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of ₱50,000 as indemnity *ex delicto* and another ₱50,000 as moral damages for each rape. Costs against appellant.

SO ORDERED.

Melo (Chairman), Sandoval-Gutierrez, JJ., concur.

Vitug, J., on official leave.

SECOND DIVISION

[A.M. No. P-01-1474. October 26, 2001]

JUDGE ANTONIO C. REYES, Regional Trial Court, Branch 61, Baguio City, *complainant, vs.* **JOSEFINA F. DELIM, Stenographer III, Regional Trial Court, Branch 61, Baguio City,** *respondent.*

SYNOPSIS

Respondent stenographer was charged with insubordination, gross dishonesty and gross negligence for the loss of 11 pages of stenographic notes in the hearing held in a special proceedings concerning an estate of considerable amount and leaking confidential informations to a party. Respondent admitted having brought home the subject stenographic notes, but claimed that she wanted to expedite their transcription. She, however, kept from her superiors that she lost it and misled them when she told them that she was transcribing the notes. She later recovered the notes and transcribed the same. Respondent was preventively suspended by complainant. In the investigation of the case, complainant, who had earlier manifested that respondent has shown remorse and since then conducted herself in an exemplary manner, did not appear. Thus, the Investigating judge failed to determine the veracity of complainant's allegation on the leakage of confidential information to a party, but found respondent guilty of violation of Rule 136, Sections 16 and 17 of the Rules of Court, and recommended that

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respondent be deemed to have served the penalty of thirty (30) days in view of her suspension by complainant.

Under Sections 16 and 17 of Rule 136 of the Rules of Court, no record from the clerk's office shall be taken without an order of the court except as otherwise provided by the Rules, and that stenographic notes must be attached to the record of the case. Violation of these rules, as manifested by respondent's actuation, constitutes gross negligence and conduct prejudicial to the best interest of the service.

Preventive suspension is not a penalty or punishment for misconduct in office but considered a preventive measure. Thus, the imposable penalty of suspension for thirty (30) days must be served by respondent. Further, only this Court is given by the Constitution the exclusive power over the discipline of lower court judges and court personnel. Respondent was imposed a suspension from office for six (6) months without pay.

SYLLABUS

1. **JUDICIAL ETHICS; JUDGES; WITHDRAWING COMPLAINT AFTER CHARGING RESPONDENT OF SELLING INFORMATION TO A PARTY CONSTITUTES LOSS OF ZEAL.**— Complainant accuses respondent, aside from taking out the notes, of having leaked information to some of the parties in the case, thus enabling them to escape before orders issued by him could be served on them, and also of receiving money from them. It is, therefore, a source of disappointment to the Court that complainant later chose to withdraw his complaint on the convenient excuse that respondent had shown remorse and had since conducted herself in an exemplary manner. It is not fair even to respondent that so serious a charge as selling confidential information to a party should remain in the record without a finding as to its veracity. In withdrawing his complaint on this note, complainant acted both as prosecutor and as judge. It is not for him to say, however, that respondent should not be proceeded against because she has since mended her ways and the one-month preventive suspension she had undergone should be considered full satisfaction of any penalty that should be imposed on her, for having taken notes home and losing them. For this reason, the Court must express its dismay at this loss of zeal by complainant Judge Antonio C. Reyes.

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2. **REMEDIAL LAW; EVIDENCE; COURT RECORDS; BRINGING HOME STENOGRAPHIC NOTES CONSTITUTES GROSS NEGLIGENCE AND CONDUCT PREJUDICIAL TO THE BEST INTEREST OF SERVICE.**— So that leaves only the charge that respondent violated Rule 136, § 14 which provides that "No record shall be taken from the clerk's office without an order of the court except as otherwise provided by these rules." Rule 136, §17 provides that stenographic notes must be attached to the record of the case. This means that being part of the record of the case, their transcription can only be done in the office. Respondent knew that she was not allowed to take home stenographic notes, yet she did so on the dubious claim that she wanted to help expedite their transcription because of the "speedy trial" policy of the court. WHEREFORE, for gross negligence and conduct prejudicial to the best interest of the service, respondent Josefina F. Delim, Stenographer III, Regional Trial Court, Branch 51, Baguio City, is hereby SUSPENDED from office for six (6) months without pay and WARNED that the commission of the same or similar acts shall be dealt with more severely. This suspension shall take effect immediately upon the receipt of a copy of this decision which the Office of the Court Administrator shall cause to be personally served on respondent.

