

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. FELIPE NACHOR Y OMayAN, APPELLANT.

G.R. No. 177779. December 14, 2010

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

"[W]hen the offended parties are young and immature girls [aged 12 to16], courts are inclined to lend credence to their version of what transpired, considering not only their relative vulnerability but also the shame and embarrassment to which they would be exposed by the trial if the matter about which they testified is not true." [1]

The Charge

For review is the Decision[2] dated June 16, 2006 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02040 which affirmed with modifications the Decision[3] of the Regional Trial Court (RTC) of Iriga City, Branch 35, in Criminal Case Nos. IR-6033 and IR-6034, convicting appellant Felipe Nachor y Omayan of the crime of rape against "AAA." [4] The Information[5] in Criminal Case No. IR-6033 contained the following accusatory allegations:

That on or about May 9, 2001, at x x x, Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, with force and intimidation, did then and there willfully, unlawfully, and feloniously [lay with] and [succeeded] in having carnal knowledge [of] 'AAA', 14-year old minor, daughter of the culprit, against her will and without her consent, to her damage and prejudice in such amount as shall be proven in Court. The act is with qualifying aggravating circumstance of the fact that the victim is below 18 years old and the offender is a parent. (Art. 266-B, Par. 6, subpar. 1, R.A. 8353)

ACTS CONTRARY TO LAW.

The Information[6] in Criminal Case No. IR-6034 is identically worded except for the date of the commission of the crime. In this case, the appellant was accused of raping "AAA" on or about 11:30 in the morning of the first week of June 2001.

The appellant pleaded not guilty to both charges. After the termination of the pre-trial conference, joint trial ensued.

The Version of the Prosecution

"AAA" was born on September 11, 1986, and lived with her parents and four siblings. She was 14 years old when in the morning of May 9, 2001, she was left alone with her father, the appellant. While she was cooking at around 11:00 o'clock in the morning, the appellant suddenly poked a bolo at her neck, pulled her wrist and dragged her towards the room which she shared with her brother and sisters. Gripped with fear, she struggled and attempted to escape but the appellant's strength was too much for her. Her shouts for help were futile since the house of their nearest neighbor was about a hundred meters away and separated by trees and hilly terrain from their house.

While inside the room, the appellant, with a bolo still in his hand, forced "AAA" to lie down on the bed. When she obeyed, the appellant removed her shorts and panty. Thereafter, he took off his shorts and underwear and started kissing her neck and breasts. He proceeded to mount "AAA," inserted his penis inside her vagina and executed a pumping motion. During this ordeal, "AAA" continued to struggle, but her attempt to resist the appellant's lewd desires was unsuccessful. She instead experienced intense pain and cried.

After the appellant satisfied his lust, he again poked his bolo at "AAA" and threatened to kill her, her mother and siblings if she would report the incident to anyone. The appellant then stood up, put on his clothes and departed. "AAA" kept the incident to herself out of fear.

"AAA" was again raped by the appellant in the first week of June, 2001 when her mother and siblings were not around. At around 11:30 in the morning, "AAA" was studying in their house when the appellant came out of his room armed with his bolo. "AAA" rushed outside for fear of another sexual abuse, but was overtaken by the appellant who poked his bolo at her neck and dragged her towards her room. Once inside, the appellant removed the pants and panty of "AAA," and threatened to kill her, her mother and siblings if she would relate the incident to another person. As in the previous incident of rape, the appellant forced "AAA" to lie down, inserted his penis inside her vagina and made coital movements. Despite her struggle and resistance, she was unable to resist his bestial acts. After satiating himself, the appellant reiterated his warning to "AAA" not to tell anyone of her ordeal or else he would kill them all.

A few months later, the abdomen of "AAA" started to bulge. Having been threatened by the appellant, she refused to divulge any information. The mother of "AAA" therefore sought the assistance of one of her wedding sponsors to whom "AAA" finally revealed the sexual abuse she experienced in the hands of her father. After this revelation was relayed to her mother, "AAA" was immediately taken to the Regional Office of the Department of Social Welfare and Development where she declared in an interview that her father sired the child she was carrying. She was then taken to the National Bureau of Investigation for a medico-legal examination. The results confirmed that "AAA" was pregnant. On December 27, 2001, "AAA" gave birth to a baby boy she named "BBB."

