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THIRD DIVISION

[G.R. No. 118133. February 28, 2003]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROBERTO BALACANAO *y* QUINES, ROBERTO SALVADOR *y* AGCAOILI, MARTIN SORIANO *y* NARAG, ERIBERTO BATUELO *y* BALACANAO, ELPIDIO GANGAN *y* BALISI, ABRAHAM CAMAYANG *y* PAGULAYAN, TACIO ACORDA *y* BISALDE, RUBEN ACORDA *y* LAYUGAN, LORENZO CARONAN *y* CANAPI, ELVIS BANGAYAN, GIL TAMBIAO, VILLAMOR AGANA, JESSIE ACORDA, HERMINIO ACORDA *y* MABUTI and DAMASO CABANA,** *accused.* **ROBERTO SALVADOR *y* AGCAOILI, MARTIN SORIANO *y* NARAG, ERIBERTO BATUELO *y* BALACANAO, ELPIDIO GANGAN *y* BALISI, ABRAHAM CAMAYANG *y* PAGULAYAN, TACIO ACORDA *y* BISALDE, and RUBEN ACORDA *y* LAYUGAN,** *accused-appellants.*

SYNOPSIS

Accused-appellants were found guilty by the trial court of the special complex crime of robbery with rape. Hence, this appeal.

In affirming the conviction of appellants, the Supreme Court ruled that the prosecution witnesses positively identified appellants as the perpetrators, hence there can be no mistake as to their participation in the commission of the crime. The Court further ruled that Estelita's incorrect identification during the preliminary investigation of her sexual abusers is inconsequential with respect to the criminal liability of appellants. As conspiracy was proven and rape was committed as a consequence, or on the occasion of the robbery, all the conspirators-participants are liable as principals of the crime of robbery with rape.

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The Court likewise held that the appreciation by the trial court of the aggravating circumstances of abuse of superior strength and ignominy is erroneous, not having been alleged in the information. The 2000 Revised Rules of Criminal Procedure requires that every complaint or information should state not only the qualifying but also the aggravating circumstances. This provision may be given retroactive effect in light of well-settled rule that statutes regulating procedure of the court will be construed as applicable to actions pending and undetermined at the time of their passage, hence, procedural laws are retroactive in that sense and to that extent.

SYLLABUS

1. **CRIMINAL LAW; ROBBERY WITH RAPE; WHEN CONSPIRACY IS PROVEN AND RAPE IS COMMITTED AS A CONSEQUENCE, OR ON THE OCCASION OF ROBBERY, ALL CONSPIRATORS-PARTICIPANTS ARE LIABLE AS PRINCIPALS OF THE CRIME OF ROBBERY WITH RAPE; CASE AT BAR.**— Estelita's incorrect identification during the preliminary investigation of her sexual abusers is inconsequential with respect to the criminal liability of accused-appellants. For at the trial court and during the preliminary investigation, she identified Balacanao as one of those who sexually abused her. As conspiracy was proven and rape was committed *as a consequence, or on the occasion* of the robbery, all the conspirators-participants are liable as principals of the crime of robbery with rape.

2. **REMEDIAL LAW; EVIDENCE; ALIBI; PHYSICAL IMPOSSIBILITY FOR ACCUSED TO BE AT THE SCENE OF CRIME, NOT ESTABLISHED IN CASE AT BAR.**— As for the brushing aside of accused-appellants' alibis since they failed to prove that it was *physically impossible for them to be at the scene of the crime* on the date and time it occurred, the trial court did not err thereby. Thus, accused-appellant Tacio Acorda merely claimed that he was at the time in *Barangay Santiago, Municipality of Iguig the same province of Cagayan.* Accused-appellants Gangan, Salvador and Soriano's evidence claimed that they were all in the *same municipality of Amulung* at about the time the crime was perpetrated. But accused-

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appellant Gangan's alibi is uncorroborated. And so is accused-appellant Salvador's that he was at the house of Arsenio Agcaoili in Anquiray, Amulung. In fact, accused-appellant Salvador's testimony on other points is mired in inconsistencies. Thus he first testified that he slept at the house of Agcaoli in Anquiray because *he (Salvador) had visitors* at home that night. He later retracted and said they were *visitors of his brother.* And while he initially stated that his brother told him not to go or leave their house because they had visitors, he later said that it was presumably the same brother who told him to leave. As for accused-appellant Soriano, he gave inconsistent statements with regard the *date* he was allegedly assigned to act as guard at the dancehall in Pacac Grande, Amulung, he initially stating that it was on June 25, 1990, but he later claiming that it was on June 24, 1990. In accused-appellant Camayang's case, while he and accused Caronan testified that they were at Pudtol, Kalinga-Apayao at about the time the offense was committed, at work in the construction of presumably the same hospital, they surprisingly failed to state that they saw each other on that day.

3. **ID.; CRIMINAL PROCEDURE; APPEAL; AN APPEAL THROWS THE ENTIRE CRIMINAL CASE OPEN FOR REVIEW.**— [A]n appeal throws the entire criminal case open for review, it becomes the duty of appellate courts to correct errors as may be found in the judgment appealed from, whether they are made the subject of assignment of errors or not.

