NOMER OCAMPO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. NO. 163705. July 30, 2007

Ponente: TINGA, J.

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TINGA, J.:

On 22 May 1996, petitioner Nomer Ocampo, Elmer Miranda, and Danilo Cruz were charged with the crime of robbery with physical injuries. The Information reads:

> That on or about the 14[th] day of November 1995, at around 8:15 o'clock in the evening, in Barangay San Nicolas I, Municipality of Magalang, Province of Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, did then and there willfully, unlawfully and feloniously, with intent of gain and by means of force and intimidation grab one Rommel Q. Misayah by the neck and armed with a bladed weapon attack the latter, inflicting upon him physical injuries which required and did require medical attendance, and on the occasion thereof, accused in furtherance of their intent to gain did then and there willfully, unlawfully and feloniously take, steal and carry away with them the following, to wit:
>
> a) One (1) Icom radio . . . P4,500.00
>
> b) Two (2) T-shirts . . . 350.00
>
> c) A pair of maong pants . . . 345.00
>
> d) A clutch bag . . . 150.00
>
> e) Cash . . . 29,000.00
>
> with a total value of THIRTY FOUR THOUSAND THREE HUNDRED FORTY FIVE (P34,345.00) PESOS, Philippine Currency, belonging to and owned by the said Rommel Q. Misayah, to the damage and prejudice of the owner, in the afore-said [sic] amount.
>
> CONTRARY TO LAW.[1]

Records show that there was an Amended Information[2] dated 17 July 1996 changing the crime charged to Robbery with Violence and Intimidation against all of the accused–Ocampo, Cruz and Miranda. Arraignment ensued on 19 July 1996[3] where all of the accused pleaded not guilty. Accused Cruz jumped bail during the pendency of the trial and was tried in absentia.[4]

The prosecution presented and offered the testimony of Rommel Q. Misayah and several documentary evidence.

Misayah testified that on 14 November 1995, at around 8:10 p.m., he was walking along San Nicolas Street on his way home when three male individuals approached him.[5] As the place was sufficiently lighted by a nearby post, he was able to identify the trio as accused Cruz, Ocampo and Miranda. When the three accused were already near him, Cruz grabbed Misayah's neck and choked him while Miranda held his shoulder and got his shoulder bag.[6]

Ocampo meanwhile was in the middle, holding a knife, warning him not to fight back. Sensing that he would be harmed anyway, Misayah fought back by pushing the hands of the accused and trying to parry their blows. He and Cruz then fell on the ground with Cruz on top of him. When the handle of his shoulder bag snapped, all of the accused ran away with the shoulder bag.[7]

By reason of the incident, Misayah sustained wounds in his hands caused by the bladed weapon held by Ocampo when he attempted to evade Ocampo's blows.[8] The shoulder bag taken from Misayah contained the items enumerated in the aforequoted Information.

At the nearby Municipal Hall, Misayah reported the incident to Police Officers de Leon, Mon Mendoza, and Catalino Mutuc.[9] Misayah was brought to Balitucan Emergency Hospital for treatment and thereafter proceeded to the precinct. After further investigation, he then executed a statement before Sr/Insp. Catalino Mutuc and SPO4 de Leon.[10]

In their defense, accused Ocampo, Miranda, and another witness, Oliver Santos, gave their version of what happened that night.

Miranda testified that he was with Ocampo in the afternoon of 14 November 1995 to accompany the latter to borrow a wheelbarrow from a certain Lut Ocampo.[11] Miranda and Ocampo played chess until 6:00 in the evening at Lut Ocampo's place while waiting for him to arrive. As they were leaving that place, they met Cruz. Instead of proceeding home, Ocampo invited Miranda for a drink at an establishment identified as "Irma's" and Cruz went along with them. That was already about 7:30 in the evening. While on their way to Irma's, Cruz and Misayah "bumped each other and had an altercation."[12] Then Miranda informed his companions that he would go ahead. Miranda was about one yard away from Cruz and Misayah when he saw Cruz strangle Misayah. Claiming that he did not want to get into trouble, he did not pacify Cruz and Misayah. He hurriedly left and proceeded to Sally Feliciano's house and stayed there until 11:00 in the evening. As he was in a hurry to leave the incident where the altercation happened, he did not notice what happened to Ocampo.[13]

