

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ERNESTO ATUEL @ LOLOY BOLHOG, ACCUSED-APPELLANT.

G.R. No. 106962. September 03, 1996

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

The accused-appellant, caught in flagrante in the act of rape, insists he did not do it and instead, boldly attributes it to another person, but fails to convince this Court.

Accused-appellant Ernesto Atuel was charged with the crime of rape under Article 335 of the Revised Penal Code, before the Regional Trial Court of Davao City, 11th Judicial Region, Branch 11,[1] in a Criminal Complaint subscribed by the mother of the complainant and approved by City Prosecutor Antonio V.A. Tan, which complaint reads as follows:[2]

"The undersigned, mother of the complainant-FELICITAS SAYON, who is a mental patient, after having been duly sworn to (sic) in accordance with law, accuses the above-named accused of the crime of RAPE, under Article 335, paragraph 1 of the Revised Penal Code, committed as follows:

That on or about August 23, 1991, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, by means of force and intimidation, willfully, unlawfully and feloniously have (sic) carnal knowledge with the complainant-Felicitas Sayon, who is a mental patient, against her will.

CONTRARY TO LAW.

Davao City, Philippines, August 28, 1991."

Arraigned on September 13, 1991, the accused, assisted by counsel, entered a plea of "not guilty". Trial on the merits ensued.

In a five-page Decision dated March 29, 1992, the trial court found appellant guilty as charged. The fallo reads as follows:[3]

"WHEREFORE, finding accused Ernesto Atuel, alias Loloy Bolhog, guilty beyond reasonable doubt of rape, under Nos. 1 and 2, of Article 335 of the Revised Penal Code, as charged, he is hereby sentenced to suffer reclusion perpetua; to indemnify Felicitas Sayon, the complainant, in the amount of P40,000.00; and to pay the costs."

The Facts

Version of the Prosecution

Severo "Berot" Echavez, a porter, had been neighbors with the accused, a stevedore, since 1987. He knew that the accused and his wife lived with Lydia Atuel, elder sister of the accused, whose house at V. de Guzman St., Sta. Ana, Davao City was about two (2) arm's lengths away from Echavez's.[4]

Aside from his house at de Guzman Street, Echavez owned a wall-less shanty located behind the Sta. Ana Wharf seawall, about 60 to 70 meters from the wharf, where he would sleep at night whenever he had a cough. There was no other shanty or dwelling in the vicinity.

At dawn during low tide, fishing boats would dock near the Sta. Ana Wharf seawall to discharge their catch of fish. Fish merchants and traders would congregate at the seawall to await the fishing boats with their cargo.

In the evening of August 22, 1991, Echavez, afflicted with a cough, slept in his shanty behind the seawall as he wanted to bathe in the sea the following morning. He was all alone in his shanty and he had not seen any other person at or near the seawall.

At about 3 o'clock in the morning of August 23, 1991, Echavez was awakened by a woman's cries for help and entreaties: "Don't, Nong, don't Nong!"[5] Going toward the place where he heard the shouts, he saw the accused having carnal intercourse with a woman lying on top of a table. The place, about 20 to 25 meters from Echavez's shanty, was deserted at that time, as fishing boats had not yet landed, but the scene was illumined by a half-moon.

Echavez immediately ran to the Sta. Ana Police Patrol Station, also known as the Central Patrol Station, and reported the incident. PO1 Prospero Ondong, Sr., requested the Desk Officer to contact a mobile patrol car for assistance and then accompanied Echavez to the place indicated by the latter.[6]

Approaching the place, they saw the accused still having sexual intercourse with the woman. The accused, wearing a black jacket and nude below the waist, was standing in front of the woman and furiously pumping into her with push-and-pull motions of his buttocks.[7] The woman, whose body was reclining inside an unfinished carved banca placed on top of the table which was about 72 centimeters in height,[8] had her skirt raised up to her stomach and was completely bare below the waist; her thighs were splayed, her feet dangling downwards.[9] She was crying "Agay! Tabang!"[10] Officer Ondong arrested the accused, who claimed that the woman was his wife.[11] The woman fell to the ground, touched her knees and exclaimed to Ondong, "Gi-rape ko, Sir." [12] Ondong brought the accused, together with the woman, to the Sta. Ana Patrol Station. He tried to interview her, but she gave inconsistent answers.[13] Ondong knew the appellant, who had been previously apprehended, there having been several warrants pending for his arrest.[14]