4. **ID.; ID.; PROSECUTION OF OFFENSES; COMPLAINT OR INFORMATION; SHOULD STATE NOT ONLY THE QUALIFYING BUT ALSO THE AGGRAVATING CIRCUMSTANCES.**— In the present case, the appreciation by the trial court of the aggravating circumstances of abuse of superior strength and ignominy is erroneous. The 2000 Revised Rules of Criminal Procedure requires that every complaint or information should state not only the qualifying but also the aggravating circumstances. This provision may be given retroactive effect in light of the well-settled rule that "statutes regulating the *procedure* of the court will be construed as applicable to actions *pending* and *undetermined* at the time of their passage, [hence] [p]rocedural laws are retroactive in that sense and to that extent." The aggravating circumstance

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"that advantage be taken of superior strength" and ignominy not having been alleged in the information in this case, the same could not be appreciated.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

CARPIO MORALES, *J.*:

On June 24, 1990, fifteen (15) armed men stormed the house of the spouses Manuel and Estelita Calata in barrio Casingsingan Norte, Amulung, Cagayan.

Two days after the incident or on June 26, 1990, Estelita executed a sworn statement charging Eriberto Batuelo, Elpidio Gangan, Roberto Salvador, Martin Soriano and Roberto Balacanao of robbery with rape, along with five other persons.

The following day, June 27, 1990, Manuel also executed a sworn statement particularly identifying Soriano as one of the reprobates.

Thereafter or on July 2, 1990, a criminal complaint for robbery with multiple rapes[1] was filed by Police Investigator Cuntapay against Balacanao, Batuelo, Gangan, Salvador, Soriano and five John Does.

After a preliminary examination conducted by Judge Rafael P. Carag of the Fifth Municipal Circuit Trial Court of Iguig, Cagayan, an appropriate information was recommended to be filed on August 22, 1990.

The station commander of the Amulung Police Station later received an anonymous letter[2] dated "10-22-90" divulging that

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[1] Records at 1.

[2] *Id.* at 292; Exhibit "D".

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a certain Damaso Cabana was one of the "architects" of the June 24, 1990 incident.

Cabana was thus taken into police custody on November 5, 1990 following which he executed a sworn statement[3] dated November 6, 1990 admitting his participation in the incident and identifying his associates as Jessie Acorda, Minio Acorda, Ruben Acorda, Tacio Acorda, Villamor Agana, Amoy Balacanao, Elvis Bangayan, Abraham Camayang, Ensu Caronan, Gil Tambiao, and four (4) other unnamed persons who turned out later to be Batuelo, Gangan, Salvador and Soriano. A reinvestigation of the case was thus conducted.

After the reinvestigation, Cabana and the fourteen he implicated were charged, by Information[4] dated August 29, 1991, before the Regional Trial Court Branch 1 of Tuguegarao, Cagayan for Robbery with Rape allegedly committed as follows:

> That on or about June 24, 1990, in the municipality of Amulung, Province of Cagayan, and within the jurisdiction of this Honorable Court, the above-named accused, armed with guns, conspiring together and helping one another with intent to gain and by the use of force, violence and intimidation of person entered the house of the complainant[s], Mr. and Mrs. Manuel A. Calata, and once inside the house did then and there willfully, unlawfully and feloniously take, steal and carry away against the will of the owner, the following items:

One (1) Karaoke sing-along valued at	₱4,500.00
One (1) Wall clock valued at	300.00
Assorted jewelries all valued at	3,000.00
Assorted merchandize all valued at	2,500.00
One (1) Samurai valued at	550.00
Cash money in the amount of	300.00
PNB and LAND BANK Bank Books, a wallet containing pertinent papers, assorted keys and other items	
TOTAL VALUE	₱11,150.00

[3] *Id.* at 107-109. Exhibit "C".

[4] *Id.* at 81-83.

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all valued at ₱11,150.00 and all belonging to the complainant[s] Mr. and Mrs. Manuel A. Calata, to the damage and prejudice of the aforesaid owner[s] Mr. and Mrs. Manuel A. Calata in the aforesaid amount of ELEVEN THOUSAND ONE HUNDRED FIFTY (₱11,150.00) PESOS, Philippine Currency; that on the same occasion of the robbery, the above-named accused likewise armed with their aforesaid firearms, with lewd designs and by the use of force, violence against and intimidation of persons did then and there willfully, unlawfully and feloniously have sexual intercourse one after the other with the offended party, Estrella (*sic*) Calata against her will.

Contrary to law.

Five of those charged, namely: Jessie Acorda, Herminio Acorda, Villamor Agana, Elvis Bangayan and Gil Tambiao, eluded arrest.

Balacanao, Caronan, Batuelo, Camayang, Gangan, Salvador, Soriano and Tacio Acorda pleaded not guilty upon arraignment.

On motion of the prosecution, Damaso Cabana was discharged to become a state witness.

From its evidence, the prosecution established the following version:

Between 5:30 and 6:00 p.m. of June 24, 1990, Abraham Camayang, leader of a group of notorious characters from Solana, Cagayan (Solana group), and his henchman Villamor Agana went to the house of state witness Cabana in Casingsingan Norte, Solana, Cagayan and invited Cabana to join them for an unspecified purpose. Acceding, Cabana joined the two who were later joined by seven Solana group members, namely: Gil Tambiao, Elvis Bangayan, Lorenzo Caronan, Jessie Acorda, Herminio Acorda, Tacio Acorda and Ruben Acorda.

