THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FAUSTINO GABON Y CUMPA, ACCUSED-APPELLANT.

G.R. No. 127003. November 16, 2001

Ponente: VITUG, J.

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VITUG, J.:

The law has seen it fit to prescribe the penalty of death in the commission of exceptionally offensive crimes; nevertheless, a death sentence is not indiscriminately imposed or passed upon with indifference, and it is only after all the legally pertinent facts and circumstances attendant to the case are firmly established and fully assessed when that extreme punishment will be finally decreed.

Accused Faustino Gabon y Cumpa was charged with the crime of rape in a complaint filed by Michelle Gabon that read:

> "COMPLAINT
>
> "The undersigned Complainant under oath accuses FAUSTINO GABON y CUMPA of the crime of Rape, committed as follows:
>
> "That on or about the 17th day of October 1994, in the Municipality of Marikina, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being the legitimate father of the undersigned complainant, with lewd design and by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with the undersigned complainant Michelle Gabon, 15 years of age, against her will and consent."[1]

Upon his arraignment before the trial court, the accused entered a plea of "Not Guilty."

The evidence submitted during the trial consisted of, in the case of the prosecution, the testimony of Michelle Gabon, Jocelyn Mercado, and Dr. Ma. Cristina Freyra, as well as documentary exhibits that included Michelle's birth certificate, and, for the defense, the testimony of Faustino Gabon and his brother Jose Gabon.

The Prosecution Evidence -

Michelle Gabon, the complainant, was sleeping comfortably in a room she shared with her father and siblings without any clue on what awaited her. At 1:30 in the morning of 17 October 1994, she woke up to find the accused, her father, on top of her - naked but his briefs. Startled with his behavior, she instinctively pushed him away but he kept on. The accused removed her shorts and panty, forced open her thighs and legs and onslaught his penis into her vagina. She placed her arms to her chest so that she could again try pushing him away. She uttered, "ayoko, ayoko;" it was in vain, her father retorting, "sandali lang ito." Her ordeal made her bleed in pain. Michelle was then only 15 years old, her birthdate being 27 December 1978.

Michelle went to the police with Peewee, her half-sister, to lodge a complaint. She reported that the incident of 17 October 1994 was not the first of sexual abuses that occurred regularly, almost twice a week, from 19 March to 17

October 1994. She did not reveal the incidents to anyone, except to her other half-sister Jocelyn Mercado, for fear of him.

Jocelyn Mercado testified to being a stepdaughter of the accused. On 18 October 1994, at 11 o'clock in the morning, Michelle went to her house in Las Piñas. Michelle confided to her that since March of 1994 Michelle had continued to be subjected to bestial abuse by the accused about twice a week that lasted until 17 October 1994. Michelle said she had kept mum about these intrusions because of fear.

Dr. Ma. Cristina Freyra examined Michelle on 19 October 1994; she attested on the results of her examination -

> "FINDINGS
>
> "Fairly developed, fairly nourished and coherent female subject. Breasts are hemispherical with dark brown areola and nipples from which no secretions could be pressed out. Abdomen is flat and soft.
>
> "GENITAL
>
> "There is minimal growth of pubic hair. Labia majora are full, convex and coaptated with the slightly congested and abraded labia minora presenting in between. On separating the same is disclosed an abraded posterior fourchette and an elastic, fleshy-type hymen with deep healed lacerations at 3 and 9 o'clock. External vaginal orifice offers moderate resistance to the introduction of examining index finger. Vaginal canal is narrow with prominent rugosities. Cervix is normal in size, color and consistency.
>
> "Vaginal and peri-urethral smears are negative for fram-negative diplococci and for spermatozoa.
>
> "CONCLUSION
>
> "Subject is in non-virgin state physically.
>
> "There are no external signs of recent application of any form of trauma."[2]