Ocampo, on his behalf, testified that he knew Misayah who has a drug store in Magalang, Pampanga. At about 8:00 p.m. of 14 November 1995, he was walking with Miranda and Cruz on their way to Vannie's Restaurant when Cruz crossed the street and approached Misayah.[14] Ocampo and Miranda continued walking when Ocampo saw Cruz choke Misayah and then have an exchange of fist blows. Ocampo and Miranda did not assist Cruz as it was only a brief fist fight. Ocampo saw Cruz run away while he and Miranda were left behind. Ocampo and Miranda saw Misayah run towards the Municipal Hall and the two proceeded to their respective homes.[15]

Defense witness Oliver Santos who knew the three accused testified that on the evening of 14 November 1995, he was at Vannie's videoke having a drinking spree with his friends. At 9:00 p.m., he asked leave from his friends to go ahead. While waiting for a motorcycle ride outside of Vannie's videoke, he saw Cruz and Misayah, whom he knew as the owner of a drug store, acting as if they were strangling each other. The fight took about a minute. He did not bother to do anything because he was afraid and also because fighting was a common incident in that area.[16] Santos was somewhat inebriated when he witnessed the incident as he had consumed one (1) pitcher of draft beer. However, he still recognized the faces of Misayah and Cruz. On that occasion, he also saw Ocampo and Miranda walking towards the town proper.[17]

All three accused were convicted by the trial court in a decision[18] dated 31 May 2000, which held:

> WHEREFORE, finding the three (3) accused, Danilo Cruz, Nomer Ocampo and Elmer Miranda @ Mitoy guilty beyond reasonable doubt of the crime of Robbery with Physical Injuries defined and penalized under Article 294 (5) of the Revised Penal Code, with the presence of an aggravating circumstance of conspiracy, they are hereby sentenced to suffer each an imprisonment in an indeterminate penalty of from [sic] eight (8)

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> years to twenty one (21) days of prision mayor, as minimum, to ten (10) years of prision mayor, as maximum, and to indemnify the complainant Rommel Q. Misayah the amount of P34,345.00 without subsidiary imprisonment in case of insolvency.
>
> SO ORDERED.

Ocampo and Miranda appealed their conviction to the Court of Appeals. However, in its decision[19] dated 10 February 2004, the Court of Appeals affirmed with modification the trial court's decision, stating thus:

> As to the penalty, the crime of robbery with violence against persons is penalized under par. 5, Article 294 of the Revised Penal Code by prision correccional maximum to prision mayor medium. Considering the attendant aggravating circumstance of abuse of superior strength (not conspiracy as ruled by the trial court), which is not offset by any mitigating circumstance, the penalty should be imposed in its maximum period, which is prision mayor medium or from eight (8) years and one (1) day to ten (10) years. Applying the Indeterminate Sentence Law, the minimum of the imposable penalty shall be the penalty next lower in degree which is arresto mayor maximum to prision correccional medium, in any of its periods, or from four (4) months and one (1) day to four (4) years and two (2) months. Thus, appellants should have been meted the indeterminate penalty of from [sic] 4 years and two months of prision correccional, as minimum, to eight (8) years of prision mayor medium, as maximum.
>
> WHEREFORE, the judgment appealed from is hereby AFFIRMED with the MODIFICATION that the accused-appellants are hereby sentenced to suffer the indeterminate penalty of from [sic] four (4) years and two months of prision correccional, as minimum to eight (8) years of prision mayor, as maximum. Costs against appellants,
>
> SO ORDERED.[20]

Miranda did not challenge the affirmance of his conviction by the Court of Appeals. On the other hand, Ocampo filed a Motion for Reconsideration[21] which was denied through a Resolution dated 20 May 2004.[22] Ocampo alone then filed the present Petition for Review on Certiorari.[23]

