gestae.*

It must be noted that the mere marking, identification, or authentication of documentary evidence does not mean that it will be, or has been, offered as part of the evidence of a party. This was the ruling of the Supreme Court in *People v.* Santito*, Jr*.

Annexes attached to pleadings, if not offered formally, are mere scraps of paper and should not be considered by the court, unless the truth of their contents has been judicially admitted.

To the general rule that the court shall not consider any evidence not formally offered, there are certain exceptions:

1. Under the Rule on Summary Procedure, where no full blown trial is held in the interest of speedy administration of justice;

2. In summary judgments under Rule 35 where the judge bases his decisions on the pleadings, depositions, admissions, affidavits and documents filed with the court;

3. Documents whose contents are taken judicial notice of by the court;

4. Documents whose contents are judicially admitted;

5. Object evidence which could not be formally offered because they have disappeared or have become lost after they have been marked, identified and testified on and described in the record and became the subject of cross-examination of the witnesses who testified on them during the trial, *e.g.,* marijuana involved in a prohibited drugs prosecution.

TYPES OF ADMISSIBILITY

a**. Multiple Admissibility Rule** –
evidence is relevant and competent for
two or more purposes.
_ Evidence will be received if it satisfies all the requirements prescribed by law in order that it
may be admissible for the purpose for which it was presented, even if it does not satisfy the other requirements for its admissibility for other purposes. (5 Moran)
_ Under the rule of multiple admissibility o evidence, even if Consunji's confession may not be
competent as a against his co accused Panganiban, being hearsay as to the latter, or to prove conspiracy between them without conspiracy being established by
other evidence, the confession of Consunji was, nevertheless, admissible as evidence of the declarant's own guilt (People vs. Yatco, 97 Phil. 941).

b. Conditional Admissibility Rule –
evidence that which appears to be immaterial is admitted by the court subject to the condition that its connection with other facts subsequently to be proved will be
established. (People vs. Yatco, 97 Phil. 940).

_ A fact offered in evidence mayappear to be immaterial unless it is connected with other facts to be subsequently proved. In such a case, evidence of that fact may be received on condition that the other facts be
afterwards proved. On failure to comply with this condition, the evidence already given shall be stricken out. (5 Moran)

c. Curative Admissibility Rule evidence,
otherwise improper, is admitted to contradict improper
evidence introduced by the other party. (1 Wigmore)

_ Improper evidence admitted on one side without objection, does not give the other side the right to introduce in reply the same kind of evidence if objected to; however, when a plain and unfair prejudice would
otherwise inure to the opponent, the court may permit him to use a curative counter-evidence to contradict the improper evidence presented. (5 Moran)

Digital evidence or **electronic evidence** is any probative information stored or transmitted in digital form that a party to a court case may use attrial.[1] Before accepting digital evidence a court will determine if the evidence is relevant, whether it is authentic, if it is hearsay and whether a copy is acceptable or the original is required.[1]
The use of digital evidence has increased in the past few decades as courts have allowed the use of e-mails, digital photographs, ATM transaction logs, word processing documents, instant message histories, files saved
from accounting programs, spreadsheets, internet browser histories,databases, the contents of computer memory, computer backups, computer printouts, Global Positioning System tracks, logs from a hotel's electronic door locks, and digital video or audio files.[2]
Many courts in the United States have applied

the Federal Rules of Evidence to digital evidence in a similar way to traditional documents, although some have noted important[according to whom?] differences. For example, that digital evidence tends to be more voluminous, more difficult to destroy, easily modified, easily duplicated, potentially more expressive, and more readily available. As such, some courts have sometimes treated digital evidence differently for purposes of authentication, hearsay, the best evidence rule, and privilege. In December 2006, strict new rules were enacted within the Federal Rules of Civil Procedure requiring the preservation and disclosure of electronically stored evidence. Digital evidence is often attacked for its authenticity due to the ease with which it can be modified, although courts are beginning to reject this argument without proof of tampering.[3][1]

MODES OF EXCLUDING INADMISSIBLE EVIDENCE

There are two ways of excluding inadmissible evidence. One is by objection and the other is by a motion to strike out.

A. Evidence is objected to at the time it is offered and not before:

1. Oral evidence is objected to after its express formal offer before the witness testifies.17 When thereafter the witness is allowed to testify, objection to a question propounded in the course of the oral examination of a witness shall be made as soon as the grounds therefor shall become reasonably apparent.18

2. Documentary and object evidence are objected to upon their formal offer after the presentation of a party's testimonial evidence.

Failure to seasonably object to offered evidence amounts to a waiver of the grounds for objection. The rules of exclusion are not self-operating. They must be properly invoked.

The grounds for objection must be specified.19 Grounds not raised are deemed waived. However, repetition of objection is unnecessary when a continuing objection is properly made.20 Objection to the purpose for which evidence is offered is not proper.

B. A motion to strike out answer or testimony is proper in the following instances:

1. The witness answers prematurely.21

2. The answer is incompetent, irrelevant or improper.22

The incompetency referred to here is limited to the incompetency of the witness to answer the question posed; it does not extend to the general concept of incompetency of evidence for being excluded by law or the Rules.

3. The answer given is unresponsive.

4. The ground for objection was not apparent when the question was asked.

5. Uncompleted testimony – *e.g.*, a witness who gave direct testimony becomes unavailable for cross-examination through no fault of the cross-examiner.

6. Unfulfilled condition in conditionally admitted testimony.

C. Objections and Ruling

Objections to evidence may be formal or substantive.

1. Formal objections are based on the defective form of the question asked. Examples:

(1) leading questions which suggest to the witness the answer desired.23

a. If counsel finds difficulty in avoiding leading questions, the judge may suggest, to expedite questions, that counsel begin his questions with the proper interrogative pronouns, such as *"who", "what", "where", "why", "how"*, etc.

b. Leading questions are allowed of a witness who cannot be reasonably expected to be led by the examining counsel, as (a) on cross-examinations;24 (b) when the witness is unwilling or hostile, after it has been demonstrated that the witness had shown unjustified

[1] www. Wikipedia.com

reluctance to testify or has an adverse interest or had misled the party into calling him to the witness stand, and in either case after having been declared by the court to be indeed unwilling or hostile;25 or (c) when the witness is an adverse party or an officer, director, or managing agent of a public or private corporation or of a partnership or association with is an adverse party.26

c. Leading questions may also be asked when there is difficulty in getting direct and intelligible answers from a witness who is ignorant, or a child of tender years, or is feeble minded, or a deaf-mute.27

d. Leading questions may moreover be asked on preliminary matters, *i.e.,* on facts not in controversy, and offered only as basis for more important testimony to follow. For example, "*You are Mrs Maria Morales, wife of the plaintiff in this case?*"

(2) misleading questions, which assume as true a fact not testified to by the witness (*"question has no basis"),* or contrary to that which he has previously stated;28

(3) double or multiple questions, which are two or more queries in one. For example, Q: *"Did you see the defendant enter the plaintiff's house, and was the plaintiff there?"*

(4) vague; ambiguous; indefinite or uncertain questions - not allowed because the witness cannot understand from the form of the question just what facts are sought to be elicited.

(5) repetitious questions; or those already answered. However, on cross-examination, the cross-examiner may ask a question already answered to test the credibility of the witness.

(6) argumentative questions, which challenge a witness' testimony by engaging him in an argument, *e.g.*, Q: "Isn't it a fact Mr Witness that nobody could possibly see all the circumstances you mentioned in a span of merely two seconds, and that either your observations are inaccurate or you are lying?"

2. Substantive objections are those based on the inadmissibility of the offered evidence, e.g.;

(1) irrelevant, immaterial

(2) best evidence rule

(3) parol evidence rule

(4) disqualification of witness

(5) privileged communication

(6) *res inter alios acta*

(7) hearsay

(8) opinion

(9) evidence illegally obtained

(10)private document not authenticated

The ruling by the court on an objection must be given immediately after an objection is made, unless the court desires to take a reasonable time to inform itself on the question presented; but the ruling shall always be made during the trial and at such time as will give the party against whom it is made an opportunity to meet the situations presented by the ruling.29 Thus, an objection to a question asked of a witness must be at once resolved by the court by either sustaining or overruling the objection. It would be incorrect for a judge to consider the objection "submitted" or "noted". Unless the objection is resolved, the examination of the witness could not be expected to continue since, in all likelihood, the next question would depend on how the objection is resolved. If the issue raised by the objection is a particularly difficult one, it would not be improper for the judge to perhaps declare a brief recess to enable him to quickly study the matter. But certainly, the resolution must be given before the trial resumes.

The reason for sustaining or overruling an objection need not be stated. However, if the objection is based on two or more grounds, a ruling sustaining the objection, or one or some of them, must specify the ground or grounds relied upon.30

Judges are advised to judiciously consider the validity of the grounds for objections and carefully rule on them. A ruling that all evidence formally offered are "admitted for whatever they may be worth" will not reflect well on the judge, as it implies a hasty and ill-considered resolution of the offer and the objections. Besides, the phrase "for whatever they may be worth" is improper since it refers to the weight or credibility of the evidence; the weight of the evidence shall be considered only after the evidence shall have been admitted. Another ruling that is ludicrous and even nonsensical is "Evidence admitted subject to the objections". This is a non-ruling.

In case of an honest doubt about the admissibility of evidence, it is better policy to rule in favor of its admission. An erroneous rejection of evidence will be unfair to the offeror since the judge cannot validly

consider it even if after the trial, the judge realizes his mistake. On the other hand, if the judge had erred in admitting a piece of evidence, he may simply give it little or no weight when deciding the case.

THE RULES ON ELECTRONIC EVIDENCE
A.M. No. 01-7-01-SC
Effective August 1, 2001

Scope: Unless otherwise provided in this Rule, it shall apply whenever an electronic document or electronic data message is offered or used in evidence.

Coverage: The Rules shall apply to all civil actions and proceedings, as well as quasijudicial and administrative cases.

_ R.A. 8792 gave recognition to the admissibility of electronic documents and electronic data messages as evidence. The law says that "for evidentiary purposes, an electronic document shall be the functional equivalent of a written document under existing laws.:

_ To be admissible must maintained its integrity, reliability and must be capable of being authenticated.

_ Definitions:
1) Electronic Document – refers to information or the representation of information, data, figures, symbols or other modes of written expression, described or however represented, by which a right is established or an obligation extinguished, or by which a fact may be proved and affirmed, which is received, recorded, transmitted, stored, processed, retrieved, or produced electronically.

¨ What Electronic Document Includes
(a) Digitally signed document; or
(b) Any print-out or output, readable by sight or other means, which accurately reflects the electronic data message or electronic document.

2) Digitally Signed – refers to an electronic document or electronic data message bearing a digital signature verified by the public key listed in a certificate.

3) Electronic Data Message – refers to information generated, sent, received or stored by electronic, optical or similar means. ¨ For purposes of the Rules on Electronic Evidence, the term "electronic document" may be used interchangeably with "electronic data message."

4) Electronic Signature – refers to any distinctive mark, characteristic and/or sound in electronic form, representing the identity of a person and attached to or logically associated with the electronic data message or electronic document or any methodology or procedure employed or adopted by a person and executed or adopted by such person with the intention of authenticating, signing or approving an electronic data message or electronic document. It includes digital signatures.

5) Digital Signature – refers to an electronic signature consisting of a transformation of an electronic document or an electronic data message using an asymmetric or untransformed electronic document

public cryptosystem such that a person having the initial and the signer's public key can accurately determine:
(a) whether the transformation was created using the private key that corresponds to the signer's public key; and,
(b) whether the initial electronic document had been altered after the transformation was made.
¨ Note: An electronic signature or a digital signature is deemed as the functional equivalent of the signature of a person on a written document.

6) Asymmetric or Public Cryptosystem – a system capable of generating a secure key pair, consisting of a private key for creating a digital signature, and a public key for verifying the digital signature.

7) Ephemeral Electronic Communication – refers to telephone conversations, text messages, chatroom sessions, streaming audio, streaming video, and other electronic forms of communication the evidence of which is not recorded or retained.

RULES:
1. A recording of the telephone conversation or ephemeral electronic communication may be offered as ephemeral evidence in the same way as in presenting audio, photographic or video evidence to the court.
2. Electronic Documents as Functional Equivalent of Paper-Based Documents: Whenever a rule of evidence refers to the term writing, document, record, instrument, memorandum or any other form of writing, such term shall be deemed to include an electronic document.
3. The TOTAL EXCLUSIONARY RULE: Evidence obtained in violation of a defendant's constitutional rights must be suppressed from the government's case in chief.
4. The Fruit of the Poisonous Tree / But For/ Taint Doctrine- posits that all evidence (the fruit) derived from an illegal search (the poisonous tree) must be suppressed, whether it was obtained directly through the illegal search itself or indirectly using information obtained din the illegal search.

_ **Scope of Exclusionary Rule**
a) Right against unreasonable search and seizure.
b) Right to privacy and inviolability of communication.
c) Right under investigation for an offense.
d) Right against self-incrimination.

_ Note: The rule is limited only to evidence obtained by law enforcers except as otherwise provided by law.

Republic of the Philippines
SUPREME COURT
Manila

THIRD DIVISION

G.R. No. 170491 April 4, 2007

NATIONAL POWER CORPORATION, Petitioner,
vs.
HON. RAMON G. CODILLA, JR., Presiding Judge, RTC of Cebu, Br. 19, BANGPAI SHIPPING COMPANY, and WALLEM

SHIPPING, INCORPORATED, Respondents.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before Us is a Petition for Review on Certiorari under Rule 45 of the Rules of Civil Procedure, assailing the Decision[1] of the Court of Appeals in CA-G.R. CEB-SP No. 00848, dated 9 November 2005, which dismissed the Petition for Certiorari filed by the National Power Corporation seeking to set aside the Order[2] issued by the Regional Trial Court (RTC) of Cebu, Branch 19 dated 16 November 2004, denying admission and excluding from the records plaintiff's (herein petitioner) Exhibits "A", "C", "D", "E", "H" and its sub-markings, "I", "J", and its sub-markings, "K", "L", "M" and its sub-markings, "N" and its sub-markings, "O", "P" and its sub-markings, "Q" and its sub-markings, "R" and "S" and its sub-markings.

On 20 April 1996, M/V Dibena Win, a vessel of foreign registry owned and operated by private respondent Bangpai Shipping, Co., allegedly bumped and damaged petitioner's Power Barge 209 which was then moored at the Cebu International Port. Thus, on 26 April 1996, petitioner filed before the Cebu RTC a complaint for damages against private respondent Bangpai Shipping Co., for the alleged damages caused on petitioner's power barges.

Thereafter, petitioner filed an Amended Complaint dated 8 July 1996 impleading herein private respondent Wallem Shipping, Inc., as additional defendant, contending that the latter is a ship agent of Bangpai Shipping Co. On 18 September 1996, Wallem Shipping, Inc. filed a Motion to Dismiss which was subsequently denied by public respondent Judge in an Order dated 20 October 1998. Bangpai Shipping Co. likewise filed a Motion to Dismiss which was also denied by public respondent Judge in an Order issued on 24 January 2003.

Petitioner, after adducing evidence during the trial of the case, filed a formal offer of evidence before the lower court on 2 February 2004 consisting of Exhibits "A" to "V" together with the sub-marked portions thereof. Consequently, private respondents Bangpai Shipping Co. and Wallem Shipping, Inc. filed their respective objections to petitioner's formal offer of evidence.

On 16 November 2004, public respondent judge issued the assailed order denying the admission and excluding from the records petitioner's Exhibits "A", "C", "D", "E", "H" and its sub-markings, "I", "J" and its sub-markings, "K", "L", "M" and its sub-markings, "N" and its sub-markings, "O", "P" and its sub-markings, "Q" and its sub-markings, "R" and "S" and its sub-markings. According to the court *a quo*:

The Court finds merit in the objections raised and the motion to strike out filed respectively by the defendants. The record shows that the plaintiff has been given every opportunity to present the originals of the Xerox or photocopies of the documents it offered. It never produced the originals. The plaintiff attempted to justify the admission of the photocopies by contending that "the photocopies offered are equivalent to the original of the document" on the basis of the Electronic Evidence (Comment to Defendant Wallem Philippines' Objections and Motion to Strike). But as rightly pointed out in defendant Wallem's Reply to the Comment of Plaintiff, the Xerox copies do not constitute the electronic evidence defined in Section 1 of Rule 2 of the Rules on Electronic Evidence as follows:

"(h) "Electronic document" refers to information or the representation of information, data, figures, symbols or other models of written expression, described or however represented, by which a right is established or an obligation extinguished, or by which a fact may be proved and affirmed, which is received, recorded, transmitted, stored, processed, retrieved or produced electronically. It includes digitally signed documents and any printout, readable by sight or other means which accurately reflects the electronic data message or electronic document. For the purpose of these Rules, the term "electronic document" may be used interchangeably with "electronic data message".

The information in those Xerox or photocopies was not received, recorded, retrieved or produced electronically. Moreover, such electronic evidence must be authenticated (Sections 1 and 2, Rule 5, Rules on Electronic Evidence), which the plaintiff failed to do. Finally, the required Affidavit to prove the admissibility and evidentiary weight of the alleged electronic evidence (Sec. 1, Rule 9, Ibid) was not executed, much less presented in evidence.

The Xerox or photocopies offered should, therefore, be stricken off the record. Aside from their being not properly identified by any competent witness, the loss of the principals thereof was not established by any competent proof.

x x x x

WHEREFORE, plaintiff's Exhibits "A", "C", "D", "E", "H" and its sub-markings, "I", "J", and its sub-markings, "K", "L", "M" and its sub-markings, "N" and its sub-markings, "O", "P" and its sub-markings, "Q" and its sub-markings, and "R" are hereby DENIED admission and excluded from the records. However, these excluded evidence should be attached to the records of this case to enable the appellate court to pass upon them should an appeal be taken from the decision on the merits to be rendered upon the termination of the trial of this case.

Exhibits "S" and its sub-markings are also DENIED admission for lack of proper identification since the witness who brought these pictures expressly admitted that he was not present when the photos were taken and had not knowledge when the same where taken.[3]

Upon denial of petitioner's Motion for Reconsideration in an Order dated 20 April 2005, petitioner filed a Petition for *Certiorari* under Rule 65 of the Rules of Civil Procedure before the Court of Appeals maintaining that public respondent Judge acted with grave abuse of discretion amounting to lack or excess of jurisdiction in denying the admission of its Exhibits "A", "C", "D", "E", "H" and its sub-markings, "I", "J" and its sub-markings, "K", "L", "M" and its sub-markings, "N" and its sub-markings, "O", "P" and its sub-markings, "Q" and its sub-markings, "R", and "S" and its sub-markings.

On 9 November 2005, the appellate court issued a Decision dismissing petitioner's petition for certiorari, the pertinent portions of which elucidate:

After a judicious scrutiny of the record of the case on hand, together with the rules and jurisprudence which are applicable in the premises, we have come up with a finding that the petition for certiorari filed in this case is not meritorious.

It appears that there is no sufficient showing by the petitioner that the respondent judge acted

with grave abuse of discretion in issuing the assailed orders in Civil Case No. CEB-18662. As what our jurisprudence tells us, grave abuse of discretion is meant such capricious and whimsical exercise of judgment as would be equivalent to lack of jurisdiction x x x.

In the case at bench, what has been shown to the contrary by the totality of the record on hand is that the respondent judge acted correctly and within the pale of his sound discretion in issuing the assailed order, dated November 16, 2004, in Civil Case No. CEB-18662.

Indeed, it appears that the pieces of petitioner's documentary evidence which were denied admission by the respondent judge were not properly identified by any competent witness. As pointed out by the respondent Bangpai Shipping Company in its comment on the petition filed in this case which reproduces some excerpts of the testimonies in the court *a quo* of Atty. Marianito De Los Santos, Engr. Nestor Enriquez, Jr. and Mr. Rodulfo I. Pagaling, the said witnesses did not have personal knowledge of and participation in the preparation and making of the pieces of documentary evidence denied admission by respondent judge x x x. In other words, there was lack of proper identification of said pieces of documentary evidence. x x x.

Then another ground for denying admission of petitioner's Exhibits A, C, D, E, H, I, J, K, L, M, N, O, P, Q, R, and S by the respondent judge is that said pieces of documentary evidence were merely photocopies of purported documents or papers. There is no gainsaying the fact that the respondent judge acted within the pale of his discretion when he denied admission of said documentary evidence. Section 3 of Rule 130 of the Rules of Court of the Philippines is very explicit in providing that, when the subject of inquiry are the contents of documents, no evidence shall be admissible other than the original documents themselves, except in certain cases specifically so enumerated therein, and the petitioner has not shown that the non-presentation or non-production of its original documentary pieces of evidence falls under such exceptions. As aptly pointed out by the respondent judge in the order issued by him on November 16, 2004:

"x x x The record shows that the plaintiff (petitioner herein) has been given every opportunity to present the originals of the Xerox or photocopies of the documents it offered. It never produced said originals."

So, the petitioner has only itself to blame for the respondent judge's denial of admission of its aforementioned documentary evidence.

Of course, the petitioner tries to contend that the photocopies of documents offered by it are equivalent to the original documents that it sought to offer in evidence, based on the Rules on Electronic Evidence which were in force and effect since August 1, 2001. However, such a contention is devoid of merit. The pieces of documentary evidence offered by the petitioner in Civil Case CEB-18662 which were denied admission by the respondent judge do not actually constitute as electronic evidence as defined in the Rules on Electronic Evidence. The informations therein were not received, retrieved or produced electronically. The petitioner has not adequately established that its documentary evidence were electronic evidence. it has not properly authenticated such evidence as electronic documents, assuming *arguendo* that they are. Lastly, the petitioner has not properly established by affidavit pursuant to Rule 9 of the Rules on Electronic Evidence the admissibility and

evidentiary weight of said documentary evidence.

Thus, by any legal yardstick, it is manifest that the respondent judge did not commit grave abuse of discretion in denying admission of the aforementioned documentary evidence of petitioner.

But even if it be granted just for the sake of argument that the respondent judge committed an error in denying the aforementioned documentary evidence of the petitioner, still the petition for certiorari filed in this case must fail. Such error would at most be only an error of law and not an error of jurisdiction. In *Lee vs. People, 393 SCRA 397*, the Supreme Court of the Philippines said that certiorari will not lie in case of an error of law. x x x.

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us DISMISSING the petition filed in this case and AFFIRMING the assailed orders issued by respondent judge in Civil Case No. CEB-18662.[4]

Aggrieved by the aforequoted decision, petitioner filed the instant petition.

The focal point of this entire controversy is petitioner's obstinate contention that the photocopies it offered as formal evidence before the trial court are the functional equivalent of their original based on its inimitable interpretation of the Rules on Electronic Evidence.

Petitioner insists that, contrary to the rulings of both the trial court and the appellate court, the photocopies it presented as documentary evidence actually constitute electronic evidence based on its own premise that an "electronic document" as defined under Section 1(h), Rule 2 of the Rules on Electronic Evidence is not limited to information that is received, recorded, retrieved or produced electronically. Rather, petitioner maintains that an "electronic document" can also refer to other modes of written expression that is produced electronically, such as photocopies, as included in the section's catch-all proviso: "any print-out or output, readable by sight or other means".

We do not agree.

In order to shed light to the issue of whether or not the photocopies are indeed electronic documents as contemplated in Republic Act No. 8792 or the Implementing Rules and Regulations of the Electronic Commerce Act, as well as the Rules on Electronic Evidence, we shall enumerate the following documents offered as evidence by the petitioner, to wit:

1. Exhibit "A" is a photocopy of a letter manually signed by a certain Jose C. Troyo, with "RECEIVED" stamped thereon, together with a handwritten date;

2. Exhibit "C" is a photocopy of a list of estimated cost of damages of petitioner's power barges 207 and 209 prepared by Hopewell Mobile Power Systems Corporation and manually signed by Messrs. Rex Malaluan and Virgilio Asprer;

3. Exhibit "D" is a photocopy of a letter manually signed by a certain Nestor G. Enriquez, Jr., with "RECEIVED" stamped thereon, together with a handwritten notation of the date it was received;

4. Exhibit "E" is a photocopy of a Standard Marine Protest Form which was filled up and accomplished by Rex Joel C.

Malaluan in his own handwriting and signed by him. Portions of the Jurat were handwritten, and manually signed by the Notary Public;

5. Exhibit "H" is a photocopy of a letter manually signed by Mr. Nestor G. Enriquez, Jr. with "RECEIVED" stamped thereon, together with a handwritten notation of the date it was received;

6. Exhibit "I" is a photocopy of a computation of the estimated energy loss allegedly suffered by petitioner which was manually signed by Mr. Nestor G. Enriquez, Jr.;

7. Exhibit "J" is a photocopy of a letter containing the breakdown of the cost estimate, manually signed by Mr. Nestor G. Enriquez, Jr., with "RECEIVED" stamped thereon, together with a handwritten notation of the date it was received, and other handwritten notations;

8. Exhibit "K" is a photocopy of the Subpoena Duces Tecum Ad Testificandum written using a manual typewriter, signed manually by Atty. Ofelia Polo-De Los Reyes, with a handwritten notation when it was received by the party;

9. Exhibit "L" is a photocopy of a portion of the electricity supply and operation and maintenance agreement between petitioner and Hopewell, containing handwritten notations and every page containing three unidentified manually placed signatures;

10. Exhibit "M" is a photocopy of the Notice of Termination with attachments addressed to Rex Joel C. Malaluan, manually signed by Jaime S. Patinio, with a handwritten notation of the date it was received. The sub-markings also contain manual signatures and/or handwritten notations;

11. Exhibit "N" is a photocopy of a letter of termination with attachments addressed to VIrgilio Asprer and manually signed by Jaime S. Patino. The sub-markings contain manual signatures and/or handwritten notations;

12. Exhibit "O" is the same photocopied document marked as Annex C;

13. Exhibit "P" is a photocopy of an incident report manually signed by Messrs. Malaluan and Bautista and by the Notary Public, with other handwritten notations;

14. Exhibit "Q" is a photocopy of a letter manually signed by Virgilio Asprer and by a Notary Public, together with other handwritten notations.

On the other hand, an "electronic document" refers to information or the representation of information, data, figures, symbols or other models of written expression, described or however represented, by which a right is established or an obligation extinguished, or by which a fact may be proved and affirmed, which is received, recorded, transmitted, stored, processed, retrieved or produced electronically.[5] It includes digitally signed documents and any printout, readable by sight or other means which accurately reflects the electronic data message or electronic document.[6]

The rules use the word "information" to define an electronic document received, recorded, transmitted, stored, processed, retrieved or produced electronically. This would suggest that an electronic document is relevant only in terms of the information contained therein, similar to any other document which is presented in evidence as proof of its contents.[7] However, what differentiates an electronic document from a paper-based document is the manner by which the information is processed; clearly, the information contained in an electronic document is received, recorded, transmitted, stored, processed, retrieved or produced electronically.

A perusal of the information contained in the photocopies submitted by petitioner will reveal that not all of the contents therein, such as the signatures of the persons who purportedly signed the documents, may be recorded or produced electronically. By no stretch of the imagination can a person's signature affixed manually be considered as information electronically received, recorded, transmitted, stored, processed, retrieved or produced. Hence, the argument of petitioner that since these paper printouts were produced through an electronic process, then these photocopies are electronic documents as defined in the Rules on Electronic Evidence is obviously an erroneous, if not preposterous, interpretation of the law. Having thus declared that the offered photocopies are not tantamount to electronic documents, it is consequential that the same may not be considered as the functional equivalent of their original as decreed in the law.

Furthermore, no error can be ascribed to the court a quo in denying admission and excluding from the records petitioner's Exhibits "A", "C", "D", "E", "H" and its sub-markings, "I", "J" and its sub-markings, "K", "L", "M" and its sub-markings, "N" and its sub-markings, "O", "P" and its sub-markings, "Q" and its sub-markings, and "R". The trial court was correct in rejecting these photocopies as they violate the best evidence rule and are therefore of no probative value being incompetent pieces of evidence. Before the onset of liberal rules of discovery, and modern technique of electronic copying, the best evidence rule was designed to guard against incomplete or fraudulent proof and the introduction of altered copies and the withholding of the originals.[8] But the modern justification for the rule has expanded from the prevention of fraud to a recognition that writings occupy a central position in the law.[9] The importance of the precise terms of writings in the world of legal relations, the fallibility of the human memory as reliable evidence of the terms, and the hazards of inaccurate or incomplete duplicate are the concerns addressed by the best evidence rule.[10]

Moreover, as mandated under Section 2, Rule 130 of the Rules of Court:

"SECTION 2. Original writing must be produced; exceptions. — There can be no evidence of a writing the contents of which is the subject of inquiry, other than the original writing itself, except in the following cases:

> (a) When the original has been lost, destroyed, or cannot be produced in court;
>
> (b) When the original is in the possession of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;
>
> (c) When the original is a record or other document in the custody of a public officer;

(d) When the original has been recorded in an existing record a certified copy of which is made evidence by law;

(e) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole."

When the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated.[11] The offeror of secondary evidence is burdened to prove the predicates thereof: (a) the loss or destruction of the original without bad faith on the part of the proponent/offeror which can be shown by circumstantial evidence of routine practices of destruction of documents;[12] (b) the proponent must prove by a fair preponderance of evidence as to raise a reasonable inference of the loss or destruction of the original copy; and (c) it must be shown that a diligent and bona fide but unsuccessful search has been made for the document in the proper place or places.[13] However, in the case at bar, though petitioner insisted in offering the photocopies as documentary evidence, it failed to establish that such offer was made in accordance with the exceptions as enumerated under the abovequoted rule. Accordingly, we find no error in the Order of the court a quo denying admissibility of the photocopies offered by petitioner as documentary evidence.

Finally, it perplexes this Court why petitioner continued to obdurately disregard the opportunities given by the trial court for it to present the originals of the photocopies it presented yet comes before us now praying that it be allowed to present the originals of the exhibits that were denied admission or in case the same are lost, to lay the predicate for the admission of secondary evidence. Had petitioner presented the originals of the documents to the court instead of the photocopies it obstinately offered as evidence, or at the very least laid the predicate for the admission of said photocopies, this controversy would not have unnecessarily been brought before the appellate court and finally to this Court for adjudication. Had it not been for petitioner's intransigence, the merits of petitioner's complaint for damages would have been decided upon by the trial court long ago. As aptly articulated by the Court of Appeals, petitioner has only itself to blame for the respondent judge's denial of admission of its aforementioned documentary evidence and consequently, the denial of its prayer to be given another opportunity to present the originals of the documents that were denied admission nor to lay the predicate for the admission of secondary evidence in case the same has been lost.

WHEREFORE, premises considered, the instant petition is hereby DENIED. The Decision of the Court of Appeals in CA-G.R. CEB-SP No. 00848, dated 9 November 2005 is hereby AFFIRMED. Costs against petitioner.

SO ORDERED.

MINITA V. CHICO-NAZARIO
Associate Justice

WE CONCUR:

CONSUELO YNARES-SANTIAGO
Associate Justice

Chairperson

MA. ALICIA AUSTRIA-MARTINEZ
Associate Justice

ROMEO J. CALLEJO, SR.
Asscociate Justice

ANTONIO EDUARDO B. NACHURA
Associate Justice

-oOo-

Anti-Wire Tapping Act (RA 4200)

_ An Act to prohibit and penalize Wire-Tapping and other Related Violations of the Privacy of Communications, and for other purpose

_ This law provides that it shall be unlawful for any person, not being authorized by all the parties to any
private communication or spoken word, to tap any wire or cable, or by using any other device commonly known as a Dictaphone or dictagraph or detectaphone or walkie-talkie or taperecorder, or however otherwise
described.

_ What are Covered by the
Prohibition
1) Knowingly possess any tape record, wire record, disc record or any other such record, or copies thereof, of any
communication or spoken word; or
2) Replay the same for any other person;
3) Communicate the contents thereof either verbally or in writing; or
4) Furnish transcriptions thereof, whether complete or partial, to any other persons.

Rules:

1. Any information obtained in violation of this act shall not be admissible in evidence in any judicial, quasi-judicial, legislative or administrative hearing or investigation.
2. Law Limited to Wiretapping Device: The law refers to a "tap" of a wire or cable or the use of a "device or arrangement" for the purpose of secretly overhearing,
intercepting, or recording the communication. There must be either:
   a. physical interruption through a wiretap, or
   b. deliberate installation of a device or arrangement in order to overhear, intercept, or record the spoken words.
3. Instances Not Covered by the Act
   a. Listening to telephone extension lines.
   b. Telephone party lines.

Republic of the Philippines
SUPREME COURT
Manila

EN BANC

A.M. No. 1096-CFI May 31, 1976

ROLANDO BARTOLOME, complainant,
vs.
HON. JUAN DE BORJA, District Judge, Branch XX, Court of First Instance, Manila, respondent.

Adm. Matter No. 1114-CFI May 31, 1976

FRANCISCO GREGO, complainant,
vs.
HON. JUAN DE BORJA, District Judge, Branch XX, Court of First Instance, Manila, respondent.

R E S O L U T I O N

FERNANDO, *J.*:

Administrative charges usually arise from a deep sense of grievance on the part of complainants. They are often, as a result, made to appear much graver than the facts warrant. Even with due allowance made for that tendency, what is evident on a most cursory appraisal of these cases against respondent Judge Juan de Borja of the Court of First Instance of Manila, is that no curb was placed on such propensity to exaggerate matters. The language of hyperbole was employed. In the first, he was accused by Rolando Bartolome, who Identifies himself as a labor regulation officer in the Department of Labor, of oppression and deliberate violation of the penal laws, gross ignorance of the law and deliberate intent to place the Secretary of Labor and the Office of The President in a very bad light, as well as grave misconduct in the proceedings had with reference to a certiorari petition. [1] In the other, with a certain Francisco Grego as complainant, he is indicted for serious misconduct, characterizing what was done by him in a pending criminal case where the complainant was the accused as oppressive, whimsical, capricious, arbitrary and despotic. [2] Respondent Judge was required to answer each of the above complaints by the then Judicial Consultant, retired Justice Manuel P. Barcelona of the Court

of Appeals. He did so in pleadings couched in a dispassionate tone with citation of the authorities to lend support to the way he discharged his functions. After a study of the records of the case, this Court is of the opinion that no disciplinary action is warranted. Another judge may have ruled differently on the questions submitted, but it would not conduce to the proper administration and the prized Ideal of independence that a man on the bench is expected to cherish if he is held to such a strict degree of accountability that for the exercise of his discretion, he is made to suffer. The complaints must be dismissed.

It was a detailed administrative complaint that was submitted by Rolando Bartolome in support of his charges that there was oppression and deliberate violation of the Anti-Wire Tapping Act, [3] as well as the provisions on libel in the Revised Penal
Code. [4] In essence the gravamen of such charges consisted of respondent Judge allowing the replay of a taped telephone conversation between complainant and Adelina Velasco who with her father was accused of violating the Minimum Wage Law and found guilty thereof by the Department of Labor. The matter was then elevated in a petition for prohibition and mandamus filed with the Court of First Instance and assigned to the sala of respondent Judge [5] to show the grave abuse of discretion as well as the motivation of the complainant against them. Permission was sought for the court to listen to a taped telephone conversation between her and the complainant. It was made at her instance without the knowledge of the latter. The lower court granted the request. Information derogatory to complainant thus came to light. Moreover, certain portions of the testimony of Adelina Velasco were likewise damaging to his reputation. Complainant is most vehement in his accusation that respondent Judge's actuation was not only oppressive in character but likewise violative of the aforesaid penal statutes. It was also characterized by him as manifesting gross ignorance of the law as well as deliberate intent to place the Secretary of Labor and the President "in a very bad light," all of which he summarized as constituting grave misconduct that would justify the removal of respondent Judge. In the answer submitted by respondent Judge, he noted that while there were three separate headings in the complaint, the discussion "is rather repetitious and, in parts at least, disorganized, [he therefore] found it more convenient to take up the matters involved in the order they are discussed by complainant." [6] Then came an analysis of the Anti-wire Tapping Act [7] to show there was no violation thereof on his part. Then respondent Judge referred to the next main charge which dealt with "the admission of allegedly libelous testimony." [8] It is his submission that as a matter of law, he could not refuse the introduction of any evidence as long as the adverse party does not object to it. Furthermore, he pointed out that considering the nature of the petition for prohibition and mandamus, he could not very well refuse evidence of such character, adding that Solicitor Kilayko, who represented respondent public officials did not interpose any objection. [9] It is not amiss to refer to what was stressed in the opening portion of his answer: "At the outset, I should like to make one general observation with respect to recurring statements in the letter-complaint to the effect that I "deliberately" committed one thing or another. In every case tried before my court, I have always tried to act deliberately, never rashly, impetuously or carelessly. I know of course that neither deliberation or deliberateness can ensure infallibility; they

merely tend to safeguard against mindless or careless errors. In Civil Case No. 94698 I likewise acted or at least tried to act carefully and with deliberation but not for the purpose, design or motives alleged by complainant." [10]

The impression readily yielded by the other complaint lodged by Francisco Grego was his resolute determination to avoid being tried on a libel charge by respondent Judge. On at least five occasions, he filed motions for postponement alleging as ground that The Department of Justice had not finished reviewing the case. Thus while originally set by respondent Judge for arraignment and trial on March 6, 1975, and he was arraigned but not tried on that day, as of August 22, 1975, after such repeated postponements, the case had not been heard. On that day in view of the absence of complainant, respondent Judge issued a warrant for his arrest as was done on a previous occasion although later on set aside. Again, complainant felt he had a legitimate grievance as he was then suffering from pharyngitis and had to stay at home. On these occasions, when as could have been expected, the patience of respondent Judge was sorely tried, it was asserted by complainant that respondent acted not in a calm and dispassionate manner but with visible indignation. On September 8, 1975, he went to the Court of Appeals on certiorari to nullify the warrant of arrest and was able to obtain a restraining order. It is on the allegations of such a petition that he based this complaint to this Court. It likewise contained assertions that the respondent Judge, giving vent to his ire when postponements were sought or orders set aside, did employ intemperate and vile language, at times addressed to his wife, who was sent by him in his stead when he was unable to appear in person. When asked to comment respondent Judge did so on November 21, 1975. He stated there: "Since the letter-complaint of Francisco Grego adopted as his grounds therefor the allegations and annexes of his petition for certiorari in the Court of Appeals (CA-G.R. No. 04579), the undersigned is adopting as his answer to the letter-complaint his answer to said petition for certiorari, with annexes, and the decision of the Court of Appeals of October 22, 1975 dismissing the petition. It seems that this complainant, instead of facing manfully the charges in Crim. Case No. 20079 pending against him in this court, is trying to avoid at all cost going to trial, to the point of employing harassing tactics against the judge, of which the letter-complaint is only the latest." [11] He summarized in his answer to the Court of Appeals what he considered the background facts of the pending libel case in his sala against complainant Francisco Grego: "1. The information in the case was filed on January 29, 1975 and an order for the arrest of the accused was issued on February 4, 1975. 2. The accused filed on February 12, 1975 a motion to reduce the amount of the bail bond from P1,750.00 to P1,000.00 and the same was granted by the Court on the same date. 3. The bail bond was filed the following day. On February 17, 1975 the accused filed a motion to suspend arraignment and trial on the ground that the resolution of the fiscal who filed the case had been appealed to the Department of Justice. the motion was denied. 4. The accused was arraigned on March 6, 1975 and he entered a plea of not guilty. 5. The case was set for hearing on March 20, 1975 but postponed to April 18, 1975 upon motion of the accused. 6. On April 14, 1975 the accused filed a motion for postponement, which was denied by the Court, and when be failed to appear at the hearing he was ordered arrested. However, no warrant of arrest was actually issued and the case was again set for hearing on June 6, 1975. As the accused was not

represented by counsel, a counsel de oficio was appointed for him in the person of Atty. Florencio Paredes. 7. On June 6, 1975 the accused again failed to appear the hearing and another order for his arrest was issued. 8. On June 30, 1975, the accused filed a motion to lift order of arrest and confiscation of the bail bond and the motion was granted on the same date. The case was set for hearing on July 10, 1975. On that date the counsel de oficio moved for postponement and the hearing was reset for July 17, 1975. 9. The hearing on that date was not held because of a motion of the prosecuting fiscal for suspension of the proceedings, alleging that the Chief State Prosecutor had asked that the case be elevated to the Department of Justice for review. On August 22, 1975 the Court issued an order denying the motion to suspend proceedings. * * * On the same date the Court issued an order for the arrest of the accused and the confiscation of his bond. A motion for reconsideration was filed by the accused on the same date, which was granted by the Court on September 4, 1975, at the same time setting the case for hearing on October 2, 1975 10. The accused filed a motion addressed to the Executive Judge on September 4, 1975 to transfer the case to another sala. The same was referred to Branch XX by the Executive Judge. On September 12, 1975 the Court issued an order considering the motion as one to have the Judge inhibit or disqualify himself from trying the case, on ground of bias, and denying the same as without merit. The Chief State Prosecutor has Advised the prosecuting fiscal that the records of the case are being returned to the latter without action on the petition for review filed by the accused. The case may therefore be heard by the Court without further impediment, unless ordered otherwise by this Honorable Tribunal." [12] He likewise enclosed affidavits subscribed to by him and by his branch clerk of court denying "as falsifications and falsehoods certain allegations made in the petition regarding statements they allegedly made to petitioner and his wife." [13] It bears repeating that the Court of Appeals dismissed the certiorari petition of complainant in a decision promulgated on October 22, 1975, the opinion being penned by Justice San Diego with the concurrence of Justices Melencio-Herrera and Domondon.

Complainants in These two administrative cases would have this Court remove respondent Judge for the acts imputed to him. They should have realized that for such a plea to prosper there must be a showing of ."serious misconduct or inefficiency." [14] Proceedings of this character, according to In re Horrilleno, [15] as set forth in the opinion of Justice Malcolm, are "in their nature highly penal in character and to be governed by the rules of law applicable to criminal cases. The charges must, therefore, be proved beyond a reasonable doubt." [16] that 1922 decision has been subsequently adhered to. [17] It is quite obvious then, why as set forth at the outset, complainants must fail.

1. The charge of serious misconduct is without support, even on the assumption that no exaggeration was indulged in by complainants. That is evidently the case as far as the alleged grievance of Rolando Bartolome is concerned. What was objected to by him was the replay of a tape-recording which did cast reflection on his actuations. It is his contention that thereby respondent Judge was guilty of oppression. Clearly it would be to impart a novel concept to the accepted meaning of what is oppressive to assent to such a view. It is equally so as far as the alleged misconduct imputed to respondent by complainant Francisco Grego. His orders denying repeated motions for postponement and when appropriate issuing warrants of arrest for

non-appearance of the accused did not fail to conform to the norm expected of a judge. So the Court of Appeals held in dismissing Grego's certiorari petition. In both cases therefore, respondent Judge clearly cannot be held accountable for misconduct, much less serious misconduct.

2. Now as to respondent Judge having laid himself open to charges of inefficiency. The complaint filed by Francisco Grego is bereft of any such allegation. If at all respondent perhaps would not have been proceeded against if he were less insistent on procedural regularity, more tolerant for the pleas for postponement, as well as the failure of complainant to appear in court when required to do so. On the other hand, the complaint filed by Rolando Bartolome did indict respondent Judge for gross ignorance of the law. If such a charge could be substantiated, it would follow that inefficiency, serious inefficiency at that, could be imputed to respondent. The root cause of the matter, as was made plain before, was the replay of the taped telephone conversation between Adelina Velasco and complainant. The accusation is that in so allowing it, respondent violated the Anti-Wire Tapping Act. [18] In his answer to this Court, respondent Judge to refute such a contention relied on the second paragraph of its first section with this proviso: "That the use of such record or any copies thereof as evidence in any civil, criminal investigation or trial of offense mentioned in Sec. 3 hereof shall not be covered by this prohibition." [19] He further justified the action taken by him thus: "I may be further stated that, * * * the tape replay and the admission in evidence of the transcript thereof * * * were objected to on the other grounds, but never on the ground that they were in violation of the anti-wire tapping law, RA 4200. Apparently, Solicitor Kilayko, representing the respondent officials, [in Civil Case No. 946987] was satisfied, after hearing testimony that Adelina Velasco, with whom complainant had the tape recorded telephone conversation, was the one who "initiated" or took a recording of the conversation, that there was no violation of the prohibition of sections 1 to 3 of RA 4200 because the recording was taken by one of the parties to the conversation or that the use of the tapes was authorized by the above-quoted proviso of section 1. The failure of Solicitor Kilayko to object to the replay of the tape recording or the transcripts thereof on the ground that they were in violation of the anti-wire tapping law, cannot be imputed to his ignorance of that law because he tried to cross-examine Adelina Velasco precisely for the reason, as he manifested, that "we were trying to find out whether there was any violation of any law in the tape recording of telephone conversation" * * * In the circumstances mentioned above, and finding that the grounds offered against the replay (to wit, that "it was sufficiently established that his voice is that of Rolando Bartolome's voice," quoted on p. 2 of the complaint) and the grounds ("hearsay and self-serving and immaterial") offered against the transcript * * * of the tape recording * * * to be untenable, I believed that as a judge I had no alternative except to allow the replay and to admit the transcript in evidence." [20] Complainant Grego would likewise indict respondent Judge for gross ignorance of the law when instead of merely conforming to the rules and regulations of The Department of Labor, he did rely on the explicit wording of Presidential Decree No. 21. If there is an awareness on the part of complainant of the ruling of this Court, he ought to have realized that as held in Nation Multi Service Labor Union v. Agcaoili, [21] the explicit wording of the decree is controlling. Neither can respondent Judge be held accountable for

entertaining the petition for as was decided by this Court in San Miguel Corporation v. Secretary of Labor [22] the judiciary possesses the power to review acts of administrative agencies exercising quasi-legislative power in appropriate cases especially so when a due process question is involved. It would seem, therefore, that respondent Judge, far from being ignorant, acted after due deliberation in the light of his understanding of statutes or presidential decrees, as well as decisions of this tribunal. Even on the assumption, however, that his interpretation was erroneous, still he could not be held accountable to gross ignorance of the law. At the most, he could have been mistaken. That does not render him liable to administrative sanction. As was declared by the then Chief Justice Makalintal in Vda. de Zabala v. Pamaran: [23] "No one, called upon to try the facts or interpret the law in the process of administering justice, can be infallible in his judgment."[24] In the complaint of Rolando Bartolome, characterized by prolixity, there is likewise reference to the possible violation of the provisions of the Revised Penal Code on libel as well as the Civil Code. All that needs be said is that if it were prepared by him unaided — he is a layman — it is understandable why the conclusions reached by him on such questions do not bear the mark of orthodoxy. On the other hand, if he relied on a legal practitioner, it is quite probable that the one consulted, even if possessed of the requisite skill, did try to lend plausibility to what at bottom are essentially groundless charges by a rather strained reading of legal doctrines. What emerges clearly then is that the failing of inefficiency cannot be imputed to respondent Judge.

3. In the light of the foregoing, there would have been nothing amiss if the two complaints were summarily dismissed. A brief opinion then would have sufficed. Nonetheless, it was felt more appropriate to explain the action taken by the Court in some detail, conformably to its policy of assuring each and every complainant that due attention is paid to any administrative charge against a member of the judiciary. As was noted in Tobias v. Ericta:[25] "The constitutional right to a petition, to enable the citizen to air his grievances, would certainly be emasculated if the response of the governmental body to which it is addressed is one of indifference. The fate of the people and the supremacy of the Constitution would thereby be sorely tested. What is worse, a safety valve against a violent reaction would be closed. This constitutional guarantee requires then that complaints against officialdom be seriously attended to. Where meritorious, the remedy could be supplied. If found to be devoid of substance, the party charged is vindicated with the complainant having the satisfaction of at least having been listened to. There is thus fidelity to what the Constitution ordains." [26] There is this additional beneficial result of such a policy. It emphasizes even more the need for occupants of the bench to live up to the Ideal of a disinterested and impartial arbiter, dispensing justice with an even hand in a calm and dispassionate manner. For the appearance, no less than the reality of justice, does count. As far as the behavior of a trial judge is concerned, however, it is not realistic to assume, considering the nature and the burden laid on his shoulders, that he will at all times personify equanimity. It is understandable if there may be occasions when he is visibly annoyed or irked and that he would react accordingly. Francisco Grego did complain of such conduct on the part of respondent. It could have happened thus, but certainly complainant ought to have realized that his stubbornness in seeking postponements and his failure to be

present at scheduled hearings could not have been expected to have gone unnoticed or to have been overlooked. Such being the case, there is nothing objectionable to the use of vigorous and strong language to characterize what for the judge would be attempts to obstruct the administration of justice. This is not to condone resort to what had been referred to as an epithetical response. If there be display of wit or sarcasm, however, that is not to be deplored. They are qualities associated, as Shaw noted, with intellectuals. There certainly can be no objection to having people on the bench gifted with such talent, although Cardozo would counsel moderation. For it is a truism that the law is both a noble and learned profession.

WHEREFORE, the charges of Rolando Bartolome and of Francisco Grego are dismissed for lack of merit. Let a copy of this resolution be entered on the record of respondent Judge Juan de Borja.

Castro, C.J., Teehankee, Barredo, Makasiar, Antonio, Esguerra, Muñoz Palma, Aquino and Martin JJ., concur.

Concepcion Jr., J., is on leave.

Section 4. Relevancy; Collateral Matters
Test of Relevancy
1. Every fact or circumstance tending to throw light on the issue is relevant,
2. Evidence is relevant from which the fact in issue is logically inferable;
3. Any circumstance is relevant which tends to make the proposition at issue more or less probable, or which is calculated to explain or establish facts pertinent to the inquiry;
4. The test is whether the evidence conduces to the proof of a pertinent hypothesis, such hypothesis being one which, if sustained, would logically influence the issue;
5. Facts are relevant if they fairly tend to prove the offense charged.

_ **Components of Relevant Evidence**
a. **Materiality**- looks to the relation between the propositions for which the evidence is offered and the issues of the case.
_ Test of Materiality: Whether the evidence is offered upon a matter properly in issue. The question is, "Is this relevant?"
_ Example: Where A sues B on a written contract, and the only defense pleaded by B is a denial that he executed the contract, evidence offered by him as to a release would be immaterial, and hence irrelevant.
b. **Probative Value**- the tendency of evidence to establish the proposition that it is offered to prove.

DEGREE OF PROBATIVENESS REQUIRED:

To be relevant, evidence need not be absolutely determinative of the fact which it is directed, in other words, it need not be conclusive. To be relevant, the evidence must merely help a little.
_ Example: Flight by no means proves guilt or makes guilt more likely than not. Evidence of flight merely makes guilt somewhat more likely.
_ Collateral facts – those other than the facts in issue and which are offered as a basis for inference as to the existence or non-existence of the facts in issue. (Sec. 4, Rule 129)

a. CLASSIFICATION OF COLLATERAL MATTERS:
1) Prospectant Collateral matters are those preceding of the fact in issue but pointing forward to it.
• Example: moral character, motive, conspiracy.
2) Concomitant Collateral matters- are those accompanying the fact in issue and pointing to it.
• Example: alibi, or opportunity and incompatibility;
3) Retrospectant Collateral matters- are those succeeding the fact in issue but pointing backward to it.
• Example: flight and concealment, behavior of the accused upon being arrested, fingerprints or footprints, articles left at the scene of the crime which may identify the culprit. (1 Wigmore)

Rules:
1. Rule: Collateral matters are not allowed.
Exception: Admissible when they tend in any reasonable degree to establish the probability or improbability of the fact in issue.
2. Knowledge, motive, or intent may often be ascertained from evidence of transactions, apparently collateral, and such evidence, if shown to be relevant, is admissible for such and similar purpose. Such evidence is admissible in both civil and criminal cases.
3. The rule is that when a person's conduct is in issue the fact that the person engaged in conduct of the same sort on a different occasion may be shown as tending to shed some light on some quality of the conduct in question such as intent, knowledge, good or bad faith, malice or other state of mind or bodily feeling. (1 Jones)

SECOND DIVISION
[G.R. Nos. 140538-39. June 14, 2004]
PEOPLE OF THE PHILIPPINES, *appellee*, *vs.* GODOFREDO B. ADOR and DIOSDADO B. ADOR III, *appellants*.
D E C I S I O N
PUNO, *J.*:
The quiescence of the fading day was shattered by bursts of gunfire, startling the otherwise tranquil but sanguine folks of Pacol, Naga City. As the fusillade of shots ceased and the wisp of smoke cleared, frolicking promenaders

stumbled upon Ompong Chavez who was gasping his last, clutching his intestines which had spewed out from his bloodied stomach. He did not in fact reach the hospital alive. A breath away, Abe Cuya lay lifeless on the pavement. He died on the spot. For the twinned deaths, the Adors, six (6) of them, were haled to court.

In two (2) separate informations, Diosdado Sr., Diosdado Jr., Diosdado III, Godofredo, Rosalino and Allan, all surnamed Ador, were charged with the murder of Absalon "Abe" S. Cuya III and Rodolfo "Ompong" S. Chavez. The Informations in Crim. Cases Nos. 97-6815 and 97-6816 identically read:

That on or about March 10, 1997, in the City of Naga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another, with intent to kill, with treachery and the aid of armed men, did then and there willfully, unlawfully and feloniously shoot ABSALON "ABE" CUYA III (RODOLFO "OMPO" CHAVEZ y SAN ANDRES for Crim. Case No. 97-6816) with firearms, inflicting upon him multiple and mortal gunshot wounds which caused his death, to the damage and prejudice of his heirs.

With the aggravating circumstance of evident premeditation and nighttime.

CONTRARY TO LAW.

However, only four (4) of the six (6) Adors, namely, Diosdado Sr., Godofredo, Rosalino and Allan, were taken into custody. The two (2), Diosdado Jr. and Diosdado III, remained at large. Trial thus proceeded only against Diosdado Sr., Godofredo, Rosalino and Allan who all pleaded not guilty. Diosdado Sr. is the father of Diosdado Jr., Diosdado III and Godofredo, while Rosalino is the father of Allan. Diosdado Sr. and Rosalino are brothers.

In its effort to secure the conviction of the accused, the prosecution presented a total of sixteen (16) witnesses: Mercy Beriña, Larry Cado, Medico-Legal Officer of Naga City Dr. Joel S. Jurado, Police Inspector Ma. Julieta Razonable, SPO1 Benjamin Barbosa, SPO3 Augusto Basagre, Major Ernesto Idian, Inspector Reynaldo F. Fulgar, SPO1 Noli Reyes Sol, SPO3 Eduardo C. Bathan, Inspector Vicente C. Lauta, Ernani Castillo, PO3 Augusto I. Nepomuceno, Absalon Cuya Sr., Efren Chavez and Pablo Calsis.

From the evidence of the prosecution, it appears that on March 10, 1997, at around seven-thirty in the evening, while Mercy Beriña, Larry Cado and some eleven (11) others were leisurely walking along Kilometer 11 on their way to Zone 1, Kilometer 10, Pacol, Naga City, to attend a wedding anniversary, they heard several gunshots. Shortly after, they met a certain Pablito Umali who told them that "Ompong" Chavez had been shot. They ran to Chavez straight off and saw him already lying on the ground, about $1\frac{1}{2}$ meters away from a lighted electric post, holding on to his intestines which were starting to come out. Beriña shook Chavez and asked him what had happened. Chavez replied "*tinambangan kami na Ador*" ("We were ambushed by the Adors") and requested that he be brought to the hospital as he was dying. About eight (8) meters from where Chavez was, in a dark spot, lay "Abe" Cuya, dead.

Upon learning of the shooting incident through their radio communication, SPO1 Benjamin Barbosa, together with PO2 Alexander Diaz, immediately proceeded to the crime scene to conduct an investigation. SPO3 Eduardo Bathan and SPO1 Wilfredo Fernandez, among others, were already there. SPO1 Barbosa collected some pieces of evidence, took some pictures and made some sketches. SPO1 Fernandez on the other hand interviewed one Cresenciana Mendoza in her house which was nearby, and when he heard people shout that Chavez was still

alive, he brought Chavez to the hospital but the latter expired on the way.

That same evening, upon being informed that the Adors had a long-standing grudge against the Cuyas, SPO1 Barbosa sought the help of then Barangay Captain Josue Perez to accompany him to the residence of the Adors. They arrived at the Adors at around ten o'clock that evening and spoke with their patriarch, Diosdado Ador Sr. SPO1 Barbosa looked for the other male members of the Ador family but was told by Diosdado Sr. that they were already asleep. Diosdado Sr. nevertheless promised to present them the following day.

The following morning, March 11, 1997, Barangay Captain Perez accompanied the Adors, namely, Diosdado Sr., Diosdado III, Godofredo, Rosalino, Allan and Reynaldo, to SPO1 Barbosa at the PNP Central Police Headquarters. The Adors were informed of their constitutional rights to remain silent and to choose their own counsel. They were then brought to the PNP Crime Laboratory at the Provincial Headquarters and subjected to paraffin tests. On the way to the crime laboratory, Godofredo told his police escort that he had been entrusted with a handgun which he kept in his residence. The information was relayed to Major Ernesto Idian, then Deputy Chief of Police of Naga City, who ordered PO3 Augusto I. Nepomuceno to accompany him in recovering the gun because Godofredo said that he would turn in the gun only to PO3 Nepomuceno. Thus, Major Idian, PO3 Nepomuceno and some others accompanied Godofredo to the latter's residence.

Upon reaching the Ador residence, Godofredo, together with PO3 Nepomuceno, went to their backyard, retrieved the gun from under a fallen coconut trunk and turned it in to the latter. Godofredo allegedly told the police that he fired the said gun outside their house on the night of March 10 after he heard several gunshots. PO3 Nepomuceno identified the gun as a caliber .38 "paltik" handgun which had no serial number. PO3 Nepomuceno then turned over the handgun to Major Idian who likewise identified it as a .38 caliber revolver. Major Idian returned the handgun to PO3 Nepomuceno for ballistic and paraffin examination. Thereafter, PO3 Nepomuceno placed his initials on the gun and put it in his private locker while preparing the documents for the examinations and the possible filing of a case for Illegal Possession of Firearm.

Also, on the same day, March 11, 1997, Dr. Joel S. Jurado, Medico-Legal Officer of Naga City, conducted an autopsy on the bodies of Chavez and Cuya. Based on the autopsy reports, Dr. Jurado testified that Cuya sustained five (5) gunshot wounds and died from "cardio-pulmonary arrest, massive intra-thoracic, intra-abdominal, intra-cranial hemorrhage secondary to multiple gunshot wounds penetrating the heart, brain, lungs and digestive tract." Chavez on the other hand had three (3) gunshot wounds and died from "traumatic shock and massive intra-abdominal hemorrhage secondary to multiple gunshot wounds penetrating the right kidney and the internal abdominal organs." Dr. Jurado further testified that that he recovered a slug from Cuya's head three (3) days after he conducted the autopsy - after Cuya's relatives called his attention to a protruding mass in Cuya's head. Thus, he had Cuya's cadaver sent back to the funeral parlor, opened it and was able to extract a deformed .38 caliber slug which he thereafter submitted to the City Prosecutor's Office.

Police Inspector Reynaldo Fulgar, Chief of the Firearm Identification Section of the PNP Crime Laboratory, Camp Ola, Legaspi City, testified that based on the ballistic examination he conducted on the bullets submitted to his office, the .38 caliber slug recovered from

Cuya's head matched the three (3) .38 caliber test bullets which were test-fired from the suspected firearm surrendered by Godofredo. He however averred that the .38 caliber bullets were actually fired from a .357 Smith and Wesson Magnum homemade revolver without serial number, and not from a .38 caliber revolver.

The paraffin casts taken from the Adors were also transmitted to the PNP Crime Laboratory Services for examination and yielded the presence of gunpowder nitrates, thus –

(1) Diosdado A. Ador – both hands, positive;
(2) Diosdado B. Ador III – right hand, positive; left hand, negative;
(3) Godofredo B. Ador – right hand, positive; left hand, negative;
(4) Rosalino A. Ador – both hands, positive;
(5) Reynaldo T. Ador – both hands, negative;
(6) Allan T. Ador – both hands, positive.

Absalon Cuya Sr., father of deceased Cuya III, said that the killing of his son was driven by the long-standing feud between the Adors and his family. He said that Diosdado Jr. had earlier accused his other son Liberato of frustrated homicide for allegedly stabbing him (Diosdado Jr.). Then, Adelina, a daughter of Diosdado Sr., filed a case for abduction with multiple rape against him, Absalon III, Rayne and Josephine, all surnamed Cuya, after the romantic relationship between Adelina and his deceased son Absalon III turned sour. He also presented official receipts of the funeral and burial expenses which amounted to ₱10,230.00.

Efren Chavez, brother of deceased Chavez, likewise spoke of the animosity between the Chavez and the Ador families. He produced a certification from the PNP Naga City Police Station that on February 17, 1997, a blotter was entered in the Daily Record of Events showing that deceased Chavez reported a certain Ricardo Ador who while under the influence of liquor caused him physical injury. The witness likewise presented an official receipt showing that the family spent ₱3,500.00 for the funeral of the deceased Chavez. After presenting Chavez, the prosecution rested its case.

On April 7, 1998, the four (4) accused filed a demurrer to evidence "for utter lack of evidence." On May 13, 1998, the trial court dismissed the cases against Diosdado Sr., Rosalino and Allan but denied the demurrer to evidence against Godofredo –

WHEREFORE, this Court finds the demurrer to evidence to be justified for the accused Diosdado A. Ador, Allan T. Ador and Rosalino Ador, hence, the same is hereby granted insofar as these accused are concerned. Said accused therefore, namely: Diosdado A. Ador, Allan T. Ador and Rosalino Ador are ACQUITTED in Crim. Cases Nos. 97-6815 and 97-6816. The bailbonds posted for their provisional liberty are hereby cancelled.

Trial of the case insofar as Godofredo B. Ador is concerned shall proceed.

SO ORDERED.

Thus, trial proceeded against Godofredo.

For his defense, Godofredo denied any participation in the killings of Cuya and Chavez. He said that on March 10, 1997, at around seven o'clock in the evening, he heard several gunshots while he was having dinner with his wife and four (4) children in their house in Pacol, Naga City. Since his wife advised him not to go out anymore, he slept after dinner. The following day, while he was gathering pili nuts, his long-time friend Dominador Bautista arrived and asked him to go down from the tree. Bautista wanted to borrow money and on his way to see him, found a gun by the footpath. Bautista gave the gun to him. It was his first time to hold a gun. He tried it out and fired three (3) times. After firing the gun, he removed the empty shells from its chambers and

threw them away. He then wrapped the gun with plastic and hid it under a coconut trunk. Bautista left when he told him that he had no money. He then continued to gather pili nuts until Major Idian and three (3) other policemen came.

Godofredo's father told him that they were being suspected of killing Chavez and Cuya the night before. Thus, they went to the provincial headquarters, were subjected to paraffin testing and made to sign a blank bond paper. After that, they went back to the central police station. At the central police station, Godofredo narrated to a certain Calabia that that morning, his friend Bautista found a gun along the road and gave it to him. He hid the gun under a coconut trunk. Calabia relayed the information to Major Idian who directed PO3 Nepomuceno to go with Godofredo to get the gun. Godofredo led PO3 Nepomuceno to where he hid the gun, retrieved it and handed it to the latter. They then returned to the police headquarters where he was jailed. He asserted that the gun presented in court is different from the gun he surrendered to the police.

Bautista corroborated Godofredo's story. He testified that he found the gun which Godofredo yielded to PO3 Nepomuceno. He said that he was on his way to see Godofredo to borrow money when he chanced upon the handgun on the pathway. He gave the gun to Godofredo and the latter tested it by pulling its trigger. After firing the gun, Godofredo removed the empty shells and threw them. Godofredo then wrapped the gun with plastic and hid it under a fallen coconut trunk.

Meanwhile, Diosdado Jr. was arrested on October 9, 1998, at Barangay Doña, Orani, Bataan, and committed to the Naga City Jail on November 17, 1998, while Diosdado III surrendered to the court and was committed to the same city jail on November 22, 1998. On November 23, 1998, both Diosdado Jr. and Diosdado III were arraigned and entered a plea of not guilty. Hence, trial against them commenced and proceeded jointly with the case of the remaining accused, Godofredo.

The prosecution presented Pablo Calsis as a witness against Diosdado Jr. and Diosdado III. Calsis testified that on March 10, 1997, at around 7:30 in the evening, he dropped by the house of Cresenciana Mendoza whom he fondly called Lola Kising at Kilometer 10, Pacol, Naga City, before going home from work. After asking permission from her to go home and while about to urinate outside her house, he heard several gunshots. He ducked by a *sineguelas* tree at a nearby flower plantation. As he was about to stand up, he saw Disodado Jr., Diosdado III, Godofredo and another unidentified man run away. Godofredo was carrying a short firearm while Diosdado Jr. had a long firearm. He saw Chavez and Cuya lying on the road. Chavez was about five (5) meters away from where he stood while Cuya was ten (10) meters away. The place was illuminated by a bright light from an electric post. There were no other people around. Calsis ran away for fear that he might be identified by the assailants. He heard Chavez mumbling but shirked nevertheless.

Calsis narrated to Absalon Cuya Sr. what he saw only after about one (1) year and nine (9) months. Fear struck him. He maintained that he knew the assailants because he and his wife lived in the house of Lola Kising after they got married. Immense fear prevented him from attending to Chavez, even while he heard him murmuring, and from informing the families of the victims of the incident that very same night. He was about to tell the Chavez family the following morning but was counseled by his Lola Bading, the sister of his Lola Kising, against getting involved in the case. Calsis and his family

left their residence in Pacol one (1) month after the incident because he was afraid the assailants might have identified him. Even Lola Kising left her residence two (2) months after the incident. It was only after he learned from Absalon Cuya Sr. that the trial court dismissed the cases for lack of evidence insofar as some of the original accused were concerned that he took pity on the respective families of the victims who have failed to get justice for the death of their loved ones.

In defense, Diosdado Jr. testified that on March 10, 1997, he was in Marikina City working as a warehouseman and timekeeper of the Consuelo Builders Corporation. He was there the whole time from February 15, 1997, until March 24, 1997. Pablo Aspe, a co-worker of Diosdado Jr., corroborated the latter's testimony. He said that on February 15, 1997, he and Diosdado Jr. left Pacol, Naga City, together to work in Consuelo Construction in Marikina City. They were with each other in Marikina City the whole time from February 15, 1997, until he (Aspe) went home to Naga City on March 22, 1997. While in Marikina City, they resided and slept together in their barracks at the construction site.

Diosdado III also took the witness stand. On March 10, 1997, at around seven o'clock in the evening, he was at their house at Zone 1, Pacol, Naga City, watching television with his parents and cousins Reynaldo and Allan when they heard gunshots. They ignored the gunshots, continued watching television and slept at eight o'clock. The following day, at around six o'clock in the morning, while he was fetching water, four (4) policemen arrived at their house and talked to his father. Thereafter, his father called him, his brother Godofredo, uncle Rosalino and cousins Allan and Reynaldo. The policemen then requested all of them to go to the PNP Central Police Headquarters for investigation regarding the killings of Chavez and Cuya. Upon reaching the police headquarters, they were interviewed by the media and afterwards brought to the provincial headquarters where they were subjected to paraffin tests. They were then brought back to the Central Police Headquarters and later allowed to go back home to Pacol. Then, sometime in October, 1997, his father was arrested by the police. Diosdado III was at their residence when his father was picked up. Only his father was taken by the police. He continued to reside in their house until April, 1998, when he transferred to Sagurong, San Miguel, Tabaco, Albay, to work as a fisherman. On November 21, 1998, he received a letter from his father telling him to come home. Thus, he went home the following day. On November 23, 1998, he surrendered to the court.

The defense also presented Barangay Captain Josue Perez and an uncle of Diosdado Jr. and Disodado III, Jaime Bobiles. Perez testified that he was the barangay captain of Pacol from 1982 until May, 1997. In 1996, Cresenciana Mendoza left their barangay permanently to live with her children in Manila because she was sickly and alone in her house. He said that Mendoza never came back. He does not know any Pablo Calsis and the latter could not have talked to Mendoza on March 10, 1997, because at that time, Mendoza was not there and her house was already abandoned. Similarly, Bobiles confirmed the testimony that Diosdado III worked as a fisherman in Tabaco and stayed in his residence from May 1, 1998, until November 1998 when Diosdado III received a letter from his father and had to go home.

In rebuttal however, prosecution witness SPO1 Fernandez asserted that he interviewed Cresenciana Mendoza that fateful night of March 10, 1997. After the rebuttal witness was presented, the cases were finally submitted for

decision.
On August 2, 1999, the trial court held that "a chain of circumstances x x x lead to a sound and logical conclusion that indeed the accused (Diosdado III and Godofredo) committed the offense charged" and as such rendered judgment –
WHEREFORE, premises considered, this court finds the accused Godofredo B. Ador and Diosdado B. Ador III GUILTY beyond reasonable doubt of the crime of MURDER, defined and penalized under the provisions of Article 248 of the Revised Penal Code, as amended by Republic Act 7659 in Criminal Cases Nos. 97-6815 and 97-6816, hereby sentences the said accused Godofredo B. Ador and Diosdado B. Ador III to suffer the penalty of RECLUSION PERPETUA in Criminal Case No. 97-6815; RECLUSION PERPETUA in Criminal Case No. 97-6816, to pay the heirs of Absalon "Abe" Cuya III ₱25,000 each by way of actual damages and ₱50,000 in each criminal case by way of indemnity. To pay the heirs of Rodolfo "Ompong" Chavez the sum of ₱50,000 in each criminal case by way of indemnity, such accessory penalties as provided for by law and to pay the cost. For insufficiency of the prosecution to prove the guilt of the accused Diosdado B. Ador, Jr. beyond reasonable doubt, he is hereby ACQUITTED in Crim. Cases Nos. 97-6815 and 97-6816.
The Jail Warden of the Naga City District Jail is hereby ordered to forthwith release from its custody the accused Diosdado B. Ador, Jr., unless his further detention is warranted by any other legal cause or causes.
SO ORDERED.
Hence, this joint appeal interposed by Disodado III and Godofredo. They maintain that the trial court gravely erred in convicting them of murder based on circumstantial evidence. The testimony of prosecution witness Pablo Calsis that he saw them running away from the scene of the crime was concocted. The handgun turned in by Godofredo was not the same gun presented by the prosecution during the trial. The unusual discovery of a slug from the head of the deceased - three (3) days after the autopsy was conducted and after the cadaver was turned over to the family of the victim - was quite doubtful. Even the supposed dying declaration of the victim specifically pointed to neither Diosdado III nor Godofredo. And, the trial court erred in admitting in evidence those taken against them in violation of their constitutional rights to counsel during custodial investigation.
The rules of evidence allow the courts to rely on circumstantial evidence to support its conclusion of guilt. It may be the basis of a conviction so long as the combination of all the circumstances proven produces a logical conclusion which suffices to establish the guilt of the accused beyond reasonable doubt. All the circumstances must be consistent with each other, consistent with the theory that all the accused are guilty of the offense charged, and at the same time inconsistent with the hypothesis that they are innocent and with every other possible, rational hypothesis except that of guilt. The evidence must exclude each and every hypothesis which may be consistent with their innocence. Also, it should be acted on and weighed with great caution. Circumstantial evidence which has not been adequately established, much less corroborated, cannot by itself be the basis of conviction.
Thus, for circumstantial evidence to suffice, (1) there should be more than one circumstance; (2) the facts from which the inferences are derived are proven; and (3) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. Like an ornate tapestry created out of interwoven fibers which cannot be plucked out and assayed a strand at a

time apart from the others, the circumstances proved should constitute an unbroken chain which leads to one fair and reasonable conclusion that the accused, to the exclusion of all others, is guilty beyond reasonable doubt. The test to determine whether or not the circumstantial evidence on record are sufficient to convict the accused is that the series of the circumstances proved must be consistent with the guilt of the accused and inconsistent with his innocence. Accordingly, we have set guidelines in appreciating circumstantial evidence: (1) it should be acted upon with caution; (2) all the essential facts must be consistent with the hypothesis of guilt; (3) the facts must exclude every theory but that of guilt; and (4) the facts must establish such a certainty of guilt of the accused as to convince the judgment beyond a reasonable doubt that the accused is the one who committed the offense.