The Solana group, along with Cabana, then repaired to the house of the spouses Calata where another group of notorious characters from Amulung, Cagayan (Amulung group) composed of its leader Roberto Balacanao, Elpidio Gangan, Martin Soriano, Eriberto Batuelo and Roberto Salvador were already waiting in the vicinity.

Solana group leader Camayang thereupon gave directions to the two groups, he posting Cabana, Hermino Acorda and Tacio

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Acorda as look outs along the road south of the Calata house. Camayang, with four others, then entered the backdoor into the kitchen of the Calata house, catching by surprise Estelita and her minor children 11 years old Claudette and Carlos who screamed. Estelita's husband Manuel, who was in the sala, immediately dashed into the kitchen where he was met by Balacanao who pushed him back into the sala and made him lie face down. His hands were at once tied behind his back.

The second wave of malefactors soon entered the same backdoor of the Calata house, after which Camayang and Batuelo held Estelita and her two young children at bay. They then demanded money from the Calatas. In particular, Soriano made it appear that they are subversives who needed money for the treatment of their comrade who was injured in an encounter.

In the meantime, the Calatas' neighbors Concepcion Lumboy, Celso Gorospe and Renato Corpuz passed by chance by the Calata house. Attracted by the noise and commotion inside the house, they proceeded thereto and once inside, they were pounced upon and shoved into the sala where they were ordered to lie flat in a prone position. Their hands were tied too behind their backs.

Caronan, to further instill terror, ordered one of his men to get a can of gasoline and when a can of gasoline was brought, he told his cohorts to pour gasoline on the victims and burn them.

As the crime wore on, Camayang dragged Estelita and her daughter Claudette into a room beside the sala, the entrance of which room was covered only by a curtain. Once inside the room, Camayang tore off the clothes of Estelita and Claudette. As Claudette was crying, Camayang and his companions spared her and the naked girl immediately ran to her bound father in the sala. Estelita was then raped by Camayang, followed by Tacio Acorda, then by Caronan, and finally by Balacanao.

The bound hands of Manuel and his three neighbors were later untied by the malefactors and they were ordered to remove their clothes. Caronan thereupon ordered Celso Gorospe to dance

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naked amidst the rhythmic clappings and jeers of the malefactors. The four were later ordered to put on their clothes but they were again tied and ordered to lie flat on the floor.

Herminio Acorda later shouted "get out now, people are coming," prompting the malefactors to hurriedly flee with their loot consisting of cash, pieces of jewelry, assorted goods, appliances, a samurai sword, bank books, a wallet, keys, a wall clock and other items all valued at about ₱11,150.00. Thus, when the people referred to by Herminio Acorda — a group of thirty men from the adjacent *barangay* of Calintaan headed by their barangay captain Cesar Lacuesta — arrived at the Calata house, the malefactors were gone.

On June 26, 1990, upon instruction of the police, Estelita submitted herself to a medical examination. Dr. Dulce Baculi, the Municipal Health Officer of Amulung, came out with her findings embodied in her Certification (Exhibit "E")[5] which reads:

"I. External Examination:

a. 1. Contusion at left jaw.

2. Slight swelling of upper lip.

b. No other external physical injuries noted on the victim.

"II. Internal Examination:

a. Vulva on internal examination shows slight tenderness and smeared with blood.

Note: Victim is having her menstrual period."

For the defense, all the accused, disclaiming being acquainted with state witness Damaso Cabana on or before the incident, proffered alibi.

After trial, the trial court found the accused Balacanao, Caronan, Batuelo, Camayang, Gangan, Salvador, Soriano, Ruben L. Acorda and Tacio B. Acorda guilty beyond reasonable doubt of Robbery with Rape, by Decision of May 3, 1994 the dispositive portion of which reads:

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[5] *Id.* at 8; Exhibit "E".

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WHEREFORE, the Court finds the accused Roberto Balacanao *y* Quines, Roberto Salvador *y* Agcaoili, Martin Soriano *y* Narag, Eriberto Batuelo *y* Balacanao, Elpidio Gangan *y* Balisi, Abraham Camayang *y* Pagulayan, Lorenzo Caronan *y* Canapi, Tacio Acorda *y* Bisalde and Ruben Acorda *y* Laguyan guilty beyond reasonable doubt of the special complex crime of Robbery with Rape *aggravated by abuse of superior strength and ignominy* and hereby imposes upon each and everyone of them the penalty of *Reclusion Perpetua* with all the accessory penalties provided for by law and to pay in solidum Manuel and Estelita Calata the stolen properties in the amount of ₱11,150.00 and moral damages in the amount of ₱500,000.00 and cost.

SO ORDERED. (italics supplied)

The Decision has, with respect to *Balacanao* who did not appeal, become final and executory.

Caronan and Camayang jointly filed a notice of appeal on May 12, 1994. *Caronan*, however, later filed an undated letter, which this Court treated as a Motion, praying for the withdrawal of his appeal[6] in view of the extension to him of executive clemency. This Court granted said Motion and accordingly dismissed the case against Caronan by a Resolution of April 7, 1999.[7]

Salvador, Gangan, Soriano, Batuelo and Ruben Acorda (Salvador, *et al.*) also jointly filed a notice of appeal while Tacio Acorda and Camayang separately filed theirs.

Accused-appellant Tacio Acorda assigned as lone error of the trial court its finding that he is guilty beyond reasonable doubt.

