THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RUSTICO RIVERA Y PALACIO, ACCUSED-APPELLANT.

G.R. No. 130607. November 17, 1999

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PER CURIAM:

The focus of this review by the Court is to examine whether or not the constitutional presumption of innocence accorded to an accused has been sufficiently overcome by the State in the case at bar enough to sustain the judgment of the trial court finding the indictee guilty beyond reasonable doubt of qualified rape and thereby imposing upon him the death penalty. This Court, in this automatic review of the case, concludes affirmatively.

The Information filed against the accused in Criminal Case No. 778-M-95 of the Regional Trial Court ("RTC"), Branch 7, of Malolos, Bulacan, was to the following effect:

> "I N F O R M A T I O N
>
> "The undersigned Asst. Provincial Prosecutor, on complaint of the offended party, Alphamia A. Rivera, 10 years of age, under oath accuses Rustico Rivera y Palacio, father of the offended party, of the crime of rape, penalized under the provisions of Art. 335 of the Revised Penal Code, committed as follows:
>
> "That on or about the 16th day of May, 1995, in the municipality of Calumpit, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there wilfully, unlawfully and feloniously, by means of force, intimidation and with lewd design have carnal knowledge of one Alphamia A. Rivera, his daughter, a minor, of 10 years of age, against her will and without her consent.
>
> "Contrary to law.
>
> "Malolos, Bulacan, June 23, 1995."[1]

When arraigned on 09 August 1995, the accused, assisted by counsel de oficio, entered a plea of not guilty. The trial ensued shortly after the arraignment.

The Case for the prosecution.-

Alphamia Rivera, the private complainant, testified that she was born on 16 August 1984, the eldest among the three children of herein accused Rustico Rivera and Amalia Rivera. The family resided in a small house, in Gatbuca, Calumpit, Bulacan. At about 1:30 in the afternoon of 16 May 1995, Alphamia, her younger sister Nina Joy and her younger brother Rustan were lying on a wooden bed (papag) momentarily being put to sleep by their father. Moments later, the accused slightly touched Alphamia's back with his finger ("kinakalabit po niya ako"[2]). He then abruptly removed her short pants and panty, mashed her breast and licked her vagina. He rolled out a mat ("banig") on the floor and brought Alphamia down from the raised "papag." Against her will, he spread her legs while crouching on top of her until she felt the slight painful penetration inside her. She did not bleed but saw a "urine-like" fluid being later discharged from the penis of her father.

Alphamia did not divulge the incident to anyone because of fear of her father who threatened to choke her if she were to tell on him. Her mother subsequently found out about the matter when Nina Joy related the story to her Ate Mary Anne (a cousin) who, in turn, told her Tita Lyn of it. It turned out that Nina Joy witnessed the bestial act done to her older sister by their father and merely pretended to be asleep ("nagtutulug-tulugan lang pala siya"[3]) at the time. Responding to questions from the trial judge, Alphamia said that prior to 16 August 1994, there were already instances when she would be sexually molested by her father. Her father would touch her vagina with his fingers and his penis or mash and kiss her breasts.

Dr. Fe Mesina, the Medical Health Officer of Calumpit, Bulacan, who conducted a physical examination on Alphamia on 17 May 1995, came out with a medical report. The document disclosed:

> "MEDICO-LEGAL REPORT
>
> "General Data:
>
> "ALPHAMIA RIVERA Y. ALIWALAS, ten (10) years old, female child and or resident of Fatbuca, Calumpit, Bulacan.
>
> "Alleged Case:
>
> "Rape
>
> "Date, Time an Place of Commission:
>
> "May 16, 1995 at about 1:30 p.m. more or less, inside their residence.
>
> "Requesting Party:
>
> "SPO Ernesto T. Deogracias, PNP, Calumpit.
>
> "Date, Time and Place of Examination:
>
> "May 17, 1995 at 11:00 p.m. at MHO's clinic.
>
> "Findings:
>
> "General Survey:
>
> "Normally developed, fairly nourished, conscious, coherent, cooperative, ambulatory, afebrile female, Filipino child.
>
> "Extra-genital Examination:
>
> "No abnormal findings
>
> "Genital Examination:
>
> "No pubic hair
>
> Labia Majora and minora-coaptated. Fourchette-congested and very tender to touch.
>
> "Hymen - Thick with old, healed laceration at 3 o'clock and 5 o'clock positions, congested and very tender to touch.
>
> "Hymenal Orifice
>
> "Examining fingers could not be inserted due to pain and tenderness.
>
> "Cervical smear was taken and sent to laboratory for examination.