Measured against the guidelines set, we cannot uphold the conviction of the accused based on the circumstantial evidence presented.

The first circumstance which the prosecution sought to prove is that the accused were supposedly seen fleeing from the *locus criminis,* armed with their respective weapons. Thus, the trial court, gleaning from the evidence presented, found that "[w]hen about to stand, Calsis saw Godofredo B. Ador, Diosdado B. Ador, Jr. and Diosdado B. Ador III, and a person going to the direction of the house of the Adors which is about 500 meters away." In fact, prosecution witness Calsis allegedly even saw Diosdado Jr. carrying "a long firearm but x x x could not determine what kind of gun it was." However, the trial court acquitted Diosdado Jr. But only rightly so. For, Calsis had difficulty in identifying the Adors notwithstanding his assertion that he knew and saw them personally. We defer to his direct examination – ATTY. TERBIO (Private Prosecutor):

Q. You said you recognized the persons running, could you tell us their names?
PABLO CALSIS:
A. Yes sir.
Q. Name them?
A. Godofredo Ador, Jr., Sadang III.
Q. How about the others?
A. I could not tell his name but if I see him I could identify him.
Q. The 4 persons whom you saw that night, if they are present in court, please point them out?
A. Yes sir.
Q. Point particularly **Godofredo** Ador, Jr.?
A. (Witness pointed or tapped the shoulder of a person inside the courtroom who answered by the name **Diosdado Ador, Jr.**)
Q. How about this **Sadang III**?
A. (Witness tapped the shoulder of a man who answered by the name of **Diosdado Ador III**.)
Q. Likewise, point to the **third person**?
A. (Witness pointed to **a man**…)
COURT:
Delete that portion from the record, he is not on trial.
ATTY TERBIO:
Q. You said you saw 4 persons, is the fourth one inside the courtroom?
A. None sir.
Q. But if you saw that person, will you be able to recognize him?
A. Yes sir.
Q. Why do you know these persons whom you just tapped the shoulder?
x x x x x
x x x x
A. I know these persons having lived in the house of Lola Kising.
Q. How far?
A. Around 100 meters.
Q. On the said date and time and place, you said you saw them running, how far were you from them?

A. Around 10 meters. (*Emphases supplied*)
The testimony of Calsis, if at all, could hardly be used against Diosdado III whom he miserably failed to positively identify during trial. In fact, the acquittal of Diosdado Jr. by the trial court renders the entire testimony of Calsis in serious doubt. Calsis was presented to positively identify the assailants who were supposedly personally known to him and were just ten (10) meters away from him. It puzzles us no end why he cannot even identify the Adors in open court. Thus, despite Calsis' assertion that Diosdado Jr. was one of the assailants, the trial court doubted him and gave credence to the alibi of Diosdado Jr. that the latter was in Nangka, Marikina, when the killings took place. The trial court favored the unbiased testimony of Aspe who said that Diosdado Jr. worked as a timekeeper and warehouseman with him at the Consuelo Construction at Nangka, Marikina, from February 15, 1997, until March 22, 1997, and went home to Pacol only on May 27, 1997. This ruling is strengthened by the fact that on the morning following the killings, all the male members of the Ador family were brought to the police headquarters for paraffin examination and Diosdado Jr. was not among them. We thus respect the finding of the trial court that indeed Diosdado Jr. was not at the scene of the crime absent any indication that the lower court overlooked some facts or circumstances which if considered would alter the outcome of the case.
While it is true that the courts are not bound to accept or reject an entire testimony, and may believe one part and disbelieve another, our Constitution and the law mandate that all doubts must be resolved in favor of the accused. Calsis committed an obvious blunder in identifying the supposed assailants which this Court cannot simply let go. On the contrary, it creates reasonable doubt in our minds if Calcis really saw the persons he allegedly saw or if he was even where he said he was that evening. For, it is elementary that the positive identification of the accused is crucial in establishing his guilt beyond reasonable doubt. That is wanting in the instant case.
What is more, Calsis' asseverations, at the outset, could no longer be used against Godofredo since both the prosecution and the defense have already rested and the case against Godofredo was already submitted for decision when Calsis was presented. Neither can they still be used against Diosdado Jr. who was already acquitted by the trial court.
Both Diosdado III and Godofredo denied the charges hurled against them. But, while it is true that alibi and denial are the weakest of the defenses as they can easily be fabricated, absent such clear and positive identification, the doctrine that the defense of denial cannot prevail over positive identification of the accused must yield to the constitutional presumption of innocence. Hence, while denial is concededly fragile and unstable, the conviction of the accused cannot be based thereon. The rule in criminal law is firmly entrenched that verdicts of conviction must be predicated on the strength of the evidence for the prosecution and not on the weakness of the evidence for the defense.
The second circumstance is the handgun turned in by Godofredo. But this was bungled by the prosecution. Major Idian, Deputy Chief of Police of the Naga City Police Station, to whom the handgun was turned over after Godofredo surrendered it, identified it as a caliber .38 revolver, thus –
ATTY TERBIO (Private Prosecutor):
Q. What kind of firearm was it?
MAJOR IDIAN:
A. Revolver handgun, caliber .38 with 6 rounds ammunition.

Q. What is the caliber?
A. .38 caliber.
Similarly, PO3 Nepomuceno who then had been with the PNP for eight (8) years already and to whom Godofredo turned in the handgun, likewise identified it as a caliber .38, thus –
ATTY TERBIO (Private Prosecutor):
Q. What is the caliber of that gun?
PO3 NEPOMUCENO:
A. .38 caliber.
However, Insp. Fulgar, Chief of the Firearm Identification Section of the PNP Crime Laboratory, testified that "[t]he indorsement coming from the City Prosecutors Office x x x alleged that the .38 caliber live bullet was fired from a .38 caliber revolver. But our office found out that the firearm was not a .38 caliber revolver but a .357 caliber revolver."
Could it be that the handgun was replaced before it was turned over to the PNP Crime Laboratory? While the prosecution traced the trail of police officers who at every stage held the gun supposedly recovered from Godofredo, it never clarified this discrepancy which is quite glaring to ignore. It is difficult to believe that a Deputy Chief of Police and a police officer of eight (8) years will both mistake a .357 caliber for a .38 caliber handgun. Likewise, a Chief of the Firearm Identification Section of the PNP Crime Laboratory cannot be presumed not to know the difference between the two (2) handguns. Suffice it to say that the prosecution failed to clear up the variance and for this Court to suggest an explanation would be to venture into the realm of pure speculation, conjecture and guesswork. Thus, faced with the obvious disparity in the suspected firearm used in the crime and that which was turned over by Godofredo, his declaration that the handgun presented in court was different from the gun he gave to the police deserves serious, if not sole consideration.
Consequently, even the third circumstance, the .38 caliber slug supposedly recovered from the head of the victim three (3) days after the autopsy was conducted loses evidentiary value as its source is now highly questionable. It has become uncertain whether the deformed slug was fired from the .38 caliber revolver turned in by Godofredo or from a .357 caliber handgun as attested to by the Chief of the Firearm Identification Section of the PNP Crime Laboratory.
Neither can this Court rely on the dying declaration of the dying Chavez nor on the results of the paraffin tests to convict either Diosdado III or Godofredo or both. To refute these, we need not go far and beyond the 13 May 1998 Order of the trial court partially granting the demurrer to evidence filed by the accused – The only direct evidence introduced by the prosecution is the testimony of Mercy Beriña, that she heard Rodolfo "Ompong" Chavez say "tinambangan kami na Ador" (We were ambushed by the Adors). Sad to say, no specific name was ever mentioned by the witness. Neither was she able to tell how many (persons) "Adors" were involved. This testimony if it will be given credence may inculpate any person with the family name Ador as assailant. The prosecution therefore was not able to establish with moral certainty as to who of the Adors were perpetrators of the offense x x x x Paraffin tests are not conclusive evidence that indeed a person has fired a gun.
The fact that the accused-appellants tested positive of gunpowder nitrates does not conclusively show that they fired the murder weapon, or a gun for that matter, for such forensic evidence should be taken only as an indication of possibility or even of probability, but not of infallibility, since nitrates are also admittedly found in substances other than gunpowder. (People v. Abellarosa, G.R. No.

121195, 27 November 1996; People v. de Guzman, 250 SCRA 118; People v. Nitcha, 240 SCRA 283) Thus, while a dying declaration may be admissible in evidence, it must identify with certainty the assailant. Otherwise, it loses its significance. Also, while a paraffin test could establish the presence or absence of nitrates on the hand, it cannot establish that the source of the nitrates was the discharge of firearms – a person who tests positive may have handled one or more substances with the same positive reaction for nitrates such as explosives, fireworks, fertilizers, pharmaceuticals, tobacco and leguminous plants. In People v. Melchor, this Court acquitted the accused despite the presence of gunpowder nitrates on his hands – [S]cientific experts concur in the view that the result of a paraffin test is not conclusive. While it can establish the presence of nitrates or nitrites on the hand, it does not always indubitably show that said nitrates or nitrites were caused by the discharge of firearm. The person tested may have handled one or more of a number of substances which give the same positive reaction for nitrates or nitrites, such as explosives, fireworks, pharmaceuticals and leguminous plants such as peas, beans and alfalfa. A person who uses tobacco may also have nitrate or nitrite deposits on his hands since these substances are present in the products of combustion of tobacco. The presence of nitrates or nitrites, therefore, should be taken only as an indication of a possibility but not of infallibility that the person tested has fired a gun.

In fine, the admissions made by Godofredo to Major Idian and PO3 Nepomuceno including the gun in question cannot be considered in evidence against him without violating his constitutional right to counsel. Godofredo was already under custodial investigation when he made his admissions and surrendered the gun to the police authorities. The police had already begun to focus on the Adors and were carrying out a process of interrogations that was lending itself to eliciting incriminating statements and evidence: the police went to the Ador residence that same evening upon being informed that the Adors had a long-standing grudge against the Cuyas; the following day, all the male members of the Ador family were told to go to the police station; the police was also informed of the dying declaration of deceased Chavez pointing to the Adors as the assailants; the Adors were all subjected to paraffin examination; and, there were no other suspects as the police was not considering any other person or group of persons. The investigation thus was no longer a general inquiry into an unsolved crime as the Adors were already being held as suspects for the killings of Cuya and Chavez.

Consequently, the rights of a person under custodial investigation, including the right to counsel, have already attached to the Adors, and pursuant to Art. III, Sec. 12(1) and (3), 1987 Constitution, any waiver of these rights should be in writing and undertaken with the assistance of counsel. Admissions under custodial investigation made without the assistance of counsel are barred as evidence. The records are bare of any indication that the accused have waived their right to counsel, hence, any of their admissions are inadmissible in evidence against them. As we have held, a suspect's confession, whether verbal or non-verbal, when taken without the assistance of counsel without a valid waiver of such assistance regardless of the absence of such coercion, or the fact that it had been voluntarily given, is inadmissible in evidence, even if such confession were gospel truth. Thus, in Aballe v. People, the death weapon, a four-inch kitchen knife, which was found after the accused brought the police to his house and pointed to them the pot where he

had concealed it, was barred from admission as it was discovered as a consequence of an uncounseled extrajudicial confession.

With hardly any substantial evidence left, the prosecution likewise played up the feud between the Adors on one hand and the Chavezes and the Cuyas on the other hand, and suggested that the Adors had an axe to grind against the Chavezes and the Cuyas. For sure, motive is not sufficient to support a conviction if there is no other reliable evidence from which it may reasonably be adduced that the accused was the malefactor. Motive alone cannot take the place of proof beyond reasonable doubt sufficient to overthrow the presumption of innocence.

All told, contrary to the pronouncements of the trial court, we cannot rest easy in convicting the two (2) accused based on circumstantial evidence. For, the pieces of the said circumstantial evidence presented do not inexorably lead to the conclusion that they are guilty. The prosecution witness failed to identify the accused in court. A cloud of doubt continues to hover over the gun used and the slug recovered. The dying declaration and paraffin examination remain unreliable. Godofredo's uncounseled admissions including the gun he turned in are barred as evidence. And, the supposed motive of the accused is simply insufficient. Plainly, the facts from which the inference that the accused committed the crime were not proven. Accordingly, the guilt of the accused cannot be established, more so to a moral certainty. It is when evidence is purely circumstantial that the prosecution is much more obligated to rely on the strength of its own case and not on the weakness of the defense, and that conviction must rest on nothing less than moral certainty.

Consequently, the case of the prosecution has been reduced to nothing but mere suspicions and speculations. It is hornbook doctrine that suspicions and speculations can never be the basis of conviction in a criminal case. Courts must ensure that the conviction of the accused rests firmly on sufficient and competent evidence, and not the results of passion and prejudice. If the alleged inculpatory facts and circumstances are capable of two (2) or more explanations, one of which is consistent with the innocence of the accused, and the other consistent with his guilt, then the evidence is not adequate to support conviction. The court must acquit the accused because the evidence does not fulfill the test of moral certainty and is therefore insufficient to support a judgment of conviction. Conviction must rest on nothing less than a moral certainty of the guilt of the accused. The overriding consideration is not whether the court doubts the innocence of the accused but whether it entertains a reasonable doubt as to his guilt. It is thus apropos to repeat the doctrine that an accusation is not, according to the fundamental law, synonymous with guilt – the prosecution must overthrow the presumption of innocence with proof of guilt beyond reasonable doubt. The prosecution has failed to discharge its burden. Accordingly, we have to acquit.

IN VIEW WHEREOF, the Decision of the Regional Trial Court of Naga City, Br. 25, in Crim. Cases Nos. 97-6815 and 97-6816 dated August 2, 1999, finding accused-appellants Godofredo B. Ador and Diosdado B. Ador III guilty beyond reasonable doubt of two (2) counts of murder and imposing on them the penalty of reclusion perpetua, is hereby REVERSED and SET ASIDE. Accused-appellants Godofredo B. Ador and Diosdado B. Ador III are ACQUITTED on reasonable doubt and their IMMEDIATE RELEASE is hereby ORDERED unless they are being held for some other legal cause.

SO ORDERED.

Quisumbing, Austria-Martinez, Callejo, Sr., and

Tinga, JJ., concur.
Both dated 12 November 1997; *Rollo,* pp. 17-18.

[1993V331] PEOPLE OF THE PHILIPPINES, plaintiff-appellee, vs. JOEL SARTAGODA y BOCANEGRA, JIMMY BASCUÑA y LAZARTE, VICENTE STA. ANA y GUTIERREZ and JOHN DOE, accused-appellants.1993 April 072nd DivisionG.R. No. 97525D E C I S I O N
CAMPOS, JR., J.:
The Regional Trial Court, Fourth Judicial Region, Branch 36, Calamba, Laguna convicted all three accused-appellants in its decision ** dated November 7, 1990, the dispositive portion of which reads:
"WHEREFORE, the court hereby finds the accused Joel Sartagoda y Bocanegra, Jimmy Bascoña (sic) y Lazarte and Vicente Sta. Ana y Gutierrez all guilty beyond reasonable doubt as co-principals of the crime of Robbery With Rape, defined and penalized in Article 294, paragraph 2 of the Revised Penal Code; there being two aggravating circumstances without any mitigating circumstance to offset the same, hereby sentences each of the said accused to suffer the penalty of Reclusion Perpetua with the accessories provided for by the law.
Each of the three accused is ordered to indemnify the offended party Vilma de Belen the sum of P30,000.00, and each of them shall recognize the offspring if there be any.
The said accused are likewise ordered to return the personal properties stolen or pay its equivalent amount of P17,490.00 to Rogelio de Belen, the lawful owner thereof.
SO ORDERED." 1
The facts of the case may be summarized as follows:
It was the evening of July 2, 1988 while Rogelio de Belen, his two daughters and his sister Vilma de Belen were sleeping in their house at Calamba, Laguna, when appellant broke in and woke him up, poking a knife at him. They tied up his hands and made him lie flat on his stomach and asked for the key to his cabinet. Fearing for his life and that of his companions, he reluctantly told them where the key was kept.
Just on the other room was Vilma, who heard whispers (kaluskos) but simply played possum. When the three saw her on the bed, they approached her. One covered her mouth as another poked a knife at her neck. They threatened to kill her if she should make an outcry.
They raised her blouse and removed her underwear. They tied both her hands so that she could offer no resistance. She was at such a pitiful state when the accused Jimmy Bascuña went on top of her, kissing her on different parts of her body, while Vicente Sta. Ana held her legs apart. Jimmy finally inserted his sex organ inside her and satisfied his bestial desire. After Jimmy was over, Vicente took his turn and then Joel. After the three of them had successfully deflowered Vilma, they left, carrying with them the money and other personal belongings of the de Belen family.
After the three men left, Rogelio, with his hands and feet still tied up, tried to get up from the bed and switched the lights on and called to his neighbors for help. Vilma, meanwhile, had lost consciousness due to shock.
Meanwhile, Petra Lamire, his sister-in-law who lives right next to his house responded to his cry for help. She went to their house and untied Rogelio. She saw Vilma with her upper body naked and sobbing so she covered Vilma with a blanket. Soon after, his other sister-in-law also arrived. They reported the incident to the Barangay Captain.
They had Vilma examined by Dr. Danilo A. Ramirez at Dr. Jose Rizal Memorial Hospital at about 10:00 that same morning. He conducted external and internal examinations. His external

examination showed no physical injuries except that he noted several abrasions at the genital area. His internal examination showed fresh lacerations of the hymen at 9:00 and 4:00 positions. The vagina admitted two fingers with ease.

In the present appeal the lone assigned error is: THE LOWER COURT ERRED IN NOT DECLARING (THAT) THE EVIDENCE OF THE PROSECUTION UTTERLY FAILED TO PROVE THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT HENCE, THEIR ACQUITTAL IS INEVITABLE.

This appeal has no merit.

The accused-appellants fault the trial court of ignoring the fingerprint examination report submitted by the Crime Laboratory of the PC/INP Camp Crame which stated that none of the specimen latent fingerprints were found to be positive. It is their contention that since their fingerprints were not found in the objects found in the scene of the crime they cannot be held guilty of the crime charged beyond reasonable doubt.

Although We agree with their opinion that a positive finding of matching fingerprints has great significance, We cannot sustain their theory that from the negative findings in the fingerprint examination conducted in the course of the investigation in the instant case, it must be concluded that they could not have been at the scene of the crime. Negative findings do not at all times lead to a valid conclusion for there may be logical explanations for the absence of identifiable latent prints other than their not being present at the scene of the crime.

Only latent fingerprints found on smooth surface are useful for purposes of comparison in a crime laboratory because prints left on rough surfaces result in dotted lines or broken lines instead of complete and continuous lines. Such kind of specimen cannot be relied upon in a fingerprint examination. The latent fingerprints are actually oily substances adhering to the surfaces of objects that come in contact with the fingers. By their very nature, oily substances easily spread such that when the fingers slide against the surface they touch, no identifiable latent print is left, only smudges instead. Not all police investigators are aware of the nature of latent fingerprints so as to be guided accordingly in deciding which objects to submit for fingerprint lifting and examination. Noting the interplay of many circumstances involved in the successful lifting and identification of proper latent fingerprints in a particular crime scene, the absence of one does not immediately eliminate the possibility that the accused-appellants could have been at the scene of the crime. They may be there yet they had not left any identifiable latent fingerprint. Besides, in the case at bar, only ten latent fingerprints are involved. The findings in this particular fingerprint examination are not sufficient to cast even just a reasonable doubt in their finding of guilt for the crime charged.

The accused-appellants likewise contend that the police line-up had been irregularly conducted revealing suggestibility to their prejudice. They accused Pat. Reyes of coaching complainant Vilma de Belen when she identified her three assailants. They claim that it was Pat. Reyes' fault that "they were not allowed to select their positions at the line-up; that they were not placed in line under a numeral against a wall marked to indicate their respective height in feet and inches; that there was no record made of their descriptions and physical characteristics; that the witness/victim was not out of view of the three (3) accused lined-up for identification purposes." 2

We find these claims of irregularities of little if

not, of no significance at all when considered in the light of the natural desire in the victim to seek retribution not simply from anybody who may be put before her but from the very same offenders who actually did violence against her. It would be most illogical for an outraged victim to direct her anger against anyone other than her three offenders. We cannot accept the accused-appellants' claim that it was on Pat. Reyes' suggestion that the victim pointed to the accused-appellants as her assailants. No amount of coaching will be sufficient to counter the natural outrage of a rape victim against her abuser when said abuser is presented before her in a police line-up. The outrage displayed by the rape victim was a spontaneous reaction. She identified her assailants because of no other reason except to let people know who hurt her.

Whether or not there was a previous police line-up, the fact is that they were positively identified at the trial. There is no law requiring a police line-up as essential to a proper identification. 3 The complainant's recognition of the accused-appellants as her attackers cannot be doubted for she had during the carnal acts ample opportunity to see the faces of the men who ravaged her. It is the most natural reaction for victims of criminal violence to strive to see the looks and faces of their assailants and observe the manner in which the crime was committed. Most often the face of the assailant and body movements thereof, create a lasting impression which cannot easily be erased from their memory. 4

The accused-appellants further claim that "the Medical Findings of Dr. Danilo Ramirez concludes that the alleged victim of rape, Vilma de Belen must have had sexual experienced (sic) five (5) to six (6) days before the alleged incident happened on July 2, 1988 at about 3 to 4 o'clock in the morning". 5 There is no truth to this claim. In fact, there was no categorical or positive assertion on the part of Dr. Ramirez that the sexual intercourse with Vilma was committed on the very date when the alleged "robbery with rape" took place on July 2, 1988.

This is a clear distortion of the testimony of Dr. Ramirez who on cross-examination testified as follows:

"ATTY. MAIQUEZ:
Q You cannot also determine when was the first and when was the last intercourse as per your examination?

FISCAL Objection, witness is incompetent.

COURT Witness may answer.

A The findings suggest that because of hymenal laceration the injuries was (sic) recent not more than one week, sir.

Q When you say it is not more than one week, could it be 6 or 5 days?
A Possible, sir.

Q When you say it is possible that the victim could have experienced sexual intercourse 6 to 5 days that was indicated in your examination marked as Exh. A, can you determine as per your finding?

A Well, yes, sir, I placed fresh hymenal laceration because laceration will determine whether it is fresh or old because of the characteristice (sic) of the laceration, sir.

Q At the time you examined the patient in your medical opinion it could have been 5 or 6 days had elapsed?

A Yes, sir.

ATTY. MAIQUEZ: That will be all." 6

The trial court, in the exercise of its discretion to seek clarification in witness' testimony proceeded as follows:

"COURT:
Q Doctor, in your findings you noted that there was an abrasion?
A Yes, your Honor.

Q Is that more than one abrasion?
A I found 3 mm., your Honor.

WITNESS (continuing):
and on the lower opening of the vagina on the right side, that is the only place, sir.

COURT:
Q Aside from that injury or rater (sic) that portion there is no other injury which you found?
A None, your Honor.

Q Because laceration stated in your medicolegal certificate that there was fresh hymenal laceration noted at 9 and 4 o'clock on the face of the clock?
A Yes, your Honor.

Q Do we gather it right when you stated in your medicolegal certificate fresh it is not yet healed?
A Yes, your Honor.

Q From that finding of yours regarding the existence of fresh hymenal laceration you said that it least one or 2 days had elapsed before you have conducted the physical examination?
A Yes, your Honor.

Q In other words from one to 5 days?
A Yes, your Honor.

COURT:
Q But it is possible that it could be more than one or two days?.
WITNESS:
A Yes, your Honor." 7

It is evident that Dr. Ramirez never categorically concluded that the sexual intercourse causing the fresh hymenal lacerations took place five to six days before the date of her examination. The accused-appellants' claim that the sexual intercourse took place on June 26 or 27, 1988 is conjectural and without factual basis.

The claim of the accused-appellants that the prosecution failed to present rebuttal evidence to refute the averments of Joel Sartagoda that they tried in vain to persuade him to admit the charge against him and to implicate his two (2) co-accused did not deserve the attention of the trial court nor does it deserve Ours, being per se unacceptable and unbelievable in the light of human experience.

Finally, they claim that the fact that Vicente Sta. Ana and Jimmy Bascuña did not flee, even when they had all the opportunities to do so, prove their innocence. When they were allowed to go home after Vilma failed to identify them during the first confrontation at the police station, they stayed home and did not flee until they were again required to appear at the police station for the second time. The accused-appellants in effect posit that if flight is an indication of guilt, non-flight or the decision not to flee, having the opportunity to do so, is a sign of innocence.

We do not agree. Although it is settled that unexplained flight indicates guilt, it does, not necessarily follow that absence thereof proves innocence, specially so when there is overwhelming evidence to establish their guilt.

This Court finds no reversible error having been committed by the trial court in convicting the three accused-appellants for the crime of robbery with multiple rape under Article 294 par. 2 of the Revised Penal Code. We affirm its findings of fact which are firmly grounded on the evidence presented at the trial. We reiterate our ruling thus:

"There is need to stress anew that this Court has long been committed to the principle that the determination by a trial judge who could weigh and appraise the testimony as to the facts duly proved is entitled to the highest respect, unless it could be shown that he ignored or disregarded circumstances of weight or influence sufficient to call for a different finding." 8

We are for the affirmance of the conviction of the three accused-appellants. With regard to the indemnity to Vilma de Belen for multiple rape, there having been evidence of conspiracy, the act of one being the act of all, each must be liable for all the three rapes committed, they must be held solidarily liable 9 for said indemnity which the trial court fixed at P30,000.00 for each offender or a total of P90,000.00. 10

However, this Court cannot uphold the trial court's ruling ordering each of the accused to "recognize the offspring if there be any". In multiple rape, not one maybe required to recognized the offspring of the offended woman. In a case 11 where three persons, one after another, raped a woman, neither of the accused was ordered to recognize the offspring simply because it was impossible to determine the paternity thereof.

WHEREFORE, premises considered, the appealed decision is AFFIRMED with the MODIFICATION that the accused-appellants are held jointly and severally liable to indemnify Vilma de Belen for multiple rape in the amount of P90,000.00, and that none of the accused is required to recognize the offspring.

SO ORDERED.
Narvasa (C.J., Chairman), Padilla, Regalado and Nocon, JJ., concur.

RULE 129
WHAT NEED NOT BE PROVED

Section 1. *Judicial notice, when mandatory*. ? A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the official acts of legislative, executive and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions. (1a)

Section 2. *Judicial notice, when discretionary*. ? A court may take judicial notice of matters which are of public knowledge, or are capable to unquestionable demonstration, or ought to be known to judges because of their judicial functions. (1a)

Section 3. *Judicial notice, when hearing necessary*. ? During the trial, the court, on its own initiative, or on request of a party, may announce its intention to take judicial notice of any matter and allow the parties to be heard thereon.

After the trial, and before judgment or on appeal, the proper court, on its own initiative or on request of a party, may take judicial notice of any matter and allow the parties to be heard thereon if such matter is decisive of a material issue in the case. (n)

Section 4. *Judicial admissions*. ? An admission, verbal or written, made by the party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made. (2a)

Judicial notice is a rule in the law of evidence that allows a fact to be introduced into evidence if the truth of that fact is so notorious or well known, or so authoritatively attested, that it cannot reasonably be doubted. This is done upon the request of the party seeking to rely on the fact at issue. Facts and materials admitted under judicial notice are accepted without being formally introduced by a witness or other rule of evidence, and even if one party wishes to lead evidence to the contrary.
Judicial notice is frequently used for the simplest, most obvious common sense facts, such as which day of the week corresponded to a particular calendar date.2

It is the authority of a judge to accept as facts certain matters which are of common knowledge from sources which guarantee accuracy or are a matter of official record, without the need for evidence establishing the fact. Examples of matters given judicial notice are public and court records, tides, times of sunset and sunrise, government rainfall and temperature records, known historic events or the fact that ice melts in the sun.3

_ The function of judicial notice is that, it displaces evidence, since as it stands for proof, it fulfills the object which evidence is designed to fulfill and makes evidence unnecessary.
_ It is based upon obvious reasons of convenience and expediency and operates to save trouble, expense, and time which would be lost in establishing, in the ordinary way, facts which do not admit of contradiction.

Definitions:
1. **Judicial Notice** – no more than that the court will bring to its aid and consider, without proof of the facts, its knowledge of those matters of public concern which are known by all well-informed persons.
2. **Judicial Knowledge** – cognizance of certain facts which a judge under rules of legal procedure or otherwise may properly take or act upon without proof because they are already known to him, or is assumed to have, by virtue of his office.

Q: What is judicial notice?
A: It is the cognizance of certain facts which judges may properly take and act upon without proof because they are supposed to be known to them. It is based on considerations of expediency and convenience. It displaces evidence, being equivalent to proof.
Note: Judicial notice fulfils the objective which the evidence intends to achieve. It is not equivalent to judicial knowledge or that which is based on the personal knowledge of the court; rather, it is the cognizance of "common knowledge." Judicial notice relieves the parties from the necessity of introducing evidence to prove the fact notified. It makes evidence unnecessary.

Q: What are the facts that need not be proved?
1. Those which the courts may take judicial notice *(Rule 129);*
2. Those that are judicially admitted *(Rule 129);*
3. Those that are conclusively presumed *(Rule 131);* and
4. Those that are disputably presumed but uncontradicted *(Rule 131).*

Q: What are the requisites of judicial notice?
A:
1. The matter must be one of common and general knowledge;
2. It must be well and authoritatively settled and not doubtful or uncertain; and
3. It must be one which is not subject to a reasonable dispute in that it is either:
   a. Generally known within the territorial jurisdiction of the trial court; or
   b. Capable of accurate and ready determination by resorting to sources whose accuracy cannot reasonably be questionable *(Expertravel & Tours, Inc. v. CA, G.R. No. 152392, May 26, 2005)*.

Note: The principal guide in determining what facts may be assumed to be judicially known is that of *notoriety (Ibid.)*. The test of notoriety is whether the fact involved

[2] http://en.wikipedia.org/wiki/Judicial_notice
[3] http://dictionary.law.com/Default.aspx?selected=1065

is so notoriously known as to make it proper to assume its existence without proof.

Q: When is a matter considered "common knowledge"?
A: They are those matters coming to the knowledge of men generally in the course of ordinary experiences of life, or they may be matters which are generally accepted by mankind as true and are capable of ready and unquestioned demonstration.
Note: Thus, facts which are universally known, and which may be found in encyclopedias, dictionaries or other publications, are judicially noticed, provided, they are of such universal notoriety and so generally understood that they may be regarded as forming part of the common knowledge of every person. A court however cannot take judicial notice of any fact which, in part, is dependent on the existence or non-existence of a fact of which the court has no constructive knowledge *(Expertravel & Tours, Inc. v. CA, G.R. No. 152392, May 26, 2005)*.

Q: What is mandatory notice?
A: If the fact sought to be proved are:
1. Existence and territorial extent of States;
2. Political history, forms of government and symbols of nationality;
3. Law of nations;
4. Admiralty and maritime courts of the world and their seals;
5. Political constitution and history of the Philippines;
6. Official acts of legislative, executive and judicial departments of the Philippines;
7. Laws of nature;
8. Measure of time; and
9. Geographical divisions *(Sec. 1)*.

THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee,
vs.
ROMAN MENESES Y MARIN, accused-appellant.
1998 March 26 3rd Division
G.R. No. 111742 D E C I S I O N
KAPUNAN, J:
Eyewitness identification is vital evidence and, in most cases, decisive of the success or failure of the prosecution. 1 Subject of the Court's scrutiny in the instant criminal case is the credibility of a child's alleged eyewitness account on which the appellant's conviction by the trial court was solely anchored.

At around three o'clock in the early morning of December 15, 1991, thirty-three year old Cesar Victoria was stabbed to death while sleeping by his seven-year old son Christopher in a rented makeshift room in Tondo, Manila.
Appellant Roman Meneses was charged with the murder of Cesar Victoria, in an Information dated December 27, 1991, which reads:
That on or about December 15, 1991, in the City of Manila, Philippines, the said accused, with evident premeditation and treachery, did then and there willfully, unlawfully and feloniously, with intent to kill, attack, assault and use personal violence upon one CESAR VICTORIA y FERNANDEZ, by then and there stabbing the latter with a fan knife (balisong) on the different parts of his body, thereby inflicting upon the said CESAR VICTORIA y FERNANDEZ mortal wounds which were the direct and immediate cause of his death immediately. 2
The prosecution presented the following witnesses: Christopher R. Victoria, SPO3 Jaime Mendoza, SPO3 Eduardo Gonzales and Medico-Legal Officer Florante Baltazar.
Christopher R. Victoria testified that he witnessed the stabbing of his father. He testified that while he lived with his Kuya Odeng on Kasipagan Street, Tondo, on the night of December 14, 1991, he went to his father's rented makeshift room to sleep after he (Christopher) was whipped by his brother. Christopher's other siblings lived elsewhere in Tondo and his mother was living in Quezon. He further testified that he was awakened from sleep and saw his father being stabbed in the heart with a "veinte nueve." After the assailant ran away, Christopher cried.
SPO3 Jaime Mendoza, a police investigator of the Western Police District testified that on December 15, 1991, a kagawad of Barangay 123, Zone 9, Tondo, Manila called the precinct informing him that Cesar Victoria was found

stabbed to death. With three policemen, Mendoza immediately went to the crime scene, arriving there at around three o'clock in the morning. Mendoza described the scene as a makeshift room about three by five square meters. The room was connected by a divider with a door to a house owned by the Spouses Ardiete, the victim's landlord. The policemen saw the victim's bloodied body, with several stab wounds, lying on a wooden bed.
Mendoza testified that when he questioned Christopher, who was then in the house, Christopher could not identify nor describe the attacker, but that the child said he could identify him because he knew his face. On re-direct examination however, Mendoza said that Christopher identified the assailant as appellant.

Mendoza and the policemen brought Christopher to the precinct where his statement was taken. 3 After the appellant was arrested and turned over to the investigators on December 26, 1991, Christopher was again brought to the precinct where, during a confrontation with appellant, Christopher identified appellant as the person who stabbed his father. 4
SPO3 Eduardo C. Gonzales testified that at about two o'clock in the morning of December 25, 1991, he arrested appellant. The arrest was based on the report of Angelina Victoria, appellant's wife, who implicated appellant in the crime. The policemen found appellant at the place pointed to by Angelina, which was a flower box at the corner of Tuazon and Mithi Streets. Frisked, appellant yielded a balisong. After announcing that they were policemen and that appellant was being arrested as the suspect in the stabbing of Cesar Victoria, Gonzales and his companions brought appellant to Police Station No. 2. Appellant was later transferred to the Homicide Section.
On cross-examination, Gonzales stated that he and his companions merely "invited" appellant to go with them to the police station for investigation, but that at the police station, appellant verbally admitted to stabbing Cesar Victoria. 5
Medico-Legal Officer Florante P. Baltazar of the Philippine National Police Crime Laboratory conducted the autopsy on the victim. He testified in court that the cause of death of the victim, as stated in his Autopsy Report, was "cardio-respiratory arrest due to shock and hemorrhage secondary to stab wounds," and that the victim sustained five external injuries, two of which were fatal. 6 He opined that based on the direction of the stab wounds, the victim was not lying down when stabbed, but could have been standing or sitting when stabbed by the attacker who could have also been standing. 7
The lone witness for the defense was the appellant himself, Roman Meneses. He interposed the defense of denial and alibi.
Appellant testified that the victim, who was his brother-in-law, and Christopher used to live with him and his wife Angelina, the victim's sister, in their house at A. Tuazon Street, Tondo, Manila. On the day of the crime, appellant alleged that he was in San Isidro, Mexico, Pampanga, and had been there since the tenth or eleventh of that month, after he had a misunderstanding with Angelina.
He further testified that he was arrested on December 24, 1991, without a warrant after being implicated in the crime by his wife. He was brought to the police station where he was mauled by policemen; he never admitted though to killing Cesar Victoria, his brother-in-law.
Appellant also denied that there was animosity between him and his brother-in-law. In fact, when Cesar was stabbed after he (Cesar) got out of prison, appellant even brought him to the hospital and paid for his medical expenses.
Appellant even sent his nephew Christopher to

school. 8
In a Decision dated July 26, 1993, the trial found appellant guilty, thus:

WHEREFORE, judgment is hereby rendered convicting the accused of the crime of Murder, and he is hereby sentenced with the penalty of Reclusion Perpetua.
The accused is hereby ordered to indemnify and pay the heirs of the victim Cesar Victoria the sum of P50,000.00 as damages sustained by them on account of the victim's death. 9
In this appeal, appellant assigns to the trial court the following errors:
THE TRIAL COURT ERRED IN NOT GIVING EXCULPATORY WEIGHT TO THE EVIDENCE ADDUCED BY THE DEFENSE.
THE TRIAL COURT ERRED IN CONVICTING APPELLANT OF THE CRIME CHARGED NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.
ON THE ASSUMPTION THAT APPELLANT IS GUILTY, THE TRIAL COURT ERRED IN CONVICTING HIM OF MURDER INSTEAD OF HOMICIDE ONLY. 10
The issue in the instant case is credibility. The judgment of appellant's conviction is anchored entirely on the testimony of the single eyewitness, Christopher Victoria, who identified appellant as the one who he allegedly saw stab his father.
We find that the trustworthiness of the identification of appellant by Christopher is dubious, raising reasonable doubt in the mind of the Court as to appellant's culpability.
It was established that the crime took place in the wee hours of the morning, before the crack of dawn, at around three o'clock. 11 The court can take judicial notice of the "laws of nature," 12 such as in the instant case, that at around three in the morning during the Christmas season, it is still quite dark and that daylight comes rather late in this time of year. 13
Nowhere in the description of the crime scene by witness SPO3 Mendoza in his testimony was it established that there was light or illumination of any sort by which Christopher could see the attacker. SPO3 Mendoza testified thus:
Q. You said you found the body of the victim, what (sic) did you found (sic) at the body of the victim?
A. We found the body of the victim on adjacent makeshift of the No. 1324.
Q. The makeshift room which was adjacent to the house, whose house of that makeshift was adjacent?
A. It was owned by Cesar Victoria and his son Christopher.
Q. You said you interviewed a couple named Ardiete, where did you see this couple?
A. Inside the house, sir.
Q. How far is that house to the house of the victim?
A. Only a division within that house, only division separate.

COURT:
Q. You said that the makeshift was adjacent to the house, does the Court understand from you that the makeshift was attach to the house?
A. Part of the house, Your Honor.
Q. Is there an opening on it?
A. Yes, Your Honor.
Q. How wide?
A. The main door going to the house.
Q. Did you come to know, what that makeshift was for?
A. It was occupied intended for the victim Cesar Victoria and his son, they actually rented the space.
Q. So the place where you found the victim is a place which can be used for living purposes?

A. Yes, sir.
Q. How did you come to that conclusion?
A. Because that portion, there was a door, there was a door before you can get inside.

FISCAL SULLA:
Q. How big is that room more or less?
A. More or less about three meters or five meters.
Q. Now who occupied the room adjacent to the room occupied by the victim?
A. The spouses Ardiete, sir. 14

The crime took place in a makeshift room measuring about three by five square meters. While the room had a door, there was no mention of a window which could have allowed entry of some kind of light from the outside. It is highly improbable that a young boy, just roused from sleep and his eyes adjusting to the unlit room, could identify the attacker, much less identify the knife used, as Christopher did, as a "veinte nueve."
The prosecution failed to paint a crystal-clear picture of the environ by which Christopher could have made an accurate and reliable identification of the attacker. Christopher's testimony being improbable, is not credible. Evidence is credible when it is "such as the common experience of mankind can approve as probable under the circumstances. We have no test of the truth of human testimony, except its conformity to our knowledge, observation, and experience." 15
We now consider the identification itself. We note a glaring discrepancy, not inconsequential, in the testimony of SPO3 Mendoza regarding Christopher's identification of appellant. SPO3 Mendoza testified thus:
Q. Where was the son of the victim when you arrived?
A. Inside the house, sir.
COURT:
Q. Did you talked (sic) to the son of the victim?
A. Yes, sir.
Q. What did he tell you?
A. He told me he can remember the suspect whenever he sees him again.
Q. Then he can identify him?
A. Yes, Your Honor.
ATTY. SARMIENTO:
Q. So at the time that you were there, the son of the victim was not able to tell you who the suspect was?

A. Yes, sir.
xxx xxx xxx
Q. Neither the wife nor the husband [referring to the spouses Ardiete], nor the son tell you that they saw the killing?
A. The son of the victim said that he can identified (sic) the suspect.
Q. Did you asked (sic) him if he can identify?
A. Yes, sir.
Q. And what did he tell you?
A. He knows the face of the suspect.
Q. Did you ask him the name of the suspect, if he knows him at that time?
A. He can't tell the name.
Q. Did he tell you the description of the suspect?
A. He can't tell the description of the suspect but he insist (sic) that if he can see him again, he can identify. 16

During his direct and cross-examination, SPO3 Mendoza asserted that Christopher could not name his father's attacker nor give a description; however, in his re-direct examination he said that Christopher mentioned categorically appellant's name, Roman Meneses, thus:
Q. When you responded to the scene of the crime, and talking to Christopher Victoria who

can identify the suspect, did you asked [sic] him why he can identify the suspect?

A. Yes, sir.
Q. What did he say?
A. He remember [sic] the face.
Q. And did you ask him why he can remember the face?
A. Yes, sir. Because he openly sees the face, sice (sic) he was his uncle.
Q. Did you asked [sic] the son what is the name of his uncle?
A. Yes, sir.
xxx xxx xxx
Q. What is the name?
A. Roman Meneses. 17

This inconsistency in the testimony of SPO3 Mendoza not only tolls on his credibility as well as the credibility of his testimony, but more significantly, casts doubt on the trustworthiness, veracity and reliability of the alleged identification itself. Significantly, this inconsistency was noted by the trial court with vexation, but the Court merely glossed over the same, stating that the identification of appellant by Christopher during the subsequent confrontation rendered such inconsistency unimportant.
Even in the Advance Information 18 prepared by SPO3 Mendoza on December 15, 1991, no mention was made regarding an identification made by Christopher when questioned immediately after the crime. Mendoza wrote:

CHRISTOPHER VICTORIA, 8 years old, son of victim, who was sleeping beside the latter during the commission of the crime when interviewed stated that he was awakened, while his father was being stabbed by suspect, whom he claimed he can identify if he can see him again.
Case to be further investigated and follow-up to determine the motive behind the knife-slaying and efforts will be exerted to establish the identity of suspect. 19
Indeed, it taxes the credibility of Christopher's testimony that while he knew appellant prior to the crime, being his uncle, who for some time he was staying with, he failed to point to appellant as the attacker when questioned by the police immediately after the incident. Wall 20 in his work on eyewitness identification expounds on the danger signals which a trial court judge and the appellate courts should watch out for when considering identifications in criminal cases, thus:
When a person has been the victim of a crime committed by a friend, acquaintance, relative, or other person previously familiar to him, and decides to make a complaint to the police, it is to be expected that he would immediately inform them of the name (or it that be unknown, then at least the identity) of the person whom they should arrest. The victim would normally tell the police that he had been hit by John Smith, or that her purse had been snatched by the grocer's delivery boy. Of course, some crimes are never reported, for one reason or another. But once the victim decides to make a criminal complaint, then he will almost invariably name or designate the perpetrator of the crime immediately, if he is able to do so. The occasional failure of a complainant to do this is a danger signal of which the courts have sometimes taken note.
In an Idaho prosecution for rape, for example, the complaining witness identified the defendant at the trial, but had not accused him when making her original complaint to the police, even though he was previously known to her. As an explanation, she testified that she had not recognized him during the commission of the crime. The ensuing conviction was reversed on the ground that the evidence of identification

was insufficient. In an Iowa prosecution for assault with intent to commit rape, the complainant was a young married woman who had known the defendant prior to the commission of the alleged crime. She identified him at the trial, but admitted that she had not recognized him during the assault, for he had a veil covering his face. It was after he left, she testified that it came to her mind that he assault, and on the same day, she became afraid to stay alone at home while waiting for her husband to return, and asked none other than the defendant to wait with her — a course of action which was commented upon by the appellate court which reversed the conviction on grounds which included the insufficiency of the evidence of identification.

In a New York murder prosecution, the victim's widow identified the defendant prior to her husband's killers. Although she knew the defendant prior to her husband's death, she admitted that she had not named him to the police on the night of the crime, and admitted also that she had told the coroner that she had never before seen her husband's murderers. A conviction for murder in the first degree was reversed because the trial judge had failed to charge the jury that they should consider those facts in determining the accuracy of the identification. And in a recent New York robbery prosecution, it was brought out that the two women who had identified the defendant at the trial had not immediately named him to the police, even though they had known him previously, since he was the son of an acquaintance of one of them. The conviction was reversed on appeal, the court stating, with respect to the identifying witnesses, that:

If we give credence to their testimony, it appears that they were able to and did observe fully the fact and general appearance of one of the three alleged robbers who was identified by them 17 months later as the defendant . . . Certainly, if, at the time of the incident, they had recognized the particular individual as one whom they knew or as resembling one with whom they were acquainted, it is reasonable to expect that they would have given this information promptly to the police . . . On the state of this record, there was no plausible explanation for the failure of the two women, or one of them, to recognized the defendant at the time of the robbery or, in any event, to pass along to the police within a reasonable time information which would have led them to identify the defendant as one of the robbers. We realize . . . That the issue is one of credibility and that, generally speaking, such issued is for the trier of the facts. Here, however, on the whole record, we have concluded that the finding of the jury as to the guilt of the defendant . . . is contrary to the weight of the evidence; and that, in any event, a new trial should be had in the interests of justice.

These four cases should suffice to illustrate how the courts react to this danger signal on the rather rare occasions when it is in the record before them. Those occasions are rare, it is submitted, because when the point actually arises in a case, it usually produces that reasonable doubt which causes a jury to acquit. It may also be of some significance that when a jury convicts despite such a glaring weakness in the identification, it is usually in the type of case that stirs up the greatest emotions — sex crimes and crimes of violence. Common sense, however, dictates that when this danger signal is present in a case, and the failure of the witness or complainant to do what would normally be done, i.e., to name or designate the perpetrator of the crime immediately, is not satisfactorily explained, no conviction should occur or should be allowed to stand in the absence of independent and persuasive evidence of the

defendant's guilt.
The prosecution did not endeavor to explain Christopher's failure to name the attacker at the time he was questioned immediately after the crime. From SPO3 Mendoza's testimony, Christopher was at that time coherent and answering clearly questions from the police.
We further find objectionable Christopher's identification of appellant during a "show-up" at the police station. As testified to by SPO3 Mendoza, "I made confrontation between them," referring to Christopher and appellant. SPO3 Mendoza testified on the circumstances surrounding the "confrontation" between Christopher and appellant, thus:
Q. Who was able to arrest the suspect?
A. PO Eddie Gonzales sir.
Q. And what did you do when you informed about this?
A. I invited again the eye witness, the son of the victim.
Q. And what did you do when you invited the eye witness?
A. We make confrontation between the suspect and him.
Q. Where?
A. Inside the room sir.
Q. When was that?
A. Right after the suspect was arrested.
Q. When was he arrested?
A. December 25, 1991
xx xxx xxx
Q. And then in the confrontation between the suspect and the eye witness, what happened?
A. The eye witness positively identified the suspect as the one who stabbed the victim..
COURT:
Who identified?
A. The eye witness Your Honor.
xxx xxx xxx
FISCAL SULLA:
Q. Exactly, where was the suspect when he was identified by the witness?
A. Inside the office.
Q. In what particular place inside your office?
A. Crime against person, homicide. 21
xxx xxx xxx
Q. So, when the accused was arrested and you were informed about it, what did you do?
A. I investigated again, after I made a confrontation between the son of the victim and the suspect.
Q. Son of the victim alone?
A. Together with Angelina? 22
xxx xxx xxx
Q. So the suspect was turn-over (sic) over to you?
A. Yes, sir.
Q. When was that?
A. Day after December 25, 1992.
Q. And when the suspect was turned-over to your office, who were there?
A. The night shift in charge.
Q. How about the son of the victim, were (sic) he there?
A. I just saw him (there) when I arrive (sic).
Q. What happened when they arrived.
A. I took immediately the statement of the son of the victim.
Q. Did you point them the suspect?
A. No, sir.
Q. Was there confrontation between the suspect and the son together with Angelina?
A. Yes, sir.
Q. What happened during the confrontation?
A. He pin-pointed the suspect.
Q. Who pin-pointed the suspect?
A. The son of the victim.
Q. How about Angelina?
A. She did not. 23
xxx xxx xxx
Q. And from that time how long did it take? When they arrive (sic), how long (did) this Christopher Victoria identify the suspect?

A. Immediately during my investigation I made a confrontation with the suspect and the victim, and he pinpointed to me that the suspect was really the one.

Q. You said that the suspect was inside the jail, when you made the investigation in your office, how far is your office to the detention cell?
A. About three meters.
Q. When did the confrontation exactly took (sic) place?
A. I let the son of the victim to go (sic) nearer the detention cell.
COURT:
Q. Did you tell something, did you asked (sic) did you tell anything to the son before the confrontation?
A. Yes, sir.
COURT:
What did the son told (sic) you?
A. He told me he can.
Q. And after he told you he can, what did you do?
A. I made confrontation between them.
COURT:
And during the confrontation, what did the son tell you?
A. He is Roman Meneses.
COURT:
Did you asked (sic) him where did he saw (sic) the person pointed to?
A. Yes, he told me that he saw him in the room they rented at Alinia. 24

In Tuason v. Court of Appeals, 25 the Court stated that an identification of the accused during a "show-up" or where the suspect alone is brought face to face with the witness for identification, 26 is seriously flawed. We stated thus:

. . . the mode of identification other than an identification parade is a show-up, the presentation of a single suspect to a witness for purposes of identification. Together with its aggravated forms, it constitutes the most grossly suggestive identification procedure now or ever used by the police (See Louisell, David W., Kaplan, John, and Waltz, Jon R., Cases and Materials on Evidence; Wall, Eyewitness Identification in Criminal Cases, 1968 ed., p. 1263)

In the Tuason case, during a first encounter in the National Bureau of Investigation (NBI) headquarters, the accused therein was pointed to by the alleged eyewitnesses after an NBI agent first pointed him out to them. The Court said that "[the eyewitnesses'] identification of [petitioner] from a [subsequent] line-up at the NBI was not spontaneous and independent. An NBI agent improperly suggested to them petitioner's person." 27

From Mendoza's testimony we can gather that appellant was presented as the suspect in the crime to Christopher inside Mendoza's office in the Homicide Section of the police station, or later in the detention cell the boy was made to approach. While Mendoza did not literally point to appellant as in the Tuason case, equally pervasive in the "confrontation" in the instant case is what Wigmore calls "the suggestion of guilty identity." 28

Even applying the totality of circumstances test set in People v. Teehankee, Jr, 29 formulated and used by courts in resolving the admissibility and reliability of out-of-court identifications, we must hold the identification of appellant by Christopher to be seriously flawed. The test lists three factors to consider:

. . . (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at that time; (3) the accuracy of any prior description given by the witness; (4) the level of certainty

demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and, (6) the suggestiveness of the identification process. (See Neil v. Biggers, 409 US 188 (1973); Manson v. Brathwaite, 432 US 98 (1977); Del Carmen, Criminal Procedure, Law and Practice, 3rd Edition., p. 346)

Indeed, we cannot discount the angle that young Christopher was influenced by prior prompting or manipulation by an adult, his aunt Angelina. Rather than reinforce the identification, the circumstances pointed out by the trial court plants in mind the plausibility that appellant's wife Angelina could have coached the young impressionable Christopher. These circumstances are:

First, was the insistence of [appellant's] wife as testified by the accused himself, that he was the one who killed the victim, and was pointed to by her as the assailant, thus, he was arrested. Another was the resentment of the accused against his brother-in-law-victim brought about by the latter's intervention in that serious quarrel between him and his wife. Thirdly, that the accused no doubt disliked the financial support and subsistence being given by his wife to the victim.

Quite revealingly, Angelina was the one who went to the police to implicate appellant in the crime and who directed the police to where he could be found. She later herded Christopher to the police station for the boy to give his statement. She was also with the boy when he was made to identify appellant during the "confrontation."

We see Angelina's actuations as suspect, especially when we consider that per SPO3 Mendoza's testimony, when he questioned Christopher immediately after the crime, the boy could not simply name the attacker.

And while the above circumstances, particularly, the supposed resentment of appellant against the victim, who was his wife Angelina's brother, and envy proceeding from Angelina's giving financial support to the victim may constitute motive, motive alone, without credible positive identification, cannot be a basis for conviction. 30

The People points out that appellant had verbally admitted having committed the crime at the time of his arrest and later during the conduct of the investigation. 31 The appellant however during the trial denied having made such verbal admissions of guilt. Granting arguendo that appellant indeed made such verbal admissions, the same would not be admissible in evidence against him because the constitutional preconditions for its admission were not complied with The mere assertion by a police office that after an accused was informed of his constitutional right to remain silent and to counsel he readily admitted his guilt, does not make the supposed confession admissible against the purported confessant. 32 Here, it was not even shown that appellant's supposed admissions of guilt were made with benefit of counsel. 33

It is conceded that appellant's defense of alibi is weak. 34 The settled rule however is that conviction should rest on the strength of the prosecution and not on the weakness of the defense. 35 The onus is on the prosecution to prove the accused guilt beyond reasonable doubt, in view of the constitutional presumption of the innocence of the accused. 36 We must rule that the prosecution failed to so discharge its burden.

WHEREFORE, in view of the foregoing, the Decision dated July 26, 1993 of the Regional Trial Court of Manila, National Capital Judicial Region, Branch 34 in Criminal Case No. 91-101878 convicting appellant ROMAN MENESES y MARIN is REVERSED and appellant is ACQUITTED of the crime charged on the ground of reasonable doubt. The Court orders

his RELEASE from commitment unless he is held for some other legal cause or ground. Costs de Oficio.

SO ORDERED.
Narvasa, C .J ., Romero and Purisima, JJ ., concur.

FIRST DIVISION
[G.R. No. 142295. May 31, 2001]
VICENTE DEL ROSARIO y NICOLAS, *petitioner*, *vs*. PEOPLE OF THE PHILIPPINES, *respondent*.
D E C I S I O N
PARDO, *J.*:
Petitioner Vicente del Rosario y Nicolas appeals *via* certiorari from a decision of the Court of Appeals affirming with modification the decision of the Regional Trial Court, Bulacan, Branch 20, Malolos, and finding him guilty beyond reasonable doubt of violation of P. D. No. 1866, as amended by Republic Act No. 8294 (illegal possession of firearms), sentencing him to four (4) years, nine (9) months and eleven (11) days of *prision correccional,* as minimum, to six (6) years, eight (8) months and one (1) day of *prision mayor,* as maximum, and to pay a fine of P30,000.00.
On June 17, 1996, Assistant Provincial Prosecutor Eufracio S. Marquez of Bulacan filed with the Regional Trial Court, Bulacan, Malolos an Information charging petitioner Vicente del Rosario y Nicolas with violation of P. D. No. 1866, as follows:
"That on or about the 15th day of June 1996, in the municipality of Norzagaray, Province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously have in his possession under his custody and control, the following, to wit:
"a) One (1) pc. Pistol Cal. 45 SN:70G23792 (w/o license)
"b) One (1) pc. Revolver Cal. 22 SN:48673 (w/o license)
"c) Twenty Seven (27) rds live ammos. For cal. .45
"d) Five (5) pcs. Magazines for cal. .45
"e) Eight (8) rds live ammunitions for cal. 22
"f) Five (5) pcs. Magazines short for cal. 5.56 (M16)
"g) Twenty (20) rds live ammunitions for cal 5.56
"without first having obtained a proper license therefor.
"Contrary to law."
On June 25, 1996, the trial court arraigned the petitioner. He pleaded not guilty. Trial ensued.
The facts, as found by the Court of Appeals, are as follows:
"Sometime in May 1996, the police received a report that accused-appellant Vicente del Rosario was in possession of certain firearms without the necessary licenses. Acting upon the report, P/Sr. Insp. Jerito Adique of the PNP Criminal Investigation Group at Camp Olivas, Pampanga inquired from the PNP Firearms and Explosive Division whether or not the report was true. On May 10, 1996, P/Sr. Insp. Edwin C. Roque of the PNP Firearms and Explosives Division issued a certification (Exhibit L) stating that per records in his office, the appellant is not a licensed/registered firearm holder of any kind and caliber. Armed with the said certification, P/Sr. Insp. Adique applied for a search warrant to enable his team to search the house of appellant.
"On June 13, 1996, a search warrant (Exhibit A) was issued by Judge Gil Fernandez, Sr. of the Regional Trial Court of Quezon City, Branch 217, authorizing the search of the residence of appellant at Barangay Tigbe, Norzagaray, Bulacan. On June 15, 1996, at about 7:00 o'clock in the morning, a team led by P/Sr. Insp. Adique went to Norzagaray to serve the warrant.

Before proceeding to the residence of the appellant, the police officers requested Barangay Chairman Rogelio de Silva and Barangay Councilman Aurelio Panteleon to accompany them in the implementation of the warrant. Upon arrival at the house of appellant, the police officers introduced themselves to the wife of appellant. When the appellant came out, P/Sr. Insp. Adique informed him that they had a search warrant and that they were authorized to search his house. After appellant gave his permission, the police officers conducted a search of the house. The search yielded the following items: (a) a caliber .45 pistol with Serial No. 703792 with five magazines of caliber .45 (Exhibits B and H) found at the master's bedroom; (b) five magazines of 5.56 M-16 rifle and two radios (Exhibits C to C-4) found in the room of appellant's daughter; and (c) a caliber .22 revolver with Serial No. 48673 (Exhibit F) containing 8 pieces of live ammunition (Exhibit M) found in the kitchen of the house. When asked about his license to possess the firearms, the appellant failed to produce any. This prompted the police officers to seize the subject firearms.

"SPO2 Marion Montezon, one of the searching officers, prepared three separate inventories of the seized items (Exhibits H, M and N). The inventories were signed by P/Sr. Insp. Adique, the appellant and the barangay officials who witnessed the search. Thereafter SPO2 Montezon prepared a certification of orderly search (Exhibit I) which was signed by the appellant and the barangay officials attesting to the orderly conduct of the search.

"For his defense, appellant contends that he had a license for the caliber .45 pistol recovered in his bedroom and that the other items seized during the search including the caliber .22 revolver, were merely planted by the police officers. Appellant likewise assails the manner in which the search was carried out, claiming that the police officers just barged into his house without asking permission. Furthermore, he claimed that the barangay officials arrived only after the police already had finished the search.

"After trial and on July 2, 1998, the trial court rendered a judgment of conviction, the dispositive portion of which reads:

"WHEREFORE, premises considered, the Court finds the accused VICENTE DEL ROSARIO y NICOLAS guilty beyond reasonable doubt of violation of P. D. No. 1866 as charged under the Information dated June 17, 1996.

"Conformably with the provisions of said law, as amended by Republic Act No. 8294, and pursuant to the provisions of the Indeterminate Sentence Law, the Court hereby sentences the accused to suffer imprisonment of six (6) months of arresto mayor, as minimum, to six (6) years of prision correctional, as maximum, and to pay a fine of Fifteen Thousand Pesos (P15,000.00)."

On July 20, 1998, petitioner appealed to the Court of Appeals, assailing the decision for being contrary to facts and the law.

On July 9, 1999, the Court of Appeals promulgated its decision affirming with modification the decision of the trial court as set out in the opening paragraph of this decision.

On August 10, 1999, petitioner filed with the Court of Appeals a motion for reconsideration and/or new trial. He contended that the certification issued by the Chief, Firearms and Explosives Division, Philippine National Police stating that the person named therein had not been issued a firearm license referred to a certain Vicente "Vic" del Rosario of barangay Bigte, Norzagaray, Bulacan, not to him. He comes from barangay Tigbe, Norzagaray, Bulacan, and that he has a valid firearm license.

On February 22, 2000, the Court of Appeals denied the motion for reconsideration for lack

of merit.
Hence, this appeal.
Petitioner submits that the search conducted at his residence was illegal as the search warrant was issued in violation of the Constitution and consequently, the evidence seized was inadmissible. He also submits that he had a license for the .45 caliber firearm and ammunition seized in his bedroom. The other firearm, a .22 caliber revolver seized in a drawer at the kitchen of his house, a magazine for 5.56 mm. cal. Armalite rifle, and two 2-way radios found in his daughter's bedroom, were either planted by the police or illegally seized, as they were not mentioned in the search warrant.
We find the petition impressed with merit.
We define the issues as follows:
First: whether petitioner had a license for the .45 caliber Colt pistol and ammunition seized in his bedroom; and
Second: whether the .22 caliber revolver seized in a drawer at the kitchen of his house, a magazine for 5.56 mm. cal. Armalite rifle and two 2-way radios found in his daughter's bedroom, were planted by the police or were illegally seized.
We shall resolve the issues *in seriatim.*
First: The .45 cal. Colt pistol in question was duly licensed.
Normally, we do not review the factual findings of the Court of Appeals and the trial courts. However, this case comes within the exceptions. The "findings of fact by the Court of Appeals will not be disturbed by the Court unless these findings are not supported by evidence." In this case, the findings of the lower courts even directly contradict the evidence. Hence, we review the evidence. The trial court held that the copy of the license presented was blurred, and that in any event, the court could rely on the certification dated May 10, 1996, of P/Sr. Inspector Edwin C. Roque, Chief, Records Branch, Firearms and Explosives Division, Philippine National Police stating that Vicente "Vic" del Rosario of Barangay **Bigte,** Norzagaray, Bulacan is not a licensed/registered firearm holder of any kind and caliber. As against this, petitioner submitted that he was not the person referred to in the said certification because he is Vicente del Rosario y Nicolas from Barangay **Tigbe,** Norzagaray, Bulacan. The Court takes judicial notice of the existence of both barangay Tigbe and barangay Bigte, in Norzagaray, Bulacan. In fact, the trial court erred grievously in not taking judicial notice of the barangays within its territorial jurisdiction, believing the prosecution's submission that there was only barangay Tigbe, and that barangay Bigte in the certification was a typographical error.
Petitioner presented to the head of the raiding team, Police Senior Inspector Jerito A. Adique, Chief, Operations Branch, PNP Criminal Investigation Command, a valid firearm license. The court is duty bound to examine the evidence assiduously to determine the guilt or innocence of the accused. It is true that the court may rely on the certification of the Chief, Firearms and Explosives Division, PNP on the absence of a firearm license. However, such certification referred to another individual and thus, cannot prevail over a valid firearm license duly issued to petitioner. In this case, petitioner presented the printed computerized copy of License No. RCL 1614021915 issued to him on July 13, 1993, expiring in January 1995, by the Chief, Firearms and Explosives Division, PNP under the signature of Reynaldo V. Velasco, Sr. Supt. (GSC) PNP, Chief, FEO. On the dorsal side of the printed computerized license, there is stamped the words "Validity of computerized license is extended until renewed license is printed" dated January 17, 1995, signed by Police Chief Inspector Franklin S. Alfabeto, Chief, Licence Branch, FEO. Coupled with this indefinite

extension, petitioner paid the license fees for the extension of the license for the next two-year period.

Consequently, we find that petitioner was the holder of a valid firearm license for the .45 caliber Colt pistol seized in the bedroom of his house on June 15, 1996. As required, petitioner presented the license to the head of the raiding team, Police Senior Inspector Jerito A. Adique of the Criminal Investigation Division Group, PNP. As a senior police officer, Senior Inspector Adique could easily determine the genuineness and authenticity of the computerized printed license presented. He must know the computerized license printed form. The stamp is clearly visible. He could decipher the words and the signature of the authorized signing official of the Firearms and Explosives Division, PNP. He belonged to the same national police organization.

Nevertheless, Senior Insp. Adique rejected the license presented because, according to him, it was expired. However, assuming that the license presented was expired during the period January 1995 to January 1997, still, possession of the firearm in question, a .45 caliber Colt pistol with serial No. 70G23792, during that period was not illegal. The firearm was kept at home, not carried outside residence. On June 15, 1996, at the time of the seizure of the firearm in question, **possession of firearm with an expired license was not considered unlawful,** provided that the license had not been cancelled or revoked. Republic Act No. 8294, providing that possession of a firearm with an expired license was unlawful took effect only on July 7, 1997. It could not be given retroactive effect.

According to firearm licensing regulations, the renewal of a firearm license was automatically applied for upon payment of the license fees for the renewal period. The expired license was not cancelled or revoked. It served as temporary authority to possess the firearm until the renewed license was issued. Meantime, the applicant may keep the gun at home pending renewal of the firearm license and issuance of a printed computerized license. He was not obliged to surrender the weapon. Printed at the dorsal side of the computerized license is a notice reading:

"IMPORTANT

1. This firearm license is valid for two (2) years. Exhibit this license whenever demanded by proper authority.
2. Surrender your firearm/s to the nearest PNP Unit upon **revocation or termination** of this license. Under any of the following instances, your license shall be revoked for which reason your firearm/s is/are subject to confiscation and its/their forfeiture in favor of the government.

a. Failure to notify the Chief of PNP in writing of your change of address, and/or qualification.
b. Failure to **renew** this license **by paying annual license, fees, within six (6) months from your birth month. Renewal of your license can be made within your birth month** or month preceding your birth month. Late renewal shall be penalized with 50% surcharge for the first month (from the first day to the last day of this month) followed by an additional 25% surcharge for all of the succeeding five (5) months compounded monthly.
c. Loss of firearm/s through negligence.
d. Carrying of firearm/s outside of residence without appropriate permit and/or carrying firearm/s in prohibited places.
e. Conviction by competent court for a crime involving moral turpitude or for any offense where the penalty carries an imprisonment of more than six (6) months or fine of at least P1,000.00.
f. Dismissal for cause from the service.

g. Failure to sign license, or sign ID picture or affix right thumbmark.
3. Unauthorized loan of firearm/s to another person is punishable by permanent disqualification and forfeiture of the firearm in favor of the government.
4. If termination is due to death, your next of kin should surrender your firearm/s to the nearest PNP Unit. For those within Metro Manila, surrender should be made with FEO, Camp Crame.
5. When firearms become permanently unserviceable, they should be deposited with the nearest PNP Unit and ownership should be relinquished in writing so that firearms may be disposed of in accordance with law.
6. Application for the purchase of ammunition should be made in case of a resident of Metro Manila direct to the Chief, FEO and for residents of a Province to secure recommendation letter to the nearest PNP Provincial Command who will thereafter endorse same to CHIEF, FEO for issuance of the permit. License must be presented before an authority to purchase ammo could be obtained."
Indeed, as heretofore stated, petitioner duly paid the license fees for the automatic renewal of the firearm license for the next two years upon expiration of the license in January 1995, as evidenced by official receipt No. 7615186, dated January 17, 1995. The license would be renewed, as it was, because petitioner still possessed the required qualifications. Meantime, the validity of the license was extended until the renewed computerized license was printed. In fact, a renewed license was issued on January 17, 1997, for the succeeding two-year period.
Aside from the clearly valid and subsisting license issued to petitioner, on January 25, 1995, the Chief, Philippine National Police issued to him a permit to carry firearm outside residence valid until January 25, 1996, for the firearm in question. The Chief, Philippine National Police would not issue a permit to carry firearm outside residence unless petitioner had a valid and subsisting firearm license. Although the permit to carry firearm outside residence was valid for only one year, and expired on January 25, 1996, such permit is proof that the regular firearm license was renewed and subsisting within the two-year term up to January 1997. "A Permit to Carry Firearm Outside Residence presupposes that the party to whom it is issued is duly licensed to possess the firearm in question." Unquestionably, on January 17, 1997, the Chief, Firearms and Explosives Division, PNP renewed petitioner's license for the .45 cal. Colt pistol in question. Clearly then, petitioner had a valid firearm license during the interregnum between January 17, 1995, to the issuance of his renewed license on January 17, 1997.
Finally, there is no rhyme or reason why the Court of Appeals and the trial court did not accept with alacrity the certification dated June 25, 1996, of P/Sr. Inspector Edwin C. Roque, Chief, Records Branch, Firearms and Explosives Division, PNP that Vicente N. del Rosario of Barangay Tigbe, Norzagaray, Bulacan is a licensed/registered holder of Pistol, Colt caliber .45 with serial number 70G23792, covered by computerized license issued dated June 15, 1995, with an expiry date January 1997. Reinforcing the aforementioned certification, petitioner submitted another certification dated August 27, 1999, stating that Vicente N. del Rosario of Barangay Tigbe, Norzagaray, Bulacan, was issued firearm license No. RL-C1614021915, for caliber .45 Pistol with Serial Number 70G23792, for the years covering the period from July 13, 1993 to January 1995, and the extension appearing at the back thereof for the years 1995 to 1997.

Had the lower courts given full probative value to these official issuances, petitioner would have been correctly acquitted, thus sparing this Court of valuable time and effort.