Accused-appellant Camayang challenges the trial court for having erred:

I. IN BASING ITS DECISION ON CONVICTION OF APPELLANT (CAMAYANG) SOLELY ON THE CONFESSIONAL TESTIMONY OF DAMASO CABANS [*sic*] PARTICULARY

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[6] *Rollo* at 235.

[7] *Id.* at 263.

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IN THE IDENTIFICATION OF ACCUSED ABRAHAM CAMAYANG AS ONE OF THE CULPRITS;

II. IN NOT BELIEVING THE COUNTER-AFFIDAVIT OF ACCUSED-APPELLANT ABRAHAM AS CORROBORATED BY WITNESSES;

III. IN RELYING ON THE TESTIMONY OF WITNESSES FOR THE PROSECUTION INSTEAD OF WEIGHING THE EVIDENCES ADDUCED DURING THE TRIAL, THERE BEING ABSENT THE INTENT OF ACCUSED ABRAHAM CAMAYANG'S PARTICIPATION (sic) IN THE COMMISSION OF THE OFFENSE; and

IV. IN CONVICTING ACCUSED APPELLANT ABRAHAM CAMAYANG WHO AT THE TIME OF THE ALLEGED OFFENSE WAS COMMITTED WAS NOT AT THE SCENE [OF THE CRIME AND WAS] MERELY IMPLICATED BY [CABANA DUE TO] INTIMIDATION AND COERCION DURING THE CUSTODIAL INVESTIGATION.

And as to accused-appellants Salvador, *et al.*, they fault the trial court in:

I. . . . FINDING THE ACCUSED-APPELLANTS ROBERTO A. SALVADOR, ELPIDIO GANGAN, MARTIN N. SORIANO, ERIBERTO B. BATUELO AND RUBEN L. ACORDA GUILTY BEYOND REASONABLE DOUBT OF THE COMPLEX CRIME OF ROBBERY WITH RAPE.

II. . . . ORDERING THE ACCUSED-APPELLANT ROBERTO A. SALVADOR, ELPIDIO GANGAN, MARTIN N. SORIANO, ERIBERTO B. BATUELO AND RUBEN L. ACORDA TO PAY *IN SOLIDUM* THE SPOUSES MANUEL AND ESTELITA CALATA, THE AMOUNT OF ₱11,150.00 REPRESENTING THE AMOUNT OF THE STOLEN PROPERTY AND MORAL DAMAGES IN THE AMOUNT OF ₱500,000.00 AND COST.

Accused-appellants' respective appeals lack merit.

Robbery with rape is a special complex crime[8] punished under the second paragraph of Art. 294 of the Revised Penal Code which reads:

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[8] The elements of robbery are: (1) the subject is personal property belonging to another; (2) there is unlawful taking of that property; (3) the taking is with the

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Art. 294. Robbery with violence against intimidation of persons — Penalties. — Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

x x x x x x x x x

2. The penalty of *reclusion temporal* in its medium period to *reclusion perpetua*, when the robbery shall have been accompanied by rape or intentional mutilation, or if by reason or on occasion of such robbery, any of the physical injuries penalized in subdivision 1 of Article 263 shall have been inflicted: *Provided, however*, That when the robbery accompanied with rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death; (As amended by P.D. No. 767, August 15, 1975)

x x x x x x x x x

That the crime was committed is undisputed. The issue in the main is the *identity* of the malefactors.

Accused-appellants contend that the prosecution failed to establish their identity as participants in the crime, hence, it was error for the trial court not to have appreciated their alibi.

Accused-appellants' contention does not persuade.

From the following extracts of the testimony of state witness Cabana, and his identification[9] in court of accused-appellants, there can be no mistaking their participation in the crime:

(Atty. Maramag)

Q: When this case was filed before the Honorable Court you were one of the original accused in this case, is it not?

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intent gain; and (4) there is violence against or intimidation of any person or use of force upon things (*People v. Tano*, 331 SCRA 449,. 466 [2000]). Rape, on the other hand, is committed by having carnal knowledge of a woman under any of the following instances: (1) force or intimidation is used, (2) the woman is deprived of reason or otherwise unconscious, or (3) she is under twelve years of age (*People v. Tano*, 331 SCRA 449, 464 [2000]). The special complex crime of robbery with rape is committed when the robbery is accompanied by rape.

[9] *Id.* at 74-76.

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(Cabana)

A: Yes, sir.

Q: Tell the Court why you were one of the accused in this case?

A: I was one of the accused because I was then in their company at that time [June 24, 1990].

Q: You said you were one in their company kindly mention your companions at that time?

A: *Villamor Agana, Abraham Camayang, Elvis Bangayan, Gil Tambiao, Lorenzo Caronan, Ruben Acorda, Tacio Acorda, Jessie Acorda, Minio Acorda, Amoy Balacanao, Pidio Gangan, Martin Soriano, Eriberto Batuelo, Berto Salvador* and I am the 15th.[10] (Italics supplied)

x x x x x x x x x

Q: At or about between the hour of 5:30 to 6:00 o'clock in the evening of June 24, 1990 where were you?

A: I was in our house in Casingsingan, sir.

Q: What were you doing at that time in your house?

A: At that time I am (*sic*) going purposely to fetch water but here comes (*sic*) the arrival of *Villamor Agana and Abraham Camayang*.