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"Respectfully submitted,

"(SGD.) FE P. MESINA, M.D.
Municipal Health Officer."[4]

Elaborating, Dr. Mesina stated at the witness stand that the lacerations at 3 o'clock and 5 o'clock positions in the victim's hymen could have been caused by the forceful introduction of a hard throbbing penis into the private part (vulva) of the victim. The tenderness and swelling of the portions around the hymen or the labia majora and labia minora that did not correspond to the old lacerations indicated that there was a recent "attempt to introduce a hard penis only a day before (the) examination."[5] Only the tip of the penis apparently penetrated the hymen and did not reach the cervical canal which could have otherwise inflicted new lacerations.

Nina Joy Rivera, the 9-year old sister of Alphamia, when called to the witness stand, narrated how her father molested her sister ("kinakalabit ang Ate ko"[6]). She saw her father inserting his hand inside the dress of her Ate on her left breast. After a while, he removed her Ate's lower apparel, licked her vagina, and separated her thighs. Her Ate resisted but he persisted. Nina was awake and only feigning sleep. She would close her eyes whenever her father appeared to glance at her until she finally got up and said "Daddy, iihi po ako."[7] She noticed, while she was urinating, that a pillow was placed to cover the hips and genital area of her sister.

Amalia Rivera testified that she was not at home at the time of the incident but was attending a meeting at Dampol, Pulilan, Bulacan. She expressed how painful it was for her to later learn about it. She sought the advice of her relatives, before taking Alphamia to the police station in Calumpit, Bulacan, to lodge a complaint and then to the office of the Municipal Health Officer to have her daughter medically examined. Her husband had meanwhile left for Tarlac, and it was during his 3-day absence that she had the case prepared to prevent him from absconding. When her husband returned on 20 May 1995, she had him promptly arrested by the police.

SPO3 Roberto Cristobal, the last witness to testify for the prosecution, was the police officer who took the written statements of Alphamia and Nina Joy and assisted in the arrest of the accused.

The Case for the Defense.-

The defense presented the accused Rustico Rivera himself and Dr. Dominick L. Aguda, medico-legal officer of the NBI, who conducted a second physical examination on Alphamia Rivera at the instance of the accused.

Rustico Rivera denied the accusation. He asseverated that at about 1:30 p.m. of 16 May 1995, his two daughters were in the house of his mother-in-law viewing television shows while he and Rustan (his son) were having a nap inside the house. The accusation against him, he said, was merely concocted by his mother-in-law who harbored ill-feelings against him and by his wife with whom he had frequent fights. The most recent quarrel of the couple occurred on 14 May 1995 after his wife herself had remarked that a jeepney driver was in love with her that caused him to lose his cool and to strike at her. Being then jobless, he was forced to continually ask for financial help from his relatives in Tarlac.

Dr. Dominick L. Aguda, medico-legal officer of the NBI, conducted a second physical examination on Alphamia Rivera on 21 January 1997 in his office in San Fernando, Pampanga, upon the request of the accused. His findings were contained in Living Case No. MG-97-04; viz:

"F I N D I N G S

"GENERAL PHYSICAL EXAMINATION:

"Height: 148 cms. Weight:_____

"Fairly nourished/developed; conscious, coherent, ambulatory subject. Breast, hemispherical, doughy, Areolae, brown, 2.5 cms. in diameter, Nipples, brown, protruding, 0.5 cm. in diameter.

"No extragenital phyiscal injury noted.