"In crimes involving illegal possession of firearm, the prosecution has the burden of proving the elements thereof, viz.: (a) the existence of the subject firearm and (b) the fact that the accused who owned or possessed it does not have the license or permit to possess the same. The essence of the crime of illegal possession is the possession, whether actual or constructive, of the subject firearm, without which there can be no conviction for illegal possession. After possession is established by the prosecution, it would only be a matter of course to determine whether the accused has a license to possess the firearm." "Possession of any firearm becomes unlawful only if the necessary permit or license therefor is not first obtained. The absence of license and legal authority constitutes an essential ingredient of the offense of illegal possession of firearm and every ingredient or essential element of an offense must be shown by the prosecution by proof beyond reasonable doubt. Stated otherwise, the negative fact of lack or absence of license constitutes an essential ingredient of the offense which the prosecution has the duty not only to allege but also to prove beyond reasonable doubt." "To convict an accused for illegal possession of firearms and explosives under P. D. 1866, as amended, two (2) essential elements must be indubitably established, viz.: (a) *the existence of the subject firearm or explosive* which may be proved by the presentation of the subject firearm or explosive or by the testimony of witnesses who saw accused in possession of the same, and (b) *the negative fact that the accused had no license or permit to own or possess the firearm or explosive* which fact may be established by the testimony or certification of a representative of the PNP Firearms and Explosives Unit that the accused has no license or permit to possess the subject firearm or explosive." x x x We stress that the essence of the crime penalized under P. D. 1866 is primarily the accused's lack of license or permit to carry or possess the firearm, ammunition or explosive as possession by itself is not prohibited by law." Illegal possession of firearm is a crime punished by special law, a *malum prohibitum,* and no malice or intent to commit a crime need be proved. To support a conviction, however, there must be possession coupled with intent to possess (*animus possidendi*) the firearm.

In upholding the prosecution and giving credence to the testimony of police officer Jerito A. Adigue, the trial court relied on the presumption of regularity in the performance of official duties by the police officers. This is a flagrant error because his testimony is directly contradictory to the official records of the Firearms and Explosives Division, PNP, which must prevail. Morever, the presumption of regularity can not prevail over the Constitutional presumption of innocence. Right from the start, P/Sr. Insp. Jerito A. Adigue was aware that petitioner possessed a valid license for the caliber .45 Colt pistol in question. Despite this fact, P/Sr. Insp. Adigue proceeded to detain petitioner and charged him with illegal possession of firearms. We quote pertinent portions of the testimony of petitioner:

"Q: What else did Adigue tell you after showing to him the license of your cal. .45 pistol and the alleged cal. .22 found in a drawer in your kitchen?

A: He told me that since **my firearm is licensed,** he will return my firearm, **give him ten thousand pesos** (P10,000.00) and for me to tell who among the people in our barangay have unlicensed firearm, sir.

Q: How did he say about the ten thousand pesos?
A: He said "palit kalabaw na lang tayo" sir.
Q: And what did you answer him?
A: I told him my firearm is licensed and I do not have money, if I have, I will not give him, sir, because he was just trying to squeeze something from me.
Q: How about the unlicensed firearms in your barangay which he asked from you?
A: I said I do not know any unlicensed firearm in our barangay, sir.
Q: About the .22 cal. pistol, what was your answer to him?
A: I told him that it was not mine, they planted it, sir.
Q: What did he say next?
A: He said that it is your word against mine, the **Court will believe me because I am a police officer, sir**.
Q: What was your comment to what he said?
A: I said my firearm is licensed and we have Courts of law who do not conform with officials like you and then he laughed and laughed, sir."

The trial court was obviously misguided when it held that "it is a matter of judicial notice that a caliber .45 firearm can not be licensed to a private individual." This ruling has no basis either in law or in jurisprudence.

Second issue. The seizure of items not mentioned in the search warrant was illegal.

With respect to the .22 caliber revolver with Serial No. 48673, that the police raiding team found in a drawer at the kitchen of petitioner's house, suffice it to say that the firearm was not mentioned in the search warrant applied for and issued for the search of petitioner's house. "Section 2, Article III of the Constitution lays down the general rule that a search and seizure must be carried out through or on the strength of a judicial warrant, absent which such search and seizure becomes 'unreasonable' within the meaning of said constitutional provision." "Supporting jurisprudence thus outlined the following requisites for a search warrant's validity, the absence of even one will cause its downright nullification: (1) it must be issued upon probable cause; (2) the probable cause must be determined by the judge himself and not by the applicant or any other person; (3) in the determination of probable cause, the judge must examine, under oath or affirmation, the complainant and such witnesses as the latter may produce; and (4) the warrant issued must particularly describe the place to be searched and persons or things to be seized." Seizure is limited to those items particularly described in a valid search warrant. Searching officers are without discretion regarding what articles they shall seize. Evidence seized on the occasion of such an unreasonable search and seizure is tainted and excluded for being the proverbial "fruit of a poisonous tree." In the language of the fundamental law, it shall be inadmissible in evidence for any purpose in any proceeding.

In this case, the firearm was not found inadvertently and in plain view. It was found as a result of a meticulous search in the kitchen of petitioner's house. This firearm, to emphasize, was not mentioned in the search warrant. Hence, the seizure was illegal. The seizure without the requisite search warrant was in plain violation of the law and the Constitution. True that as an exception, the police may seize without warrant illegally possessed firearm or any contraband for that matter, inadvertently found in plain view. However, "[t]he seizure of evidence in 'plain view' applies only where the police officer is not searching for evidence against the accused, but inadvertently comes across an incriminating object." Specifically, seizure of evidence in "plain view" is justified when there is:

(a) a prior valid intrusion based on the valid

warrantless arrest in which the police are legally present in the pursuit of their official duties;
(b) the evidence was inadvertently discovered by the police who had the right to be where they are;
(c) the evidence must be immediately apparent, and
(d) "plain view" justified mere seizure of evidence without further search.
Hence, the petitioner rightly rejected the firearm as planted and not belonging to him. The prosecution was not able to prove that the firearm was in the effective possession or control of the petitioner without a license. In illegal possession of firearms, the possessor must know of the existence of the subject firearm in his possession or control. "In People v. de Gracia, we clarified the meaning of possession for the purpose of convicting a person under P. D. No. 1866, thus: x x x 'In the present case, a distinction should be made between criminal intent and intent to possess. While mere possession without criminal intent is sufficient to convict a person for illegal possession of a firearm, it must still be shown that there was *animus possidendi* or an intent to possess on the part of the accused.' x x x x Hence, the kind of possession punishable under P. D. No. 1866 is one where the accused possessed a firearm either physically or constructively with *animus possidendi* or intention to possess the same."
That is the meaning of *animus possidendi.* In the absence of *animus possidendi,* the possessor of a firearm incurs no criminal liability.
The same is true with respect to the 5.56 cal. magazine found in the bedroom of petitioner's daughter. The seizure was invalid and the seized items were inadmissible in evidence. As explained in People v. Doria, the "plain view" doctrine applies when the following requisites concur: (1) the law enforcement officer is in a position where he has a clear view of a particular area or has prior justification for an intrusion; (2) said officer inadvertently comes across (or sees in plain view) a piece of incriminating evidence; and (3) it is immediately apparent to such officer that the item he sees may be evidence of a crime or a contraband or is otherwise subject to seizure."
With particular reference to the two 2-way radios that the raiding policemen also seized in the bedroom of petitioner's daughter, there was absolutely no reason for the seizure. The radios were not contraband *per se.* The National Telecommunications Commission may license two-way radios at its discretion. The burden is on the prosecution to show that the two-way radios were not licensed. The National Telecommunication Commission is the sole agency authorized to seize unlicensed two-way radios. More importantly, admittedly, the two-way radios were not mentioned in the search warrant. We condemn the seizure as illegal and a plain violation of a citizen's right. Worse, the petitioner was not charged with illegal possession of the two-way radios.
Consequently, the confiscation of the two 2-way radios was clearly illegal. The possession of such radios is not even included in the charge of illegal possession of firearms (violation of P. D. No. 1866, as amended) alleged in the Information.
WHEREFORE, the Court hereby REVERSES the decision of the Court of Appeals in CA-G. R. CR No. 22255, promulgated on July 09, 1999.
The Court ACQUITS petitioner Vicente del Rosario y Nicolas of the charge of violation of P. D. No. 1866, as amended by R. A. No. 8294 (illegal possession of firearms and ammunition), in Criminal Case No. 800-M-96, Regional Trial Court, Bulacan, Branch 20, Malolos.
Costs *de oficio.*
The Chief, Firearms and Explosives Division, PNP shall return to petitioner his caliber .45 Colt

pistol, with Serial Number No. 70G23792, the five (5) extra magazines and twenty seven (27) rounds of live ammunition, and the two 2-way radios confiscated from him. The Chief, Philippine National Police, or his duly authorized representative shall show to this Court proof of compliance herewith within fifteen (15) days from notice. The .22 caliber revolver with Serial No. 48673, and eight (8) live ammunition and the magazine for 5.56 mm. caliber Armalite rifle are confiscated in favor of the government.
SO ORDERED.
Davide, Jr., C.J., (Chairman), Puno, and Ynares-Santiago, JJ., concur.

Q: What is discretionary notice?
A: *Discretionary* – a court may take judicial notice of matters which are:
1. Of public knowledge;
2. Capable of unquestionable demonstration; or
3. Ought to be known to judges because of their judicial functions *(Sec. 2)*.

FIRST DIVISION
[G.R. No. 142295. May 31, 2001]
VICENTE DEL ROSARIO y NICOLAS, *petitioner*, *vs*. PEOPLE OF THE PHILIPPINES, *respondent*.
D E C I S I O N
PARDO, *J.*:
Petitioner Vicente del Rosario y Nicolas appeals *via* certiorari from a decision of the Court of Appeals affirming with modification the decision of the Regional Trial Court, Bulacan, Branch 20, Malolos, and finding him guilty beyond reasonable doubt of violation of P. D. No. 1866, as amended by Republic Act No. 8294 (illegal possession of firearms), sentencing him to four (4) years, nine (9) months and eleven (11) days of *prision correccional,* as minimum, to six (6) years, eight (8) months and one (1) day of *prision mayor,* as maximum, and to pay a fine of P30,000.00.
On June 17, 1996, Assistant Provincial Prosecutor Eufracio S. Marquez of Bulacan filed with the Regional Trial Court, Bulacan, Malolos an Information charging petitioner Vicente del Rosario y Nicolas with violation of P. D. No. 1866, as follows:
"That on or about the 15th day of June 1996, in the municipality of Norzagaray, Province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously have in his possession under his custody and control, the following, to wit:
"a) One (1) pc. Pistol Cal. 45 SN:70G23792 (w/o license)
"b) One (1) pc. Revolver Cal. 22 SN:48673 (w/o license)
"c) Twenty Seven (27) rds live ammos. For cal. .45
"d) Five (5) pcs. Magazines for cal. .45
"e) Eight (8) rds live ammunitions for cal. 22
"f) Five (5) pcs. Magazines short for cal. 5.56 (M16)
"g) Twenty (20) rds live ammunitions for cal 5.56
"without first having obtained a proper license therefor.
"Contrary to law."
On June 25, 1996, the trial court arraigned the petitioner. He pleaded not guilty. Trial ensued.
The facts, as found by the Court of Appeals, are as follows:
"Sometime in May 1996, the police received a report that accused-appellant Vicente del Rosario was in possession of certain firearms without the necessary licenses. Acting upon the report, P/Sr. Insp. Jerito Adique of the PNP Criminal Investigation Group at Camp Olivas, Pampanga inquired from the PNP Firearms and Explosive Division whether or not the report was true. On May 10, 1996, P/Sr. Insp. Edwin C. Roque of the PNP Firearms and Explosives Division issued a certification (Exhibit L) stating that per records in his office, the appellant is

not a licensed/registered firearm holder of any kind and caliber. Armed with the said certification, P/Sr. Insp. Adique applied for a search warrant to enable his team to search the house of appellant.

"On June 13, 1996, a search warrant (Exhibit A) was issued by Judge Gil Fernandez, Sr. of the Regional Trial Court of Quezon City, Branch 217, authorizing the search of the residence of appellant at Barangay Tigbe, Norzagaray, Bulacan. On June 15, 1996, at about 7:00 o'clock in the morning, a team led by P/Sr. Insp. Adique went to Norzagaray to serve the warrant. Before proceeding to the residence of the appellant, the police officers requested Barangay Chairman Rogelio de Silva and Barangay Councilman Aurelio Panteleon to accompany them in the implementation of the warrant. Upon arrival at the house of appellant, the police officers introduced themselves to the wife of appellant. When the appellant came out, P/Sr. Insp. Adique informed him that they had a search warrant and that they were authorized to search his house. After appellant gave his permission, the police officers conducted a search of the house. The search yielded the following items: (a) a caliber .45 pistol with Serial No. 703792 with five magazines of caliber .45 (Exhibits B and H) found at the master's bedroom; (b) five magazines of 5.56 M-16 rifle and two radios (Exhibits C to C-4) found in the room of appellant's daughter; and (c) a caliber .22 revolver with Serial No. 48673 (Exhibit F) containing 8 pieces of live ammunition (Exhibit M) found in the kitchen of the house. When asked about his license to possess the firearms, the appellant failed to produce any. This prompted the police officers to seize the subject firearms.

"SPO2 Marion Montezon, one of the searching officers, prepared three separate inventories of the seized items (Exhibits H, M and N). The inventories were signed by P/Sr. Insp. Adique, the appellant and the barangay officials who witnessed the search. Thereafter SPO2 Montezon prepared a certification of orderly search (Exhibit I) which was signed by the appellant and the barangay officials attesting to the orderly conduct of the search.

"For his defense, appellant contends that he had a license for the caliber .45 pistol recovered in his bedroom and that the other items seized during the search including the caliber .22 revolver, were merely planted by the police officers. Appellant likewise assails the manner in which the search was carried out, claiming that the police officers just barged into his house without asking permission. Furthermore, he claimed that the barangay officials arrived only after the police already had finished the search.

"After trial and on July 2, 1998, the trial court rendered a judgment of conviction, the dispositive portion of which reads:

"WHEREFORE, premises considered, the Court finds the accused VICENTE DEL ROSARIO y NICOLAS guilty beyond reasonable doubt of violation of P. D. No. 1866 as charged under the Information dated June 17, 1996.

"Conformably with the provisions of said law, as amended by Republic Act No. 8294, and pursuant to the provisions of the Indeterminate Sentence Law, the Court hereby sentences the accused to suffer imprisonment of six (6) months of arresto mayor, as minimum, to six (6) years of prision correctional, as maximum, and to pay a fine of Fifteen Thousand Pesos (P15,000.00)."

On July 20, 1998, petitioner appealed to the Court of Appeals, assailing the decision for being contrary to facts and the law.

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Hence, this appeal.

Petitioner submits that the search conducted at his residence was illegal as the search warrant was issued in violation of the Constitution and consequently, the evidence seized was inadmissible. He also submits that he had a license for the .45 caliber firearm and ammunition seized in his bedroom. The other firearm, a .22 caliber revolver seized in a drawer at the kitchen of his house, a magazine for 5.56 mm. cal. Armalite rifle, and two 2-way radios found in his daughter's bedroom, were either planted by the police or illegally seized, as they were not mentioned in the search warrant.

We find the petition impressed with merit.

We define the issues as follows:

First: whether petitioner had a license for the .45 caliber Colt pistol and ammunition seized in his bedroom; and

Second: whether the .22 caliber revolver seized in a drawer at the kitchen of his house, a magazine for 5.56 mm. cal. Armalite rifle and two 2-way radios found in his daughter's bedroom, were planted by the police or were illegally seized.

We shall resolve the issues *in seriatim.*

First: The .45 cal. Colt pistol in question was duly licensed.

Normally, we do not review the factual findings of the Court of Appeals and the trial courts. However, this case comes within the exceptions. The "findings of fact by the Court of Appeals will not be disturbed by the Court unless these findings are not supported by evidence." In this case, the findings of the lower courts even directly contradict the evidence. Hence, we review the evidence. The trial court held that the copy of the license presented was blurred, and that in any event, the court could rely on the certification dated May 10, 1996, of P/Sr. Inspector Edwin C. Roque, Chief, Records Branch, Firearms and Explosives Division, Philippine National Police stating that Vicente "Vic" del Rosario of Barangay **Bigte,** Norzagaray, Bulacan is not a licensed/registered firearm holder of any kind and caliber. As against this, petitioner submitted that he was not the person referred to in the said certification because he is Vicente del Rosario y Nicolas from Barangay **Tigbe,** Norzagaray, Bulacan. The Court takes judicial notice of the existence of both barangay Tigbe and barangay Bigte, in Norzagaray, Bulacan. In fact, the trial court erred grievously in not taking judicial notice of the barangays within its territorial jurisdiction, believing the prosecution's submission that there was only barangay Tigbe, and that barangay Bigte in the certification was a typographical error.

Petitioner presented to the head of the raiding team, Police Senior Inspector Jerito A. Adique, Chief, Operations Branch, PNP Criminal Investigation Command, a valid firearm license. The court is duty bound to examine the evidence assiduously to determine the guilt or innocence of the accused. It is true that the court may rely on the certification of the Chief, Firearms and Explosives Division, PNP on the absence of a firearm license. However, such certification referred to another individual and thus, cannot prevail over a valid firearm license duly issued to

petitioner. In this case, petitioner presented the printed computerized copy of License No. RCL 1614021915 issued to him on July 13, 1993, expiring in January 1995, by the Chief, Firearms and Explosives Division, PNP under the signature of Reynaldo V. Velasco, Sr. Supt. (GSC) PNP, Chief, FEO. On the dorsal side of the printed computerized license, there is stamped the words "Validity of computerized license is extended until renewed license is printed" dated January 17, 1995, signed by Police Chief Inspector Franklin S. Alfabeto, Chief, Licence Branch, FEO. Coupled with this indefinite extension, petitioner paid the license fees for the extension of the license for the next two-year period.

Consequently, we find that petitioner was the holder of a valid firearm license for the .45 caliber Colt pistol seized in the bedroom of his house on June 15, 1996. As required, petitioner presented the license to the head of the raiding team, Police Senior Inspector Jerito A. Adique of the Criminal Investigation Division Group, PNP. As a senior police officer, Senior Inspector Adique could easily determine the genuineness and authenticity of the computerized printed license presented. He must know the computerized license printed form. The stamp is clearly visible. He could decipher the words and the signature of the authorized signing official of the Firearms and Explosives Division, PNP. He belonged to the same national police organization.

Nevertheless, Senior Insp. Adique rejected the license presented because, according to him, it was expired. However, assuming that the license presented was expired during the period January 1995 to January 1997, still, possession of the firearm in question, a .45 caliber Colt pistol with serial No. 70G23792, during that period was not illegal. The firearm was kept at home, not carried outside residence. On June 15, 1996, at the time of the seizure of the firearm in question, **possession of firearm with an expired license was not considered unlawful,** provided that the license had not been cancelled or revoked. Republic Act No. 8294, providing that possession of a firearm with an expired license was unlawful took effect only on July 7, 1997. It could not be given retroactive effect.

According to firearm licensing regulations, the renewal of a firearm license was automatically applied for upon payment of the license fees for the renewal period. The expired license was not cancelled or revoked. It served as temporary authority to possess the firearm until the renewed license was issued. Meantime, the applicant may keep the gun at home pending renewal of the firearm license and issuance of a printed computerized license. He was not obliged to surrender the weapon. Printed at the dorsal side of the computerized license is a notice reading:

"IMPORTANT

1. This firearm license is valid for two (2) years. Exhibit this license whenever demanded by proper authority.
2. Surrender your firearm/s to the nearest PNP Unit upon **revocation or termination** of this license. Under any of the following instances, your license shall be revoked for which reason your firearm/s is/are subject to confiscation and its/their forfeiture in favor of the government.

a. Failure to notify the Chief of PNP in writing of your change of address, and/or qualification.
b. Failure to **renew** this license **by paying annual license, fees, within six (6) months from your birth month. Renewal of your license can be made within your birth month** or month preceding your birth month. Late renewal shall be penalized with 50% surcharge for the first month (from the first day to the

last day of this month) followed by an additional 25% surcharge for all of the succeeding five (5) months compounded monthly.
c. Loss of firearm/s through negligence.
d. Carrying of firearm/s outside of residence without appropriate permit and/or carrying firearm/s in prohibited places.
e. Conviction by competent court for a crime involving moral turpitude or for any offense where the penalty carries an imprisonment of more than six (6) months or fine of at least P1,000.00.
f. Dismissal for cause from the service.
g. Failure to sign license, or sign ID picture or affix right thumbmark.
3. Unauthorized loan of firearm/s to another person is punishable by permanent disqualification and forfeiture of the firearm in favor of the government.
4. If termination is due to death, your next of kin should surrender your firearm/s to the nearest PNP Unit. For those within Metro Manila, surrender should be made with FEO, Camp Crame.
5. When firearms become permanently unserviceable, they should be deposited with the nearest PNP Unit and ownership should be relinquished in writing so that firearms may be disposed of in accordance with law.
6. Application for the purchase of ammunition should be made in case of a resident of Metro Manila direct to the Chief, FEO and for residents of a Province to secure recommendation letter to the nearest PNP Provincial Command who will thereafter endorse same to CHIEF, FEO for issuance of the permit. License must be presented before an authority to purchase ammo could be obtained."
Indeed, as heretofore stated, petitioner duly paid the license fees for the automatic renewal of the firearm license for the next two years upon expiration of the license in January 1995, as evidenced by official receipt No. 7615186, dated January 17, 1995. The license would be renewed, as it was, because petitioner still possessed the required qualifications. Meantime, the validity of the license was extended until the renewed computerized license was printed. In fact, a renewed license was issued on January 17, 1997, for the succeeding two-year period.
Aside from the clearly valid and subsisting license issued to petitioner, on January 25, 1995, the Chief, Philippine National Police issued to him a permit to carry firearm outside residence valid until January 25, 1996, for the firearm in question. The Chief, Philippine National Police would not issue a permit to carry firearm outside residence unless petitioner had a valid and subsisting firearm license. Although the permit to carry firearm outside residence was valid for only one year, and expired on January 25, 1996, such permit is proof that the regular firearm license was renewed and subsisting within the two-year term up to January 1997. "A Permit to Carry Firearm Outside Residence presupposes that the party to whom it is issued is duly licensed to possess the firearm in question." Unquestionably, on January 17, 1997, the Chief, Firearms and Explosives Division, PNP renewed petitioner's license for the .45 cal. Colt pistol in question. Clearly then, petitioner had a valid firearm license during the interregnum between January 17, 1995, to the issuance of his renewed license on January 17, 1997.
Finally, there is no rhyme or reason why the Court of Appeals and the trial court did not accept with alacrity the certification dated June 25, 1996, of P/Sr. Inspector Edwin C. Roque, Chief, Records Branch, Firearms and Explosives Division, PNP that Vicente N. del Rosario of Barangay Tigbe, Norzagaray, Bulacan is a licensed/registered holder of Pistol, Colt

caliber .45 with serial number 70G23792, covered by computerized license issued dated June 15, 1995, with an expiry date January 1997. Reinforcing the aforementioned certification, petitioner submitted another certification dated August 27, 1999, stating that Vicente N. del Rosario of Barangay Tigbe, Norzagaray, Bulacan, was issued firearm license No. RL-C1614021915, for caliber .45 Pistol with Serial Number 70G23792, for the years covering the period from July 13, 1993 to January 1995, and the extension appearing at the back thereof for the years 1995 to 1997. Had the lower courts given full probative value to these official issuances, petitioner would have been correctly acquitted, thus sparing this Court of valuable time and effort.

"In crimes involving illegal possession of firearm, the prosecution has the burden of proving the elements thereof, viz.: (a) the existence of the subject firearm and (b) the fact that the accused who owned or possessed it does not have the license or permit to possess the same. The essence of the crime of illegal possession is the possession, whether actual or constructive, of the subject firearm, without which there can be no conviction for illegal possession. After possession is established by the prosecution, it would only be a matter of course to determine whether the accused has a license to possess the firearm." "Possession of any firearm becomes unlawful only if the necessary permit or license therefor is not first obtained. The absence of license and legal authority constitutes an essential ingredient of the offense of illegal possession of firearm and every ingredient or essential element of an offense must be shown by the prosecution by proof beyond reasonable doubt. Stated otherwise, the negative fact of lack or absence of license constitutes an essential ingredient of the offense which the prosecution has the duty not only to allege but also to prove beyond reasonable doubt." "To convict an accused for illegal possession of firearms and explosives under P. D. 1866, as amended, two (2) essential elements must be indubitably established, viz.: (a) *the existence of the subject firearm or explosive* which may be proved by the presentation of the subject firearm or explosive or by the testimony of witnesses who saw accused in possession of the same, and (b) *the negative fact that the accused had no license or permit to own or possess the firearm or explosive* which fact may be established by the testimony or certification of a representative of the PNP Firearms and Explosives Unit that the accused has no license or permit to possess the subject firearm or explosive." x x x We stress that the essence of the crime penalized under P. D. 1866 is primarily the accused's lack of license or permit to carry or possess the firearm, ammunition or explosive as possession by itself is not prohibited by law." Illegal possession of firearm is a crime punished by special law, a *malum prohibitum,* and no malice or intent to commit a crime need be proved. To support a conviction, however, there must be possession coupled with intent to possess (*animus possidendi*) the firearm.

In upholding the prosecution and giving credence to the testimony of police officer Jerito A. Adigue, the trial court relied on the presumption of regularity in the performance of official duties by the police officers. This is a flagrant error because his testimony is directly contradictory to the official records of the Firearms and Explosives Division, PNP, which must prevail. Morever, the presumption of regularity can not prevail over the Constitutional presumption of innocence. Right from the start, P/Sr. Insp. Jerito A. Adigue was aware that petitioner possessed a valid license for the caliber .45 Colt pistol in question. Despite this

fact, P/Sr. Insp. Adigue proceeded to detain petitioner and charged him with illegal possession of firearms. We quote pertinent portions of the testimony of petitioner:
"Q: What else did Adigue tell you after showing to him the license of your cal. .45 pistol and the alleged cal. .22 found in a drawer in your kitchen?
A: He told me that since **my firearm is licensed,** he will return my firearm, **give him ten thousand pesos** (P10,000.00) and for me to tell who among the people in our barangay have unlicensed firearm, sir.
Q: How did he say about the ten thousand pesos?
A: He said "palit kalabaw na lang tayo" sir.
Q: And what did you answer him?
A: I told him my firearm is licensed and I do not have money, if I have, I will not give him, sir, because he was just trying to squeeze something from me.
Q: How about the unlicensed firearms in your barangay which he asked from you?
A: I said I do not know any unlicensed firearm in our barangay, sir.
Q: About the .22 cal. pistol, what was your answer to him?
A: I told him that it was not mine, they planted it, sir.
Q: What did he say next?
A: He said that it is your word against mine, the **Court will believe me because I am a police officer, sir.**
Q: What was your comment to what he said?
A: I said my firearm is licensed and we have Courts of law who do not conform with officials like you and then he laughed and laughed, sir."
The trial court was obviously misguided when it held that "it is a matter of judicial notice that a caliber .45 firearm can not be licensed to a private individual." This ruling has no basis either in law or in jurisprudence.

Second issue. The seizure of items not mentioned in the search warrant was illegal. With respect to the .22 caliber revolver with Serial No. 48673, that the police raiding team found in a drawer at the kitchen of petitioner's house, suffice it to say that the firearm was not mentioned in the search warrant applied for and issued for the search of petitioner's house.
"Section 2, Article III of the Constitution lays down the general rule that a search and seizure must be carried out through or on the strength of a judicial warrant, absent which such search and seizure becomes 'unreasonable' within the meaning of said constitutional provision."
"Supporting jurisprudence thus outlined the following requisites for a search warrant's validity, the absence of even one will cause its downright nullification: (1) it must be issued upon probable cause; (2) the probable cause must be determined by the judge himself and not by the applicant or any other person; (3) in the determination of probable cause, the judge must examine, under oath or affirmation, the complainant and such witnesses as the latter may produce; and (4) the warrant issued must particularly describe the place to be searched and persons or things to be seized." Seizure is limited to those items particularly described in a valid search warrant. Searching officers are without discretion regarding what articles they shall seize. Evidence seized on the occasion of such an unreasonable search and seizure is tainted and excluded for being the proverbial "fruit of a poisonous tree." In the language of the fundamental law, it shall be inadmissible in evidence for any purpose in any proceeding.
In this case, the firearm was not found inadvertently and in plain view. It was found as a result of a meticulous search in the kitchen of petitioner's house. This firearm, to emphasize, was not mentioned in the search warrant. Hence, the seizure was illegal. The seizure without the

requisite search warrant was in plain violation of the law and the Constitution. True that as an exception, the police may seize without warrant illegally possessed firearm or any contraband for that matter, inadvertently found in plain view. However, "[t]he seizure of evidence in 'plain view' applies only where the police officer is not searching for evidence against the accused, but inadvertently comes across an incriminating object." Specifically, seizure of evidence in "plain view" is justified when there is:

(a) a prior valid intrusion based on the valid warrantless arrest in which the police are legally present in the pursuit of their official duties;

(b) the evidence was inadvertently discovered by the police who had the right to be where they are;

(c) the evidence must be immediately apparent, and

(d) "plain view" justified mere seizure of evidence without further search.

Hence, the petitioner rightly rejected the firearm as planted and not belonging to him. The prosecution was not able to prove that the firearm was in the effective possession or control of the petitioner without a license. In illegal possession of firearms, the possessor must know of the existence of the subject firearm in his possession or control. "In People v. de Gracia, we clarified the meaning of possession for the purpose of convicting a person under P. D. No. 1866, thus: x x x 'In the present case, a distinction should be made between criminal intent and intent to possess. While mere possession without criminal intent is sufficient to convict a person for illegal possession of a firearm, it must still be shown that there was *animus possidendi* or an intent to possess on the part of the accused.' x x x x Hence, the kind of possession punishable under P. D. No. 1866 is one where the accused possessed a firearm either physically or constructively with *animus possidendi* or intention to possess the same." That is the meaning of *animus possidendi.* In the absence of *animus possidendi,* the possessor of a firearm incurs no criminal liability.

The same is true with respect to the 5.56 cal. magazine found in the bedroom of petitioner's daughter. The seizure was invalid and the seized items were inadmissible in evidence. As explained in People v. Doria, the "plain view" doctrine applies when the following requisites concur: (1) the law enforcement officer is in a position where he has a clear view of a particular area or has prior justification for an intrusion; (2) said officer inadvertently comes across (or sees in plain view) a piece of incriminating evidence; and (3) it is immediately apparent to such officer that the item he sees may be evidence of a crime or a contraband or is otherwise subject to seizure."

With particular reference to the two 2-way radios that the raiding policemen also seized in the bedroom of petitioner's daughter, there was absolutely no reason for the seizure. The radios were not contraband *per se.* The National Telecommunications Commission may license two-way radios at its discretion. The burden is on the prosecution to show that the two-way radios were not licensed. The National Telecommunication Commission is the sole agency authorized to seize unlicensed two-way radios. More importantly, admittedly, the two-way radios were not mentioned in the search warrant. We condemn the seizure as illegal and a plain violation of a citizen's right. Worse, the petitioner was not charged with illegal possession of the two-way radios. Consequently, the confiscation of the two 2-way radios was clearly illegal. The possession of such radios is not even included in the charge of illegal possession of firearms (violation of P. D. No. 1866, as amended) alleged in the

Information.
WHEREFORE, the Court hereby REVERSES the decision of the Court of Appeals in CA-G. R. CR No. 22255, promulgated on July 09, 1999.
The Court ACQUITS petitioner Vicente del Rosario y Nicolas of the charge of violation of P. D. No. 1866, as amended by R. A. No. 8294 (illegal possession of firearms and ammunition), in Criminal Case No. 800-M-96, Regional Trial Court, Bulacan, Branch 20, Malolos.
Costs *de oficio.*
The Chief, Firearms and Explosives Division, PNP shall return to petitioner his caliber .45 Colt pistol, with Serial Number No. 70G23792, the five (5) extra magazines and twenty seven (27) rounds of live ammunition, and the two 2-way radios confiscated from him. The Chief, Philippine National Police, or his duly authorized representative shall show to this Court proof of compliance herewith within fifteen (15) days from notice. The .22 caliber revolver with Serial No. 48673, and eight (8) live ammunition and the magazine for 5.56 mm. caliber Armalite rifle are confiscated in favor of the government.
SO ORDERED.
Davide, Jr., C.J., (Chairman), Puno, and Ynares-Santiago, JJ., concur.

SECOND DIVISION

[G.R. No. 128720. January 23, 2002]

S/SGT. ELMER T. VERGARA, *petitioner, vs.* PEOPLE OF THE PHILIPPINES, *respondent.*

D E C I S I O N

QUISUMBING, *J.*:

Petitioner seeks the reversal of the Court of Appeals' decision dated October 31, 1996, in CA-G.R. No. CR 18318, which affirmed the judgment of the Regional Trial Court of Pasig City, Branch 167, in Criminal Case No. 86163, convicting him of robbery, thus:

WHEREFORE, judgment is hereby rendered finding the accused S/Sgt. Elmer Vergara GUILTY beyond peradventure of doubt of the crime of Robbery defined and penalized under Art. 294, No. (5), in relation to Art. 295, of the Revised Penal Code and is hereby sentenced to an indeterminate penalty of Four (4) years of *prision correcional*, as minimum, to Eight (8) years and Twenty-One (21) days of *prision mayor*, as maximum; to indemnify the offended party in the sum of P106,000.00; to suffer all the accessory penalties appurtenant thereto; and, to pay the Costs.

SO ORDERED.

The facts of the case are as follows:

On March 19, 1991, an information charging S/Sgt. Elmer Vergara, PC, C1C Nicasio Custodio y Abrera, PC and Leonido Losanes y Vasquez of robbery in band was filed by the Rizal Provincial Prosecutor's Office with the RTC of Pasig, Metro Manila. The information reads:

That on or about the 19th day of October, 1990, in the Municipality of Mandaluyong, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together with John Doe, whose true identity and present whereabout is still unknown, and mutually helping and aiding one another, armed with high powered handguns, with intent of gain, by means of violence and intimidation employed upon the person of one Catherine F. Manalo, an employee of J & E Manalo Construction Co., Inc., who was then aboard a private car, did then and there wilfully, unlawfully and feloniously take, steal and

divest from Catherine F. Manalo the payroll money amounting to ₱89,000.00 belonging to J & E Manalo Construction Company, Inc. and a gold necklace with two (2) pendants, 18K valued at ₱17,000 belonging to Catherine F. Manalo, to the damage and prejudice of J & E Manalo Construction Company, Inc. and Catherine F. Manalo in the aforementioned amounts of ₱89,000.00 and ₱17, 000.00 respectively.

Contrary to law.

Although all the suspects were brought into police custody, petitioner's co-accused managed to extricate themselves from police control and remain at large. Only petitioner was left to face the charges. On May 21, 1993, he was arraigned. With the assistance of counsel *de oficio*, he pleaded "not guilty" to the charges. Following the pre-trial conference on August 20, 1993, trial on the merits ensued.

The prosecution relied on the positive identification made by private complainant who testified in court. As found by the court *a quo:*

x x x

On October 27, 1990, during the police line-up at the San Juan Police Station…she positively identified herein accused Elmer Vergara as the armed man who pointed the gun at her after he approached the left side of the car and wearing an army fatigue uniform with black hat and who got her car keys, thereafter, she executed another statement implicating accused Elmer Vergara as one of the four armed men who robbe[d] her.

On March 16, 1994, during the hearing of the case, she (Catherine F. Manalo) again pointed to accused Elmer Vergara to be one of the robbery/hold-up gang members (HULIDAP), who took the payroll money of the J & E Manalo Construction Co., Inc., and her gold necklace, his participation being that of the person who pointed the gun at her and got the keys to her car; she remembered him to be about 5'6" to 5'7" in height, with dark features, chubby and heavily built.

Petitioner claimed an alibi, while denying any participation in the offense. The trial court summed up his defense as follows:

Accused Elmer Vergara lays a serious doubt on his identity as one of the perpetrators of the robbery 'hold-up' in question…Claiming innocence, he presented evidence showing that he was at some other place during the occurrence of the robbery. His alleged presence at the Pacita Complex at San Pedro, Laguna, being a member of the narcotic operatives engaged in a surveillance of a suspected drug pusher, was corroborated by no less than the team leader Captain, now Major Christopher Laxa. Major Christopher Laxa was definite in declaring that S/Sgt. Elmer Vergara was physically present inside the Pizza Hut restaurant at Pacita Complex, San Pedro Laguna, at about 3:00 o'clock in the afternoon of October 19, 1990 and, that he did not leave the area from the time of their arrival at around 1:00 o'clock in the morning until 11:30 o'clock in the evening.…

The trial court chose to believe the prosecution and disregarded petitioner's alibi. On March 29, 1995, it convicted Vergara not of robbery in band as charged in the information, however, but of robbery as defined and penalized under Article 294 of the Revised Penal Code. As explained by the trial court:

Under Art. 295 of the Revised Penal Code a robbery shall be deemed to have been committed by a band <u>when more than three</u>

armed malefactors (underline supplied) take part in its commission. The prosecution's evidence demonstrates that only three (3) in the group were armed, although there was another member inside the car at the time of the commission. However, there is no indication that the person inside the car was armed. Conceding in gratia argumenti, therefore, that the group of the accused Elmer Vergara was composed of more than three (3) malefactors, the evidence disclosed that only three (3) were armed, and hence, the crime cannot be considered to have been committed by a band and does not come within the purview of Article 296 of the Revised Penal Code, which requires more than three (3) armed malefactors to constitute the crime of robbery committed by a band.

In convicting petitioner for robbery, the trial court stated:

Both the defenses of negative identification and alibi are unavailing. Contrary to these protestations, complainant Catherine Manalo had a vivid recollection of the identity of S/Sgt. Elmer Vergara as the person who accosted her on the left side of the car or at the driver's seat and who poked a gun at her neck and was also the one who took the key from the ignition. It was a clear day, 3:00 o'clock in the afternoon, and the probability of a poor recollection is nil. Catherine Manalo was able to see Sgt. Elmer Vergara while on board the Gallant (sic) Sigma Car when it was trailing her car and also at the time it was passing her car until her path was blocked and the three (3) armed malefactors disembarked. She had sufficient time to recollect the faces of the persons who approached the car and their respective positions. There is no reason to doubt her unerring testimony that she was able to positively remember and then later on identified the robbers. Between the positive declaration of Catherine Manalo and the denial of accused Elmer Vergara, the former deserves more credence, notwithstanding minor inaccuracies as to the height and weight and styling of the hair of accused Elmer Vergara.

x x x

Conceding the fact that accused Elmer Vergara was in San Pedro, Laguna, it is not physically impossible for him to have gone to Pasig, Metro Manila, considering that he had an available means of transportation. The distance between San Pedro, Laguna where the accused claimed he was at the time the robbery took place, and Pasig, Metro Manila, where the crime was committed, is less than an hour drive by car and can easily be reached by one who, like the accused Elmer Vergara, had a car available to him.

Aggrieved by his conviction, Vergara elevated the case to the Court of Appeals, docketed as CA-G.R. CR No. 18318, on the sole issue of whether or not petitioner committed the crime charged against him. The appeal was anchored on two grounds: (1) the alleged dubious identification of Vergara by the private complainant, and (2) failure of the trial court to appreciate Vergara's alibi that he was on an intelligence mission in San Pedro, Laguna at the time the alleged robbery, specially in view of the corroboration of his alibi by his commanding officer.

Finding no reversible error in the findings and conclusions of the trial court, the Court of Appeals affirmed Vergara's conviction. The appellate court said:

In the case at bench (sic), the prosecution had proven the identity of accused-appellant beyond reasonable doubt through the testimonies of

prosecution witnesses Villanueva and Manalo. Appellant failed to controvert the testimony of prosecution witness Villanueva that accused-appellant was pointed to by witness Manalo out of nine (9) persons. Thus, the trial court had no reason to consider the identification made by witness Manalo in the police station as one that stemmed from a suggestive identification procedure used by the police.

The trial court was correct in regarding the difference in height as a minor matter. What is vital is that the witness recognized accused in the line-up and reiterated her identification of accused-appellant in open court. In the absence of ill-motive on her part to testify falsely against accused-appellant, the trial court is correct in giving full faith and credence to the testimony of witness Manalo.

Petitioner timely filed a motion for reconsideration, but it was denied by the appellate court in its resolution of March 26, 1997.

Insisting on his innocence, petitioner now submits to this Court the following sole assignment of error:

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN GIVING MORE CREDENCE TO THE TESTIMONY OF COMPLAINANT CATHERINE MANALO THAN THE TESTIMONIES OF THE ACCUSED AND HIS WITNESS AND CONSEQUENTLY FURTHER ERRED IN FINDING THE ACCUSED GUILTY OF THE CRIME BEYOND REASONABLE DOUBT.

The issue of whether or not the guilt of the accused had been proven beyond reasonable doubt hinges, in our view, on the credibility of witnesses presented by the prosecution and the defense. Crucial in this regard is the identification made by the complaining witness, Catherine Manalo, of the petitioner, Sgt. Elmer T. Vergara, as one of the malefactors.

Petitioner vehemently insists that the contradictions in Catherine Manalo's testimony are not mere minor inconsistencies. According to petitioner, while private complainant below described him as around 5'6"-5'7" tall, weighing about 160-165 lbs., and sporting a military haircut; in truth, he is only 5'3-1/2" tall, tips the scale at less than 150 lbs., and had long hair at the time of the incident. Given these discrepancies, petitioner insists that private complainant below must have been referring to another person and not to him.

Basically, petitioner's contention raises questions of facts, which traditionally fall within the province of the trial court and the Court of Appeals. After reviewing the records of this case, we find no reason to disturb the assessment of the trial court of all the pieces of evidence submitted before it, particularly as its findings and conclusions had been affirmed by the appellate court.

In this case, petitioner has been convicted on the basis of the positive identification made by private complainant below. As the Court of Appeals stressed, petitioner was categorically identified by the private complainant not just once, but twice, as one of the armed men who robbed her. The first time was during the police line-up of nine (9) persons on October 27, 1990 and the second time was during her testimony in open court. The records show that private complainant had no motive to falsely testify against petitioner. We agree with the lower courts that the discrepancies in the private complainant's description are not decisive. Her

description was based on visual estimates, which cannot be expected to be perfect. What is decisive is that petitioner was positively and categorically identified as one of the robbers, not just once but twice, by private complainant, Catherine Manalo. Her recollection of his description might suffer from imperfection regarding his height, weight and personal appearance. But we note less. Jurisprudence recognizes that victims of crime have a penchant for seeing the faces and features of their attackers, and remembering them. That some variance as to petitioner's height and weight might exist in her recollection, in comparison to his statistical measurement does not destroy her credibility. That the trial court found this variance inconsequential does not render its findings on the credibility of witnesses erroneous. Such findings are accorded great respect and will be sustained by the appellate courts unless the trial court overlooked, misunderstood, or misapplied some facts or circumstances of weight and substance which could alter the decision or affect the result of the case. Here, the important thing is that complaining witness Catherine Manalo identified the petitioner as one of the perpetrators of the robbery twice, without any presumptions or suggestion from the police at the line-up or the court at the trial.

Petitioner also argues that the prosecution failed to contradict his alibi. He submits that the prosecution failed to prove that he had a car available to him, or that he drove one from San Pedro, Laguna to Pasig, Metro Manila. Petitioner further insists that the trial court's finding that the place where the crime was committed is less than an hour's drive by car and can easily be reached by one who, like petitioner, had a car available to him, is erroneous and unsupported by the evidence on record.

Judicial notice could be taken of the travel time by car from San Pedro, Laguna to Pasig City, Metro Manila, because it is capable of unquestionable demonstration, and nowadays is already of public knowledge, especially to commuters. We find no error in the trial court's finding that it was not impossible for petitioner to be at the scene of the crime, despite his alibi that he was engaged in intelligence work in San Pablo Laguna that same afternoon of October 19, 1990.

For alibi to prosper, it would not be enough for the accused to prove that he was elsewhere when the crime was committed. He must further demonstrate that it would have been physically impossible for him to have been at the scene of the crime at the time of its commission. It is essential that credible and tangible proof of physical impossibility for the accused to be at the scene of the crime be presented to establish an acceptable alibi. Petitioner failed to meet this test. While petitioner could have been working as intelligence agent in San Pedro, Laguna from October 19 –21, 1990, contrary to his claim, it was not physically impossible for him to have been in Pasig City, Metro Manila on the day of the commission of the crime.

Petitioner's insistence that he had no vehicle available to him is not supported by the testimony of his own commanding officer who testified in petitioner's defense, to wit:

FISCAL: CROSS EXAMINATION:

Q: Mr. Witness, what mode of transportation did you take in going to Laguna in (sic) October 19, 1990.
A: We used cars.
Q: What vehicle?
A: Toyota Corona '78 model and a Galant, old model.

Q: And in what particular vehicle did you yourself used?
A: Toyota Corona and another car as a back-up vehicle.
xxx
Q: Who arrived ahead, your car or the car of the accused?
A: We arrived together because we traveled not far with each other, we maintained the distance of three to five meters, ma'm.
Q: How many were you?
A: Normally, up to nine members of the team, but in that operation I think, seven or six members, ma'm.
xxx
Q: Who were the companions of Vergara where he was riding?
A: It was Sgt. San Jose who was driving the car, together with Sgt. Magno and Sgt. Rubi.
Q: How about you, who were your companions?
A: I was with the other car, with a civilian driver, and I cannot recall anymore whom I was with at the time.

Nor was his commanding officer's corroborative testimony of much help in sustaining petitioner's alibi, as shown by the following:

FISCAL:

What is your basis that Vergara was with you at about 3:00 in the afternoon of October 19, 1990?
A: What do you mean basis? His physical presence in the area is my basis, ma'm, that he was there.
Q: Do you keep an attendance record or attendance book of the members of the team?
A: We do not normally do it once we left for an operation, we believe it is not necessary to account every minute every hour of the operation, so long as we are in the area, target area and every body (sic) is posted on our designated position, as soon as the signal is already given then that's the time we will respond or arrest the guy, but I can say that Sgt. Vergara never left the place until the 21st of October, he was there in Pacita Complex, ma'm.
Q: In other cases where you conducted surveillance do you maintain a logbook?
A: The log book is filled up only, I mean we do the logging prior and after the operation, that's the time we placed the preparations or extent of our operation, that's the time we entered this in the log book and when we returned from the operation, we also registered about the result of the operation.
x x x
Q: You do not likewise keep a call or make a roll call or keep attendance record?
A: It is automatic ma'm, everytime, during the operation we see to it that all the persons were in the area at the time we registered ourselves in the logbook.
Q: In your team, who in particular is assigned to keep track of the attendance?
A: Being the team leader, I am the one in charge to keep the movements of every members (sic) of the team, but when I left on 19th October proceeding to Makati, I specifically gave instructions to maintain the operation and see to it that they have new informations (sic) or new development of the case they have to call me by radio so that I can come back in the area, that was the instruction to the assistant team leader whenever I left the area.
Q: So I understand that you do not go with the members of the team during the whole period or duration of the surveillance.
A: Sometimes, ma'm, there are instances. In that particular instance I left my men at about 1130 in the evening of 19th October, I left my team and back again in the early morning of 20 October.

There were far too many glaring lapses in the testimony of petitioner's corroborative witness

for petitioner's alibi to be given much weight, thus:

Q: And what was that particular mission in San Pedro, Laguna on October 19, 1990?
A: We were supposed to conduct a buy-bust operation with the aid of our informant, an errand boy of the subject pusher.
Q: Do you know the name of that informant?
A: I cannot recall.
xxx
Q: And in what particular place in Laguna was this suppose(d) surveillance that you will conduct?
A: I cannot recall the name of the street but I know the place, but the street name and the exact number I cannot recall.
xxx
Q: What place?
A: I cannot recall.
Q: What is the number?
A: I cannot recall.
Q: Who was the subject?
A: It was a certain alias German, ma'm.
xxx
COURT:
Is a certain Nicasio Custodio y Abrera a member of your team?
A: I think during that time.
xxx
COURT:
On October 19, 1990, will you recall if he was with you?
A: I cannot recall, your honor.

In the case of alibi, it is elementary that the requirements of time and place be strictly complied with by the defense, meaning that the accused must not only show that he was somewhere else but that it was also physically impossible for him to have been at the scene of the crime at the time it was committed.

In the light of private complainant's positive identification of petitioner as the perpetrator of the crime, the latter's defense of bare denial and alibi must necessarily fail, as her positive testimony overrides his negative testimony. Alibi is a weak defense that becomes even weaker in the face of positive identification of the accused. Further, an alibi cannot prevail over the positive identification of the petitioner by a credible witness who has no motive to testify falsely.

WHEREFORE, the instant petition is hereby DENIED. The decision of the Court of Appeals in CA-G.R. No. CR 18318 is hereby AFFIRMED. Costs against the petitioner.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena and De Leon, Jr., JJ., concur.

PEOPLE OF THE PHILIPPINES, plaintiff-appellee,
vs.
ANDRES PEÑAFLORIDA, accused-appellant.
1999 September 02
1st Division G.R. No. 130550 D E C I S I O N
DAVIDE, JR., C.J.:
Accused-appellant Andres Pe¤aflorida (hereafter ANDRES) appeals from the decision1 [Original Record (OR), 132. Per Judge Renato C. Francisco.] of the Regional Trial Court (RTC), Branch 19, Malolos, Bulacan, in Criminal Case No. 2683-M-94, dated 12 May 1997, finding him guilty of murder and sentencing him to suffer the penalty of reclusion perpetua and indemnify the heirs of the victim, SPO3 Eusebio Natividad, in the amount of P50,000.
The information,2 [Id., 2.] filed on 13 October 1994, charged ANDRES together with two other persons, whose identities are still unknown, with

murder, allegedly committed in this manner:
That on or about the 5th day of October, 1994, in the municipality of San Ildefonso, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused together with two (2) other persons, whose true names are still unknown and against whom the preliminary investigation has not yet been completed by the Office of the Provincial Prosecutor of Bulacan, armed with guns, and with intent to kill one SPO3 Eusebio Natividad, conspiring, confederating together and mutually helping one another did then and there wilfully, unlawfully and feloniously, with treachery, evident premeditation and use of superior strength, attack, assault and shoot with guns the said SPO3 Eusebio Natividad, hitting him on different parts of his body, thereby inflicting upon him mortal wounds which directly caused death.
ANDRES pleaded not guilty upon arraignment.3 [OR, 9.].
At the trial, the prosecution presented its eyewitness, Rodolfo de la Cruz (hereafter RODOLFO). He testified that at around 4:00 p.m. on 5 October 1994, he was resting on the terrace of his house at Pinaod, San Ildefonso, Bulacan, when he noticed an oncoming owner-type jeep. On board were the driver SPO3 Eusebio Natividad, RODOLFO's former CAFGU trainer and an unknown companion passenger. Suddenly, three men, each armed with a short pistol, blocked and stopped the jeep. One of the three armed men shouted: "Natividad katapusan mo na ito," (Natividad, this is your end). Afterwhich, the three gunmen simultaneously fired upon Natividad. When the assault ceased, one of the gunmen took Natividad's wallet and gun. The attackers then fled on board a vehicle.4 [TSN, 25 January 1995, 1-7.]
RODOLFO claimed that the killing took place in a small market (talipapa) about five armslength from his terrace, hence, he was able to see clearly the faces of Natividad's assailants.5 [Id.]
RODOLFO also recounted that seven days after the shooting incident or on 12 October 1994, he voluntarily proceeded to the 175th PC Detachment upon the invitation of the police authorities who were conducting the investigation on the matter. There, the police officers presented a man whom RODOLFO instantly recognized as one of NATIVIDAD's assailants, in particular, the one who took Natividad's gun and wallet. The police then informed RODOLFO that the man's name was ANDRES Pe¤aflorida. Armed with the name to match one of the faces he remembered as one of Natividad's attackers, RODOLFO voluntarily and promptly executed on that same day, a sworn statement narrating the events pertaining to the attack.6 [TSN, 25 January 1995, 8-9.] In open court, RODOLFO once again specifically pointed to ANDRES as one of the assailants of Natividad who seized the latter's gun and wallet.7 [Id., 5-6.]
After RODOLFO's testimony, the prosecution formally offered in evidence his aforementioned sworn statement as Exhibit "A" and Exhibit "A-1."8 [OR, 5.] It also offered in evidence the death certificate of Natividad as Exhibit "B,"9 [Id., 142.] which indicated that the cause of his death was massive hemorrhage due to multiple gunshot wounds. The defense raised no objections and admitted the exhibits. The prosecution then rested its case.10 [TSN, 20 May 1996, 5-6.]
The defense thereafter presented its witnesses ANDRES and his brother, Roberto Peñaflorida. ANDRES interposed alibi. He claimed that at around 4:30 p.m., on 5 October 1994, he was in the house of his brother, Roberto in Marulas, Bulacan where he assisted the latter in the repair of the chassis of some automobiles. He

did not leave Marulas that day hence, he could not be physically present in some other place, much less in San Ildefonso. He left Marulas only on 11 October 1994 upon his cousin's request to harvest palay at Sapang Palay. He was arrested on said date.11 [Id.]

ANDRES further denied ever knowing both Natividad and RODOLFO. Natividad certainly was not his enemy hence, ANDRES could not think of any reason why RODOLFO implicated him in the killing of Natividad.12 [TSN, 28 May 1996, 1-9.]

Roberto Pe¤aflorida corroborated the alibi of ANDRES. He maintained that he was working with ANDRES the whole day of 5 October 1994 in the repair of a Motherland bus. Roberto further declared that ANDRES had been living with him since December, 1993. There had been no occasion for ANDRES to leave Marulas except on 11 October 1994 when he was invited by a friend to go to San Ildefonso. A week later, Roberto learned that ANDRES had been arrested.13 [TSN, 3 September 1996, 4-6.]

The trial court considered said evidence of the defense as unworthy of belief. It instead gave full faith and credit to the evidence of the prosecution, particularly the testimony of the lone prosecution witness RODOLFO. It is convinced that RODOLFO positively identified ANDRES as one of the culprits who, using a short firearm, riddled the different parts of Natividad's body with bullets that led to his untimely demise. It assessed the testimony of RODOLFO as "clear, unequivocal, unmistakable and overwhelming leaving no room for doubt as to its veracity and conclusiveness."14 [Rollo, 16.]

The trial court then reiterated in its decision, the jurisprudential doctrine that RODOLFO's positive identification prevails over the uncorroborated and self-serving denial and alibi interposed by the defense.15 [Id., 18-19.]

The trial court also appreciated that treachery, evident premeditation and abuse of superior strength attended the killing of Natividad. It then convicted ANDRES of the crime of murder and sentenced him to suffer the penalty of reclusion perpetua and to indemnify the heirs of Natividad in the amount of P50,000. The dispositive portion of the decision16 [Id., 19.] reads, as follows:

Wherefore, based on the evidence on record, this Court finds the accused, ANDRES PEÑAFLORIDA, GUILTY beyond reasonable doubt of the crime of MURDER punishable under Art. 248 of the Revised Penal Code, the killing having been attended with aggravating circumstances of alevosia, evident premeditation and abuse of superior strength, and hereby sentences him to suffer the penalty of reclusion perpetua with the accessory penalties provided by law and to indemnify the heirs of SPO3 Eusebio Natividad the sum of P50,000.00 and to pay the costs.

ANDRES seasonably appealed from the decision. In his Appellant's Brief, ANDRES contends that the trial court erred in convicting him since he was not positively identified by RODOLFO. There was no positive identification because (a) RODOLFO could not have remembered the physical features of the three (3) gunmen, particularly ANDRES, given the short time that he (RODOLFO) had seen them and that previous to the incident he did not know any one of them;17 [Rollo, 41-42.] (b) RODOLFO did not identify ANDRES from a police line-up but was introduced to him (RODOLFO) alone;18 [Id., 43.] and (c) RODOLFO belatedly executed the sworn statement (Exhibit "A" and Exhibit "A-1"), albeit seven days after the shooting incident. With this, ANDRES insinuates that the police authorities "coached" RODOLFO in the

identification for he executed the sworn statement, propitiously on 12 October 1994, a day after ANDRES' arrest. ANDRES additionally points out that he was arrested not by virtue of a warrant of arrest but upon mere invitation by a certain police officer Palarca who brought him immediately to the 175th PC Detachment.19 [Id., 44.]

In its Appellee's Brief, the Office of the Solicitor General supports the trial court's decision and prays that the assailed decision be affirmed in toto.

The appeal is without merit.

Well settled is the rule that the ascertainment of the credibility of witnesses is best left to the determination of the trial court. This is so because the trial court is in a distinct advantageous position to examine the witnesses' deportment and manner of testifying. On appeal, its evaluation or assessment of the testimonies of witnesses is accorded great respect and finality in the absence of any indication that it overlooked certain facts or circumstances of weight and influence which, if considered, would alter the results of the case.20 [See People v. Gornes, 230 SCRA 270, 275 (1994)]

In this case, no cogent reasons were presented to disturb the factual findings of the trial court particularly on the assessment of the credibility of the prosecution eyewitness. The trial court ascertained that RODOLFO "categorically, unequivocably and repeatedly pointed to" ANDRES as one of the three armed men who ambushed and gunned down Natividad. It declared that RODOLFO positively identified ANDRES. We agree.

RODOLFO had all the opportunity to observe the horrible occurrence as he was only about five armslength from the scene of the crime. He had a good view of the assailants' physical and facial features. True, he had seen their faces for only a short span of time but that was all RODOLFO needed in order to remember their faces. Even if he did not know any one of the assailants previous to the incident, such a fact would not deter RODOLFO from remembering them. In fact, RODOLFO was so certain of the attackers' faces that he easily and quickly recognized ANDRES as one of them when he saw the latter at the 175th PC Detachment. It is therefore unnecessary for RODOLFO to have identified ANDRES from the police line-up. Besides, there is no law requiring a police line-up as an essential requisite for proper identification.21 [People v. Buntan, Sr., 221 SCRA 421, 430 (1993)] Further, no proof was adduced indicating that RODOLFO was coached by the police officers or improperly motivated in identifying ANDRES as one of Natividad's slayers.

As to the alleged delay in the execution of RODOLFO's sworn statement, it does not and will not impair his credibility as witness. This Court takes judicial notice of the actuality that witnesses in this country are usually reluctant to volunteer information about a criminal case or are unwilling to be involved in or dragged into criminal investigations.22 [People v. Landicho, 258 SCRA 1, 37 (1996)] Indeed, RODOLFO exhibited a natural human reaction. Although there was delay in the execution of his sworn statement, what matters is RODOLFO overcame his initial reluctance and fear to be involved by voluntarily participating in the police investigation and then openly testifying in court.

In sum, RODOLFO's positive identification of ANDRES as one of the authors of the crime

prevails over his defense of alibi.23 [See People v. Barlis, 231 SCRA 426, 439 (1994); People v. Pidia, 249 SCRA 687, 703 (1995); People v. Gomez, 251 SCRA 455, 470 (1995); People v. Quijada, 259 SCRA 191, 214 (1996)] Settled is the rule that alibi is the weakest of all defenses, for it is easy to contrive and difficult to prove.24 [See People v. Kyamko, 222 SCRA 183, 194 (1993); People v. Abo, 230 SCRA 612, 625 (1994); People v. de Leon, 248 SCRA 609, 623 (1995)] For such a defense to prosper, it is not enough for ANDRES to prove that he was somewhere else when the crime occurred, i.e., at Marulas, Bulacan but he must also demonstrate that it was physically impossible for him to have been at the scene of the crime at San Ildefonso, Bulacan, at the time of its commission.25 [See People v. Buka, 205 SCRA 567, 584 (1992); People v. Maqueda, 242 SCRA 565, 592 (1995); People v. Laurente, 255 SCRA 543, 565 (1996); People v. Alshaika, 261 SCRA 637, 646 (1996)] This, ANDRES failed to establish.

We will now discuss the trial court's assessment that all the aggravating circumstances alleged in the information attended the commission of the crime. We approve the trial court's correct appreciation of alevosia, but disapprove its determination of evident premeditation and abuse of superior strength.

For treachery to be considered, two elements must concur: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or retaliate; and (2) the means of execution were deliberately or consciously adopted.26 [See People v. De la Cruz, 207 SCRA 632, 650 (1992); People v. Garcia, 209 SCRA 164, 178 (1992); People v. Tampon, 258 SCRA 115, 132 (1996); People v. Tumaob, Jr., 291 SCRA 133, 138-139 (1998)]

Natividad's assailants unexpectedly appeared from nowhere to ambush him. The assailants were able to immediately establish strategic positions from which vantage point they simultaneously fired upon the victim, taking him by surprise. The stratagem ensured Natividad's helplessness, defenselessness and immobility. Thus, it can be said that ANDRES and his two (2) still unknown companions employed means of execution which gave Natividad no opportunity at all to defend himself and that the manner of execution was deliberately and consciously adopted. The fact that the attack was preceded by a cry or signal of "Natividad katapusan mo na ito," from ANDRES and his companions did not make such attack less treacherous. In the same vein, the frontal attack did not negate or lessen the presence of treachery.27 [People v. Tampon, id.; People v. De Manuel, 263 SCRA 49, 58-59 (1996)]

Like treachery, evident premeditation should be established by clear and positive evidence. Sifting through the records, we found a dearth of evidence establishing the requisites of evident premeditation, to wit: (1) the time when the accused determined to commit the crime; (2) an act manifestly indicating that the accused has clung to his determination; and (3) sufficient lapse of time between such determination and execution to allow him to reflect upon the consequences of his act.28 [See People v. Barba, 203 SCRA 436, 458 (1991); People v. Boniao, 217 SCRA 653, 672 (1993); People v. Cordova, 224 SCRA 319, 347-348 (1993); People v. Castillo, 289 SCRA 213, 228 (1998)] Hence, the finding thereof by the trial court in the absence of any evidentiary basis was but speculation. We have already ruled that mere presumptions and inferences, no matter how logical and probable they might be, would not suffice to establish evident premeditation.29 [See People v.

Villanueva, 265 SCRA 216, 226 (1996)]

For the similar reason that there must exist proof that the attackers deliberately took advantage of their superior strength, their apparent superiority in number vis-a-vis that of the victim, notwithstanding,30 [See People v. Castor, 216 SCRA 410, 421 (1992)] the aggravating circumstance of abuse of superior strength cannot be appreciated. Again, the records disclosed no such proof. In any event, even if abuse of superior strength was proved, it would still be absorbed by the qualifying aggravating circumstance of treachery.31 [1 Ramon C. Aquino, The Revised Penal Code, 376 (1987 ed.), citing authorities.]

One final point, ANDRES assails the regularity and validity of his arrest. He claims that his arrest without a warrant circumscribes the conditions for a valid warrantless arrest which are set forth in Section 5, Rule 113 of the Rules of Court, to wit:

SEC. 5. Arrest without a warrant when lawful. -- A peace officer or a private person may, without a warrant, arrest a person:

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

(b) When an offense has in fact been committed, and he has personal knowledge of facts indicating that the person to be arrested has committed it; and

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

In Filoteo v. Sandiganbayan,32 [263 SCRA 222, 264 (1996)] petitioner therein impugned the validity of his arrest on the ground that it was effected not by virtue of a warrant but by mere invitation. We observed therein that the claim was belatedly made, stressed that petitioner should have questioned the validity of his arrest before he entered his plea, and ruled that his failure to do so constituted a waiver of his right against unlawful restraint of liberty. We reiterate herein said ruling. Anyway, even if ANDRES was illegally arrested, it would not affect his culpability since an allegation of a warrantless arrest could not deprive the State of its right to convict the guilty when all the facts on the record pointed to his guilt.33 [See People v. Briones, 202 SCRA 708, 718-719 (1991); People v. Silan, 254 SCRA 491, 505 (1996). See also De Asis v. Romeo, 41 SCRA 235, 239-240 (1991)]
WHEREFORE, the instant appeal is hereby DISMISSED and the challenged 12 May 1997 decision of the Regional Trial Court, Branch 19, Malolos, Bulacan, in Criminal Case No. 2683-M-94, finding herein accused-appellant Andres Pe¤aflorida guilty beyond reasonable doubt of the crime of murder and sentencing him to suffer the penalty of reclusion perpetua and to indemnify the victim in the sum of P50,000 is hereby AFFIRMED.
No pronouncement as to costs.
SO ORDERED

Q: What is judicial admission?
A: It is an admission, verbal or written, made by a party in the course of the proceedings in the same case, which does not require proof *(Sec. 4)*.
Q: What are the elements of judicial admission?

A:
1. It must be made by a party to the case or his counsel;
2. It must be made in the course of the proceedings in the *same* case; and
3. It can be verbal or written admission. There is no particular form required.

Q: Distinguish judicial admission from extrajudicial admission.

JUDICIAL ADMISSIONS	**EXTRAJUDICIAL ADMISSIONS**
Those made in the course of the proceeding in the same case	Those made out of court or in a judicial proceeding other than the one under consideration
Do not require proof and may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.	Regarded as evidence and must be offered as such, otherwise the court will not consider it in deciding the case.
Judicial admissions need not be offered in evidence since it is not evidence. It is superior to evidence and shall be considered by the court as established.	Requires formal offer for it to be considered
Conclusive upon the admitter	Rebuttable
Admissible even if self-serving	Not admissible if self-serving
Subject to cross-examination	Not subject to cross-examination

Q: When are judicial admissions made?
A: It may be made by the party himself or by his counsel:
1. In the pleadings filed by the parties;
2. In the course of the trial either by verbal or written manifestations or stipulations, including depositions, written interrogatories and requests for admissions; or
3. In other stages of the judicial proceedings, as in pre-trial

EN BANC
[G.R. No. 139416. March 12, 2002]
PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, *vs*. ERNESTO HERMANES, *accused-appellant.*
D E C I S I O N
MELO, *J.*:
Before us on automatic review is the decision rendered by the Regional Trial Court of the 8th Judicial Region (Branch XXX, Basey, Samar) finding appellant Ernesto Hermanes guilty of the crime of rape and imposing upon him the supreme penalty of death.
The conviction of appellant stemmed from an Information dated September 25, 1996 which reads:
That on or about the 2nd day of November, 1995 at about 10:00 o'clock in the evening, at Brgy. Maligaya, Municipality of Sta. Rita, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of violence and intimidation, did, then and there, willfully, unlawfully and feloniously succeed in having carnal knowledge without the consent and against the will of the complainant MARINA HERMANES, inside her house, the accused being her step-father, with threats of killing her and all members of her family.
CONTRARY TO LAW.
(p. 7, Rollo.)
At his arraignment, appellant pleaded not guilty. Thereupon, trial ensued.
The relevant facts as presented by the prosecution are faithfully summarized in the brief submitted by the Solicitor General, to wit:
On or about November 2, 1995 at around ten o'clock in the evening, private complainant Marina Hermanes, who at that time was ten (10) years old, was in the house shared by appellant Ernesto Hermanes, her stepfather, and his wife Milagros (p. 6, TSN, July 22, 1997). Marina's natural mother already died (p. 135, Records). Marina further declared that she has been living with her stepfather, the appellant, and his wife Milagros since she was two (2) years old (p. 6, TSN, July 22, 1997).
Marina was lying in her bedroom when appellant entered and undressed her. Appellant opened his trousers, placed himself on top of private complainant, and successfully inserted his organ

("sili') into her vagina ("pipi"), Marina felt pain (p. 8, ibid.). Thereafter, appellant made a push and pull motion for quite some time (p. 9, ibid.). Having satisfied himself, appellant stood up, closed his trousers and left Marina alone to attend to his carabao (pp. 110-11, ibid.).
The following day at eight (8) o'clock in the morning, Marina proceeded to the house of Soltero Salubre, a Kagawad of their barangay at that time, and told him that her father, Ernesto Hermanes, raped her, and has raped her twice before the incident of November 2, 1995 (pp. 6, 12, TSN, January 14, 1998). Because of said complaint, Salubre brought Marina to the Department of Social Welfare and Development (DSWD) Office in Sta. Rita, Samar (p. 9, ibid.). Marina has since been in the custody of the DSWD Home for Girls (Abused) Children, Lingap Center, Palo, Leyte (p. 5, TSN, July 22, 1997).
(pp. 4-5, Appellee's Brief.)
On November 4, 1995, or 2 days after the rape, Marina was physically examined by the Municipal Health Officer of Sta. Rita, Dra. Rusela Grapa. Marina was found to have hymenal lacerations at the 3 and 7 o'clock positions, which, according to Dra. Grapa could have been caused by the insertion of male organ (tsn, November 11, 1996, p. 5). Moreover, on direct examination, Dra. Grapa testified that these lacerations were "fresh."
Q: When you examined the patient, what was then the nature of the lacerations? New or healing?
A: It was a fresh healing laceration. It was fresh but starting to heal.
Q: If these lacerations were fresh but healing, can you estimate the time of the incident?
A: Yes.
Q: And from your day of examination, when could have the incident happened?
A: Between 24 to 48 hours.
Q: This laceration, was this caused by sexual intercourse?
A: Yes.
(tsn, August 14, 1997, p. 10-11.)
As the prosecution was about to call its last witness on January 14, 1998, appellant, through counsel, manifested his desire to withdraw his previous plea of not guilty and to change the same to a plea of guilty. The trial court allowed him to do so. Thus, appellant was re-arraigned and, with the aid of his counsel, he subsequently pleaded guilty to the crime charged (Record, p. 86).
The change in plea notwithstanding, the prosecution continued with the presentation of its last witness in order to establish appellant's guilt and precise degree of culpability *(ibid.).*
Thereafter, on July 14, 1998, appellant, through new counsel Atty. Mario Nicolasora, filed a manifestation in court denying that he wanted to change his original plea of not guilty to guilty. Consequently, the trial court ordered the withdrawal of appellant's earlier plea of guilty and the reversion of his plea to not guilty *(ibid.,* p. 104).
At the subsequent hearing set on August 12, 1998, the defense was to present appellant as its witness. Instead of so doing, Atty. Nicolasora asked that the presentation of evidence for the defense be deferred and that appellant be allowed to prove intoxication, degree of instruction and education, and the lack of intent to do so grave a wrong as that committed, in order to mitigate his liability, all for the purpose of convincing the trial court to recommend to the Office of the President the grant of executive clemency *(ibid.,* p. 107).
On August 14, 1998, appellant, through counsel, filed a manifestation admitting responsibility for the November 2, 1995 rape, and asked for forgiveness from complainant and the public in general. Likewise, appellant manifested that he

would present evidence to prove certain mitigating circumstances in his favor and reiterated his request for the trial court to recommend executive clemency (*ibid.,* p. 108). However, despite having been given ample opportunity to prove supposed mitigating circumstances, appellant inexplicably defaulted thereat, and given the long delay that had attended the hearing of the case for the defense, the trial court was constrained, on December 21, 1998, to consider the defense as having waived its right to present evidence. The case was thus considered submitted for final resolution.

