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Case No. 1736-B is ***REINSTATED*** and the trial judge is directed to proceed therewith and immediately issue a warrant of arrest against accused Emmanuel Navarro.

Considering that Criminal Cases Nos. 1799-B and 1802-B are still pending trial with the Regional Trial Court (Branch 29), Bislig City, the Clerk of Court of this Court is directed to cause the return of the original records thereof with immediate dispatch to the said trial court for further proceedings.

Atty. Domingo P. de Castro, Clerk of Court of the Regional Trial Court (Branch 29), Bislig City is required to show cause, within ten (10) days from receipt of copy of herein decision why he should not be cited for contempt of court and administratively charged in elevating the original records of Criminal Cases Nos. 1799-B and 1802-B without proper authority, thereby unduly delaying the trial of said cases which are not involved in the present petition which concerns accused Navarro only.

SO ORDERED.

Bellosillo (Chairman), Mendoza, Quisumbing, and *Callejo, Sr., JJ.*, concur.

EN BANC

[G.R. Nos. 130714 and 139634. December 27, 2002]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DONEL GO and VAL DE LOS REYES,** *accused.* **DONEL GO,** *accused-appellant.*

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[G.R. Nos. 139331 and 140845-46. December 27, 2002]

PEOPLE OF THE PHILIPPINES, *plaintiff appellee, vs.* **VAL DE LOS REYES,** *accused-appellant.*

SYNOPSIS

Accused-appellants Go and de los Reyes were charged before the Regional Trial Court (RTC) of Tabaco, Albay with two and three counts of rape, respectively, all committed against Imelda Brutas. Only accused-appellant Go was initially apprehended; de los Reyes remained at large. Subsequently, Branch 16 of the RTC of Tabaco, Albay found appellant Go guilty beyond reasonable doubt of two counts of rape and sentenced him to suffer the death penalty for each count. Hence, the automatic review of the cases against appellant Go.

Appellant de los Reyes was later apprehended, hence, Branch 16 of the RTC of Tabaco, Albay ordered the revival of the cases against him. The cases were transferred to Branch 15 of the same court, which found him guilty beyond reasonable doubt of three counts of rape and sentenced him to suffer *reclusion perpetua* in each count. Appellant de los Reyes appealed to this Court questioning the regularity of the procedure adopted by the trial court by allowing the prosecution witnesses to merely affirm on direct examination their previous testimonies taken during the trial of appellant Go.

In the case of *People vs. Estenzo*, this Court held that the witness should have been examined directly on the statements in her affidavit. The Supreme Court held that the same rule applies in the present cases against appellant de los Reyes where the prosecution witnesses merely asked to confirm their testimonies given at the trial of another in which he took no part.

The Court further ruled that in the case at bar, the apprehensions of the prosecution that the lapse of time may have compromised the memory of the witnesses are understandable. In any event, lapse of time is a matter that the trial court would consider in weighing the credibility of witnesses and their testimonies; it does not justify the abbreviated procedure

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adopted by the trial court, especially considering that the case against appellant Go was tried before another branch of the RTC. As irregularities prejudicial to the substantial rights of the accused were committed during the trial, the accused is entitled to a new trial. The Court ordered that all the proceedings and evidence affected by such irregularities must be set aside and taken anew. Pending the rehearing proceedings in the trial court, the automatic review of the cases against Go was held in abeyance.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; PRESENTATION OF; EXAMINATION OF WITNESSES; TESTIMONIES OF WITNESSES MUST BE GIVEN ORALLY.**— In *People v. Estenzo*, after the therein accused had testified, the defense counsel manifested that for the subsequent witnesses, he was filing only their affidavits subject to cross-examination by the prosecution on matters therein and on all matters pertinent and material thereto. The trial court acceded to the manifestation over the objection of one of the private prosecutors. This Court held that such procedure violated Sections 1 and 2, Rule 132 and Section 1, Rule 133 of the then Revised Rules of Court, which required that the testimonies of witnesses be given orally. ... The ruling in *Estenzo* was reiterated in *Sacay vs. Sandiganbayan* where, at the close of her direct examination, a witness was asked to confirm the truth of the contents of her sworn statement. This Court held that the witness "should have been examined directly on the statements in her affidavit." The same rule applies in the present cases against accused-appellant de los Reyes where the prosecution witnesses were merely asked to confirm their testimonies given at the trial of another in which he took no part.