At around 4:00 in the morning, the complainant was brought by a policeman to the Davao Medical Center. At that time, she was wearing a crumpled dress, her hair long, disheveled and loose. When interviewed by Dr. Ma. Lourdes Monteverde, complainant gave her name as Fely Delgado,[15] and said that she went to Magsaysay Park at 2 o'clock that morning to look for a prayer book. She was observed to laugh for no reason at all. In accordance with the hospital's administrative order, she was referred to the Davao City Health Office.[16]

Complainant admitted that, at the time of the incident, she was undergoing treatment for severe headaches. She testified that at about 3 o'clock in the morning of August 23, 1991, while at Magsaysay Park, she was approached by a man whom she did not know who forcibly brought her to a place near the beach where he boxed, slapped and maltreated her, and thereby rendered her unconscious. She regained consciousness at the police station.[17]

On August 28, 1991, five days after the incident, complainant was examined by Dr. Danilo P. Ledesma, Medico-Legal Officer of the Davao City Health Office.[18] Dr. Ledesma noticed complainant was "slightly incoherent". She complained to him that she had been raped. Dr. Ledesma could not categorically say that the hymenal lacerations were caused by a male organ for they could have also been caused by a finger or the result of masturbation.[19]

Dr. Melody Yeto, a doctor assigned at the psychiatry department of the Davao Medical Center, confirmed the insanity of complainant, who was suffering from inappropriate mental status, that is, her answers to questions

were not congruent with her feelings. Based on the recorded examination conducted by Dr. Enriquez -- another psychiatrist who examined the complainant on August 16, 1990 -- it was learned that complainant suffered from "sleeplessness" and was found to have "roamed around aimlessly". Her behavior, based on the observations of Dr. Yeto, was indicative of the existence of mental disorder.[20] From the medical records at the psychiatry section of the Davao Medical Center, it was learned that the woman's real name is Felicitas Sayon, and that she was single, 23 years old and had her legal residence at New Bataan, Province of Davao (formerly Davao del Norte). However, at the time of the incident, she was temporarily living with relatives at Ubalde Street, Agdao, Davao City, as she was then undergoing psychiatric treatment and check-up as an outpatient at the psychiatric section of the said center for schizophreniform disorder[21]. She was allegedly also being treated by herbolarios. Although her mental condition improved, her psychosis was not fully cured.[22]

Version of the Defense

The defense presented two witnesses, viz., Lydia Atuel, elder, sister of the accused, and the accused himself. Lydia, a self-confessed former prostitute, testified that it was a certain Caloy Reynoso, a friend and neighbor of long standing, whom she met in the evening of August 22, 1991 with the complainant, who was the one who copulated with the complainant. According to Lydia, at past 1 o'clock in the morning of August 23, 1991, she went to the beach for she thought she felt labor pains. There she saw two people, one on top of the other. Then she heard Caloy saying to the other person with him to keep quiet because someone was looking at them. According to Lydia, the charge of rape against her brother was fabricated by Severo Echavez who had an ax to grind against appellant, who in turn had taken a gangplank owned by the former.[23]

Testifying on his own behalf, accused alleged that, at about 2 o'clock in the morning of August 23, 1991, he was serving as a member of the "ronda" team together with his neighbors, Armando Tadlas and Boyet Mosqueda. The area covered by their "ronda" was from the second wharf in Sta. Ana up to Carpenter Street. Thereafter, he went looking for Caloy Reynoso who, according to his sister Lydia, was at the cottage of Echavez. When he went to the beach to look for him, he saw Caloy together with a woman and Echavez. When he went to the beach to look for him, he saw Caloy together with a woman and Echavez. Suddenly, someone behind him shouted. It turned out to be a policeman who ordered him to raise his hands; he was then frisked and arrested.[24]

The Issues

On appeal, accused-appellant assigned the following errors:[25]

"I

The trial court gravely erred in not finding the testimonies of the prosecution witnesses substantially insufficient to warrant a conviction.

II

The trial court gravely erred in finding the accused-appellant guilty as charged despite utter failure of the prosecution to establish his guilt by proof beyond reasonable doubt."