On March 19, 1999, the trial court rendered its decision convicting appellant. The dispositive part of the decision states:

IN VIEW OF THE FOREGOING, finding the accused Guilty beyond reasonable doubt of the heinous crime of raping his own 10-year-old stepdaughter Marina Hermanes through the conclusive evidences presented by the prosecution as well as his admission of the same through his counsel, he is hereby sentenced to suffer the extreme penalty of

DEATH. However, taking into consideration the underlying circumstances herein as above pointed out, the Court hereby recommends the granting of Executive Clemency to the said accused.

Upon promulgation of the above, let the record herein be forwarded to the Honorable Supreme Court for automatic review.

SO ORDERED.

(pp. 23-24, Rollo.)

Appellant assails the trial court on the sole issue of the imposition of the penalty of death.

The case being one on automatic review, the Court undertook an examination and scrutiny of the evidentiary record, and on the basis thereof, it now affirms the trial court's finding of guilt.

The prevailing rule is that the testimony of rape victims who are young and immature deserves full credence (*People vs. Bernaldez,* 294 SCRA 317 [1998]). The Court's attention has not been called to any dubious reason or improper motive on the part of Marina that would have impelled her to charge and testify falsely against appellant in regard to so heinous a crime as rape. Where no compelling and cogent reason is established that would explain why the complainant was so driven as to blindly implicate an accused, the testimony of a young girl of having been the victim of a sexual assault cannot be discarded (*People vs. Abella,* 315 SCRA 36 [1999]).

The evidence establishes beyond reasonable doubt the guilt of appellant. The testimony of complainant is plain, straightforward, and positive. With clarity and candor, complainant recounted the manner in which she was raped by appellant, *viz:*

Q: Okey, do you recall where were you on November 2, 1995 at about 10:00 o'clock in the evening?

A: Yes, sir.

Q: Where were you then, if you can recall?

A: I was in the house.

Q: And where is this house of yours located that you are referring to?

A: Brgy. Maligaya, Sta. Rita, Samar.

xxx xxx xxx

Q: While you were there in your house that evening do you recall of any incident that occurred to you?

A: Yes, sir.

Q: And what is this incident that occurred to you?

A: That night I was undressed.

Q: By whom were you undressed?

A: Ernesto Hermanes.

Q: Where were you then particularly inside the house when you were undressed?

A: I was in the bedroom.

Q: How did Ernesto Hermanes undress you?
A: He placed himself on top of me.
Q: What were you wearing then if you can recall?
A: I was wearing a dress.
Q: After this Ernesto Hermanes undressed you and placed himself on top of you, what did he do to you next?
A: He sexually abused me.
Q: By sexual abuse, what did he actually do to you?
A: He placed his *sili* (organ) inside my *pipi* (vagina).
Q: Do you know where is your pipi?
A: Here (Witness pointing between her legs).
Q: When Ernesto Hermanes put inside his organ to your organ, what did you feel?
A: It was very painful.
Q: Do you know what do you mean by *sili?*
A: Yes, sir.
xxx xxx xxx
Q: When his penis was already inside your vagina, what did Ernesto Hermanes do to you?
A: He did it again.
Q: What do you mean by saying, he did it again?
A: I do not know how to call it.
Q: As you were feeling the pain, what did you do next if any?
A: (No answer)
Q: For how long did he place his penis inside your vagina?
A: It was 9:00 o'clock in the evening.
Q: Was the penis of Ernesto Hermanes inside your vagina long?
A: Yes, sir.
Q: Did he make any movement of his penis while it was inside your vagina?
A: Yes, sir.
Q: How?
A: (He was making a push and pull motion as witness indicated).
Q: How many times did Ernesto Hermanes do this sexual abuse to you during that evening?
A: One.
(tsn, July 22, 1997, p. 6-10.)

Prescinding from the above, and on the basis of the manifestation filed by Atty. Nicolasora on August 14, 1998, the trial court observed that appellant admitted having raped his stepdaughter, stating that "it is only in this case now that the accused herein Ernesto Hermanes has admitted guilt, manifesting his desire to ask for forgiveness, and had practically and wholly submitted himself to the discretion and compassion of this Court (Decision, p. 10)." Said manifestation, states in part:

1. That after an exhausting conference with the accused, the latter informed the undersigned that he cannot bear his conscience and he would like to state completely in court the actual circumstances of the rape that transpired on November 2, 1995 at about 10:00 o'clock in the evening at Barangay Maligaya, Sta. Rita, Samar;

xxx xxx xxx

3. That he is now remorseful and he believes that by completely stating the truth he may be forgiven by his foster daughter, Marina Hermanes (rape victim), his spouse and the public in general;
4. That the gist of the would be testimony of the accused would show that during the rape incident he was heavily intoxicated and he and his foster daughter, Marina Hermanes, were alone at their residence;
5. That he will present the following mitigating circumstances in his favor, as follows: (a) intoxication; (b) plea of guilty; (c) the degree of instruction and education of the offender; and (d) that he had no intention to commit so grave a wrong as that committed.
6. That he plead for the mercy and compassion of the Honorable Court that in the event the penalty prescribed by law be meted against him, he respectfully pleads to this court that it

recommends executive clemency for his behalf.
A perusal of the manifestation filed by Atty. Nicolasora on behalf of appellant shows that it was signed only by Atty. Nicolasora, *not by appellant.* While we stated in *People vs. Balisoro* (307 SCRA 48 [1999]) that an admission made in the pleadings cannot be controverted by the party making such admission and that the same is conclusive as to him, it is also hornbook doctrine that the authority of an attorney to bind his client as to any admission of facts made by him is limited to matters of judicial procedure. An admission which operates as a waiver, surrender, or destruction of the client's cause is beyond the scope of the attorney's implied authority (*People vs. Maceda,* 73 Phil. 679 [1942]). In this case, Atty. Nicolasora's admission that appellant was heavily intoxicated at the time of the incident and that he had no intention to commit so grave a wrong as that committed practically frittered away appellant's case in favor of the prosecution. The manifestation cannot thus be held as an admission by appellant of his guilt.
The inadmissibility of Atty. Nicolasora's manifestation notwithstanding, appellant nonetheless is still criminally liable for the rape of Marina Hermanes. While appellant is not bound by the manifestation of guilt filed by Atty. Nicolasora, he is still bound by the decision of the trial court to consider the case submitted for decision due to the inordinate delay and failure of his counsel to present evidence on his behalf. It must be noted that the prosecution completed the presentation of its evidence on January 14, 1998, and that the defense was given numerous opportunities to present evidence but, for almost one year, and despite several warnings to that effect, they failed to do so, so much so that the trial court, on December 21, 1998, was constrained to consider the case submitted for decision. A client is bound by an adverse decision rendered as a result of his attorney's inaction or negligence, such as failure to present sufficient evidence. The reason for this is that the adverse judgment is a mere consequence of an omission on a procedural matter in regard to which an attorney has the implied authority to bind his client. Too, the prosecution has more than sufficiently proven appellant's guilt beyond reasonable doubt.
Appellant, however, is correct in his sole submission that he does not deserve the death penalty.
The crime of rape is punished under Article 335 of the Revised Penal Code, as amended by Section 11 of Republic Act No. 7659 which pertinently reads:
The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:
x x x
x x x
x x x
1. 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.
x x x
x x x
x x x
Summarizing the recent rulings of the Court under the aforequoted provision (*People vs. Lomibao,* 337 SCRA 211 [2000]; *People vs. Acala,* 307 SCRA 330 [1999]; *People vs. Maglente,* 306 SCRA 546 [1999]), the concurrence of the minority of the victim and her relationship to the offender constitute special qualifying circumstances and both factors must be alleged and proved with certainty, otherwise, the death penalty cannot be imposed. In the present case, while the information did state that appellant is

the stepfather of the complainant, it, however, failed to mention that complainant was under 18 years of age at the time of the commission of the offense. As such, the charge of rape in the information is not in its qualified form so as to fall under the special qualifying circumstances stated in Section 11 of Republic Act No. 7659. Verily, the information's failure to allege the minority of the victim cancels out the imposition of the death penalty.

In addition to the failure of the information to allege the minority of the complainant, appellant also claims that the trial court erred in imposing the death penalty allegedly because the step-father and step-daughter relationship between appellant and the victim was never conclusively established. We deem it unnecessary to discuss this particular argument in view of the previous disquisition that the death penalty cannot be imposed for failure of the information to allege the minority of the complainant. There being no allegation of the minority of the victim in the indictment under which appellant was arraigned, he cannot be convicted of qualified rape as he was not properly informed that he is being accused of qualified rape. Appellant's conviction of qualified rape violates his constitutional right to be properly informed of the nature and cause of accusation against him. Having been apprised only of the elements of simple rape, which crime was duly established by the prosecution, appellant can be convicted only for such crime and accordingly should be sentenced to *reclusion perpetua.*

As to the damages, the trial court failed to award civil indemnity in favor of private complainant. Inasmuch as the death penalty is not imposable in this case due to the deficiency in the allegations of the information against appellant, private complainant is only entitled to P50,000.00 as civil indemnity, in accordance with current rulings (*People vs. Bares,* G.R. Nos. 137762-65, March 27, 2001; *People vs. Lomibao, supra*).

Likewise, appellant is liable to pay the rape victim the amount of P50,000.00 as moral damages, which is automatically granted in rape cases without need of pleading or proof of the basis thereof (*People vs. Alba,* 305 SCRA 811 [1999]).

WHEREFORE, the decision under review is hereby affirmed with the modifications that (a) appellant is found guilty beyond reasonable doubt only of the crime of simple rape, for which he is sentenced to suffer the penalty of *reclusion perpetua;* (b) that appellant is ordered to pay the victim the amount of Fifty Thousand (P50,000.00) Pesos as civil indemnity and Fifty Thousand (P50,000.00) Pesos as moral damages.

SO ORDERED.

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

Q: What is self-serving evidence?
A: No. The self-serving rule which prohibits the admission of declaration of a witness applies only to extrajudicial admissions. If the declaration is made in open court, such is raw evidence. It is not self-serving. It is admissible because the witness may be cross-examined on that matter.

Q: Are judicial admissions made by the accused during his arraignment binding upon him?
A: No. A plea of guilty entered by the accused may be later withdrawn at any time before the judgment of conviction becomes final. Such plea is not admissible in evidence against the accused and is not even considered as an extrajudicial admission.

Q: What are the consequences of judicial admissions?
A:
1. A party who judicially admits a fact cannot later challenge that fact as judicial admissions constitute waiver of proof; production of evidence is dispensed with;
2. No evidence is needed to prove a judicial admission and it cannot be contradicted unless it is shown to have been made through palpable mistake or that no such admission was made.

Q: May courts take judicial notice of foreign laws?

A:
GR: Foreign laws may not be taken judicial notice of, and have to be proved like any other fact.
XPN: When said laws are within the actual knowledge of the court and such laws are:
1. Well and generally known;
2. Actually ruled upon in other cases before it; and
3. None of the parties claim otherwise.

Q: What are the rules with regard to judicial notice of ordinances?
A:
1. MTCs are required to take judicial notice of the ordinances of the municipality or city wherein they sit.

2. RTCs must take judicial notice only:
a. When expressly authorized to do so by statute; or
b. In case on appeal before them and wherein the inferior court took judicial notice of an ordinance involved in the same case.

3. Appellate courts may also take judicial notice of ordinances not only because the lower courts took judicial notice thereof but because these are facts capable of unquestionable demonstration. *(Riano, Evidence: A Restatement for the Bar, pp. 90-91, 2009 ed.)*

Q: What is the rule on judicial notice of records of another case previously tried?
A:
GR: Courts are not authorized to take judicial notice of the contents of the records of other cases, even when such cases have been tried or are pending in the same court, and notwithstanding the fact that both cases may have been heard or are actually pending before the same judge. *(Calamba Steel Center, Inc. v. CIR, G.R. No. 151857, Apr. 28, 2005)*
XPNS:
1. When in the absence of any objection, with the knowledge of the opposing party, the contents of said other cases are clearly referred to by title and number in a pending action and adopted or read into the record of the latter;
2. When the original record of the other case or any part of it is actually withdrawn from the archives at the court's discretion upon the request, or with the consent, of the parties, and admitted as part of the record of the pending case. *(Jumamil v. Cafe, G.R. No. 144570, Sept. 21, 2005)*
3. When the action is closely interrelated to another case pending between the same parties;
4. Where the interest of the public in ascertaining the truth are of paramount importance;
5. In cases seeking to determine what is reasonable exercise of discretion or whether or not the previous ruling is applicable in a case under consideration; or
6. Where there is finality of a judgment in another case that was previously pending determination and therefore, *res judicata. (Herrera, Vol. V, pp. 89-90, 1999 ed.)*

THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, vs. JAILON KULAIS, CARLOS FALCASANTOS @ "Commander Falcasantos," AWALON KAMLON HASSAN @ "Commander Kamlon," MAJID SAMSON @ "Commander Bungi," JUMATIYA AMLANI DE FALCASANTOS, NORMA SAHIDDAN DE KULAIS, SALVADOR MAMARIL y MENDOZA, HADJIRUL ASIN y ALIH, JAINUDDIN HASSAN y AHMAD, IMAM TARUK ALAH y SALIH, JALINA HASSAN DE KAMMING, FREDDIE MANUEL @ "Ajid" and several JOHN and JANE DOES, accused, JAILON KULAIS, appellant.
1998 July 16 1st Division G.R. Nos. 100901-08
D E C I S I O N

PANGANIBAN, J:

The trial court's is erroneous in taking of judicial notice of a witness' testimony in another case, also pending before it, does not affect the conviction of the appellant, whose guilt is proven beyond reasonable doubt by other clear, convincing and overwhelming evidence, both testimonial and documentary. The Court takes this occasion also to refund the bench and the bar that reclusion perpetua is not synonymous with life imprisonment.

The Case

On August 22, 1990, five Informations for kidnapping for ransom (Crim. Cases Nos. 10060, 10061, 10062, 10063 and 10064) and three Informations for kidnapping (Crim. Case Nos. 10065, 10066 and 10067), all dated August 14, 1990, were filed 1 before the Regional Trial Court of Zamboanga City against Carlos

Falcasantos, Jailon Kulais, Jumatiya Amlani, Norma Sahiddan de Kulais, Jalina Hassan de Kamming, 2 Salvador Mamaril, Hadjirul Plasin, Jaimuddin Hassan, Imam 3 Taruk Alah, Freddie Manuel alias "Ajid," and several John and Jane Does. The Informations for kidnapping for ransom, which set forth identical allegations save for the names of the victims, read as follows:

"That on or about the 12th day of December, 1988, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being all private individuals, conspiring and confederating together, mutually aiding and assisting one another, with threats to kill the person of FELIX ROSARIO [in Criminal Case No. 10060] 4 and for the purpose of extorting ransom from the said Felix Rosario or his families or employer, did then and there, willfully, unlawfully and feloniously, KIDNAP the person of said Felix Rosario, 5 a male public officer of the City Government of Zamboanga, who was then aboard a Cimarron vehicle with plate No. SBZ-976 which was being ambushed by the herein accused at the highway of Sitio Tigbao Lisomo, Zamboanga City, and brought said Felix Rosario 6 to different mountainous places of Zamboanga City and Zamboanga del Sur, where he was detained, held hostage and deprived of his liberty until February 2, 1989, the day when he was released only after payment of the ransom was made to herein accused, to the damage and prejudice of said victim; there being present an aggravating circumstance in that the aforecited offense was committed with the aid of armed men or persons who insure or afford impunity."

The three Informations for kidnapping, also under Article 267 of the Revised Penal Code, likewise alleged identical facts and circumstances, except the names of the victims:

"That on or about the 12th day of December, 1988, in the City of Zamboanga and within the jurisdiction of this Honorable Court, the above-named accused, being all private individuals, conspiring and confederating together, mutually aiding and assisting one another, by means of threats and intimidation of person, did then and there, willfully, unlawfully and feloniously KIDNAP, take and drag away and detain the person of MONICO SAAVEDRA Y LIMEN [Criminal Case No. 10065] 7 a male public officer of the City Government of Zamboanga, against his will, there being present an aggravating circumstance in that the aforecited offense was committed with the aid of armed men or persons who insure or afford impunity."

Of the twelve accused, only nine were apprehended, namely, Jailon Julais, Jumatiya Amlani, Nonna Sahiddan de Kulais, Salvador Mamaril, Hadjirul Plasin, Jainuddin Hassan, Imam Taruk Alah, Jalina Hassan and Freddie Manuel. 8

On their arraignment on September 13, 1990, all the accused pleaded not guilty. Joint trial on the merits ensued. On April 8, 1991, Judge Pelagio S. Mandi rendered the assailed 36-page Decision, the dispositive portion of which reads:

"WHEREFORE, above premises and discussion taken into consideration, this Court renders its judgment, ordering and finding:

1. FREDDIE MANUEL, alias "AJID" and IMAM TARUK ALAH y SALIH not guilty of the eight charges of kidnapping for ransom and for kidnapping, their guilt not having been proved beyond reasonable doubt.

Their immediate release from the City Jail,

Zamboanga City is ordered, unless detained for some other offense besides these 8 cases (Crim. Cases Nos. 10060-10067).

2. JAINUDDIN HASSAN y AHMAD, JAILON KULAIS, SALVADOR MAMARIL y MENDOZA and HADJIRUL PLASIN y ALIH [g]uilty as principals by conspiracy in all these 8 cases for kidnapping for ransom and for kidnapping (Crim. Cases Nos. 10060-10067).

Their guilt is aggravated in that they committed the 8 offenses with the aid of armed men who insured impunity. Therefore, the penalties imposed on them shall be at their maximum period.

WHEREFORE, for the five charges of kidnapping for ransom, and pursuant to Art. 267 of the Revised Penal Code, five life imprisonments are imposed on Jainuddin Hassan y Ahmad, Jailon Kulais, Salvador Mamaril y Mendoza and Kadjirul Plasin y Alih (Crim. Cases Nos. 10060-10064).

For kidnapping Mrs. Virginia San Agustin-Gara, a female and public officer and pursuant to Art. 267, Revised Penal Code (par. 4.), another life imprisonment is imposed on Jainuddin Hassan y Ahmad, Jailon Kulais, Salvador Mamaril y Mendoza and Hadjirul Plasin y Alih (Crim. Case No. 10066)

For kidnapping Monico Saavedra y Limen, and Calixto Francisco y Gaspar, and their kidnapping not having lasted more than five days, pursuant to Art. 268, Revised Penal Code, and the Indeterminate Sentence Law, the same four accused - Jainuddin Hassan y Ahmad, Jailon Kulais, Salvador Mamaril y Mendoza and Hadrijul Plasin y Alih - are sentenced to serve two (2) jail terms ranging from ten (10) years of prision mayor as minimum, to eighteen (18) years of reclusion temporal as maximum (Crim. Cases Nos. 10065 and 10067).

3. JAMATIYA AMLANI FALCASANTOS not guilty in the three charges of kidnapping and she is acquitted of these charges. (Crim. Cases Nos. 10065, 10066 and 10067).

But Jumatiya Amlani de Falcasantos is guilty as accomplice in the five charges of kidnapping for ransom.

WHEREFORE, Jumatiya Amlani de Falcasantos is sentenced to serve five (5) imprisonments, ranging from TEN (10) YEARS of prision mayor as minimum to EIGHTEEN (18) YEARS of reclusion temporal as maximum (Crim. Cases Nos. 10060-10064).

4. NORMA SAHIDDAN DE KULAIS, 18 years old, and JALIHA HUSSIN (charged as Jalina Hassan de Kamming), 15 years old, not guilty in the three charges for kidnapping and are, therefore, ACQUITTED of these three charges. (Crim. Cases Nos. 10065, 10066 & 10067).

But Norma Sahiddan de Kulais and Jalina Hussin are found guilty as accomplices in the five charges for kidnapping for ransom. Being minors, they are entitled to the privileged mitigating circumstance of minority which lowers the penalty imposable on them by one degree.

WHEREFORE, Norma Sahiddan de Kulais and Jalina Hussin are sentenced to serve five imprisonments ranging from SIX (6) YEARS of prision correccional as minimum to TEN YEARS AND ONE (1) DAY of prision mayor as maximum (Crim. Cases Nos. 10060-10064).

Due to the removal of the suspension of sentences of youthful offenders "convicted of

an offense punishable by death or life" by Presidential Decree No. 1179 and Presidential Decree No. 1210 (of which kidnapping for ransom is such an offense) the sentences on Norma Sahiddan de Kulais and Jaliha Hussin de Kamming are NOT suspended but must be served by them.

Januddin Hassan, Jailon Kulais, Salvador Mamaril and Hadjirul Plasin are sentenced further to return the following personal effects taken on December 12, 1988, the day of the kidnapping, or their value in money, their liability being solidary.

To Jessica Calunod:	
One (1) Seiko wrist watch	P250.00
One Bracelet	P2,400.00
One Shoulder Bag	P200.00
Cash	P200.00
To Armado C. Bacarro:	
One (1) wrist watch	P800.00
One Necklace	P300.00
One Calculator	P295.00
Eyeglasses	P500.00
One Steel Tape	P250.00
To Edilberto S. Perez	
One (1) Rayban	P1,000.00
One Wrist Watch	P1,800.00
Cash	P300.00
To Virginia San Agustin-Gara	
One (1) Wrist Watch	P850.00

The benefit of Art. 29, Revised Penal Code, on preventive suspension, shall be extended to those sentenced.
The cases against Majid Samson, alias "Commander Bungi" Awalon Kamlon a.k.a. "Commander Kamlon" Carlos Falcasantos and several "John Does" and Jane "Does" are ARCHIVED until their arrest.

Costs against the accused convicted.

SO ORDERED." 9

On May 7, 1991, Jallon Kulais, Jumatiya Amlani de Falcasantos, Norma Sahiddan de Kulais and Jaliha Hussin filed their joint Notice of Appeal. 10 In a letter dated February 6, 1997, the same appellants, except Jailon Kulais, withdrew their appeal because of their application for "amnesty." In our March 19, 1997 Resolution, we granted their motion. Hence, only the appeal of Kulais remains for the consideration of this Court. 11

The Facts
The Version of the Prosecution
The solicitor general summarized in this wise, the facts as viewed by the People:

"On December 12, 1988, a group of public officials from various government agencies, organized themselves as a monitoring team to inspect government projects in Zamboanga City. The group was composed of Virginia Gara, as the head of the team; Armando Bacarro, representing the Commission on Audit; Felix del Rosario, representing the non-government; Edilberto Perez, representing the City Assessor's Office; Jessica Calunod and Allan Basa of the City Budget Office and Monico Saavedra, the driver from the City Engineer's Office. (p. 3, TSN, October 22, 1990.)

On that particular day, the group headed to the Lincomo Elementary School to check on two of its classrooms. After inspecting the same, they proceeded to the Talaga Footbridge. The group was not able to reach the place because on their way, they were stopped by nine (9) armed men who pointed their guns at them (p. 4, TSN, ibid.).

The group alighted from their Cimarron jeep where they were divested of their personal

belongings. They were then ordered to walk to the mountain by the leader of the armed men who introduced himself as Commander Falcasantos (p. 5, TSN, ibid.)

While the group was walking in the mountain, they encountered government troops which caused their group to be divided. Finally, they were able to regroup themselves. Commander Kamlon with his men joined the others. (pp. 7-8, TSN, ibid.).

The kidnappers held their captives for fifty-four (54) days in the forest. During their captivity, the victims were able to recognize their captors who were at all times armed with guns. The wives of the kidnappers performed the basic chores like cooking. (pp. 9-10. TSN, ibid.)

Commander Falcasantos also ordered their victims to sign the ransom notes which demanded a ransom of P100,000.00 and P14,000.00 in exchange for twenty (20) sets of uniform. (p. 15, TSN, ibid.)

On February 3, 1989, at around 12:00 o'clock noontime, the victims were informed that they would be released. They started walking until around 7:00 o'clock in the evening of that day. At around 12:00 o'clock midnight, the victims were released after Commander Falcasantos and Kamlon received the ransom money. (p. 19, TSN, ibid.) The total amount paid was P122,000.00. The same was reached after several negotiations between Mayor Vitaliano Agan of Zamboanga City and the representatives of the kidnappers. (pp. 2, 6, TSN, Nov. 11, 1990)

xxx xxx xxx." 12

The prosecution presented fifteen witnesses, including some of the kidnap victims themselves: Jessica Calunod, Armando Bacarro, Edilberto Perez, Virginia San Agustin-Gara, Calixto Francisco, and Monico Saavedra.

The Version of the Defense

The facts of the case, according to the defense, are as follows: 13

"On May 28, 1990, at about 10:00 o' clock in the morning, while weeding their farm in Sinaburan, Zamboanga del Sur, accused-appellant Jumatiya Amlani was picked up by soldiers and brought to a place where one army battalion was stationed. Thereat, her five (5) co-accused, namely Salvador Mamaril, Hadjirul Plasin, Jainuddin Hassin, Imam Taruk Alah and Freddie Manuel were already detained. In the afternoon of the same day, appellants spouses Jailon Kulais and Norma Sahiddan were brought to the battalion station and likewise detained thereat. On May 30, 1990, the eight (8) accused were transported to Metrodiscom, Zamboanga City. Here on the same date, they were joined by accused-appellant Jaliha Hussin.

At the time Amlani was picked up by the military, she had just escaped from the captivity of Carlos Falcasantos and company who in 1988 kidnapped and brought her to the mountains. Against their will, she stayed with Falcasantos and his two wives for two months, during which she slept with Falcasantos as aide of the wives and was made to cook food, wash clothes, fetch water and run other errands for everybody. An armed guard was assigned to watch her, so that, for sometime, she had to bear the ill-treatment of Falcasantos' other wives one of whom was armed. After about two months, while she was cooking and Falcasantos and his two wives were bathing in the river, and while her guard was not looking, she took her chance and made a successful dash for freedom. (TSN, January 29,

1992, pp. 2-15)

Likewise a kidnap victim herself is accused-appellant Jaliha Hussin, who was thirteen years old at the time (she was fifteen years old when the trial of the instant cases commenced). She was kidnapped by Daing Kamming and brought to the mountains where he slept with her. She stayed with him for less than a month sleeping on forest ground and otherwise performing housekeeping errands for Kamming and his men. She made good her escape during an encounter between the group of Kamming and military troops. She hid in the bushes and came out at Ligui-an where she took a "bachelor" bus in going back to her mother's house at Pudos, Guiligan, Tungawan, Zamboanga del Sur. One day, at around 2:00 o' clock in the afternoon, while she was harvesting palay at the neighboring village of Tigbalangao, military men picked her up to Ticbanuang where there was an army battalion detachment. From Ticbawuang, she was brought to Vitali, then to Metrodiscom, Zamboanga City, where on her arrival, she met all the other accused for the first time except Freddie Manuel. (Ibid., pp. 16-21)

Another female accused is appellant Norma Sahiddan, a native of Sinaburan, Tungawan, Zamboanga del Sur. At about 3:00 o'clock in the afternoon of a day in May, while she and her husband were in their farm, soldiers arrested them. The soldiers did not tell them why they were being arrested, neither were they shown any papers. The two of them were just made to board a six by six truck. There were no other civilians in the truck. The truck brought the spouses to the army battalion and placed them inside the building where there were civilians and soldiers. Among the civilians present were her six co-accused Hadjirul Plasin, Salvador Mamaril, Jaimuddin Hassan, Ima[m] Taruk Alah, Freddie Manuel and Jumatiya Amlani. That night, the eight of them were brought to Tictapul, Zamboanga City, then to Vitali; and, finally, to the Metrodiscom, Zamboanga City where they stayed for six days and six nights. On the seventh day, the accused were brought to the City Jail, Zamboanga City. (TSN, January 30, 1991, pp. 6-11)

The husband of Norma Sahiddan is Jailon Kulais who, as heretofore narrated, was arrested with his wife the day the soldiers came to their farm on May 28, 1990. He has shared with his wife the ordeals that followed in the wake of their arrest and in the duration of their confinement up to the present. (TSN, January 22, 1991 pp. 2-4).

The Trial Court's Ruling
The trial court found Appellant Kulais guilty of five counts of kidnapping for ransom and one count of kidnapping a woman and public officer, for which offenses it imposed upon him six terms of "life imprisonment." It also found him guilty of two counts of slight illegal detention for the kidnapping of Monico Saavedra and Calixto Francisco. The trial court ratiocinated as follows:

"Principally, the issue here is one of credibility - both of the witnesses and their version of what had happened on December 12, 1988, to February 3, 1989. On this pivotal issue, the Court gives credence to prosecution witnesses and their testimonies. Prosecution evidence is positive, clear and convincing. No taint of evil or dishonest motive was imputed or imputable to prosecution witnesses. To this Court, who saw all the witnesses testify, prosecution witnesses testified only because they were impelled by a sense of justice, of duty and of truth.

Contrarily, defense evidence is weak, uncorroborated and consisted only of alibis. The individual testimonies of the nine accused dwelt principally on what happened to each of them on May 27, 28 and 29, 1990. None of the accused explained where he or she was on and from December 12, 1988, to February 3, 1989, when prosecution evidence showed positively seven of the nine accused were keeping the five or six hostages named by prosecution evidence.

The seven accused positively identified to have been present during the course of the captivity of the five kidnap-victims-complainants are: (1) Jumatiya Amlani; (2) Jaliha Hussin; (3) Norma Sahiddan; (4) Jailon Kulais; (5) Hadjirul Plasin; (6) Salvador Mamaril and (7) Jainuddin Hassan.

The two accused not positively identified are: Freddie Manuel alias "Ajid", and Imam Taruk Alah. These two must, therefore, be declared acquitted based on reasonable doubt.

The next important issue to be examined is: Are these seven accused guilty as conspirators as charged in the eight Informations; or only as accomplices? Prosecution evidence shows that the kidnapping group to which the seven accused belonged had formed themselves into an armed band for the purpose of kidnapping for ransom. This armed band had cut themselves off from established communities, lived in the mountains and forests, moved from place to place in order to hide their hostages. The wives of these armed band moved along with their husbands, attending to their needs, giving them material and moral support. These wives also attended to the needs of the kidnap victims, sleeping with them or comforting them.

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II) The guilt of Jainuddin Hassan, Jailon Kulais, Salvador Mamaril and Hadjirul Plasin. The Court holds these four men guilty as conspirators in the 8 cases of kidnapping. Unlike the three women-accused, these male accused were armed. They actively participated in keeping their hostages by fighting off the military and CAFGUS, in transferring their hostages from place to place, and in guarding the kidnap hostages. Salvador Mamaril and Jailon Kulais were positively identified as. among the nine armed men who had kidnapped the eight kidnap victims on December 12, 1988.

The higher degree of participation found by the Court of the four accused is supported by the rulings of our Supreme Court quoted below.

(1) The time-honored jurisprudence is that direct proof is not essential to prove conspiracy. It may be shown by a number of infinite acts, conditions and circumstances which may vary according to the purposes to be accomplished and from which may logically be inferred that there was a common design, understanding or agreement among the conspirators to commit the offense charged. (People vs. Cabrera, 43 Phil 64; People vs. Carbonel, 48 Phil. 868.)

(2) The crime must, therefore, in view of the solidarity of the act and intent which existed between the sixteen accused, be regarded as the act of the band or party created by them, and they are all equally responsible for the murder in question. (U.S. vs. Bundal, et. al. 3 Phil 89, 98.)

(3) When two or more persons unite to accomplish a criminal object, whether through the physical volition of one, or all, proceeding severally or collectively, each individual whose evil will actively contribute to the wrongdoing is in law responsible for the whole, the same as

though performed by himself alone.

(People vs. Peralta, et. al. 25 SCRA 759, 772 (1968).) 14

The Assigned Errors

The trial court is faulted with the following errors, viz:
I
"The trial court erred in taking judicial notice of a material testimony given in another case by Lt. Melquiades Feliciano, who allegedly was the team leader of the government troops which allegedly captured the accused-appellants in an encounter; thereby, depriving the accused-appellants their right to cross-examine him.
II
On the assumption that Lt. Feliciano's testimony could be validly taken judicial notice of, the trial court, nevertheless, erred in not disregarding the same for being highly improbable and contradictory.
III
The trial court erred in finding that accused-appellants Jumatiya Amlani, Jaliha Hussin and Norma Sahiddan provided Carlos Falcasantos, et. al., with material and moral comfort, hence, are guilty as accomplices in all the kidnapping for ransom cases.
IV
The trial court erred in denying to accused-appellant Jaliha Hussin and Norma Sahiddan the benefits of suspension of sentence given to youth offenders considering that they were minors at the time of the commission of the offense." 15

As earlier noted, Jumatiya Amlani, Jaliha Hussin and Norma Sahiddan had withdrawn their appeal, and as such, the third and fourth assigned errors, which pertain to them only, will no longer be dealt with. Only the following issues pertaining to Appellant Jailon Kulais will be discussed: (1) judicial notice of other pending cases, (2) sufficiency of the prosecution evidence, and (3) denial as a defense. In addition, the Court prosecution will pass upon the propriety of the penalty imposed by the trial court.

The Court's Ruling
The appeal is bereft of merit.
First Issue: Judicial Notice and Denial of Due Process

Appellant Kulais argues that he was denied due process when the trial court took judicial notice of the testimony given in another case by one Lt. Melquiades Feliciano, who was the team leader of the government troops that captured him and his purported cohorts. 16 Because he was allegedly deprived of his right to cross-examine a material witness in the person of Lieutenant Feliciano, he contends that the latter's testimony should not be used against him. 17

True, as a general rule, courts should not take judicial notice of the evidence presented in other proceedings, even if these have been tried or are pending in the same court, or have been heard and are actually pending before the same judge. 18 This is especially true in criminal cases, where the accused has the constitutional right to confront and cross-examine the witnesses against him.

Having said that, we note, however, that even if the court a quo did take judicial notice of the testimony of Lieutenant Feliciano, it did not use such testimony in deciding the cases against the appellant. Hence, Appellant Kulais was not denied due process. His conviction was based mainly on the positive identification made by some of the

kidnap victims, namely, Jessica Calunod, Armando Bacarro and Edilberto Perez. These witnesses were subjected to meticulous cross-examinations conducted by appellant's counsel. At best, then, the trial court's mention of Lieutenant Feliciano's testimony is a decisional surplusage which neither affected the outcome of the case nor substantially prejudiced Appellant Kulais.

Second Issue: Sufficiency of Prosecution Evidence

Appellant was positively identified by Calunod, as shown by the latter's testimony:

"CP CAJAYON D MS:
Q. And how long were you in the custody of these persons?
A. We stayed with them for fifty-four days.
Q. And during those days did you come to know any of the persons who were with the group?
A. We came to know almost all of them considering we stayed there for fifty-four days.
Q. And can you please name to us some of them or how you know them?
A. For example, aside from Commander Falcasantos and Commander Kamlon we came to know first our foster parents, those who were assigned to give us some food.
Q. You mean to say that the captors assigned you some men who will take care of you?
A. Yes.
Q. And to whom were you assigned?
A. To Ila Abdurasa.
Q. And other than your foster [parents] or the parents whom you are assigned to, who else did you come to know?
A. Pagal and his wife; Tangkong and his wife Nana; the two (2) wives of Commander Falcasantos - Mating and Janira - another brother in-law of Commander Kamlon, Usman, the wife of Kamlon, Tira.
xxx xxx xxx
Q. Now, you said that you were with these men for fifty-four days and you really came to know them. Will you still be able to recognize these persons if you will see the[m] again?
A. Yes, ma'am.

Q. Now will you look around this Honorable Court and see if any of those you mentioned are here?
A. Yes, they are here.

Q. Some of them are here?
A. Some of them are here.
xxx xxx xxx
Q. Where is Tangkong? What is he wearing?
A. White t-shirt with orange collar. (witness pointing.) He was one of those nine armed men who took us from the highway.
RTC INTERPRETER:

Witness pointed to a man sitting in court and when asked of his name, he gave his name as JAILON KULAIS.
CP CAJAYON D MS:

Q. Aside from being with the armed men who stopped the vehicle and made you alight, what else was he doing while you were in their captivity?
A. He was the foster parent of Armando Bacarro and the husband of Nana.

COURT:
Q. Who?
A. Tangkong.
xxx xxx xxx: 19
Likewise clear and straightforward was Bacarro's testimony pointing to appellant as one of the culprits:

"FISCAL CAJAYON:

xxx xxx xxx
Q. And what happened then?
A. Some of the armed men assigned who will be the host or who will be the one to give food to us.

Q. To whom were you assigned?
A. I was assigned to a certain Tangkong and his wife Nana.
xxx xxx xxx
Q. Now, you said you were assigned to Tangkong and his wife. Do you remember how he looks like?
A. Yes.
Q. Now, will you please look around this Court and tell us if that said Tangkong and his wife are here?
A. Yes, ma'am.

Q. Could you please point this Tangkong to us?
A. Witness pointed to a person in Court. When asked his name he identified [himself] as Jailon Kulais.

Q. Why did you say his name is Tangkong? Where did you get that name?
A. Well, that is the name [by which he is] usually called in the camp.
xxx xxx xxx
ATTY. FABIAN (counsel for accused Kulais)

Q. When did you first meet Tangkong?
A. That was on December 11, because I remember he was the one who took us.

Q. When you were questioned by the fiscal a while ago, you stated that Mr. Mamaril was one of those who stopped the bus and took you to the hill and you did not mention Tangkong?
A. I did not mention but I can remember his face.

xxx xxx xxx
Q. And because Tangkong was always with you as your host even if he did not tell you that he [was] one of those who stopped you, you would not recognize him?
A. No, I can recognize him because he was the one who took my shoes.
COURT:
Q. Who?
A. Tangkong, your Honor.
xxx xxx xxx" 20
Also straightforward was Ernesto Perez' candid narration:
"FISCAL CAJAYON:
xxx xxx xxx
Q. Who else?
A. The last man.
Q. Did you come to know his name?
A. Only his nickname, Tangkong. (Witness pointed to a man in Court who identified himself as Jailon Kulais.)
Q. And what was Tangkong doing in the mountain?
A. The same, guarding us.
CROSS-EXAMINATION BY ATTY. SAHAK
Q. Engr. Perez, you stated that you were ambushed by nine armed men on your way from [the] Licomo to [the] Talaga Foot Bridge. What do you mean by ambushed?
A. I mean that they blocked our way and stopped.
Q. They did not fire any shots?
A. But they were pointing their guns at us.
Q. And among the 9 armed men who held you on your way to the Talaga Footbridge, you stated that one of them was Commander Falcasantos?
A. Yes.
Q. Could you also recognize anyone of the accused in that group?
A. Yes.
Q. Will you please identify?
A. That one, Tangkong. (The witness pointed to a

man sitting in court who identified himself as Jailon Kulais.)
CROSS-EXAMINATION BY ATTY. FABIAN
Q. You said Jailon Kulais was among those who guarded the camp?
FISCAL CAJAYON:
Your Honor, please, he does not know the name of Julais, he used the word Tangkong.
ATTY. FABIAN
Q. You said Tangkong guarded you. What do you mean?
A. He guarded us like prisoners. After guarding us they have their time two hours another will be on duty guarding us.
Q. Where did you meet Tangkong?
A. He was one of the armed men who kidnapped us.
xxx xxx xxx" 21
It is evident from the foregoing testimonies of Calunod, Bacarro and Perez that kidnapping or detention did take place: the five victims were held, against their will, for fifty-three days from December 12, 1988 to February 2, 1989. It is also evident that Appellant Kulais was a member of the group of armed men who staged the kidnapping, and that he was one of those who guarded the victims during the entire period of their captivity. His participation gives credence to the conclusion of the trial court that he was a conspirator.

Kidnapping for Ransom

That the kidnapping of the five was committed for the purpose of extorting ransom is also apparent from the testimony of Calunod, who was quite emphatic in identifying the accused and narrating the circumstances surrounding the writing of the ransom letters.

"CP CAJAYON D MS:

Q. Now, you were in their captivity for 54 days and you said there were these meetings for possible negotiation with the City Government. What do you mean by this? What were you supposed to negotiate?
A. Because they told us that they will be releasing us only after the terms. 22

Q. And what were the terms? Did you come to know the terms?
A. I came to know the terms because I was the one ordered by Commander Falcasantos to write the letter, the ransom letter.
Q. At this point of time, you remember how many letters were you asked to write for your ransom?
A. I could not remember as to how many, but I can identify them.
Q. Why will you able to identify the same?
A. Because I was the one who wrote it.
Q. And you are familiar, of course, with your penmanship?
A. Yes.
Q. Now we have here some letters which were turned over to us by the Honorable City Mayor Vitaliano Agan. 1,2,3,4,5 - there are five letters all handwritten.

COURT:
Original?
CP CAJAYON D MS:
Original, your Honor.
Q. And we would like you to go over these and say, tell us if any of these were the ones you were asked to write.
A. (Witness going over [letters]) This one, 2 pages. This one, 2 pages. No more.

Q. Aside from the fact that you identified your penmanship in these letters, what else will make you remember that these are really the ones you wrote while there?

A. The signature is there.

Q. There is a printed name here, Jessica Calunod.
A. And over it is a signature.
Q. That is your signature?
A. Yes, ma'am.
Q. How about in the other letter, did you sign it also?
A. Yes, there is the other signature.

Q. There are names " other names here " Eddie Perez, Allan Basa, Armando Bacarro, Felix Rosario, Jojie Ortuoste and there are signatures above the same. Did you come up to know who signed this one?
A. Those whose signatures there were signed by the persons. [sic]

Q. And we have here at the bottom, Commander Kamlon Hassan, and there is the signature above the same. Did you come to know who signed it?
A. [It was] Commander Kamlon Hassan who signed that.

xxx xxx xxx
Q. Jessica, I am going over this letter . . . Could you please read to us the portion here which says the terms? . . .
A. (Witness reading) "Mao ilang gusto nga andamun na ninyo and kantidad nga P100,000 ug P14,000 baylo sa 20 sets nga uniforms sa Biyernes (Pebrero 3, 1989)." 23
xxx xxx xxx
INTERPRETER (Translation):

"This is what they like you to prepare[:] the amount of P100,000.00 and P14,000.00 in exchange [for] 20 sets of uniform on Friday, February 3, 1989.
xxx xxx xxx
Q. Now you also earlier identified this other letter and this is dated January 21, 1988. 24 Now, could you please explain to us why it is dated January 21 1988 and the other one Enero 31, 1989 or January 31, 1989?
A. I did not realize that I placed 1989, 1988, but it was 1989.

Q. January 21, 1989?
A. Yes
xxx xxx xxx
Q. Now, in this letter, were the terms also mentioned? Please go over this.
A. (Going over the letter) Yes, ma'am.

Q. Could you please read it aloud to us?
A. (Witness reading) "Gusto nila and P100,000.00 ng kapinan nu ug 20 sets nga completong uniformer (7 colors marine type) wala nay labot ang sapatos, tunga medium ug tunga large size." 25
xxx xxx xxx
INTERPRETER:
"They like the P100,000.00 and an addition of 20 sets of complete uniform (7 colors, marine-type not including the shoes), one half medium, one half large."
xxx xxx xxx
Q. After having written these letters, did you come to know after [they were] signed by your companions and all of you, do you know if these letters were sent? If you know only.

A. I would like to make it clear. The first letter was ordered to me by Falcasantos to inform the City Mayor that initial as P500,000.00, and when we were already - I was asked again to write, we were ordered to affix our signature to serve as proof that all of us are alive." 26 [sic]

Calunod's testimony was substantially corroborated by both Armando Bacarro 27 and Edilberto Perez. 28 The receipt of the ransom

letters, the efforts made to raise and deliver the ransom, and the release of the hostages upon payment of the money were testified to by Zamboanga City Mayor Vitaliano Agan 29 and Teddy Mejia. 30

The elements of kidnapping for ransom, as embodied in Article 267 of the Revised Penal Code, 31 having been sufficiently proven, and the appellant, a private individual, having been clearly identified by the kidnap victims, this Court thus affirms the trial court's finding of appellant's guilt on five counts of kidnapping for ransom.

Kidnapping of Public Officers

Victims Virginia San Agustin-Gara, Monico Saavedra and Calixto Francisco were members of the government monitoring team abducted by appellant's group. The three testified to the fact of kidnapping; however, they were not able to identify the appellant. Even so, appellant's identity as one of the kidnappers was sufficiently established by Calunod, Bacarro and Perez, who were with Gara, Saavedra and Francisco when the abduction occurred.

That Gara, Saavedra and Francisco were detained for only three hours 32 does not matter. In People vs. Domasian, 33 the victim was similarly held for three hours, and was released even before his parents received the ransom note. The accused therein argued that they could not be held guilty of kidnapping as no enclosure was involved, and that only grave coercion was committed, if at all. 34 Convicting appellants of kidnapping or serious illegal detention under Art. 267 (4) of the Revised Penal Code, the Court found that the victim, an eight-year-old boy, was deprived of his liberty when he was restrained from going home. The Court justified the conviction by holding that the offense consisted not only in placing a person in an enclosure, but also in detaining or depriving him, in any manner, of his liberty. 35 Likewise, in People vs. Santos, 36 the Court held that since the appellant was charged and convicted under Article 267, paragraph 4, it was not the duration of the deprivation of liberty which was important, but the fact that the victim, a minor, was locked up.

Thus, in the present case, the detention of Gara, Saavedra and Francisco for only a few hours is immaterial. The clear fact is that the victims were public officers 37 - Gara was a fiscal analyst for the City of Zamboanga, Saavedra worked at the City Engineer's Office, and Francisco was a barangay councilman at the time the kidnapping occurred. Appellant Kulais should be punished, therefore, under Article 267, paragraph 4 of the Revised Penal Code, and not Art. 268, as the trial court held.

The present case is different from People vs. Astorga, 38 which held that the crime committed was not kidnapping under Article 267, paragraph 4, but only grave coercion. The appellant in that case had tricked his seven-year-old victim into going with him to a place he alone knew. His plans, however, were foiled when a group of people became suspicious and rescued the girl from him. The Court noted that the victim's testimony and the other pieces of evidence did not indicate that the appellant wanted to detain her, or that he actually detained her.

In the present case, the evidence presented by the prosecution indubitably established that the victims were detained, albeit for a few hours. There is proof beyond reasonable doubt that kidnapping took place, and that appellant was a

member of the armed group which abducted the victims.

Third Issue: Denial and Alibi

The appellant's bare denial is a weak defense that becomes even weaker in the face of the prosecution witnesses' positive identification of him. Jurisprudence gives greater weight to the positive narration of prosecution witnesses than to the negative testimonies of the defense. 39 Between positive and categorical testimony which has a ring of truth to it on the one hand, and a bare denial on the other, the former generally prevails. 40 Jessica Calunod, Armando Bacarro and Edilberto Perez testified in a clear, straightforward and frank manner; and their testimonies were compatible on material points. Moreover, no ill motive was attributed to the kidnap victims and none was found this Court.

We agree with the trial court's observation that the appellant did not meet the charges against him head on. His testimony dwelt on what happened to him on the day he was arrested and on subsequent days thereafter. Appellant did not explain where he was during the questioned dates (December 12, 1988 to February 3, 1989); neither did he rebut Calunod, Bacarro and Perez, when they identified him as one of their kidnappers.

Reclusion Perpetua, Not Life Imprisonment
The trial court erred when it sentenced the appellant to six terms of life imprisonment. The penalty for kidnapping with ransom, under the Revised Penal Code, is reclusion perpetua to death. Since the crimes happened in 1988, when the capital penalty was proscribed by the Constitution, the maximum penalty that could have been imposed was reclusion perpetua. Life imprisonment is not synonymous with reclusion perpetua. Unlike life imprisonment, reclusion perpetua carries with it accessory penalties provided in the Revised Penal Code and has a definite extent or duration. Life imprisonment is invariably imposed for serious offenses penalized by special laws, while reclusion perpetua is prescribed in accordance with the Revised Penal Code. 41

WHEREFORE, the conviction of Appellant Jailon Kulais as principal in five counts of kidnapping for ransom and in three counts of kidnapping is AFFIRMED, but the penalty imposed is hereby MODIFIED as follows: Appellant is sentenced to five terms of reclusion perpetua, one for each of his five convictions for kidnapping for ransom; and to three terms of reclusion perpetua, one each for the kidnapping of Public Officers Virginia Gara, Monico Saavedra and Calixto Francisco. Like the other accused who withdrew their appeals, he is REQUIRED to return the personal effects, or their monetary value, taken from the kidnap victims. Additionally, he is ORDERED to pay the amount of P122,000 representing the ransom money paid to the kidnappers. Costs against appellant.

SO ORDERED.
Davide, Jr., Bellosillo, Vitug and Quisumbing, JJ ., concur.

Q: Anna and Badong were accused of killing Cathy. However, only Anna was arrested since Badong went in to hiding. After trial, Anna was acquitted of the charge in a decision rendered by Judge Santos. Subsequently, Badong was arrested and brought to trial. After trial, Badong was found guilty of homicide in a decision rendered by Judge Yantok, the judge who replaced Judge Santos after the latter retired. On appeal, Badong argues that Judge Yantok should have taken judicial notice of the acquittal of Anna rendered by Judge Santos. Is Badong correct?
A: No. The appreciation of one judge of the testimony of a certain witness is not binding on another judge who heard the testimony of the same witness on the same matter. Each magistrate who hears the testimony of a witness is called upon to make his own appreciation of the evidence. It is, therefore, illogical to argue that because one judge made a conclusion in a certain way with respect to one or more of the accused; it necessarily dictates that the succeeding judge who heard the same case against the other accused should automatically make the same conclusion *(People v. Langit, G.R. Nos. 134757-58, Aug. 4, 2000)*.

Note: All courts must take judicial notice of the decisions of the Supreme Court as they are duty bound to know the rulings of the highest tribunal and to apply them in the adjudication of cases, jurisprudence being a part of our judicial system

POSTSCRIPT ON RULE 129

LAYING THE FOUNDATIONS FOR EVIDENCE

In determining the competency of an offered piece of evidence, the court must examine the requisites provided by the pertinent rule or law for its admissibility. These requisites must be established as foundations for the evidence. For example, for a declaration of an agent to be admissible against his principal, as an exception to the *res inter alios acta* rule,31 the declaration must be: (1) within the scope of the agent's authority; (2) made during the existence of the agency; and (3) the agency is shown by evidence other than by such declaration.32 If the agent's declaration is on a matter outside the scope of his agency, or is made after the agency had ceased, the agent's declaration cannot be admitted against his principal; the general rule of *res inter alios acta* will apply instead.

Similarly, the foundation required by the Rules for the proper presentation of evidence must be laid, lest the evidence be rejected. For example, when the original of a document is unavailable, before secondary evidence thereof is admitted, the proponent must establish: (1) the existence or execution of the original document, and (2) the circumstances of the loss or destruction of the original, or that the original cannot be produced in court.

A. Judicial Notice

1. Mandatory and Discretionary Judicial Notice

Not everything alleged in a party's pleading is required to be proved. Certain matters may be so well known to the court that to compel a party to prove it would be a waste of time and effort.

Under the Rules, it shall be mandatory for the court to take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationalities, the law of nations, the admiralty and maritime courts of the world and their seals, the political Constitution and history of the Philippines, the official acts of the three departments of the Philippine government, the laws of nature, the measure of time and the geographical divisions.33 Courts may take judicial notice of matters which are: (a) of public knowledge, (b) capable of unquestionable demonstration, or (c) ought to be known to judges because of their official functions.34

2. Hearing the Parties on Discretionary Judicial Notice

During the trial, when a court is uncertain whether it may, at its discretion, take judicial notice of a certain fact or not, it may call the parties to a hearing to give them a reasonable opportunity to present information relevant to the propriety or impropriety of taking judicial notice of that fact. Certainly the so-called *"hearing"* is not for the purpose of adducing evidence on that fact. Similarly, even after the trial and before judgment or on appeal, the court may hear the parties on the propriety of taking judicial notice of a certain matter if such matter is decisive of a material issue in the case.35 This procedure will apprise the parties of the possibility that the judge will or will not take judicial notice of a fact, or of his resolution either way; it will thus eliminate the element of surprise and enable the parties to act accordingly.

3. Judicial Notice of Proceedings in Another Case

In the adjudication of a case pending before it, a court is not authorized to take judicial notice of the contents of another case even if said case was heard by the same judge. The following are exceptions to this general rule: (1) when in the absence of any objection, with the knowledge of the opposing party, the contents of said other case are clearly referred to by title and number in a pending action and adopted or read into the record of the latter; or (2) when the original record of the other case or any part of it is actually withdrawn from the archives at the court's discretion upon the request, or with the consent, of the parties, and admitted as part of the record of the pending case.36 Parenthetically, a court will take judicial notice of its own acts and records in the same case.37

When there is an objection, and the judge therefore cannot take judicial notice of a testimony or deposition given in another case, the interested party must present the witness to testify anew. However, if the witness is already dead or unable to testify (due to a grave cause almost amounting to death, as when the witness is old and has lost the power of speech38), his testimony or deposition given in a former case or proceeding, judicial or administrative, involving the same parties and subject matter, may be given in evidence against the adverse party who had the opportunity to cross-examine him.39

If the testimony or deposition given in another proceeding is that of a party in a case, the other party may simply offer in evidence the record of that testimony or the deposition without having to call the declarant-party to testify thereon. Certainly, a party will offer the opposing party's declaration as evidence only if it is prejudicial to the latter's interest. Such declaration of a party against his interest is an extra-judicial admission which may be given in evidence against him.40

B. Admissions: Judicial And Extra-Judicial

An admission is a party's acknowledgment of a fact which is against his interest.

A party may make an admission in any of these ways:

1. In written pleadings, motions and other papers, and stipulations filed in the case.

2. In open court, either by his testimony on the stand or by his statement or that of his counsel.

3. In his statement made outside the proceedings in the same case.

In the first two instances above-mentioned, the admissions made are regarded as judicial admissions. A judicial admission does not require proof and may be contradicted only by showing that it was made through palpable mistake or that no such admission was made. A judicial admission need not be offered in evidence since it is not evidence. It is superior to evidence and shall be considered by the court as established.

On the other hand, statements made by a party outside the proceedings in the same case are extrajudicial admissions which may be an act, declaration or omission made by a party as to a relevant fact and may be given in evidence against him.41 This type of admission is regarded as evidence and must be offered as such; otherwise, the court will not consider it in deciding the case. If the extra-judicial statement of a party is not against his interest but is in his favor, it becomes a self-serving declaration which is inadmissible for being hearsay since it will be testified to by one who simply heard the statement and has no personal knowledge of it. But it will not be incompetent evidence, nor self-serving, if testified to by the party himself at the trial.42

By the rule's definition, not all admissions made by a party during a judicial proceeding are judicial admissions. To qualify, they must be made and offered in the proceedings in the same case. If made in one judicial proceeding, but offered in another, they become extrajudicial admissions for purposes of the latter case. Thus, the declaration of a defendant in a case that the plaintiff therein is his agent is a judicial admission of the agency relationship between them if that fact is against the defendant's interest. However, that same admission may only be an extrajudicial admission if considered in another case between the same parties.

With more reason, an admission made in a document drafted for purposes of filing as a pleading in the case but never filed, another pleading being filed in its stead, is not a judicial admission, for the unfiled document is not considered a pleading. Whether it would even be an extrajudicial admission would depend upon whether the document was signed by the client or only by his attorney. If signed only by the attorney, it would not be admissible at all, since an attorney has authority to make statements on behalf of his client only in open court or in a pleading actually filed.43

In criminal cases, it should be noted that an admission or stipulation made by the accused during the pre-trial cannot be used in evidence against him unless reduced to writing and signed by him and his counsel.44 But this rule does not apply to admissions made in the course of the trial. Thus, an admission made by an accused or his counsel during the trial may be used against the accused although not signed by either of them.45

Admissions in a pleading which had been withdrawn or superseded by an amended pleading, although filed in the same case, are reduced to the status of extrajudicial admissions and therefore must be proved by the party who relies thereon46 by formally offering in evidence the original pleading containing such extrajudicial admission.47 Consistently, the 1997 Rules of Civil Procedure provides that 'An amended pleading supersedes the pleading that it amends. However, admissions in superseded pleadings may be received in evidence against the pleader xxx.'48

Since generally a judicial admission does not require proof and cannot be contradicted, any attempt made by a party to still prove it may be objected to as immaterial, *i.e.,* not in issue anymore; and any attempt to adduce evidence in contradiction of that admission may also be objected to. In either case, the judge may himself block such attempts as improper departures from the issues of the case. Unless, of course, it can be shown that the admission was made through palpable mistake or that no such admission was made at all.

RULE 130
RULES OF ADMISSIBILITY
OBJECT (REAL) EVIDENCE

Real evidence, material evidence or **physical evidence** is any material object, introduced in a trial, intended to prove a fact in issue based on its demonstrable physical characteristics. Physical evidence can conceivably include all or part of any object.[1]

Examples
Examples include the written contract, the defective part or defective product, the murder weapon, the gloves used by an alleged murderer.
Trace evidence, such as fingerprints, glove prints and firearm residue, is also a type of real evidence. Real evidence is usually reported upon by anexpert witness with appropriate qualifications to give an opinion. This normally means a forensic scientist or one qualified in forensic engineering.
In a murder trial for example (or a civil trial for assault), the physical evidence might include *biological evidence* such as DNA left by the attacker on the victim's body, the body itself, the weapon used, pieces of carpet spattered with blood, or casts of footprints or tire prints found at the scene of the crime.

Provenance
Admission of real evidence requires authentication, demonstration of relevance, and a showing that the object is in "the same or substantially the same condition" now as it was on the relevant date. An object of real evidence is authenticated through witness statements or by circumstantial evidence called the chain of custody.

Physical and documentary evidence
Evidence that conveys in a different form the same information that would be conveyed by a piece of physical evidence is not itself physical evidence. For example, a diagram comparing a defective part to one that was properly made is documentary evidence—only the actual part, or a replica of the actual part, would be physical evidence. Similarly, a film of a murder taking place would not be physical evidence (unless it was introduced to show that the victims blood had splattered on the

film), but documentary evidence (as with a written description of the event from an eyewitness).[4]

RULE 130

Rules of Admissibility

A. OBJECT (REAL) EVIDENCE

Section 1. *Object as evidence*. ? Objects as evidence are those addressed to the senses of the court. When an object is relevant to the fact in issue, it may be exhibited to, examined or viewed by the court. (1a)

Objects as evidence are those addressed to the senses of the court. When an object is relevant to the fact in issue, it may be exhibited to, examined or viewed by the court.

Republic of the Philippines
SUPREME COURT
Manila

EN BANC

G.R. No. 131516 March 5, 2003

PEOPLE OF THE PHILIPPINES, plaintiff-appellee,
vs.
RONNIE RULLEPA Y GUINTO, accused-appellant.

CARPIO MORALES, J.:

On complaint of Cyra May Francisco Buenafe, accused-appellant Ronnie Rullepa y Guinto was charged with Rape before the Regional Trial Court (RTC) of Quezon City allegedly committed as follows:

> That on or about the 17th day of November, 1995, in Quezon City, Philippines, the said accused, by means of force and intimidation, to wit: by then and there willfully, unlawfully and feloniously removing her parity, kissing her lips and vagina and thereafter rubbing his penis and inserting the same to the inner portion of the vagina of the undersigned complainant, 3 years of age, a minor, against her will and without her consent.[1]

Arraigned on January 15, 1996, accused-appellant pleaded not guilty.[2]

From the testimonies of its witnesses, namely Cyra May,[3] her mother Gloria Francisco Buenafe, Dr. Cristina V. Preyra, and SPO4 Catherine Borda, the prosecution established the following facts:

On November 20, 1995, as Gloria was about to set the table for dinner at her house in Quezon City, Cyra May, then only three and a half years old, told her, "Mama, *si kuya Ronnie lagay niya titi niya at sinaksak sa puwit at sa bibig ko*."

"*Kuya* Ronnie" is accused-appellant Ronnie Rullepa, the Buenafes' house boy, who was sometimes left with Cyra May at home.

Gloria asked Cyra May how many times accused-appellant did those things to her, to which she answered many times. Pursuing, Gloria asked Cyra May what else he did to her, and Cyra May indicated the room where accused-appellant slept and pointed at his pillow.

As on the night of November 20, 1995 accused-appellant was out with Gloria's husband Col. Buenafe,[4] she waited until their arrival at past 11:00 p.m. Gloria then sent accused-appellant out on an errand and informed her husband about their daughter's plaint. Buenafe thereupon

[4] http://en.wikipedia.org/wiki/Real_evidence

talked to Cyra May who repeated what she had earlier told her mother Gloria.

When accused-appellant returned, Buenafe and Gloria verified from him whether what Cyra May had told them was true. Ronnie readily admitted doing those things but only once, at 4:00 p.m. of November 17, 1995 or three days earlier. Unable to contain her anger, Gloria slapped accused-appellant several times.

Since it was already midnight, the spouses waited until the following morning to bring accused-appellant to Camp Karingal where he admitted the imputations against him, on account of which he was detained. Gloria's sworn statement[5] was then taken.[6]

Recalling what accused-appellant did to her, Cyra May declared at the witness stand: "*Sinaksak nya ang titi sa pepe ko, sa puwit ko, at sa bunganga*," thus causing her pain and drawing her to cry. She added that accused-appellant did these to her twice in his bedroom.

Dr. Ma. Cristina V. Preyra, the Medico-Legal Officer and Chief of the Biological Science Branch of the Philippine National Police Crime Laboratory who examined Cyra May, came up with her report dated November 21, 1995,[7] containing the following findings and conclusions:

> FINDINGS:
>
> GENERAL AND EXTRA GENITAL:
>
> Fairly developed, fairly nourished and coherent female child subject. Breasts are undeveloped. Abdomen is flat and soft.
>
> GENITAL:
>
> There is absence of pubic hair. Labia majora are full, convex and coaptated with **congested and abraded labia minora presenting in between**. On separating the same is disclosed an abraded posterior fourchette and an elastic, fleshy type intact hymen. External vaginal orifice does not admit the tip of the examining index finger.
>
> xxx xxx xxx
>
> CONCLUSION:
>
> Subject is in virgin state physically.

There are no external signs of recent application of any form of trauma at the time of examination. (Emphasis supplied.)

By Dr. Preyra's explanation, the abrasions on the *labia minora* could have been caused by friction with an object, perhaps an erect penis. She doubted if riding on a bicycle had caused the injuries.[8]

The defense's sole witness was accused-appellant, who was 28 and single at the time he took the witness stand on June 9, 1997. He denied having anything to do with the abrasions found in Cyra May's genitalia, and claimed that prior to the alleged incident, he used to be ordered to buy medicine for Cyra May who had difficulty urinating. He further alleged that after he refused to answer Gloria's queries if her husband Buenafe, whom he usually accompanied whenever he went out of the house, was womanizing, Gloria would always find fault in him. He suggested that Gloria was behind the filing of the complaint. Thus:

q According to them you caused the abrasions found in her genital?
a That is not true, sir,
q If that is not true, what is the truth?
a As I have mentioned earlier that before I started working with the family I was sent to Crame to buy medicine for the daughter because she had difficulty in urinating.
q Did you know why the child has difficulty in urinating?
a No, I do not know, sir.
q And how about the present complaint filed against you, the complaint filed by the mother of the victim?
a I did not do it, sir.
q What is the truth, what can you say about this present complaint filed against you?
a As I said Mrs. Buenafe got mad at me because after I explained to her that I was going with her gusband (sic) to the children of the husband with a former marriage.[9]

Finding for the prosecution, Branch 96 of the Quezon City RTC rendered judgment, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered finding accused RONNIE RULLEPA y GUINTO guilty beyond reasonable doubt of rape, and he is accordingly sentenced to *death*.

The accused is ordered to pay CYRA MAE BUENAFE the amount of P40,000.00 as *civil indemnity*.

Costs to be paid by the accused.[10] (Italics in the original.)

Hence, this automatic review, accused-appellant assigning the following errors to the trial court:

I

THE COURT A QUO ERRED IN CONSIDERING AS ADMISSIBLE IN EVIDENCE THE ACCUSED-APPELLANT'S ADMISSION.

II

THE COURT A QUO ERRED ON (sic) RULING THAT THE ACCUSED-APPELLANT'S SILENCE DURING TRIAL AMOUNTED TO AN IMPLIED ADMISSION OF GUILT.

III

THE COURT A QUO ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIME CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.

IV

THE COURT A QUO GRAVELY ERRED IN IMPOSING THE SUPREME PENALTY OF DEATH UPON THE ACCUSED-APPELLANT.[11] (Emphasis supplied.)

Accused-appellant assails the crediting by the trial court, as the following portion of its decision shows, of his admission to Gloria of having sexually assaulted Cyra May:

> In addition, the mother asserted that Rullepa had admitted Cyra Ma[y]'s complaint during the confrontation in the house. Indeed, according to the mother, the admission was even expressly *qualified* by Rullepa's insistence that he had committed the sexual assault only once, specifying the time thereof as 4:00 pm of November 17, 1995. That qualification proved that the admission was voluntary and true. An uncoerced and truthful admission like this should be absolutely admissible and

competent.

xxx xxx xxx

Remarkably, the admission was not denied by the accused during trial despite his freedom to deny it if untrue. Hence, the admission became conclusive upon him.[12] (Emphasis supplied.)

To accused-appellant, the statements attributed to him are inadmissible since they were made out of fear, having been elicited only after Cyra May's parents "bullied and questioned him." He thus submits that it was error for the trial court to take his failure to deny the statements during the trial as an admission of guilt.

Accused-appellant's submission does not persuade. The trial court considered his admission merely as an**additional** ground to convince itself of his culpability. Even if such admission, as well as the implication of his failure to deny the same, were disregarded, the evidence suffices to establish his guilt beyond reasonable doubt.

The plain, matter-of-fact manner by which Cyra May described her abuse in the hands of her *Kuya* Ronnie is an eloquent testament to the truth of her accusations. Thus she testified on direct examination:

q Do you recall if Ronnie Rullepa did anything to you?
a Yes, sir.
q What did he do to you?
a "Sinaksak nya ang titi sa pepe ko, sa puwit ko, at sa bunganga"
q How many times did he do that to you?
a Twice, sir.
xxx xxx xxx
q Do you remember when he did these things to you?
a Opo.
q When was that?
a When my mother was asleep, he put — he removed my panty and inserted his penis inside my vagina, my anus and my mouth, sir.
xxx xxx xxx
q After your Kuya Ronnie did those things to you what did you feel?
a "Sabi nya ganito (Witness putting her finger in her lips) Nasaktan po ako at umiyak po ako".
q Did you cry because of hurt?
a Yes.
q What part of your body hurt?
a "Pepe ko po." When I went to the bathroom to urinate, I felt pain in my organ, sir.[13]

Cyra May reiterated her testimony during cross-examination, providing more revolting details of her ordeal:

q So, you said that Kuya Ronnie did something to you what did he do to you on November 17, 1995?
a "Sinaksak nga yong titi nya". He inserted his penis to my organ and to my mouth, sir.
xxx xxx xxx
q When you said that your kuya Ronnie inserted his penis into your organ, into your mouth, and into your anus, would you describe what — his penis?
a It is a round object, sir.
Court:
Is this titi of your kuya Ronnie a part of his body?
a Opo.
q Was that in the head of kuya Ronnie?
a No, sir.
q Which part of his body that titi located? (Witness pointing to her groin area)
Court:
Continue

xxx xxx xxx
q Why were you in that room?
a Gusto nya po matulog ako sa kuwarto niya.
q When you were in that room, what did Kuya Ronnie do to you?
a "Hinubo po niya ang panty ko."
q And after he remove your panty, what did Kuya Ronnie do, what did he do to you?
a He inserted his penis to my organ, sir.
q Why did kuya Ronnie, was kuya Ronnie already naked or he was already wearing any clothing?
a Still had his clothing on, sir.
q So, where did his penis, saan lumabas ang penis ni Kuya Ronnie?
a Dito po, (Witness referring or pointing to her groin area)
xxx xxx xxx
q So, that's the — and at the time, you did not cry and you did not shout for help?
a Sabi nya po, not to make any noise because my mother might be roused from sleep.
q How long was kuya Ronnie did that to you?
a Matagal po.
q After kuya Ronnie scrub his penis to your vagina, what other things did he do?
a After that he inserted his penis to my mouth, and to my anus, sir.
q You did not complain and you did not shout?
a I cried, sir.[14]

Accused-appellant draws attention to the statement of Cyra May that he was not in the house on November 17 (1995), as reflected in the following transcript of her testimony:

q Is it not a fact that you said a while ago that when your father leaves the house, he [was] usually accompanied by your kuya Ronnie?
a Opo.
q Why is it that Kuya Ronnie was in the house when your father left the house at that time, on November 17?
a He was with Kuya Ronnie, sir.
q So, it is not correct that kuya Ronnie did something to you because your kuya Ronnie [was] always with your Papa?
a Yes, sir.[15]

The above-quoted testimony of Cyra May does not indicate the time when her father Col. Buenafe left their house on November 17, 1995 with accused-appellant and, thus, does not preclude accused-appellant's commission of rape on the same date. In any event, a young child is vulnerable to suggestion, hence, her affirmative response to the defense counsel's above-quoted **leading** questions.

As for the variance in the claim regarding when Gloria was informed of the rape, Gloria having testified that she learned of it on November 20, 1995[16] while Cyra May said that immediately after the incident, she awakened her mother who was in the adjacent room and reported it:[17] This is a minor matter that does not detract from Cyra May's categorical, material testimony that accused-appellant inserted his penis into her vagina.

Accused-appellant goes on to contend that Cyra May was coached, citing the following portion of her testimony:

> q "Yong sinabi mong sinira nya ang buhay mo," where did you get that phrase?
>
> a It was the word of my Mama, sir.[18]

On the contrary, the foregoing testimony indicates that Cyra May was really narrating the truth, that of hearing her mother utter "*sinira niya ang buhay mo*."

Accused-appellant's suggestion that Cyra May

merely imagined the things of which he is accused, perhaps getting the idea from television programs, is preposterous. It is true that "the ordinary child is a `great weaver of romances,"' and her "imagination may induce (her) to relate something she has heard or read in a story as personal experience."[19] But Cyra May's account is hardly the stuff of romance or fairy tales. Neither is it normal TV fare, if at all.