"GENITAL EXAMINATION:

"Pubic hair - absent; Labia majora and minora, coaptated, Fourchette-V-shaped, tense. Vestibular mucosa, pinkish. Hymen-moderatley thick, old, healed lacerated wounds; complete at 11* and incomplete at 3* and 5 o'clock position, corresponding to the face of a watch; Hymenal orifice admits a tube, 2.5 cms. in diameter. Vaginal walls, tight; Rugosities-prominent.

"CONCLUSIONS:

"1. There was no extragenital physical injuries noted on the body of the subject at the time of examination.

"2. Genital findings compatible with sexual intercourse with man on or about the alleged date of commission."[8]

Dr. Aguda appeared before the trial court by virtue of a subpoena and presented as a hostile witness by the defense as his findings turned out to be unfavorable to the accused. Dr. Aguda testified that there was a healed hymenal lacerated wound at 11:00 o'clock position and old healed lacerated hymenal wounds incomplete at 3 and 5 o'clock positions. The healed lacerations could have been caused by entry of any object or possibly a genital organ of a human male. Any object more than 2.5 cm. in diameter could cause this lacerated wound in the hymen, considering the size of the victim's hymen of only 2.5 cm. in diameter.

Weighing the evidence adduced before it, the trial court, in a decision, promulgated on 06 August 1997, found for the prosecution. The court adjudged:

"WHEREFORE, judgment is hereby rendered finding accused Rustico Rivera y Palacio GUILTY beyond reasonable doubt of the crime of incestuous rape as defined and penalized under Section 11 (1) of Republic Act No. 7659 and he is hereby sentenced to suffer the penalty of DEATH, and to pay his victim, Alphamia A. Rivera, the sum of P50,000.00 as moral damges, plus the sum of P50,000.00 as exemplary damages.

"SO ORDERED."[9]

In its brief filed for the accused, the defense raised the all too typical and encompassing assignment of errors in appeals of this nature, i.e., that-

"I. The trial court erred in not giving credit to the evidence for the accused-appellant.

"II. The trial court erred in convicting the accused-appellant and in imposing the death penalty."[10]

The denial voiced out by appellant, the imputation of ill-motives on the part of his wife and mother-in-law, and the supposed frame-up against him are no match to the positive and categorical testimony of the prosecution witnesses, specifically that of the victim herself and her sister, Nina Joy, whose declarations are corroborated by the physical evidence testified to, in turn, by Dr. Fe Mesina and Dr. Dominick Aguda. It should indeed be highly inconceivable for such young and inexperienced girls as Alphamia, barely 11 years old, and her sister Nina Joy to both succumb to the making of a fabricated charge not just for a simple offense but a capital crime against their own father.[11] Truly, they must have been impelled by a desire so strong as to let justice find its way.[12] The Court is particularly impressed by the victim's testimony - that can only be described to be consistent, candid, and spontaneous-even under rigid examination.

"FISCAL:

"Q

And after that, what did your father do?

"A

After that, he woke me up, sir.

"Q

Where were you sleeping then when your father woke you up?

"A

In our bedroom, sir.

"Q

Now, would you please tell the Honorable Court what was the action of your father when you said he was trying to wake you up?

"A

`Kinakalabit po niya ako.'

"Q

And what part of your body did your father touch you?

"A

At my back, sir.

"Q

By the way, during that time, would you please describe to this Honorable Court what was your attire at that time?

"A

I was wearing T-shirt and Short, sir.

"Q

During that time, were you wearing panty?

"A

Yes, sir, I was then wearing panty.

"Q

What part of your body was your father touching when you are being awakened by him?

"ATTY. SANTOS:

Already answered.

"FISCAL:

"Q

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When you woke up, what did your father do?

"A

He was touching my private parts, sir.

"Q

And what else was your father touching, if any?

"A

My breast, sir.

"Q

And after that, what did your father do?

"A

My father was touching my vagina with his penis, sir.

"Q

Why? At that time were you wearing short and panty?

"A

Yes, sir, at that time, I was still wearing my short and panty.