The Court's Ruling

First Issue: Credibility of Witnesses

Appellant contends that the prosecution's evidence "does not measure up to the quantum of proof required by law", aside from being "highly dubious in nature, infirmed (sic) and marred by improbabilities", and conflicting. According to appellant, the testimonies of Severo Echavez and the victim are in conflict, for the victim herself testified that she was rendered unconscious by the blows and physical maltreatment inflicted by the rapist, and therefore she could not have uttered the cries for help allegedly heard by Echavez.

Appellant's contention is devoid of merit. Rape as a harrowing experience is usually not remembered in detail.

Rather, the victim of such an atrocity would normally be inclined to forget the execrable event and sweep it into the dustbin of her unwanted experiences and memories. For such an offense is not something which enhances one's life experience and therefore worth recalling or reliving, but rather, something which causes deep psychological wounds and casts a stigma upon the victim for the rest of her life, no matter that it was never her fault that she met such a fate. A rapist should not expect the hapless object of his lechery to have the memory of an elephant and the cold precision of a mathematician.[26] In the case at bar, the rule requiring that minor inconsistencies in testimonies be disregarded should apply with even greater force, considering that complainant at the time was suffering from insanity as confirmed by the medical report of August 28, 1991. Complainant was mentally ill at the time of the incident, and consequently could not be expected to remember in precise detail all that actually happened to her. Her severe traumatic experience was too much for her unstable mental faculties. In fact, she was incoherent and violent on the days following the incident.[27] Her testimony as to what had happened certainly cannot constitute gospel truth, especially since at the time she gave her testimony she was still undergoing treatment from psychiatrists and herbolarios, and, therefore, not possessed of completely normal mental faculties. We have said that a rape victim is not cannot be expected to keep an accurate account of her traumatic experience.[28] And the credibility of a rape victim is not destroyed by some inconsistencies in her testimony.[29] On the contrary, it is a recognized axiom in rape cases that inconsistencies in the victim's testimony do not detract from the vital fact that, in truth, she had been abused. Testimonial discrepancies could have been caused by the natural fickleness of the memory, which variances tend to strengthen rather than weaken credibility as they erase any suspicion of rehearsed testimony.[30]

Moreover, it is doctrinal that the evaluation by the trial court of the testimony of a witness is accorded the highest respect because it is the trial court that has the direct opportunity to observe the witness's demeanor on the stand and determine if she is telling the truth or not. Such assessment is binding on this Court except when the same was reached arbitrarily or when the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which could have affected the result of the case. But none of such exceptions apply to this case.[31]

At any rate, what is important is whether the sexual congress was indeed consummated. The fact was proven not by the testimony of complainant but by that of Severo Echavez. The trial court correctly relied on the testimonies of Echavez, a long time acquaintance and neighbor of appellant who witnessed the incident, as well as that of Police Officer Ondong, who responded to Echavez's report. Echavez's testimony is straightforward, credible and sufficient to convict appellant, as can be gleaned from the excerpt of testimony given below.[32]

"PROSECUTOR

Q

Now, last August 23, 1991, at around 3:00 o'clock (sic) in the morning, can you tell us where were you?

A

I was sleeping in my cottage at the wharf.

Q

This cottage of yours is located at the Sta. Ana wharf?

A

Yes, sir.

Q

Now, while you were sleeping at 3:00 o'clock (sic) dawn of August 23, 1991, was there any unusual incident that took place?

ATTY. ZAMORA

Your honor, please, he was sleeping, so, he could not have known any unusual incident because he was sleeping according to him.

COURT

Witness may answer.

(WITNESS)

A

I was awakened by sounds and I heard someone saying, 'Don't Nong, don't Nong', asking for help..

COURT

Is 'Nong' an abbreviation of the word 'Manong'?

x x x x x x x x

INTERPRETER

Yes, Your honor, it's a contraction of the word 'Manong'.

COURT

Yes, it's a contraction of the word 'Manong' which means older brother. Continue.

PROSECUTOR

Q

When you heard somebody calling 'Nong', what did you do?

A

I ran to the police station because the voice was asking for help and I could not go there and so . . .
(interpretation of the answer of the witness not finished)

COURT

Q

How far is the police station from where you heard the call for help?

A

If I am not mistaken it will reach (sic) to 200 meters.

Q

You are referring to the Sta. Ana Patrol Station in front of the Magsaysay Park at Sta. Ana, Davao City?

A

Yes, sir.

Q

What voice did you hear, a male voice or a female voice?