This Court cannot believe that a victim of Cyra May's age could concoct a tale of defloration, allow the examination of her private parts, and undergo the expense, trouble, inconvenience, not to mention the trauma of public trial."[20]

Besides, her testimony is corroborated by the findings of Dr. Preyra that there were abrasions in her *labia minora*, which she opined, could have been caused by friction with an erect penis.

This Court thus accords great weight to the following assessment of the trial court regarding the competency and credibility of Cyra May as a witness:

> Her very tender age notwithstanding, Cyra Ma(y) nonetheless appeared to possess the necessary intelligence and perceptiveness sufficient to invest her with the competence to testify about her experience. She might have been an impressionable child — as all others of her age are — but her narration of *Kuya*Ronnie's placing his "*titi*" in her "*pepe*" was certainly one which could not be considered as a common child's tale. Her responses during the examination of counsel and of the Court established her consciousness of the *distinction* between *good* and *bad*, which rendered inconceivable for her to describe a "bad" act of the accused unless it really happened to her. Needless to state, she described the act of the accused as bad. Her demeanor as a witness — manifested during trial by her unhesitant, spontaneous, and plain responses to questions — further enhanced her claim to credit and trustworthiness.[21] (Italics in the original.)

In a futile attempt at exculpation, accused-appellant claims that even before the alleged incident Cyra May was already suffering from pain in urinating. He surmises that she could have scratched herself which caused the abrasions. Dr. Preyra, however, was quick to rule out this possibility. She stated categorically that that part of the female organ is very sensitive and rubbing or scratching it is painful.[22] The abrasions could not, therefore, have been self-inflicted.

That the Medical-Legal Officer found "no external signs of recent application of any form of trauma at the time of the examination" does not preclude accused-appellant's conviction since the infliction of force is immaterial in statutory rape.[23]

More. That Cyra May suffered pain in her vagina but not in her anus despite her testimony that accused-appellant inserted his penis in both orifices does not diminish her credibility. It is possible that accused-appellant's penis failed to penetrate her anus as deeply as it did her vagina, the former being more resistant to extreme forces than the latter.

Accused-appellant's imputation of ill motive on the part of Gloria is puerile. No mother in her right mind would subject her child to the humiliation, disgrace and trauma attendant to a prosecution for rape if she were not motivated solely by the desire to incarcerate the person

responsible for the child's defilement.[24] Courts are seldom, if at all, convinced that a mother would stoop so low as to subject her daughter to physical hardship and shame concomitant to a rape prosecution just to assuage her own hurt feelings.[25]

Alternatively, accused-appellant prays that he be held liable for acts of lasciviousness instead of rape, apparently on the basis of the following testimony of Cyra May, quoted *verbatim*, that he merely "scrubbed" his penis against her vagina:

> q Is it not a fact that kuya Ronnie just made some scrubbed his penis into your vagina?
>
> a Yes, Sir.
>
> q And when — he did not actually penetrated your vagina?
>
> a Yes, sir.[26]

Dr. Preyra, however, found abrasions in the *labia minora*, which is "directly beneath the *labia majora*,"[27] proving that there was indeed penetration of the vagina, not just a mere rubbing or "scrubbing" of the penis against its surface.

In fine, the crime committed by accused-appellant is not merely acts of lasciviousness but statutory rape.

The two elements of statutory rape are (1) that the accused had carnal knowledge of a woman, and (2) that the woman is below twelve years of age.[28] As shown in the previous discussion, the first element, carnal knowledge, had been established beyond reasonable doubt. The same is true with respect to the second element.

The victim's age is relevant in rape cases since it may constitute an element of the offense. Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659,[29] 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:
>
> xxx xxx xxx.
>
> 3. When the woman is **under twelve years** of age . . .
>
> xxx xxx xxx.
>
> The crime of rape shall be punished by *reclusion perpetua*.
>
> xxx xxx xxx.

Furthermore, the victim's age may constitute a **qualifying circumstance**, warranting the imposition of the death sentence. The same Article states:

> The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:
>
> 1. 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 with the third civil degree, or the common-law spouse of the parent of the victim:
>
> xxx xxx xxx.
>
> 4. when the victim is . . . a child **below seven (7) years** old.

xxx xxx xxx.

Because of the seemingly conflicting decisions regarding the sufficiency of evidence of the victim's age in rape cases, this Court, in the recently decided case of *People v. Pruna*,[30] established a set of guidelines in appreciating age as an element of the crime or as a qualifying circumstance, to wit:

> 1. The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.
>
> 2. In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age.
>
> 3. If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances:
>
> a. If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old;
>
> b. If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old;
>
> c. If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old.
>
> 4. In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused.
>
> 5. It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him.
>
> 6. The trial court should always make a categorical finding as to the age of the victim.

Applying the foregoing guidelines, this Court in the *Pruna* case held that the therein accused-appellant could only be sentenced to suffer the penalty of *reclusion perpetua* since:

> . . . no birth certificate or any similar authentic document, such as a baptismal certificate of LIZETTE, was presented to prove her age. . . . .
>
> xxx xxx xxx.
>
> However, the Medico-Legal Report relied upon by the trial court does not in any way prove the age of LIZETTE, for there is nothing therein which even mentions her age. Only testimonial evidence was

presented to establish LIZETTE's age. Her mother, Jacqueline, testified (that the victim was three years old at the time of the commission of the crime).

xxx xxx xxx

Likewise, LIZETTE testified on 20 November 1996, or almost two years after the incident, that she was 5 years old. However, when the defense counsel asked her how old she was on 3 January 1995, or at the time of the rape, she replied that she was 5 years old. Upon further question as to the date she was born, she could not answer.

For PRUNA to be convicted of rape in its qualified form and meted the supreme penalty of death, it must be established with certainty that LIZETTE was below 7 years old at the time of the commission of the crime. It must be stressed that the severity of the death penalty, especially its irreversible and final nature once carried out, makes the decision-making process in capital offenses aptly subject to the most exacting rules of procedure and evidence.

In view of the uncertainty of LIZETTE's exact age, corroborative evidence such as her birth certificate, baptismal certificate or any other authentic document should be introduced in evidence in order that the qualifying circumstance of "below seven (7) years old" is appreciated against the appellant. The lack of objection on the part of the defense as to her age did not excuse the prosecution from discharging its burden. That the defense invoked LIZETTE's tender age for purposes of questioning her competency to testify is not necessarily an admission that she was below 7 years of age when PRUNA raped her on 3 January 1995. Such being the case, PRUNA cannot be convicted of qualified rape, and hence the death penalty cannot be imposed on him.

However, conformably with no. 3 (b) of the foregoing guidelines, the testimony of LIZETTE's mother that she was 3 years old at the time of the commission of the crime is sufficient for purposes of holding PRUNA liable for statutory rape, or rape of a girl below 12 years of age. Under the second paragraph of Article 335, as amended by R.A. No. 7659, in relation to no. 3 of the first paragraph thereof, having carnal knowledge of a woman under 12 years of age is punishable by *reclusion perpetua*. Thus, the penalty to be imposed on PRUNA should be *reclusion perpetua*, and not death penalty. (Italics in the original.)

Several cases[31] suggest that courts may take "judicial notice" of the appearance of the victim in determining her age. For example, the Court, in *People v. Tipay*,[32] qualified the ruling in *People v. Javier*,[33] which required the presentation of the birth certificate to prove the rape victim's age, with the following pronouncement:

> This does not mean, however, that the presentation of the certificate of birth is at all times necessary to prove minority. The minority of a victim of tender age who may be below the age of ten is quite manifest and the court can take judicial notice thereof. The crucial years pertain to the ages of fifteen to seventeen where minority may seem to be dubitable due to one's physical

> appearance. In this situation, the prosecution has the burden of proving with certainty the fact that the victim was under 18 years of age when the rape was committed in order to justify the imposition of the death penalty under the above-cited provision. (Emphasis supplied.)

On the other hand, a handful of cases[34] holds that courts, without the requisite hearing prescribed by Section 3, Rule 129 of the Rules of Court,[35] cannot take judicial notice of the victim's age.

Judicial notice signifies that there are certain "*facta probanda*," or propositions in a party's case, as to which he will not be required to offer evidence; these will be taken for true by the tribunal without the need of evidence.[36]Judicial notice, however, is a phrase sometimes used in a loose way to cover some other judicial action. Certain rules of Evidence, usually known under other names, are frequently referred to in terms of judicial notice.[37]

The process by which the trier of facts judges a person's age from his or her appearance cannot be categorized as judicial notice. Judicial notice is based upon convenience and expediency for it would certainly be superfluous, inconvenient, and expensive both to parties and the court to require proof, in the ordinary way, of facts which are already known to courts.[38] As *Tundag* puts it, it "is the cognizance of certain facts which judges may properly take and act on **without proof** because they already know them." Rule 129 of the Rules of Court, where the provisions governing judicial notice are found, is entitled "What Need Not Be Proved." When the trier of facts observes the appearance of a person to ascertain his or her age, he is not taking judicial notice of such fact; rather, he is conducting an **examination of the evidence**, the evidence being the appearance of the person. Such a process militates against the very concept of judicial notice, the object of which is to do away with the presentation of evidence.

This is not to say that the process is not sanctioned by the Rules of Court; on the contrary, it does. A person's appearance, where relevant, is admissible as object evidence, the same being addressed to the senses of the court. Section 1, Rule 130 provides:

> SECTION 1. *Object as evidence.* — Objects as evidence are those addressed to the senses of the court. When an object is relevant to the fact in issue, it may be exhibited to, examined or viewed by the court.

"To be sure," one author writes, "this practice of inspection by the court of objects, things or **persons** relevant to the fact in dispute, has its roots in ancient judicial procedure."[39] The author proceeds to quote from another authority:

> "Nothing is older or commoner in the administration of law in all countries than the submission to the senses of the tribunal itself, whether judge or jury, of objects which furnish evidence. The view of the land by the jury, in real actions, of a wound by the judge where mayhem was alleged, **and of the person of one alleged to be an infant, in order to fix his age**, the inspection and comparison of seals, the examination of writings, to determine, whether they are (`)blemished,(') the implements with which a crime was committed or of a person alleged, in a bastardy proceeding,

> to be the child of another, are few illustrations of what may be found abundantly in our own legal records and textbooks for seven centuries past."[40] (Emphasis supplied.)

A person's *appearance*, as evidence of age (for example, of infancy, **or of being under the age of consent to intercourse**), is usually regarded as relevant; and, if so, the tribunal may properly observe the person brought before it.[41] Experience teaches that corporal appearances are approximately an index of the age of their bearer, particularly for the marked extremes of old age and youth. In every case such evidence should be accepted and weighed for what it may be in each case worth. In particular, the *outward physical* appearance of an alleged minor may be considered in judging his age; a contrary rule would for such an inference be pedantically over-cautious.[42]Consequently, the jury or the court trying an issue of fact may be allowed to judge the age of persons in court by observation of such persons.[43] The formal offer of the person as evidence is not necessary. The examination and cross-examination of a party before the jury are equivalent to exhibiting him before the jury and an offer of such person as an exhibit is properly refused.[44]

This Court itself has sanctioned the determination of an alien's age from his appearance. In *Braca v. Collector of Customs*,[45] this Court ruled that:

The customs authorities may also determine from the personal appearance of the immigrant what his age is. The person of a Chinese alien seeking admission into the Philippine Islands is evidence in an investigation by the board of special inquiry to determine his right to enter; and such body may take into consideration his appearance to determine or assist in determining his age and a finding that the applicant is not a minor based upon such appearance is not without evidence to support it.

This Court has also implicitly recognized the same process in a criminal case. Thus, in *United States v. Agadas*,[46]this Court held:

> Rosario Sabacahan testified that he was 17 years of age; that he had never purchased a cedula; and that he was going to purchase a cedula the following January. Thereupon the court asked this defendant these questions: "You are a pretty big boy for seventeen." Answer: "I cannot tell exactly because I do not remember when I was born, but 17 years is my guess." Court: "If you are going to take advantage of that excuse, you had better get some positive evidence to that effect." Answer: "I do not remember, as I already stated on what date and in what year I was born." The court, in determining the question of the age of the defendant, Rosario Sabacahan, said:
>
> > "The defendant, Rosario Sabacahan, testified that he thought that he was about 17 years of age, but**judging by his appearance** he is a youth 18 or 19 years old. He has shown that he has no positive information on the subject and no effort was made by the defense to prove the fact that he is entitled to the mitigating circumstance of article 9, paragraph 2, of the Penal code, which fact it is held to be incumbent upon the defense to establish by satisfactory evidence in order to enable the court to give an accused person the benefit

of the mitigating circumstance."

In United States vs. Estavillo and Perez (10 Off. Gaz., 1984) Estavillo testified, when the case was tried in the court below, that he then was only 16 years of age. There was no other testimony in the record with reference to his age. But the trial judge said: "The accused Estavillo, notwithstanding his testimony giving his age as 16 years, is, as a matter of fact, not less than 20." This court, in passing upon the age of Estavillo, held:

> "We presume that the trial court reached this conclusion with reference to the age of Estavillo from the latter's personal appearance. There is no proof in the record, as we have said, which even tends to establish the assertion that this appellant understated his age. . . . It is true that the trial court had an opportunity to note the personal appearance of Estavillo for the purpose of determining his age, and by so doing reached the conclusion that he was at least 20, just two years over 18. This appellant testified that he was only 16, and this testimony stands uncontradicted. Taking into consideration the marked difference in the penalties to be imposed upon that age, we must, therefore, conclude (resolving all doubts in favor of the appellants) that the appellants' ages were 16 and 14 respectively."

While it is true that in the instant case Rosario testified that he was 17 years of age, yet the trial court reached the conclusion, judging from the personal appearance of Rosario, that "he is a youth 18 or 19 years old." Applying the rule enunciated in the case just cited, we must conclude that there exists a reasonable doubt, at least, with reference to the question whether Rosario was, in fact 18 years of age at the time the robbery was committed. This doubt must be resolved in favor of the defendant, and he is, therefore, sentenced to six months of *arresto mayor* in lieu of six years ten months and one day of *presidio mayor*. . . . .

There can be no question, therefore, as to the **admissibility** of a person's appearance in determining his or her age. As to the **weight** to accord such appearance, especially in rape cases, *Pruna* laid down guideline no. 3, which is again reproduced hereunder:

> 3. If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances:
>
> > a. If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old;
> >
> > b. If the victim is alleged to be

below 7 years of age and what is sought to be proved is that she is less than 12 years old;

c. If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old.

Under the above guideline, the testimony of a relative with respect to the age of the victim is sufficient to constitute proof beyond reasonable doubt in cases (a), (b) and (c) above. In such cases, the disparity between the allegation and the proof of age is so great that the court can easily determine from the appearance of the victim the veracity of the testimony. The appearance corroborates the relative's testimony.

As the alleged age approaches the age sought to be proved, the person's appearance, as object evidence of her age, loses probative value. Doubt as to her true age becomes greater and, following *Agadas*, *supra*, such doubt must be resolved in favor of the accused.

This is because in the era of modernism and rapid growth, the victim's mere physical appearance is not enough to gauge her exact age. For the extreme penalty of death to be upheld, nothing but proof beyond reasonable doubt of every fact necessary to constitute the crime must be substantiated. Verily, the minority of the victim should be not only alleged but likewise proved with equal certainty and clearness as the crime itself. Be it remembered that the proof of the victim's age in the present case spells the difference between life and death.[47]

In the present case, the prosecution did not offer the victim's certificate of live birth or similar authentic documents in evidence. The victim and her mother, however, testified that she was only three years old at the time of the rape. Cyra May's testimony goes:

q Your name is Cyra Mae is that correct?
a Yes, sir.
q And you are 3 years old?
a Yes, sir.[48]

That of her mother goes:

Q How old was your daughter when there things happened?
A 3 and ½ years old.
Q When was she born?
A In Manila, May 10, 1992.[49]

Because of the vast disparity between the alleged age (three years old) and the age sought to be proved (below twelve years), the trial court would have had no difficulty ascertaining the victim's age from her appearance. No reasonable doubt, therefore, exists that the second element of statutory rape, i.e., that the victim was below twelve years of age at the time of the commission of the offense, is present.

Whether the victim was below seven years old, however, is another matter. Here, reasonable doubt exists. A mature three and a half-year old can easily be mistaken for an underdeveloped seven-year old. The appearance of the victim, as object evidence, cannot be accorded much weight and, following *Pruna*, the testimony of the mother is, by itself, insufficient.

As it has not been established with moral certainty that Cyra May was below seven years old at the time of the commission of the offense, accused-appellant cannot be sentenced to suffer the death penalty. Only the penalty

of *reclusion perpetua* can be imposed upon him.

In line with settled jurisprudence, the civil indemnity awarded by the trial court is increased to P50,000.00. In addition, Cyra May is entitled to an award of moral damages in the amount of P50,000.00.[50]

WHEREFORE, the Decision of the Regional Trial Court of Quezon City, Branch 96, is **AFFIRMED** with**MODIFICATION**. Accused-appellant Ronnie Rullepa y Guinto is found **GUILTY** of Statutory Rape, defined and punished by Article 335 (3) of the Revised Penal Code, as amended, and is sentenced to suffer the penalty of*reclusion perpetua*. He is ordered to pay private complainant, Cyra May Buenafe y Francisco, the amount of P50,000.00 as civil indemnity and P50,000.00 as moral damages.

SO ORDERED.

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

_ Classification of Object Evidence
a. That which consists in the exhibition or production of the object inside or outside the courtroom,
b. That which consists in the inspection of the object outside the courtroom (ocular inspection), and
c. That which consists in the making of an experiment

_ Requisites for Admissibility:
a. The object must be relevant to the fact in issue; and
b. The object must be authenticated before it is admitted.

Rules:
1. **Instances when Exhibition Maybe Dispensed with**
a. Where the presentation is violative of decency.
b. Where the presentation has no purpose other than to arouse the passion of the court towards the party against whom it is offered in evidence.
c. When the object is repulsive or offensive to the sensibilities.
d. Where, in the discretion of the court, the production of evidence will cause great inconvenience, or where, for other reasons, it is unjust.

Republic of the Philippines
SUPREME COURT
Manila

FIRST DIVISION

G.R. No. 121979 March 2, 1998

PEOPLE OF THE PHILIPPINES, plaintiff-appellee,
vs.
SAMUEL ULZORON, accused-appellant.

BELLOSILLO, *J.:*

SAMUEL ULZORON was charged with rape with the use of a deadly weapon. Complaining witness was Emily Gabo. On 8 March 1995 the trial court adjudged him guilty as charged and sentenced him to *reclusion perpetua*. [1] No indemnity was awarded to Emily for the sexual assault.

On 31 March 1987, at around 10:00 o'clock in the morning, Emily was watering her plants near a well in Brgy. Tumarbong, Roxas, Palawan, when Samuel suddenly appeared. He was armed with a 2-foot long bolo hanging in its scabbard around his waist with a long-sleeved work shirt slung over his shoulder. He asked Emily where her husband was. She replied that Roberto was already in the *kaingin* so she advised him to follow her husband there. But Samuel opted to remain and rest on an anthill some two and a half (2-1/2) meters from the well. [2]

After Emily finished watering her plants and before she could start washing clothes, Samuel grabbed her wrists and locked them with one hand behind her back with the other hand drawing his bolo and pointing it at her neck. She struggled to free herself from his hold but was so intimidated with the bolo that she could not

shout for help; she lost her strength eventually. After she weakened, he dragged her some forty (40) meters away to the bushes and tall grasses. He forced her to lie down; then he mounted her. He laid his bolo beside him, pinned her arms with one hand, and with the other, loosened the buttons of her dress. Emily could only struggle in vain until he ripped off her dress and panties. He opened the zipper of his pants and then inserted his penis to her vagina. He copulated with her for about fifteen (15) minutes. She did everything to disengage herself from the sexual imbroglio but her efforts proved no match to his strength. [3]

At this moment, Emily heard her husband's voice calling for her. Roberto was now somewhere within the *vicino*. He saw Emily's slippers near the well so he franctically hollered, "Baby!" She answered back. When Roberto's voice was heard by Samuel, he dashed off and fled to the thickets. [4]

Roberto followed the direction of Emily's voice until he saw her emerge from the thick hushes. She was in a state of shock. He asked her what happened and she told him that she was sexually abused by Samuel Ulzoron. Emily pointed Roberto to the place where she was dragged and raped. Together they went there and found Ulzoron's bolo and work shirt and took them home. [5]

The following afternoon, Emily went to Dr. Feliciano M. Velasco Jr. for physical examination. The doctor noted the discharge mixed with semen in her private part. He opined that it could have been caused by sexual intercourse within twenty-four (24) hours prior to his examination. He found her cervix to be parous with superficial erosions. Her hymen was obliterated with caruncles. [6] The next day Emily lodged a complaint for rape against Samuel Ulzoron as she turned over his belongings to the police authorities as her evidence in support thereof. [7]

Ulzoron had his own story to tell. He said that on the day of the incident he saw Emily at the well. She told him that work in the *kaingin* would be in the afternoon yet so she advised him to come back. Since he was returning in the afternoon, he decided to leave his bolo and work shirt near the well. However, at around 10:00 o'clock that morning, as he was about to retrieve his bolo and shirt, he saw the Gabo spouses having sexual intercourse in a hut with a wall only on one side. As he was ashamed to be seen by them he proceeded instead to the house of a relative. [8]

On the strength of the testimony of Emily Gabo, the trial court convicted the accused. It found her testimony straightforward and credible. It rationalized that she would not have filed her complaint for rape if her accusations were not true, for to do so would only expose herself to public shame or ridicule. No improper motive on her part to file the case had been shown. The findings of the examining physician also lent credence to her claim. On the other hand, the trial court found the defense of the accused too weak, anemic, for if Ulzoron really felt embarrassed to be seen by the Gabo spouses, he could have taken a detour or passed another way to get back his bolo and work shirt. Besides, it was never established that the Gabos had so much yearning for each other that they had to indulge in sexual congress in a hut that was open to public view and at such an unlikely hour. [9]

Appellant concedes, even as he assails his conviction, that his defense is inherently weak. Nevertheless, he faults the trial court for convicting him on the basis of his defense. He argues that the undisputed facts and circumstances made it more likely that Emily was

involved in an adulterous relationship with him. [10] He claims, for instance, that there was absolutely nothing to support the victim's claim of struggle, and that while he allegedly dragged her forty (40) meters away before assaulting her sexually, the examining physician could not conclude that physical force was actually inflicted since she did not sustain any physical injuries. [11] Another point raised by the defense is her testimony that while he was on top of her his bolo was beside him. The plain import of such testimony, according to the accused, is that the bolo was not a necessary instrument in the commission of the crime. [12] He also invites attention to the circumstance that the judge who wrote the decision did not personally try the case and therefore lacked the opportunity to observe the demeanor of the parties and their witnesses. [13]

The arguments of appellant are unpersuasive; they fail to convince us. Contrary to his claim that he was convicted because of his weak defense, his conviction was actually founded on the overwhelming evidence of the prosecution. With regard to his claim that he had an adulterous relationship with the victim, the Office of the Solicitor General observed that such claim was a radical departure from the defense of denial he raised at the trial. The OSG observed further that the "sweetheart defense" was being raised for the first time in this appeal hence should be disallowed conformably with established jurisprudence. [14] Here, the Court does not necessarily agree. Appellant could only be emphasizing the point that the facts and circumstances established could lead to a conclusion of the existence of adulterous relationship between him and Emily and not of rape. In other words, appellant could be utilizing the "sweetheart theory" not necessarily as a defense but as a focal point in disputing the appreciation by the trial court of the evidence for the prosecution. Thus, this course taken by the defense may not be totally disregarded.

The term "dragged" should not indeed be taken in the meaning understood by appellant as "dragged along on the ground." When asked on cross-examination by the defense counsel to "describe how she and appellant traveled at (*sic*) forty (40) meters distance," [15] she said, "He was holding my hands and at the same time he is (*sic*) *pushing me forward*." [16] This testimony adequately explains the absence of injuries in her body. At any rate, it is not necessary for the commission of rape that there be marks of physical violence on the victim's body. [17] While Emily repeatedly mentioned her struggles to be released from his grasp, such efforts need not always result in physical injuries. [18] Besides, they did not refer to the circumstances when she was being dragged by the accused, but to the circumstances when he initially grabbed her hands, [19] when he was on top of her, [20] when he was undressing her, [21] and when she was exerting efforts to disengage herself from the sexual anchorage. [22]

Intimidation may be of the moral kind, e.g., the fear caused by threatening a woman with a knife. [23] There was sufficient intimidation when appellant pointed his 2-foot long bolo at Emily's neck while they were near the well until they reached the spot where she was finally abused. This intimidation continued even after he positioned himself on top of her and placed the bolo beside him since he was at liberty to point it anew at her neck or any part of her body. Anyway, the significant consideration is that, as aforementioned, the intimidation was continuous as to sufficiently engender fear in her mind. [24]

The circumstance that the judge who wrote the

decision had not heard the testimonies of the prosecution witnesses does not taint or disturb his decision. After all, he had the records of the case before him including the transcript of stenographic notes. The validity of a decision is not necessarily impaired by the fact that its writer only took over from a colleague who had earlier presided at the trial unless there is a clear showing of grave abuse of discretion in the appreciation of the facts, [25]and none exists in the present case. The records amply support the factual findings of the trial court and its assessment of the credibility of the witnesses.

The circumstances of force and intimidation attending the instant case were manifested clearly not only in the victim's testimony but also in the physical evidence presented during the trial consisting of her torn dress and underwear as well as the medico-legal report. Such pieces of evidence indeed are more eloquent than a hundred witnesses. [26] The fact of carnal knowledge is not disputed. It was positively established through the offended party's own testimony and corroborated by that of her examining physician.

Moreover, the conduct of the complaining witness immediately following the assault clearly established the truth of her charge that she was raped by accused-appellant. [27] Consequently, we agree with the observation of the OSG that Emily's actuations following her misfortune, namely, her revelation to her husband of her violation by the accused and subjecting her private parts immediately to medical examination, as well as the filing of her complaint for rape immediately thereafter are consistent with her straightforward, logical, truthful and credible testimony thus rebutting any insinuation of voluntariness on her part to the sexual confrontation; rather, they only display a moral certainty of his culpability for the crime charged.

WHEREFORE, the decision appealed from finding accused-appellant SAMUEL ULZORON guilty of rape and sentencing him to *reclusion perpetua* is AFFIRMED. In addition, he is ordered to indemnify his victim Emily Gabo the amount of P50,000.00, and to pay the costs.

SO ORDERED.

Republic of the Philippines
SUPREME COURT
Manila

THIRD DIVISION

G.R. No. 118816 July 10, 1998

SANTIAGO ARGONCILLO, RICHARDO BALBONA and POLICARPIO UMITEN, petitioners,

vs.

COURT OF APPEALS and THE PEOPLE OF THE PHILIPPINES, respondents.

KAPUNAN, *J.*:

This is a petition to review the decision [1] of the Court of Appeals which affirmed *in toto* the decision of the Regional Trial Court of Roxas City, Branch 15, [2] finding petitioners herein guilty of "illegal fishing with the use of an explosive," the dispositive portion of which reads:

WHEREFORE, the Court finds the accused, Policarpio Umiten, Santiago Argoncillo and Richard Balbona, guilty beyond reasonable doubt for the crime of illegal fishing with the use of an

explosive punishable under Section 33 in relation to Section 38 of Presidential Decree No. 704 dated May 16, 1975 as amended by Presidential Decree No. 1058 dated December 1, 1976 and each shall suffer a straight penalty of twenty (20) years imprisonment.

However, accused, Johnson Sucgang, Elvis Villar and Efren Alvaro, are acquitted for failure of the prosecution to prove their guilt beyond reasonable doubt.

The fish sample is forfeited in favor of the government.

Considering the penalty imposed upon the accused, Policarpio Umiten, Santiago Argoncillo and Richard Balbona, the bail bond for their provisional liberty is increased to Twenty Thousand (P20,000.00) Pesos each effective immediately upon promulgation. They shall not be released from detention until they put up an appropriate bail bond for their provisional liberty.

The property bond of accused, Johnson Sucgang, Elvis Villar and Efren Alvaro, are deemed cancelled.

Costs against the convicted accused.

SO ORDERED. [3]

On August 1, 1990, an Information was filed by the Provincial Fiscal of Capiz charging Johnson Sucgang, Policarpio Umiten, Elvis Villar, Santiago Argoncillo, Richardo Balbona and Efren Alvaro with illegal fishing (with the use of dynamite), as follows:

That at or about 6:30 o'clock [*sic*] in the evening of May 7, 1990, in the sea water of Barangay Basiao, Ivisan, Capiz, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping one another, wilfully, unlawfully and feloniously catch, take, gather and have in their possession and control different species of fish with the use of explosives. [4]

Upon arraignment on September 11, 1990, the accused, with the assistance of counsel, pleaded "not guilty" to the offense charged. Trial ensued thereafter.

The lower court synthesized the evidence presented by the prosecution as follows: [5]

Due to reports of rampant illegal fishing at Barangay Basiao, Ivisan, Capiz, personnel from the Department of Agriculture and Natural Resources specifically from the Bureau of Fisheries as well as the Barangay Captain of said place assisted by the local policemen created a team to conduct surveillance within the Ivisan Bay. Thus, around 5:30 in the afternoon of May 7, 1990, a team riding in two (2) pumpboats from the Barangay Basiao wharf proceeded along the waters of Ivisan Bay. Riding in one pumpboat were Persinefles U. Oabe, the Barangay Captain of said place; Rolando Amoroso, an employee of the Bureau of Fisheries; Pat. Rafael Tupaz, a member of the local Integrated National Police and Remegio Unasin, a barangay councilman who acted as the pilot. In the other pumpboat were Joey de la Cruz, a co-employee of Rolando Amoroso; Pat. Reggie Uadan and Enido Baldesimo. Now and then, the team had to stop and listen for possible occurrences of illegal fishing within their vicinity. Around 6:30 of the same evening while standing by with their engines off, in a place facing Barangay Culasi, they heard an explosion. Sensing it was caused by dynamite, they proceeded to the area around five hundred meters (500 m.) away from them.

After ten minutes of navigation, the team arrived at the scene in question which was near an islet. They surrounded the area. At a distance of around ten meters, Joey de la Cruz, an employee of the Bureau of Fisheries and Aquatic Resources, saw three persons diving into the water. Thereafter, they would surface and throw their catch of fish to the unmotorized banca around four meters long nearby. In the seashore of said islet, around three to four meters away from these three persons floating in the water, were three other persons standing in the rocky portions around three meters apart. These six persons tried to escape but Rolando Amoroso, the co-employee of Joey de la Cruz, advised them not to do so and introduced themselves as law enforcers. The team found out that the fishes they caught were deep sea fish of four kinds locally known as "vulgan," "bulawis," "pacol," and "bag-angan." Joey de la Cruz gathered seven fish samples from their banca while Rolando Amoroso went down from the pumpboat and proceeded to the islet. However, upon inspection, he failed to find any explosive (dynamite) either on the seashore or on the banca. No paraphernalia used in dynamite fishing were found. Both Joey de la Cruz and Rolando Amoroso recognized the six persons as the herein accused by their faces.

Persinefles U. Oabe, barangay captain of Barangay Basiao, who was with the team riding in a pumpboat with Rolando Amoroso identified the three persons retrieving fish from the water as Policarpio Umiten, Santiago Argoncillo and Richard Balbona while the other three persons standing on the rocky portions of the islet as Johnson Sucgang, Elvis Umiten and Efren Alvaro.

The team apprehended the six accused and brought them to the fish cage of the barangay captain located within the same barangay. While on their way, Joey de la Cruz externally examined the fish samples.

Upon their arrival at the fish cage, another external examination was conducted by Joey de la Cruz and Rolando Amoroso. In both external examinations, the two found out that the fishes were caught with the use of explosives because blood was oozing from their operculums and their eyes were protruding.

An on-the-spot investigation was conducted but the accused denied any culpability. They were then released on the strength of their promise to report to the local police the following day.

The fish samples were then placed in a plastic bag filled with ice at the house of Barangay Captain Persinefles U. Oabe that evening. In the morning, Joey de la Cruz and Rolando Amoroso brought the fish samples to their office in Roxas City where they conducted an internal examination. The examination revealed that the fish samples were caught with the use of explosives because their air bladders were raptured and deeply stained with blood; the vertebral columns were broken but with bloodstains; their ribs were broken; and there were blood clots in their abdomens. Joey de la Cruz and Rolando Amoroso rendered a written report of their internal examination to the Provincial Agricultural Officer.

The testimonies of Joey de la Cruz, Rolando Amoroso, and Persinefles U. Oabe above were corroborated by Pat. Rafael Tupaz, one of the police escorts of the team.

Sgt. Sergio Ordales, a member of the local police of the municipality of Ivisan testified that while on duty in the morning of May 8, 1990, herein six accused arrived at their station. He asked why they were there and they answered that they were told to report to the

police station. He learned from them that they were arrested for illegal fishing with the use of explosives.

On the other hand, the lower court portrayed the evidence presented by the version of the defense, thus:

All the accused denied the imputation of the prosecution.

Policarpio Umiten, Santiago Argoncillo, Richard O. Balbona were uniform in alleging that around 4:00 in the afternoon of May 7, 1990, they dropped a fishnet about two hundred (200) "armslength" and one (1) meter in width at the scene where they were apprehended. This method they locally call "patuloy" requires that the fishnet be retrieved every hour to collect its catch. The trio went back to the place near the islet in question around 6:30 in the evening for the purpose of collecting their catch from the fishnet. They had not been able to collect all their catch from the net when the team of law enforcers, prosecution witnesses herein, arrived. They were asked whether they heard an explosion. After they denied having heard any, Barangay Captain Persinefles U. Oabe, told the accused to go with them. The team got seven pieces of fish samples. The accused left around one and one-half kilos of fish they had gathered at the time the team of law enforcers arrived. They were then brought to the fish cage owned by Persinefles U. Oabe at Barangay Basiao.

Above three accused would like the Court to believe that the seven pieces of fish samples taken by the team of fishing law enforcers were the catch of their fishnet they locally called "patuloy."

On the other hand, Elvis Villar testified that he and Efren Alvaro were together in going to the islet in question, riding in an unmotorized banca to gather shells locally called "suso" and "butlogan" for viand. Both started gathering shells under the stones in the islet around 5:30 in the afternoon. While they were preparing to go home at around 6:30 in the evening, the team of law enforcers riding in motorized pumpboats arrived. The barangay captain and the personnel from the Bureau of Fisheries and Aquatic Resources asked them whether they heard an explosion. After they denied having heard any, they were told by the barangay captain to board their pumpboats. They obliged, leaving the shells they had gathered. They were then brought to the fish cage of the barangay captain.

Although accused Johnson Sucgang admitted his presence in the islet in question, he offered a different explanation. He testified that he went to said place to look for "pulutan" requested by his customer, Wilfredo Arcangeles. Being an operator and manager of Virgen Beach Resort located at Sitio Manangkalan, he obliged. Thus, between 5:00 to 5:30 in the afternoon of May 7, 1990, he left his resort riding in a banca. He paddled his way towards the islet where he saw two persons at the bank while the other three were on the water. He went ashore. Later, the barangay captain and his companions riding in two pumpboats arrived. Like his co-accused, he was asked if he heard an explosion. After he denied hearing any, the barangay captain told him to go with them. They were all brought to the fish cage of the barangay captain for questioning.

Wilfredo Arcangeles corroborated the claim of Johnson Sucgang. He confirmed that he requested the latter to look for "pulutan" since he had visitors from Bacolod City prompting Johnson Sucgang to look for some. He saw the accused leave in a banca and affirmed that he

had no dynamite with him. [6]

On September 30, 1991, the trial court rendered its decision which, as stated at the beginning, was affirmed by the Court of Appeals.

Hence, this petition.

Petitioners point out that the fact that neither explosives nor related paraphernalia were found in their possession is an indication of their innocence.

We do not agree. First, it is quite probable that petitioners dumped these materials into the sea while the raiding party was approaching. Moreover, Section 33, Presidential Decree No. 704, as amended by Presidential Decree No. 1058, provides:

Sec. 33. Illegal fishing; . . . — It shall be unlawful for any person to catch, take or gather, or cause to be caught, taken or gathered fish or fishery/aquatic products in Philippine waters with the use of explosives, obnoxious or poisonous substance, or by the use of electricity as defined in paragraphs (l), [7] (m) [8] and (d), [9]respectively, of Sec. 3 hereof . . .

xxx xxx xxx

The discovery of dynamite, other explosives and chemical compounds containing combustible elements, or obnoxious or poisonous substance, or equipment or device for electric fishing in any fishing boat or in the possession of a fisherman shall constitute a presumption that the same were used for fishing in violation of this Decree, the discovery in any fishing boat of fish caught or killed by the use of explosives, obnoxious or poisonous substance or by electricity shall constitute a presumption that the owner, operator or fisherman were fishing with the use of explosives, obnoxious or poisonous substance or electricity.

In *Hizon vs. Court of Appeals*, [10] this Court held that the law, as contained in the last paragraph of Section 33, creates a presumption that illegal fishing has been committed when fish caught or killed with the use of explosives, obnoxious or poisonous substances or by electricity are found in a fishing boat. In this case, it cannot be denied that the fishes found in petitioners' banca were caught or killed by the use of explosives.

The Report [11] of Bureau of Fisheries employees Joey de la Cruz and Rolando Amoroso states:

Republic of the Philippines

Department of Agriculture

Roxas City

1990-05-08

The Provincial Agricultural Officer

Department of Agriculture

Roxas City

Sir:

I have the honor to submit to this office the result of the scientific fish examination conducted on the fish samples taken from the possession of Mr. Johnson Umiten Sucgang, 38 years old, married and resident of Barangay Basiao, Ivisan, Capiz and company on May 7, 1990, 6:30 PM by combined elements of the Department of Agriculture, PC/INP Unit of Ivisan, Capiz and Barangay officials of Basiao, Ivisan, Capiz conducting sea borne patrol on

illegal fishing.

Source of fish samples : Sea water of Brgy., Basiao, Ivisan,Capiz

Fish samples taken from : Johnson U. Sucgang, 38 years old,married, of Brgy., Basiao, Ivisan,Capiz, *et. al.*

Date fish samples taken : May 7, 1990 at 6:30 PM

Date fish samples examined : May 7, 1990 at 7:00 PM

Name offish samples taken Number Weight Value

Local Name

Bulawis 2 pcs. 300 gms P 8.00

Bulgan 2 pcs. 200 gms 10.00

Pakol 1 pc. 100 gms 2.00

Bag-angan 1 pc. 150 gms 3.00

Bukod 1 pc. 150 gms 3.00

Characteristics noted on the fish examined:

1. External Manifestation

a. Blood, oozing on the operculum.

2. Internal Manifestation

a. Air bladder raptured deeply stained with blood;

b. Vertebral column broken with blood stain.

Conclusion:

The fish samples manifested signs that said fish were caught or killed by the use of explosives.

Examined by:

(Sgd.)

JOEY I. DE LA CRUZ

(Sgd.)

ROLANDO E. AMOROSO

Fish Examiners

Joey de la Cruz affirmed the above findings in his testimony before the trial court. [12] Said testimony was corroborated by Rolando Amoroso, a co-employee of De la Cruz in the Bureau of Fisheries. The latter further stated that the fish were killed *specifically by dynamite*:

ATTY. LUMAWAG:

Q *Can you identify whether it was through dynamite or any other means of explosive the fish was caught?*

A *Yes, sir. Because you know when we saw, when we conducted the external manifestation of the fish, not only blood oozing from the ears but also from the eyes that were protruding.*

Q *Is it not possible that it be caused also through fishing by means of* electricity?

A *No.*

Q *Other kinds of explosives?*

A *Yes, explosives*.

Q *For example, what other aside from dynamite?*

A *What explosives aside from dynamite, no other*. **13**

The trial court correctly gave credence to these testimonies, thus:

Above three (3) accused would like the Court to believe that the seven (7) pieces of fish samples taken by the team of fishing law enforcers were the catch of their fish net they locally called [sic] "patuloy."

xxx xxx xxx

With the external and internal examination by Joey de la Cruz and Rolando Amoroso showing that these fishes were caught with the use of explosive, bare denial of above three (3) accused that they caught them by means of a fishing net they locally call "patoloy" is insufficient to disprove such finding. It is simply a superiority of weight of object evidence over testimonies of the accused.

Joey de la Cruz is an agricultural technologist of their office and a graduate of Bachelor of Science in Fishery. Joey de la Cruz and Rolando Amoroso had undergone training course in fishery laws and implementing regulations as well as actual demonstrations in sea to practice what they had learned in theory. [As] . . . technical personnel of the Bureau of Fishery and Aquatic Resources, their finding after an internal and external examination of fish samples to prove they were caught with the use of explosives should be presented to show that these prosecution witnesses fabricated their story. There is no ulterior motive which implied them to testify as they did. Furthermore, no evidence was introduced by the defense to impeach their credibility nor evidence to discredit their persons. Credibility of the testimonies having remained unimpeached, it shall be given great weight in the determination of the guilt of the accused. Besides, being public officers to enforce fishing laws, in the absence of ill-motive on their part, to impute to the accused a serious offense of illegal fishing with the use of explosive, the presumption is that there was regular performance of public duty on their part. [14]

The presumption that the crime of illegal fishing was committed has, therefore, been clearly established. Such presumption, however, is merely *prima facie*, and may be rebutted by the accused. [15]

Petitioners attempt to overcome said presumption by disputing the findings of prosecution witnesses Joey de la Cruz and Rolando Amoroso. They claim that since not all their catch were examined, there can be no conclusive proof that the fish were killed with the use of explosives. [16]

They also question the credibility of these witnesses, thus:

. . . . If it is true that prosecution witness Joey dela Cruz, allegedly a technical personnel [*sic*] of the Bureau of Fisheries and competent to determine if a fish is killed by dynamite blast, found the 7 fishes to have been killed by a dynamite blast, it was unnatural for the team not to arrest the petitioners on the spot. . . . [1]

Petitioners' arguments have no merit.

It is ridiculous to have expected that all the fish found in the accused's fishing boat would be

subjected to an examination. It is sufficient that, as in the case at bar, a random sample of the accused's catch was examined and found to have been killed with the use of explosives. A patent impracticality would result if the law required otherwise.

The fact that the patrol team did not immediately deliver the accused to the municipal jail does not diminish the credibility of the above witnesses. Persinefles U. Oabe, the barangay captain of Basiao, gave a plausible explanation for the accused's release:

A We released those six persons because if we bring them to the municipality of Ivisan we have no available transportation because they were only riding in a single motor vehicle. [18]

The want of available transportation is not surprising. The dearth in law enforcement facilities, especially in the provinces, is not lost on this Court and is a matter of judicial notice.

In fine, we find no reason to disturb the assessment of the trial court regarding the credibility of prosecution witnesses Joey de la Cruz and Rolando Amoroso. Its findings are accorded great respect by appellate tribunals since trial courts have the advantage of examining the witnesses' testimonies and observing their demeanor first hand. [19]

Petitioners also argue that they could not have been caught fishing with the use of dynamite in shallow waters because the fishes used as evidence were described by the prosecution witnesses as "deep sea fishes." According to petitioners:

The seven (7) fishes that the prosecution used as evidence were described by prosecution witnesses as "deep sea fishes". But it has been shown in the testimony of petitioner Santiago Argoncillo that he and the other petitioners were fishing in shallow waters about 1 1/2 meters deep (TSN, March 13, 1991, p. 7) and using fishnet 200 armslength long and 1 meter wide (TSN, March 13, 1991, p. 4). This testimony was not rebutted by the prosecution. In fact, the 3 accused who were acquitted by the trial court were found by the prosecution witnesses standing on the seashore near where the petitioners were fishing (TSN, January 23, 1991, pp. 5 to 6). That petitioners would engage in dynamite fishing in shallow waters and near the seashore would be unnatural. The allegation that the petitioners were fishing with the use of explosive is therefore not credible. [20]

We are not persuaded.

The fishes caught by petitioners were not actually "deep sea fishes" in the sense that they came from the deep portions of the sea as distinguished from shallow waters or waters near or along the shores. The fishes caught were locally known as "vulgan," "bulawis," "pacol," and "bag-angan." They are generally described as "isda sa bato" or "bottom feeders." The following excerpt from the testimony of fish examiner Joey de la Cruz shows that the term "deep sea fishes" arose from the trial court's erroneous translation of "isda sa bato" or "bottom feeders" which were the terms actually employed by said witness to describe the subject fishes:

ATTY. LUMAWAG:

Q What were the species of the fishes that you recovered from that banca?

A Bottom feeders.

COURT:

"Isda sa bato," in English?

A Bottom feeders.

COURT:Deep sea fishes. **21**

Petitioners next contend that if it is true that they were engaged in illegal fishing, it would be "unnatural" for them to use a boat which would make it difficult for them to escape from the law enforcers riding motorized boats. [22]

Petitioners' contention is too ludicrous to warrant serious consideration. The law punishing illegal fishing does not require the use of motorized banca or boat for the crime to be committed. Concededly, a motorized banca can better serve those engaged in illegal fishing for purposes of eluding law enforcers. However, not everyone can financially afford to fit a motor in his banca. Indeed, petitioner Argoncillo admitted that the banca that they were using was leased from a certain Dikoy Odrunia. [23]

Petitioners likewise aver that they did not flee when the law enforcers arrived, and even voluntarily reported to the Ivisan Police Station the following morning. They submit that their alleged non-flight should strengthen their claim of innocence. [24]

We disagree. There is no established doctrine to the effect that, in every instance, non-flight is an indication of innocence. [25] Moreover, even if they wanted to, petitioners could not have possibly eluded the law enforcers who were in two pump boats. Attempts to flee would also have been useless since petitioners were already identified by the barrio captain.

Lastly, the fact that the accused were asked by the patrol team whether or not they heard an explosion is not in any way reflective of petitioners' innocence. We deem such inquiry as nothing more than a part of the investigative process. It is quite common, and in most cases, necessary, for law enforcers to ask questions to help them ascertain whether or not there exists probable cause to arrest persons suspected of committing a crime.

Having failed to discharge themselves of the burden of disproving that they have committed illegal fishing, the Court is left with no alternative but to affirm petitioners' conviction.

The penalty imposed by law [26] for illegal fishing if explosive is actually used is imprisonment ranging from twenty (20) years to life imprisonment. The Indeterminate Sentence Law provides that if, as in this case, the offense is punished by a law other than the Revised Penal Code, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same. [27] The trial court therefore erred when it sentenced petitioners to "suffer a *straight* penalty of twenty (20) years imprisonment." [28] In *Spouses Jose and Trinidad Bacar vs. Judge Salvador P. de Guzman, Jr.*, [29] we held that it was erroneous to impose a straight penalty of six (6) years imprisonment on the accused for homicide. We explained:

. . . It is basic law that . . . the application of the Indeterminate Sentence Law is mandatory where imprisonment exceeds one (1) year, except only in the following cases:

a. Offenses punished by death or life imprisonment.

b. Those convicted of treason (Art. 114), conspiracy or proposal to commit treason (Art. 115).

c. Those convicted of misprision of treason (Art. 116), rebellion (Art. 134), sedition (Art. 139, or espionage (Art. 117).

d. Those convicted of piracy (Art. 122).

e. Habitual delinquents (Art. 62, par. 5).

Recidivists are entitled to an indeterminate sentence. (People v. Jaramilla, L-28547, Feb. 22, 1974). Offender is not disqualified to avail of the benefits of the law even if the crime is committed while he is on parole. (People v. Calreon, CA 78 O.G. 6701, Nov. 19, 1982).

f. Those who escaped from confinement or those who evaded sentence.

g. Those granted conditional pardon and who violated the terms of the same (Art. 159). (People v. Corral, 74 Phil. 359).

h. Those whose maximum period of imprisonment does not exceed one year.

Where the penalty actually imposed does not exceed one year, the accused cannot avail himself of the benefits of the law, the application of which is based upon the penalty actually imposed in accordance with law and not upon that which may be imposed in the discretion of the Court. (People v. Hidalgo, [CA] G.R. No. 00452-CR, Jan. 22, 1962).

i. Those who are already serving final judgment upon the approval of the Indeterminate Sentence Law.

The need for specifying the minimum and maximum periods of the indeterminate sentence is to prevent the unnecessary and excessive deprivation of liberty and to enhance the economic usefulness of the accused, since he may be exempted from serving the entire sentence, depending upon his behavior and his physical, mental, and moral record. *The requirement of imposing an indeterminate sentence in all criminal offenses whether punishable by the or by special laws, with definite minimum and maximum terms, as the Court deems proper within the legal range of the penalty specified by the law must, therefore, be deemed mandatory.* [30]

Accordingly, the proper penalty to be imposed upon the accused should be an *indeterminate* penalty which is hereby set at twenty (20) years as *minimum* to twenty-five (25) years as *maximum*.

WHEREFORE, the petition is hereby DISMISSED, and the decision of the Court of Appeals is AFFIRMED with the modification that petitioners are hereby sentenced to suffer an indeterminate penalty of imprisonment ranging from twenty (20) years as minimum to twenty-five (25) years as maximum.

SO ORDERED.

Narvasa, C.J., Romero and Purisima, J., concur.

2. **Requirements for Admissibility of Tape Recordings, Wire and Dictaphone**
a. The tape, wire, or dictaphone was capable of taking testimony;
b. The person operating the device was competent to operate it;
c. The recording is authentic and correct;
d. The testimony has been duly preserved;
e. The testimony was voluntarily made;
and
f. The speaker has been correctly identified.

3. Requisites for Experiments to be Admissible
a. Relevancy; and
b. The present condition of the object must be the same at the time of issue.

Q: What are the purposes of authentication of object evidence?

A:
1. Prevent the introduction of an object different from the one testified about; and
2. Ensure that there has been no significant changes in the object's condition.

Q: What are the requisites for the object evidence to be admissible?

A: It must
1. Be relevant to the fact in issue;
2. Be authenticated before it is admitted;
3. Not be hearsay;
4. Not be privileged; and
5. Meet any additional requirement set by law.

Q: What does object evidence include?

A:
1. Any article or object which may be known or perceived by the use of the senses;
2. Examination of the anatomy of a person or of any substance taken therefrom;
3. Conduct of tests, demonstrations or experiments; and
4. Examination of representative portrayals of the object in question (*e.g.* maps, diagrams)

Q: May the courts refuse the introduction of object or real evidence and rely on testimonial evidence alone?

A: Yes, but only if:
1. Its exhibition is contrary to public morals or decency;
2. To require its being viewed in court or in ocular inspection would result in delays, inconvenience, or unnecessary expenses which are out of proportion to the evidentiary value of such object;
3. Such object evidence would be confusing or misleading, as when the purpose is to prove the former condition of the object and there is no preliminary showing that there has been no substantial change in said condition; or
4. The testimonial or documentary evidence already presented clearly portrays the
object in question as to render a view thereof unnecessary. *(Regalado, Vol. II, p. 716, 2008 ed.)*

Q: Is exhibition of the object which is repulsive or indecent absolutely prohibited?
A: No. If a view of the object is necessary in the interest of justice, such object may still be exhibited, but the court may exclude the public from such view. Such view may not be refused if the indecent or immoral objects constitute the very basis of the criminal or civil action (*e.g.* obscene pictures or exhibits). *(Moran, p. 73)*

Q: In a criminal case for murder, the prosecution offered as evidence photographs showing the accused mauling the victim with several of the latter's companions. The person who took the photograph was not presented as a witness. Be that as it may, the prosecution presented the companions of the victim who testified that they were the ones in the photographs. The defense objected to the admissibility of the photographs because the person who took the photographs was not presented as witness. Is the contention of the defense tenable?

A: No. Photographs, when presented in evidence, must be identified by the photographer as to its production and testified as to the circumstances under which they were produced. The value of this kind of evidence lies in its being a correct representation or reproduction of the original, and its admissibility is determined by its accuracy in portraying the scene at the time of the crime.
The photographer, however, is not the only witness who can identify the pictures he has taken. The correctness of the photograph as a faithful representation of the object portrayed can be proved *prima facie*, either by the testimony of the person who made it or by other competent witnesses who can testify to its exactness and accuracy, after which the court can admit it subject to impeachment as to its accuracy.
Here, the photographs are admissible as evidence inasmuch as the correctness thereof was testified to by the companions of the victim *(Sison v. People, G.R. Nos. 108280-83, Nov. 16, 1995)*.

Q: Ron was charged with murder for shooting Carlo. After trial, Ron was found guilty as charged. On appeal, Ron argued that the trial court should have acquitted him as his guilt was not proved beyond reasonable doubt. He argues that the paraffin test conducted on him 2 days after he wasarrested yielded a negative result. Hence, he could not have shot Carlo. Is Ron correct?

A: No. While the paraffin test was negative, such fact alone did not *ipso facto* prove that Ron is innocent. A negative paraffin result is not conclusive proof that a person has not fired a gun. It is possible to fire a gun and yet be negative for nitrates, as when the culprit is wearing gloves or he washes his hands afterwards. Here, since Ron submitted himself for paraffin testing only two days after the shooting, it was likely he had already washed his hands thoroughly, thus removing all traces of nitrates therefrom *(People v. Brecinio, G.R. No. 138534, Mar. 17, 2004)*.

Q: What are the categories of object evidence for purposes of authentication?

A:
1. *Unique objects* – those that have readily identifiable marks (*e.g.* a calibre 40 gun with serial number XXX888)
2. *Objects made unique* – those that are readily identifiable (*e.g.* a bolo knife used to hack a victim which could be identified by a witness in court)
3. *Non-unique objects* – those which have no identifying marks and cannot be marked (*e.g.* footprints left at a crime scene)

Q: Distinguish real evidence from demonstrative evidence.

A: Real evidence	Demonstrative Evidence
Tangible object that played some *actual role* in the matter that gave rise to the litigation	Tangible evidence that *merely illustrates* a matter of importance in the litigation
Intends to prove that the object is used in the underlying event	Intends to show that the demonstrative object fairly represents or illustrates what it is alleged to be illustrated

Q: What is ocular inspection or "view"?

A: An ocular inspection conducted by the judge without the presence of the parties or due notice is not valid, as an ocular inspection is *part of the trial*.
Note: It is a discretionary act of the trial court to go to the place where the object is located, when the object evidence cannot be brought in courts.

CHAIN OF CUSTODY IN RELATION TO SECTION 21 OF THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002

Q: What is Chain of Custody Rule in relation to Sec. 21 of the Comprehensive Dangerous Drugs Act of 2002?

A: It is a method of authenticating evidence. It requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain.
These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same. *(Lopez v. People, G.R. No. 172953, Apr. 30, 2008)*

Q: When is there a need to establish a chain of custody?

A: It is necessary when the object evidence is non-unique as it is not readily identifiable, was not made identifiable or cannot be made identifiable, *e.g.* drops of blood or oil, drugs in powder form, fiber, grains of sand and similar objects. *(Riano, Evidence: A Restatement for the Bar, p. 149, 2009 ed.)*

Q: What is the purpose of establishing a chain of custody?

A: To guaranty the integrity of the physical evidence and to prevent the introduction of evidence which is not authentic but where the exhibit is positively identified the chain of custody of physical evidence is irrelevant. *(Ibid.)*

RULE ON DNA EVIDENCE (A.M. NO. 06-11-5-SC)

Q: In what cases do the Rules on DNA Evidence apply?

A: It shall apply whenever DNA evidence is offered, used, or proposed to be offered or used as evidence in all criminal and civil actions as well as special proceedings *(Sec. 1).*

Q: What is DNA?

A: DNA (deoxyribonucleic acid) is the chain of molecules found in every nucleated cell of the body *(Sec. 3, Rule on DNA Evidence).* It is the fundamental building block of a person's entire genetic make-up, which is found in all human cells and is the same in every cell of the same person *(People v. Umanito, G.R. No. 172607, Oct. 26, 2007).*

Q: What is DNA evidence?

A: It constitutes the totality of the DNA profiles, results and other genetic information directly generated from DNA testing of biological samples *(Sec. 3).*

Q: What is DNA testing?

A: It means verified and credible scientific methods which include the extraction of DNA from biological samples, the generation of DNA profiles and the comparison of the information obtained from the DNA testing of biological samples for the purpose of determining, with reasonable certainty, whether or not the DNA obtained from two or more distinct biological samples originates from the same person (direct identification) or if the biological samples originate from related persons (Kinship Analysis) *(Sec. 3).*
Note: The scientific basis of this test comes from the fact that our differences as individuals are due to the differences in the composition of our genes. These genes comprise a chemical substance, the deoxyribonucleic acid or DNA *[The Court Systems Journal (1999)].*

Q: May DNA testing be conducted absent a prior court order?

A: Yes. The Rules on DNA Evidence does not preclude a DNA testing, without need of a prior court order, at the behest of any party, including law enforcement agencies, before a suit or proceeding is commenced *(Sec. 4).*

Q: What are the requisites for the issuance of a DNA testing order?

A: In pending actions, the appropriate court may, at any time issue a DNA testing order either *motu proprio* or upon application of any person who has a legal interest in the matter in litigation after due hearing and notice to the parties and upon showing of the following:
1. A biological sample exists that is relevant to the case;
2. The biological sample:
3. was not previously subjected to the type of DNA testing now requested; or
4. was previously subjected to DNA testing, but the results may require confirmation for good reasons;
5. The DNA testing uses a scientifically valid technique;
6. The DNA testing has the scientific potential to produce new information that is relevant to the proper resolution of the case; and
7. The existence of other factors, if any, which the court may consider as potentially affecting the accuracy or integrity of the DNA testing *(Sec. 4).*

Q: Is the order granting the DNA testing appealable?

A: No. An order granting the DNA testing shall be immediately executory and shall not be appealable. Any petition for *certiorari* initiated therefrom shall not, in any way, stay the implementation thereof, unless a higher court issues an injunctive order *(Sec. 5).*

Q: During Alexis' trial for rape with murder, the prosecution sought to introduce DNA evidence against him, based on forensic laboratory matching of the materials found at the crime scene and Alexis' hair and blood samples. Alexis' counsel objected, claiming that DNA evidence is inadmissible because the materials taken from Alexis were in violation of his constitutional right against self-incrimination as well as his right of privacy and personal integrity. Should the DNA evidence be admitted or not? Reason.

A: The DNA evidence should be admitted. It is not in violation of the constitutional right against self-incrimination or his right of privacy and personal integrity. The right against self-incrimination is applicable only to testimonial evidence. Extracting a blood sample and cutting a strand from the hair of the accused are purely mechanical acts that do not involve his discretion nor require his intelligence. **(2004 Bar Question)**

Q: Is the result of DNA testing automatically admitted as evidence in the case in which it was sought for?

A: No. The grant of a DNA testing application shall not be construed as an automatic admission into evidence of any component of the DNA evidence that may be obtained as a result thereof *(Sec. 5).*

Q: If a DNA test was conducted, what are the possible results that it may yield?

A:
1. The samples are similar, and could have originated from the *same source* (Rule of Inclusion). In such a case, the analyst proceeds to determine the statistical significance of the similarity.
2. The samples are different hence it must have originated from *different sources* (Rule of Exclusion). This conclusion is absolute and requires no further analysis;
3. The test is *inconclusive*. This might occur due to degradation, contamination, failure of some aspect of protocol, or some other reasons. Analysis might be repeated to obtain a more conclusive result *(People v. Vallejo, G.R. No. 144656, May 9, 2002).*

Q: What should the courts consider in evaluating DNA testing results?

A:
1. The evaluation of the weight of matching DNA evidence or the relevance of mismatching DNA evidence;
2. The results of the DNA testing in the light of the totality of the other evidence presented in the case; and
3. DNA results that exclude the putative parent from paternity shall be conclusive proof of non-paternity *(Sec. 9).*

Q: To whom is the post-conviction DNA testing available?

A: *Post-conviction DNA testing* may be available, without need of prior court order, to the prosecution or any person convicted by final and executory judgment.

Q: What are the requisites for the applicability of the Post-conviction DNA testing?

A:
1. Existing biological sample;
2. Such sample is relevant to the case; and
3. The testing would probably result in the reversal or modification of the judgment of conviction *(Sec. 6).*

Q: What is the remedy of the convict if the post-conviction DNA testing result is favorable to him?

A: The convict or the prosecution may file a petition for a writ of *habeas corpus* in the court of origin. In case the court, after due hearing, finds the petition to be meritorious, it shall reverse or modify the judgment of conviction and order the release of the convict, unless continued detention is justified for a lawful cause *(Sec. 10).*

Q: What should the courts consider in determining the probative value of DNA evidence?

A:
1. The chain of custody, including how the biological samples were collected, how they were handled, and the possibility of contamination of the samples;
2. The DNA testing methodology, including the procedure followed in analyzing the samples, the advantages and disadvantages of the procedure, and compliance with the scientifically valid standards in conducting the tests;
3. The forensic DNA laboratory, including accreditation by any reputable standards-setting institution and the qualification of the analyst who conducted the tests. If the laboratory is not accredited, the relevant experience of the laboratory in forensic casework and credibility shall be properly established; and
4. The reliability of the testing result *(Sec. 7).*

Q: What are the things to be considered in assessing the probative value of DNA evidence?

A:
1. How the samples are collected;
2. How they were handled;
3. The possibility of the contamination of the samples;
4. The procedure followed in analyzing the samples;
5. Whether the proper standards and procedures were followed in conducting the tests; and
6. The qualification of the analyst who conducted the tests. *(Ibid.)*

Q: What are the things to be considered in evaluating whether or not the DNA testing methodology is reliable?
A:
1. The falsifiability of the principles or methods used, that is, whether the theory or technique can be and has been tested;
2. The subjection to peer review and publication of the principles or methods;
3. The general acceptance of the principles or methods by the relevant scientific community;
4. The existence and maintenance of standards and controls to ensure the correctness of data generated;
5. The existence of an appropriate reference population database; and
6. The general degree of confidence attributed to mathematical calculations used in comparing DNA profiles and the significance and limitation of statistical calculations used in comparing DNA profiles.

Republic of the Philippines
SUPREME COURT
Manila

THIRD DIVISION

G.R. No. 185708 **September 29, 2010**

PEOPLE OF THE PHILIPPINES, Appellee,
vs.
JUANITO CABIGQUEZ y ALASTRA, Appellant.

D E C I S I O N

VILLARAMA, JR., *J.:*

On appeal is the Decision[1] dated July 9, 2008 of the Court of Appeals (CA), Mindanao Station, which affirmed the Decision[2] dated October 29, 2003 of the Regional Trial Court (RTC) of Cagayan de Oro City, Branch 18 finding appellant Juanito Cabigquez y Alastra (Cabigquez) and Romulo Grondiano y Soco (Grondiano) guilty beyond reasonable doubt of robbery (Criminal Case No. 2001-816), and also convicting appellant Cabigquez of rape (Criminal Case No. 2001-815), both crimes committed against private complainant AAA,[3] a 43-year old widow and mother of ten (10) children. Grondiano decided to withdraw his appeal before the appellate court.[4] Hence, this review shall consider only Cabigquez's appeal.

Below are the facts, as culled from the records of both the trial and appellate courts.

In the evening of March 26, 2001, AAA and her three minor children – BBB, CCC, and DDD[5] – slept inside AAA's small *sari-sari* store which was annexed through the exterior balcony of her house at Purok 1-A, Tablon in Cagayan de Oro City. AAA's head was close to the door, while a cabinet stood at her right side. She left the 50-watt incandescent bulb on as they slept through the night.[6]

At around 3:30 a.m., March 27, 2001, AAA was awakened when clothes fell on her face. When she looked up, she saw a man whose face was covered with a handkerchief and wearing a camouflage jacket and cycling shorts. He immediately poked a gun at her. AAA shouted "Ayyy!," rousing her three children from sleep.[7] Despite

the cover on the burglar's face, BBB was able to identify him as Romulo Grondiano, one of their neighbors, based on the hanging mole located below his left eye.[8] Armed with a stainless handgun,[9] Grondiano ordered AAA and her children to lie face down.[10] Though stricken with fear, BBB noticed that Grondiano had a companion who stayed at the balcony keeping watch.[11] Grondiano then ransacked the store, taking with him ₱3,000.00 cash from the cabinet and ₱7,000.00 worth of grocery items. Before he left, Grondiano pointed the gun at AAA's back and warned them not to make any noise.[12]

As soon as Grondiano left the store, the other man entered. BBB identified the man as appellant Juanito Cabigquez as the latter did not conceal his face. Armed with Grondiano's gun, Cabigquez stripped AAA of her short pants and underwear, placed a pillow on her lower abdomen and mounted her from behind. He lifted and twisted one of her legs and pinned the other. AAA shouted "Ayaw!" (No!), but offered no further resistance. Cabigquez inserted his penis into AAA's vagina, and proceeded to ravish her in full view of her children, and even as the latter cried for mercy. Before he left, Cabigquez threatened to kill AAA and her children if they would tell anyone about the incident.[13]

Afraid for their lives, AAA and her children remained prostrate on the floor even after the two malefactors had left. Shortly thereafter, they decided to proceed to the house of AAA's older son, EEE, and asked for help. AAA failed to disclose to her son the identities of the two men. Meanwhile, BBB, fearing retaliation from the two men, decided not to divulge the identities of Cabigquez and Grondiano to her mother and brother.[14]

That same morning, March 27, 2001, AAA reported the incident to the Puerto Police Station. No criminal complaint, however, was filed since AAA was still uncertain of the identities of the two men. AAA was physically examined by Dr. Cristilda O. Villapañe and Dr. Riman Ricardo, resident physicians at the Northern Mindanao Medical Center.[15]Dr. Villapañe's examination revealed that the smear recovered from AAA's vagina was positive for spermatozoa,[16]while Dr. Ricardo found a two-centimeter contusion on AAA's left hand dorsum.[17]

On May 24, 2001, Cabigquez was arrested for possession of illegal drugs.[18] Grondiano was likewise arrested on May 26, 2001 also for possession of illegal drugs.[19] With the two men incarcerated, and now certain of their safety, BBB finally mustered the courage to reveal the identities of Cabigquez and Grondiano to her mother.[20]

On July 18, 2001, two Informations were filed against Cabigquez and Grondiano, viz:

Criminal Case No. 2001-816 (For: Robbery)

The undersigned Assistant City Prosecutor accuses JUANITO CABIGQUEZ y ALASTRA, alias "DODOY", and ROMULO GRONDIANO y SOCO, alias "Molok", of the crime they committed, as follows:

That on March 27, 2001, at more or less 3:30 o'clock in the early morning in a store located at Purok 1-A, Barangay Tablon, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping with one another, with intent to gain and violence or intimidation of persons, did then and there wil[l]fully, unlawfully and feloniously take, rob and carry away cash – Php3,000.00 and assorted [grocery] stocks valued Php7,000.00 all in all amounting to Php10,000.00, owned by and belonging to one [AAA], in the following manner: that accused Romulo Grondiano intimidated the offended party with a gun pointed to her and her three children and ordered them to lay on the floor with face down and then took, robbed and carried away the aforementioned valuable personal things while Juanito Cabigquez y Alastra acting/serving as lookout at the door of the store, to the damage and prejudice of the offended party, in the total sum of Php10,000.00, Philippine Currency.

Contrary to and in violation to Article 294, par. 5, of the Revised Penal Code, as amended.[21]

Criminal Case No. 2001-815 (For: Rape)

The undersigned Assistant City Prosecutor accuses, JUANITO CABIGQUEZ Y ALASTRA ALIAS "DODOY", of the crime of RAPE that he committed as follows:

That on March 27, 2001, at more or less 3:30 o'clock or thereabout, in the early morning, at Purok 1A, Tablon, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a gun, and with the use thereof, by means of force, and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledged (sic) of the offended party [AAA], against her will [and] in the presence and full view of her children.

Contrary to and in violation to (sic) Article 266-A (Formerly under Art. 335) of the Revised Penal Code, as amended by R.A. 8353.[22]

Both accused pleaded not guilty to the charges.[23] During the trial, Cabigquez admitted that on the night of March 26, 2001, he slept in the house of Leonila Omilao, a neighbor of Cabigquez and AAA.[24] He admitted that he did not have any quarrel with AAA and found no possible reason why AAA would file the complaints and testify against him.[25] Omilao herself testified that Cabigquez was in her house on the night of the incident and even saw the latter sleeping in the kitchen. During Omilao's cross-examination, however, the trial court noted Silvina Cabigquez, appellant's daughter, coaching Omilao in her answers.[26]

On October 21, 2002, the trial court, on motion by the defense, ordered the National Bureau of Investigation (NBI) in Manila to conduct a deoxyribonucleic acid (DNA) analysis on the sperm taken from AAA's vagina. On May 21, 2003, NBI Forensic Chemist III

Aida Viloria Magsipoc testified that the sample collected from AAA did not match Cabigquez's DNA profile since the specimen submitted to them were mere vaginal discharges from AAA.[27]

On October 29, 2003, the trial court rendered judgment convicting Cabigquez and Grondiano of the crimes charged. The dispositive portion of said decision reads:

IN THE LIGHT OF ALL THE FOREGOING, the Court finds accused JUANITO CABIGQUEZ GUILTY beyond reasonable doubt of the crime of Rape under Article 266-A of the Revised Penal Code, punishable under Article 266-B of the same Code, and there being one aggravating circumstance [the used (sic) of a deadly weapon (firearm)] without a[ny] mitigating circumstance, accused JUANITO CABIGQUEZ is hereby sentenced and is SO ORDERED to suffer the supreme penalty of Death by lethal injection, including its accessory penalties. He is further directed and is SO ORDERED to pay the victim the sum of FIFTY THOUSAND PESOS (P50,000.00) as indemnity, plus another TWENTY FIVE THOUSAND PESOS (P25,000.00), as moral damages. Pursuant to Section 22 of R.A. 7659 and Section 10 of Rule 122 of the Rules of Court, let the entire record of this case be forwarded to the Supreme Court for automatic review.

FURTHERMORE, the Court likewise finds accused JUANITO CABIGQUEZ and ROMULO GRONDIANO GUILTY beyond reasonable doubt of the Crime of Robbery punishable under paragraph 5 of Article 294 of the Revised Penal Code, and [there] being no aggravating nor mitigating circumstance, and after applying the Indeterminate Sentence Law, accused JUANITO CABIGQUEZ and ROMULO GRONDIANO are hereby sentenced and are SO ORDERED to serve the [penalty of] imprisonment of TWO (2) YEARS, TEN (10) MONTHS AND TWENTY (20) DAYS OF *PRISION CORRECCIONAL*, as the MINIMUM, to SIX (6) YEARS, ONE (1) MONTH AND ELEVEN (11) DAYS OF *PRISION MAYOR*, as the MAXIMUM, including its accessory penalties, plus further SO ORDERED to pay the stolen items and cash in the sum of TEN THOUSAND PESOS (P10,000.00).