2. **ID.; ID.; CREDIBILITY OF WITNESSES; LAPSE OF TIME, A MATTER THAT TRIAL COURT WOULD CONSIDER IN WEIGHING THE CREDIBILITY OF WITNESSES AND THEIR TESTIMONIES.**— The apprehensions of the prosecution that the lapse of time may have compromised the memory of the witnesses are understandable. But following this line of thought, would not the witnesses have just the same gone over the transcripts of their testimonies during the trial of accused-

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appellant Go to refresh them to thereby enable them to answer the questions of accused-appellant de los Reyes' counsel on cross-examination? [L]apse of time is a matter that the trial court would consider in weighing the credibility of witnesses and their testimonies; it does not justify the abbreviated procedure adopted by the trial court, especially considering that the case against accused-appellant Go was tried before *another branch* of the RTC.

3. **ID.; ACTIONS; NEW TRIAL; REMEDY OF ACCUSED IN CASE IRREGULARITIES PREJUDICIAL TO HIS SUBSTANTIAL RIGHTS WERE COMMITTED DURING TRIAL.**— As irregularities prejudicial to the substantial rights of the accused were committed during the trial, the accused is entitled to a new trial. All the proceedings and evidence affected by such irregularities must thus be set aside and taken anew.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff- appellee.
Levi M. Ramirez for accused-appellant Val delos Reyes.
The Solicitor General for accused-appellant Donel Go.

R E S O L U T I O N

CARPIO MORALES, *J.*:

Accused-appellants Donel Go and Val de los Reyes were charged before the Regional Trial Court (RTC) of Tabaco, Albay with two and three counts of rape, respectively, all committed against Imelda Brutas. Of the two, only accused-appellant Go was initially apprehended; de los Reyes remained at large.

Arraigned on May 3, 1995, accused-appellant Go pleaded not guilty to the charges. Before the prosecution could finish presenting evidence, he jumped bail and was tried *in absentia.*

The evidence for the prosecution consists of the testimonies of its five witnesses, namely: private complainant Imelda Brutas, her mother Adela, sister Clara, Dr. Marissa Saguinsin of the Rural Health Unit in Tabaco, Albay, and SPO4 Rosalino

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Bonavente; Imelda's panty[1] and watch[2] which she was wearing when the rape allegedly occurred; the certification[3] about the entry in the police blotter of Imelda's complaint; the medical certificates issued by Dr. Estela Zenit of the Ziga Memorial District Hospital[4] and Dr. Marissa Saguinsin of the Rural Health Unit in Tabaco, Albay;[5] the affidavit executed by Marivic after the alleged incident;[6] the photographs of accused-appellants Go and de los Reyes;[7] and the Referral Form of the ABS-CBN program "*Hoy Gising*."[8]

For the defense, the testimonies of five witnesses were offered.

In its Decision of June 25, 1997, Branch 16 of the RTC of Tabaco, Albay found accused-appellant Go guilty beyond reasonable doubt of two counts of rape and sentenced him to suffer the *death* penalty for each count. An *alias* warrant of arrest against accused-appellant de los Reyes was issued and the cases against him were archived.

Hence, the automatic review of the cases against accused-appellant Go, docketed herein as G.R. Nos. 130714 and 139634.

Accused-appellant de los Reyes was later apprehended, hence, Branch 16 of the Tabaco, Albay RTC ordered the revival of the cases against him. On December 3, 1997, the cases were transferred to Branch 15 of the same court, it having been designated by this Court as a heinous crimes court. At his arraignment on January 8, 1998, he pleaded not guilty to all three charges of rape. Trial ensued thereafter.