The Version of the Appellant

The appellant denied raping "AAA." He averred that on May 9, 2001, he left his house at 7:00 o'clock in the morning to go to his sister in Antipolo, Buhi, Camarines Sur. Moreover, "AAA" no longer stayed in their house from April 2001 to October 2001. During this period, she worked as a housemaid without his permission. It was only in October 2001 that he saw "AAA" and noticed that she was already pregnant. He asked his wife if she knew anything of the delicate condition of "AAA" but he did not receive a reply. He instructed his wife to go to her brothers and sisters to have a conference with "AAA." His wife complied but excluded him from the meetings without any explanation. His wife could not also explain why they kept the pregnancy of "AAA" a secret from him.

The appellant asserted that it was his son, Randy, who impregnated "AAA." He confronted Randy on the pregnancy of "AAA" but the latter refused to reply and cried instead. The appellant also claimed that his wife assisted "AAA" in filing the cases to get rid of him so that she could continue having an affair with the man often seen in her company.

The Ruling of the Regional Trial Court

On January 27, 2003, the trial court rendered its Decision, the dispositive portion of which reads as follows:

WHEREFORE, finding accused, Felipe Nachor y Omayan guilty beyond reasonable doubt [of] the crime of rape under Art. 335 of the Revised Penal Code as amended by RA 7659 and further amended by RA 8353 in

relation to RA 7610, in [C]riminal [C]ases No[s]. IR-6033 and IR-6034, respectively, he is sentenced to death, [to] pay an indemnity of P50,000.00, and to pay the costs.

SO ORDERED.[7]

The Verdict of the Court of Appeals

With the imposition of capital punishment on the appellant, the case was elevated to us for mandatory review and docketed as G.R. Nos. 157931-32. Pursuant to *People v. Mateo*,^[8] however, we referred the case to the CA, which affirmed with modification the trial court's decision. Thus:

UPON THE VIEW WE TAKE OF THIS CASE, THUS, the appealed Decision dated January 27, 2003 of the Regional Trial Court of Iriga City, Branch 35, in Criminal Cases Nos. IR-6033 and IR-6034 finding the accused-appellant FELIPE NACHOR Y OMAYAN guilty beyond reasonable doubt of two counts of qualified rape and sentencing him in each case to suffer the supreme penalty of death is AFFIRMED, with the MODIFICATION that for each count of rape, the accused-appellant is also CONDEMNED to pay private complainant "AAA," the amounts of P75,000.00 as civil indemnity, P50,000.00 as moral damages, and P25,000.00 as exemplary damages.

Should no motion for reconsideration be filed in this case by the accused-appellant within the allowable reglementary period, or after the lapse thereof, let the entire records of this case be forwarded to the Honorable Supreme Court for appropriate action thereon.

SO ORDERED.[9]

Assignment of Errors

Hence, this appeal where the appellant raises the following assignment of errors contained in his Brief before the CA:

I.

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE INCREDIBLE TESTIMONY OF PRIVATE COMPLAINANT.

II.

THE COURT A QUO GRAVELY ERRED IN IMPOSING THE CAPITAL PUNISHMENT OF DEATH.[10]

Our Ruling

The appeal is unmeritorious.

"[In determining] the innocence or guilt of the accused in rape cases, the courts are guided by three well-entrenched principles: (1) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the accused, though innocent, to disprove; (2) considering that in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with extreme caution; and, (3) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense." [11]

Guided by these legal precepts, we find the testimony of "AAA," who was 14 years old when the two incidents of rape occurred, credible and untainted by any hint of falsehood or prevarication. She testified on her ordeal committed on May 9, 2001 as follows:

PROS. (BERNARD) BELTRAN:

Q:

Do you know the accused in these cases?

A:

Yes, sir.