Q: Why did these two Abraham Camayang and Villamor Agana come to you?

A: At that time this Villamor Agana told me to come [sic] with them because we are going somewhere else.[11] (Italics supplied)

x x x x x x x x x

(Court)

Q: When Villamor Agana and Abraham Camayang went to you and you went with them you mean to say that it was only the three of you who proceeded from your house up to the place where you were going?

x x x x x x x x x

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[10] TSN, July 6, 1993 at 44.

[11] *Id.* at 46-47.

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A: When we started from our house we were only three but at the downgrade portion of our house located at the southern part the other companions were already there and we went together, sir.

Q: How many of them were already there at the southern portion of your house?

A: They are seven in all, sir.

Q: Name them.

A: *Gil Tambiao, Elvis Bangayan, Lorenzo Caronan, Jessie Acorda, Minio Acorda, Tacio Acorda, Ruben Acorda.*[12] (Italics supplied)

x x x x x x x x x

(Court)

Q: According to you [you] were ten in all who left your premises going towards the house of Mr. Calata were you able to reach the house of Mr. Calata?

A: Yes, sir.

Q: The Court understands that only the ten of you reached Calata's house?

A: Upon reaching near the house of Mr. Calata, the five others were already at the eastern portion of the house of Mr. Calata then they joined us.

x x x x x x x x x

(Atty. Maramag)

Q: Will you please name those five who were on the eastern portion of the house of Mr. Calata?

A: *Amoy Balacanao, Elpidio Gangan* and the other three I only came to know their names while we were already at the PNP station at Amulung but I already knew their faces at that time.

Q: You now name the three others whom you came later to know their names?

A: *Martin Soriano, Eriberto (sic) Salvador, Berto Batuelo.*[13] (Italics supplied)

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[12] *Id.* at 51-52.

[13] *Id.* at 53-55.

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Estelita and Manuel positively identified too accused-appellants and described their respective acts. Estelita thus testified in court:

(Fiscal Saquing)

Q: Who were these ten persons who entered your house if you know?

(Estelita)

A: I know them, sir. They were: *Abraham Camayang, Ruben Acorda, Anastacio Acorda, Ensu Caronan, Amoy Balacanao, Pedro [sic] Batuelo, Gangan Agana.*[14] (Italics supplied)

x x x x x x x x x

(Court)

Q: You name those who allegedly entered your house one by one.

A: *Abraham Camayang, Ensu Caronan, Ruben Acorda, Atanacio Acorda, Damaso Cabana, Agana, Martin Soriano, Pedro (sic) Batuelo, Amoy Balacanao, Roberto [sic] Gangan*, sir.[15] (Italics supplied)

x x x x x x x x x

(Fiscal Saquing)

Q: Who ransact (sic) your cabinets?

A: The accused, *Tacio Acorda, Ruben Acorda, Ensu Caronan, Batuelo, Gangan, Amoy Balacanao*, sir.[16] (Italics supplied)

x x x x x x x x x

And she also positively identified accused Balacanao and Caronan and accused-appellants Camayang and Tacio Acorda as the four men who sexually abused her.[17]

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[14] TSN, March 23, 1993, Direct Examination of Estelita Calata at 6.

[15] *Id.* at 29.

[16] *Id.* at 10.

[17] TSN, March 23, 1993, Direct Examination of Estelita Calata at 12. See p. 21 for Estelita's testimony that accused Balacanao and Caronan and accused-appellants Camayang and Tacio Acorda had sexual intercourse with her.

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Manuel's identification of accused-appellants as participants is shown in his following testimony:

(Court)

Q: When you said in answer to the question of Atty. Reyes that it was Damaso Cabana and his group that went up your house and molest[ed] your wife, who were the members of this group that you are referring [to] if you know [their names]?

(Manuel)

A: *Abraham Camayang, Roberto Balacanao, Lorenzo Caronan, Ruben Acorda, and Tacio Acorda, and members from Amulung are Martin Soriano, Eriberto Batuelo and Roberto Salvador.*[18] (Italics supplied)

x x x x x x x x x

(Atty. Maramag)

Q: And this person who poked his gun at your face is *Roberto Balacanao alias Amoy Balacanao*?

A: Yes, sir.

Q: At the time when this Amoy Balacanao poked his gun and ordered you "*dapa, dapa,*" where was your wife and two children at that time?

A: They were still at the kitchen and I saw *Abraham Camayang h[o]ld the hands of my wife and so with my two children, and also in (sic) the person[s] of Roberto Salvador and Martin Soriano at the same time demanding money.*[19] (Italics supplied)

x x x x x x x x x

Q: How about when you were ordered by Amoy Balacanao to lay face downward on the floor, what did you do?

A: I was brought to the sala and made me laid [*sic*] face downward by this certain fellow in [*sic*] the name of Lorenzo Caronan.[20] (Italics supplied)

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[18] TSN, July 6, 1993, Cross-Examination of Manuel Calata at 13.

[19] TSN, March 30, 1993, Direct Examination of Manuel Calata at 11.

[20] *Id.* at 13.

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x x x x x x x x x

(Atty. Cipriano)

Q: Who among them asked for money?

A: The companions of Abraham Camayang, sir.

Q: Do you know their names?