"Q

What else did your father do after or aside from touching your private part and trying to place his private part to your private part?

"A

My father was even licking my vagina with his tongue, sir.

"Q

And was your father able to lick your vagina?

"A

Yes, sir.

"FISCAL:

"Q

Was at that time you were still wearing your short and panty?

"A

He removed my short and panty, sir.

"Q

Now, how about your T-shirt?

"A

He did not remove my T-shirt, sir.

"Q

What other things did your father do when you said your father was licking your vagina?

"A

He put his hand inside my T-shirt, sir.

(Witness demonstrating her hand being placed on her left breast.)

"Q

After that, what did your father do?

"A

After that he put me down because the bed I was lying in was raised, sir.

"COURT:

"Q

And where did he bring you after he put you down from the raised `papag'?

"A

He rolled out a mat (banig) on the floor and he lay me down on the mat (banig).

"FISCAL:

"Q

And that is under your bed?

"A

He rolled out this `banig' just under the raise `papag.'

FISCAL:

"Q

How tall is this papag?

"A

Up to this high, sir. (Witness demonstrating a height of about 4 feet.)

"Q

You said that you were placed under this `papag' and made to lie on this 'banig,' what did your father do?

"A

While I was lying on my back on the mat (banig) he separated my thighs and touched my vagina with his penis, sir.

"Q

Would you please demonstrate to this Honorable Court the position of your father when he was doing that to

you?

"A

He was doing like this, sir. (Witness demonstrating a crouching position in which the body of his father was on top of her and his arms spread out on her sides.)

"Q

You said that your father was placing his penis on your vagina, did you feel that?

"A

Yes, sir.

"Q

Where in particular in your body was that the private part of your father was touching at the time when you feel it?

"A

Here, sir. (Witness pointing to her vagina.)

"FISCAL:

"Q

Did you feel the penis of your father touching the mouth of your vagina?

"A

Yes, sir.

"Q

Did the penis of your father even slightly penetrated your vagina?

"A

Yes, sir.

"COURT:

"Q

And what did you feel when according to you the penis of your father was able to enter your vagina?

"A

I felt pain, sir.

"Q

And this penetration of the penis of your father inside your vagina, was it slight or was it deep?

"A

It was only a slight penetration, sir.

"Q

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Did you experience bleeding?

"A

No, sir. But there was discharge from his penis like urine.

"Q

Were you able to notice the color o this discharge?

"A

A watery substance, sir.

"COURT:

"Q

The color, were you able to notice the color?

"A

I did not notice the color, sir.

"FISCAL:

"Q

And after that, what did your father do?

"A

After that, he said that we better stopped because somebody might see us, sir.

"Q

And after that, what did your father do?

"A

After that, we went out, sir.

"Q

Did your father tell you anything after the two of you went out of your bedroom?

"A

None, sir.

"Q

Did you report this incident to your mother?

"A

No, sir, because I was afraid.

"Q

To whom were you afraid?

"A

I was afraid of my mother and my father because my mother might spank me if I tell her, sir.

"COURT:

Make it of record that the witness now begins to cry.

"FISCAL:

"Q

Why were you afraid of your father?

"A

Because he might also spank me, sir.

"Q

Did your father threaten you?

"A

Yes, sir.

"Q

And do you still remember the words or exact words that your father told you?

"A

He said he will choke me if ever I will tell anybody about it, sir."[13]

CROSS EXAMINATION ON WITNESS ALPHAMIA RIVERA

"Q

And after you were awakened by your father, according to you, he removed your panty and your short?

"A

Not yet, sir, at first he touched my private part, sir.

"Q

With your panty and short still on?

"A

Yes, sir.

"Q

Now when he touched your private part your other sister and brother were already awakened?

"A

No, sir, my brother was already asleep while my sister was faking her asleep, sir.

"Q

But in the same way that they were in that papag where you were sleeping?

"A

Yes, sir.

"Q

And after he touched your private part he carried you under the papag?

"A

Not yet, sir.