Q:

If he is in this courtroom, will you [point] to him?

INTERPRETER:

The witness points to a person who when asked x x x his name answered [`Felipe Nachor'] the accused in these cases.

PROS. BELTRAN:

Q:

Why do you know him?

A:

He is my father.

Q:

Sometime on May 9, 2001, where were you?

A:

I was at home.

Q:

Where is that house of yours situated?

A:

At x x x, Camarines Sur.

Q:

With whom were you in your house during that day?

A:

My father.

Q:

While you were in your house at x x x, Camarines Sur on May 9, 2001 with your father, what unusual incident happened if any?

A:

My father poked a bolo [at] my neck.

Q:

How long was that bolo?

A:

The length of the bolo (witness demonstrating with her hand, 1 ½ feet).

Q:

Now, what happened next?

A:

He undressed me.

Q:

What was undressed from you?

A:

My shorts and panties.

Q:

What about your upper clothing?

A:

It was not.

Q:

After the accused undressed you, what did the accused do next?

A:

He also undressed, sir.

Q:

What was undressed from him?

A:

His shorts and briefs.

Q:

After the accused undressed himself, what did he do next?

A:

He lay on top of me.

Q:

What did he do next?

COURT:

Before that, what was your position?

A:

I was lying on my back.

Q:

Who made you lie on your back?

A:

My father.

Q:

Now, when you were lying on your back and your father was on top, what did your father do next?

A:

His penis was inserted in my vagina.

Q:

Prior to the insertion of his penis [into] your vagina, what did he do to you if any?

A:

He kissed me.

Q:

x x x what part of your body was kissed by him?

A:

On my neck.

Q:

Where else?

A:

On my breast.

x x x x

PROS. BELTRAN:

Q:

Now while the penis of the accused was inside your vagina, what was he doing?

A:

He again poked the bolo [at] my neck.

Q:

What did he do next?

A:

He said that [if] I [report] the matter he will kill us all.

Q:

What happened next?

A:

He put on his shorts.

Q:

What else happened?

A:

And then he left.

Q:

What about you?

A:

I put on my shorts also.

Q:

What about your panties?

A:

I put it [on] also.

Q:

Did you tell anybody what happened to you?

A:

No[,] sir.

Q:

Why?

A:

We might be killed.

Q:

By whom?

A:

My father.

x x x x

COURT:

Q:

You said the accused Felipe Nachor poked a bolo [at] you. What part of your body did he poke his bolo?

A:

[At] my neck.

Q:

While poking the bolo [at] your neck, what did he say if any?

A:

That if I reported the matter, he will kill us all.

Q:

When you said the word `us', who [were] you referring to?

A:

Myself, my mother, my sisters and brothers.

Q:

While he had sexual intercourse with you, what did you feel?

A:

I felt anger.

Q:

What about your vagina?

A:

I felt pain in my vagina.

Q:

What did you do while he was having sexual intercourse with you?

A:

I was crying.

Q:

Aside from that, what did you do if any?

A:

I was trying to escape, to run away.

Q:

Were you able to run away?

A:

No, your Honor.

Q:

Why?

A:

Because he held my hands.[12]

x x x x

On the rape committed in the first week of June, 2001, she testified as follows:

PROS. BELTRAN:

Q:

Sometime in the first week of June, 2001 in the morning was there any unusual incident that happened between you and your father if any?

COURT:

Where? In what place?

PROS. BELTRAN:

At x x x, Camarines Sur.

WITNESS:

Yes, sir.

PROS. BELTRAN:

Q:

What was that?

A:

I was again poked with a bolo [by] my father on my neck.

Q:

When you said your father, you are referring to the accused in these cases Felipe Nachor y Omayan the one that you [pointed to] a while ago in court?

A:

Yes, sir.

Q:

Now, what was [that] unusual incident that happened [in] the first week of June 2001, at x x x, Camarines Sur sometime at around 11:30 in the morning?

A:

I was again poked with a bolo on my neck and he undressed me.

Q:

What was undressed from you?

A:

My panties and shorts.