A: *Martin Soriano* and *Ruben Acorda, sir.*[21] (Italics supplied)

x x x x x x x x x

(Atty. Cipriano)

Q: Could you tell us what did this *Eriberto Batuelo*, what was the participation?

A: He held one of my children and demanded money at that time, sir.

Q: What is the name of your child?

A: Claudette, sir.

Q: How about this *Elpidio Gangan*?

A: The same, they are at the back of my wife and my two children, sir.[22] (Italics supplied)

x x x x x x x x x

And Manuel and Estelita identified in court five of the seven accused-appellants, with Estelita positively identifying accused-appellants Soriano, Gangan and Batuelo[23] while

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[21] TSN, July 6, 1993, Cross-Examination of Manuel Calata at 25.

[22] *Id.* at 32.

[23] TSN, March 23, 1993, Cross-Examination of Estelita Calata, at 38-39.

(Atty. Cipriano)

Q: Could you identify *Martin Soriano*?

(Estelita)

A: Yes, sir (*witness pointed to a man in blue shirt who gave his name as Martin Soriano*)

Q: How about this *Elpidio Gangan*, will you please point at him?

A: *Witness pointed to a man who gave his name as Elpidio Gangan.*)

Q: How about this *Eriberto Batuelo*?

A: (*The witness pointed to a man who gave his name as Eriberto Batuelo*)

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Manuel identified accused-appellants Camayang, Salvador and Soriano.[24]

In another vein, accused-appellants assail the credibility of the prosecution witnesses, particularly drawing attention to Cabana's statement that there were five who sexually abused Estelita which contradicts the latter's testimony that there were four, thus rendering his testimony unworthy of belief.[25] Accused-appellant Tacio Acorda adds that Cabana was just used by Police Investigator Rodrigo Cuntapay to entangle him in this case.

Accused-appellants also capitalize on the failure of Estelita to correctly identify her sexual abusers *during the preliminary investigation*.[26]

Accused-appellants' assault at the credibility of the prosecution witnesses fails.

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[24] TSN, March 30, 1993, Direct Examination of Manuel Calata at 11-13.

Q: *If this Abraham Camayang is in Court* will you please go down from the witness stand and point to him?

A: *That one, sir. (Witness pointing to a fellow who is wearing a Red T-shirt and when asked he gave his name as Abraham Camayang.)*

Q: Will you please point to *Roberto Salvador* if he is in Court?

A: Yes, sir.

Q: Will you please point at him?

A: *That one, sir. (Witness pointing to a person who is wearing a white T-shirt and when asked he gave his name as Roberto Salvador.)*

Q: How about this *Martin Soriano*, will you please point if he is around.

A: This one, sir. (Witness pointing to a fellow and when asked he gave his name as Martin Soriano). (italics supplied)

x x x x x x x x x

Q: *If this Lorenzo Caronan is in* Court will you please point at him?

A: Yes, that one, sir. (Witness pointing to a person and when asked he gave his name as Lorenzo Caronan.) (italics supplied)

x x x x x x x x x

[25] Records at 142-144.

[26] *Id.* at 137.

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Cabana's failure to point out the exact number of Estelita's sexual tormentors is of no consequence, accused-appellants themselves having noted[27] that the testimony of Cabana as regards this point is hearsay and inadmissible.

With respect to the claim that Cabana was merely used by Police Investigator Cuntapay to implicate accused-appellant Tacio Acorda in the crime, the same finds no support from the records and cannot accordingly defeat the presumption that official duty has been regularly performed.[28]

As for the questioned identification by Estelita during the preliminary investigation of her sexual abusers, this did not escape the attention of the trial court when it noted as follows:[29]

Estelita testified that the men whom she identified in court were the real rapists. She explained that she *committed the error during the previous identification* (preliminary investigation) *due to nervousness* and confusion on the names of the rapists in their number and in the order or sequence of the sexual assaults upon her. (Italics supplied).

x x x x x x x x x

But Estelita's explanation behind her error in the identification of her rapists during the preliminary investigation merited the understanding and credence by the trial court in this wise:

Estelita suffered what very few women in this world had gone through. She underwent a most traumatic and nerve-shocking ordeal — a hideous, ghastly and outrageous blow upon her feminine possession. *To expect her to narrate in court* and in public her most horrible and excruciating experience in a *perfect sequence of events and accurate identification* of the reprobates whom, in the first place, she did no personally know, *is to be unreasonable. . . .*[30] (Italics supplied).

x x x x x x x x x

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[27] Records at 140.

[28] Rule 131 (3) (m).

[29] Records at 51-53.

[30] *Id.*

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Indeed, Estelita's confusion should not militate against her given the number of malefactors and the ordeal she went through. What counts is that she was firm at the witness stand that her rapists, and the order in which they raped her, were what she mentioned thereat. Thus, on direct examination, she declared:

(Fiscal Saquing)

Q: After pulling you and stripping you off [*sic*] your dress, what did Abraham Camayang do next?

(Estelita)

A: He pulled me down inside our room and tore my dress and pulled me down on the floor and raped me, sir.

x x x x x x x x x

Q: After Abraham Camayang raped you, what happened next?

A: This Atanacio Acorda raped me again, he poked a gun and pulled me down and because I am afraid to die I just submitted myself, sir.

Q: When Atanacio Acorda finished raping you, what transpired next if there was?