"Q

You mean to tell the court that after he touched your private part that was the time also that he removed one by one, your panty and your short?

"A

Yes, sir.

"Q

While you were still lying on the papag?

"A

Yes, sir.

"Q

At what point or when you were brought down from the papag after your father rolled out a mat under the papag, that was the time that he removed your panty and your short?

"A

While I was still lying down on the papag, my father had already started removing my short and my panty, sir.

"Q

Which came first, his rolling out a mat under the papag or his removing your panty and short?

"A

The rolling out of a mat on the floor came ahead, sir.

"Q

Did you not feel apprehensive when he removed your short immediately before you were brought under the papag?

"A

Well, I became nervous, sir.

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"Q

Did you not tell your father to stop doing that because that is bad?

"A

No, sir, because I was afraid, sir.

"Q

So that you did not even make a noise to call the attention of the other occupants of the other houses?

"A

Yes, sir.

"Q

You were still on the papag lying when your father went on top of you?

"A

No, sir.

"Q

So, except for touching your private part, he did not do anything while you were still on the papag?

"A

There was, sir.

"Q

You mean while you were still on the papag, he tried to put his penis on your vagina?

"A

No, sir, he was just touching my vagina with his penis, sir.

"Q

He was not wearing at that time a lower apparel?

"A

There was, sir.

"Q

But according to you he used his penis in trying to touch your private part?

"A

He merely lowered his pants to his thighs and he did not remove his pants completely, sir.

"Q

And also while you were still lying in that papag, he was using his finger and putting it inside your private part?

"A

Yes, sir.

"Q

And in addition to that, according to you, he was even licking or kissing your private part?

"A

Yes, sir.

"Q

How long was that before you were brought down under the papag?

"A

I do not know, sir."[14]

It would take a most senseless kind of depravity for a young daughter to concoct a story which could put her own father to suffer death. At all event, still the well-entrenched guiding rule is, when the issue focuses on the credibility of witnesses or the lack of it, that the assessment made by the trial court should be controlling unless cogent reasons, not here extant, compel otherwise.

The trial court described what it saw in the two young girls.

"But more than the physical pain that could ease in days, there is the endless pain of a mind that will be forever plagued by a most hideous memory.

"There is no name for the kind of sorrow written in Alphamia's face as she tearfully recounted her terrible ordeal. Her eyes mirrored an undying agony. Indeed, no experience could be more painful to a child than to be ravished by her own father, because her torment will never end as she will be continually ravaged by an endless nightmare.

"It is the cruelest thing a man could do to his child.

"Alphamia was a pitiful sight. And understandably so. Her world has crumbled. Her dreams were shattered. Her young life was ruined.

"Even Nina Joy, whose testimony provided strong corroboration to the account of Alphamia, was crushed. She said she stopped loving her father for the repulsive thing that he did to her sister. She only has contempt for her father. It is not difficult to believe her as, undeniably, there can be no love where respect is gone."[15]

The events that unfolded were verily most tragic for a girl who would have to yet cross the threshold of womanhood.

The imputation of ill-motives on the part of the wife of appellant hardly merits condsideration. A mother certainly would not expose her own daughter to the ignominy of a rape trial merely to end her relationship with her husband[16] or to retaliate against him for his transgressions knowing the long-life stigma and scars[17] it could bring.

The trial court has correctly imposed the death penalty in the case at bar after taking into account the qaulifying circumstances of minority of the victim and the paternity relationship between appellant and the victim. Section 11 of Republic Act No. 7659, amending Article 335 of the Revised Penal Code, provides:

"Sec. 11. Article 335 of the same Code is hereby amended to read as follows:

"Art. 335. When and how rape is committed.- Rape is committed by having carnal knowledge of 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 or is demented.
>
> "The crime of rape shall be punished by reclusion perpetua.
>
> "Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death.
>
> "When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be death.
>
> "When the rape is attempted or frustrated and a homicide is committed by reason or on the occasion thereof, the penalty shall be reclusion perpetua to death.
>
> "When by reason or on the occasion of the rape, a homicide is committed, the penalty shall be death.
>
> "The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:
>
> "1. When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.
>
> "2. When the victim is under the custody of the police or military authorities.
>
> "3. When the rape is committed in full view of the husband, parent, any of the children or other relatives within the third degree of consanguinity.
>
> "4. When the victim is a religious or a child below seven (7) years old.
>
> "5. When the offender knows that he is afflicted with Acquired Immune Deficiency Syndrome (AIDS) disease.
>
> "6. When committed by any member of the Armed Forces of the Philippines or the Philippine National Police or any law enforcement agency.
>
> "7. When by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation."

The crime of rape has been established. Alphamia, the victim, is a minor (merely 10 years of age at the time of commission of the offense), and the offender is the father of the victim. These elements have been properly alleged in the information and proven during the trial.

In People vs. Ramos,[18] the Court has declared:

> "While Republic Act No. 7659 did not give a legal designation to the crime of rape attended by any of the seven new circumstances introduced in Article 335 on December 31, 1993, this Court has referred to such crime as qualified rape in a number of its decisions. However, with or without a name for this kind of rape, the concurrence of the minority of the victim and her relationship with the offender give a different character to the rape defined in the first part of Article 335. They raise the imposable penalty upon a person accused of rape from reclusion perpetua to the higher and supreme penalty of death. Such an effect conjointly puts relationship and minority of the offended party into the nature of a special qualifying circumstance."[19]

The Court is thus constrained to affirm the imposition of the death penalty on the accused. Nevertheless, four members of the Court, although maintaining their adherence to the separate opinions expressed in People vs.

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Echegaray[20] that Republic Act No. 7659, insofar as it prescribes the death penalty, is unconstitutional, bow to the ruling of the Court, by a majority vote, that the law is constitutional and that the death penalty can accordingly be imposed.

With respect to the award of damages, Alphamia Rivera should be entitled to the amount of P75,000.00 by way of civil indemnity ex-delicto[21] in line with now prevailing policy adopted by this Court in rape cases when committed under, and effectively qualified by, any of the circumstances under which the death penalty is imposed. The trial court's award of P50,000.00 in moral damages for the injury suffered is upheld.

WHEREFORE, the judgment of the trial court convicting the accused Rustico Rivera of qualified rape in Criminal Case No. 778-M-95 is AFFIRMED with the modification that the civil indemnity ex-delicto awarded by the trial court to the offended party, Alphamia A. Rivera, is increased to P75,000.00. The P50,000.00 moral damages likewise ordered by the court a quo to be paid by the accused is sustained.

In accordance with Section 25 of Republic Act No. 7659, amending Article 83 of the Revised Penal Code, upon finality of this decision, let the records of this case be forthwith forwarded to the Office of the President for the possible exercise of the pardoning power.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., JJ., concur.

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[1] Records, p. 1.

[2] TSN, 11 September 1995, p. 5.

[3] TSN, 11 September 1995, p. 11.

[4] Rollo, pp. 23-24.

[5] TSN, 02 October 1995, p. 9, 12-14.

[6] TSN, 24 January 1996, p. 15.

[7] TSN, 29 January 1996, p. 30.

[8] Records, p. 117.

[9] Records, p. 161.

[10] Rollo, p. 104.

[11] People vs. Matrimonio, 215 SCRA 613; People vs. Lao, 249 SCRA 137; People vs. Cabanela, G.R. No. 127657, 24 November 1998.

[12] People vs. Vitor, 245 SCRA 392; People vs. Dado, 244 SCRA 655.

[13] TSN, 11 September 1995, pp. 5-11.

[14] TSN, 23 October 1995, pp. 7-11.

[15] Rollo, pp. 36-37.

[16] People vs. Burce, 269 SCRA 293.

[17] People vs. Alimon, 257 SCRA 658.

[18] 296 SCRA 559.

[19] At p. 575.

[20] 267 SCRA 682.

[21] People vs. Prades, 293 SCRA 411; People vs. Bartolome, 296 SCRA 615.

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