Q:

After he undressed you, what did the accused do next?

A:

He also undressed himself.

Q:

What was undressed by him?

A:

Brief and shorts.

Q:

After he undressed himself, what did he do next?

A:

He laid on top of me.

Q:

What was your position when your father laid on top of you?

A:

I was lying on my back.

Q:

Who made you lie on our back?

A:

My father.

Q:

Now when your father was on top of you, what did your father do next?

A:

His penis was inserted inside my vagina.

Q:

Immediately?

A:

Yes, sir.

x x x x

Q:

When your father inserted his penis inside your vagina, what did he do next?

A:

He made a push and pull motion.

Q:

So you want to impress us that while the penis of the accused was inside your vagina he was doing a push and pull motion on you, is that what you mean?

x x x x

WITNESS:

A:

Yes, sir.

PROS. BELTRAN:

Q:

What happened next?

A:

And then he put on his shorts.

Q:

What about his briefs?

A:

He put on his briefs also.

Q:

What about you?

A:

I also put on my panties and shorts.

x x x x

Q:

When your father was already dressing himself, what did he tell you if any?

A:

That if I reported the matter he will kill us.

Q:

Prior to the insertion of the penis of your father [in] your vagina, did he tell you anything?

A:

That if I tell the incident to somebody he will kill us.

Q:

When you said that he will kill us, [whom] do you think x x x your father [was] referring [to]?

A:

My mother, my sisters and brothers.

Q:

Now, how did these incidents come into the open?

A:

Because my mother brought me to the `hilot'.

COURT:

Q:

Why, why did your mother bring you to the `hilot'?

A:

Because according to one of the wedding sponsors of my mother, why is my [abdomen] becoming bigger.

PROS. BELTRAN:

Q:

What happened to the `hilot'?

A:

According to the `hilot' my [abdomen] was already six (6) months big.

Q:

Do you know the reason why your [abdomen] was then about six (6) months big?

A:

Yes, sir.

Q:

Why?

A:

Because of what my father did to me that he raped me.

Q:

Why was it that your [abdomen] was big?

A:

Because his penis was inserted in my vagina.

Q:

Do you know a certain child by the name of "BBB?"

A:

Yes, sir.

Q:

Why do you know the child?

A:

That's my child.

Q:

Do you know the father of your child?

A:

Yes, sir[.]

Q:

Who is the father of your child?

A:

Felipe Nachor.

Q:

So you want to impress [on]us that your father Felipe Nachor is also the father of your child "BBB?"

A:

Yes, sir."^[13] (Emphasis supplied.)

We agree with the observations of the trial court, as sustained by the CA, that the testimony of "AAA" on both occasions of her rape is worthy of credence. Her statements under oath are sufficient evidence to convict the appellant for having carnal knowledge of her by means of force and intimidation on May 9, 2001 and the first week of June, 2001. "AAA" positively identified the appellant as her abuser. She never wavered in her testimony and maintained even on cross-examination that the appellant was her rapist.

"[On the issue of credibility of witnesses,] the trial court's assessment deserves great weight, and is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight or influence x x x. Having the [advantage of directly observing the] deportment and manner of testifying [of the witness], the trial court is in a better position than the appellate court to evaluate testimonial evidence properly."^[14]

In this case, we see no reason to deviate from the findings of the trial court as affirmed by the CA. The evaluation of the testimony of "AAA" has been appreciated properly and the evidence is overwhelming to convict the

appellant of the crime charged.

The appellant attempts to discredit "AAA" by assailing instances in her testimony that were improbable and inconsistent with human behavior. Particularly, he argues that there was no resolute resistance by "AAA" on the assault on her honor. He maintains that the testimony of "AAA" is incredible since he "cannot remove her shorts and panties or easily insert his penis into her vagina without first putting aside the bolo which he was allegedly holding with his left hand." [15] He further claims that there was failure on the part of "AAA" to immediately file a complaint or report the rape incidents to her mother or to the police authorities despite the absence of threats. Lastly, he contends that "AAA" acted normally, as if nothing happened, and did not even leave their home after she was supposedly raped on different dates.