Ocampo argues that the appellate court erred in finding him criminally liable because: (i) Misayah's testimony was uncorroborated; (ii) it was unbelievable that Misayah would just walk on a slightly lighted street when he is carrying a considerable amount of cash and other items; (iii) there was no clear record that the prosecution presented any of the police officers who apprehended and investigated petitioner; (iv) the court failed to give credence to the testimony of Santos simply because he was tipsy; (v) although Misayah claimed that he had been grabbed by the neck, his medical certificate does not show any injury on the neck or on the arm to confirm if he was indeed held by Miranda on that part of his body; (vi) the examining doctor was not presented to confirm the authenticity of the issued medical certificate and to be cross-examined thereon; and (vii) it is very unlikely that Misayah's shoulder bag could accommodate all the items he claimed to have been contained therein. In sum, petitioner reiterates that the prosecution failed to prove that he is guilty beyond reasonable doubt of the crime for which he is being charged.

Before proceeding to the merits of this case, certain observations from the trial and appellate courts' decisions have to be clarified.

The initial information filed by the prosecution in this case designated the offense charged as Robbery with Physical Injuries.[24] This was later amended to Robbery with Violence and Intimidation.[25] Yet, the trial court's decision convicted the accused of Robbery with Physical Injuries under Article 294 (5) of the Revised Penal Code. The appellate court, on the other hand, affirmed the conviction under Article 294 (5) but classified the crime as robbery with violence against persons.

The variance in the assigned nomenclatures may give rise to the false impression that robbery with physical injuries under Article 294 (5) of the Revised Penal Code is distinct from robbery with intimidation as well as robbery with violence against persons. The title or heading of Article 294 reads "Robbery with violence against or intimidation of persons." Said heading is clearly the general nomenclature given to all five (5) types of robbery enumerated thereunder.[26] Paragraphs 2 to 5 cover robbery with physical injuries.[27] Paragraph 5, in particular, defines what is known as simple robbery. Simple robbery involves only slight or less serious physical injuries.[28] For conviction under this paragraph, the injury inflicted should not fall within the categories provided for in paragraphs 1 to 4 of Article 294. Thus, over and above the dichotomy of the terms employed, it is certain and beyond dispute that the three accused were tried for the crime under Article 294 (5) of the Revised Penal Code.

Now, to the merits.

The core of Ocampo's arguments in this instant petition is that the findings of the appellate court do not conform to the evidence on record. It should be emphasized that factual matters cannot be raised in a petition for review on certiorari before the Court as this Court is limited to reviewing only questions of law.[29] The findings of fact of the trial court are binding upon this Court when affirmed by the Court of Appeals.[30] Exceptions to this rule are when the findings of fact of the Court of Appeals are contrary to the findings and conclusions of the trial court, or are not supported by the evidence on record.[31] Absent any ground to apply the exception to this instant case, there is no reason, therefore, to disturb the findings of the lower courts.

Petitioner claims it was erroneous for the appellate court to give credence to Misayah's uncorroborated evidence because it failed to establish where his money and other valuables came from and his injuries did not conform to the nature of the attack made on him as well.

Based on the records, we cannot see how and why the questions raised by petitioner can cast doubt on the credibility of the testimony of Misayah. As Misayah owns a drug store, it is not unlikely that Misayah would have P29,000.00 cash in his possession as he returned home from a day's work. With respect to the injuries suffered by Misayah, he stated in his cross examination that he tried to parry the blows made by all the accused by the use of his hands.[32] Thus, it is believable that his hands would bear the brunt of the blows. Further, Miranda himself admitted during his direct examination that he "personally saw" Cruz strangle Misayah.[33]

Moreover, we give weight to the trial court's observation that Misayah testified "in a straightforward manner" and positively identified not only Cruz as the one who choked him but also the other two (2) accused.[34] The testimony of a sole witness, though uncorroborated, is sufficient for conviction if it is free from any sign of impropriety or falsehood.[35] The testimony of a lone eyewitness, if found positive and credible by the trial court, is sufficient to support a conviction especially when the testimony bears the earmarks of truth and sincerity and had been delivered spontaneously, naturally and in a straightforward manner.[36] Indeed, the testimony of a single witness is sufficient and needs no corroboration, save only in offenses where the law expressly prescribes a minimum number of witnesses.[37]

On the lower court's disregard of defense witness Santos's testimony, we have consistently held that where the credibility of witnesses is an issue, the appellate court will generally not disturb the findings of the trial court unless some facts and circumstances may have been overlooked that may otherwise affect the result of the case.[38] The Court accords deference to the trial court's appraisal on a witness's credibility, or lack thereof, because of its superior advantage in observing the conduct and demeanor of the witness while testifying.[39] Given that the observation of the trial court with respect to Santos is supported by evidence, there is no ground to discredit the trial and appellate courts' assessment of Santos's testimony.