3. **ADMINISTRATIVE LAW; CIVIL SERVICE LAW; PREVENTIVE SUSPENSION, NOT A PUNISHMENT.**— In this case, the Investigating Judge recommends a penalty of suspension for thirty (30) days and that the one-month penalty imposed by the complainant judge be deemed sufficient service of this penalty. The recommendation is untenable. Respondent's suspension was preventive in nature as Judge Reyes made clear in the letter to the Court Administrator. Rule XIV, §24 of the Omnibus Rules Implementing the Civil Service Law provides that "Preventive suspension is not a punishment or penalty for misconduct in office but is considered to be a preventive measure." Moreover, only this Court is given by the Constitution the exclusive power over the discipline of lower court judges and court personnel.

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DECISION

MENDOZA, *J.:*

This is an administrative complaint,[1] dated January 4, 2000, filed by Judge Antonio C. Reyes of the Regional Trial Court, Branch 61, Baguio City against Josefina F. Delim, Stenographer III of the same court, for insubordination, gross dishonesty, and gross negligence for the loss of stenographic notes taken by her in a case.

Respondent was the stenographer on duty in the hearing held on November 11, 1999 in Special Proceedings No. 704-R, entitled "*In the Matter of the Estate of the Deceased Spouses Gelacio J. Munsayac and Vicenta F. Munsayac.*" In his complaint, Judge Reyes alleged that on November 15, 1999, he directed respondent Josefina F. Delim to transcribe her notes immediately considering the importance of the testimony of the witnesses presented at the hearing. However, it was alleged, although respondent promised to deliver the transcript to complainant soon, she never did so. Instead, in the evening of November 22, 1999, respondent went to see complainant and reported to the latter that she had lost her notes in the Munsayac case.

It was further alleged that the next day, November 23, 1999, complainant learned from the branch clerk of court, Atty. Mayflor Heo, that respondent had not reported the loss of the stenographic notes and that on the same day, respondent wrote a letter to the branch clerk of court, explaining that she was unable to transcribe her notes because she had left them in a taxi which she had taken going to her boarding house. Despite reports of the loss made over the radio, she failed to recover her notes.[2]

As a result of the incident, respondent was asked by complainant to show cause within 48 hours why no disciplinary action should be taken against her.[3]

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[1] *Rollo*, pp. 2-6.

[2] Exh. 1; *id.*, p. 7.

[3] Exh. 2; *id.*, p. 8.

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In compliance with the judge's order, respondent submitted an affidavit[4] in which she claimed that she found the taxi where she had left her notes and that she had recovered them.

Complainant expressed skepticism "that the stenographic notes have suddenly been found." He suspected that the notes had been given to one of the parties in the case. He cited instances in which orders issued by him apparently had been leaked to the petitioners in the case because: (1) despite a freeze order, dated February 23, 1999, issued by him, petitioners Lily Munsayac-Sunga and Grace Munsayac-De Villa were able to remove jewelry from their safety deposit box in Allied Bank on February 24, 1999; (2) despite his order, dated September 29, 1999, for the arrest of petitioner Grace Munsayac-De Villa, the latter was able to evade arrest and go into hiding; and (3) despite his order, dated November 23, 1999, for the arrest of the petitioners in the case, the latter were able to escape in the early morning of November 24, 1999. Complainant alleged he saw respondent at Atty. Heo's desk, while the latter was not around, reading the November 23, 1999 arrest order "with unusual interest." Complainant likewise claimed he had been told by a stenographer, Mila Aranda, that once, between November 11 and 24, 1999, respondent alighted from the taxi they were riding in front of the office of the petitioners' counsel and that he was then carrying with her the tape recorder used in recording the proceedings in that case. Complainant further alleged that he had been told by Dean Galo Reyes of the St. Louis University College of Law, one of the counsels in the Munsayac case, that respondent borrowed ₱10,000.00 from him.