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[1] Exhibit "A."

[2] Exhibit "B."

[3] Exhibit "C."

[4] Exhibit "D."

[5] Exhibit "E."

[6] Exhibit "F."

[7] Exhibit "G."

[8] Exhibit "H."

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Except for SPO4 Bonavente, the same prosecution witnesses who testified at the trial of accused-appellant Go were availed of at the trial of accused-appellant de los Reyes.

When Adela Brutas, Imelda's mother, was called to the witness stand, the private prosecutor started rereading the questions and answers as recorded in the transcript of her testimony at *the trial of accused-appellant Go*. Before he could go over the entire transcript, however, the defense counsel objected. The private prosecutor thereupon asked Adela, as the following transcript of the proceedings, quoted *verbatim*, shows, if she affirmed all her answers appearing in the transcript of stenographic notes taken during her testimony at the trial of accused-appellant Go:

[Private prosecutor Atty. Sarte]

Q Are you the same Adela Brutas who on January 10, 1996 testified at RTC Branch [16] in the Criminal Case of *People vs. Donel Go and Val de Los Reyes*?

A. Yes, sir.

Q. Do you remember that you were asked a question by this representation you stated that your name is Adela Brutas the victim, what is your relation to the victim Imelda Brutas in these cases and your answered "she is my daughter" do you affirm same answer propounded by you?

A. Yes, sir.

Q. And then again the question is: In whose house?" and you answered, "In our house, sir."

A. Yes, sir.

Q. Likewise you were asked the question: "Where is your daughter living in December 1994?" and you answered, "In Tayhi, Tabaco, Albay." do you affirm that that was your answer when you're asked that question?

A. Yes, sir.

Q. In like manner on December 22, at about 4:00 o'clock in the afternoon of 1994 do you remember of any unusual incident

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that happened to your daughter and you answered . . . I know it.

[Defense counsel]

ATTY. RAMIREZ:

Objection your Honor, I object your Honor to the question it is not stated your Honor to the purpose for which this witness will testify as either narrated in order to prove morale damages; that the witness is looking for her daughter and her daughter was allegedly sent to an errand to deliver pictures.

JUDGE SARTE:

Your Honor my question is not yet finished your Honor, because I am referring to the sending by her sister. . .

COURT:

Conditional.

x x x x x x x x x

JUDGE SARTE:

Then you answered: I heard that Imelda was sent for an errand by your sister Clara, I heard Clara telling Imelda to bring pictures to a house in front of a demolished house." Is that your answer to the question that was confronted to you?

ATTY. RAMIREZ:

Your Honor I object to the way it was being propounded, it would not be in a manner be the form direct testimony because the witness direct questions pertaining to the alleged declaration relative to the purpose for which she is being offered to testify, but not to affirm an earlier declaration your Honor.

COURT:

What is your purpose Judge?

JUDGE SARTE:

The purpose that we present the same testimony as we presented in the case of *People versus Donel Go and Val de los Reyes*, because would *supposedly jointly to be tried* in

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Branch 16, but for reason that the other accused was no where to be found *Branch 16 proceeded only with the trial of Donel Go excluding Val de los Reyes so, we have the same testimony we have the same evidence to be submitted.*

ATTY. LEVI RAMIREZ:

Well your Honor the manner of this witness being presented is that there is a question and the counsel is already stating the answer.

JUDGE SARTE.

That is why I am asking her whether she affirm that because that is her answer in Branch 16.

COURT:

To obviate objection *Pañero why don't you just proceed directly with your direct-examination*?

JUDGE SARTE:

But your Honor there would be a variation in the answer which we do not want to happen here, because she cannot remember all her answer that she gave in Branch 16.

COURT:

That will be the risk of the prosecution *Pañero.*

ATTY. RAMIREZ:

Because your Honor there is a question propounded and at the same time counsel is answering already.