The appellant's contentions fail to impress. There is no factual basis for the appellant's assertion that "AAA" did not exert a tenacious effort to defy his sexual aggression. On the contrary, "AAA" was unwavering in her testimony that she struggled with the appellant in both occasions of rape. "AAA" even punched and kicked him in the thigh during the first occasion of her rape. [16] During the first rape incident, she tried to flee from her horrible fate, but the appellant was too strong and succeeded in having carnal knowledge of her. She even shouted for help, but nobody heard her as the house of the nearest neighbor was more or less 100 meters away and separated from their house by trees and hilly terrain.

The appellant's assault on the credibility of "AAA" by asserting that he could not remove her shorts and panties or easily insert his penis into her vagina without first putting aside the bolo held in his left hand while his right hand was holding both her hands [17] has also no basis in fact. As borne by the record, the appellant had already been undressed of her shorts and panties before she was forced to lie down. It is thus not impossible for him to consummate the rape using his right hand to bind the hands of "AAA" while holding a bolo to her neck with his left hand.

Even if it were true that "AAA" did not seriously resist the appellant's sexual offense, her failure is inconsequential and cannot affect the credibility of her testimony. "It must be stressed that the resistance of the victim is not an element of the crime [of rape]," and the law does not impose on the prosecution the burden of establishing the same. [18] "As long as the force or intimidation is present, whether it was more or less irresistible is beside the point." [19]

Here, "AAA" testified that on both occasions of rape, the appellant poked a bolo at her neck, dragged her to a room in the house and succeeded in making her submit to his will. The use of a bladed weapon to ensure the commission of the rape "speaks loudly of appellant's use of violence, or force and intimidation." [20]

Worth noting, too, is the filial relationship between the appellant and "AAA." He is the father of the 14 year-old victim. In incestuous rape, the father's "moral ascendancy and influence over [his daughter] sufficiently substitutes for force and intimidation." [21] He "takes advantage of his blood relationship, [proximity,] ascendancy, and [moral] influence over his victim both to commit the [rape] and to intimidate the victim into silence." [22]

The appellant further claims that the conduct of "AAA" after being raped, i.e., not reporting the incident to anyone despite the absence of threats from him and acting like nothing happened, was incredible and contrary to human experience. This contention is misleading as a review of the record reveals that he cowed "AAA" into not telling anyone of her harrowing ordeal by threatening to kill her, as well as her mother and siblings if she would do so. Considering that "AAA" was a young girl at the time she was raped, the appellant's threat was sufficient to produce fear in her mind. Moreover, the fact that the appellant was her biological father and exercised moral ascendancy over her explains why she "behaved as though no wrong had been done to her." [23] "[D]elay in

divulging the name of the perpetrator of the crime, if sufficiently explained, does not impair the credibility of the witness and [her] testimony nor destroy their probative value." [24]

The appellant's defenses of denial and alibi were properly rejected. Denial and alibi are inherently weak defenses and constitute self-serving negative evidence which cannot be accorded greater evidentiary weight than the positive declaration of a credible witness. "Between the positive assertions of the [victim] and the negative averments of the [appellant,] the former indisputably deserve more credence and are entitled to greater evidentiary weight." [25]

We are not convinced by the appellant's postulations that it was his son, Randy, who raped "AAA" and that he was accused of raping her due to the instigation of his wife who wanted to get rid of him so she could continue her illicit affair with another man. A young girl, `innocent and guileless, cannot be expected to brazenly impute a crime so serious as rape to any man if it were not true. Parents would not sacrifice their own daughter, a child of tender years at that, and subject her to the rigors and humiliation of public trial for rape, if they were not motivated by an honest desire to have their daughter's transgressor punished accordingly." [26]

The Proper Penalty

The appellant committed incestuous rape and must consequently suffer the penalty provided by law. The trial court correctly imposed upon him the penalty of death since a rape committed while the victim was still under 18 years of age by an offender who is her parent merits no less than the imposition of capital punishment under Article 266-B of the Revised Penal Code.[27] It is clear from the birth certificate of "AAA" that she was only 14 years old when she was ravished by the appellant, her biological father.