On the basis of the foregoing allegations, complainant sought the dismissal of respondent and her disqualification from employment in the government in the future. In the meantime, he prayed that respondent be suspended from her work.

In a letter,[5] dated January 5, 2000, complainant informed the Court Administrator that he had suspended respondent for one month without pay "in view of the sensitive position that she holds" in relation to the gravity of the charges.

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[4] Exh. 3; *id.*, pp. 9-11.

[5] *Rollo*, p. 1.

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However, on November 22, 2000, complainant had a change of heart, although not a change of mind. He filed a "Manifestation to Withdraw Administrative Complaint,"[6] alleging that since the filing of the complaint in this case, respondent had shown exemplary conduct and conscientiousness in her work; that he was reconsidering the charges he had filed against her "in the spirit of understanding the plight of the rank and file employees of the court during these difficult times"; and that he believed the 30-day suspension he had imposed on respondent was sufficient penalty for her offense.

Just the same, this Court decided to investigate the charges against respondent. On March 21, 2001, the Court redocketed the complaint in this case as a regular administrative matter, required respondent to comment on the complaint against her, and referred the case to Executive Judge Nelsonida Ulat- Marrero of the Regional Trial Court, La Trinidad, Benguet for report and recommendation.[7]

Respondent submitted the explanation, dated November 23, 1999, she had submitted to Atty. Heo, her affidavit, and the affidavits of Florencio Tamayo,[8] the owner of the taxi in which respondent allegedly left her stenographic notes, and Rogelio Lucena,[9] the driver of the taxi.

In her affidavit, respondent said that on November 11, 1999, she and a friend, Liza Palangdao, hired a Highlander taxi to take them home at the Health Center Compound, T. Alonzo Street; that it was only when she was already home that she realized that the big brown envelope containing the stenographic notes which she had taken earlier that day in Special Proceedings No. 704-R was missing; that she appealed for help in recovering the brown envelope from Bombo Radyo and her churchmates who were taxi drivers; that on November 24, 1999, Liza Palangdao told her that

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[6] *Id.*, pp. 16-17.

[7] *Id.*, p. 22.

[8] Exh. 4; *Rollo*, pp. 12-13.

[9] Exh. 5; *id.*, p. 14. The second page of Rogelio Lucena's affidavit was not numbered.

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she saw the FX taxi they rode in on November 11, 1999 and was able to jot down its plate number (AYC 601); that she traced the taxi to its registered owner, a certain Mrs. Alanzalon, who informed her that she had already sold the taxi to a Marie Tamayo, wife of police Sgt. Florencio Tamayo; that on November 26, 1999, she went to Sgt. Tamayo's address at Lower Brookside and was told that Rogelio Lucena, his driver, had found the brown envelope; and that on November 27, 1999, the envelope which contained the stenographic notes was finally returned to her by Lucena.

The affidavits of Tamayo and his driver, Rogelio Lucena, corroborated respondent's.

For his part, complainant stated in a Manifestation that for the reasons given in his earlier motion to withdraw his complaint, he "feels no necessity in testifying in this case."[10] Indeed, in the scheduled hearing in the case on August 9, 2001, complainant judge did not appear. Nonetheless, Executive Judge Ulat-Marrero proceeded with her investigation.

First to take the witness stand was Atty. Mayflor Heo, the Branch Clerk of Court. She testified that the day after the November 11, 1999 hearing in the Munsayac case, she told respondent to hurry the transcription of stenographic notes as Judge Reyes needed it in resolving a motion filed in the case. After several days, however, respondent told her that she had lost her notes. Later, according to Atty. Heo, respondent told her that she was able to recover the notes which she gave to her (Atty. Heo). Atty. Heo admitted that it was her duty as branch clerk of court to see to it that the stenographic notes were attached to the record of the case. However, she claimed she was not able to do this because the hearing on November 11, 1999 lasted quite late, until 5:00 p.m., and she knew that respondent was not supposed to take the notes home, especially because respondent assured her that she was "working" on her notes.[11]

Anent complainant's arrest order, dated November 23, 1999, Atty. Heo said that the same was not confidential because Judge

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[10] *Rollo*, pp. 42-43.