A

A female voice.

COURT

Continue.

PROSECUTOR

Q

And did you arrive at the Sta. Ana Patrol Station?

A

Yes, sir.

Q

What did you do when you reached the Sta. Ana Patrol Station?

A

I reported to the police.

Q

After you made the report to the police, what was the response of the police?

A

The policeman went to that place where the voice asking for help was heard.

Q

How many policemen went with you?

A

One policeman.

Q

And that policeman went to the place where you heard the voice?

A

Yes, sir.

Q

When you arrived, what did you see?

A

When we arrived there (were) a man and a woman having sexual intercourse.

PROSECUTOR

Q

What was the position of the man when he had intercourse with the woman?

A

The man was standing while the woman's legs were dangling on the table with her head backward in a lying position.

Q

On what object was the woman lying?

A

On top of the table."

To discredit Echavez, the defense attributed ill-motive, alleging that he harbored a grudge against appellant because of a previous quarrel involving a piece of wood used as a gangplank.[33] The alleged quarrel, however, was too flimsy a reason, and the object of the quarrel too insignificant an item, for Echavez to have falsely charged the appellant with so serious a crime. Also, it was not even Echavez but Officer Ondong who testified as to complainant's utterance to the effect that she had been raped.

The accused also claims that Echavez's action of first seeking assistance from the authorities instead of immediately extending help to and thus preventing further violation of the victim was contrary to human nature and the natural course of things.[34]

We disagree. Going for police assistance instead of rushing in to stop a crime is not an abnormal reaction and may even be deemed the more prudent move. Appellant, caught in flagrante delicto, could have immediately fled and escaped arrest. On the other hand, he could also have fought it out with Echavez, who might have been on the losing end. Further, it was not possible to determine beforehand if appellant was armed or not. It was, therefore, the better course of action for Severo to first seek the help of the authorities. Likewise, behavioral psychology teaches us that different people react to similar situations dissimilarly.[35]

In any case, it is un rebutted that appellant was caught having sexual intercourse with Felicitas Sayon, who was proven beyond the shadow of a doubt to be a mental patient, and whose physical examination yielded findings of hymenal lacerations. Also, appellant was caught with his pants down, literally, and in the most compromising position vis-a-vis the victim, by no less than a police officer. Accused himself admitted he had no quarrel or personal differences with Officer Ondong. Thus, the trial court correctly refused to give credence to the appellant's accusation that Ondong butt-stroked him with his Armalite rifle on his stomach and back, as there was no cogent reason for Ondong to "third-degree" the accused.

While the defense tried to discredit the prosecution witnesses, Ondong's testimony was a fortress they could not breach. The police officer arrested appellant while in the very act of committing the crime, and his testimony is certainly entitled to full faith and credit. For it is well settled that credence is accorded the testimonies of prosecution witnesses who are law enforcers, it being presumed that they have regularly performed their duty, absent any convincing proof to the contrary.[36] Likewise, when there is no showing that a witness for the prosecution was actuated by improper motives, the presumption is that he was not so actuated and his testimony is entitled to full faith and credit.[37] The testimony of Officer Ondong is too explicit in its graphic depiction of the sexual assault and of the reaction of the complainant after the apprehension that, in comparison, appellant's denials appear lame and unworthy of belief. This is obvious and unmistakable from the following excerpt of testimony:[38]

PROSECUTOR ESPARAGOZA

Q

Specifically, on August 23, 1991, at 3:30 in the morning, can you tell us where you were?

A

I was on duty at that time.

Q

While on duty, did anything took (sic) place while you were on duty?

A

Well,(.) one Severo Echavez appeared in our office and reported that somebody was asking for help.

Q

And when (sic) after receiving this report from Mr. Echavez that somebody was asking for help, what did you do?

A

I requested the desk officer to call the mobile patrol to assist Mr. Echavez together with me (sic).

Q

And where did you proceed after that?

A

Well, we proceeded to Magsaysay Park wherein Severo Echavez reported the call for help.

x x x x x x x x

Q

And what did you find out later?

WITNESS

A

I saw a man wearing a black jacket (swaying) with a push and pull motion.

COURT

Q

What was he doing, if any?

A

He was half(-)naked. His hands was (sic) on the brace on the makeshift of the brace he was holding. His buttocks is (sic) moving push and pull.