The Defense Evidence -

The accused, Faustino Gabon, denied not only his having raped the complainant but likewise his paternity to Michelle. He testified that he had first met Gloria Banez (mother of Michelle) in May 1978 at Arizona Sauna Bath. He frequented the place and, soon, the two found themselves carrying on an affair. He recounted that Gloria had two children by her husband with whom she was separated. In July 1978, Gloria told Faustino that she was pregnant but that she had no idea who the father might be. The accused took pity on Gloria and decided to live with her. On 27 December 1978, Michelle was born and carried his surname - Gabon. In support of his denial of the rape charges, Faustino pointed to a certain Marlon, a boyfriend of Michelle, as being the likely culprit. He asseverated that the rape charge was but a product of Jocelyn's desire for revenge for his having caused the break-up of Jocelyn and her Japanese boyfriend. Michelle also resented her having been scolded by him due to her poor grades in school. Michelle's claim to have bled when assaulted on the morning of 17 October 1994, he stressed, was inconsistent with the medical findings which showed healed, not fresh lacerations, and no external signs of recent injury.

Jose Gabon, his brother, corroborated the accused only on the relationship of Faustino and Michelle.

Finding no merit on the pleas of the accused vis a vis the evidence adduced by the prosecution, the trial court convicted him of rape and imposed the extreme penalty of death; the trial court concluded:

> "WHEREFORE, the Court finds accused Faustino Gabon y Cumpa GUILTY BEYOND REASONABLE DOUBT of the crime of RAPE, aggravated by the fact that the accused is the father of the complainant, and hereby sentences him to suffer the penalty of DEATH pursuant to Section 11 of R.A. No. 7659; to pay

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> complainant Michelle Gabon the sum of P50,000.00 as moral damages, and the sum of P50,000.00 as exemplary damages, plus all the accessory penalties provided for by law, without subsidiary imprisonment in case of insolvency, and to pay the costs.
>
> "Let the entire records of this case be forwarded to the Supreme Court for automatic review."[3]

In his appeal to this Court, the convicted accused assigned a lone error, i.e., that -

> "x x x (T)he Lower Court erred in believing the untruthful story spunned by Michelle Gabon and her sister Peewee, instead of seeing the truth in the story of Faustino. The evidence - the medico-legal report - disproves the assertation of Michelle that her father raped her on October 17, 1994."[4]

In almost all rape cases, it is the word of the complainant pitted against that of the accused. The issue, being one of credibility which largely bears on the veracity of conflicting testimony, an appellate court would be justified in placing great reliance on the evaluation made by the trial court before whom the declarants are seen, heard and observed during oral testimony.

In an unflinching manner, Michelle gave a detailed account of that which had befallen her.

> "FISCAL CAPELLAN:
>
> Madam Witness, on October 17, 1994, do you recall of any unusual incident involving yourself and your father, Faustino Gabon?
>
> "WITNESS:
>
> Yes, sir.
>
> "FISCAL CAPELLAN:
>
> And what is that incident all about?
>
> "WITNESS:
>
> I was raped by my father.

"x x x x x x x x x

"FISCAL CAPELLAN:

Now Madam Witness, you stated earlier that you were raped by your father-accused Faustino Gabon. My question now is, where did this incident happen? Where did it happen?

"WITNESS:

At our house.

"FISCAL CAPELLAN:

And where is your house located?

"WITNESS:

No. 34 J. M. Basa St., Calumpang, Marikina, Metro Manila.

"FISCAL CAPELLAN:

And about what time was that when you were raped in your house in Marikina on October 17, 1994?

"WITNESS:

About 1:30 a.m.

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"FISCAL CAPELLAN:

In what particular place of your house were you raped by your father?

"WITNESS:

Inside our room sir.

"x x x x x x x x x

"FISCAL CAPELLAN:

And Madam Witness, what exactly did your father do to your person on that early morning of October 17, 1994?

"WITNESS:

I was sleeping at that time when I was awakened and I saw him on top of me already undressed.

"FISCAL CAPELLAN:

What did you do when you were awakened and discovered that your father was in the nude over you?

"WITNESS:

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I pushed him, sir.

"FISCAL CAPELLAN:

And were you successful in pushing him?

"WITNESS:

No sir, because he was very big.

"FISCAL CAPELLAN:

After you failed to push him, what happened if any?