[11] TSN, pp. 2-3, 8-9, Aug. 9, 2001; *Rollo*, pp. 66-67, 72-73.

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Reyes usually left his order on her (Atty. Heo's) desk. She said that although she knew that the persons to be arrested had been alerted before the order could be carried out, she did not confront respondent because she did not see respondent actually reading the order.[12]

Milagros Aranda is also a stenographer in the RTC, Branch 61, Baguio City. She testified that when Judge Reyes informed her of the loss of the stenographic notes, she volunteered the information that respondent might have lost the notes in a taxi which she and complainant had taken on November 12, 2001, the day after the hearing in that case. Aranda said that on that day, respondent got off on Session Road in front of the Greenwich Pizza restaurant, near the Laperal Building where Atty. Emiliano Gayo, counsel for the petitioners in the Munsayac case, held office.[13]

Respondent Josefina Delim testified in her behalf. She testified that she took home the stenographic notes because the court was observing speedy trial in all cases and that this was not the only instance when she took her notes home. She said she knew that stenographers are not allowed to take their notes home and that Judge Reyes was unaware that she was doing this. Respondent said she could not remember going home together with Milagros Aranda and getting off on Session Road because she often got off near the Sunshine Grocery to take the jeep going to the Health Center Compound on T. Alonzo Street.[14] Respondent claimed that she had no malicious intention in taking the stenographic notes home as her only purpose was to expedite their transcription.

The Investigating Judge held that because Judge Reyes failed to appear during the investigation, his allegations that respondent had leaked confidential information to the petitioners in the Munsayac case and that she borrowed money from a counsel in the case could not be determined. Nonetheless, the Investigating Judge found respondent guilty of violation of Rule 136, §§14 and

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[12] *Id.*, pp. 4-5, 9-10; *id.*, pp. 68-69, 73-74.

[13] *Id.*, pp. 12-14; *id.*, pp. 76-78.

[14] *Id.*, pp. 17-21; *id.*, pp. 81-85.

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17 of the Rules of Court in taking home with her stenographic notes which should have been attached to the record of the Munsayac case.

The pertinent provisions of Rule 136 read:

SEC. 14. *Taking of record from the clerk's office.* — No record shall be taken from the clerk's office without an order of the court except as otherwise provided by these rules. However, the Solicitor General or any of his assistants, the provincial fiscal or his deputy, and the attorneys *de oficio* shall be permitted, upon proper receipt, to withdraw from the clerk's office the record of any cases in which they are interested.

SEC. 17. *Stenographer.* — It shall be the duty of the stenographer who has attended a session of a court either in the morning or in the afternoon, to deliver to the clerk of court, immediately at the close of such morning or afternoon session, all the notes he has taken, to be attached to the record of the case; and it shall likewise be the duty of the clerk to demand that the stenographer comply with said duty. The clerk of court shall stamp the date on which such notes are received by him. When such notes are transcribed the transcript shall be delivered to the clerk, duly initialed on each page thereof, to be attached to the record of the case.

Whenever requested by a party, any statement made by a judge of first instance, or by a commissioner, with reference to a case being tried by him, or to any of the parties therefor, or to any witness or attorney, during the hearing of such case, shall be made of record in the stenographic notes.

The Investigating Judge held that respondent also misled her superiors when she told them she was transcribing the notes when the fact was that the same had been lost. Accordingly, she found respondent guilty of gross neglect of duty, grave misconduct or conduct prejudicial to the best interest of the service, gross negligence or infidelity in the custody of stenographic notes, and dishonesty warranting a penalty of suspension of thirty (30) days. However, the Investigating Judge recommended that respondent be deemed to have served this penalty in view of respondent's suspension by Judge Reyes. In making this recommendation, the Investigating Judge said that because respondent's violations "do not involve separate and distinct acts but arose from a single

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wrongful act (taking out of stenographic notes without court order)" and taking into account Judge Reyes' observation that respondent had been a conscientious employee for the past months, respondent had been sufficiently punished.