Petitioner likewise alleges that Misayah's testimony was filled with inconsistencies such as his allegation that he

immediately executed an affidavit after the incident when in fact his affidavit was dated 20 November 1995 or six days after the incident. However, it is not beyond reason if a victim like Misayah would immediately report the incident but subsequently make a sworn statement days after the incident especially when the victim, as did Misayah, suffered injuries requiring medical attention. Moreover, the RTC records also show that Misayah executed a separate sworn statement before SPO1 Mutuc, investigator of Magalang Police Station, on 16 November 1995[40] and the prosecution submitted another affidavit by Misayah taken before SPO2 Rivera[41] in its formal offer of evidence. It is not unlikely, therefore, that several affidavits were in fact executed by Misayah in the days immediately following the incident.

Even as petitioner challenges the evidence of the prosecution, he downplays the inconsistencies of the testimonies of the witnesses for the defense. Said inconsistencies, particularly on the witnesses' accounts of what proceeded after the incident, are material and have rendered their testimonies implausible. It is hard to believe that there was a mere lapse of memory of either Miranda or Ocampo on whether they were indeed left behind together or whether one of them fled and the other was left behind even before the departure of Cruz.[42] Certainly, one cannot fail to observe or at least recall later who was with whom considering the gravity of the incident and the fact that only three of them were together that evening.

More fundamentally, the defense's version of the incident is contrary to human experience and behavior. As correctly pointed out by the trial court:

> It is incredible that accused Nomer Ocampo and Elmer Mirand[a] have not done anything when their companion Danilo Cruz was in a fight with complainant. The least they could do was to pacify the two protagonists yet, they did not do this and they proceeded to go to their respective way home as if nothing has happened. If indeed the incident happened so fast and that the accused Danilo Cruz and complainant Rommel Misayah separated immediately after that "sudden strangling" of each other" [sic], the least that Ocampo and Miranda could do [sic] was to wait and ask Cruz what happened. Yet, again, they did not do this. x x x x[43]

Evidence, to be believed, must not only proceed from the mouth of a credible witness but must be credible in itself, such that the common experience and observation of mankind can show it as probable under the circumstances.[44] And, the best test of the credibility of a testimony is its compatibility with human knowledge, observation and common experience of man.[45] Whatever is repugnant to these standards becomes incredible and lies outside of judicial cognizance.[46]

On the conspiracy aspect, it is worthy of note that while the Court of Appeals in the body of its decision sustained the existence of conspiracy as held by the lower court[47] yet in the penultimate paragraph of the decision as well as in the dispositive portion, it ruled out the presence of conspiracy. Thus:

> As to the penalty, the crime of robbery with violence against persons is penalized under par. 5, Article 294 of the Revised Penal Code by prision correccional maximum to prision mayor medium. Considering the attendant aggravating circumstance of abuse of superior strength (not conspiracy as ruled by the trial court),[48] which is not offset by any mitigating circumstance, the penalty should be imposed in its maximum period, which is prision mayor medium or from eight (8) years and one (1) day to ten (10) years. Applying the Indeterminate Sentence Law, the minimum of the imposable penalty shall be the penalty next lower in degree which is arresto mayor maximum to prision correctional medium, in any of its periods, or from four (4) months and one (1) day to four (4) years and two (2) months. Thus, appellant should have been meted the indeterminate penalty of from 4 years and two months of prision correccional, as minimum, to eight (8) years of prision mayor medium, as maximum.
>
> WHEREFORE, the judgment appealed from is hereby AFFIRMED with the MODIFICATION that accused-appellants are hereby sentenced to suffer the indeterminate penalty of from four (4) years and two

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months of prision correccional, as minimum to eight (8) years of prision mayor, as maximum. Costs against appellants.