"WITNESS:

He tried to remove my shorts and panty and tried to insert his penis to my vagina.

"FISCAL CAPELLAN:

By the way Madam Witness, what were you wearing then?

"WITNESS:

I was wearing shorts and T-Shirt.

"FISCAL CAPELLAN:

And you were wearing bra, then?

"WITNESS:

Yes, sir.

"FISCAL CAPELLAN:

And what kind of shorts, Madam Witness?

"WITNESS:

Garterized shorts.

"FISCAL CAPELLAN:

What about your T-shirt, was it loose or tight?

"WITNESS:

Loose, sir.

"FISCAL CAPELLAN:

Now, you stated earlier that your father tried to remove your shorts and panty. My question now is, was he able or was he successful in removing your shorts and panty, Madam Witness?

"WITNESS:

Yes, sir.

"FISCAL CAPELLAN:

And after he was able to remove your shorts and panty, what happened next, if any?

"WITNESS:

He spread out my thighs and tried to insert his penis on my vagina.

"FISCAL CAPELLAN:

Was he successful in inserting his penis to your vagina, Madam Witness?

"WITNESS:

Yes, sir.

"FISCAL CAPELLAN:

And after he inserted his penis to your vagina, what happened next, if any?

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"WITNESS:

I was hurt, sir.

"FISCAL CAPELLAN:

By the way Madam Witness, did you not try to resist when you were sexually attacked by your father?

"WITNESS:

I fought, sir.

"FISCAL CAPELLAN:

In what manner?

"WITNESS:

I was pushing him.

"FISCAL CAPELLAN:

And did you try to scream or yell for help?

"WITNESS:

No.

"FISCAL CAPELLAN:

Why?

"WITNESS:

I was afraid that he might hurt me when I shout.

"FISCAL CAPELLAN:

Did he threaten you, Madam Witness?

"WITNESS:

No, sir.

"FISCAL CAPELLAN:

But why did you not shout or yell for help?

"WITNESS:

Because if I shout or yell for help he might hurt me and he might do the same things to my younger sisters.

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"x x x x x x x x x

"FISCAL CAPELLAN:

Now, after your father inserted his penis to your vagina, what happened next if any?

"WITNESS:

I bled.

"FISCAL CAPELLAN:

What part of your body bled Madam Witness?

"WITNESS:

My vagina, sir.

"FISCAL CAPELLAN:

And for how long did your father sexually abuse you on October 17, 1994?

"WITNESS:

30 minutes, sir.

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"x x x x x x x x x

"FISCAL CAPELLAN:

Now Madam Witness, going back to the incident wherein you were being raped by your father. Would you recall if what was your position then when your father first attacked you?

"WITNESS:

I was lying.

"FISCAL CAPELLAN:

And when he was already on top of you, what was your position then?

"WITNESS:

`Nakatihaya, po.'

"FISCAL CAPELLAN:

And while he was sexually abusing you, what was your position then?

"WITNESS:

I was still lying down, sir.

"FISCAL CAPELLAN:

And you also stated that your father forced open your leg, is it not?

"WITNESS:

Yes, sir.

"FISCAL CAPELLAN:

How about your arms, Madam Witness?

"WITNESS:

On top of my breast.

"FISCAL CAPELLAN:

Why were your hands on top of your breast?

"WITNESS:

So that I could push him.

"FISCAL CAPELLAN:

Were you able to push him?

"WITNESS:

No, sir.

"FISCAL CAPELLAN:

By the way Madam Witness, was that the first time that your father sexually abused you?

"WITNESS:

No, sir.

"FISCAL CAPELLAN:

Then do you recall the instances when your father abused you?

"WITNESS:

Yes, sir.

"FISCAL CAPELLAN:

May we know the occasions when your father abused you?

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"WITNESS:

It started in March 1994.

"FISCAL CAPELLAN:

Up to when?

"WITNESS:

October 17, 1994.

"FISCAL CAPELLAN:

And during the period from March 1994 to October 1994, would you recall if how many times did your father sexually abuse you?

"WITNESS:

No, sir.