JUDGE SARTE:

I am not answering it it is in the transcript.

COURT:

Anyway that particular piece of evidence was offered here, you can offer it here subject to cross-examinations. Anyway that is the direct testimony of this witness.

x x x x x x x x x

All right you proceed with the direct testimony of this case.

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JUDGE SARTE:

Yes, your Honor.

Q. All right, do you affirm all your answers you told, you made by this representation on January 10, 1996?

COURT:

Cross?

ATTY. RAMIREZ:

No cross your Honor.

COURT:

Whatever testimonies he testified to other than that? So you are waiving the cross-examination *Pañero*?

ATTY. RAMIREZ:

As far as their documents are concerned, the identification of the contents yes, the refusal of admission to that.

COURT:

You will refuse admission when it is presented in evidence?

ATTY. RAMIREZ:

Yes, your Honor, because so far a mere declaration is limited to fact that she was a witness of a case before RTC, Branch 16, on that aspect we have no cross.

COURT:

So discharge the witness.[9] (Italics supplied.)

When called to the witness stand, Imelda, after relating on direct examination the events immediately *preceding* the alleged rapes, the following transpired, also quoted *verbatim*:

Q. Now do you remember whether on June 21, 1995 in Branch 16 you testified regarding this matter?

A. Yes, sir.

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[9] TSN, April 15, 1998, pp. 7-13.

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JUDGE SARTE:

Now your Honor please for purpose of evidence we would request that this transcript be marked as Exhibit "F" dated June 21, 1995.

COURT:

Mark it.

JUDGE SARTE:

And also pages 4-37 be consecutively marked as Exhibit "F-1" *etc.*

Q. Now in said transcript you were asked a question — "Because of that heavy rain what did you do." And you made an answer, "According to Donel Go I should take shelter in his house."

ATTY. RAMIREZ:

Objection your Honor.

JUDGE SARTE:

No question yet.

COURT:

Let him finish.

JUDGE SARTE: (continuing)

Q. Is this the question and your answer when you testified in Branch 16?

ATTY. RAMIREZ:

Well, your Honor I would object because the question would be very leading the question propounded was already made by the counsel.

Well that is on record, whether he said that?

COURT:

Lay the basis first Judge.

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JUDGE SARTE:

> Now you declared that there was something that happened, because of that what did you do and you said you take shelter in his house, do you confirm that that is the answer you gave?

ATTY. RAMIREZ:

> I will object because that would be improper for direct testimony.

COURT:

> Well that is in the transcript.

ATTY. RAMIREZ:

> No your Honor, because the question and answer being conferred with the witness would be improper for direct testimony because there is already that answer.

COURT:

> Anyway Judge that transcript has already been marked, it is not necessary for you to take the individual questions asked and that has been adopted and marked already.

JUDGE SARTE:

> *Now in view of that your Honor, we are adopting all the direct-examinations all the answers of the witness appearing on the transcript which was taken from Branch 16, dated June 21, 1995 this already marked Exhibit "F".*
>
> x x x x x x x x x
>
> That is all your honor.[10] (Italics supplied.)

At the succeeding hearing, defense counsel cross-examined Imelda but only on matters *preceding* and *following* the alleged rapes.[11]

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[10] TSN, July 29, 1998, pp. 3, 5–6.

[11] TSN, August 19, 1998, pp. 2-9.

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The prosecution employed the same procedure when it presented Imelda's sister Clara,[12] and Dr. Marissa Saguinsin,

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[12] Q. [addressed to Clara)

Do you remember of any unusual incident that whereby your sister by the name of Imelda Brutas was a victim of a rape incident?

ATTY. RAMIREZ:

Very leading your Honor.

COURT:

Reform the question.

JUDGE SARTE:

Q. You said that your sister is Imelda Brutas, do you know what happened to her on December 25, 1994.

A. Yes, sir.

JUDGE SARTE:

Q. Will you please narrate? What happened? Of your own knowledge of your sister Imelda Brutas?

ATTY. RAMIREZ:

We will object there is no basis whether the witness was present on a particular place?