In view, however, of the passage of Republic Act No. 9346,[28] which prohibits the imposition of the penalty of death, the penalty of reclusion perpetua, without eligibility for parole, should be imposed.[29] Thus, appellant is hereby sentenced to reclusion perpetua without eligibility of parole for each count of rape.

The Damages

In line with prevailing jurisprudence,[30] the amounts of civil indemnity and

damages awarded to "AAA" also require a modification. For each of the two counts of rape, she is entitled to an award of P75,000.00 as civil indemnity, another P75,000.00 as moral damages and P30,000.00 as exemplary damages.

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 02040, which affirmed with modifications the Decision of the Regional Trial Court of Iriga City, Branch 35, finding appellant Felipe Nachor y Omayan guilty beyond reasonable doubt of two counts of rape is AFFIRMED with modifications that appellant is sentenced to suffer the penalty of reclusion perpetua without eligibility for parole for each count of rape; and the awards of moral damages and exemplary damages are increased to P75,000,00, and P30,000.00 respectively, for each count of rape.

SO ORDERED.

Corona, C.J., Carpio, Carpio Morales, Nachura, Leonardo-De Castro, Peralta, Bersamin, Abad, Villarama, Jr., Perez, Mendoza, and Sereno, JJ., concur.

Velasco, Jr., J., on official leave.

Brion, J., on leave.

- [1] *People v. Torrellos*, 448 Phil. 287, 299-300 (2003).
- [2] CA rollo, pp. 149-166; penned by Associate Justice Renato C. Dacudao and concurred in by Associate Justices Hakim S. Abdulwahid and Monina Arevalo Zenarosa.
- [3] Records, Vol. I, pp. 117-126; penned by Presiding Judge Alfredo D. Agawa.
- [4] The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 7610, An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for other Purposes; Republic Act No. 9262, An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes; and Section 40 of A.M. No. 04-10-11-SC, known as the Rule on Violence Against Women and Their Children, effective November 5, 2004.
- [5] Records, Vol. I, p. 1.
- [6] Records, Vol. II, p. 1.
- [7] Records, Vol. I, p. 126.
- [8] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.
- [9] CA rollo, pp. 165-166.
- [10] *Id.* at 51.
- [11] *People v. Basmayor*, G.R. No. 182791, February 10, 2009, 578 SCRA 369, 381.
- [12] TSN, July 6, 2002, pp. 4-8.
- [13] TSN, July 8, 2002, pp. 10-14.
- [14] *People v. Basmayor*, supra note 11 at 382-383.
- [15] CA rollo, p. 65.
- [16] TSN, July 8, 2002, p. 24.
- [17] CA rollo, p. 65.
- [18] *People v. Sulima*, G.R. No. 183702, February 10, 2009, 578 SCRA 415, 426 ; *People v. Fraga*, 386 Phil. 884, 907 (2000).
- [19] *People v. Baldo*, G.R. No. 175238, February 24, 2009, 580 SCRA 225, 233.
- [20] *Id.*
- [21] *People v. Madera*, 460 Phil. 795, 816 (2003).
- [22] *People v. Melivo*, 323 Phil. 412, 423-424 (1996).
- [23] *People v. Fraga*, supra note 19 at 908.
- [24] *People v. Villanueva*, 312 Phil. 55, 67-68 (1995).
- [25] *People v. Bang-ayan*, G.R. No. 172870, September 22, 2006, 502 SCRA 658, 670.

[26] *People v. Sarcia*, G.R. No. 169641, September 10, 2009, 599 SCRA 20, 39.

[27] ART. 266-B Penalties. - x x x.

The death penalty shall be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim;

x x x x.

[28] Approved on June 24, 2006.

[29] *People v. Guillermo*, G.R. No. 173787, April 23, 2007, 521 SCRA 597, 610.

[30] *People v. Araojo*, G.R. No. 185203, September 17, 2009, 600 SCRA 295, 309.

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