A: Another came sir, and this Ensu Caronan again raped me.

x x x x x x x x x

Q: After this Ensu Caronan finished raping you what happened if there was?

A: This Amoy Balacanao raped me, again, sir.

x x x x x x x x x.

And on cross-examination[31] she declared:

(Atty. Cipriano)

Q: When you testified here in Court you said that it was Abraham Camayang who first raped you but during the preliminary investigation you testified that it was Roberto Salvador who

[31] TSN, March 23, 1993, Direct Examination of Estelita Calata at 34-36.

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first raped you. Now, *which is correct, your statement during the preliminary investigation or your statement now?*

A: *My testimony now before this Court, sir.*

Q: You also testified during the preliminary investigation that [the] second person who raped you was Martin Soriano but *in your testimony now the second person was [sic] Atanacio Acorda, which is correct?*

A: *Atanacio Acorda, sir.*

Q: *Your statement now before the Court?*

A: *Yes, sir.*

Q: You were then lying when you gave your statement during the preliminary investigation?

A: *I was confused only in their names but the truth is what I am testifying now.*

Q: You have also statement during the preliminary investigation that it was Elpidio Gangan who was the third person who raped you but before this Court you said it was Ensu Caronan?

A: Ensu Caronan, sir.

Q: Not Elpidio Gangan?

A: Yes, sir. (Italics supplied)

Why would Estelita, a married woman and mother of four[32] raped successively by four men on one occasion, devise a sick narrative and expose herself to the unbearable stigma and humiliation attendant to a trial for rape if she were not determined to punish her malefactors?

In any event, Estelita's incorrect identification during the preliminary investigation of her sexual abusers is inconsequential with respect to the criminal liability of accused-appellants. For at the trial court and during the preliminary investigation, she identified Balacanao as one of those who sexually abused her. As conspiracy was proven and rape was committed *as a consequence, or on the occasion* of the robbery, all the

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[32] *Vide People v. Mendoza*, 292 SCRA 168, 179 (1998) where this Court said: "A married woman with a husband and three daughters would not publicly admit that she had been criminally abused unless that was the truth."

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conspirators-participants are liable as principals of the crime of robbery with rape.[33]

As for the brushing aside of accused-appellants' alibis since they failed to prove that it was *physically impossible for them to be at the scene of the crime*[34] on the date and time it occurred, the trial court did not err thereby.

Thus, accused-appellant Tacio Acorda merely claimed that he was at the time in *Barangay Santiago, Municipality of Iguig the same province of Cagayan.*

Accused-appellants Gangan, Salvador and Soriano's evidence claimed that they were all in the *same municipality of Amulung* at about the time the crime was perpetrated. But accused-appellant Gangan's alibi is uncorroborated. And so is accused-appellant Salvador's that he was at the house of Arsenio Agcaoili in Anquiray, Amulung.[35] In fact, accused-appellant Salvador's testimony on other points is mired in inconsistencies. Thus he first testified that he slept at the house of Agcaoli in Anquiray because *he (Salvador) had visitors* at home that night.[36] He later retracted and said they were visitors of his brother.[37] And while he initially stated that his brother told him not to go or leave their house because they had visitors, he later said that it was presumably the same brother who told him to leave.[38] As for accused-appellant Soriano, he gave inconsistent statements

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[33] *People v. Mendoza*, 292 SCRA 168, 181-182 (1998). In any event, the other rapes are not considered aggravating (*Vide People v. Regala*, 329 SCRA 707, 716-717; citing *People v. Martinez*, 274 SCRA 259 (1997).

[34] *People v. Tamsi*, G.R. Nos. 142928-29, September 11, 2002.

[35] Arsenio Agcaoli testified that he knew that accused-appellant did not leave his (Agcaoili's) house on the night of June 24, 1990 because he (Agcaoili) did not sleep that night and accused-appellant had coffee in his house the following morning. There is no testimony, however, to the effect that he saw accused-appellant from six in the evening till the following morning when accused-appellant left his house.

[36] TSN, February 11, 1994 at 15.

[37] *Id.* at 16.

[38] *Id.* at 17.

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with regard the date he was allegedly assigned to act as guard at the dancehall in Pacac Grande, Amulung, he initially stating that it was on June 25, 1990, but he later claiming that it was on June 24, 1990.

In accused-appellant Camayang's case, while he and accused Caronan testified that they were at Pudtol, Kalinga-Apayao, at about the time the offense was committed, at work in the construction of presumably the same hospital, they surprisingly failed to state that they saw each other on that day.

As for the other arguments of accused-appellants, they are bereft of merit.

Accused-appellant Camayang's claim that the trial court laid undue stress on the sworn statement of Cabana[39] and that his guilt cannot be predicated thereon is belied by the trial court's disquisition which shows that Cabana's sworn statement was only one of the documentary bases for its decision.

The argument that Cabana's testimony was given under the compulsion of irresistible force and insuperable fear[40] is purely speculative.

As for the argument that since Cabana is an unschooled farmer, the question-and-answer method of eliciting testimony cannot become the basis for accused-appellant Camayang's conviction[41] deserves scant consideration.

Accused-appellant Tacio Acorda's contention that his guilt was not proven beyond reasonable doubt because his name was never mentioned by the spouses Calata during the preliminary investigation[42] fails. He was identified by Cabana during the reinvestigation. More importantly, he was positively identified by Cabana and the spouses Calata during the trial.