SO ORDERED. Cagayan de Oro City, October 29, 2003.[28]

The records of the case were elevated to this Court on automatic review. Pursuant to our ruling in People v. Mateo,[29] the case was referred to the CA.

In his appeal, appellant maintained his defense of alibi and denial. He questioned the accuracy and credibility of BBB's testimony given her failure to immediately divulge the identity of the perpetrators after the incident. Appellant also noted that AAA's lone interjection, while she was allegedly being raped by him, can hardly be considered as a manifest resistance.[30] The defense also argued that the prosecution failed to establish conspiracy since BBB did not actually see that Cabigquez was on the balcony while the robbery was being committed.[31]

By Decision dated July 9, 2008, the CA upheld the RTC in convicting appellant of both crimes of robbery and rape. The CA found BBB's testimony candid and not prompted by ill-motive. As to BBB's failure to promptly implicate Grondiano and Cabigquez for the crimes, the appellate court ruled that this cannot be taken against her in the light of serious threats made by said accused on their family. The alleged contradictions in the testimonies of AAA and BBB were likewise not fatal to the case of the prosecution as they bear no materiality to the commission of the crime. The CA also noted that the accused were able to consummate their criminal acts without any physical resistance from the victims who could not even cry loudly because they were ordered at gunpoint not to make any noise. It rejected the defense of alibi put up by Cabigquez in view of his admission that he stayed at a house within the vicinity of AAA's store.[32]

The CA thus decreed:

WHEREFORE, premises considered, the appealed October 29, 2003 Decision of the Regional Trial Court (RTC) of Misamis Oriental, 10th Judicial Region, Branch 18, Cagayan de Oro City, convicting Juanito A. Cabigquez, the lone appellant before Us, for the crimes of Robbery and Rape, is hereby AFFIRMED with MODIFICATION in that Juanito A. Cabigquez is hereby sentenced to suffer the penalty of reclusion perpetua for the crime of Rape.

SO ORDERED.[33]

Before this Court, appellant Cabigquez reiterates the following arguments:

I.

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE THEIR GUILT BEYOND REASONABLE DOUBT.

II.

THE COURT *A QUO* GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE INCREDIBLE AND INCONSISTENT TESTIMONY OF THE PROSECUTION WITNESSES.

III.

ASSUMING ARGUENDO THAT THE ACCUSED-APPELLANTS COMMITTED ROBBERY, THE COURT A QUO GRAVELY ERRED IN ORDERING THEM TO PAY THE COMPLAINANT P10,000.00 AS ACTUAL DAMAGES.

IV.

THE COURT *A QUO* GRAVELY ERRED IN FINDING THAT THERE WAS CONSPIRACY IN THE CASE AT

BAR.[34]

We sustain the ruling of the CA.

The factual findings of the RTC, as affirmed by the appellate court, indubitably prove that appellant raped AAA even if the specimen obtained from the vaginal swabs and submitted to the NBI failed to match appellant's DNA profile. Rape is committed by a man who shall have carnal knowledge of a woman through force, threat or intimidation.[35] The commission of rape was clearly shown by testimonial and documentary evidence; the defense submits that it is the identity of the perpetrator which is not duly established.

For purposes of criminal investigation, DNA identification is indeed a fertile source of both inculpatory and exculpatory evidence.[36] In this case, however, the result of the DNA test is rendered inconclusive to exculpate or inculpate the appellant since the sample tested by the NBI merely contained vaginal discharges. In the laboratory test earlier conducted by Dr. Villapañe on the vaginal swab obtained from AAA's genitalia, the presence of spermatozoa was confirmed. This notwithstanding, the totality of evidence satisfactorily established that it was indeed appellant who raped AAA.

AAA's daughter, BBB, who witnessed the entire incident which happened inside their store on the night in question, positively identified appellant as the one who raped her mother against the latter's will by threatening her and her children with a handgun he was then carrying. BBB's unflinching and consistent testimony, when taken together with Dr. Villapañe's findings and AAA's own declarations in court, provides sufficient basis for the conviction of appellant for rape.

Quoted herein are the relevant portions of BBB's testimony on direct examination as to her identification of appellant as her mother's rapist, viz:

> Q Now, [BBB], you said that you are 13 years old and you said a while ago you sworn that you will tell the truth, can you remember that?
>
> A Yes, sir.
>
> Q Okay now, are you going to tell the truth and nothing but the truth before this Honorable Court?
>
> A Yes, sir I will tell the truth.
>
> Q Do you know what will happen to you if you tell a lie in court?
>
> A Yes, sir I will be imprisoned.
>
> Q Do you want to be imprisoned?
>
> A No, sir.
>
> Q So, you will tell the truth nothing but the truth?
>
> A Yes, sir.
>
> Q Do you know accused Romulo Grondiano?
>
> A Yes, sir because he is our neighbor.
>
> x x x x
>
> Q Do you also know accused Juanito Cabigquez who is accused for rape and co-accused in robbery?
>
> A Yes, sir he is also our neighbor.
>
> Q For how long have you known Juanito Cabigquez before March 27, 2001?
>
> A Since I came that age of reason I already knew Juanito Cabigquez.
>
> Q Is Juanito Cabigquez also a resident of Purok 1-A at Tablon?
>
> A Yes, sir.
>
> Q Do you also know the nickname of Juanito Cabigquez?
>
> A Its Dodoy.
>
> Q If Juanito Cabigquez is inside this courtroom, can you point to him?
>
> A Note: Witness pointed to a person who when asked of his name identified himself as Juanito Cabigquez.
>
> Q Okay, on March 27, 2001 at about 3:30 early in the morning, do you remember where were you?
>
> A I was inside our store sleeping together with our mother.
>
> Q Aside from you and your mother, who were other persons who were with you?
>
> A Together with my two (2) siblings.
>
> x x x x

Q Now, while you were sleeping together with your mother and your two (2) younger siblings at that time, what happened?

x x x x

A The three (3) of us were awakened because of the shout of our mother.

Q Who is that us?

A I together with my two (2) siblings.

Q Your mother also woke up?

A Yes, sir.

Q Now, after you were awakened by the shout of your mother, what did you observe, if there was any?

A I saw my mother knelt down and I came nearer and then I embraced her because I thought she was dreaming but I saw Romulo Grondiano with a gun.

x x x x

Q Alright, what happened while you saw accused Romulo Grondiano already at the door of your store of your mother holding a gun and your mother was kneeling?

A He ordered us to lay face down.

Q After Romulo Grondiano ordered you to lay face down, what did you, your mother and your two (2) siblings do?

A I let my mother lay face down.

Q How about you?

A I also lay face down.

Q How about your two (2) younger siblings?

A They also lay face down.

Q Alright, while the four (4) of you were lying face down, what did you observe?

A I noticed that he had a companion who is at our balcony.

Q How were you able to notice that he has a companion?

A Because we had a chair made of bamboo and then if somebody or a person hit it, it will sound.

x x x x

Q Now, after Romulo Grondiano took all those things that you have enumerated a while ago, where did Romulo Grondiano go?

A He pointed a gun at my mother's back and then ordered us not to move.

x x x x

Q Alright, after Romulo Grondiano told you, your mother and your two (2) younger siblings not to move, where did Romulo Grondiano go?

A He went to the balcony and then Juanito Cabigquez replaced him (Romulo) in going up, he (Juanito) went inside our store.

x x x x

Q Alright, you testified a while ago that after Romulo Grondiano went inside your store he passed by the balcony of your house, then co-accused Juanito Cabigquez came in, where did Juanito Cabigquez come in?

A He entered in our store.

Q The same store where you, your mother and two (2) younger siblings were staying at that time?

A Yes, sir.

Q How were you able to recognize that it was Juanito Cabigquez who came in?

A Because I saw him.

Q When you saw Juanito Cabigquez, were you still lying face down or were you already sitting?

A I was already lying face down.

Q How were you able to see him?

A Because I looked back at the door because I thought that Romulo Grondiano already left but then I saw Juanito Cabigquez came in and replaced Romulo Grondiano.

Q This Juanito Cabigquez who came in after Romulo

Grondiano went out, is he the same Juanito Cabigquez the co-accused for robbery and accused in rape case?

A Yes, sir.

Q If he is inside this courtroom, can you point him again?

A Note: Witness pointed again to a person who when asked of his name identified himself as Juanito Cabigquez.

Q After Juanito Cabigquez came in inside the store, what did you observe?

A He removed the shortpants of my mother and then he got the pillow of my mother and placed it under her abdomen.

x x x x

Q Now, what was the position of your mother when Juanito Cabigquez took off the shortpants of your mother?

A She was still lying face down.

Q What was the position of your mother when Juanito Cabigquez put the pillow under her abdomen?

A She was still lying face down.

Q By the way, when Juanito Cabigquez entered the store, was the light still on?

A Yes, sir.

Q Now, you said that your mother shouted when Juanito Cabigquez came in. My question is, when did your mother actually shout?

A When Juanito Cabigquez was removing the shortpants of my mother.

COURT: (to the witness)

Q Can you tell the Court what kind of shout your mother did?

A My mother shouted "ay!"

PROS. M. NOLASCO: (cont'g.)

Q Now, was Juanito able to take off the shortpants of your mother?

A Yes, sir because it was a gartered shortpants.

Q Now, how about the panty of your mother?

A It was removed together with the shortpants.

Q Now, after the shortpants and panty of your mother were taken off and the pillow was placed under her abdomen, what next did you observe?

A Juanito Cabigquez mounted on my mother.

Q And then, what did Juanito do when he mounted to your mother?

A He did a push and pull motion.

Q How about your two (2) younger siblings, were they still awake at that time?

A Yes, sir, they were crying.

Q How about you?

A I also cried.

Q When you noticed that he (Juanito Cabigquez) entered your store, was he carrying a gun?

x x x x

A He was bringing a gun.

x x x x

Q Can you demonstrate the length of the gun that you saw?

A The gun which Juanito Cabigquez was bringing was the same gun Romulo brought.

Q How about your mother while Juanito Cabigquez was already mounted on her and make a push and pull motion, what did your mother do?

A My mother was crying.

x x x x

Q You said that you, your mother and your two (2) younger siblings were crying while Juanito Cabigquez

mounted on your mother and made a push and pull motion, what happened after that?

A He pointed his gun at the back of my mother and then told us not to tell to anybody because they will return and kill us.

Q Now, after Juanito Cabigquez warned you not to tell anybody otherwise they will return and kill you, what did Juanito Cabigquez do?

A He went up to the balcony.

x x x x

Q How about Juanito Cabigquez, when he entered your store of your mother and raped your mother, what was he wearing?

A He was wearing a white t-shirt and maong pants.

COURT: (to the witness)

Q Was it long or short?

A Long pants.

x x x x [37] (Emphasis supplied.)

Appellant asserts that it is significant that AAA herself did not recognize him and his co-accused despite her familiarity with them as they were her customers in her store. It was pointed out that the identification of the perpetrators was supplied solely by her daughter BBB, who should not have been given any credence in view of her inconsistent declarations such as when she testified that when she woke up, her mother was kneeling contrary to the latter's testimony that when clothes fell on her face, she was awakened and that her mother shouted but a gun was pointed to her. Moreover, BBB saw the accused several times after the alleged crimes transpired and yet she did not manifest any alarm even when they reported the matter to the police; it was only after the accused were detained that their identities were revealed. In the light of serious discrepancies in the testimonies of prosecution witnesses, appellant maintains that BBB's identification of the perpetrators of robbery and rape was unreliable and doubtful.[38]

We are not persuaded.

While it is true that the most natural reaction for victims of crimes is to strive to remember the faces of their assailants and the manner in which the craven acts are committed,[39] in this case, AAA cannot be faulted for failing to recognize appellant as her rapist though the latter was their neighbor. It must be recalled, as narrated by AAA and BBB, they were all still lying face down when appellant suddenly entered the store right after his co-accused Grondiano exited through the balcony taking the loot with him. BBB recounted that her mother was still lying face down when appellant removed her mother's short pants and panty, placed a pillow below her abdomen and then proceeded to rape her. It was BBB who had the opportunity to look at this second person who entered their house because she looked back at the door thinking that Grondiano (the one who first entered the store) already left, but then appellant immediately came in after Grondiano. Although AAA was able to shout at that time, she could not move because she was afraid that her three children, who were already crying, will be harmed.[40]

As to the alleged inconsistency in the position of her mother when accused Grondiano entered their store, the same is inexistent considering that AAA was relating the exact moment when she woke up and realized the presence of an intruder because clothes fell on her face, while BBB who was awakened by the shout of her mother, simply described her mother then already in a kneeling position as she woke up first. BBB had thought her mother was just dreaming but then she saw Grondiano already inside the house with a gun.

Neither would BBB's delay in revealing the identities of the perpetrators to the police taint her identification of appellant as the one who raped her mother and conspirator of Grondiano in robbing their store. Failure to immediately reveal the identity of a perpetrator of a felony does not affect, much less impair, the credibility of witnesses, more so if such delay is adequately explained.[41] BBB sufficiently explained her action in not immediately divulging to her mother and brother nor reporting to the police whom she saw inside their house that early morning of March 27, 2001. She was afraid that the assailants would make good their threat that they will return and kill their family if they reported the incident to anybody. But when a couple of months later appellant and his co-accused Grondiano were arrested on drug charges, BBB finally felt it was safe to come out in the open and inform the police of the identities of the two men who robbed their house, one of whom subsequently raped her mother (appellant).

Appellant cannot seek acquittal on the basis of the negative result of the DNA test on the specimen conducted by the NBI.

A positive DNA match is unnecessary when the totality of the evidence presented before the court points to no other possible conclusion, i.e., appellant raped the private offended party. A positive DNA match may strengthen the evidence for the prosecution, but an inconclusive DNA test result may not be sufficient to exculpate the accused, particularly when there is sufficient evidence proving his guilt. Notably, neither a positive DNA match of the semen nor the presence of spermatozoa is essential in finding that rape was committed. The important consideration in rape cases is not the emission of semen but the penetration of the female genitalia by the male organ.[42]

Moreover, it is evident that the rape of AAA was committed in the presence and in full view of her three minor children. Thirteen

(13)-year old BBB, as well as her two minor siblings who were present at the time when the rape was committed, was already old enough to sense the bestiality being committed against their own mother.[43] Such circumstance, as recited in the last portion of the Information for Criminal Case No. 2001-815 is, by itself, sufficient to qualify the rape under Article 266-B of the Revised Penal Code,[44] as amended. Consequently, the CA was correct in affirming the conviction of appellant for qualified rape.

With respect to the charge of robbery, we find no merit in appellant's argument that the prosecution failed to establish that he conspired with co-accused Grondiano in stealing goods from private complainant's store. He asserts that there was no proof that he was outside the store when the crime of robbery was being committed; private complainant and her daughter merely surmised that another person was outside the store because of a creaking sound created by a bamboo chair, but they actually did not see that person or if there was indeed that person.[45]

On this issue, we hold that the CA correctly ruled that conspiracy was sufficiently proven by circumstantial evidence on record, thus:

We also find that the trial court correctly appreciated conspiracy against Cabigquez with respect [to] the crime of robbery. There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Direct proof of previous agreement to commit a crime is not necessary. Conspiracy may be shown through circumstantial evidence, deduced from the mode and manner in which the offense was perpetrated, or inferred upon the acts of the accused themselves when such lead to a joint purpose and design, concerted action, and community of interest.

Neither [AAA] nor [BBB] saw Cabigquez acting as a lookout outside the store. However, the creaking sound coming from the balcony and the fact that [BBB] saw Cabigquez go inside the store, as soon as Grondiano left, reasonably verify a discernment that someone stood by outside and close to the store's entrance during the looting, and that such person was Cabigquez. The fact that only Grondiano concealed his face reasonably indicates a prior agreement between the two (2) malefactors for Cabigquez to act as a lookout in the commission of robbery. After raping [AAA], Cabigquez also warned of killing [AAA and her children] if they told anyone about the incident, which threat contributed to the common sentiment of concealing both crimes of robbery and rape. These circumstances sufficiently establish a joint purpose and design, and a community of interest, between Cabigquez and Grondiano, in committing the crime of robbery.[46]

On the matter of actual damages awarded by the trial court, appellant questions the amount thereof, insisting there was no basis for the actual cost of the items taken from the store.

We find no reversible error committed by the CA in sustaining such award. In People v. Martinez,[47] this Court ruled that the trial court has the power to take judicial notice of the value of stolen goods because these are matters of public knowledge or capable of unquestionable demonstration. Judicial cognizance, which is based on considerations of expediency and convenience, displace evidence since, being equivalent to proof, it fulfills the object which the evidence is intended to achieve. Surely, matters like the value of the appliances, canned goods and perfume are undeniably within public knowledge and easily capable of unquestionable demonstration.[48] Here, what is involved are common goods for everyday use and ordinary stocks found in small sari-sari stores like private complainant's store, i.e., milk, soap, coffee, sugar, liquor and cigarettes. The RTC was thus correct in granting the reasonable amount of ₱10,000.00 as computed by the private complainant representing the value of stolen merchandise from her store.

Further, the Court deems it proper to adjust the sums awarded as civil indemnity, moral and exemplary damages. Applying prevailing jurisprudence, the private complainant is entitled to ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱25,000.00 as exemplary damages.[49]

Lastly, the death penalty imposed on appellant was correctly modified to reclusion perpetua, in view of the passage of Republic Act No. 9346, entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines."[50] Notwithstanding the reduction of the penalty imposed on appellant, he is not eligible for parole following Section 3 of the said law, which provides:

SEC. 3. Persons convicted of offenses punished with reclusion perpetua, or whose sentences will be reduced to reclusion perpetua, by reason of this Act, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.

WHEREFORE, the appeal is DISMISSED and the Decision dated July 9, 2008 of the Court of Appeals, Mindanao Station in CA-G.R. CR-H.C. No. 00409 is AFFIRMED with MODIFICATIONS in that the penalty of reclusion perpetua imposed on appellant in Criminal Case No. 2001-815 for qualified rape is herein clarified as without eligibility for parole, and the appellant is ordered to pay the private complainant ₱75,000.00 as civil indemnity,₱75,000.00 as moral damages and ₱25,000.00 as exemplary damages.

With costs against the appellant.

SO ORDERED.

MARTIN S. VILLARAMA, JR.
Associate Justice

WE CONCUR:

B. DOCUMENTARY EVIDENCE

Section 2. *Documentary evidence*. ? Documents as evidence consist of writing or any material containing letters, words, numbers, figures, symbols or other modes of written expression offered as proof of their contents. (n)

Documentary evidence
Documentary evidence is any evidence introduced at a trial in the form of documents. Although this term is most widely understood to mean writings on paper (such as an invoice, a contract or a will), the term actually include any media by which information can be preserved. Photographs, tape recordings, films, and printed emails are all forms of documentary evidence.

Documentary versus physical evidence
A piece of evidence is *not* documentary evidence if it is presented for some purpose other than the examination of the contents of the document. For example, if a blood-spattered letter is introduced solely to show that the defendant stabbed the author of the letter from behind as it was being written, then the evidence is physical evidence, not documentary evidence. However, a film of the murder taking place *would* be documentary evidence (just as a written description of the event from an eyewitness). If the content of that same letter is then introduced to show the motive for the murder, then the evidence would be both physical and documentary.

Authentication
Documentary evidence is subject to specific forms of authentication, usually through the testimony of an eyewitness to the execution of the document, or to the testimony of a witness able to identify the handwriting of the purported author. Documentary evidence is also subject to the best evidence rule, which requires that the original document be produced unless there is a good reason not to do so.

Documents as evidence consist of writing or any material containing letters, words, numbers, figures, symbols or other modes of written expression offered as proof of their contents.

Question:
When a document does considered real or object evidence?
Answer:
If the object is to examine the age, signature thereon, or the conditions of the document itself, the same is considered real evidence which the court may view for such purpose.

Q: May a private document be offered and admitted in evidence both as documentary evidence and as object evidence? Explain.

A: Yes. A private document is considered as object evidence when it is addressed to the senses of the court or when it is presented in order to establish certain physical evidence or characteristics that are visible on the paper and the writings that comprise the document. It is considered as documentary evidence when it is offered as proof of its contents.

Q: What are the requisites for admissibility of documentary evidence?
A:
1. The document must be relevant;
2. The evidence must be authenticated;
3. The document must be authenticated by a competent witness; and
4. The document must be formally offered in evidence.

[G.R. No. 143125. June 10, 2003]
PEOPLE OF THE PHILIPPINES, *appellee,* *vs.* DIOSDADO CORIAL y REQUIEZ, *appellant.*
D E C I S I O N
VITUG, *J.*:

For automatic review is the decision of the Regional Trial Court of Pasay City, Branch 109,[1] imposing the death penalty on convicted appellant Diosdado Corial y Requiez for the crime of qualified rape,[2] said to have been committed, according to the indictment, against his own minor granddaughter Maricar Corial.

At his arraignment, appellant pleaded "not guilty" to the charge;[3] trial ensued shortly thereafter.

The Case for the Prosecution. -

Maricar Corial was born to Marietta Corial, appellant's daughter, but she did not come to know her father (now said to be deceased). Maricar had two maternal sisters who lived with their mother and her "stepfather" in Balagtas, Bulacan. Maricar lived with her grandparents, herein appellant and his wife Carmelita, in Pasay City.

One afternoon in July 1998, Maricar and appellant were left alone in the house. She was wearing a duster when her grandfather forced himself on her. He first inserted his penis into her private part, and then into her mouth and, finally, into her anus. When her mother, Marietta, arrived for Christmas in 1998, Maricar revealed the sexual abuse she had suffered from her grandfather. Maricar went first to the barangay hall where she lodged a complaint against appellant and then to the Philippine General Hospital where Maricar was physically examined. Still later, they repaired to the Pasay City Police station where Maricar executed a sworn statement (*salaysay*).

According to barangay captain Policarpio Tawat, Marietta and Maricar went to see him on the morning of 29 December 1998 at the *barangay* hall to seek assistance about the sexual assault. Along with a barangay *kagawad*, Tawat went to invite appellant to the barangay hall and then had a medical examination conducted on Maricar. When the medical examination proved positive for rape, Tawat turned appellant over to the Pasay City Police station.

The Provisional Medical Certificate,[4] dated 29 December 1998, showed the following findings of Dr. Mariella Sugue-Castillo; *viz*:

"GENITAL EXAMINATION:
External genitalia: normal
Hymen: crescentic hymen, no discharge seen,
(+) mound at 7 o'clock position, (+)
attenuation of posterior hymen

Anus: normal findings

"IMPRESSION

Disclosure of sexual abuse.
Genital finding of posterior hymen attenuation is suspicious for prior penetration injury"[5]

On the afternoon of 29 December 1998, SPO3 Milagros Carrasco was at the Women and Children Desk of the Pasay City Police station when *Barangay* Captain Tawat, Marietta, young Maricar, and Marietta's father arrived. After hearing the story, SPO3 Carrasco contacted social worker Erlinda Aguila to assist her in conducting the interview with Maricar. The child claimed that her maternal grandfather had sexually abused her. When confronted by SPO3 Carrasco, appellant remarked in Tagalog that he was just having a "taste" of the child (*tinitikman niya lang*).

The Case for the Defense. -

Testifying for her father, Nelly Corial stated that the 59-year-old appellant had six children, all of them female, by his wife Carmelita. He was a mason and construction worker employed by D. M. Consunji while her mother was a dressmaker. Her father was a responsible person with no vices. Her parents first took custody of Maricar because the latter's father, Francisco Amado and live-in partner of Marietta, would often inflict physical harm upon the child. After Francisco's death, Marietta resided in Balagtas, Bulacan, with yet another live-in partner, Rene Malinao, who both for a while took Maricar into their custody. Maricar was soon brought back to her grandparent's residence in Pasay City because of the maltreatment she had been getting from Malinao. According to Nelly, her parents loved Maricar, provided for her needs, and had her take up schooling at the Pio del Pilar Elementary School. After the case against appellant was filed, Marietta confided to Nelly her regrets (*nagsisisi*) for having filed the case. Marietta became "mentally deranged" and would harm herself for no reason at all. She concluded that Marietta's complaint was fabricated (*gawa-gawa lamang niya iyun*). Menchu, another daughter of appellant, also testified for him. Her residence in Pasay City was separated from appellant's house only by a wall. She confirmed that Maricar was brought to San Pedro, Laguna, at the instance of appellant who had wanted the child to have a vacation there.

Appellant denied having raped Maricar. He took the child away from her parents because they were unable to properly care for her. After Francisco's death, he took custody of Marietta and her child but only for four months when Marietta started to live with another partner in Bulacan. Marietta was a good daughter and a good mother but she was mentally ill and hardheaded (*suwail*). Marietta instigated the case against him because he had refused to allow her to live in their house in Pasay City. From Monday to Saturday, he would leave the house at six o'clock in the morning and return from work at seven o'clock in the evening. On Sundays, Nelly would always be at home.

The Assailed Decision. -

The trial court debunked the defense of denial interposed by appellant and the assertion that the rape case was only trumped-up by his daughter Marietta. It instead gave credence to what it so described as the "spontaneous and straightforward" testimony of Maricar Corial. The trial court adjudged:

"In view of all the foregoing, the Court opines that the prosecution has proven the guilt of the accused, Diosdado Corial y Requiez for rape as defined and penalized under Art. 266-A and 266-B of RA 8353 as amended, and the Court hereby sentences the accused, Diosdado Corial y Requiez to death and to indemnify the complainant in the amount of P75,000.00 and moral and exemplary damages in the amount of P50,000.00."[6]

Appellant, in this Court's review of his case, would consider erroneous his conviction for there was no opportunity for him and his granddaughter to be alone in their residence, particularly on Sundays when all the members of the household stayed home, and for Maricar's failure to make an outcry during the alleged sexual assault that could have easily attracted the attention of close kins whose house was only adjacent to theirs.

Quite often, this Court has held that rapists are not deterred from committing the odious act of sexual abuse by the mere presence nearby of people or even family members. Rape is committed not exclusively in seclusion;[7] lust, it is said, respects neither time nor place. The trial court has valued Maricar's testimony as being "spontaneous and straightforward." Indeed, when a victim's testimony is straightforward and unflawed by any major inconsistency or contradiction, the same must be given full faith and credit.[8] Appellant capitalizes on the so-called disparity between the declaration of Maricar in her testimony in court and her sworn statement. He quotes a portion of her *salaysay; viz:*

"06. T: Natatandaan mo ba kung kailan at kung saan nangyari ang mga ginawa na sinasabi ng lolo mo sa iyo?

S: Opo, simula po ng Grade II ako. Tapos naulit po nuong July 1998 at nauulit po pag araw ng Linggo pag wala ang lola ko at ang tita ko sa bahay namin. Kasi nagtratrabaho si Lolo ng Lunes hanggang Sabado. Pero pag wala siyang pasok ay ginagalaw din niya ako. Sa bahay namin sa Dolores, Pasay.[9]

He then labels it as being inconsistent with her testimony on cross-examination; *viz*:

"Atty. Casas:

Now, it was in July 1998 which is finally the alleged (sic) contained in the information that you claimed you have been sexually molested, is that correct?

"A: Yes, sir.

"Q: And you told the Court in your direct examination that it was the first time that the same was

committed?

"A: Yes, sir."[10]

Not only is her assailed statement - that before the July 1998 incident she has also been subjected to sexual assault by appellant – inconsequential in a material point but it also does not necessarily take away her credibility at the witness stand. It is acknowledged that affidavits, usually taken *ex parte*, are often held unreliable for being incomplete and inaccurate.[11]

Maricar's failure to shout during the sexual assault is not all that strange. Not every witness to or victim of a crime can be supposed to always act in conformity with the usual expectations of everyone;[12] in fact, there is no known and accepted standard therefor. Moreover, to attribute to her the sophistication of an adult woman would be to brush aside the fact that Maricar is just a young girl. Even then, it would be unreasonable to judge her actions on the traumatic experience by any norm of behavior that, if at all, may be expected from mature persons.[13]

The Court is not persuaded by the claim of appellant that Marietta, the victim's mother, has fabricated the charge simply because appellant did not allow her to stay with him. It just is not a convincing tale. It is difficult to believe that Marietta would send his own father to jail, even to the gallows, sacrifice the honor and dignity of their family and subject her own child to untold humiliation and disgrace if she were motivated by any desire other than to bring to justice the person responsible for defiling her child.[14]

Appellant's claim that Marietta is deranged lacks unbiased evidentiary support. In any event, it hardly has any bearing on the credibility of her own daughter. Nor would the failure of the prosecution to present Marietta at the witness stand adversely affect the outcome of the case. The prosecution is not bound to present any witness other than the victim herself, for as long as the testimony of the victim is credible, natural, convincing and otherwise consistent with human nature and the course of things,[15] it may be the basis for a conviction. It is the prerogative of the prosecution, not much unlike that of the defense, to determine which evidence to submit in support of its own case.[16]

Maricar, on direct examination, testified thusly:

"Q: In the information filed to (sic) this Honorable Court, stated that you are complaining for rape perpetrated by your Lolo Diosdado Corial that happened in July 1998. Do you still recall the date in July when this incident, the alleged incident happened?

"A: It was in July but I do not know or remember the date, sir.

"Q: But could you still recall if that was in the morning or lunch time or evening of July 1998?

"A: It was in the afternoon of July 1998.

"Q: And in what place where this incident happened regarding the complaint (sic) that you were sexually molested by your grandfather Diosdado Corial?

"A: The incident happened at 164 Dolores Street, Pasay City.

"Q: Was it inside your house?

"A: Yes, sir.

"Q: You earlier stated that the alleged rape happened in the afternoon, sometime in July 1998 inside your house at No. 164 Dolores Street, Pasay City. My question is, who were actually present inside your house when the incident happened?

"A: My grandmother was there, but she left.

"Q: And who was left behind in the afternoon of July 1998 when the incident happened?

"A: I and my grandfather was (sic) left inside the house.

"Q: And what actually were you doing in that afternoon of July 1998 when you were inside your house?

"A: None, sir.

"Q: What were you wearing then?

"A: I was wearing a duster, sir.

"Q: And so was there any unusual incident that happened in the month of July 1998? When you were left by your Lola inside your house and left with your Lolo?

"A: Yes, there was.

"Q: Would you kindly tell to this Honorable Court, what happened to you on that month of July 1998?

"A: I was raped by my grandfather, sir.

"Q: Will you further explain to this Honorable Court, how were you raped by your grandfather?

"A: He inserted his penis into my private part, sir.

"Q: And what did you feel when your grandfather inserted his penis inside your private part?

"A: I felt pain, sir.

"Fiscal Barrera:

Besides inserting his penis at your private part, what else did your Lolo do to you?

"A: He was requesting me to suck his penis.

"Q: And did he actually put his penis inside your mouth?

"A: Yes, sir.

"Q: And what happen(ed) after he inserted his penis inside your mouth?

"A: He requested me to suck it, sir.

"Q: And what else happened aside (from) inserting his penis at your private part, and putting his penis inside your mouth sometime in the month of July 1998?

"A: He inserted his penis inside my anus.

"Q: What did you feel when he inserted his penis inside your anus in the month of July 1998?

"A: It was painful, sir.

"Q: What else happened besides inserting his penis inside your anus or "Puwet"?

"A: No more, sir.

"Q: And so after that, what did you do?

"A: When my mother arrived last Christmas, I told her what my grandfather did to me.

"Q: You mean that was last Christmas 1998?

"A: Yes, sir.

"Q: And so what actually did you tell your mother Marietta Corial?

"A: I told her that my grandfather put his penis inside my vagina.[17]

On cross examination, she recounted:

"Q: You specifically mentioned the word rape when you were asked any unusual incident that happened on June 1998, is that correct?

"A: Yes, sir.

"Q: Who told you or how did you learn the word rape?

"A: Nobody told me, sir.

"Court:
Pero alam mo ba ang meaning *nang* rape?
Alam mo ba ang ibig sabihin nang rape?

"A: Rape means `*Pang gagahasa.*'

"x x x x x x x x x

"Q: And because the penis of your Lolo was inserted inside your vagina, you felt pain?

"A: Yes, sir.

"Q: But you did not shout, is that correct?

"A: I was boxing him.

"x x x x x x x x x

"Atty. Casas:

You also mentioned that your Lolo raped you by placing his penis inside your mouth, is that correct?

"A: Yes, sir.

"Q: Definitely, you did not like that idea or actuation by your Lolo?

"A: Yes, sir.

"x x x x x x x x x

"Q: By the way, Maricar, do you love your Lolo and Lola?

"A: I love my grandmother.

"Q: How about your grandfather, do you love him?

"A: I don't love him.

"Q: Why do you not love your grandfather?

"A: Because, he did something wrong to me."[18]

The trial court has found appellant guilty of having violated Sections 266-A and 266-B of the Revised Penal Code, as amended by Republic Act No. 8353 (Anti-Rape Law of 1997),[19] that read:

"Article 266-A. Rape; When And How Committed. – Rape is committed –

"1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat, or intimidation;

b) When the offended party is deprived of reason or otherwise unconscious;

c) By means of fraudulent machination or grave abuse of authority; and

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

"2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

"Article 266-B. *Penalties.* – Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua.*

"x x x x x x x x x

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

"1) 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 death penalty for the crime herein charged may be imposed only when the twin qualifying circumstances of relationship between the appellant and the victim and the latter's age are indubitably proven; otherwise, the appellant can only be held liable for the crime of simple rape penalized by *reclusion perpetua*.[20] The relationship between appellant and the victim has been adequately established. The prosecution evidence has shown that appellant is the grandfather of the victim,[21] a fact that appellant himself has likewise maintained.[22] The same cannot, however, be said with respect to the age of the victim.

In *People vs. Pruna*,[23] the Court, after noting the divergent rulings on proof of age of the victim in rape cases, has set out certain guidelines in appreciating age, either as an element of the crime or as a qualifying circumstance. The primary evidence of age of the victim is her birth certificate. Age may also be proven by such authentic documents as a baptismal certificate and school records only in the absence of a birth certificate. If the aforesaid documents are shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of **the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient but only under the following circumstances**: a) If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old; b) If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old; c) If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old.

In the instant case, the prosecution did not offer the victim's certificate of live birth or any similar authentic document in evidence. The trial court, in convicting the appellant of the crime of rape and imposing upon him the death penalty even in the absence of the necessary documents, relied on the **sworn statement** of Marietta Corial, the mother of the victim, attesting to the fact that her daughter Maricar Corial was born on 26 May 1990.[24] Marietta Corial, however, did not testify in court. Such sworn statement was thus inadmissible in evidence under the hearsay rule,[25] and unless the affiant had been placed on the witness stand, the admission of the mere affidavit and the conviction of appellant on the basis thereof would violate the right of the accused to meet witness face to face.[26]

In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age under the circumstances heretofore mentioned, the **complainant's sole testimony can suffice provided that it is expressly and clearly admitted by the accused**; to repeat, *"provided that it is expressly and clearly admitted by the accused."*[27] There is no such declaration and admission on the part of appellant.

This Court cannot be overly strict as regards the proof of age of the victim particularly when, such as under Article 266-B of the Revised Penal Code, as amended by Rep. Act No. 8353, age is an element of the crime that, if shown, would make it punishable by death. As so frequently expressed by the Court, the severity of the death penalty, which by its nature is irreversible when carried out, should behoove courts to apply the most exacting rules of procedure and evidence. The prosecution is not excused from discharging its burden even when the defense lets itself loose about it.

The trial court ordered appellant to "indemnify the complainant in the amount of P75,000.00 and moral and exemplary damages in the amount of P50,000.00." The award must be corrected. In consonance with prevailing jurisprudence, appellant must be made to pay P50,000.00 civil indemnity, an award that is outrightly due the victim of rape by the mere fact of its commission, P50,000.00 moral damages which is deemed concomitant with and which necessarily results from this odious criminal offense, and P25,000.00 exemplary damages which are awarded under Article 2230 of the Civil Code when the crime is committed with one or more aggravating circumstances[28] such as relationship between the offender and the victim.[29]

WHEREFORE, the judgment of the court *a quo* finding appellant Diosdado Corial y Requiez guilty of rape is AFFIRMED with MODIFICATION in that he is hereby only adjudged guilty of simple, not qualified, rape and sentenced to suffer, instead of the death penalty, the penalty of *reclusion perpetua*. The award of damages by the trial court is likewise modified by hereby ordering appellant to indemnify the victim the amounts of P50,000.00 civil indemnity, P50,000.00 moral damages and P25,000.00 exemplary damages. Costs *de oficio*.

SO ORDERED.

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

1. Best Evidence Rule

Section 3. *Original document must be produced*; *exceptions*. ? When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:

(a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;

(b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;

(c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and

(d) When the original is a public record in the custody of a public officer or is recorded in a public office. (2a)

The best evidence rule is a common law rule of evidence which can be traced back at least as far as the 18th century. In Omychund v Barker (1745) 1 Atk, 21, 49; 26 ER 15, 33, Lord Harwicke stated that no evidence was admissible unless it was "the best that the nature of the case will allow". The publication ten years later of Gilbert's enormously influential Law of Evidence,[1] a posthumous work by Sir Jeffrey Gilbert, Lord Chief Baron of the Exchequer, established the primacy of the best evidence rule, which Gilbert regarded as central to the concept of evidence. The general rule is that secondary evidence, such as a copy or facsimile, will be not admissible if an original document exists, and is not unavailable due to destruction or other circumstances indicating unavailability.
The best evidence rule is also thought to be the basis for the rule precluding the admissibility of hearsay evidence, although the two rules are now quite distinct.

The best evidence rule applies when a party wants to admit as evidence the contents of a document at trial, but that the original document is not available. In this case, the party must provide an acceptable excuse for its absence. If the document itself is not available, and the court finds the excuse provided acceptable, then the party is allowed to use secondary evidence to prove the contents of the document and have it as admissible evidence. The best evidence rule only applies when a party seeks to prove the contents of the document sought to be admitted as evidence.

Q: Define object evidence.

A: Object evidence, also known as real evidence, demonstrative evidence, autoptic preference and physical evidence, is that evidence which is addressed to the senses of the court *(Sec. 1)*. It is not limited to the view of an object. It extends to the visual, auditory, tactile, gustatory, and olfactory. It is considered as evidence of the highest order.

Q: What are the purposes of authentication of object evidence?
A:
To avoid risk of error in trusting to somebody's copy or recollection the words of a document.

Q: What are the requisites for the object evidence to be admissible?
A: It must
1. Be relevant to the fact in issue;
2. Be authenticated before it is admitted;
3. Not be hearsay;
4. Not be privileged; and
5. Meet any additional requirement set by law.

Q: What does object evidence include?
A:
1. Any article or object which may be known or perceived by the use of the senses;
2. Examination of the anatomy of a person or of any substance taken therefrom;
3. Conduct of tests, demonstrations or experiments; and
4. Examination of representative portrayals of the object in question (*e.g.* maps, diagrams)

What are Considered Original Documents
a. The original of a document is one the contents of which are the subject of inquiry.
b. When a document is in two or more copies executed at or about the same time, with identical contents, all such copies are equally regarded as originals.
c. When an entry is repeated in the regular course of business, one being copied from another at or near the time of the transaction, all the entries are likewise equally regarded as originals.
d. An electronic document, if it is a printout or output readable by sight or other means shown to reflect the data accurately. (Rules on Electronic Evidence, A.M. No. 01-7-01-SC)

Q: In a criminal case for murder, the prosecution offered as evidence photographs showing the accused mauling the victim with several of the latter's companions. The person who took the photograph was not presented as a witness. Be that as it may, the prosecution presented the companions of the victim who testified that they were the ones in the photographs. The defense objected to the admissibility of the photographs because the person who took the photographs was not presented as witness. Is the contention of the defense tenable?
A: No. Photographs, when presented in evidence, must be identified by the photographer as to its production and testified as to the circumstances under which they were produced. The value of this kind of evidence lies in its being a correct representation or reproduction of the original, and its admissibility is determined by its accuracy in portraying the scene at the time of the crime.
The photographer, however, is not the only witness who can identify the pictures he has taken. The correctness of the photograph as a faithful representation of the object portrayed can be proved *prima facie*, either by the testimony of the person who made it or by other competent witnesses who can testify to its exactness and accuracy, after which the court can admit it subject to impeachment as to its accuracy.
Here, the photographs are admissible as evidence inasmuch as the correctness thereof was testified to by the companions of the victim *(Sison v. People, G.R. Nos. 108280-83, Nov. 16, 1995)*.

Q: Ron was charged with murder for shooting Carlo. After trial, Ron was found guilty as charged. On appeal, Ron argued that the trial court should have acquitted him as his guilt was not proved beyond reasonable doubt. He argues that the paraffin test conducted on him 2 days after he was arrested yielded a negative result. Hence, he could not have shot Carlo. Is Ron correct?
A: No. While the paraffin test was negative, such fact alone did not *ipso facto* prove that Ron is innocent. A negative paraffin result is not conclusive proof that a person has not fired a gun. It is possible to fire a gun and yet be negative for nitrates, as when the culprit is wearing gloves or he washes his hands afterwards. Here, since Ron submitted himself for paraffin testing only two days after the shooting, it was likely he had already washed his hands thoroughly, thus removing all traces of nitrates therefrom *(People v. Brecinio, G.R. No. 138534, Mar. 17, 2004)*.

MONEY AS EVIDENCE

FIRST DIVISION

[G.R. No. 80505 : December 4, 1990.]

192 SCRA 28

THE PEOPLE OF THE PHILIPPINES, ***Plaintiff-Appellee,*** **vs. MARIO TANDOY y LIM,** ***Defendant-Appellant***.

D E C I S I O N

CRUZ, J.:

The decision of the Regional Trial Court of Makati, Branch 133 dated October 13, 1987, convicting Mario Tandoy of the crime of violation of Art. II, Sec. 4 of Rep. Act No. 6425 known as the Dangerous Drugs Act of 1972, is before us on appeal.

The information against the accused-appellant read as follows:

That on or about the 27th day of May 1986, in the Municipality of Makati, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused without being authorized by law, did then and there willfully, unlawfully and feloniously sell eight (8) pieces of dried marijuana flowering tops, two (2) pieces of dried marijuana flowering tops and crushed dried marijuana flowering tops, which are prohibited drug, for and in consideration of P20.00.

Upon arraignment, Tandoy entered a plea of not guilty. After trial, Judge Buenaventura J. Guerrero rendered a decision the dispositive portion of which declared:

> WHEREFORE, the Court finds Mario Tandoy y Lim guilty beyond reasonable doubt of violation of Sec. 4, Art. II, Rep. Act No. 6425, as amended, and is hereby sentenced to life imprisonment and to pay a fine of P20,000.00 and cost.
>
> The marijuana confiscated in this case is declared confiscated and forfeited and ordered turned over to the Dangerous Drugs Board for proper disposal.
>
> SO ORDERED.

The accused-appellant raises the following assignment of errors in this appeal:

> 1. The Court a quo erred in finding accused guilty beyond reasonable doubt of the crime charged despite lack of evidence to prove that he sold marijuana to the poseur-buyer.
>
> 2. The Court a quo erred in admitting in evidence against the accused Exh. "E-2-A" which is merely a xerox copy of the P10.00 bill allegedly used as buy-bust money.

The evidence of the prosecution may be summarized as follows:

On May 27, 1986, at about 3:30 p.m. Lt. Salido, Jr. of the Makati Police Station dispatched Pfc. Herino de la Cruz, and Detectives Pablo R. Singayan, Nicanor Candolesas, Luisito de la Cruz, Estanislao Dalumpines, Antonio Manalastas and Virgilio Padua to conduct a buy-bust operation at Solchuaga St., Barangay Singkamas, Makati.

The target area was a store along the said

street, and Singayan was to pose as the buyer. He stood alone near the store waiting for any pusher to approach. The other members of the team strategically positioned themselves. Soon, three men approached Singayan. One of them was the accused-appellant, who said without preamble: "Pare, gusto mo bang umiskor?" Singayan said yes. The exchange was made then and there — two rolls/pieces of marijuana for one P10.00 and two P5.00 bills marked ANU (meaning Anti-Narcotics Unit).

The team then moved in and arrested Tandoy. Manalastas and Candolesas made a body search of the accused-appellant and took from him the marked money, as well as eight more rolls/foils of marijuana and crushed leaves.

The arresting officers brought Tandoy to the Office of the Anti-Narcotics Unit, Makati Police Station, for investigation by Detective Marvin Pajilan. The accused-appellant chose to remain silent after having been informed of his constitutional rights.

These events were narrated under oath by De la Cruz, Singayan and Pajilan. 1 Microscopic, chemical and chromotographic examination was performed on the confiscated marijuana by Raquel P. Angeles, forensic chemist of the National Bureau of Investigation, who later testified that the findings were positive. The marijuana was offered as an exhibit. 2

As might be expected, the accused-appellant had a different story. His testimony was that from 1:30 to 4:00 p.m. of the day in question, he was playing "cara y cruz" with 15 other persons along Solchuaga St. when somebody suddenly said that policemen were making arrests. The players grabbed the bet money and scampered. However, he and a certain Danny (another "cara y cruz" player) were caught and taken to the Narcotics Command headquarters in Makati. There they were mauled and warned that if they did not point to their fellow pushers, they would rot in jail. The accused-appellant denied he had sold marijuana to Singayan and insisted the bills taken from him were the bet money he had grabbed at the "cara y cruz" game. 3

The trial court, which had the opportunity to observe the demeanor of the witnesses and to listen to their respective testimonies, gave more credence to the statements of the arresting officers. Applying the presumption that they had performed their duties in a regular manner, it rejected Tandoy's uncorroborated allegation that he had been manhandled and framed. Tandoy had not submitted sufficient evidence of his charges, let alone his admission that he had no quarrel with the peace officers whom he had met only on the day of his arrest.

In People v. Patog, 4 this Court held:

When there is no evidence and nothing to indicate the principal witness for the prosecution was actuated by improper motives, the presumption is that he was not so actuated and his testimony is entitled to full faith and credit.

Tandoy submits that "one will not sell this prohibited drug to another who is a total stranger until the seller is certain of the identity of the buyer."

The conjecture must be rejected.

In People v. Paco, 5 this Court observed:

Drug-pushing when done on a small level as in this case belongs to that class of crimes that may be committed at anytime and at any place. After the offer to buy is accepted and the exchange is made, the illegal transaction is completed in a few minutes. The fact that the parties are in a public place and in the presence of other people may not always discourage them from pursuing their illegal trade as these factors may even serve to camouflage the same.

Hence, the Court has sustained the conviction of drug pushers caught selling illegal drugs in a billiard hall (People v. Rubio, G.R. No. 66875, June 19, 1986, 142 SCRA 329; People v. Sarmiento, G.R. No. 72141, January 12, 1987, 147 SCRA 252), in front of a store (People vs. Khan, supra) along a street at 1:45 p.m. (People v. Toledo, G.R. No. 67609, November 22, 1985, 140 SCRA 259), and in front of a house (People v. Policarpio, G.R. No. 69844, February 23, 1988).

As the Court has also held, "What matters is not an existing familiarity between the buyer and the seller but their agreement and the acts constituting the sale and delivery of the marijuana leaves." 6

Under the second assigned error, the accused-appellant invokes the best evidence rule and questions the admission by the trial court of the xerox copy only of the marked P10.00 bill.

The Solicitor General, in his Comment, correctly refuted that contention thus:

This assigned error centers on the trial court's admission of the P10.00 bill marked money (Exh. E-2-A) which, according to the appellant, is excluded under the best evidence rule for being a mere xerox copy. Apparently, appellant erroneously thinks that said marked money is an ordinary document falling under Sec. 2, Rule 130 of the Revised Rules of Court which excludes the introduction of secondary evidence except in the five (5) instances mentioned therein.:

The best evidence rule applies only when the contents of the document are the subject of inquiry. Where the issue is only as to whether or not such document was actually executed, or exists, or in the circumstances relevant to or surrounding its execution, the best evidence rule does not apply and testimonial evidence is admissible. (Cf. Moran, op. cit., pp. 76-77; 4 Martin, op. cit., p. 78.)

Since the aforesaid marked money was presented by the prosecution solely for the purpose of establishing its existence and not its contents, other substitutionary evidence, like a xerox copy thereof, is therefore admissible without the need of accounting for the original.

Moreover, the presentation at the trial of the "buy-bust money" was not indispensable to the conviction of the accused-appellant because the sale of the marijuana had been adequately proved by the testimony of the police officers. So long as the marijuana actually sold by the accused-appellant had been submitted as an exhibit, the failure to produce the marked money itself would not constitute a fatal omission.

We are convinced from the evidence on record that the prosecution has overcome the constitutional presumption of innocence in favor of the accused-appellant with proof beyond reasonable doubt of his guilt. He must therefore suffer the penalty prescribed by law for those who would visit the scourge of drug addiction upon our people.

WHEREFORE, the appeal is DISMISSED and the challenged decision AFFIRMED in toto, with costs against the accused-appellant.

SO ORDERED

Narvasa (Chairman), Gancayco, Griño-Aquino and Medialdea, JJ., concur.

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Republic of the Philippines
SUPREME COURT
Manila

SECOND DIVISION

G.R. No. L-85785 April 24, 1989

BENITO SY y ONG, petitioner,
vs.
PEOPLE OF THE PHILIPPINES PHILIPPINES and COURT OF APPEALS, respondents.

Law Firm of Raymundo A. Armovit for petitioner.

The Solicitor General for respondent.

MELENCIO-HERRERA, J.:

Convicted of Estafa under Article 315, Paragraph 1(b) of the Revised Penal Code by three (3) Courts, namely, the Metropolitan Trial Court, Caloocan City, Branch 52; [1] the Regional Trial Court of the same City, Branch 129 ; [2]and respondent Court of Appeals, petitioner now seeks to break the chain of convictions.

The indictment against petitioner-accused, filed on 18 August 1986, reads:

That on or about and during the month of January 1986 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above- named accused received from the Panama Sawmill Inc., represented in this case by TE PENG MEN, PBC Check No. 291616 dated January 15, 1986 for P6,000.00 which check was subsequently encashed by said accused for the purpose of and under the express obligation on his part to use the said amount in securing a Marine Insurance coverage for P3,000,000.00 on a shipment of logs owned by Panama Sawmill, Inc. but said accused with abuse of trust and confidence reposed upon him far from complying with his obligation and with intent to deceive and defraud said corporation, did then and there willfully, unlawfully and feloniously receive a Marine Insurance coverage for only Pl,000,000.00 to cover said shipment of logs, paying therefor only the amount of P2,712.50 as insurance premium without the knowledge and consent of said Panama Sawmill, Inc., and thereafter, said accused misappropriated and converted to his own personal use and benefit the balance of P3,287.50, and despite repeated demands upon him, said accused refused and failed to account for said sum of P3,287.50 to the damage and prejudice of said Panama Sawmill Inc., in the aforestated amount of P3,287.50. (p. 3, Original Record)

After trial on the merits, the Metropolitan Trial Court of Caloocan City convicted petitioner in a Decision, dated 17 December 1986, the dispositive portion of which reads:

WHEREFORE, by proof beyond reasonable doubt, the accused BENITO SY is found GUILTY of violating Art. 315, Par. 3 of the Revised Penal Code, he is sentenced to a straight penalty of FOUR (4) MONTHS imprisonment, to reimburse or give restitution in the amount of THREE THOUSAND TWO HUNDRED EIGHTY SEVEN (3,287.50) PESOS AND 50/100 CENTAVOS and to pay costs. (p. 37, Original Record.)

On appeal before it, the Regional Trial Court of Caloocan City, affirmed the judgment of conviction on 3 June 1987, but increased the penalty, as follows:

IN VIEW OF THE FOREGOING, this Court finds the accused Benito Sy y Ong guilty beyond reasonable doubt of the crime of estafa, thru misappropriation, as defined under par. 1(b) and penalized under the 3rd par. of Art 315 of the Revised Penal Code and there being no attendant mitigating nor aggravating circumstance, he is hereby sentenced to suffer an indeterminate penalty of THREE (3) MONTHS OF ARRESTO MAYOR TO ONE (1) YEAR AND ONE (1) DAY OF *PRISION CORRECCIONAL*; to suffer the accessory penalties provided for by law; and to

pay complainant Panama Sawmill Co., by way of reparation, the amount of P3,287.50. Costs against appellant. (p. 304, Original Record)

On 30 June 1988 respondent Court of Appeals affirmed the Regional Trial Court Decision [3] notwithstanding two (2) Manifestations in lieu of Comment submitted by the Office of the Solicitor General, dated 3 March 1988 and 3 October 1988, respectively, recommending acquittal of petitioner-accused.

Before us now, petitioner re-asserts his innocence. The Solicitor General has also reiterated his recommendation for acquittal.

According to Te Peng Men Manager of Panama Sawmill, Inc. (henceforth, simply "Panama") and sole witness of the prosecution, the developments in this case unfolded as follows:

1. Sometime in January 1986 "Panama" engaged petitioner, an insurance agent, to obtain marine insurance in the amount of P3M to cover its log shipment from Palawan to Manila.

2. As instructed,on l4 January l986 petitioner secured Marine Insurance Policy No. OAC-M-86/002 from Oriental Assurance Corporation ("Oriental", for short), with a face value of P3M (Exhibit "A"). Only the duplicate original of the Policy was left with "Panama".

3. On 15 January 1986, "Panama" gave petitioner Philippine Bank of Communication Check No. 291616 in the amount of P6,000.00 payable to "Oriental" for the policy coverage of P3M.

4. On 28 January 1986 some of the logs valued at P1.2M were lost when the barge transporting the shipment encountered rough seas in the vicinity of Dumaran Island, Palawan.

5. "Panama" filed a claim for loss against "Oriental" only to be informed by the latter that its marine insurance coverage was only for P1M and that petitioner had paid a premium of only P2,712.50 (Exhibit "D")

6. Contending that petitioner had misappropriated the difference of P3,287.50 for his personal use and benefit to its prejudice, "Panama" charged petitioner with Estafa.

For his part, petitioner maintains that the following details constitute the truth:

a) Petitioner had never, at any one time, dealt with prosecution witness, Te Peng Men. It was only through one Tau Tian that petitioner had any contact with "Panama".

b) "Oriental" had issued a Marine Insurance Policy in the amount of P3M in favor of "Panama" through petitioner's efforts.

c) However, Tau Tian requested petitioner to return the Policy since the rate was quite high and "Panama" wanted to pay only P6,000.00. Thereafter, Tau Tian returned the original of the Policy to petitioner but retained the duplicate copy. Tau Tian instructed petitioner to obtain a reduction of the premium from P8,137.50 to P6,000.00.

d) Since petitioner was not able to secure a reduction in the premium, he obtained instead a P1M policy from "Oriental" paying for that purpose a premium of P2,712.50. In addition, he obtained a P2M policy from the First Integrated Insurance Co., Inc. paying a premium therefor of P3,255.00. The two policies totalled P3M and the premiums paid reached P5,967.50, or almost P6,000.00.

e) The real reason why "Panama" was not able to

recover on the aforementioned policies was because the policy of "Oriental" was for total loss only and not for partial loss. In fact, even the Tan Gatue Adjustment Company sustained the rejection of "Panama's" claim for that reason.

Defense witness, Kent Cotoco, the Underwriting Manager of "Oriental" corroborated petitioner's testimony that the P3M Policy first issued by "Oriental" (Exhibit "1") was cancelled and replaced by a P1M Policy (Exhibit "3"). He explained that before the P3M Policy was cancelled, petitioner had surrendered the original to "Oriental"; that the original and the replacement Policies bear the same serial number 86/002 because it is company policy for the replacement Policy to carry the same number as the original Policy; and that he was aware that the First Integrated Insurance Co., Inc., had issued a P2M Policy for "Panama" (t.s.n., November 21, 1986, pp. 78-80) because the latter company charges a lower premium rate than "Oriental" (*ibid.*, pp. 80-82).

Is the accused guilty of Estafa committed through misappropriation under paragraph l(b), Article 325 of the Revised Penal Code? Said provision reads:

ART. 315. *Swindling (estafa).* Any person who shall defraud another by any of the means mentioned herein-below shall be punished by:

x x x x x x x x x

(b) By appropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same, even though such obligation be totally or partially guaranteed by a bond or by denying having received such money, goods, or other property.

For the crime of Estafa through misappropriation to exist the following elements must be present:

1. That money, goods or other personal property is received by the offender in trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return, the same;

2. That there be misappropriation or conversion of such money or property by the offender, or denial on his part of such receipt;

3. That such misappropriation or conversion or denial is to the prejudice of another; and

4. That there is a demand made by the offended party to the offender. (II Criminal Law, Luis B. Reyes, 12th Edition, p. 717)

Have the foregoing elements been met in respect of petitioner-accused? Petitioner, supported by the Solicitor General, avers that they have not because no conversion or misappropriation has been committed and that there was no demand for the return of the P6,000.00 given to petitioner. In other words, elements 2, 3, and 4 of the crime are lacking.

The totality of the evidence yields the following incontrovertible data in chronological order:

Jan. 14, 1986 - Issuance of Oriental Marine Insurance Policy No. OAC-M-86/002 for P 3M, with a total premium of P8,137.50. "against total loss only." (carbon copy, Exhibit "A", original, Exhibit "1").

Jan. 15, 1986 - PBC Check No. 291616 payable to

Oriental Assurance Corporation for P6,000.00 (Exhibit "C"), endorsed at the back by petitioner (Exhibit "C-1") and stamped "cleared' on the same day, January 15, 1986.

Jan. 15, 1986 - Issuance of First Integrated Marine Insurance Policy No. 00266 for P2M with a premium of P3,000.00 plus P225.00 documentary stamps with a coverage "Total Loss by Total Loss of the Vessel Only" (Exhibit "2").

Jan. 20, 1986 - Issuance of "Oriental" Marine Insurance OAC-M-861002 for P1M, with a total premium of P2,712.50 "against total loss only." (Exhibit "3").

Jan. 21, 1986 - Official receiptof "Oriental"for P2,712.50 representing premium for Policy No. M-861002 in the amount of P1M (Exhibits "D" and 4").

Jan. 28, 1986 - Partial loss of the log shipment.

Feb. 28, 1986 - Report of the Tan-Gatue Adjustment Co., Inc., that the loss was not compensable under the terms and conditions "Total Loss Only" stipulated in the "Oriental" Policy (Exhibit "6").

May 2, 1986 - Endorsement No. M-0001 of First Integrated declaring that its Marine Cargo Policy No. 00266, issued on January 15, 1986, is "CANCELLED effective as of its inception date, for non-payment of premium" (Exhibit "E"; "E-1").

May , 1986 - Investigation of case by City Fiscal of Caloocan city.

June 10, 1986 - First Integrated Official Receipt for P3,255.00 in payment of premium for Marine Cargo Policy No. 00266 issued (Exhibit "5")

June 10, 1986 - Endorsement No. NPA/M-0002/86 First Integrated, reinstating Marine Cargo Policy No. 00266 provided no loss "has occurred prior to the date of issuance of this endorsement" (Exhibit "7").

Aug. 18, 1986 - Information for Estafa filed before the Metropolitan Trial Court, Caloocan City.

Upon the established facts, there can be no dispute that petitioner received a check in the amount of P6,000.00 from "Panama" for the particular purpose of securing a marine insurance coverage of P3M. That marked the creation of a fiduciary relation between them, the existence of which, either in the form of a trust or under any other obligation involving the duty to make delivery of the same, is an essential element of the crime of Estafa by misappropriation or conversion. The first element of the crime of Estafa, therefore, is satisfied.

As to the second element of "misappropriation or conversion" of the money or property received, petitioner contends that the same is in attendant because petitioner had, in fact, procured the P3M insurance coverage from two companies, spending therefor all of the entrusted amount of P6,000.00 for premiums.

We find ourselves in disagreement.

To "convert" ("*distraer*") connotes the act of using or disposing of another's property as if it were one's own. And to "misappropriate" ("*appropiar*") means to own, to take something for one's own benefit (II Criminal Law, Luis B. Reyes, 12th Edition, p. 729). That there was conversion or misappropriation by petitioner is

immediately shown by the fact that, as admitted by him on cross-examination, he had deposited the "Panama" check of P6,000.00 payable to "Oriental" in his own personal account (t.s.n., November 21, 1986, p. 30) even though he was not authorized to do so by "Oriental" being merely an ordinary, not a special agent, as testified to by the underwriting agent of "Oriental" (*ibid.*, pp. 70-74). Petitioner assumed the right to dispose of it as if it were his, thus committing conversion with unfaithfulness and a clear breach of trust. A check while not regarded as legal tender is normally, under commercial usage, a substitute for cash. The credit represented by it in stated monetary value is properly capable of appropriation (Galvez vs. Court of Appeals, L- 22760, November 29, 1971, 42 SCRA 278).

More, petitioner only gave a duplicate original copy of the "Oriental" policy to "Panama", which accepted it as the right policy. If, as petitioner alleges, "Panama" had asked him to secure a reduction in premium, it would have been a simple matter for him to have informed "Panama" of the second Policy for P1M he had secured from "Oriental" as well as the P2M Policy from First Integrated. But, no. All these were fraudulently concealed from "Panama" and were brought out only during the preliminary investigation of the case before the City Fiscal's Office.

Petitioner's obtainment of the First Integrated Policy, with a coverage of P2M, was only on paper. He had failed to pay the premium therefor of P3,255.00 at the time of issuance so that the Policy never became valid and binding (Sec. 77, Insurance Code of 1978). Eloquent proof of that is the Endorsement of 2 May 1986 of First Integrated cancelling its said Policy for non-payment of premium "effective as of its inception date," or on 15 January 1986.

Petitioner's explanation that he paid for the premium twice - the first time on 21 January 1986 except that he was not issued a receipt because he paid for it in cash (t.s.n., November 21, 1986, pp. 36-37), and the second time on 10 June 1986 "because the first time my sub-agent did not pay it directly to the company on the first time so I paid it again," (*ibid.*, p. 38) - is prevarication, pure and simple.

Petitioner paid the premium for the First Integrated Policy only on 10 June 1986 or five (5) months after its issuance and five (5) months after the partial loss of the shipment, and while the case was already pending investigation at the City Fiscal's Office. The company reinstated the Policy, also on 10 June 1986, but on the condition that "no loss had occurred prior to the date of issuance of this endorsement." It was a useless reinstatement, therefore, and the stark fact remains that at the time of loss there was no coverage from First Integrated because of non-payment of premium. Evidently petitioner paid the premium at that late date in a futile attempt to revive the Policy and as a last-ditch effort to show that the entire P6,000.00 amount received from "Panama" was used by petitioner for the purpose intended - namely, the payment of premium for marine insurance coverage of P3M. Indications are that no payment of premium to First Integrated would have been made either, but for this criminal charge. The evidence is clear that he had utilized the balance of the P6,000.00 (after deducting the premium of P2,712.50 paid to "Oriental") for his own benefit, and with abuse of confidence, which is the very essence of misappropriation. And he would have gotten away scot-free if no loss of the shipment had occurred.

The third element of Estafa is likewise present. The misappropriation or conversion resulted in prejudice to "Panama" which had believed all

along that its shipment was insured for P3M. There was disturbance in its property rights, and, although temporary, is sufficient to constitute injury within the meaning of Article 315(1-b) of the Revised Penal Code (Lu Hayco vs. Court of Appeals, L-49607-13 & 55775-86, August 26, 1985, 138 SCRA 227).

As to the fourth essential element, that of demand made by the offended party to the offender, which petitioner claims is wanting in this case, suffice it to state that demand is not necessary when there is evidence of misappropriation as in this case.

> It so happens only that failure to account, upon demand, for funds or property held in trust, is circumstantial evidence of misappropriation. The same may, however, be established by other proof, such as that introduced in the case at bar. (Tubb vs. People, et al., 101 Phil. 114 [1957])

All the essential elements of Estafa through misappropriation or conversion being present, we do not see our way clear to breaking the chain of convictions by the other Courts before us. The guilt of petitioner-accused has been proven beyond reasonable doubt.

WHEREFORE, the judgment under review is hereby AFFIRMED. With costs against petitioner-accused, Benito Sy y Ong.

SO ORDERED.

Paras, Padilla, Sarmiento and Regalado, JJ., concur.

Q: What are the categories of object evidence for purposes of authentication?
A:
1. Unique objects – those that have readily identifiable marks (e.g. a calibre 40 gun with serial number XXX888)
2. Objects made unique – those that are readily identifiable (e.g. a bolo knife used to hack a victim which could be identified by a witness in court)
3. Non-unique objects – those which have no identifying marks and cannot be marked (e.g. footprints left at a crime scene)

Q: What is ocular inspection or "view"?
A: An ocular inspection conducted by the judge without the presence of the parties or due notice is not valid, as an ocular inspection is *part of the trial.*

Note: It is a discretionary act of the trial court to go to the place where the object is located, when the object evidence cannot be brought in courts.

Q: What is Chain of Custody Rule in relation to Sec. 21 of the Comprehensive Dangerous Drugs Act of 2002?
A: It is a method of authenticating evidence. It requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain.
These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same. *(Lopez v. People, G.R. No. 172953, Apr. 30, 2008)*

Q: When is there a need to establish a chain of custody?
A: It is necessary when the object evidence is non-unique as it is not readily identifiable, was not made identifiable or cannot be made identifiable, *e.g.* drops of blood or oil, drugs in powder form, fiber, grains of sand and similar objects. *(Riano, Evidence: A Restatement for the Bar, p. 149, 2009 ed.)*

Q: What is the purpose of establishing a chain of custody?
A: To guaranty the integrity of the physical evidence and to prevent the introduction of evidence which is not authentic but where the exhibit is positively identified the chain of custody of physical evidence is irrelevant. *(Ibid.)*

RULE ON DNA EVIDENCE (A.M. NO. 06-11-5-SC)

PAROL EVIDENCE RULE

What is Parol Evidence?

It is any evidence *aliunde* (extrinsic evidence) which is intended or tends to vary or contradict a complete and enforceable agreement embodied in a document *(Regalado, Vol. II, p. 730, 2008 ed.)*. It may refer to testimonial, real or documentary evidence

What is the rationale of the parol evidence rule?

1. To give stability to written statements;
2. To remove the temptation and possibility of perjury; and
3. To prevent possible fraud.

TESTIMONIAL EVIDENCE

Q: Who are qualified to be witnesses?

A: All persons who:
1. can perceive and perceiving;
2. can make known their perception to others *(Sec. 20, Rule 130)*;
3. must take either an oath or an affirmation *(Sec. 1, Rule 132; Riano, Evidence: A Restatement for the Bar, p. 245, 2009 ed.)*; and
4. must not possess the disqualifications imposed by law or the rules *(Riano, Evidence: A Restatement for the Bar, p. 246, 2009 ed.)*

NOTE: The ability to make known the perception of the witness to the court involves two factors: (a) the ability to remember what has been perceived; and (b) the ability to communicate the remembered perception. Consider a witness who has taken the oath and who has personal knowledge of the event which he is going to testify **(***Riano, Evidence: A Restatement for the Bar, p. 248, 2009 ed)*..

Q: What are the qualifications of a witness?

A: A prospective witness must show that he has the following abilities:
1. To Observe – the testimonial quality of perception;
2. To Remember – the testimonial quality of memory;
3. To Relate – the testimonial quality of narration; and
4. To Recognize a duty to tell the truth – the testimonial quality of sincerity.

Q: What cannot be considered as grounds for disqualification?

A: GR:
1. Religious or political belief;
2. Interest in the outcome of the case; or
3. Conviction of a crime *(Sec. 20)*.

XPN: Unless otherwise provided by law like the following:
1. Those convicted of falsification of document, perjury or false testimony is prohibited from being witnesses to a will *(Art. 821, NCC)*.
2. Those convicted of an offense involving moral turpitude cannot be discharged to become a State witness *(Sec. 17, Rule 119; Sec. 10, R.A. 6981)*.
3. Those who fall under the disqualification provided under Secs. 21-24, Rule 130.

COMPETENCY VS CREDIBILITY OF A WITNESS

A: Competency of a Witness	**Credibility of a Witness**
Has reference to the basic qualifications of a witness as his capacity to perceive and his capacity to communicate his perception to others. (Riano, 2009, p.250)	Refers to the believability of the witness and has nothing to do with the law or the rules. (Ibid).

Q: What is the rule on competency of witness?

A: GR: A person who takes the witness stand is presumed to possess the qualifications of a witness. *(Presumption of competency)*

XPN: There is *prima facie* evidence of incompetency in the following:
1. The fact that a person has been recently found of unsound mind by a court of competent jurisdiction; or
2. That one is an inmate of an asylum for the insane.

DISQUALIFICATIONS OF WITNESSES

Q: Who are disqualified to be witnesses under the rules?

A: Those who are:
1. Disqualified by reason of mental incapacity or immaturity;
2. Disqualified by reason of marriage;
3. Disqualified by reason of death or insanity of adverse party; and
4. Disqualified on the ground of privileged communication:
a. Marital privilege;
b. Attorney-client privilege;
c. Doctor-patient privilege;
d. Minister-penitent privilege; or
e. Public officer as regards communications made in official confidence.

Note: The qualifications and disqualifications of witnesses are determined as of the time they are produced for examination in court or at the taking of the depositions.

DISQUALIFIED BY REASON OF MENTAL INCAPACITY OR IMMATURITY

1. The proposed witness must be incapable of making known his perception to others; and

2. The incapacity must exist as of the time of his production for examination *(Riano, Evidence: A Restatement for the Bar, p. 254, 2009 ed.)*.

Q: Who are disqualified by reason of mental incapacity or immaturity?

A:
1. *Mental incapacity* – those whose mental condition, at the time of their production for examination, is such that they are incapable of intelligently making known their perception to others; he can still be a witness during his lucid interval. The disqualification is only absolute if the insane person is publicly known to be insane and does not have lucid intervals.

2. *Mental immaturity* – children whose mental maturity is such as to render them incapable of perceiving the facts respecting which they are examined and of relating them truthfully. *(Sec. 21)*

Q: When must the incompetence of the witness by reason of mental incapacity or immaturity exist?

A: Mental Incapacity	**Mental Immaturity**

The incompetence of the witness must exist not at the time of his perception of the facts but at the time he is produced for examination, and consists in his inability to intelligently make known what he has perceived. *(Riano, Evidence: A Restatement for the Bar, p. 255, 2009 ed.)*	The incompetence of the witness must occur at the time the witness perceives the event including his incapability to relate his perceptions truthfully. *(Ibid.)*

Q: Does mental unsoundness of the witness at the time the fact to be testified occurred affect his competency?