From the allegations in his complaint, it is clear that complainant feels that this case involves more than respondent simply taking out without permission stenographic notes taken by her in a case which apparently concerns an estate of considerable worth. In his own words, it involves the betrayal of an "institution which she had undertaken to serve with utmost fidelity in accordance with her oath of office."[15] Complainant accuses respondent, aside from taking out the notes, of having leaked information to some of the parties in the case, thus enabling them to escape before orders issued by him could be served on them, and also of receiving money from them. It is, therefore, a source of disappointment to the Court that complainant later chose to withdraw his complaint on the convenient excuse that respondent had shown remorse and had since conducted herself in an exemplary manner. It is not fair even to respondent that so serious a charge as selling confidential information to a party should remain in the record without a finding as to its veracity. In withdrawing his complaint on this note, complainant acted both as prosecutor and as judge. It is not for him to say, however, that respondent should not be proceeded against because she has since mended her ways and the one-month preventive suspension she had undergone should be considered full satisfaction of any penalty that should be imposed on her, for having taken notes home and losing them. For this reason, the Court must express its dismay at this loss of zeal by complainant Judge Antonio C. Reyes.

The Court is therefore left no choice but to simply consider what the record of this case shows. We cannot even hold respondent liable for her failure to attach the notes to the record of the Munsayac case immediately after the hearing on November 11, 1999 as required by Rule 136, §17 in view of the Administrative Circular No. 24-90, promulgated on July 12, 1990, which, by

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[15] Complaint, p. 4; *Rollo*, p. 5.

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directing stenographers "to transcribe all stenographic notes and to attach the transcripts to the record of the case not later than twenty (20) days from the time the notes are taken," in effect gives them 20 days within which to deliver the transcribed notes to the clerk of court.[16]

So that leaves only the charge that respondent violated Rule 136, § 14 which provides that "No record shall be taken from the clerk's office without an order of the court except as otherwise provided by these rules." Rule 136, §17 provides that stenographic notes must be attached to the record of the case. This means that being part of the record of the case,[17] their transcription can only be done in the office.[18]

Respondent knew that she was not allowed to take home stenographic notes, yet she did so on the dubious claim that she wanted to help expedite their transcription because of the "speedy trial" policy of the court. One wonders at her zeal when the untranscribed notes consisted of only 11 pages and by respondent's admission took only an hour to do. The shakiness of her explanation is evident in the following excerpt from her testimony:

[INVESTIGATING JUDGE NELSONIDA T. ULAT-MARRERO]:

Q Miss Delim if it takes you one hour to transcribe an 11-page stenographic notes, why did you have to bring home the stenographic notes if you knew that it will only take you an hour to transcribe it?

A Because in the afternoon most of the time we are typing the orders on the cases we have already in the morning and in the afternoon we do typing for the orders.

Q Were you also the stenographer on duty on the next day?

A Ma'am I cannot just remember because there was a time that we had our schedule the whole week but this time we are having it every other day.

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[16] *Esmeralda-Baroy v. Cosca*, 245 SCRA 227 (1995).

[17] *Alivia v. Nieto*, 251 SCRA 62 (1995).

[18] *Esmeralda-Baroy v. Cosca*, 245 SCRA 227 (1995).

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Q On that particular week? November 11?
A Ma'am I cannot remember if I am the [stenographer on] duty again the following day. And there was a time that since we are four stenographers in the office there was a time that I will be on duty for the whole week and the others for the following week.

Q When did that start, when did that schedule start?
A Ma'am I forgot.

Q Did it start in 1999?
A I cannot remember.

Q Atty. Heo, how is the scheduling of the stenographers?

ATTY. HEO:
There was once before, weekly.