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[39] Records at 80.

[40] *Id.*

[41] *Id.* at 81.

[42] *Id.* at 333, 336.

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The lack of merit of the appeal notwithstanding, it being settled that an appeal throws the entire criminal case open for review, it becomes the duty of appellate courts to correct errors as may be found in the judgment appealed from, whether they are made the subject of assignment of errors or not.[43]

In the present case, the appreciation by the trial court of the aggravating circumstances of abuse of superior strength and ignominy is erroneous. The 2000 Revised Rules of Criminal Procedure requires that every complaint or information should state not only the qualifying but also the aggravating circumstances.[44] This provision may be given retroactive effect in light of the well-settled rule that "statutes regulating the *procedure* of the court will be construed as applicable to actions pending and undetermined at the time of their passage, [hence] [p]rocedural laws are retroactive in that sense and to that extent."[45] The aggravating circumstance "that advantage be taken of superior strength" and ignominy not having been alleged in the information in this case, the same could not be appreciated.

With respect to the award of ₱11,150.00 to the spouses Calata as actual damages for the claimed stolen personal properties: Ordinary witnesses such as private complainants cannot establish the value of jewelry.[46] Neither can the same be taken judicial

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[43] *People v. Borbano*, 76 Phil. 702, 708 (1946), cited in *People v. Alejandro*, 225 SCRA 347, 350 (1993). There is no reason why this rule should not apply to automatic review of death penalty cases before the Supreme Court such as the present. *Vide People v. Laguerta*, 344 SCRA 453 (2000), *People v. Renola*, 308 SCRA 145 (1999), and *People v. Balacano*, 336 SCRA 615 (2000) where the Supreme Court applied said doctrine in cases before it on automatic review.

[44] Rule 110, Section 8 states in part:

Designation of the offense. — The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

[45] *People v. Arrojado*, 350 SCRA 679, 695-696 (2001.)

[46] *People v. Tejero*, 308 SCRA 660, 685-686 (1999), citing *Galian v. State Assurance Co.*, 29 Phil. 413, 418 (1915) and *People v. Martinez*, 274 SCRA 259, 272-273 (1997).

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notice of.[47] The valuations made by Manuel and Estelita cannot thus become the basis for reparation in the absence of receipts or any other competent evidence.

Neither can reparation for the Karaoke sing-along appliance be ordered, absent proof as to its description, kind/model and competent evidence of its value.[48] The same holds true with respect to the assorted merchandise, the samurai, the wallet, the PNB and Land Bank bankbooks and assorted keys. The wall clock having been admittedly recovered,[49] only the amount of ₱10,000.00 cash stolen[50] established by the prosecution which, though not the amount alleged in the information, was not objected to and rebutted by the defense,[51] should be awarded.

It was also error for the trial court to award ₱500,000.00 as moral damages without citing the basis therefor. Estelita is thus entitled to only an award of ₱50,000.00 for each count of rape as civil indemnity and ₱50,000.00 for each count as moral damages.[52] Furthermore, an award to Manuel of ₱50,000.00 as moral damages is in order.

WHEREFORE, the May 3, 1994 Decision of the Regional Trial Court of Cagayan, Branch 1 at Tuguegarao, finding accused-appellants Roberto A. Salvador, Elpidio B. Gangan, Martin N. Soriano, Eriberto B. Batuelo, Abraham P. Camayang, Ruben L. Acorda and Tacio B. Acorda guilty beyond reasonable doubt of the special complex crime of Robbery with Rape and sentencing them to each suffer the penalty of *reclusion perpetua* is hereby *AFFIRMED*. They are ordered to pay jointly and severally the amount of ₱10,000.00 to private complainants Manuel Calata and Estelita Calata as actual damages; the amount of ₱50,000.00 to Estelita Calata for each count of rape as civil indemnity, and

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[47] *Id.*

[48] *Id.*

[49] TSN, July 6, 1993, Re-Cross Examination of Manuel Calata at 27.

[50] TSN, March 23, 1993 at 31.

[51] *People v. Tejero, supra* note 47 at 686.

[52] *People v. Bayona*, 327 SCRA 190, 202 (2000).

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another ₱50,000.00 for each count as moral damages; and the amount of ₱50,000.00 to Manuel Calata as moral damages.

SO ORDERED.

Puno (Chairman), Panganiban and *Sandoval-Gutierrez, JJ.*, concur.

Corona, J., on leave.

SECOND DIVISION

[G.R. No. 131035. February 28, 2003]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **SALVADOR DE LA CRUZ,** *accused-appellant.*

SYNOPSIS

Accused-appellant was found guilty by the trial court of the crime of murder for the death of Florencio Antonio. He was sentenced to suffer the penalty of *reclusion perpetua*. Hence, this appeal.

The Supreme Court ruled that the findings of facts of the trial court, its calibration of the testimonial evidence of the parties, its assessment of the probative weight thereof and its conclusions anchored on said findings are accorded great respect, if not conclusive effect, because of the unique advantage of the trial court of observing and monitoring at close range the conduct, demeanor and deportment of the witnesses as they gave their testimonies before the trial court. However, the principle is not absolute. The appellate court is not bound by the findings and conclusions of the trial court if it ignored, overlooked, misconstrued or misinterpreted substantial facts and circumstances which if considered would change the outcome of the case. However, the Court has carefully examined