COURT:

All right to obviate objection Judge lay the basis.

JUDGE SARTE:

Q. Now you said you testified in Court in Branch 16, regarding this RAPE INCIDENT against the accused Donel Go and Val de los Reyes but the case proceeded only to Donel Go because during that time Val de los Reyes was at large, do you remember that incident when you testified?

A. Yes, sir because I was the one who sent my sister with the pictures to Donel Go.

ATTY. RAMIREZ:

I move that the last phrase be stricken off the record, for being not responsive to the question.

COURT:

All right, we will allow — because it is part of the explanation.

JUDGE:

Is that in the transcript of your testimony when you testified in Branch 16? You go over the question and answer then tell the

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Medical Officer of the Rural Health Unit in Tabaco, Albay.[13]

Honorable Court whether that is the same question asked to you? Tell the Court whether you answers were the same answers you said in this Court?

WITNESS:

Yes, sir the same answers.

JUDGE SARTE:

Your Honor we request that this transcript be marked as Exhibit "G" as in good. Pages 11-27 dated February 5, 1996. I discovered that this transcript has no signature of the stenographer and the the reserved signature be marked as G-18.

Q. You affirm that all of those answers are your answers?

A. Yes, sir.

JUDGE SARTE:

That is all your Honor. (TSN, July 29, 1998, pp. 8-9.)

[13] Dr. Saguinsin identified the medico-legal certificate she issued as well as the transcript of her testimony taken at the trial of Go:

Q. How long have you been in this office?

A. I start since October 1990 up to the present.

Q. Now, do you recall having testified in the sala of the Hon. Judge, Cesar Bordeos in connection with the trial of Crim. Cases Nos. T-2640-41 wherein the accused is one Donel Go?

A. Yes, sir.

Q. Now showing to you this transcript, is this transcript of your testimony you had with Br. 16 of Judge Bordeos?

A. Yes, sir.

Q. Now in connection with this case now because you will note in the trial had before Branch 16 of Judge Bordeos there was almost mentioned of Val de los Reyes in connection with these present three (3) cases numbers 2639-40-41 against the accused Val de los Reyes. Now, do you recall if you had a patient by the name of Imelda Brutas who went to your office in connection with these cases now?

ATTY. RAMIREZ:

I would object no basis. That she will be testifying in connection with the three (3) present cases. She cannot be competent to testify on the accusation made by the accused herein but merely to limit herself in the medical certificate your Honor.

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Thereafter, the prosecution formally offered its evidence including the panty (Exhibit "A") and the wristwatch (Exhibit "B") worn by Imelda when the alleged rapes occurred; the

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COURT:

I think that is the purpose anyway. You can go direct.

ATTY. SARTE:

Q. Showing to you this medical certificate. Will you please tell the Hon. Court if that is the medical certificate that you have issued?

A. Yes, sir.

Q. Now whose signature appears over the typewritten name, Marissa Saguinsin, M.D.?

A. That is my signature.

Q. So, the examination conducted by you more than one (1) month from the alleged complaint of, Am I correct?

A. Yes, sir.

Q. Now, in the examination you made, Am I right to say that the patient was physically fit or in good health?

A. Yes, sir.

ATTY. SARTE (Continuing)

May we request the medical certificate be marked as EXHIBIT "E" and in connection with that, I will lay the introduction of the transcript and as EXHIBIT "E-1" signature of Dra. Saguinsin. In connection with her testimony that she declared in these cases in Branch 16 before Judge Bordeos and identified this to be the transcript of the proceeding, we request that the transcript of Dr. Saguinsin that was made on February 5, 1996 in Crim Cases Nos. 2640 and 2641 be marked as Exhibit "E-2" starting from pages 4 to 10; and the pages to be consecutively marked as Exhibit E-2-A, *etc.*

COURT:

Mark them accordingly.