PROSECUTOR ESPARAGOZA

Q

When you say, 'push and pull', can you describe specifically, in the more understandable language when you said he was making a push and pull?

A

Can I demonstrate.

Q

No, when you said push and pull, what do you mean by making a push and pull position.

COURT

Q

What was he doing actually?

A

He was swinging, the body was swinging, the buttocks was (sic) swinging.

PROS. ESPARAGOZA

Q

Was he not committing a sexual intercourse?

A

Yes, sir, he was committing a sexual intercourse.

Q

And when you said he was having a sexual intercourse, was another person around whom he was conducting a sexual intercourse?

A

Yes, sir, there was a woman in front of him.

Q

Can you tell us, describe to us the woman at that time?

A

The woman was lying in the carved wooden (sic), her feet was dangling and her body was fitted to the carved wood, her skirt was rolled.

COURT

Q

What is that carved wood?

A

I described it as unfinished "banca", it was cut this size.

xxx xxx xxx

PROS. ESPARAGOZA

Q

Before you brought the man and the woman to the Police Station, what happened?

A

When I called him the suspect, he told me 'asawa ko ni' (she is my wife). Then he add another words (sic) 'unsa mani police brutality ni' (what is this, police brutality?), he told me that.

Q

How about the woman were their (sic) comments made by the woman?

A

I saw the woman fall to the ground touching her knees and he (sic) uttered 'gi rape ko, sir' (I was raped, sir).

Q

Did you find out later the name of that woman?

A

I found out later on that the real name thru her mother and his brother that she was Felicitas Sayon.

Q

How about the man who allegedly raped her, do you know his name?

A

He is known to our station as Ernesto Atuel."

Second Issue: Rape Proven Beyond Reasonable Doubt

Under Art. 335 of the Revised Penal Code, rape is committed by having carnal knowledge with a woman under any of the following circumstances:

- "1. By using force or intimidation;
2. When the woman is deprived of reason or otherwise unconscious; and
3. When the woman is under twelve years of age, even though neither of the circumstances mentioned in the two next preceding paragraphs shall be present."

In this case, there is no question that the victim was mentally disturbed or insane at the time the sexual assault was committed. Her inconsistent answers to the queries made by Officer Ondong; her incongruent reactions as observed by Dr. Monteverde; her tendency to laugh for no reason at all; and her desire to look for a prayerbook in the wee hours of the morning at the Magsaysay Park; all these speak of a person not in full control of her senses and mental faculties. She was, therefore, correctly held by the trial court as being deprived of reason. In the rape of a woman deprived of reason or otherwise unconscious, the victim has no will. Sexual intercourse with an insane, deranged, or mentally deficient, feeble-minded, or idiotic woman is rape, pure and simple. The deprivation of reason contemplated by law need not be complete; mental abnormality or deficiency is sufficient.[39]

Appellant, therefore, was correctly convicted of the crime of rape, for having had sexual intercourse with complainant, who suffered from mental disorder. It was not even necessary to prove the element of force or

intimidation in order to secure appellant's conviction, but nonetheless, the trial court also established the fact that appellant utilized force in the sexual assault, and that the sexual intercourse was effected against the victim's will as she was shown to have shouted for help. She also alleged physical maltreatment, which though not proven by physical evidence was not disputed or rebutted by the appellant. In consonance with recent jurisprudence to the effect that the rape of a woman deprived of reason or having some mental defect deserves a heavier penalty in the form of increased civil liability, [40] the civil indemnity awarded should be, as it is hereby, increased to P50,000.00.

WHEREFORE, in view of the foregoing, the appeal is DENIED for lack of merit, and the assailed Decision is AFFIRMED, but the award of civil indemnity is hereby increased to P50,000.00.

SO ORDERED.

Narvasa, C.J. (Chairman), Davide, Jr., Melo, and Francisco, JJ., concur.

[1] Presided by Judge Nicasio O. Delos Reyes.

[2] Rollo, p. 3

[3] Rollo, pp. 15-16.

[4] Appellant denied that he lived with his sister. He stated his residence to be at Fifth Avenue, about a hundred meters away from the house of his sister. (TSN, April 22, 1992, p. 3).

[5] A Visayan contraction for Manong, a vernacular name for an older male relative; TSN, February 25, 1992, p. 16.