SO ORDERED.[49]

It is a well-settled rule that the dispositive portion of the decision prevails over the opinion, the former being the final order while the opinion is an informal expression of the views of the court, thus forming no part of the judgment.[50] Following this rule, the appellate court thus found the presence of abuse of superior strength as an aggravating circumstance but not conspiracy.

The appellate court is correct in ruling out conspiracy. The existence of conspiracy cannot be presumed. The elements of conspiracy must be proven beyond reasonable doubt.[51] Conspiracy must be shown to exist as clearly and convincingly as the commission of the offense itself.[52] Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[53] It may be inferred from the conduct of the accused before, during, and after the commission of the crime. All taken together, however, the evidence therefor must be reasonably strong enough to show a community of criminal design.[54]

In the case at bar, there is no convincing evidence that all of the accused had resolved to rob Misayah prior to the actual robbery. What is evident is that the robbery that transpired was a spur of the moment decision among the three accused. For one, Miranda and Ocampo were consistent in their statement that they were on their way to have a drink at the common time of the incident. For another, they saw Misayah by chance. Still for another, there was no evidence that all of the accused knew beforehand that Misayah would be passing by the street where the robbery occurred that fateful evening. Neither was it shown that the street was part of Misayah's regular route on his way home.

According to Misayah in his testimony, Cruz grabbed his neck and choked him while Miranda held his shoulder. Ocampo meanwhile was in the middle, holding a knife and warning him not to fight back. While the evidence did not prove the existence of conspiracy, it indelibly established that the accused took advantage of their superior strength.[55]

Article 294, paragraph (5) of the Revised Penal Code fixes the penalty for simple robbery at prision correccional in its maximum period to prision mayor in its medium period, the range of which is from four (4) years, two (2) months and one (1) day to ten (10) years.[56] Considering the aggravating circumstance of abuse of superior strength, the penalty should be imposed in its maximum period while the minimum shall be taken from the penalty next lower in degree, which is arresto mayor maximum to prision correccional medium in any of its periods, the range of which is four (4) months and one (1) day to four (4) years and two (2) months.[57]

We note that the appellate court's decision did not order the accused to indemnify Misayah the amount of P34,345.00. The records do not show that this amount had already been paid pursuant to the Decision of the trial court dated 31 May 2000. Thus, we modify the appellate court's decision in this respect.

WHEREFORE, the decision dated 10 February 2004 of the Court of Appeals is AFFIRMED with MODIFICATION. Accused Ocampo is sentenced to the indeterminate penalty of four (4) years and two (2) months of prision correccional as minimum to eight (8) years of prision mayor as maximum. Petitioner Ocampo together with his other co-accused Miranda and Cruz are ordered to indemnify Rommel Q. Misayah the amount of P34,345.00 without subsidiary imprisonment in case of insolvency. Costs against petitioner.

SO ORDERED.
Quisumbing, (Chairperson), Carpio, Carpio-Morales, and Velasco, Jr., JJ., concur.

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[1] Records, p. 2.

[2] Id. at 18.

[3] Id. at 21.

[4] Id. at 340; RTC Decision.

[5] TSN, 11 April 1997, p. 6.

[6] Also referred to as clutch bag in the records.

[7] TSN, 11 April 1997, pp. 6-7.

[8] Rollo, p. 20; CA Decision.

[9] Id. at 31.

[10] Id.

[11] Id.

[12] TSN, 3 April 1998, p. 9.

[13] Rollo, p. 32; RTC Decision.

[14] Id.

[15] Id. at 33.

[16] Id.

[17] Id.

[18] Id. at 30-35; Decision penned by Judge Ofelia Tuazon Pinto.

[19] Id. at 18-28; Penned by Associate Justice Rebecca de Guia-Salvador, concurred in by Associate Justices Romeo A. Brawner and Jose C. Reyes, Jr.

[20] Id. at 27.

[21] Id. at 71-74; Dated 1 May 2004.

[22] Id. at 29.

[23] Id. at 3-16.

[24] Records, p. 2.

[25] Id. at 18.

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

> - The penalty of from reclusion perpetua to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed; or when the robbery shall have been accompanied by rape or intentional mutilation or arson.