ATTY. SARTE:

The purpose of presenting this transcript is that the victim and in Crim. Cases Nos. T-2639-40-41 these cases here in Court is the same victim that was examined medically by Dr. Saguinsin and the cases had in Branch 16 before the Honorable Judge Bordeos. (TSN, July 6, 1998, pp. 6-8.)

The defense counsel, Atty. Levi Ramirez, then proceeded to cross-examine Dr. Saguinsin on the contents of the medical certificate.

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Certification of Entry in the Police Blotter of the Tabaco Police Department (Exhibit "C"); the Medico-Legal Certificate issued by the Dr. Saguinsin (Exhibit "E"); the Referral Form of the ABS-CBN program (Exhibit "H") to prove, among other things, "the extent to which Clara Brutas went through in order to seek justice for the cause of her younger sister"; and the decision of the Tabaco, Albay RTC, Branch 16, (Exhibit "I") "to show that Donel Go was convicted" by said court.

Also offered in evidence were the transcripts of the testimonies of Adela (Exhibit "D"), Dr. Saguinsin (Exhibit "E-2-A" to "E-2-I"), Imelda (Exhibit "F") to prove that she was raped by accused-appellant Val de los Reyes, and Clara (Exhibit "G") to corroborate Imelda's testimony *taken at the trial of accused-appellant Go* were also in evidence.

The defense objected to the admission of, among others, Exhibits "A," "B," "D" and "F", they having "never [been] identified and presented in court," it adding that the "court cannot take judicial notice" thereof "as accused [de los Reyes] was never a party to the trial" of accused-appellant Go. The objection of the defense notwithstanding, the trial court admitted all the exhibits offered by the prosecution.

After the prosecution rested its case, the defense presented three witnesses. And it presented a letter[14] to accused-appellant de los Reyes allegedly written by Imelda who returned to the witness stand to rebut the defense evidence.

In its Decision of February 22, 1999, the Tabaco, Albay RTC, Branch 15 found accused-appellant de los Reyes guilty beyond reasonable doubt of three counts of rape and sentenced him to suffer *reclusion perpetua* in each.

His motion for reconsideration having been denied, accused-appellant de los Reyes appealed to this Court. His appeal, G.R. Nos. 139331 and 140845-46, and that of accused-appellant Go, G.R. Nos. 130714 and 139634, were consolidated.

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[14] Exhibit "I."

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Accused-appellant de los Reyes assigns to the trial court the following errors:

1. THE TRIAL COURT ABUSED ITS DISCRETION IN ALLOWING A SUMMARY PROCEEDING INSTEAD OF A FULL DRESS TRIAL.
2. THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE ABSENCE OF ANY EVIDENCE ON RECORD.
3. THE TRIAL COURT VIOLATED THE CONSTITUTIONAL RIGHT OF THE ACCUSED TO DUE PROCESS.[15]

As for accused-appellant Go, he assigns these errors:

I

THE COURT *A QUO* GRAVELY ERRED IN FINDING THAT THE GUILT OF ACCUSED-APPELLANT DONEL GO HAS BEEN PROVEN BEYOND REASONABLE DOUBT.

II

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE TESTIMONY OF THE PRIVATE COMPLAINANT.

In view of the discussion which follows, this Court shall first pass on accused-appellant de los Reyes' appeal.

Accused-appellant de los Reyes questions the regularity of the procedure adopted by the trial court by allowing prosecution witnesses Adela, Clara, Imelda, and Dr. Saguinsin to merely affirm on direct examination their previous testimonies taken during the trial of accused-appellant Go. Such proceeding, he contends, violated his right to confront and cross-examine said witnesses.

In *People v. Estenzo*,[16] after the therein accused had testified, the defense counsel manifested that for the subsequent witnesses,

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[15] *Rollo*, G.R. Nos. 139331 and 140845-46, pp. 89-90.

[16] 72 SCRA 428 (1976).

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he was filing only their affidavits subject to cross-examination by the prosecution on matters therein and on all matters pertinent and material thereto. The trial court acceded to the manifestation over the objection of one of the private prosecutors.