A: No, it only affects his credibility. Nevertheless, as long as the witness can convey ideas by words or signs and can give sufficiently intelligent answers to questions propounded, she is a competent witness even if she is feeble-minded *(People v. De Jesus, G.R. No. L-39087, Apr. 27, 1984)* or is mental retardate *(People v. Gerones, G.R. No. 91116, Jan. 24, 1991)* or is a schizophrenic *(People v. Baid, G.R. No. 129667, July 31, 2000)*.

Q: Cyrus, a deaf-mute, was presented as a witness in a criminal case. The accused objected to the presentation of the testimony of Cyrus on the ground that, being a deaf-mute, he was not a competent witness. Is the contention of the accused correct?

A: No. A deaf-mute is not incompetent as a witness. Deaf-mutes are competent witnesses where they can:
1. understand and appreciate the sanctity of an oath;
2. comprehend facts they are going to testify on; and
3. communicate their ideas through a qualified interpreter *(People v. Tuangco, G.R. No. 130331, Nov. 22, 2001).*

DISQUALIFICATION BY REASON OF MARRIAGE/SPOUSAL IMMUNITY

The rule forbidding one spouse to testify for or against the other is based on principles which are deemed important to preserve the marriage relation as one of full confidence and affection, and that this is regarded as more important to the public welfare than that the exigencies of the lawsuits should authorize domestic peace to be disregarded for the sake of ferreting out facts within the knowledge of strangers.

Q: What are the requisites in order for the spousal immunity to apply?

A:
1. That the spouse for or against whom the testimony is offered is a party to the case;
2. That the spouses are validly married;
3. The testimony is one that is offered during the existence of the marriage *(Riano, Evidence: A Restatement for the Bar, p. 266, 2009 ed.)*; and
4. The case is not one of the exceptions provided in the rule. *(Herrera, Vol. V, p. 302, 1999 ed.)*

Q: What kind of testimony is covered by the prohibition?

A: The prohibition extends not only to testimony adverse to the spouse but also to a testimony in favor of the spouse. *(Sec. 22, Rule 130; Riano, Evidence: A Restatement for the Bar, p. 265, 2009 ed.)*
Note: It does not apply in the case of estranged spouses, where the marital and domestic relations are so strained that there is no more harmony to be preserved nor peace and tranquility which may be disturbed (Alvarez vs Ramirez, October 14, 2005)

Section 4. *Original of document*.

(a) The original of the document is one the contents of which are the subject of inquiry.

(b) When a document is in two or more copies executed at or about the same time, with identical contents, all such copies are equally regarded as originals.

(c) When an entry is repeated in the regular course of business, one being copied from another at or near the time of the transaction, all the entries are likewise equally regarded as originals. (3a)

THREE (3) CONCEPTS OF "ORIGINAL" UNDER THE BEST EVIDENCE RULE (Sec. 4)
1. One the contents of which is the subject of inquiry;
2. When a document is in two or more copies executed at or about same time with identical contents, all such copies are equally regarded as originals;
3. When an entry is repeated in the regular course of business, one being copied from another at or near the time of the transaction.

Q: What is the rule on duplicate original?
A: It states that when a document is in two or more copies executed at or about the same time with identical contents, all such copies are equally regarded as originals *(Sec. 4b, Rule 130)*. It may be introduced in evidence without accounting for the non-production of the other copies.

Republic of the Philippines
SUPREME COURT
Manila

THIRD DIVISION

G.R. No. 109172 August 19, 1994
TRANS-PACIFIC INDUSTRIAL SUPPLIES,

INC., petitioner,
vs.
The COURT OF APPEALS and ASSOCIATED BANK, respondents.

In this petition for review on *certiorari*, petitioner Trans-Pacific Industrial Supplies, Inc. seeks the reversal of the decision of respondent court, the decretal portion of which reads:

WHEREFORE, the decision of June 11, 1991 is SET ASIDE and NULLIFIED; the complaint is dismissed, and on the counterclaim, Transpacific is ordered to pay Associated attorney's fees of P15,000.00.

Costs against Transpacific.

SO ORDERED. (Rollo, p. 47)

Sometime in 1979, petitioner applied for and was granted several financial accommodations amounting to P1,300,000.00 by respondent Associated Bank. The loans were evidenced and secured by four (4) promissory notes, a real estate mortgage covering three parcels of land and a chattel mortgage over petitioner's stock and inventories.

Unable to settle its obligation in full, petitioner requested for, and was granted by respondent bank, a restructuring of the remaining indebtedness which then amounted to P1,057,500.00, as all the previous payments made were applied to penalties and interests.

To secure the re-structured loan of P1,213,400.00, three new promissory notes were executed by Trans-Pacific as follows: (1) Promissory Note No. TL-9077-82 for the amount of P1,050,000.00 denominated as working capital; (2) Promissory Note No. TL-9078-82 for the amount of P121,166.00 denominated as restructured interest; (3) Promissory Note No. TL-9079-82 for the amount of P42,234.00 denominated similarly as restructured interest (Rollo. pp. 113-115).

The mortgaged parcels of land were substituted by another mortgage covering two other parcels of land and a chattel mortgage on petitioner's stock inventory. The released parcels of land were then sold and the proceeds amounting to P1,386,614.20, according to petitioner, were turned over to the bank and applied to Trans-Pacific's restructured loan. Subsequently, respondent bank returned the duplicate original copies of the three promissory notes to Trans-Pacific with the word "PAID" stamped thereon.

Despite the return of the notes, or on December 12, 1985, Associated Bank demanded from Trans-Pacific payment of the amount of P492,100.00 representing accrued interest on PN No. TL-9077-82. According to the bank, the promissory notes were erroneously released.

Initially, Trans-Pacific expressed its willingness to pay the amount demanded by respondent bank. Later, it had a change of heart and instead initiated an action before the Regional Trial Court of Makati, Br. 146, for specific performance and damages. There it prayed that the mortgage over the two parcels of land be released and its stock inventory be lifted and that its obligation to the bank be declared as having been fully paid.

After trial, the court *a quo* rendered judgment in favor of Trans-Pacific, to wit:

WHEREFORE, premises considered and upon a clear preponderance of evidence in support of the stated causes of action, the Court finds for the plaintiffs and against defendant, and

(a) declares plaintiff's obligations to defendant to have been already fully paid;

(b) orders defendant to execute and deliver to plaintiffs a release on the *i* September 11, 1981 mortgage over TCT (50858) S-10086 and TCT (50859) S-109087, and *ii* December 20, 1983 chattel mortgage, within fifteen (15) days from the finality hereof;

(c) orders defendant to pay plaintiffs Romeo Javier and Romana Bataclan-Javier the sum of P50,000.00 as and for moral damages; and

(d) orders defendant to pay plaintiffs the sum of P30,000.00 as attorney's fees, plus expenses of the suit.

Defendant's counterclaims are dismissed for lack of merit.

With costs against defendant.

SO ORDERED. (Rollo, p. 101)

Respondent bank elevated the case to the appellate court which, as aforesaid, reversed the decision of the trial court. In this appeal, petitioner raises four errors allegedly committed by the respondent court, namely:

RESPONDENT APPELLATE COURT ERRED IN HOLDING THAT THE ACCRUED INTEREST IN THE AMOUNT OF 492,100.00 HAS NOT BEEN PAID WHEN ARTICLE 1176 OF THE CIVIL CODE PROVIDES THAT SUCH CLAIM FOR INTEREST UPON RECEIPT OF PAYMENT OF THE PRINCIPAL MUST BE RESERVED OTHERWISE IT IS DEEMED PAID.

II

RESPONDENT APPELLATE COURT ERRED IN HOLDING THAT WITH THE DELIVERY OF THE DOCUMENTS EVIDENCING THE PRINCIPAL OBLIGATION, THE ANCILLARY OBLIGATION OF PAYING INTEREST WAS NOT RENOUNCED CONTRARY TO THE PROVISIONS OF ART. 1273 OF THE CIVIL CODE AND THE UNDISPUTED EVIDENCE ON RECORD.

III

RESPONDENT APPELLATE COURT ERRED IN NOT HOLDING THAT PETITIONER HAS FULLY PAID ITS OBLIGATION CONFORMABLY WITH ARTICLE 1234 OF THE CIVIL CODE.

IV

RESPONDENT APPELLATE COURT ERRED IN AWARDING ATTORNEY'S FEES IN FAVOR OF ASSOCIATED BANK (Rollo, p. 15).

The first three assigned errors will be treated jointly since their resolution border on the common issue, i.e., whether or not petitioner has indeed paid in full its obligation to respondent bank.

Applying the legal presumption provided by Art. 1271 of the Civil Code, the trial court ruled that petitioner has fully discharged its obligation by virtue of its possession of the documents (stamped "PAID") evidencing its indebtedness. Respondent court disagreed and held, among others, that the documents found in possession of Trans-Pacific are mere duplicates and cannot be the basis of petitioner's claim that its obligation has been fully paid. Accordingly, since the promissory notes submitted by petitioner were duplicates and not the originals, the delivery thereof by respondent bank to the

petitioner does not merit the application of Article 1271 (1st par.) of the Civil Code which reads:

> Art. 1271. The delivery of a private document evidencing a credit, made voluntarily by the creditor to the debtor, implies the renunciation of the action which the former had against the latter.

Respondent court is of the view that the above provision must be construed to mean the original copy of the document evidencing the credit and not its duplicate, thus:

. . . [W]hen the law speaks of the delivery of the private document evidencing a credit, it must be construed as referring to the original. In this case, appellees (Trans-Pacific) presented, not the originals but the duplicates of the three promissory notes." (Rollo, p. 42)

The above pronouncement of respondent court is manifestly groundless. It is undisputed that the documents presented were duplicate originals and are therefore admissible as evidence. Further, it must be noted that respondent bank itself did not bother to challenge the authenticity of the duplicate copies submitted by petitioner. In People vs. Tan, (105 Phil. 1242 [1959]), we said:

When carbon sheets are inserted between two or more sheets of writing paper so that the writing of a contract upon the outside sheet, including the signature of the party to be charged thereby, produces a facsimile upon the sheets beneath, such signature being thus reproduced by the same stroke of pen which made the surface or exposed impression, all of the sheets so written on are regarded as duplicate originals and either of them may be introduced in evidence as such without accounting for the nonproduction of the others.

A duplicate copy of the original may be admitted in evidence when the original is in the possession of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice (Sec. 2[b], Rule 130), as in the case of respondent bank.

This notwithstanding, we find no reversible error committed by the respondent court in disposing of the appealed decision. As gleaned from the decision of the court *a quo*, judgment was rendered in favor of petitioner on the basis of presumptions, to wit:

The surrender and return to plaintiffs of the promissory notes evidencing the consolidated obligation as restructured, produces a legal presumption that Associated had thereby renounced its actionable claim against plaintiffs (Art. 1271, NCC). The presumption is fortified by a showing that said promissory notes all bear the stamp "PAID", and has not been otherwise overcome. Upon a clear perception that Associated's record keeping has been less than exemplary . . ., a proffer of bank copies of the promissory notes without the "PAID" stamps thereon does not impress the Court as sufficient to overcome presumed remission of the obligation *vis-a-vis* the return of said promissory notes. Indeed, applicable law is supportive of a finding that in interest bearing obligations-as is the case here, payment of principal (sic) shall not be deemed to have been made until the interests have been covered (Art. 1253, NCC). Conversely, competent showing that the principal has been paid, militates against postured entitlement to unpaid interests.

In fine. the Court is satisfied that plaintiffs must be found to have settled their obligations

in full.

As corollary, a finding is accordingly compelled that plaintiffs (sic) accessory obligations under the real estate mortgage over two (2) substituted lots as well as the chattel mortgage, have been extinguished by the renunciation of the principal debt (Art. 1273, NCC), following the time-honored axiom that the accessory follows the principal. There is, therefore, compelling warrant (sic) to find in favor of plaintiffs insofar as specific performance for the release of the mortgages on the substituted lots and chattel is concerned. (Rollo, p. 100)

premised by:

Records show that Associated's Salvador M. Mesina is on record as having testified that all three (3) December 8, 1990 promissory notes for the consolidated principal obligation, interest and penalties had been fully paid (TSN, July 18, 1990, p. 18). It is, moreover, admitted that said promissory notes were accordingly returned to Romeo Javier. (Ibid.)

The above disquisition finds no factual support, however, per review of the records. The presumption created by the Art. 1271 of the Civil Code is not conclusive but merely *prima facie*. If there be no evidence to the contrary, the presumption stands. Conversely, the presumption loses its legal efficacy in the face of proof or evidence to the contrary. In the case before us, we find sufficient justification to overthrow the presumption of payment generated by the delivery of the documents evidencing petitioners indebtedness.

It may not be amiss to add that Article 1271 of the Civil Code raises a presumption, not of payment, but of the renunciation of the credit where more convincing evidence would be required than what normally would be called for to prove payment. The rationale for allowing the presumption of renunciation in the delivery of a *private instrument* is that, unlike that of a public instrument, there could be just one copy of the evidence of credit. Where several originals are made out of a private document, the intendment of the law would thus be to refer to the delivery only of the original *original* rather than to the original *duplicate* of which the debtor would normally retain a copy. It would thus be absurd if Article 1271 were to be applied differently.

While it has been consistently held that findings of facts are not reviewable by this Court, this rule does not find application where both the trial and the appellate courts differ thereon (Asia Brewery, Inc. v. CA, 224 SCRA 437 [1993]).

Petitioner maintains that the findings of the trial court should be sustained because of its advantage in observing the demeanor of the witnesses while testifying (citing Crisostomo v. Court of Appeals, 197 SCRA 833) more so where it is supported by the records (Roman Catholic Bishop of Malolos v. Court of Appeals, 192 SCRA 169).

This case, however, does not concern itself with the demeanor of witnesses. As for the records, there is actually none submitted by petitioner to prove that the contested amount, i.e., the interest, has been paid in full. In civil cases, the party that alleges a fact has the burden of proving it (Imperial Victory Shipping Agency v. NLRC 200 SCRA 178 [1991]). Petitioner could have easily adduced the receipts corresponding to the amounts paid inclusive of the interest to prove that it has fully discharged its obligation but it did not.

There is likewise nothing on the records relied upon by the trial court to support its claim, by empirical evidence, that the amount corresponding to the interest has indeed been paid. The trial court totally relied on a disputable presumption that the obligation of petitioner as regards interest has been fully liquidated by the respondent's act of delivering the instrument evidencing the principal obligation. Rebuttable as they are, the court *a quo* chose to ignore an earlier testimony of Mr. Mesina anent the outstanding balance pertaining to interest, as follows:

Court:

Q Notwithstanding, let us go now specifically to promissory note No. 9077-82 in the amount of consolidated principal of P1,050,000.00. Does the Court get it correctly that this consolidated balance has been fully paid?

A Yes, the principal, yes, sir.

Q Fully settled?

A Fully settled, but the interest of that promissory note has not been paid, Your Honor.

Q In other words, you are saying, fully settled but not truly fully settled?

A The interest was not paid.

Q Not fully settled?

A The interest was not paid, but the principal obligation was removed from our books, Your Honor.

Q And you returned the promissory note?

A We returned the promissory note. (TSN, July 18, 1990, p. 22)

That petitioner has not fully liquidated its financial obligation to the Associated Bank finds more than ample confirmation and self-defeating posture in its letter dated December 16, 1985, addressed to respondent bank, *viz.*:

. . . that because of the prevailing unhealthy economic conditions, the business is unable to generate sufficient resources for debt servicing.

Fundamentally on account of this, *we propose that you permit us to fully liquidate the remaining obligations to you of P492,100 through a payment in kind (dacion en pago) arrangement by way of the equipments (sic) and spare parts under chattel mortgage to you* to the extent of their latest appraised values." (Rollo, pp. 153-154; Emphasis supplied)

Followed by its August 20, 1986 letter which reads:

We have had a series of communications with your bank regarding our proposal for the eventual settlement of our remaining obligations . . .

As you may be able to glean from these letters and from your credit files, *we have always been conscious of our obligation to you* which had not been faithfully serviced on account of unfortunate business reverses. Notwithstanding these however, total payments thus far remitted to you already exceede (sic) the original principal amount of our obligation. *But because of interest and other charges, we find ourselves still obligated to you by P492,100.00. . . .*

. . . We continue to find ourselves in a very fluid (sic) situation in as much as the overall outlook

of the industry has not substantially improved. Principally for this reason, *we had proposed to settle our remaining obligations to you by way of dacion en pago of the equipments (sic) and spare parts mortgaged to you to (the) extent of their applicable loan values*. (Rollo, p. 155; Emphasis supplied)

Petitioner claims that the above offer of settlement or compromise is not an admission that anything is due and is inadmissible against the party making the offer (Sec. 24, Rule 130, Rules of Court). Unfortunately, this is not an iron-clad rule.

To determine the admissibility or non-admissibility of an offer to compromise, the circumstances of the case and the intent of the party making the offer should be considered. Thus, if a party denies the existence of a debt but offers to pay the same for the purpose of buying peace and avoiding litigation, the offer of settlement is inadmissible. If in the course thereof, the party making the offer *admits* the existence of an indebtedness combined with a proposal to settle the claim amicably, then, the admission is admissible to prove such indebtedness (Moran, Comments on the Rules of Court, Vol. 5, p. 233 [1980 ed.); Francisco, Rules of Court, Vol. VII, p. 325 [1973 ed.] citing McNiel v. Holbrook, 12 Pac. (US) 84, 9 L.ed. 1009). Indeed, an offer of settlement is an effective admission of a borrower's loan balance (L.M. Handicraft Manufacturing Corp. v. Court of Appeals, 186 SCRA 640 [1990]). Exactly, this is what petitioner did in the case before us for review.

Finally, respondent court is faulted in awarding attorney's fees in favor of Associated Bank. True, attorney's fees may be awarded in a case of clearly unfounded civil action (Art. 2208 [4], CC). However, petitioner claims that it was compelled to file the suit for damages in the honest belief that it has fully discharged its obligations in favor of respondent bank and therefore not unfounded.

We believe otherwise. As petitioner would rather vehemently deny, undisputed is the fact of its admission regarding the unpaid balance of P492,100.00 representing interests. It cannot also be denied that petitioner opted to sue for specific performance and damages after consultation with a lawyer (Rollo, p. 99) who advised that not even the claim for interests could be recovered; hence, petitioner's attempt to seek refuge under Art. 1271 (CC). As previously discussed, the presumption generated by Art. 1271 is not conclusive and was successfully rebutted by private respondent. Under the circumstances, i.e., outright and honest letters of admission *vis-a-vis* counsel-induced recalcitrance, there could hardly be honest belief. In this regard, we quote with approval respondent court's observation:

The countervailing evidence against the claim of full payment emanated from Transpacific itself. It cannot profess ignorance of the existence of the two letters, Exhs. 3 & 4, or of the import of what they contain. Notwithstanding the letters, Transpacific opted to file suit and insist(ed) that its liabilities had already been paid. There was thus an
ill-advised attempt on the part of Transpacific to capitalize on the delivery of the duplicates of the promissory notes, in complete disregard of what its own records show. In the circumstances, Art. 2208 (4) and (11) justify the award of attorney's fees. The sum of P15,000.00 is fair and equitable. (Rollo, pp. 46-47)

WHEREFORE, the petition is DENIED for lack

of merit. Costs against petitioner.

SO ORDERED.

2. Secondary Evidence

Section 5. *When original document is unavailable*. ? When the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated. (4a)

Section 6. *When original document is in adverse party's custody or control*. ? If the document is in the custody or under the control of adverse party, he must have reasonable notice to produce it. If after such notice and after satisfactory proof of its existence, he fails to produce the document, secondary evidence may be presented as in the case of its loss. (5a)

Section 7. *Evidence admissible when original document is a public record*. ? When the original of document is in the custody of public officer or is recorded in a public office, its contents may be proved by a certified copy issued by the public officer in custody thereof. (2a)

Section 8. *Party who calls for document not bound to offer it*. ? A party who calls for the production of a document and inspects the same is not obliged to offer it as evidence. (6a)

Q: What is secondary evidence?
A: Secondary evidence is that which shows that better or primary evidence exists as to the proof of the fact in question. It is the class of evidence that is relevant to the fact in issue, it being first shown that the primary evidence of the fact is not obtainable. It performs the same functions as that of primary evidence. *(Francisco, p. 68, 1992 ed.)*
Note: All originals must be first accounted for before one can resort to secondary evidence. It must appear that all of them have been lost or destroyed or cannot be produced in court. The *non-production of the original* document, unless it falls under any of the exceptions in Sec. 3, Rule 130, gives rise to the presumption of suppression of evidence.

Q: When may secondary evidence be admitted?
A: It may be admitted only by laying the basis for its production and such requires compliance with the following:
1. The offeror must prove the due execution and existence of the original document;
2. The offeror must show the cause of its unavailability; and
3. The offeror must show that the unavailability was not due to his bad faith.

Accordingly, the correct order of proof is as follows*: existence, execution, loss, and contents.* This order may be changed if necessary at the sound discretion of the court. *(Citibank N.A. Mastercard v. Teodoro, G.R. No. 150905, Sept. 23, 2003)*
Note: Intentional destruction of the originals by a party who acted in good faith does not preclude the introduction of secondary evidence of the contents thereof.

. **Q: What is the order of presentation of secondary evidence?**
A:
1. Copy of the original;
2. A recital of the contents of the document in some authentic document; or
3. By the testimony of witnesses *(Sec. 5, Rule 130)*

Q: What is Definite Evidentiary Rule?
A: Where the law specifically provides for the class and quantum of secondary evidence to establish the contents of a document, or bars secondary evidence of a lost document, such requirement is controlling. *E.g.* Evidence of a lost notarial will should consist of a testimony of at least two credible witnesses who can clearly and distinctly establish its contents *(Sec. 6, Rule 76).*

Q: How may the due execution of the document be proved?
A: It may be proved through the testimony of:
1. The person who executed it;
2. The person before whom its execution was acknowledged;
3. Any person who was present and saw it executed and delivered;
4. Any person who thereafter saw and recognized the signature;
5. One to whom the parties thereto had previously confessed the execution thereof; or
6. By evidence of the genuineness of the signature or handwriting of the maker. *(Sec. 20, Rule 132)*

Q: How may the loss or destruction be proved?

A: It may be proved by:
1. Any person who knew of such fact;
2. Anyone who, in the judgment of the court, had made sufficient examination in the places where the document or papers of similar character are usually kept by the person in whose custody the document was and has been unable to find it; or
3. Any person who has made any other investigation which is sufficient to satisfy the court that the document is indeed lost.

Q: How may the contents be proved?

A: They may be proved by the testimony of:
1. Any person who signed the document;

2. Any person who read it;
3. Any person who heard when the document was being read;
4. Any person who was present when the contents of the document were talked over by the parties to such an extent as to give him reasonably full information of the contents; or
5. Any person to whom the parties have stated or confessed the contents thereof.

Q: What facts must be shown by the party offering secondary evidence if the original is in the custody of the adverse party?
A:
1. Original is in the possession or under the control of the opponent;
2. Demand or notice is made to him by the proponent signifying that the document is needed;
3. Failure or refusal of opponent to produce document in court; and
4. Satisfactory proof of existence of document *(Sec. 6)*.

Note: The party who called for a document is not obliged to offer it into evidence *(Sec. 8).*

Q: Paula filed a complaint against Lynette for the recovery of a sum of money based on a promissory note executed by Lynette. Paula alleged in her complaint that although the promissory note says that it is payable within 120 days, the truth is that the note is payable immediately after 90 days but that if Paula is willing, she may, upon request of Lynette give the latter up to 120 days to pay the note.
During the hearing, Paula testified that the truth is that the agreement between her and Lynette is for the latter to pay immediately after 90 days time. Also, since the original note was with Lynette and the latter would not surrender to Paula the original note which Lynette kept in a place about one day's trip from where she received the notice to produce the note and in spite of such notice to produce the same within 6 hours from receipt of such notice, Lynette failed to do so. Paula presented a copy of the note which was executed at the same time as the original and with identical contents.
1. Over the objection of Lynette, will Paula be allowed to testify as to the true agreement or contents of the promissory note? Why?
2. Over the objection of Lynette, can Paula present a copy of the promissory note and have it admitted as valid evidence in her favor? Why?
A:
1. Yes. As an exception to the parol evidence rule, a party may present evidence to modify, explain or add to the terms of the written agreement if he puts in issue in his pleading the failure of the written agreement to express the true intent and agreement of the parties thereto. Here, Paula has alleged in her complaint that the promissory note does not express the true intent and agreement of the parties.

2. Yes. The copy in possession of Paula is a duplicate original because it was executed at the same time as the original and with identical contents. Moreover, the failure of Lynette to produce the original of the note is excusable because she was not given reasonable notice, a requirement under the Rules before secondary evidence may be presented.

Note: The promissory note is an actionable document and the original or a copy thereof should have been attached to the complaint. *(Sec. 7, Rule 8)* In such a case, the genuineness and due execution of the note, if not denied under oath, would be deemed admitted. *(Sec. 8, Rule 9)*

Q: When Linda died, her common law husband, Lito and their alleged daughter Nes executed an extrajudicial partition of Linda's estate. Thereafter, the siblings of Linda filed an action for partition of Linda's estate and annulment of titles and damages with the RTC. The RTC dismissed the complaint and rendered that Nes was the illegitimate daughter of the decedent and Lito based solely on her birth certificate, which on closer examination, reveals that Nes was listed as "adopted" by both Linda and Lito. Is the trial court correct?
A: No. The mere registration of a child in his or her birth certificate as the child of the supposed parents is not a valid adoption, does not confer upon the child the status of an adopted child and the legal rights of such child, and even amounts to simulation of the child's birth or falsification of his or her birth certificate, which is a public document. Furthermore, a record of birth is merely a prima facie evidence of the facts contained therein. It is not conclusive evidence of the truthfulness of the statements made there by the interested parties. Nes should have adduced evidence of her adoption, in view of the contents of her birth certificate. The records however are bereft of any such evidence *(Rivera v. Heirs of Villanueva, G.R. No. 141501, July 21, 2006)*.

Q: What is Electronic Evidence?
A: According to Black's Law Dictionary, evidence is "any species of proof, or probative matter, legally presented at the trial of an issue, by the act of the parties and through the medium of witnesses, records, documents, exhibits, concrete objects, etc. for the purpose of inducing belief in the minds of the court or jury as to their contention." Electronic information (like paper) generally is admissible into evidence in a legal proceeding..
Q: What is Electronic Data Message?
A: Electronic data message refers to information generated, sent, received or stored by electronic, optical or similar means.
Q: What are the factors to be considered in assessing evidentiary weight of an electronic document?
A:
1. The reliability of the manner or method in which it was generated, stored or communicated, including but not limited to input and output procedures, controls, tests and checks for accuracy and reliability of the electronic data message or document, in the light of all the circumstances as well as any relevant agreement;
2. The reliability of the manner in which its originator was identified;
3. The integrity of the information and communication system in which it its recorded or stored, including but not limited to the hardware and computer programs or software used as well as programming errors;
4. The familiarity of the witness or the person who made the entry with the communication and information system;

5. The nature and quality of the information which went into the communication and information system upon which the electronic data message document was based; or
6. Other factors which the court may consider as affecting accuracy or integrity of the electronic document or electronic data message. *(Sec. 1, Rule 7)*

Q: How is an electronic document authenticated?
A:
1. By evidence that it had been digitally signed by the person purported to have signed the same;
2. By evidence that other appropriate security procedures or devices as may be authorized by the Supreme Court or by law for authentication of electronic documents were applied to the document; or
3. By other evidence showing its integrity and reliability to the satisfaction of the judge *(Sec. 2, Rule 5)*.

Q: What is Electronic Signature?
A: It refers to any distinctive mark, characteristic and/or sound in electronic form, representing the identity of a person and attached to or logically associated with the electronic data message or electronic document or any methodology or procedure employed or adopted by a person and executed or adopted by such person with the intention of authenticating, signing or approving an electronic data message or electronic document. For purposes of these Rules, an electronic signature includes digital signatures *[Sec. 1 (j), Rule 2]*.
Q: How is an electronic signature authenticated?
A:
1. By evidence that a method or process was utilized to establish a digital signature and verify the same;
2. By any other means provided by law; or
3. By any other means satisfactory to the judge as establishing the genuineness of the electronic signature *(Sec. 2, Rule 6)*.

Q: What is the effect of authentication of an electronic signature?
A: Upon authentication, it shall be presumed that:
1. The electronic signature is that of the person to whom it correlates;
2. The electronic signature was affixed by that person with the intention of authenticating or approving the electronic document to which it is related or to indicate such person's consent to the transaction embodied therein; and
3. The methods or processes utilized to affix or verify the electronic signature operated without error or fault *(Sec. 3, Rule 6)*.

Q: What is a Digital Signature?
A: It refers to an electronic signature consisting of a transformation of an electronic document or an electronic data message using an asymmetric or public cryptosystem such that a person having the initial untransformed electronic document and the signer's public key can accurately determine:
1. whether the transformation was created using the private key that corresponds to the signer's public key; and
2. whether the initial electronic document had been altered after the transformation was made *[Sec. 1(e), Rule 2]*

Q: What is the effect of authentication of digital signatures?
A: Upon authentication, it shall be presumed that:
1. The information contained in a certificate is correct;
2. The digital signature was created during the operational period of a certificate;
3. No cause exists to render a certificate invalid or revocable;
4. The message associated with a digital signature has not been altered from the time it was signed; and
5. A certificate had been issued by the certification authority indicated therein *(Sec. 4, Rule 6)*.

Q: When is the Hearsay Rule not applicable to electronic documents?
A: A memorandum, report, record or data compilation of acts, events, conditions, opinions, or diagnoses, made by electronic, optical or other similar means at or near the time of or from transmission or supply of information by a person with knowledge thereof, and kept in the regular course or conduct of a business activity, and such was the regular practice to make the memorandum, report, record, or data compilation by electronic, optical or similar means, all of which are shown by the testimony of the custodian or other qualified witnesses, is excepted from the rule on hearsay evidence *(Sec. 1, Rule 8)*.
Note: The presumption provided for in Section 1 of this Rule may be overcome by evidence of the untrustworthiness of the source of information or the method or circumstances of the preparation, transmission or storage thereof *(Sec. 2, Rule 8)*.
Q: May parties present audio, photographic or video evidence? Discuss.
A: Yes. Audio, photographic and video evidence of events, acts or transactions shall be admissible provided it shall be shown, presented or displayed to the court and shall be identified, explained or authenticated by the person who made the recording or by some other person competent to testify on the accuracy thereof *(Sec. 1, Rule 11)*.
Q: What is ephemeral electronic communication?
A: It refers to telephone conversations, text messages, chat room sessions, streaming audio, streaming video, and other electronic forms of communication the evidence of which is not recorded or retained. *[Sec. 1(k)]*
Q: Are text messages admissible as evidence?
A: Yes. Text messages have been classified as ephemeral electronic communication under Section 1(k), Rule 2 of the Rules on Electronic Evidence, and shall be proven by the testimony of a person who was a party to the same or has personal knowledge thereof *(Vidallon-Magtolis v. Cielito Salud, A.M. No. CA-05-20-P, Sept. 9, 2005)*.
Q: How shall ephemeral electronic communication be proven?
A: It shall be proven by the testimony of a person who was a party to the same or has personal knowledge thereof. In the absence or unavailability of such witnesses, other competent evidence be admitted. A recording of the telephone conversation or ephemeral electronic communication shall be covered by the immediately preceding section. If the foregoing communications are recorded or embodied in an electronic document, then the provisions of Rule 5 regarding Authentication of Electronic Documents shall apply. *(Sec. 2, Rule 11)*

3. Parol Evidence Rule

Section 9. Evidence of written agreements. ? When the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement.

However, a party may present evidence to modify, explain or add to the terms of written agreement if he puts in issue in his pleading:

(a) An intrinsic ambiguity, mistake or imperfection in the written agreement;

(b) The failure of the written agreement to express the true intent and agreement of the parties thereto;

(c) The validity of the written agreement; or

(d) The existence of other terms agreed to by the parties or their successors in interest after the execution of the written agreement.

The term "agreement" includes wills. (7a)

Purpose: To give stability to written agreement and remove the temptation and possibility of perjury, which would be afforded if parol evidence was admissible.

Basis: The rule is based on the presumption that the parties have made the written instrument the only repository and memorial of the truth and whatever is not found must have been waived and abandoned by the parties.

Rules:
1. The written agreement is considered as containing all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement.
2. This rule forbids any addition or contradiction of the terms of a written instrument by testimony purporting to show that, at or before the signing, of the document, other or different terms were orally agreed upon by the parties.
3. Requisites for Applicability
a. When there is a valid contract;
b. When the terms of agreement are reduced to writing;
c. The agreement is between the parties and their successors in interest; and
d. There is a dispute as to the terms of the agreement.
4. Exceptions to Parole Evidence Rule:
A party may present evidence to modify, explain or add to the terms of written agreement if he puts in issue in his pleading:
a. An intrinsic ambiguity, mistake or imperfection in the written agreement;

_ **Note:** It must be intrinsic ambiguity, i.e., when the writing admits two or more meanings or when it is understood in more than one way. Extrinsic ambiguity on the other hand, is one where the document on its face is so unintelligible and the words used so defective that it totally fails to express a meaning, in such case parol evidence is forbidden.
b. The failure of the written agreement to express the true intent and agreement of the parties thereto;
c. The validity of the written agreement; _ Example: where the consent of one of the parties was procured by mistake, fraud, intimidation, violence, or undue influence.
d. The existence of other terms agreed to by the parties or their successors in interest after the execution of the written agreement.
_ The term "agreement" includes wills.
5. Requisites to Admit Parol Evidence by Reason of Mistake
a. That the mistake should be of fact,
b. That the mistake should be mutual or common to both parties to the instrument, and
c. That the mistake should be alleged and proved by clear and convincing
evidence.
6. Theory of Integration of Jural Acts (Previous Acts): Previous acts and contemporaneous transaction of the parties are deemed integrated and merged in the written agreement which they have executed. When the parties reduced their agreement to writing, it is presumed that they have made the writing the only repository and memorial of the truth, and whatever it is not found in the writing must be understood to have been waived or abandoned.

_ **Collateral Oral Agreement –** A contract made prior to or contemporaneous with another agreement and if oral and NOT inconsistent with written agreement is admissible within the exception to parol evidence rule

PAROL EVIDENCE RULE	BEST EVIDENCE RULE
Presupposes that the original document is available in court	The original document is not available or there is a dispute as to whether said writing is original
Prohibits the varying of the terms of a written agreement	Prohibits the introduction of secondary evidence in lieu of the original document regardless of whether or not it varies the contents of the original
Applies only to documents which are contractual in nature except wills	Applies to all kinds of writings
Can be invoked only when the controversy is between the parties to the written agreement, their privies, or any party affected thereby like a *cestui que trust*	Can be invoked by any party to an action whether he has participated or not in the writing involved

4. Interpretation Of Documents

Section 10. *Interpretation of a writing according to its legal meaning*. ? The language of a writing is to be interpreted according to the legal meaning it bears in the place of its execution, unless the parties intended otherwise. (8)

Section 11. *Instrument construed so as to give effect to all provisions*. ? In the construction of an instrument, where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all. (9)

Section 12. *Interpretation according to intention*; *general and particular provisions*. ? In the construction of an instrument, the intention of the parties is to be pursued; and when a general and a particular provision are inconsistent, the latter is paramount to the former. So a particular intent will control a general one that is inconsistent with it. (10)

Section 13. *Interpretation according to circumstances*. ? For the proper construction of an instrument, the circumstances under which it was made, including the situation of the subject thereof and of the parties to it, may be shown, so that the judge may be placed in the position of those who language he is to interpret. (11)

Section 14. *Peculiar signification of terms*. ? The terms of a writing are presumed to have been used in their primary and general acceptation, but evidence is admissible to show that they have a local, technical, or otherwise peculiar signification, and were so used and understood in the particular instance, in which case the agreement must be construed accordingly. (12)

Section 15. *Written words control printed*. ? When an instrument consists partly of written words and partly of a printed form, and the two are inconsistent, the former controls the latter. (13)

Section 16. *Experts and interpreters to be used in explaining certain writings*. ? When the characters in which an instrument is written are difficult to be deciphered, or the language is not understood by the court, the evidence of persons skilled in deciphering the characters, or who understand the language, is admissible to declare the characters or the meaning of the language. (14)

Section 17. *Of Two constructions, which preferred*. ? When the terms of an agreement have been intended in a different sense by the different parties to it, that sense is to prevail against either party in which he supposed the other understood it, and when different constructions of a provision are otherwise equally proper, that is to be taken which is the most favorable to the party in whose favor the provision was made. (15)

Section 18. *Construction in favor of natural right*. ? When an instrument is equally susceptible of two interpretations, one in favor of natural right and the other against it, the former is to be adopted. (16)

Section 19. *Interpretation according to usage*. ? An instrument may be construed according to usage, in order to determine its true character. (17)

C. TESTIMONIAL EVIDENCE

1. Qualification of Witnesses

Section 20. *Witnesses*; *their qualifications*. ? Except as provided in the next succeeding section, all persons who can perceive, and perceiving, can make their known perception to others, may be witnesses.

Religious or political belief, interest in the outcome of the case, or conviction of a crime unless otherwise provided by law, shall not be ground for disqualification. (18a)

1. **Witness** – one who, being present, personally sees or perceives a thing, a beholder, spectator or eyewitness; one who testifies to what he has seen or heard, or otherwise observed.
2. Prosecution witness - It is a person who is not an accused and who is called to testify relating to a criminal case.

3. State witness – It is one of two or more persons jointly charged with the commission of a crime but who is discharged with his consent so he that he can be a witness for the state.

Rules:

1. All persons who can perceive, and perceiving, can make known their perception to others may be witnesses. Religious or political belief, interest in the outcome of the case, or conviction of a crime shall be a ground for disqualification unless otherwise provided by law.
2. Exception: When a person is disqualified:
   a. By reason of his mental condition or mental maturity;
   b. By reason of public policy;
   c. By reason of confidential communication; or
   d. When disqualified by law or these Rules.
3. When deaf mutes are competent witnesses
   a. where they can understand and appreciate the sanctity of an oath;
   b. can comprehend facts they are going to testify on; and
   c. can communicate their ideas through a qualified interpreter.
4. While an accused may voluntarily take the witness stand to testify on his behalf in a criminal case filed against him and be crossexamined thereby, he cannot be compelled to be a witness for the prosecution.
   _ Basis: The Constitution provides that no person shall be compelled to be a witness against himself. The constitutional proscription is based on two grounds:
   1) Public policy – It would place the witness against the strongest temptation to commit perjury.
   2) Humanity – It would be to extort a confession of truth by force and degree of which the law abhors.
   _ Exceptions: He can be compelled to do certain mechanical or physical acts as the right extends only against the use of physical or moral compulsion to extort communications from the accused.
5. Types of immunity from suit granted to a witness:
   a. Transactional immunity – A witness can no longer be prosecuted for any offense whatsoever arising out of the act or transaction.
   b. Use-and-derivative-use immunity – A witness is only assured that his or her particular testimony and evidence derived from it will not be used against him or her in a subsequent prosecution.
6. An adverse party in a civil case may compelled to be a witness, by subpoena or subpoena duces tecum, provided, the other party has served interrogatories or made request for admissions.
7. Other Statutes Granting Immunity from suit
   a. RA No. 6770 – The ombudsman has the authority to grant immunity from criminal prosecution to any person whose testimony is necessary to determine the truth.
   b. RA No. 6646 – Grants an acceptor or coconspirator immunity from prosecution, if he voluntarily testifies in the prosecution of vote-buying or voteselling, which is an election offense.
8. Qualities or Abilities a Witness Must Possess
   a. to observe
   b. to remember
   c. to relate
   d. to recognize a duty to tell the truth _ The objection to the competency of a witness must be made before he has given any testimony or as soon as it becomes apparent.
9. Acts Considered as Waiver
   a. Where the party fails to raise the objection when the witness testifies, and
   b. Where the party who might have made the objection calls the witness in support of his own case.

Question:

Is a mental retardate disqualified to testify?

Answer:

A mental retardate is not by itself disqualified to testify as long as he has ability to make his perception known to others.

Republic of the Philippines
SUPREME COURT
Manila

SECOND DIVISION

G.R. No. 100199 January 18, 1993
PEOPLE OF THE PHILIPPINES, plaintiff-appellee,
vs.
PRUDENCIO DOMINGUEZ and RODOLFO MACALISANG, accused-appellants.

Prudencio Dominguez and Rodolfo Macalisang, along with Roger C. Dominguez, were charged with the murders of Regional Trial Court Judge Purita A. Boligor and of her brother Luther Avanceña. Prudencio and Rodolfo were found guilty and sentenced to suffer the penalty of *reclusion perpetua* and to indemnify the heirs of Judge Purita A. Boligor in the amount of P30,000.00 and the heirs of Luther Avanceña of another P30,000.00, jointly and severally. At the same time, the trial court dismissed the charges against Roger C. Dominguez for lack of sufficient evidence.

In their brief, accused-appellants assigned the following as errors allegedly committed by the trial court:

First error — the trial court gravely erred in giving credence to the prosecution's evidence, particularly the testimony of Oscar Cagod, and basing its judgment of conviction thereon.

Second error — the trial court gravely erred in refusing to give credence to the evidence of the accused-appellants.

Third error — the trial court gravely erred in not acquitting the accused-appellants and declaring them innocent of the charge against them. [1]

The facts as found by the trial court may be summarized in the following manner. Sometime after 8:00 o'clock in the evening of 6 February 1986, that is, on the eve of the "snap" presidential election held on 7 February 1986, appellant Prudencio Dominguez then Mayor of the Municipality of Sinacaban, Misamis Occidental and his brother Roger C. Dominguez went to visit their second cousin, Judge Purita A. Boligor. Judge Boligor, according to the defense, was promoting the candidacy of Mrs. Corazon C. Aquino, the opposition candidate in the presidential race. Mayor Dominguez was affiliated with the "*Kilusan ng Bagong Lipunan*" ("KBL") and was at that time working for the re-election of former President Marcos. Mayor Dominguez and Roger arrived at Judge Boligor's house in Sinacaban in an Integrated National Police ("INP") jeep driven by Felix Amis, a police officer detailed as security man of Mayor Dominguez. Rodolfo Macalisang, brother-in-law of Mayor Dominguez, emerged on the leftside of the jeep, spoke briefly with the Mayor, then stepped aside and stayed under the shadow of a citrus (*calamansi*) tree. The Mayor and his brother Roger

proceeded towards Judge Boligor's house and entered that house. There they met with Judge Boligor and her brother Luther Avanceña who was then the UNIDO Chairman in Sinacaban, Misamis Occidental. About ten (10) minutes later, Rodolfo Macalisang entered Judge Boligor's house with an M-16 armalite automatic rifle and bursts of gunfire were heard. Shortly thereafter, Mayor Dominguez and Roger ran out of the house, got into the jeep which had been waiting for them and sped away. Macalisang then came out of the house and disappeared into the darkness. Judge Boligor and Luther were found inside the house, with multiple bullet wounds in vital parts of their bodies which caused their instantaneous death.

The prosecution's case rested mainly on the testimony of Oscar Cagod who witnessed the above sequence of events from a store across the street. The defense, for its part, attacked the credibility and the testimony of Oscar Cagod on the following grounds:

First, Cagod was not a disinterested witness, having lived in the house of Judge Boligor for eighteen (18) to nineteen (19) years and having treated the Judge like his own mother;

Second, Cagod waited for four (4) months after the slaying of Judge Boligor and Luther Avanceña before he executed his sworn statement;

Third, Cagod, according to the defense, executed his sworn statement only after the police authorities had arrested him and promised him immunity from prosecution. His testimony therefore came from a polluted source and should be received only with utmost caution.

Fourth, Cagod had been convicted, when he was twelve (12) years old, of murder, a crime involving moral turpitude and accordingly his testimony deserved no credence.

Last, the defense assailed the testimony of Cagod as being incredible in itself.

We consider the above objections seriatim. We must note initially, however, that Oscar Cagod, the prosecution star witness, was slain not long after he had testified on direct examination and on cross-examination. So far as the record here is concerned, the killer or killers of witness Oscar Cagod remain unknown. Another prosecution witness, Diosdado Avanceña brother of the two (2) deceased victims, mysteriously disappeared after his direct examination. He could not be recalled to testify on cross-examination and his testimony was stricken from the records by the trial judge upon motion of the defense.

We find the first contention of appellants to be without merit. In a long line of cases, the Court has consistently held that the relationship of a witness to a party to a case does not, by itself, impair the credibility of the witness. [2]In the instant case, assuming that Cagod had indeed treated the deceased victim Judge Boligor like his own mother, that circumstance would only add to the weight of his testimony, since he would then be most interested in seeing the real killers brought to justice rather than in falsely implicating innocent persons. In *People v. Uy, et al.*, [3]the Court explained:

. . . mere relationship to the victim need not automatically tarnish the testimony of the witness. *When there is no showing of improper motive on the part of the witnesses for testifying against the accused, the fact that they are related to the victim does not render their clear and positive testimony less worthy of full faith and credit.* On the contrary, *their natural interest in securing the conviction of the guilty would prevent them from implicating persons other than the culprits, for otherwise, the latter would thereby gain immunity.* [4] (Emphasis supplied).

In its second argument, the defense assails witness Cagod's credibility since he waited four (4) months after the slaying before executing his sworn statement. The sworn statement was allegedly made by Cagod after he had been arrested by Philippine Constabulary-Criminal Investigation Service ("PC-CIS") operatives and placed under detention. The defense complains that prior thereto, Cagod had not informed anyone about what he saw on the night of the slaying. It is settled, however, that delay on the part of witnesses in informing the authorities of what they know about the occurrence of a crime will not, by itself, affect their credibility, where such delay is satisfactorily explained. [5] We consider that the delay of four (4) months before prosecution witness Cagod executed his sworn statement should not affect the credibility of his testimony. Cagod had understandable reasons for hesitating to report to the authorities what he had seen. The accused in the instant case were clearly powerful and influential persons in Sinacaban. Prudencio Dominguez, as already noted, was Mayor of Sinacaban and Roger Dominguez was his brother. As Mayor, appellant Dominguez had armed men as personal bodyguards and otherwise at his command. Appellant Rodolfo V. Macalisang was a PC Sergeant and Civilian Home Defense Force ("CHDF") Supervisor. An alleged co-conspirator, Isidro Macalisang, was a Lieutenant of the Armed Forces of the Philippines ("AFP"), while Josue Vente also an alleged co-conspirator, was a Police Sergeant and Police Station Commander of Sinacaban. Cagod had been warned by Alfeo Lucing, a CHDF member and a follower of Mayor Dominguez, and by appellant Macalisang himself, not to talk about the shooting, upon pain of dire consequences.[6] In *People v. Bustarde, et al*, [7] the Court stated that the

failure of the witness to go to the police immediately after the killing because she feared for her life, is a factor which is entirely human and quite understandable, and should not detract from her testimonial credit. [8]

In *People v. Marmita, Jr.*, [9] the Court likewise sustained the credibility of the witness after the latter's delay in identifying the accused was explained to have been due to fear of reprisal from the accused who was known to be a powerful and influential person. In *People v. Baring*, [10] witness explained that her silence immediately after the slaying of her father was due to the fact

that previous killings in the barrio had not been given proper attention by the police authorities, and this Court ruled that her silence was understandable and did not affect her credibility. The natural reluctance of most people to get involved in a criminal case, and to volunteer information about a criminal case, is a mutter of judicial notice. [11] We, therefore, agree with the trial judge when she rejected this argument of the defense, saying:

Cagod's credibility also comes under fire for the reason that it took him four months before he executed a statement revealing what he had witnessed on February 6, 1986. As the defense would have it, be should have gone straight-away to Boligor's son or to any member of the Boligor household with his story. The defense points out that instead of doing so, Cagod went away to the ABC Hall to sleep until morning. This Court, however, notes that it was not so, for Cagod related that he rushed away to inform a cousin of Boligor, Mrs. Candelaria Gamotin, and that before he reached her house, Alfeo Lucing, one of the Mayor's men, followed him warning him not to tell other stories except that Boligor was dead.

That defense makes much of Cagod's conduct after the shooting of Boligor. Why did he remain silent when everyone wanted to know who the malefactors were? Why indeed? The defense forgets that the malefactors were not just any Tom, Dick and Harry — they were, perhaps, the most powerful and influential men in the Municipality of Sinacaban. Alfeo Lucing, who had shadowed Cagod, had already given stern warning. Cagod's fears later took concrete shape when Macalisang (whose name, oddly enough, translates as "terrifying") threatened him at gun point with dire consequences if he as much as breathe a word of the incident. Was Cagod's conduct after the shooting natural, conforming to normal behavior? This Court believes that his conduct was as normal as that of Mrs. Gamotin who, upon learning of Boligor's death, is not shown to have roused up family, relatives and neighbors to succor the Boligors — the record only shows that "they cried." Cagod's conduct was as normal as that of Dionisio Burlat, Engracia Avanceña and Diosdado Avanceña who fled the Boligor house and remained holed up in a neighbor's house till the following morning. Cagod's conduct was as normal as that of neighbors who refused to succor the Boligor household. [12]

As to the third contention of the defense that Cagod's testimony came from a "polluted source" because the sworn statement had been given after his arrest and after he had been promised immunity from prosecution, the Court notes that there was no showing that the prosecuting authorities would have included him in the criminal information. In other words, the record is bereft of any indication that Cagod was a participant or co-conspirator in the carrying out of the crimes. Neither was there any showing that Cagod had been promised or granted immunity from prosecution in consideration of his executing the affidavit in question. Even if he had been promised or granted immunity, that in itself is no indication of lack of truth or credibility in his testimony, considering that a person already charged in court may be discharged from the information and utilized as a state witness under certain conditions. [13] The defense also assails a supplemental affidavit executed by witness Cagod on 31 July 1986 as baseless and untrue and designed merely to reinforce the prosecution's theory. Cagod's first affidavit lacked certain details which Cagod later supplied in a supplemental affidavit after more clarificatory questions had been asked of him. In *People v. Salvilla*, [14] the Court held that the failure of a prosecution witness to mention the taking, an essential element of the crime of robbery, in her sworn statement did not militate against her credibility, considering that "an affidavit is almost always incomplete and inaccurate and does not disclose the complete facts for want of inquiries and suggestions."

In its fourth contention, the defense stresses that Oscar Cagod had been convicted of murder when he was twelve (12) years old and insists that, therefore, Cagod's testimony "deserves no credence and must be considered with extreme caution. [15] Initially, we note that Rule 130 of the Revised Rules of Court provides as follows:

Sec. 20. *Witnesses; their qualifications*. — Except as provided in the next succeeding section, all persons who can perceive, and perceiving, can make known their perception to others, may be witnesses.

. . . *[C]onviction of a crime* unless otherwise provided by law, *shall not be a ground for disqualification*. (Emphasis supplied).

In *Cordial v. People*, [16] this Court echoed the above cited provision of law stating that

even convicted criminals are not excluded from testifying in court so long as, having organs of sense, they "can perceive and perceiving can make known their perceptions to others. [17]

The fact of prior criminal conviction alone does not suffice to discredit a witness; the testimony of such a witness must be assayed and scrutinized in exactly the same way the testimony of other witnesses must be examined for its relevance and credibility. None of the cases cited by the appellants militates against this proposition. [18]

Oscar Cagod did not dispute his prior conviction for murder when he was only twelve (12) years old. Because of his minority, instead of being imprisoned, he was placed under the custody of Judge Boligor and her late husband, who was then Chief of Police of Sinacaban. Cagod lived with the for eighteen (18) or nineteen (19) years until Judge Boligor was slain. During that period of time, Cagod had no record of any bad or socially destructive behavior. He had in fact been of much help around the Boligors' house and had in fact worked for appellant Mayor Dominguez himself as a motorcar driver. [19] His testimony was *not in favor of* an accused "comrade," [20] and Oscar Cagod, moreover, was obviously not a hardened criminal. [21] Taking account of these circumstances, the Court considers that Oscar Cagod's credibility was not put in doubt by reason alone of conviction of a crime when he was twelve (12) years old.

In their final contention concerning the credibility of Oscar Cagod

as a witness, the defense insists that the testimony of Cagod was incredible in itself.

Cagod had testified that he was in the store across the street from Judge Boligor's house on the night of the killing, because he had been about to get sample ballots of candidate Corazon C. Aquino from Judge Boligor; but when he arrived at the latter's house, Judge Boligor told him to stay across the street considering that Mayor Dominguez was coming to her house. And so Cagod was there across the street from the Boligors' home and had an unobstructed view of the events as they unfolded outside the Boligor house which events culminated in gunfire inside the house and the Mayor and Roger speeding away from the Boligor house on the jeep which had waited for them and appellant Macalisang coming out of Judge Boligor's house and fading away into the darkness while she and her brother Luther lay dead in her house.

In addition, Oscar Cagod had testified that on the afternoon of that same day, while he was at the market place in Sinacaban, Roger Dominguez (the Mayor's brother), Josue Vente (the Police Station Commander of Sinacaban), Lt. Isidro Macalisang of AFP and the Mayor were on the terrace of the Mayor's house fronting the Sinacaban Public Market. Josue Vente summoned him (Cagod), and so he went up the stairs to the terrace. As he stepped on the terrace, he heard Mayor Dominguez saying angrily: "I gave money to Purita [A. Boligor] and Luther (Avanceña) so they will not work during election, they are hard-headed, better that these persons are taken care of." Cagod further testified that Josue Vente ordered him to buy a pack of cigarettes and that when he returned to the terrace with the cigarettes, he heard Mayor Dominguez say: "This is our agreement." Later, Mayor Dominguez ordered his men to go to Barangay Sinonok to continue their election campaign efforts and they left in four (4) motorcycles. Cagod stated that he heard the Mayor telling Roger over an hand-held radio to follow Judge Purita Boligor and to apprise him (the Mayor) of her whereabouts periodically. [22]

The defense expended a great deal of effort assailing the above testimony of Oscar Cagod concerning the goings-on on the terrace of the Mayor's house, the basic contention being that if the accused-appellants were indeed to plan a conspiracy, they would not have been so "stupid" as to batch it in broad day light within public view and within hearing distance of strangers, when they could have very well gone inside the Mayor's house. It does not seem necessary for the Court to consider in detail the arguments of the defense in this connection. For the trial court did not interpret the above testimony of Oscar Cagod as showing conspiracy being hatched by the appellants and their associates while on the Mayor's terrace. For the trial court ruled that:

. . . The Mayor at that precise time [need] not have been plotting a dastardly deed. He could have been merely expressing his disgust or anger with Boligor and Luther . . . nevertheless, . . . this Court is convinced that he (Cagod) was telling the facts as he had actually heard and seen them. He had no motive to testify falsely. [23]

The evidence of the defense included ballistics reports (Exhibits "16" and "16-A") concerning twenty-seven (27) empty cartridges retrieved from the scene of the crime. These twenty-seven (27) empty cartridges or shells were, according to this ballistics report, examined and compared with twenty-four (24) test cartridges submitted by the accused appellant and said to have been fired from eight (8) M-16 armalite rifles in the armory of the Sinacaban Police Force, including an M-16 rifle with Serial No. 162705 which allegedly was taken by appellant Macalisang from Wilfredo Daluz, a police officer and prosecution witness. In those reports, PC T/Sgt. Rodolfo C. Burgos, a ballistic technician who had conducted the examination, concluded that the twenty-seven (27) empty shells retrieved from the scene of the crime had not been fired from any of the weapons from which the twenty-four (24) test cartridges had been fired. [24] According to the letter of PC Capt. Bonfilio Dacoco, Commanding Officer of the 466th Philippine Constabulary Company, Ozamis City, dated 21 February 1986, which Sgt. Burgos read into the record during the trial, the twenty-one (21) test shells had been fired from eight (8) long firearms of the Sinacaban Police Force. [25] The trial court, however, did not give much weight to this ballistic report saying:

. . . Cagod's testimony that he had seen Macalisang enter and exit from the house of the Boligor's moments before and after the shooting remains unshaken by Burgos's testimony, especially when taken with the defense story. [26]

We agree with the trial court's appraisal that the testimony of Ballistic Technician Burgos did not have the effect of overturning the testimony of Oscar Cagod. We note that the defense had not shown that appellant Macalisang had no access to any M-16 rifle other than the eight (8) rifles of the Sinacaban Police Force from which the twenty-one (21) test bullets were said to have been fired. The negative allegation that Macalisang did not use any of the eight (8) M-16 rifles, particularly the rifle with Serial No. 162705, does not logically lead to the conclusion that Macalisang could not have used any other weapon nor does it prove that he was not the assailant. All that the testimony of Sgt. Burgos tended to show was that the murder weapon was not among the eight (8) rifles of the Sinacaban Police Force from which the test shells were said to have been fired.

In addition to denying and assailing the testimony of the now deceased witness Oscar Cagod, the appellants' raised the defense of alibi. In a long line of cases, this Court has held that for the defense of alibi to prosper, it is not enough to show that the accused was somewhere else when the crime was committed, but that the accused must further demonstrate that it was physically impossible for him to have been at the scene of the crime at the time of the commission thereof. [27] In the instant case, the Mayor's argument was that when the shooting occurred, he was already outside the house of Judge Boligor. Clearly, therefore, it was not impossible for him to have been at the scene of the crime. In fact, he was only a few steps away, according to his own testimony, when Judge Boligor and her brother were felled by automatic fire. Appellant Rodolfo Macalisang, the latter's Chief Security Officer, and as already noted, Police Supervisor of the CHDF of Sinacaban, said that he had slept the whole night of 6 February 1986 (the eve of the "snap" presidential election) and that he knew nothing of

the murder until the next morning. [28] This alibi was obviously a very weak one, considering that Macalisang's house was not only in the same municipality but was indeed only "about 120 meters" away from Judge Boligor's house. [29]

The applicable doctrine is that the defense of "alibi is worthless in the face of positive identification by the prosecution witnesses." [30] In *People v. Plandez*, [31] the Court stressed that:

. . . *[A]libi* — the much abused sanctuary of felons and which is considered as an argument with a bad reputation, *cannot prevail over positive testimonies of the prosecution witnesses. It is,* to say the least, the *weakest defense and must be taken with caution being easily fabricated.* (Emphasis supplied).

In the instant case, Cagod did not, of course, see appellant Macalisang actually shooting Judge Boligor and her brother inside her house. But Cagod did see Macalisang enter the Boligor house with a firearm, hear automatic gunfire and later saw him leave the same house with a firearm and melt away in the night. We hold that in the circumstances of this case, the testimony of prosecution witness Cagod was sufficient to produce moral certainty of guilt on the part of both appellants. Clearly, here as in most criminal cases, the issues before this Court relate to the credibility of the witnesses, particularly of Oscar Cagod and of accused-appellants. It is true that the trial judge who wrote the decision, Judge Ma. Nimfa Penaco-Sitaca, was not presiding over the trial court when Oscar Cagod rendered his testimony on direct and on cross-examination. At the same time, it was before Judge Penaco-Sitaca that the prosecution presented additional witnesses and before whom the defense presented all its evidence, both testimonial and documentary and rested its case. Thus, Judge Penaco-Sitaca had observed the deportment of the defense witnesses and their manner of testifying during the trial. The doctrine is firmly settled that the trial court's conclusion on issues of credibility is accorded with highest respect by appellate courts. [32] We have examined carefully the record of this case before the trial court and the briefs of both the appellants and the People and we
have found nothing to justify overturning the conclusions reached by Judge Penaco-Sitaca.

In its decision, the trial court found the presence of treachery as well as the generic aggravating circumstances of dwelling and abuse of superior strength. The trial court said:

. . . [The mayor] had the motive. He called the shots. He occupied a position of ascendancy over his brother-in-law and personal security officer, Macalisang, who, on his own, would have no motive nor criminal design against the victims. . . . Macalisang's armed entry into the house, immediately followed by the burst of gunfire, . . . constituted a sudden, unexpected, treacherous attack of the victims who could not have had the slightest opportunity to defend themselves. Just as treacherous was the Mayor's entry into the house under cover of civility and mirthful conversation.

It is very difficult to disagree with this finding of the trial court.

We agree, further, that the aggravating circumstance of dwelling was present, but believe that the circumstance of abuse of superior strength is properly deemed absorbed by the qualifying circumstance of treachery. This modification, however, has no effect upon the penalty properly imposable upon accused-appellants.

WHEREFORE, for all the foregoing, the decision of the trial court dated 10 May 1991 is hereby AFFIRMED, except that the element of abuse of superior strength is properly disregarded, and except that the indemnity imposable is hereby, in accord with current jurisprudence, RAISED to P50,000.00 for the killing of Judge Purita A.. Boligor and another P50,000.00 for the slaying of Luther Avanceña. Costs against appellants.

SO ORDERED.

Narvasa, C.J., Feliciano, Regalado, Nocon and Campos, Jr., JJ., concur.

Interest in the case

PEOPLE v. ALFREDO ENTILA
G.R. No. 135368. February 9, 2000

Before us is an appeal from the Decision[1] dated March 11, 1998 of Branch 26 of the Regional Trial Court (RTC) of Manila finding appellant Alfredo Entila alias "Bogie" guilty beyond reasonable doubt of the crime of kidnapping and sentencing him to suffer the penalty of *reclusion perpetua*.

The Information reads as follows:

"The undersigned accuses ALFREDO ENTILA Y PINEDA of the crime of Kidnapping, committed as follows:

"That on or about and during the period comprised between December 15, 1995 and February 21, 1996, in the City of Manila, Philippines, the said accused, being then a private individual, did then and there wilfully, unlawfully, feloniously, and illegally kidnap or detain or in any manner deprive ten years (sic) old THERESA ADATO of her liberty and deliberately failed to return or restore her to her guardian.

"Contrary to law."[2]

Upon arraignment, appellant pleaded "not guilty"; and trial on the merits ensued.

Prosecution witness Araceli Mendiola testified that the victim, Theresa Adato, was entrusted to her custody since 1995 by a friend;[3] and that in 1995, her ten (10) year old ward was enrolled in the Justo Lucban Elementary School in Paco, Manila. On December 19, 1995, Adato failed to come home, from her

afternoon classes, at the usual time of six o'clock in the evening. Worried by Adato's failure to come home on time, Mendiola went to the school to look for her. When Mendiola arrived at the school at 6:30 in the evening, it was already closed. Outside the school, she met one of Adato's classmates who informed her that he saw Adato forcibly being taken by a man. Mendiola immediately reported the incident to the barangay authorities. But when the barangay authorities were unable to find Adato, Mendiola sought the help of one SPO2 Conrado Quilala.[4]

SPO2 Conrado Quilala testified for the prosecution and stated that Mendiola approached him regarding the case of Adato on January 29, 1996. At that time, he was an intelligence operative of the Task Force Spider at Camp Bagong Diwa, Bicutan, Taguig. He invited Mendiola to file a formal complaint at the police precinct in Bicutan, and Mendiola readily complied. Quilala then advised Mendiola to gather more information pertaining to the whereabouts of her ward and the appellant.[5] Maniâ kx

Later, Mendiola received a call from one Bobby Cabanero who was a housemate of appellant in Tuguegarao, Cagayan informing her that appellant was there with Adato.[6] Mendiola relayed this information to Quilala on February 19, 1996.

Thereafter, a team, composed of Quilala, Captain Cabigas and SPO2 Camacho, was organized to rescue Adato. The team then proceeded to Cagayan on February 21, 1996. Upon reaching Cagayan, they proceeded to Barangay Bag-ay where appellant was renting a house. They were, however, informed that appellant had already left for work at Barangay Abay and that Adato was with him.[7]

In Barangay Abay, the team found appellant in a shop where he was painting a car. They approached him and informed him that Mendiola had filed a complaint against him. When asked about Adato, the appellant replied that she was just within the vicinity playing "sungka". True enough, they found Adato playing some fifty (50) meters away from the shop. The team arrested appellant on the spot and brought him and Adato back to Manila.[8]

Adato narrated that on December 15, 1995, at around eleven o'clock in the morning, she was at the Jose Lucban Elementary School. She saw appellant near the entrance of the market which is two (2) meters away from the school gate. Appellant was familiar to her as they lived in the same house with Adato and her guardian, Mendiola, occupying the second floor, and the appellant and his children staying in the ground floor. Thus, when appellant summoned her, she readily approached the former. Thereupon, the appellant pulled Adato inside the sidecar that he was driving.[9]Then she was told by the appellant, to keep quiet and he threatened to box her should she say anything.[10] Appellant brought Adato to a house in Mataas na Lupa near Paco which, Adato later came to know, was owned by appellant's friend, Chit.[11] On the way to Mataas na Lupa, Adato could not alight from the sidecar because appellant held her whenever the traffic stopped. Appellant also discouraged Adato from shouting for help by telling her that no one would be able to hear her.[12]

According to Adato, she was locked inside a room in Chit's house for more or less one (1) week. During that time, she did not see appellant, and it was Chit who gave her food.[13]

Adato only saw appellant again when the latter fetched her and brought her to the bus terminal where they were to board a bus for Tuguegarao. While waiting for their bus, Adato did not ask help from any of the other passengers in the bus terminal since appellant had threatened her life before leaving Chit's house.[14]

When they reached Tuguegarao, they initially stayed in the house of Bobby Cabanero who was introduced to Adato as appellant's cousin. Appellant and Adato occupied one room in Cabanero's house. Upon the appellant's instructions, Adato did not leave the room except to eat and to relieve herself.[15] Maniksâ

After a while, appellant and Adato transferred residence to a rented house in Barrio Bag-ay.[16] While they lived together, appellant repeatedly had sexual intercourse with Adato against her will. The appellant first abused Adato sexually on January 15, 1996 and this continued until the policemen rescued her and brought her home to Mendiola.[17]

For his part, appellant interposed the defense of denial and claimed that Adato voluntarily went with him to Tuguegarao to escape the unhappy life she led under the care of her guardian, Mendiola.

Appellant testified that he was an overseas contract worker in Saudi Arabia from 1984 to March 15, 1995 when he returned to the Philippines after hearing of his wife's critical condition. After his wife's demise on July 10, 1995, appellant decided not to go back to Saudi Arabia anymore. He stayed with his children in their house in Paco, Manila. According to the accused-appellant, he rented out the second floor of the said house to his cousin, Mendiola, who was living there with her family and ward, Adato.[18]

In the early morning of December 15, 1995, appellant informed his children that he was going to Tuguegarao as his friend, Bobby Cabanero, had offered him a job there. His children agreed, and he proceeded to his mother's house in Santiago Street, Paco, Manila, to ask for her blessing. Outside his mother's house, he saw his cousin, Arvie Entila, driving a sidecar. He then asked Arvie Entila to bring him to Quirino Highway where he planned to wait for a ride going to the bus terminal. Arvie Entila acceded to his request and brought him to the highway. While appellant was waiting for a ride, Adato approached him. According to appellant, Adato wanted to go with him, and when he told her to go back to her foster mother, she replied that Mendiola and her husband had no business meddling in her life as they were not her real parents. Adato also complained that she always quarreled with Pollard, Mendiola's real son, who often taunted her: "salot ka, umalis ka dito" (you are a curse, go away). Taking pity on Adato, appellant agreed to let her

tag along.[19]

Appellant and Adato took the bus from Manila to Tuguegarao that same morning. Upon reaching Tuguegarao, they proceeded to the house of Bobby Cabanero in Barrio Calita. According to appellant, they talked about the car repair job that Cabanero had promised him,[20] and that he and Adato stayed at the residence of Cabanero for about two (2) weeks during which time, Adato slept in the room of Cabanero's mother, while he stayed in the room of Cabanero's brothers.[21]

Thereafter, appellant proceeded to a repair shop in Barangay Bag-ay where the car repair job was waiting for him. While working at the repair shop owned by a certain Vito, appellant stayed at a house being rented by the niece of Vito while Adato stayed in a neighbor's house.[22]

One and a half weeks later, SPO2 Quilala arrived at Barangay Bag-ay with his companions. Quilala informed appellant that Mendiola had filed a complaint against him for the kidnapping of Adato. Appellant was stunned by the seriousness of Mendiola's charges, and although he denied the same to Quilala, he readily acceded to the latter's request that he go back to Manila with them.[23] Manikanä

Before going back to Manila, however, appellant was brought to the Tuguegarao Municipal Hall where he was investigated by Colonel Peñalosa. Thereafter, appellant, together with Quilala's team and Adato, boarded an Island Liner bus bound for Manila. When they reached Manila, they proceeded to Camp Ricardo Papa in Bicutan, Taguig.[24]

Appellant was detained in Camp Ricardo Papa for two (2) days without an investigation being conducted by the police officers. Thereafter, he was transferred to the Manila City Jail. Appellant claims that while at the Manila City Jail, police officers forced him to affix his signature to a document, the contents of which were not explained to him. The fiscal investigated appellant only after he had already been detained for two (2) days.[25]

Arvie Entila corroborated the testimony of appellant that Adato voluntarily went with the former.

According to Entila, while he was driving his sidecar along Quirino Highway on December 14, 1995 at around eleven o'clock in the morning, he saw Adato with a classmate. Entila who knew Adato as the ward of his aunt, Mendiola, asked her why she was there, but he received no reply from the latter.[26]

Later that day, Entila heard that Mendiola[27] was looking for Adato so he went to the house of Mendiola to inform her that he had seen Adato along Quirino Highway. However, Mendiola did not react to Entila's information.[28]

At around 8:30 in the evening of same day, Entila saw Mendiola walking along Santiago Street in Paco, Manila. He asked her if Adato had already gone home, and Mendiola replied in the affirmative. On his way out of Santiago Street, he met Adato who was apparently on her way home.[29]

The following day, at around 5:30 in the morning, Entila was outside his grandmother's house in Santiago Street. While waiting for his grandmother, he saw his uncle, the appellant. The latter approached him and told him that he was going to Olongapo to work there. Appellant then asked Entila to inform his grandmother, that is, appellant's mother, about his plan to leave town.[30]

Appellant then requested Entila to take him to Quirino Highway where he planned to hail a cab. Entila acceded and drove appellant to Quirino Highway. While appellant was waiting for a cab, Entila saw Adato come out from behind some plants at the side of Lanuza Street. He overheard Adato asking appellant to allow her to go with him because she was being given away by Mendiola. At first, appellant refused, saying that Mendiola might get angry. However, when Adato cried, appellant eventually succumbed to her pleas and took her with him.[31] Oldmisâ o

After weighing the evidence presented by both parties, the trial court found appellant's denial unworthy of merit in the face of Adato's positive declaration that appellant forcibly brought her first to a friend's house and then to Tugugarao, and deprived her of liberty for more than two (2) months. The trial court thus declared that appellant's guilt of the crime of kidnapping has been established beyond reasonable doubt. Accordingly, appellant was meted out the penalty of *reclusion perpetua*.[32]

Hence, this appeal where the appellant contends that:

"The Court A Quo Erred:

"1) In convicting appellant of the crime of Kidnapping; and

2) In the appreciation of the Evidence presented by the parties."[33]

We find for the accused-appellant.