"FISCAL CAPELLAN:

And could you more or less approximate . . . I recall that question. More or less how many times during that period from March to October?

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"ATTY. SALVADOR:

Already answered.

"FISCAL CAPELLAN:

That was the first answer. My next question, approximately how many?

"WITNESS:

Twice a week, sir.

"FISCAL CAPELLAN:

And during those times, did you consent or agree to what your father was doing, Madam Witness?

"WITNESS:

No, sir.

"FISCAL CAPELLAN:

And you said that you did not consent or agree to what your father was doing. My question now, is, what step or move did you do to repel or counter-act to the attack of your father?

"WITNESS:

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I pushed him everytime he was attacking me.

"FISCAL CAPELLAN:

And during all those times when you were sexually attacked by your father, you did not report the incident to anybody?

"WITNESS:

No, sir.

"FISCAL CAPELLAN:

Why?

"WITNESS:

I was afraid that if I tell anybody he might hurt me and he might do the same things to my younger sisters."[5]

"ATTY. NAVARRO:

Michelle, under the direct, you said that in the morning of October 17, 1994, at about 12:30 in the morning, you were awakened and you noticed Mr. Gabon was already on top of you, is that correct?

"WITNESS:

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Yes, sir.

"ATTY. NAVARRO:

And that he was already, as you said in the nude?

"WITNESS:

Yes, sir.

"ATTY. NAVARRO:

When you said in the nude, even his brief or shorts was already out?

"WITNESS:

He was still wearing his brief.

"ATTY. NAVARRO:

Now, you said also that he was on top of you and you started to push him. When you were pushing him, did you utter any cry or did you yell up?

"WITNESS:

No, sir.

"ATTY. NAVARRO:

Even before that. When you were awakened he was on top of you. Were you surprised to find him on top of you?

"WITNESS:

I was surprised.

"ATTY. NAVARRO:

And because you were surprised, did you not yell, `oh, bakit ka nandito'?

"FISCAL GAPUZAN:

That was already answered.

"ATTY. NAVARRO:

Not yet, I am going back before she was pushing him. When [he] was on top, she was surprised and she said yes.

"COURT:

What is the next question?

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"ATTY. NAVARRO:

When you were surprised, did you not yell out?

"WITNESS:

No, sir.

"ATTY. NAVARRO:

What was your reaction when you found him on top of you?

"WITNESS:

`Wala', all that I said was `ayoko'.

"ATTY. NAVARRO:

Did you repeat this `ayoko, ayoko'?

"WITNESS:

Yes, sir.

"ATTY. NAVARRO:

How many times?

"WITNESS:

2 times, sir.

"ATTY. NAVARRO:

What was the reaction of Mr. Gabon when you said `ayoko'?

"WITNESS:

He said, `sandali lang'.

"x x x x x x x x x

"ATTY. NAVARRO:

After that, you shoved him and you said `ayoko' and it [lasted] for about a minute.

"WITNESS:

Yes, sir.

"ATTY. NAVARRO:

And after that and all those times was he pinning you down?

"WITNESS:

Yes, sir.

"ATTY. NAVARRO:

And he was on top of you and his breast was against your breast?

"WITNESS:

Yes, sir.

"ATTY. NAVARRO:

Where was your hand when he was pinning you down?

"WITNESS:

I was pushing him.

"ATTY. NAVARRO:

I am asking where was his hand when your breast was against his breast and you were trying to push him?

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"FISCAL GAPUZAN:

Witness is demonstrating your Honor please that the hands of the accused abreast on the floor.

"ATTY. NAVARRO:

Was his breast very close to your breast?

"WITNESS:

No, sir.

"ATTY. NAVARRO:

Was he on reclining position?

"WITNESS:

Yes, sir, 'nakadapa'.

"ATTY. NAVARRO:

You said under direct that he removed your shorts. With what hand did he use in removing your shorts?

"WITNESS:

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Both hands.

"ATTY. NAVARRO:

So much so that when he started removing your shorts with both hands, he has to sit up, is that correct?

"WITNESS:

Yes, sir.