This Court held that such procedure violated Sections 1[17] and 2,[18] Rule 132 and Section 1, Rule 133[19] of the then Revised Rules of Court, which required that the testimonies of witnesses be given orally. Those provisions are substantially reproduced in the Revised Rules of Court as follows:

SECTION 1. *Examination to be done in open court.* — The examination of witnesses presented in a trial or hearing shall be done in open court, and under oath or affirmation. *Unless the witness is incapacitated to speak, or the question calls for a different mode of answer, the answers of the witness shall be given orally.*

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[17] SECTION 1. *Testimony to be given in open court.* — The testimony of witnesses shall be given orally in open court and under oath or affirmation.

[18] SEC. 2. *Testimony in superior courts to be reduced to writing.* — In superior courts the testimony of each witness shall be taken in shorthand or stenotype, the name, residence, and occupation of the witnesses being stated, and all questions put to the witness and his answers thereto being included. If a question put is objected to and the objection is ruled on, the nature of the objection and the ground on which it was sustained or overruled must be stated, or if a witness declines to answer a question put, the fact and the proceedings taken thereon shall be entered in the record. A transcript of the record made by the official stenographer or stenotypist and certified as correct by him shall be *prima facie* a correct statement of such testimony and proceedings.

[19] SECTION 1. *Preponderance of evidence, how determined.* — In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number.

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SEC. 2. *Proceedings to be recorded.* — The entire proceedings of a trial or hearing, including *the questions propounded to a witness and his answers thereto*, the statements made by the judge or any of the parties, counsel, or witnesses with reference to the case, *shall be recorded* by means of shorthand or stenotype or by other means of recording found suitable by the court.

A transcript of the record of the proceedings made by the official stenographer, stenotypist or recorder and certified as correct by him shall be deemed *prima facie* a correct statement of such proceedings. (Rule 131.)

SECTION 1. *Preponderance of evidence, how determined.* — In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, *the witnesses' manner of testifying*, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number. (Rule 133, italics supplied.)

The Court, still in *Estenzo*, elaborated:

The main and essential purpose of requiring a witness to appear and testify orally at a trial is to secure for the adverse party the opportunity of cross-examination. "The opponent," according to an eminent authority, "demands confrontation, not for the idle purpose of gazing upon the witness, or of being gazed upon by him, but for the purpose of cross-examination which cannot be had except by the direct and personal putting of questions and obtaining immediate answers." There is also the advantage to be obtained by the personal appearance of the witness before the judge, and it is this — it enables the judge as the trier of facts "to obtain the *elusive and incommunicable evidence of a witness' deportment while testifying*, and a certain subjective moral effect is produced upon the witness." *It is only when the witness testifies orally that the judge may have a true idea of his countenance, manner and expression, which may confirm or detract from the weight of his testimony. Certainly, the physical condition*

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of the witness will reveal his capacity for accurate observation and memory, and his deportment and physiognomy will reveal clues to his character. These can only be observed by the judge if the witness testifies orally in court. Indeed, the great weight given the findings of fact of the trial judge in the appellate court is based upon his having had just that opportunity and the assumption that he took advantage of it to ascertain the credibility of the witnesses. x x x.

Thus, Section 1 of Rule 133 of the Rules requires that in determining the superior weight of evidence on the issues involved, the court, aside from the other factors therein enumerated, may consider the "witness' manner of testifying" which can only be done if the witness gives his testimony "orally in open court." *If a trial judge prepares his opinion immediately after the conclusion of the trial, with the evidence and his impressions of the witnesses fresh in his mind, it is obvious that he is much more likely to reach a correct result than if he simply reviews the evidence from a typewritten transcript, without having had the opportunity to see, hear and observe the actions and utterances of the witness.*