At the outset, this Court observes that a material point of inconsistency has unfortunately been totally disregarded by the trial court and even by the prosecution and defense. The actual date of the alleged commission of the crime has been subject of varying testimonies.

During the direct and cross-examination of Mendiola, she consistently referred to **December 19, 1995**[34] as the day when Adato failed to come home from school. Thus, if Mendiola's testimony is to be given any weight, then the accused-appellant kidnapped the victim on December 19, 1995, and held her captive until February 21, 1996. However, Adato herself testified that the appellant kidnapped her on **December 15, 1995**. In denying Adato's charges, appellant declared that Adato voluntarily went with him on **December 15, 1995**, and this was corroborated by

defense witness Arvie Entila.

Mendiola's sworn statements before the police authorities are likewise not helpful and merely add to the confusion. On January 29, 1996, she executed a sworn statement before SPO2 Simplicio Robles of the Philippine National Police at Camp Ricardo Papa, Taguig, Metro Manila where she said that her ward, Adato, failed to come home on **December 15, 1995**.[35] In a subsequent statement given to SPO1 Celso Zapata also of the PNP at Camp Ricardo Papa, Mendiola reported that Adato had been missing since **December 19, 1995**.[36] Earlier, however, Mendiola had executed an affidavit of complaint against appellant wherein she stated that Adato failed to return home on **December 15, 1995**.[37]

What baffles this Court even more is that the trial court completely ignored this discrepancy, and the prosecution exerted no effort whatsoever to explain these inconsistencies. Ncmâ

This is not to say, however, that we are acquitting appellant solely on the basis of Mendiola's inconsistent statements with respect to the date Adato failed to return home. But we acquit appellant because a judicious review of the records of this case reveals that the defense had presented evidence, which if given due credence by the trial court, would have been sufficient to acquit him on the ground of reasonable doubt. We refer to the corroborative testimony of defense witness Arvie Entila.

Consistent with the appellant's allegation that Adato voluntarily accompanied him to Tuguegarao is the following testimony of defense witness Arvie Entila:

"q On December 15, 1995 at about five thirty in the morning can you tell us where were you, Mr. witness?
a I was at home, sir.
q What were you doing at that time?
a I was about to bring my grandmother to the market.
q By the way, Mr. witness, what is the exact address of your house?
a 1265 Santiago street.
q While saiting (sic) for your grandmother what happened, if any, Mr. witness, at that time?
a I fixed my sidecar.
q While you were fixing your sidecar what happened, if any, Mr. witness?
a I saw my uncle.
q What is the name of your uncle, Mr. witness?
a Alfredo Entila, sir.
q What was he doing at that time when you saw him?
a He was carrying a TV set approaching me.
q What did you do, Mr. witness, when you saw your uncle carrying a TV set.
a I asked him where he would go.
q What was the answer of your uncle?
a He said that he would go to Olongapo because he would work there.
q You said that he was carrying a television set, will you tell us how big is that television set? NcmmisÓ
a 21-inch TV set, sir.
q What did you do when your uncle answered you that he will be going to Olongapo?
a I did not say anything.
q After that what happened, if any?
a He asked for my grandmother.
q What was your answer, if any, Mr. witness?
a I told him that she was upstairs.
q What did your uncle do when you informed him that your grandmother was upstairs?
a He told me to inform my grandmother about his leaving.
q Did you do that, Mr. witness, as requested?
a Yes, sir.
q After that what happened?
a Alfredo requested me to bring him to Quirino Highway.
q Did you bring him to Quirino Highway as per request?
a Yes, sir.
q While at Quirino Highway what happened, if any, Mr. witness?
a He called a taxi.
q After that what happened, what else happened, if any?
a Suddenly Teresa went out.
q From where?
a At the side of the plants.
q In what particular place, Mr. witness?
a Side of Lanuza street, sir.
q What did Teresa do after you saw yer (sic) came (sic) out from Lanuza at the side of Lanuza street? Scncä m
a She wanted to go with Alfredo, my uncle.
q How did she ask Alfredo Entila that she would go with him?
a she told my uncle that she was being given away by Chi.
q What was the answer of Alfredo Entila of (sic) the information given to him?
a Alfredo told Teresa that Chi might get angry.
q What did Teresa do after being informed that this Entila does not want Teresa to go with him?
a She forced Alfredo.
q What did Alfredo do, if any?
a Teresa was crying.
q Did Alfredo eventually agree?
pros. icay Leading, Your Honor.
defense counse
I will reform.
court Reform.
defense counsel
q What did Alfredo Entila do when Teresa Adato cried and informed him that she wanted to go with him?
a Alfredo brought Teresa with him.
q Do you know where?
a Olongapo.
q Teresa Adato or Teresa testified here that she was forcibly taken by Alfredo Entila on December 15, 1995 at about eleven o clock in the morning, what can you say about it, Mr. witness?
a That is not true, sir. SdaaÓ miso
q Why do you say that Teresa Adato was not telling the truth when she said that she was forcibly taken by Alfredo Entila on that particular date?

a I was the one who brought my uncle."[38]

The prosecution would have us believe that defense witness Arvie Entila's testimony was motivated by nothing more than the natural desire to help the appellant who is his uncle. It is true that in most instances, corroboration by relatives of an accused is accorded scant consideration in view of the truism that blood is thicker than water.[39] However, a witness' testimony cannot be stripped of full faith and credit simply on account of his relationship to the parties.[40] Although relationship can put the testimony of a witness in doubt, it cannot affect credibility itself.[41] The Judge should have subjected the testimony of defense witness Arvie Entila to the ordinary process of evaluation and accordingly assigned to it the proper intrinsic weight.[42]

Furthermore, the basis for disregarding Arvie Entila's testimony in this case, simply does not exist. It should be remembered that defense witness Arvie Entila is related to the families of both the appellant and Mendiola, guardian of Adato. While appellant is his uncle, Mendiola is also his aunt, being the first cousin of his father.[43] There is no indication whatsoever that defense witness Arvie Entila favored one relative over another nor is then any proof that he harbored any improper motive to testify against Mendiola or her ward.[44] On the contrary, there exists evidence that defense witness Arvie Entila was just as concerned over the welfare of his aunt's ward, Theresa Adato. Thus, having heard that Mendiola was looking for Adato, Entila did not waste any time in informing Mendiola that he had seen Adato in Quirino Highway. Later that day, Entila again asked about Adato. Hence:

"q Mr. witness, On December 14, 1995 at about eleven o (sic) clock in the morning can you tell us where were you?
a I was in the market, sir.
q Where is this market located, Mr. witness? Sdaad
a In Paco, Manila, sir.
q What were you doing at that particular place and time?
a I was driving my sidecar looking for passenger (sic), sir.
q While thereat, Mr. witness, can you tell us what happened, if any?
a I have no passenger, sir.
q So what did you do then, Mr. witness?
a So I went around, sir.
q Where?
a Quirino Highway, sir.
q Where is this Quirino Highway located, Mr. witness?
a Corner of Lanuza.
q Is this located within Manila?
a Yes, sir.
q While at Pres. Quirino Highway looking for passenger (sic) while you were driving your pedicab what happened, if any?
a I saw Teresa, sir.
q Who is this Teresa, Mr. witness?
a Chit was the one who was taking care of Teresa, a ward of Chit.
q If this Teresa is here in court can you point her to us, Mr. witness?
a Yes, sir.
q Willyou (sic) please stand up and point her to us?
a There sir.
interpreter
Witness pointing to a person who when asked her name answered …
complainant
Teresa Adato.
defense counselScsä daad
q What was Teresa doing when you saw her at Quirino Highway on December 14, 1995 at about eleven o'clock in the morning?
a She was with her classmate sitting.
q What did you do, Mr. witness, when you saw this Teresa Adato?
a I asked her why she was there.
q What was her answer, Mr. witness?
a She did not answer.
q At about four o'clock in the afternoon of the same date, Mr. witness, can you tell us where were you?
a I was also still in the market.
q What were you doing there, Mr. witness?
a Still waiting for passenger.
q Were you able to get a passenger at that time?
a Yes, sir.
q What happened when you were able to get that passenger?
a I brought them at (sic) Santiago street.
q Where is this Santiago street?
a Paco, Manila, sir,
q Were you able to bring that passenger of yours at (sic) Santiago street?
a Yes, sir.
pros. icay
Leading, Your Honor.
defense counsel
Already answered, Your Honor.
q What happened when you arrived together with your passenger at Santiago street?
a I went to my aunt.
q And where? SupÓ rema
a 1238 Santiago street.
q On your way to the house of your aunt what happened, if any, Mr. witness?
a I heard that Chi was looking for Teresa.
q Who is this Chi?
a She is the one taking care of Teresa.
q Is this Chi here in court now?
a No, sir.
q What did you hear, Mr. witness, from Chi?
a That she was looking for Teresa.
q Do you know the reason why this Chi was looking for Teresa?
pros. icay
Incompetent.
court
Witness may answer.
witness
a She did not come here.
defense counsel
q What did you tell her when you heard that this Chi was looking for Teresa?
a I told her that I saw Teresa along Quirino Highway.

q What was the reaction of this Chi, if any, when you tell (sic) her that you saw Teresa at the Highway?
a No reaction, sir.
q Mr. witness, at about eight thirty p.m. on the same date can you tell us where were you?
a I was in the house of my aunt, sir.
q While at the house of your aunt what happened, Mr. witness?
a I went out. Jurisä
q To where?
a I went out of Santiago street.
q On your way out of Santiago strert (sic) will you tell us what happened, if any, Mr. witness?
a I saw Chi.
q what was Chi doing at that time, Mr. witness?
a She was walking.
q What else happened, if any, Mr. witness?
a I asked Chi if Teresa has arrived.
q What was the answer of Chi?
a And she answered yes.
q What did you do after that, Mr. witness, if any?
a I was on my way out of Santiago street when I saw Teresa.
q What was Teresa doing then, Mr. witness?
a She is on her way home.
q What did you do when you saw Teresa at that time?
a I told Teresa that you are really here.
q what was the answer of Teresa, if any, Mr. witness?
a She did not answer."[45]

Even the testimonies of prosecution witnesses, SPO2 Quilala and SPO2 Camacho, show that Adato's actuations were inconsistent with those expected of one who has been kidnapped.

SPO2 Camacho testified as follows:

"Q you said that when you arrived in Cagayan you were able to contact Magno Quilang, is that correct?
a no, the informant first.
q But eventually you were able to contact Magno Quilang?
a yes, sir. Scä juris
q and in fact, you said you were able to talk to him?
a yes, sir.
q did you ask him when did they start renting the place?
a no, sir.
q and you said you proceeded to Barangay Bagay and you were able to see Entila?
a yes, maam.
q and he even told you that the girl is just nearby playing?
a yes, maam.
q can you describe the place where the girl was all gedly (sic) playing sungka?
a the house is very near the repair shop.
q is this a close place?
a open place.
q so, the child is free to go out?
a YES.
Q She wasnot (sic) detained atthat (sic) time?
q did the child told (sic) you that she was kidnapped, raped or sexually abused at the time you saw her playing?
a no, maam. I did not ask.
q But the child did not inform you of such fact?
a no, maam."[46]

Curiously, Adato did not exhibit any sign of hostility towards her alleged tormentor. On the contrary, she prevented the police officers from handcuffing appellant during the trip from Tuguegarao to Manila.

SPO2 Quilala testified thus:

"q Is it not true also that this Adato requested you not to handcuff Entila?
a Yes, sir.
q Why? Jurisä sc
a I donot (sic) know, sir.
q You said you reached Bicutan, at what date was that you arrived Bicutan, what date was that?
a It was on the 22nd at about four thirty in the mornigg (sic).
q As a veteran law enforcer, Mr. witness, the action of Entila and this Adato when you found them in Tuguegarao is consistent with a woman or a child which (sic) has not been detained or kidnapped, is that right?
a Yes, sir."[47]

Adato's compassion towards appellant is more consistent with a debt of gratitude felt for one who had helped her escape a miserable life than anger and vengefulness at one who had taken her away from home and repeatedly abused her.

In convicting the appellant, the trial court relied on the oft-cited rule that denial, like alibi, is a weak defense since it is easily fabricated or concocted. There are nonetheless settled pronouncements of this Court to the effect that where an accused sets up alibi, or denial for that matter, as his line of defense, the courts should not at once look at the same with wary eyes for taken in the light of all the evidence on record, it may be sufficient to reverse the outcome of the case as found by the trial court and thereby rightly set the accused free.[48] Furthermore, the defense of alibi or denial may assume significance or strength when it is amply corroborated by a credible witness, as in the instant case.[49]

The trial court also pointed out that the defense had failed to establish any nefarious or sinister motive on the part of the victim to impute the commission of a crime to the appellant. It should be noted, however, that although Adato herself had no motive to falsely incriminate appellant, her guardian, Mendiola, had an axe to grind against appellant.

That appellant and Mendiola were feuding over the ownership of the house they were occupying in Paco, Manila is evident from their respective statements in open court.

Thus, appellant testified, thus:

"q do you know one Araceli Mendiola, Mr. witness?
a Yes, sir, my first cousin, sir.
q Can you tell us …

a Araceli Pineda MendiolaMisjÓ uris
q where was she residing at that time, Mr. witness, in 1995?
a Just on the second floor of my house which I rented out.
q You mean to say that you are the owner of the house which Araceli Mendiola was occupying at the time?
a Yes, sir.
q When you returned to the Philippines and after the death of your wife do you have any occasion to talk with Araceli Mendiola regarding the lease of your property?
a No, sir, she just occupied the place.
q My question, Mr. witness, is that did you have any occasion to talk with Araceli Mendiola after the death of your wife regarding the lease of your property?
a Yes, sir.
q What did you talk about, Mr. witness?
a about the rent of the house.
q What did you tell her regarding the lease of your property?
a She said that if she has only available money that was the only time that she will pay me.
q On December 14, 1995 Araceli Mendiola testified here before that she is the owner of the house from (sic) which she was residing at the time and it was located on the second storey (sic) of the place where you are residing, what can you say about that, Mr. witness?
a I am the owners (sic), sir.
q Do you mean to say that this Araceli Mendiola was not telling the truth when she said or testified that she is the owner of the place, Mr. witness?
pros. icay
Leading, Your Honor.
defense counsel
Point of clarification, your Honor.
court
Witness may answer. Jjä lex
witness
a That is not true, sir.
defense counsel
q what did you do when this Araceli Mendiola claims (sic) ownership over the house, over the portion of the house which you said that you only rented to her, Mr. witness, if any?
a I did not agree to that situation, sir.
q When you did not agree to that situation, Mr. witness, what did Araceli Mendiola do, if any?
a She got mad at me.
q How?
a She said that she introduced some improvements on the property.
court
q Do you know what was that improvement?
q What?
a The three G.I. sheets that she replaced, sir."[50]

On the other hand, Mendiola denied accused-appellant's ownership of the said house:

"q Madam witness, you are residing at 1238 Santiago St., Paco, Manila?
a Yes, sir.
q And you are renting this place from theaccused (sic), is that right?
a No, sir.
q And the accused is also residing at that place at 1238 Santiago St., Paco, Manila is that right?
a Yes, sir.
q And he is residing in that place because he is the owner of the house is that right?
a No, sir.
q Will you please tell us why is it that he is residing in that address?
a He lives downstairs while I live on the second floor of the house, sir."[51]

It is therefore not altogether impossible, as alleged by the defense, that Adato was merely cajoled by Mendiola into concocting the charges against appellant.

Defense witness Arvie Entila's testimony, coupled with the aforementioned circumstances, has engendered in the mind of this Court a nagging doubt as to the guilt of the appellant. This uneasiness has been spawned by the failure of the prosecution to convince this Court of appellant's guilt to that degree of moral certitude that is indispensable for the conviction of an accused. Hence, we have held in a long line of cases that if the inculpatory facts and circumstances are capable of two or more explanations, one consistent with the innocence of the accused and the other consistent with his guilt, then the evidence does not fulfill the test of moral certainty and is not sufficient to support a conviction.[52]

WHEREFORE, the Decision of Branch 26 of the Regional Trial Court of Manila in Criminal Case No. 96-147974 is REVERSED and SET ASIDE. The accused-appellant, Alfredo Entila Y Pineda alias "Bogie" is hereby ACQUITTED on the ground that his guilt was not proven beyond reasonable doubt. francis

SO ORDERED.

Testimony of relative of accused against him

HIRD DIVISION

[G.R. No. 131357. April 12, 2000]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee,* *vs.* ERNESTO GARCHITORENA, *accused-appellant.*

D E C I S I O N

PANGANIBAN, *J.*:

In resolving the sole issue raised by appellant, the Court relies on the time-tested doctrine that the trial court's assessment of the credibility of witnesses should be upheld, if it is not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence which, if considered, would materially affect the result of the case.

The Case

Filed before this Court is an appeal by Ernesto Garchitorena, who seeks reversal of the September 30, 1997 Decision[1] of the Regional Trial Court of Valenzuela, Metro Manila (Branch 171) in Criminal Case No. 5510-V-96. The Decision found him guilty of rape and sentenced him to *reclusion perpetua*.

In an Information[2] dated May 6, 1996, Assistant City Prosecutor Eriberto A. Aricheta charged appellant with rape by means of force and intimidation. The Information reads as follows:

"That on or about February 18, 1996 in Valenzuela, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation employed upon the person of one JENNIFER ACOSTA y ALEJO, did then and there wilfully, unlawfully and feloniously have sexual intercourse with the said JENNIFER ACOSTA y ALEJO, against her will and without her consent."

Upon his arraignment, appellant pleaded not guilty. Trial proceeded in due course. Thereafter, the court *a quo* rendered the assailed Decision, the dispositive portion of which reads:

"WHEREFORE, finding accused Ernesto Garchitorena y Medina [g]uilty beyond reasonable doubt, he is hereby sentenced to suffer the penalty of [r]eclusion [p]erpetua and to pay the costs.

"Accused is likewise sentenced to indemnify the offended party the sum of ₱50,000.00."[3]

The Facts

Version of the Prosecution

In its Brief,[4] the Office of the Solicitor General[5] presents the following narration of the facts:

"Jennifer Acosta was nineteen (19) years old at the time she testified in court in 1996. Appellant is her step grandfather, being the live-in partner of her paternal grandmother Rosalina Acosta. Rosalina is separated from her husband. Rosalina and appellant took Jennifer to their custody when the latter was only two (2) years old and until Jennifer was about ten (10) or eleven (11) years old. During that period, however, Jennifer would reside alternately in her grandmother and appellant's house at No. 1078 Sta. Monica Subdivision, Ugong, Valenzuela, Metro Manila and her parents' house at # 2007 La Mesa St., Ugong, Valenzuela. Rosalina and appellant's house is about two hundred (200) steps away, or about five (5) minutes walk [from] Jennifer's parents' house.

"Jennifer was ten (10) or eleven (11) years old when she resided permanently at her parents['] x x x house. But Jennifer would still go to her grandmother's house when she would call for her. Sometimes appellant would fetch Jennifer from her parents' house pretending that her grandmother needed her. If Jennifer would refuse to go with appellant, Clarita would scold her. When she was ten (10) years old, Jennifer noticed that appellant treated her differently, such as placing her on his lap, kissing her on the neck or on the cheeks and touching her private parts. Jennifer calls appellant Daddy because her grandmother told her to address appellant as such. According to Jennifer, appellant started raping her when she reached the age of ten (10), but she could no longer remember how many times appellant raped her. The rapes were committed not only in her grandmother's house but also in her parents' house. She did not tell anyone about the rapes committed by appellant against her because he threatened to kill her, her grandmother and sister should she (Jennifer) do so.

"On February 18, 1996, a Sunday, Jennifer was at the chapel until 11:00 a.m. Thereafter she went home [to] her parents' house and had lunch with her parents and sister. Around 1:00 p.m., she went to her grandmother's house. When she arrived at her grandmother's house, appellant and her grandmother were eating lunch at the kitchen. Since Jennifer had eaten her lunch, she took a little food at her grandmother's house. The kitchen was at the back of the store owned by her grandmother and outside the house. After eating, Jennifer went to the sala of the house and lay down on the sofa while appellant left and her grandmother went to the store. The sala was about twenty (20) to twenty-five (25) meters away from the store. The sofa where Jennifer had [lain] down [on] was beside a window. When one opens the door of the house, one would immediately see the sofa. When Jennifer was lying on the sofa, her head was towards the door, so she could not see the door. She had slept for less than an hour when she was awakened by a kiss planted by appellant on her right cheek. Jennifer was then wearing a T-shirt and a garterized short pants while appellant was wearing a T-shirt and pants. She could no longer remember whether appellant wore long or short pants. When Jennifer opened her eyes, she saw appellant on her right side and she uttered 'Daddy'. She attempted to stand up, but appellant's right hand held her left hand and appellant kissed her on the lips. Jennifer could not do anything but cry. She could not shout because she was afraid of him. Then, with his right hand, appellant touched her breasts. Thereupon, appellant raised her T-shirt and her bra with his right hand and alternately kissed and touched her exposed breasts. While appellant was doing all these to her, she constantly pleaded with him to stop, but her plea was useless. Thereafter, appellant pulled down her garterized short pants and panty. When her panty was removed, appellant touched her vagina with his right hand and inserted a finger into her vagina. At this point, Jennifer closed her eyes and when she opened them she saw appellant removing his brief. Appellant then placed himself on top of her and masturbated with his right hand. As appellant was on top of her, he kissed her. Jennifer was repelled by that ('nadidiri ako sa kanya'). Then appellant inserted his penis into her vagina. Suddenly, Jennifer's grandmother called out to appellant. Appellant stood up, hurriedly fixed himself up and told Jennifer not to leave because he would come back. But as soon as appellant left, Jennifer fixed herself up and went home.

"When Jennifer arrived at her parent's house, she tried to act normally. But her mother asked why she was frowning and she told

her mother that she had a headache. Her mother became suspicious. Then on March 30, 1996, her mother asked her if she had a problem. Jennifer did not answer until her mother slapped her. Then Jennifer told her mother *'Nanay, hirap na hirap na ako'* and told her mother that appellant was molesting her. Her mother said, *'napakawalanghiya niya'.*

"Dr. Noel Minay, a [m]edico-[l]egal [o]fficer of the National Bureau of Investigation, Manila conducted a physical examination on Jennifer on April 2, 1996. Dr. Minay testified that there was no physical injury on the body of Jennifer, but he found an old healed hymenal laceration at [the] 6 o'clock position. His examination revealed that Jennifer was no longer physically [a] virgin."[6]

Version of the Defense

In his Brief,[7] appellant did not present his version of the facts, but merely stated that Witnesses Rogelio and Rosalinda Acosta both testified that complainant had gone to his residence several times after the date when the alleged rape took place, and that there was thus no indication that the relationship between him and complainant was strained or abnormal.

Ruling of the Trial Court

After examining the evidence presented by both the prosecution and the defense, as well as the demeanor of the witnesses of both sides, the trial court concluded that the prosecution's account was more credible.

The trial court accorded full faith to the victim's narration of the incident which occurred on February 18, 1996. It observed that a girl of tender age would not willingly falsify a rape charge. Her lack of sufficient discretion and judgment, as well as the threats to her life and the lives of her sister and her grandmother, prevented her from resisting appellant's advances, thus enabling him to perpetrate the crime. The trial court also noted the findings of the medicolegal officer, which lent support to the fact that rape had been committed against the victim.

Hence, this appeal.[8]

Assignment of Errors

In his Brief, appellant interposes this lone assignment of error:

"The trial court erred in convicting the accused on the basis of the incredible and conflicting statements of the complainant and despite the positive testimony in favor of the accused."[9]

The Court's Ruling

The appeal is devoid of merit.

Solitary Issue:

Credibility of the Witness

Appellant contends that the trial court misapplied the doctrine that a girl of *tender* age would not disclose that she was raped if it were not true, arguing that complainant herein was already 19 years old at the time of the rape. He also contends that her actions of going back to his house and even eating with him after the supposed rape showed that it did not take place. Lastly, he argues that her Appellant contends that the trial court misapplied the doctrine that a girl of *tender* age would not disclose that she was raped if it were not true, arguing that complainant herein was already 19 years old. He further contends that her testimony should not be believed because it contained many inconsistencies.

The contentions of appellant are incorrect. He was convicted on the basis of the victim's testimony which the trial court deemed to be a true and honest narration of the events that occurred on that fateful day. During direct examination, Jennifer clearly testified as to how she had been raped by her grandfather, herein appellant. We quote hereunder the pertinent portion of her testimony:

"FISCAL RAZON: (To the witness)
Q.....Now, when he arrived, what happened?
A.....He kissed me.
Q.....Where were you kissed?
A.....[On] my cheeks.
Q.....And after you were kissed, what happened?
A.....I was awakened. When I was about to stand up, he held my hands.
Q.....And after holding your hands, what happened?
A.....Then he again kissed me.
Q.....Where were you kissed the second time?
A.....[On] my lips.
Q.....And after you were kissed on the lips, what did the accused do?
A.....He touched my breast.
Q.....By the way, how were you attired at that time?
A.....I was wearing shorts and T-shirt.
Q.....What about your bra, were you then wearing bra?
A.....Yes, sir.
Q.....Now you stated that the accused touched your breast, what happened after that?
A.....While he was kissing me, he was holding my breast.
Q.....[Which hand] of the accused was touching your breast?
A.....Right hand.
Q.....What about his left hand, what was his left hand doing?
A.....His left hand was holding my hands.
Q.....After your breast [was] touched, what happened?
A.....When he stopped touching my breast, he pulled up my T-shirt.
Q.....And after your T-shirt was pulled up, what happened?
A.....Then he pulled up my bra.
Q.....And after he pulled your bra, what did he do next?
A.....He kissed my breast.
Q.....And after kissing your breast, what did he do?
A.....After cooling down, he pulled down my shorts.

Q.....And after pulling down your shorts, what did he do?
A.....He removed my panty.
Q.....And after he removed your panty, what did he do?
A.....He touched my vagina.
Q.....And after touching your vagina, what did he do next?
A.....He inserted his finger.
Q.....And after he inserted his finger into your vagina, what did he do next, if any?
A.....He contin[u]ously inserted his finger.
Q.....And how was he attired at that time?
A.....He was wearing [pants].
Q.....And what was your position while this thing was being done to your person?
A.....I was lying down, face up.
Q.....And after he repeatedly inserted his finger into your vagina, what did he do next?
A.....Then he released me and unbuttoned his pants.
Q.....And after he unbuttoned his pants, what did he do?
A.....He put [out] his private part.
Q.....And after that, what did he do?
A.....He kissed me and went back to me, and placed himself on top of me.
x x x.....x x x.....x x x
Q.....When he placed himself on top of you, what did he do to you?
A.....While he was kissing me, he was holding his penis and he was masturbating.
Q.....After he had masturbated, what did he do, if any?
A.....He inserted his penis into my vagina.
Q.....Now, a while ago, you stated that he unbuttoned his pants, and brought out his penis[;] how far was he from you?
A.....He was just beside me.
Q.....When he inserted his penis into your vagina, what was your feeling?
A.....It was painful."[10]

True, the statement of the complainant that she was ravished in the sala conflicted with that of Rogelio Acosta who, testifying for the defense, claimed that he was watching television in the same place at that time. After hearing the testimonies of both parties, however, the trial court attached greater weight and credence to the testimony of the victim, Jennifer Acosta. This Court finds no compelling reason to reverse or alter its holding. It is a time-tested doctrine that a trial court's assessment of the credibility of a witness is entitled to great weight and is even conclusive and binding, if it is not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence.[11]

Furthermore, the trial court found no motive for complainant to testify falsely against appellant who was a close relative. In *People v. Tidula*, this Court stated that a witness' testimony against a blood relative is given great weight, if it is not found to have been motivated by any ill will. The Court held:

"A witness' testimony is accorded great weight, particularly when his or her accusation is directed against a close relative. For one to prosecute a blood relative -- especially when, as in this case, no ill or evil motive is shown -- goes beyond logic and normal human experience."[12]

Appellant insists that Jennifer fabricated the rape charge, because she had felt that her grandparents were too strict with her and her suitors. This allegation does not hold water, because no proof was ever offered to substantiate it. Moreover, one does not fabricate so serious a charge as rape simply because one's grandparents are strict, especially in this case wherein complainant was not even living with them but only visited them from time to time. In any event, her testimony is corroborated by the findings of the NBI medicolegal officer,[13] who found an old healed laceration in her sexual organ after conducting a genital inspection.

In insisting that the trial court erred in finding that Jennifer did not resist, appellant is not correct either. In rape cases, the force applied need not be irresistible.[14] It merely has to be enough to successfully carry out the assailant's carnal desire. In the present case, appellant did apply sufficient force and intimidation to consummate his lustful desire.

During her testimony, Jennifer stated that appellant held her hands while kissing her. Also, she explained that she did not shout or ask for help because she was afraid, and that he threatened to kill her grandmother and her sister. She testified as follows:

"Q.....Why did you not shout and ask for help from anybody?
A.....I was afraid of him.
Q.....Why were you afraid?
A.....Because when he was doing that thing to me, when he was raping me, he told me that he [would] kill my grandmother and my sister.
Q.....And after the penis was inserted into your vagina. what happened?
A.....When his penis was already inside my vagina, my grandmother shouted, calling him.
Q.....You stated a while ago that your grandmother was inside?
A.....Inside the store.
Q.....How come that she was able to call on your grandfather[?]
A.....Because the store was just outside x x x the house.
Q.....How far was it [from] the house of your grandmother?
A.....More or less ten (10) meters away."[15]

Lastly, appellant's argument that complainant would not have returned to his house if the rape had really occurred can also be easily dispensed with. She was reported to have been to appellant's house after February 18, 1996, but prior to March 30, 1996. However, she told her mother about the rape only on the latter date because she had at first been reluctant to talk about it out of either fear or humiliation. Thus, prior to March 30, 1996, complainant had to pretend that everything was normal. Not going to appellant's house which she was known to have frequented could have caused suspicion that something was amiss.

It can be seen from her testimony, however, that she did not go to that house on the mentioned dates without anyone accompanying

her. She testified thus:

"Q.....[On w]hat other dates [did] you [see] Jennifer Acosta at the house of your mother?
A.....On March 22, 1997 x x x my brother arrived from abroad[;] the next day March 23, 1996 Jennifer Acosta went to our house.
Q.....And who were the companion[s] of Jennifer Acosta when she arrived at the house of your mother on March 23, if any?
A.....She was accompanied by her father and her mother.
Q.....Who else?
A.....And he[r] sister.
Q.....After March 23 was there any occasion [on which] Jennifer Acost[a] went to the house of your mother?
A.....From March 23 to March 29, 1996 they came to our [house] to play domino.
Q.....And who was her companion at the time she returned on March 24 to March 29?
A.....Her younger sister."[16]

The trial court correctly awarded the amount of ₱50,000 by way of civil indemnity, which was mandatory upon the finding of the fact of rape.[17] This Court likewise awards an additional sum of₱50,000 by way of moral damages. The fact that complainant has suffered trauma which constitutes the basis for moral damages is too obvious to still require the victim's recital thereof at the trial.[18]

WHEREFORE, the appeal is hereby DENIED and the Decision of the Regional Trial Court AFFIRMED, with the modification that appellant is ordered to pay the victim the amount of ₱50,000 as moral damages, in addition to the trial court's grant of ₱50,000 as indemnity *ex delicto*. Costs against appellant.

SO ORDERED.

Testimony of relative of victim

SECOND DIVISION

[G.R. No. 130667. February 22, 2000]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, *vs.* ILDEFONSO VIRTUCIO JR. alias "*Gaga*," *accused-appellant*.

D E C I S I O N

An Information was filed on 8 April 1996 charging Ildefonso Virtucio, Jr. with murder for the death of Alejandro Briones. To this day however the accused professes innocence.

The conviction of the accused was based on the following evidence of the prosecution: At around ten o'clock in the evening of 31 March 1996 Alejandro Briones was standing outside his store in Mambaling, Cebu City. He was watching his neighbors play "chikicha," a card game. Suddenly appearing from nowhere accused Ildefonso Virtucio Jr. approached the store muttering, "*Ako nasay andar karon kay duna koy tawo nga nalagutan nga nagpa-raid nako sa shabu.*"[1] The accused then took out his gun and fired downwards. Then without any provocation the accused aimed his gun at the head of Alejandro Briones; the gun did not fire. Alejandro stood up and parried off the firearm. He asked Virtucio, "*Unsa man, Ga?*" In answer, Virtucio fired his gun and this time Alejandro was hit on his stomach. Virtucio fired another shot hitting Alejandro on his right forearm. Wounded and bleeding from his wounds, Alejandro tried to run but Virtucio finished him off with a fatal shot on the head which sent the victim falling to the ground.

Betty Briones, wife of Alejandro, was in their store. She was just one and a half (1 1/2) meters away from her husband when shot. She saw the startling occurrence as did their 12-year old son "*Aly Boy*" who was playing outside the store.

With the help of their neighbors Alejandro was taken to the Cebu City Medical Center where he died two (2) days later. Proximate cause of his death, according to his examining physician, was "cardiopulmonary arrest secondary to pulmonary embolism with possible myocardial infraction and fulminating sepsis secondary to multiple gunshot wounds.[2] For his hospitalization and medical attendance, the Brioneses incurred expenses in the amount of ₱57,000.00.

Accused Virtucio interposed alibi for his defense. He alleged that as early as eleven o'clock in the morning of 31 March 1996 he was already on his way to Tabuelan, Cebu, together with his business partner, Pablo Cuer, to await the arrival of seashells from Escalante, Negros Occidental. They arrived in Tabuelan at around four-thirty in the afternoon. He stayed in the house of Cuer until 2 April 1996 since the seashells did not arrive on the expected date. During his stay in Tabuelan he shared the same room with Cuer leaving the latter's wife to sleep in another room.

On 2 April 1996 police authorities from the Tabuelan Police Station went to the Cuer residence and invited the accused to their headquarters where he was subsequently detained. He came to know that he was implicated in the killing of Alejandro Briones only on 3 April 1996. He could not think of any reason why Betty and "*Aly Boy*" Briones would implicate him in the crime. In fact, the Brioneses were his neighbors for three (3) years and they had maintained good relationship throughout those years. He admitted though that one (1) month before the killing, the house of his common-law wife's parents was raided for shabu; however, he never blamed anyone for the incident.

Pablo Cuer corroborated the testimony of Virtucio. He said that once in Tabuelan, Cebu, the accused never left their house as they even shared the same room, while his wife slept in another room. On 1 April 1996 they woke up at four-thirty in the morning and proceeded to the wharf to wait for the seashells from Escalante, Negros Occidental. Since the seashells failed to arrive as scheduled Virtucio had to stay with the Cuers for another night. In the afternoon of the following day, 2 April 1996, Policeman Alfredo Arellano invited Virtucio to the police station where he was

subsequently detained. According to Cuer, he did not bother to give Virtucio some food while detained because he (Cuer) returned to the wharf to get the seashells.

Fe Tesoro, mother of the common-law wife of the accused, testified that she asked the accused to go in her stead to Tabuelan in the company of Pablo on 31 March 1996. So, Virtucio and Cuer left Cebu City at about ten o'clock in the morning. The Tesoros likewise went to Tabuelan that same evening using their old Tamaraw vehicle. They arrived at the house of the Cuers at around eleven o'clock in the evening. Fe Tesoro allegedly told the accused to go home as soon as the seashells were available, afterwhich the Tesoros returned to Cebu City arriving there at midnight. Fe denied knowing that her neighbor Alejandro Briones was shot at the time she left for Tabuelan, Cebu. She insisted that she only knew about the shooting of Alejandro the following day. As to the fact that Virtucio was a suspect, she testified that she learned about it only on 2 April 1996 when the police authorities fetched him from Tabuelan, Cebu.

On 21 October 1996 the Regional Trial Court of Cebu City found Virtucio guilty of murder and sentenced him to suffer the penalty of *reclusion perpetua* and to indemnify the heirs of Alejandro Briones the amount of ₱50,000.00. The court *a quo* disregarded the alibi of the accused in view of his positive identification by the prosecution witnesses as the author of the crime. Besides, he miserably failed to prove that it was physically impossible for him to have been at the crime scene at the time it was committed.

The trial court found that evident premeditation and treachery qualified the killing to murder. The court below ratiocinated that evident premeditation was present considering that the accused had harbored a grudge against the victim, the latter being suspected of instigating the raid in the house of his common-law wife's mother. The court *a quo* concluded, in addition, that the killing was treacherous as it was done in a sudden and unexpected manner, leaving the victim in no position to effectively defend himself.

Accused-appellant is now before us impugning the testimonies of the victim's widow and son for allegedly being "biased and polluted." He suggests that their testimonies be considered fabricated as they were too harmonious with nary a hint of inconsistency in their narration of facts.

In resolving the issue of credibility of witnesses, we must yield to the oft-repeated rule that the trial court's evaluation of the testimony of a witness is accorded the highest respect because of its direct opportunity to observe the witnesses on the stand and to determine if they are telling the truth or not.[3] Lacking any ground in questioning the discretion of the trial court, we consider its ruling on the credibility of the witnesses as settled.

The witnesses' relationship to the victim does not automatically affect the veracity of their testimonies. No legal provision disqualifies relatives of the victim of a crime from testifying if they are competent. That the prosecution's eyewitnesses were the widow and son of the deceased, without more, is not reason enough to disregard and label their testimonies as biased and unworthy of credence. Plainly, relationship did not affect their credibility.[4] This Court is well aware that not too infrequently crimes are committed with just the relatives of the victim as witnesses.[5]

On the same note, the testimony of "*Aly Boy*" should not be discarded simply because he was a mere child when he testified. A child is only disqualified if it can be shown that his mental maturity renders him incapable of perceiving the facts respecting which he is being examined and of relating them truthfully.[6] Once it is established that he understands or discerns the nature and character of an oath, full faith and credit should be given to his testimony. The narration of "*Aly Boy*" was vivid and full of details, stemming only from a recollection of what actually took place and not from a concocted story impressed upon him by his mother, as insinuated by accused-appellant.

The prosecution witnesses positively identified accused-appellant as the author of the crime. Faced with this positive identification, he could only offer the defense of denial and alibi. Denials, as negative and self-serving evidence, do not deserve as much weight in law as a positive and affirmative testimony.[7] Alibi as a defense has an inverse relation to positive identification. It is regarded as the weakest and most unreliable of all defenses especially in the light of clear and positive identification of the accused by the prosecution witnesses against whom no motive to falsely testify against the accused can be imputed. Alibi can only prosper by indubitably proving that the accused was somewhere else when the crime was committed, and that he could not have been physically present at the *locus criminis* or its immediate vicinity at the time of its commission; physical impossibility, in other words, of being in two (2) places at the same time.[8]

Accused-appellant's defense that he was in Tabuelan, Cebu, when Briones was killed does not persuade. The sequence of events is much too doubtful to be believed. His nonchalance upon being invited by the police strikes us as unusual. His subsequent detention minus any vehement objection also baffles this Court. Paradoxically, he claims innocence yet he has shown no signs of it. His contention that his business partner Pablo Cuer fetched him contradicted Cuer's and Tesoro's testimony that he was asked to accompany Cuer. Plainly, his alibi is riddled with inconsistencies.

The trial court, however, erred in appreciating the qualifying circumstance of evident premeditation. The court below concluded that accused-appellant must have planned the killing considering that he harbored a grudge against the deceased for quite some time. This basis falls short of the requirement that the element of evident premeditation must, like the crime itself, be proved beyond reasonable doubt. There is evident premeditation when the following are satisfactorily proved: (a) the time when the appellant decided to commit the crime; (b) an overt act showing that the appellant clung to his determination to commit the crime; and, (c) the lapse of sufficient period of time between the decision and the execution of the crime, to allow the appellant to reflect upon the

consequences of the act.[9] Other than the fact that accused-appellant had the motive to kill the victim, the prosecution in the instant case miserably failed to establish that he plotted the killing of Briones and that he had sufficient time to ponder over his plan. Notably, the proof of motive is no longer necessary in view of the positive identification of accused-appellant as the assailant.

On the other hand, the court *a quo* properly appreciated the qualifying circumstance of treachery. The essence of treachery is the sudden and unexpected attack without the slightest provocation on the part of the person attacked. There is treachery when the attack on the victim was made without giving the latter warning of any kind and thus rendering him unable to defend himself from an assailant's unexpected attack. While a victim may have been warned of a possible danger to his person, in treachery, what is decisive is that the attack was executed in such a manner as to make it impossible for the victim to retaliate.[10] In the case before us, the deceased was totally unaware of the impending attack to his person. He was just standing outside their store watching some neighbors play cards. Accused-appellant suddenly sprang from nowhere and without any provocation from the victim, shot him at close range. The deceased was unarmed and defenseless when he was killed in cold blood.

The trial court failed to award actual damages to the heirs of the victim despite the testimony of the widow that they incurred ₱57,000.00 for hospital and burial expenses. However, upon examination of the records, we find that only ₱9,000.00 of the total ₱57,000.00 was sufficiently and competently proved. Hence, the heirs of the deceased are entitled to an award of ₱9,000.00 as actual damages. On the other hand, the trial court properly awarded ₱50,000.00 as civil indemnity without need of further proof other than the death of the victim.

WHEREFORE, the Decision of the Regional Trial Court of Cebu City finding accused-appellant ILDEFONSO VIRTUCIO JR. alias "*Gagd*" guilty of murder and sentencing him to suffer the penalty of *reclusion perpetua* and to indemnify the heirs of Alejandro Briones the amount of ₱50,000.00 as civil indemnity is AFFIRMED with the MODIFICATION that accused-appellant is additionally ordered to pay the heirs of the deceased ₱9,000.00 as actual damages. Costs against accused-appellant.

SO ORDERED.

DISQUALIFICATIONS OF WITNESSES (MIM DIP)

- Mental incapacity or immaturity.
- Marriage (Marital Disqualification Rule)
- Death or Insanity. (Dead Man's Statute and claim v. insane)
- Privilege (MAP PP)

Section 21. *Disqualification by reason of mental incapacity or immaturity*. ? The following persons cannot be witnesses:

(a) Those whose mental condition, at the time of their production for examination, is such that they are incapable of intelligently making known their perception to others;

(b) Children whose mental maturity is such as to render them incapable of perceiving the facts respecting which they are examined and of relating them truthfully. (19a)

Section 22. *Disqualification by reason of marriage*. ? During their marriage, neither the husband nor the wife may testify for or against the other without the consent of the affected spouse, except in a civil case by one against the other, or in a criminal case for a crime committed by one against the other or the latter's direct descendants or ascendants. (20a)

Section 23. *Disqualification by reason of death or insanity of adverse party*. ? Parties or assignor of parties to a case, or persons in whose behalf a case is prosecuted, against an executor or administrator or other representative of a deceased person, or against a person of unsound mind, upon a claim or demand against the estate of such deceased person or against such person of unsound mind, cannot testify as to any matter of fact occurring before the death of such deceased person or before such person became of unsound mind. (20a)

Section 24. *Disqualification by reason of privileged communication*. ? The following persons cannot testify as to matters learned in confidence in the following cases:

(a) The husband or the wife, during or after the marriage, cannot be examined without the consent of the other as to any communication received in confidence by

one from the other during the marriage except in a civil case by one against the other, or in a criminal case for a crime committed by one against the other or the latter's direct descendants or ascendants;

(b) An attorney cannot, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon in the course of, or with a view to, professional employment, nor can an attorney's secretary, stenographer, or clerk be examined, without the consent of the client and his employer, concerning any fact the knowledge of which has been acquired in such capacity;

(c) A person authorized to practice medicine, surgery or obstetrics cannot in a civil case, without the consent of the patient, be examined as to any advice or treatment given by him or any information which he may have acquired in attending such patient in a professional capacity, which information was necessary to enable him to act in capacity, and which would blacken the reputation of the patient;

(d) A minister or priest cannot, without the consent of the person making the confession, be examined as to any confession made to or any advice given by him in his professional character in the course of discipline enjoined by the church to which the minister or priest belongs;

(e) A public officer cannot be examined during his term of office or afterwards, as to communications made to him in official confidence, when the court finds that the public interest would suffer by the disclosure. (21a)

Disqualifications of Witnesses
(1) Absolute disqualification:
(a) Those who cannot perceive (Sec. 20);
(b) Those who can perceive but cannot make their perception known (Sec. 20);
(c) Mentally incapacity – Those whose mental condition, at the time of their production for examination, is such that they are incapable of intelligently making known their perception to others (Sec. 21);
(d) Mentally immaturity – Children whose mental maturity is such as to render them incapable of perceiving the facts respecting which they are examined and of relating them truthfully (Sec. 21);
(e) Marital disqualification – During their marriage, neither the husband nor the wife may testify for or against the other without the consent of the affected spouse, except in a civil case by one against the other, or in a criminal case for a crime committed by one against the other or the latter's direct descendants or ascendants (Sec. 22).
(f) Parental and filial privilege -- No person may be compelled to testify against his parents, other direct ascendants, children or other direct descendants (Sec. 25).

(2) Relative disqualification:
(a) Dead Man's Statute – Parties or assignors of parties to a case, or persons in whose behalf a case is prosecuted, against an executor or administrator or other representative of a deceased person, or against a person of unsound mind, upon a claim or demand against the estate of such deceased person or against such person of unsound mind, cannot testify as to any matter of fact occurring before the death of such deceased person or before such person became of unsound mind (Sec. 23).
(b) Disqualification by reason of privileged communication (Sec. 24):
1. The husband or the wife, during or after the marriage, cannot be examined without the consent of the other as to any communication received in confidence by one from the other during the marriage except in a civil case by one against the other, or in a criminal case for a crime committed by one against the other or the latter's direct descendants or ascendants;
2. An attorney cannot, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon in the course of, or with a view to, professional employment, nor can an attorney's secretary, stenographer, or clerk be examined, without the consent of the client and his employer, concerning any fact the knowledge of which has been acquired in such capacity;
3. A person authorized to practice medicine, surgery or obstetrics cannot in a civil case, without the consent of the patient, be examined as to any advice or treatment given by him or any information which he may have acquired in attending such patient in a professional capacity, which information was necessary to enable him to act in that capacity, and which would blacken the reputation of the patient;
4. A minister or priest cannot, without the consent of the person making the confession, be examined as to any confession made to or any advice given by him in his professional character in the course of discipline enjoined by the church to which the minister or priest belongs;
5. A public officer cannot be examined during his term of office or afterwards, as to communications made to him in official confidence, when the court finds that the public interest would suffer by the disclosure.
(c) Newsman's privilege -- Without prejudice to his liability under the civil and criminal laws, the publisher, editor, columnist or duly accredited reporter of any newspaper, magazine or periodical of general circulation cannot be compelled to reveal the source of any news-report or information appearing in said publication which was related in confidence to such publisher, editor or reporter unless the court or a House or committee of Congress finds that such revelation is demanded by the security of the State (RA 1477);
(d) Bank deposits -- All deposits of whatever nature with banks or banking institutions in the Philippines including investments in bonds issued by the Government of the Philippines, its political subdivisions and its instrumentalities, are hereby considered as of an absolutely confidential nature and may not be examined, inquired or looked into by any person, government official, bureau or office, except upon written permission of the depositor, or in cases of impeachment, or upon order of a competent court in cases of bribery or dereliction of duty of public officials, or in cases where the money deposited or invested is the subject matter of the litigation (RA 1405).
(e) Sanctity of the ballot – voters may not be compelled to disclose for whom they voted.
(f) Trade secrets.
(g) Information contained in tax returns (RA 2070, as amended by RA 2212).

Disqualification by reason of mental capacity or immaturity
(1) The following persons cannot be witnesses:

(a) Those whose mental condition, at the time of their production for examination, is such that they are incapable of intelligently making known their perception to others;
(b) Children whose mental maturity is such as to render them incapable of perceiving the facts respecting which they are examined and of relating them truthfully (Sec. 21).
(2) Regardless of the nature or cause of mental disability, the test of competency to testify is as to whether the individual has sufficient understanding to appreciate the nature and obligation of an oath and sufficient capacity to observe and describe correctly the facts in regard to which he is called to testify.
(3) Basic requirements of a child's competency as a witness:
(a) Capacity of observation;
(b) Capacity of recollection;
(c) Capacity of communication.

In ascertaining whether a child is of sufficient intelligence according to the foregoing requirements, it is settled rule that the trial court is called upon to make such determination (People vs. Mendoza, 68 SCAD 552, 02/22/96).
b. Disqualification by reason of marriage (spousal immunity)
(1) During their marriage, neither the husband nor the wife may testify for or against the other without the consent of the affected spouse, except in a civil case by one against the other, or in a criminal case for a crime committed by one against the other or the latter's direct descendants or ascendants (Se. 22).
(2) The spouses must be legally married to each other to invoke the benefit of the rule; it does not cover an illicit relationship (People vs. Francisco, 78 Phil. 694). When the marriage is dissolved on the grounds provided for by law like annulment or declaration of nullity, the rule can no longer be invoked. A spouse can already testify against the other despite an objection being interposed by the affected spouse. If the testimony for or against the other spouse is offered during the existence of the marriage, it does not matter if the facts subject of the testimony occurred before the marriage. It only matters that the affected spouse objects to the offer of testimony.
(3) The testimony covered by the marital disqualification rule not only consists of utterances but also the production of documents (State vs. Bramlet, 114 SC 389).

Disqualification by reason of death or insanity of adverse party (Survivorship or Dead Man's Statute)
(1) This rule applies only to a civil case or a special proceeding. The following are the elements for the application of the rule:
(a) The plaintiff is the person who has a claim against the estate of the decedent or person of unsound mind;
(b) The defendant in the case is the executor or administrator or a representative of the deceased or the person of unsound mind;
(c) The suit is upon a claim by the plaintiff against the estate of said deceased or person of unsound mind;
(d) The witness is the plaintiff, or an assignor of that party, or a person in whose behalf the case is prosecuted; and
(e) The subject of the testimony is as to any matter of fact occurring before the death (ante litem motam) of such deceased person or before such person became of unsound mind (Sec. 23).

Disqualification by Reason of Privileged Communications between Husband and Wife
(1) The husband or the wife, during or after the marriage, cannot be examined without the consent of the other as to any communication received in confidence by one from the other during the marriage except in a civil case by one against the other, or in a criminal case for a crime committed by one against the other or the latter's direct descendants or ascendants (Sec. 24).
(2) The application of the rule requires the presence of the following elements:

(a) There must be a valid marriage between the husband and the wife;
(b) There is a communication made in confidence by one to the other; and
(c) The confidential communication must have been made during the marriage.
Marital Disqualification (Sec. 22)

Marital Disqualification (sec. 22)	Marital Privilege (Sec. 24)
Can be invoked only if one of the spouses is a party to the action;	Can be claimed whether or not the spouse is a party to the action;
Applies only if the marriage is existing at the time the testimony is offered;	Can be claimed even after the marriage has been dissolved;
Ceases upon the death or either spouse;	Continues even after the termination of the marriage;
Constitutes a total prohibition against any testimony for or against the spouse of the witness;	Applies only to confidential communications between the spouses.
The prohibition is a testimony for or against the other.	The prohibition is the examination of a spouse as to matters related in confidence to the other spouse.

Mental Incapacity

Republic of the Philippines
SUPREME COURT
Manila

THIRD DIVISION

G.R. No. 145225 **April 2, 2004**

PEOPLE OF THE PHILIPPINES, appellee,
vs.
SALVADOR GOLIMLIM @ "BADONG", appellants.

DECISION

On appeal is the Decision[1] of June 9, 2000 of the Regional Trial Court of Sorsogon, Sorsogon, Branch 65 in Criminal Case No. 241, finding appellant Salvador Golimlim alias "Badong" guilty beyond reasonable doubt of rape, imposing on him the penalty of *reclusion perpetua,* and holding him civilly liable in the amount of ₱50,000.00 as indemnity, and ₱50,000.00 as moral damages.

The Information dated April 16, 1997 filed against appellant reads as follows:

> That sometime in the month of August, 1996, at Barangay Bical, Municipality of Bulan, Province of Sorsogon, Philippines and within the jurisdiction of this Honorable Court the above-named accused, armed with a bladed weapon, by means of violence and intimidation, did then and there, wilfully, unlawfully and feloniously, have carnal knowledge of one Evelyn Canchela against her will and without her consent, to her damage and prejudice.
>
> Contrary to law.[2]

Upon arraignment on December 15, 1997,[3] appellant, duly assisted by counsel, pleaded not guilty to the offense charged.

The facts established by the prosecution are as follows:

> Private complainant Evelyn G. Canchela (Evelyn), is a mental retardate. When her mother, Amparo Hachero, left for Singapore on May 2, 1996 to work as a domestic helper, she entrusted Evelyn to the care and custody of her (Amparo's) sister Jovita Guban and her husband Salvador Golimlim, herein appellant, at Barangay Bical, Bulan, Sorsogon.[4]

Sometime in August 1996, Jovita left the conjugal residence to meet a

certain Rosing,[5] leaving Evelyn with appellant. Taking advantage of the situation, appellant instructed private complainant to sleep,[6] and soon after she had laid down, he kissed her and took off her clothes.[7] As he poked at her an object which to Evelyn felt like a knife,[8] he proceeded to insert his penis into her vagina.[9] His lust satisfied, appellant fell asleep.

When Jovita arrived, Evelyn told her about what appellant did to her. Jovita, however, did not believe her and in fact she scolded her.[10]

Sometime in December of the same year, Lorna Hachero, Evelyn's half-sister, received a letter from their mother Amparo instructing her to fetch Evelyn from Sorsogon and allow her to stay in Novaliches, Quezon City where she (Lorna) resided. Dutifully, Lorna immediately repaired to appellant's home in Bical, and brought Evelyn with her to Manila.

A week after she brought Evelyn to stay with her, Lorna suspected that her sister was pregnant as she noticed her growing belly. She thereupon brought her to a doctor at the Pascual General Hospital at Baeza, Novaliches, Quezon City for check-up and ultrasound examination.

Lorna's suspicions were confirmed as the examinations revealed that Evelyn was indeed pregnant.[11] She thus asked her sister how she became pregnant, to which Evelyn replied that appellant had sexual intercourse with her while holding a knife.[12]

In February of 1997, the sisters left for Bulan, Sorsogon for the purpose of filing a criminal complaint against appellant. The police in Bulan, however, advised them to first have Evelyn examined. Obliging, the two repaired on February 24, 1997 to the Municipal Health Office of Bulan, Sorsogon where Evelyn was examined by Dr. Estrella Payoyo.[13] The Medico-legal Report revealed the following findings, quoted *verbatim*:

> FINDINGS: LMP [last menstrual period]: Aug. 96 ?
>
> Abd [abdomen]: 7 months AOG [age of gestation]
>
> FHT [fetal heart tone]: 148/min
>
> Presentation: Cephalic
>
> Hymen: old laceration at 3, 5, 7, & 11 o'clock position[14]

On the same day, the sisters went back to the Investigation Section of the Bulan Municipal Police Station before which they executed their sworn statements.[15]

On February 27, 1997, Evelyn, assisted by Lorna, filed a criminal complaint for rape[16] against appellant before the Municipal Trial Court of Bulan, Sorsogon, docketed as Criminal Case No. 6272.

In the meantime or on May 7, 1997, Evelyn gave birth to a girl, Joana Canchela, at Guruyan, Juban, Sorsogon.[17]

Appellant, on being confronted with the accusation, simply said that it is not true "[b]ecause her mind is not normal,"[18] she having "mentioned many other names of men who ha[d] sexual intercourse with her."[19]

Finding for the prosecution, the trial court, by the present appealed Decision, convicted appellant as charged. The dispositive portion of the decision reads:

> WHEREFORE, premises considered, accused Salvador Golimlim having been found guilty of the crime of RAPE (Art. 335 R.P.C. as amended by RA 7659) beyond reasonable doubt is hereby sentenced to suffer the penalty of RECLUSION PERPETUA, and to indemnify the offended party Evelyn Canchela in the amount of P50,000.00 as indemnity and another P50,000.00 as moral damage[s], and to pay the costs.
>
> SO ORDERED.[20]

Hence, the present appeal, appellant assigning to the trial court the following errors:

> I. THE COURT A QUO GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE CONTRADICTORY AND IMPLAUSIBLE TESTIMONY OF EVELYN CANCHELA, A MENTAL RETARDATE, [AND]
>
> II. THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIME CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.[21]

Appellant argues that Evelyn's testimony is not categorical and is replete with contradictions, thus engendering grave doubts as to his criminal culpability.

In giving credence to Evelyn's testimony and finding against appellant, the trial court made the following observations, quoted *verbatim*:

> 1) Despite her weak and dull mental state the victim was consistent in her claim that her Papay Badong (accused Salvador Golimlim) had carnal knowledge of her and was the author of her pregnancy, and nobody else (See: For comparison her Sworn Statement on p. 3/Record; her narration in the Psychiatric Report on pp. 47 & 48/Record; the TSNs of her testimony in open court);
>
> 2) She remains consistent that her Papay Badong raped her only once;
>
> 3) That the contradictory statements she made in open court relative to the details of how she was raped, although would seem derogatory to her credibility and reliability as a witness under normal conditions, were amply explained by the psychiatrist who examined her and supported by her findings (See: Exhibits F to F-2);
>
> 4) Despite her claim that several persons laid on top of her (which is still subject to question considering that the victim could not elaborate on its meaning), the lucid fact remains that she never pointed to anybody else as the author of her pregnancy, but her Papay Badong. Which only shows that the trauma that was created in her mind by the incident has remained printed in her memory despite her weak mental state. Furthermore, granting for the sake of argument that other men also laid on top of her, this does not deviate from the fact that her Papay Badong (the accused) had sexual intercourse with her.[22]

The trial judge's assessment of the credibility of witnesses' testimonies is, as has repeatedly been held by this Court, accorded great respect on appeal in the absence of grave abuse of discretion on its part, it having had the advantage of actually examining both real and testimonial evidence including the demeanor of the witnesses.[23]

In the present case, no cogent reason can be appreciated to warrant a departure from the findings of the trial court with respect to the assessment of Evelyn's testimony.

That Evelyn is a mental retardate does not disqualify her as a witness nor render her testimony bereft of truth.

Sections 20 and 21 of Rule 130 of the Revised Rules of Court provide:

> SEC. 20. *Witnesses; their qualifications*. – Except as provided in the next succeeding section, all persons who can perceive, and perceiving, can make known their perception to others, may be witnesses.
>
> SEC. 21. *Disqualification by reason of mental incapacity or immaturity.* – The following persons cannot be witnesses:
>
> (a) Those whose mental condition, at the time of their production for examination, is such that they are incapable of intelligently making known their perception to others;
>
> (b) Children whose mental maturity is such as to render them incapable of perceiving the facts respecting which they are examined and of relating them truthfully.

In *People v. Trelles*,[24] where the trial court relied heavily on the therein mentally retarded private complainant's testimony irregardless of her "monosyllabic responses and vacillations between lucidity and ambiguity," this Court held:

> A mental retardate or a feebleminded person is not, *per se*, disqualified from being a witness, her mental condition not being a vitiation of her credibility. It is now universally accepted that intellectual weakness, no matter what form it assumes, is not a valid objection to the competency of a witness so long as the latter can still give a fairly intelligent and reasonable narrative of the matter testified to.[25]

It can not then be gainsaid that a mental retardate can be a witness, depending on his or her ability to relate what he or she knows.[26] If his or her testimony is coherent, the same is admissible in court.[27]

To be sure, modern rules on evidence have downgraded mental incapacity as a ground to disqualify a witness. As observed by McCormick, the remedy of excluding such a witness who may be the only person available who knows the facts, seems inept and primitive. Our rules follow the modern trend of evidence.[28]

Thus, in a long line of cases,[29] this Court has upheld the conviction of the accused based mainly on statements given in court by the victim who was a mental retardate.

From a meticulous scrutiny of the records of this case, there is no reason to doubt Evelyn's credibility. To be sure, her testimony is not without discrepancies, given of course her feeblemindedness.

By the account of Dr. Chona Cuyos-Belmonte, Medical Specialist II at the Psychiatric Department of the Bicol Medical Center, who examined Evelyn, although Evelyn was suffering from moderate mental retardation with an IQ of 46,[30] she is capable of perceiving and relating events which happened to her. Thus the doctor testified:

> Q: So do you try to impress that although she answers in general terms it does not necessarily mean that she might be inventing answers – only that she could not go to the specific details because of dullness?
>
> A: I don't think she was inventing her answer because I conducted mental status examination for three (3) times and I tried to see the consistency in the narration but very poor (sic) in giving details.
>
> x x x
>
> Q: May we know what she related to you?
>
> A: She related to me that she was raped by her uncle 'Tatay Badong'. What she mentioned was that, and I quote: 'hinila ang panty ko, pinasok ang pisot at bayag niya sa pipi ko'. She would laugh inappropriately after telling me that particular incident. I also tried to ask her regarding the dates, the time of the incident, but she could not really…. I tried to elicit those important things, but the patient had a hard time remembering those dates.

Q: But considering that you have evaluated her mentally, gave her I.Q. test, in your honest opinion, do you believe that this narration by the patient to you about the rape is reliable?
A: Yes, sir.
Q: Why do you consider that reliable?

> A: Being a (sic) moderately retarded, I have noticed the spontaneity of her answers during the time of the testing. She was not even hesitating when she told me she was raped once at home by her Tatay Badong; and she was laughing when she told me about how it was done on (sic) her. So, although she may be inappropriate but (sic) she was spontaneous, she was consistent.
>
> Q: Now, I would like to relate to you an incident that happened in this Court for you to give us your expert opinion. I tried to present the victim in this case to testify. While she testified that she was raped by her uncle Badong, when asked about the details, thereof, she would not make (sic) the detail. She only answered 'wala' (no). I ask this question because somehow this seems related to your previous evaluation that while she gave an answer, she gave no detail. Now, I was thinking because I am a man and I was the one asking and the Judge is a man also. And while the mother would say that she would relate to her and she related to you, can you explain to us why when she was presented in court that occurrence, that event happened?
>
> A: There are a lot of possible answers to that question; one, is the court's atmosphere itself. This may have brought a little anxiety on the part of the patient and this inhibits her from relating some of the details relative to the incident-in-question. When I conducted my interview with the patient, there were only

two (2) of us in the room. I normally do not ask this question during the first session with the patient because these are emotionally leading questions, and I do not expect the patient to be very trusting. So, I usually ask this type of questions during the later part of my examination to make her relax during my evaluation. So in this way, she will be more cooperative with me. I don't think that this kind of atmosphere within the courtroom with some people around, this could have inhibited the patient from answering questions.

Q: What if the victim is being coached or led by someone else, will she be able to answer the questions?

A: Yes, she may be able to answer the questions, but you would notice the inconsistency of the answers because what we normally do is that we present the questions in different ways, and we expect the same answer. This is how we try to evaluate the patient. If the person, especially a retarded, is being coached by somebody, the answers will no longer be consistent.

Q: You also mentioned a while ago that the answers given by the patient, taken all in all, were consistent?

A: Yes, sir.[31] (Underscoring supplied)

As noted in the above-quoted testimony of Dr. Belmonte, Evelyn could give spontaneous and consistent answers to the same but differently framed questions under conditions which do not inhibit her from answering. It could have been in this light that Evelyn was able to relate in court, upon examination by a female government prosecutor and the exclusion of the public from the proceedings, on Dr. Belmonte's suggestion,[32] how, as quoted below, she was raped and that it was appellant who did it:

Q: Lorna Hachero testified before this Court that you gave birth to a baby girl named Johanna, is this true?

A: (The witness nods, yes.)

Q: Who is the father of Johanna?
A: Papay Badong
Q: Who is this Papay Badong that you are referring to?
A: The husband of Mamay Bita.
Q: Is he here in court?
A: He is here.
Q: Please look around and point him to us.
A: (The witness pointing to the lone man sitting in the first row of the gallery wearing a regular prison orange t-shirt who gave his name as Salvador Golimlim when asked.)
Q: Why were you able to say that it is Papay Badong who is the father of your child Johanna?
A: Because then I was left at Mamay Bita's house, although I am not there now.
Q: And that house where you were left is also the house of your Papay Badong?
A: Yes ma'am.
Q: What did Salvador Golimlim or your Papay Badong do to you that's why you were able to say that he is the father of your child?
A: I was undressed by him.
x x x
Q: What did you do after you were undressed?
A: I was scolded by the wife, Mamay Bita.
Q: I am referring to that very moment when you were undressed. Immediately after your Papay Badong undressed you, what did you do?
x x x
A: He laid on top of me.
Q: What was your position when he laid on top of you?
A: I was lying down.
Q: Then after he went on top of you, what did he do there?
A: He made (sic) sexual intercourse with me.
Q: When you said he had a (sic) sexual intercourse with you, what did he do exactly?
A: He kissed me.
Q: Where?
A: On the cheeks (witness motioning indicating her cheeks).
Q: What else did he do? Please describe before this Honorable Court the sexual intercourse which you are referring to which the accused did to you.
A: 'Initoy' and he slept after that.
(to Court)
Nevertheless, may we request that the local term for sexual intercourse, the word 'Initoy' which was used by the witness be put on the record, and we request judicial notice of the fact that 'initoy' is the local term for sexual intercourse.
x x x
Q: What did you feel when your Papay Badong had sexual intercourse with you?
A: I felt a knife; it was like a knife.
Q: Where did you feel that knife?
A: I forgot.
Q: Why did you allow your Papay Badong to have sexual intercourse with you?
A: I will not consent to it.
x x x
Q: Did you like what he did to you?
A: I do not want it.
Q: But why did it happen?
A: I was forced to.
x x x
Q: Did you feel anything when he inserted into your vagina when your Papay Badong laid on top of you?
A: His sexual organ/penis.
Q: How did you know that it was the penis of your Papay Badong that was entered into your vagina?
A: It was put on top of me.
Q: Did it enter your vagina?
A: Yes, Your Honor.
x x x
Q: Madam Witness, is it true that your Papay Badong inserted his penis into your vagina or sexual organ during that time that he was on top of you?
A: (The witness nods, yes.)[33] (Underscoring supplied)

Appellant's bare denial is not only an inherently weak defense. It is not supported by clear and convincing evidence. It cannot thus prevail over the positive declaration of Evelyn who convincingly identified him as her rapist.[34]

In convicting appellant under Article 335 of the Revised Penal Code, as amended by Republic Act 7659 (the law in force when the crime was committed in 1996), the trial court did not specify under which mode the crime was committed. Under the said article, rape is committed thus:

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

1. By using force or intimidation;

2. When the woman is deprived of reason or otherwise unconscious; and

3. When the woman is under twelve years of age or is demented.

The crime of rape shall be punished by *reclusion perpetua*.

Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* or death.

It is settled that sexual intercourse with a woman who is a mental retardate constitutes statutory rape which does not require proof that the accused used force or intimidation in having carnal knowledge of the victim for conviction.[35] The fact of Evelyn's mental retardation was not, however, alleged in the Information and, therefore, cannot be the basis for conviction. Such notwithstanding, that force and intimidation attended the commission of the crime, the mode of commission alleged in the Information, was adequately proven. It bears stating herein that the mental faculties of a retardate being different from those of a normal person, the degree of force needed to overwhelm him or her is less. Hence, a quantum of force which may not suffice when the victim is a normal person, may be more than enough when employed against an imbecile.[36]

Still under the above-quoted provision of Art. 335 of the Rev ised Penal Code, when the crime of rape is committed with the use of a deadly weapon, the penalty shall be *reclusion perpetua* to death. In the case at bar, however, although there is adequate evidence showing that appellant indeed used force and intimidation, that is not the case with respect to the use of a deadly weapon.

WHEREFORE, the assailed Decision of the Regional Trial Court of Sorsogon, Sorsogon, Branch 65 in Criminal Case No. 241 finding appellant, Salvador Golimlim alias "Badong," GUILTY beyond reasonable doubt of rape, which this Court finds to have been committed under paragraph 1, Article 335 of the Revised Penal Code, and holding him civilly liable therefor, is hereby AFFIRMED.

Costs against appellant.
SO ORDERED.
Vitug, Sandoval-Gutierrez, and Corona, JJ., concur.

DISQUALIFICATION BY REASON OF MARRIAGE

The testimony covered by the marital disqualification rule not only consists of utterances but also the production of documents.

The spouses must be legally married to each other to invoke the benefit of the rule; it does not cover an illicit relationship.

When the marriage is dissolved on the grounds provided for by law like annulment or declaration of nullity, the rule can no longer be invoked. A spouse can already testify against the other despite an objection being interposed by the affected spouse. If the testimony for or against the other spouse is offered during the existence of the marriage, it does not matter if the facts subject of the testimony occurred before the marriage. It only matters that the affected spouse objects to the offer of testimony.

Q: What is purpose of this disqualification?
A: The rule forbidding one spouse to testify for or against the other is based on principles which are deemed important to preserve the marriage relation as one of full confidence and affection, and that this is regarded as more important to the public welfare than that the exigencies of the lawsuits should authorize domestic peace to be disregarded for the sake of ferreting out facts within the knowledge of strangers.

Q: Gizelle was estranged from her husband Mico for more than a year. Gizelle was temporarily living with her sister in Pasig City. For unknown reasons, the house of Ivy's sister was burned, killing the latter. Gizelle survived.
Gizelle saw her Mico in the vicinity during the incident. Later, Mico was charged with arson. During the trial, the prosecutor called Gizelle to the witness stand and offered her testimony to prove that her husband committed arson. Can Gizelle testify over the objection of her husband on the ground of marital privilege?

A: Yes. The marital disqualification rule is aimed at protecting the harmony and confidences of marital relations. Hence, where the marital and domestic relations are so strained that there is no more harmony to be preserved nor peace and tranquillity which may be disturbed, the marital disqualification no longer applies.
The act of Mico in setting fire to the house of his sister-in-law, knowing that his wife was there, is an act totally alien to the harmony and confidences of marital relation which the disqualification primarily seeks to protect. The criminal act complained of had the effect of directly and vitally impairing the conjugal relation. *(Alvarez v. Ramirez, G.R. No. 143439, Oct. 14, 2005).*

by: Meo J. Mallorca (culled from UP, Ateneo, San Beda, UST, FEU Notes)