"ATTY. NAVARRO:

So he removed himself from the `nakadapa' position, he sat up and started removing your shorts in a sitting down position, is that correct?

"WITNESS:

Yes, sir.

"ATTY. NAVARRO:

Now, when he was at this position of removing your shorts, was he astride you or was he at one side of the bed where you were lying down?

"WITNESS:

He was astride, sir.

"ATTY. NAVARRO:

In relation to your legs, if he was astride you when he was removing your shorts, was he astride sitting down on your upper leg or your lower portion of your leg?

"WITNESS:

On my leg, sir.

"ATTY. NAVARRO:

Now, all the while that he was doing this, what were you doing?

"WITNESS:

I was pushing him and telling him `ayoko, ayoko'."[6]

The unwavering and positive identification made by complainant of her defiler and tormentor cannot prevail over the latter's flimsy, self-serving and uncorroborated denial.[7]

The commission of rape against Michelle cannot be negated simply because of the absence of fresh laceration or by the fact that Michelle has been found to be in a non-virgin state at the time of the medical examination. A doctor's certificate is merely corroborative in character and not an indispensable requirement in proving the commission of rape;[8] in fact, lacerations, whether healed or fresh, are the best physical evidence of a forcible defloration.[9] Contrary to appellant's contention, the testimony of prosecution witness Police Senior Inspector Maria Cristina Freyra, a medico-legal officer, actually appears to support the case for the prosecution.

"FISCAL GAPUZAN:

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"What was the result of your examination?

"WITNESS:

"On examination, I found a slightly congested and abraded labia majora and elastic fleshy type hymen with deep healed laceration at 3 to 9 o'clock.

"FISCAL GAPUZAN:

"What does that mean in layman's term when you stated in your report that she has a deep healed lacerations at 3 and 9 o'clock?

"WITNESS:

"When we say deep, we mean that the extent of the laceration extend beyond ½ of the entire width of the hymen and when we say healed, we mean that the edges of the laceration are already clean cut which mean that the laceration was more than 7 days prior to the last examination.

"FISCAL GAPUZAN:

"Now, what is then your conclusion Madam Witness after having those findings pursuant to your examination?

"WITNESS:

"I concluded that subject is [in] non virgin state physically and there are no external signs of recent application of any form of trauma.

"FISCAL GAPUZAN:

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"You stated Madam Witness in your finding that the specimen have an abraded labia minora. Will you please tell this Honorable Court what does this mean in layman's term?

"WITNESS:

"In layman's term, abraded in Tagalog is `gasgas'.

"FISCAL GAPUZAN:

"And that abraded Doctor, do you consider that still fresh or healed abrasion?

"WITNESS:

"Those are fresh abrasions.

"FISCAL GAPUZAN:

"And in your medical expertise Doctor those abrasions which were fresh as you have stated, more or less, when could this been inflicted on the victim?

"WITNESS:

"The victim could have inflicted that a day prior to examination.

"FISCAL GAPUZAN:

"Now, you likewise concluded that the subject is non virgin state physically. Could you possibly tell this Honorable Court when the specimen or patient could have practically lost her virginity?

"WITNESS:

"Upon examination, I found a deep healed laceration and when we say healed, the laceration was inflicted 7 days prior to examination, therefore, she had this laceration more than 7 days upon examination, it could be a month, a year or 2 years.

"FISCAL GAPUZAN:

"Now Doctor, the victim in this case testified on cross examination that she was last abused on October 17, 1994. She likewise testified that during such date, she noticed some blood on her underwear. Would it still be possible Doctor that the witness sustain this injury despite the fact that she was a non virgin state physically?

"WITNESS:

"When I interviewed her, I asked her the date of her last menstruation. The first day of her last menstruation was October 9. Therefore, it is mathematically possible that the blood she noticed during the contact was the last flow of menstrual blood or the blood could have been due to abrasion that was brought about by the contact. But the blood that would flow from this abrasion would be minimal if you are to examine it, let us say it stick on a white sheet the stain would be brownish; very thin."[10]

Besides, in her narration, Michelle said that the incident of 17 October 1994 was not the first time she had been subjected to sexual abuse by appellant which could aptly explain the healed lacerations described by Dr. Freyra.