There is an additional advantage to be obtained in requiring that the direct testimony of the witness be given orally in court. Rules governing the examination of witness are intended to protect the rights of litigants and to secure orderly dispatch of the business of the courts. Under the rules, only questions directed to the eliciting of testimony which, under the general rules of evidence, is relevant to, and competent to prove, the issue of the case, may be propounded to the witness. A witness may testify only to those facts which he knows of his own knowledge. Thus, on direct examination, leading questions are not allowed, except on preliminary matters, or when there is difficulty in getting direct and intelligible answer from the witness who is ignorant, a child of tender years, or feebleminded, or a deaf-mute. It is obvious that such purpose may be subverted, and the orderly dispatch of the business of the courts thwarted, if trial judges are allowed, as in the case at bar, to adopt any procedure in the presentation of evidence other than what is specifically authorized by the Rules of Court. (Italics in the original; emphasis and underscoring supplied.)

The ruling in *Estenzo* was reiterated in *Sacay vs. Sandiganbayan*[20] where, at the close of her direct examination, a witness was asked to confirm the truth of the contents of her

[20] 142 SCRA 593 (1986).

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sworn statement. This Court held that the witness "should have been examined directly on the statements in her affidavit." The same rule applies in the present cases against accused-appellant de los Reyes where the prosecution witnesses were merely asked to confirm their testimonies given at the trial of another in which he took no part.

The apprehensions of the prosecution that the lapse of time may have compromised the memory of the witnesses are understandable. But following this line of thought, would not the witnesses have just the same gone over the transcripts of their testimonies during the trial of accused-appellant Go to refresh them to thereby enable them to answer the questions of accused-appellant de los Reyes' counsel on cross-examination?

In any event, lapse of time is a matter that the trial court would consider in weighing the credibility of witnesses and their testimonies; it does not justify the abbreviated procedure adopted by the trial court, especially considering that the case against accused-appellant Go was tried before *another branch* of the RTC.

As irregularities prejudicial to the substantial rights of the accused were committed during the trial, the accused is entitled to a new trial.[21] All the proceedings and evidence affected by such irregularities must thus be set aside and taken anew.[22]

Accordingly, the Court, with respect to the cases against accused-appellant de los Reyes, sets aside Exhibits "D," "E-2," "E-2-I," "F" and "G", the transcripts of the testimonies of witnesses Adela, Dr. Saguinsin, Imelda, and Clara Brutas, respectively, in the trial of accused-appellant Go.

Exhibits "A" (the panty), "B" (the wrist watch), "C" (the Certification of entry in the Police Blotter), and "H" (the Referral Form of the ABS-CBN program), none of which were identified by any of the witnesses during the trial of accused-appellant de los Reyes, are likewise set aside for lack of basis.

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[21] Rules of Court, Rule 121, Sec. 2 (a).

[22] *Id.*, Sec. 6.

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WHEREFORE, the Court Resolved to ***VACATE*** the judgment of Branch 15 of the Regional Trial Court of Tabaco, Albay in Criminal Case Nos. T-2639-41, "*People v. Val de los Reyes*", and to ***SET ASIDE*** Exhibits "A," "B," "C," "D," "E-2," "E-2-A" to "E-2-I," "F," "G" and "H." Said criminal cases are ***REMANDED*** to Branch 15 of the Regional Trial Court of Tabaco, Albay for the immediate rehearing of the testimonies of witnesses Adela Brutas, Imelda Brutas, Clara Brutas and Dr. Marissa Saguinsin, in accordance with this Court's above disquisition. The trial court is further directed to conduct said proceedings and render a decision thereon within 90 days from receipt of this Resolution. Following Section 6 (a), Rule 121 of the Revised Rules of Court, the trial court may, in the interest of justice, allow the introduction of additional evidence.

Pending these rehearing proceedings in the trial court, the automatic review of the cases against Donel Go in G.R. Nos. 130714 and 139634 is held in abeyance.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 134506. December 27, 2002]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CORLITO C. LINDO and FEDERICO C. LINDO,** *accused-appellant.* **FEDERICO C. LINDO,** *appellant.*