[6] TSN, February 26, 1992, p. 3

[7] TSN, February 26, 1992, p. 4

[8] TSN, February 25, 1992, p. 18.

[9] TSN, February 26, 1992, p. 5.

[10] Visayan words which mean "Ouch, help!"; TSN, February 26, 1992, p. 13.

[11] TSN, February 26, 1992, p. 7.

[12] "I was raped, Sir" TSN, February 26, 1992.

[13] TSN, February 26, 1992, p. 8.

[14] TSN, February 26, 1992, p.7

[15] Complainant's mother's maiden name is Delgado.

[16] TSN, March 23, 1992, pp. 3-5.

[17] TSN, March 23, 1992, p. 13.

[18] The results of the physical examination read:

"GENERAL P.E.:

Wt. = 48 kg. Ht. = 153cms.

Fairly nourished, concious, slightly incoherent, ambulatory subject.

Breast. Fully developed, hemispherical. Areolae, light brown, 1.5 cms. in diameter. Nipples, light brown, protruding, 0.9 cm. in diameter.

No extragenital physical injuries noted.

GEMITAL EXAMINATION:

Public (sic) hair, fully grown, moderate. Labia majora, gaping, labiaminora (sic), coapted. Fourchette, lax. Vestibule, pinkish, smooth. Hymen, thick, short, with a healing laceration(s) at 4:00 o' clock and 7:00 o'clock positions corresponding to the face of a watch, edges of which are congested and edematous and coactable. Hymenal orifice, originally annular, admits a tube 2.5 cms. in diameter. Vaginal walls, tight. Rugosities, prominent.

CONCLUSIONS:

1.) No evident sign of extragenital physical injury noted on the body of the subject at the time of examination.

2.) Healing hymenal lacerations, present."

(Original Records, p. 7)

[19] TSN, February 25, 1992, pp. 3-12.

[20] TSN, April 7, 1992, pp. 5-11.

[21] The respective dates of treatment were: June 15, 1989; July 10, 1989; July 28, 1989; October 23, 1989; November 24, 1989; February 5, 1990; March 6, 1990; May 3, 1990; August 16, 1990; October 18, 1990; December 18, 1990; March 26, 1991; August 28, 1991; September 26, 1991; and November 25, 1991 (Exhs. B, B-1, B-2; Records, p. 31).

[22] TSN, April 7, 1992, pp. 12-19.

[23] TSN, April 21, 1992, pp. 3-14.

[24] TSN, April 22, 1992, pp. 2-8.

[25] Rollo, p. 38.

[26] People vs. Mandap, 244 SCRA 457, May 29, 1995

[27] TSN, March 23, 1992, p. 23.

[28] People vs. Sabellina, 238 SCRA 492, December 1, 1994; People vs. Adlawan, Jr., 217 SCRA 489, January 25, 1993, citing People vs. Feliciano, 195 SCRA 19, March 11, 1991.

[29] People vs. Abapo, 239 SCRA 373, December 22, 1994

[30] People vs. Joya, 227 SCRA 9, October 1, 1993.

[31] People vs. Sabellina, supra, at p. 498, citing People vs. Eduardo de la Cruz, 229 SCRA 754, February 8, 1994.

[32] TSN, February 25, 1992, pp. 16-18.

[33] Rollo, pp. 45-46.

[34] Rollo, pp. 44-45.

[35] *People vs Ibay*, 233 SCRA 15, 25, June 8, 1994, citing *People vs. Bacani*, 181 SCRA 393, 399-400, January 24, 1990.

[36] *People vs. Segwaben*, 194 SCRA 239, February 19, 1991, citing *People vs. Sariol*, 174 SCRA 237, June 22, 1989; *People vs. Claudio*, 160 SCRA 646, April 15, 1988; *People vs. Khan*, 161 SCRA 406, May 23, 1988.

[37] *People vs. Matildo*, 230 SCRA 635, March 2, 1994.

[38] TSN, February 26, 1992, pp. 3-7.

[39] Vide Luis B.Reyes, *The Revised Penal Code*, Book Two, Twelfth Edition (1981), p. 851, citing *People vs. Layson*, C.A., 37 O.G. 318, and *People vs. Daing*, C.A., 49 O.G. 2331..

[40] See *People vs. Antonio*, 233 SCRA 283, 300, June 17, 1994, citing *People vs. Arenas*, 198 SCRA 172, June 5, 1991.

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