Appellant asserts that Michelle could have been prompted by Peewee to file the case because she, like Michelle, has abhorred being scolded by appellant for her failing grades in school. This argument is too feeble to be taken seriously. Indeed, it has often been said that it would be inconceivable for a young lass to complain of rape, let alone against her own kin, to undergo physical examination of her private parts, as well as to willingly endure the concomitant trauma and the scandal of a public trial,[11] for no compelling and valid reasons. Even when consumed with revenge, it would still take a great amount of psychological depravity to concoct a rape story, subject an innocent man to an extreme punishment and drag the supposed victim and the rest of her family to a lifetime of shame.[12] Nor would the argument that it would be impossible for the crime of rape to be committed in a crowded room an acceptable defense. It is a hornbook doctrine that rape can be committed even in a most unlikely venue.

Under Section 11(1) of Republic Act 7659,[13] in relation to Article 335 of the Revised Penal Code, the death

penalty may be imposed when the rape victim is under eighteen (18) years of age and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim. The concurrence of the minority of the victim and her filiation with the accused is essential in order to qualify the crime and warrant the imposition of the death penalty. These twin circumstances are required to be both duly alleged and proved.[14]

In the instant case, appellant failed to negate the minority of the victim properly alleged in the complaint, attested to by Michelle and stated in her birth certificate,[15] but the relationship to him of the victim, averred in the complaint, was not duly established. Michelle could have only been an illegitimate (not legitimate per the complaint) daughter of appellant, the latter not being lawfully married to Michelle's mother. Indeed, even Michelle's own filiation to appellant would not appear to be indubitable.

A discrepancy found in the information and that which might finally be established in court is fatal in the imposition of the death penalty. It is paramount that the accused should always be aptly informed of the accusation against him and, unless correctly stated in the complaint or information, qualifying circumstances cannot be considered against an accused.

The pronouncement below that the rape victim is entitled to the amount of P50,000.00 by way of civil indemnity and as being the equivalent of compensatory damages is sustained.[16] In addition, the victim is entitled to a separate award of P50,000.00 moral damages, taking into account the immeasurable havoc wrought on her youthful psyche.[17] There being no aggravating circumstance that can be considered, the award of exemplary damages by the trial court would have to be deleted.

WHEREFORE, the assailed decision of the court a quo convicting appellant FAUSTINO GABON y CUMPA is AFFIRMED with MODIFICATION in that he is only found guilty of simple rape, not qualified rape, and he is hereby meted the penalty of reclusion perpetua. In addition to the civil indemnity of P50,000.00 adjudged against appellant in favor of Michelle Gabon, the Court likewise awards to her, payable by appellant, moral damages of P50,000.00. The award of a like amount by way of exemplary damages is deleted for lack of legal basis. Costs de oficio.

SO ORDERED.

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

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[1] Rollo, p. 13.

[2] Rollo, pp. 39-40.

[3] Rollo, pp. 54-55.

[4] Rollo, p. 81.

[5] TSN, 05 January 1995, pp. 11-30.

[6] TSN, 05 July 1995, pp. 3-21.

[7] People vs. Ramos, 312 SCRA 137.

[8] People vs. Brandares, 311 SCRA 159.

[9] People vs. Alcala, 307 SCRA 330.

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[10] TSN, 19 September 1995, pp. 9-14.

[11] People vs. Quinanola, 306 SCRA 710.

[12] People vs. Sandico, 307 SCRA 204.

[13] An Act To Impose the Death Penalty on Certain Heinous Crimes, Amending for that purpose the Revised Penal Code, as amended, other Special Laws, and for other purposes.

[14] People vs. Licanda, 331 SCRA 357.

[15] A birth certificate is the best evidence of a person's date of birth. (People vs. Apostol, 320 SCRA 327.)

[16] People vs. Fuertes, 296 SCRA 602.

[17] People vs. Sagun, 303 SCRA 382.

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