Q In 1999?
A I cannot remember. When I found out that it was difficult for them to be on duty the whole week so we change it every other day, or daily rotation.

Q When did you find out that it was difficult for them to be on duty the whole week?
A I cannot remember but I think she was not the [stenographer on] duty the next day.

COURT:

So she was not the stenographer on duty the following day?
A Yes, ma'am.

Q Ms. Delim, you said that it only took you one hour to transcribe the eleven-page stenographic notes, I ask you again why did you have to bring home the stenographic notes when you know very well that you are not supposed to bring home stenographic notes and you have the next day to transcribe?
A Because as I have said ma'am we are having our speedy trial and I want it to finish the following morning.

Q You can finish it the first hour in the morning. Because you said it is only eleven pages and you said you were able to finish it in one hour.
A Ma'am I just have that desire to finish it immediately so I brought it home.[19]

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[19] TSN, pp. 20-21, Aug. 9, 2001; *Rollo*, pp. 78-84.

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Belying her ostensible desire to help in the speedy resolution of the case, it took respondent 12 days after the alleged loss of her notes before finally informing the branch clerk of court of the same. Her failure to inform the branch clerk of court sooner, let alone her apparent effort to conceal her inability to have her transcript forthwith available, only raises suspicion that her explanation was not entirely true.

Even if respondent's claim were taken at face value, she would still be liable for gross negligence. In *Alivia v. Nieto*,[20] a court stenographer took her notes with her and lost them. Like respondent in this case, the stenographer claimed that she only wanted to be able to immediately transcribe the stenographic notes. Instead, according to her, she accidentally left her bag containing the notes in a tricycle which she took on the way to the office. The stenographer was suspended for six months without pay. Respondent should likewise be suspended for the same period without pay.

In this case, the Investigating Judge recommends a penalty of suspension for thirty (30) days and that the one-month penalty imposed by the complainant judge be deemed sufficient service of this penalty. The recommendation is untenable. Respondent's suspension was preventive in nature as Judge Reyes made clear in the letter to the Court Administrator. Rule XIV, §24 of the Omnibus Rules Implementing the Civil Service Law provides that "Preventive suspension is not a punishment or penalty for misconduct in office but is considered to be a preventive measure." Moreover, only this Court is given by the Constitution the exclusive power over the discipline of lower court judges and court personnel.[21]

WHEREFORE, for gross negligence and conduct prejudicial to the best interest of the service, respondent Josefina F. Delim, Stenographer III, Regional Trial Court, Branch 51, Baguio City,

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[20] 251 SCRA 62 (1995).

[21] CONST. Art. VIII, §6; (Minute Res.) A.M. No. P-01-1473, *Benitez v. Acosta*, July 3, 2001; *Rivera v. Bellosillo*, A.M. No. MTJ-00-1316, Sept. 28, 2000.

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is hereby SUSPENDED from office for six (6) months without pay and WARNED that the commission of the same or similar acts shall be dealt with more severely. This suspension shall take effect immediately upon the receipt of a copy of this decision which the Office of the Court Administrator shall cause to be personally served on respondent.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 120548. October 26, 2001]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOSELITO ESCARDA, JOSE VILLACASTIN JR., HERNANI ALEGRE, and RODOLFO CAÑEDO,** *accused.* **JOSE VILLACASTIN, JR.,** *accused-appellant.*

SYNOPSIS

Appellant, with three (3) other accused, was charged with Anti-Cattle Rustling Law under P.D. 533. Appellant pleaded not guilty and interposed the defenses of denial and alibi claiming that he was 15 minutes away from the scene of the crime. Evidence disclosed that the accused cut through the cyclone wire fence to gain entrance into the corral and took away the two carabaos therefrom. Dionesio Himaya positively identified appellant, a nephew of his wife, as one of the malefactors. The trial court rendered judgment finding appellant guilty as charged. It appreciated the aggravating circumstances of nighttime, recidivism and unlawful entry without any mitigating circumstance. It appeared from the record that appellant was earlier convicted for cattle rustling but no evidence was shown that conviction was