- The penalty of reclusion temporal in its medium period to reclusion perpetua, when 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.

- The penalty of reclusion temporal, when by reason or on occasion of the robbery, any of the physical injuries penalized in subdivision 2 of the article mentioned in the next preceding paragraph, shall have been inflicted.

- The penalty of prision mayor in its maximum period to reclusion temporal in its medium period, if the violence or intimidation employed in the commission of the robbery shall have been carried to a degree clearly unnecessary for the commission of the crime, or when in the course of its execution, the offender shall have inflicted upon any person not responsible for its commission any of the physical injuries covered by subdivisions 3 and 4 of said article 263.

- The penalty of prision correccional in its maximum period to prision mayor in its medium period in other cases. (As amended by Republic Act No. 7659).

[27] Art. 294(2) also covers robbery with rape while Art. 294(4) likewise covers robbery with intimidation.

[28] F. D. REGALADO, CRIMINAL LAW PROSPECTUS, 1[st] ed. (2000), p. 532.

[29] RULES OF COURT, Rule 45, Sec. 1. See also Marquez v. Court of Appeals and People, 386 Phil. 9, 20 (2000), citing Boneng v. People, 304 SCRA 252, 257 (1999).

[30] Mercado v. People, 441 Phil. 216, 225 (2002), citing Gloria Changco v. Court of Appeals, G.R. No. 128033, 20 March 2002.

[31] Id.

[32] TSN, 11 April 1997, p. 7.

[33] TSN, 3 April 1998, p. 10.

[34] Rollo, p. 36; RTC Decision.

[35] Angeles, Jr. v. Court of Appeals, 407 Phil. 826, 834 (2001), citing People v. Pelen, 313 SCRA 683, 692 (1999).

[36] People v. Galano, 384 Phil. 206, 216 (2000), citing People v. Tulop, 289 SCRA 316, 332 (1998), citing People v. De La Cruz, 207 SCRA 632 (1992); People v. De Cruz, 148 SCRA 582 (1997); People v. Javier, 182 SCRA 830 (1987); People v. Francia, 154 SCRA 495 (1987).

[37] Supra note 28.

[38] People v. Paraiso, 377 Phil. 445, 458 (1999).

[39] Id., citing People v. Ligan, 152 SCRA 419.

[40] Records, p. 8.

[41] Id. at 147.

[42] See TSN, 3 April 1998, pp. 10-11 in connection with TSN, 26 February 1999, pp. 7-9.

[43] Rollo, p. 35, RTC Decision.

[44] People v. Solis, 403 Phil. 546, 565 (2001), citing People v. Alba, 256 SCRA 505, 513, 25 April 1996; Cosep v. People, 290 SCRA 378, 385, 21 May 1998.

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[45] People v. Marollano, 342 Phil. 38 (1997).

[46] Id. at 55, citing People v. Escalante, 238 SCRA 554, 563, 1 December 1994.

[47] Rollo, pp. 26-27.

[48] Emphasis supplied.

[49] Supra note 20.

[50] Republic of the Philippines v. Nolasco, G.R. No. 155108, 27 April 2005, 451 SCRA 400, citing Contreras v. Felix, 78 Phil. 570 (1947).

[51] People v. Samudio, 406 Phil. 318, 333 (2001).

[52] People v. Aquino, 390 Phil. 1176, 1185 (2000), citing People v. Berroya, 283 SCRA 111.

[53] REVISED PENAL CODE, Art. 8.

[54] People v. Alas, G.R. Nos. 118335-36, 19 June 1997, 274 SCRA 310, 324, citing Magsuci v. Sandiganbayan, 240 SCRA 13, 17, 3 January 1995.

[55] REVISED PENAL CODE. Art. 14. Aggravating Circumstances.—The following are aggravating circumstances:

x x x

15. That advantage be taken of superior strength, or means be employed to weaken the defense.

x x x

[56] Minimum : 4 years, 2 months and 1 day to 6 years, 1 month and 10 days
Medium: 6 years, 1 month and 11 days to 8 years and 20 days
Maximum: 8 years and 21 days to 10 years.

[57] Pablo v. People, G.R. No. 152481, 15 April 2005, 456 SCRA 325, 332.

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