PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RESTITUTO C. VALENZUELA, ACCUSED-APPELLANT.

G.R. No. 182057. February 06, 2009

Ponente: BRION, J.

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BRION, J.:

This is an appeal from the October 17, 2007 decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01784 affirming with modification the September 8, 2005 decision of the Regional Trial Court (RTC), Branch 48, Masbate City.[2] The RTC decision found the appellant Restituto Valenzuela y Centeno (appellant) guilty beyond reasonable doubt of two (2) counts of rape and imposed on the appellant the death penalty in each case.

ANTECEDENT FACTS

The prosecution charged the appellant before the RTC with the crime of rape under two (2) Informations that read:

> Criminal Case No. 8880
>
> That sometime in the year of 1994, and dates subsequent thereto, at Brgy. Concepcion, Municipality of Aroroy, Province of Masbate, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent and with lewd design, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with his daughter, [AAA],[3] then a nine-year old girl, against her will.
>
> CONTRARY TO LAW[4]
>
> Criminal Case No. 8881
>
> That sometime in the month of December, 1997, at Brgy. Concepcion, Municipality of Aroroy, Province of Masbate, Philippines, within the jurisdiction of this Honorable Court, the above-named accused with deliberate intent and with lewd design, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with his daughter, [AAA], a twelve-year-old girl, against her will.
>
> CONTRARY TO LAW.[5]

The appellant pleaded not guilty to both charges. The prosecution presented the following witnesses in the trial on the merits that followed: AAA; Dr. Marilou A. Hernandez (Dr. Hernandez); and BBB. The appellant took the witness stand for the defense.

The RTC summarized AAA's testimony regarding the 1994 rape as follows:

> Sometime in the year 1994 at about 10:00 in the morning while BBB, the mother of AAA was not at home in Brgy. Concepcion, Aroroy, Masbate, as she was hired to weed in the farm of her neighbor; and said AAA was the only child left at their house since her younger brothers were then playing somewhere, the accused ordered his daughter, AAA, to get inside the bedroom.[6] Once inside the bedroom, accused Restituto Valenzuela

> undressed his own daughter, AAA, then sucked her breast, kept on kissing her whole body. She tried to struggle but to no avail. Only her shorts and panty were removed and her dress was just raised. Then her father inserted his finger in her vagina. After a few minutes, Restituto Valenzuela inserted his penis into the vagina of AAA who felt the pain.[7] Then the accused began the push and pull or pumping on top of his daughter. The victim kept on crying. After that sexual intercourse, the accused stood up and warned his daughter not to tell that incident to anybody or else he will harm her. AAA noticed blood in her vagina. She did not tell that incident to anybody for fear of the threats of her own father. When her mother arrived, she just pretended that nothing unusual happened to her.[8]
>
> x x x [Footnotes referring to the pertinent parts of the record supplied]

AAA further testified that the appellant repeatedly raped her from 1994 to 1998, the last incident being in January 1998.[9] She gave birth on October 20, 1998, and pointed to the appellant as the father of the child.[10]

Dr. Hernandez, the Municipal Health Officer of Aroroy, Masbate, narrated that she conducted a physical examination of AAA on August 7, 1998 at the Rural Health Family Planning Center. The examination revealed that AAA was already seven (7) months pregnant.[11]

According to Dr. Hernandez, she did not find any laceration or injuries on AAA's private part. She attributed the absence of injury to lapse of time; whatever injury there was had healed since the last rape incident happened way back in December 1997.[12]

BBB, the mother of AAA, testified that the appellant is her common-law husband, and that AAA is their eldest daughter. She recalled that on August 5, 1998, she noticed that AAA was becoming fat and that her stomach was bulging. Thereafter, AAA told her that she had been sexually abused by the appellant. She also learned that AAA had previously disclosed to her uncle, CCC, that the appellant was sexually abusing her (AAA).[13]

At BBB's instructions, the sexual abuse was reported to the police, leading to the appellant's arrest.[14]

The appellant was the sole defense witness and gave a different version of the events which the RTC summarized as follows:

> Accused Restituto Valenzuela claimed that BBB is his common-law wife. They lived together as husband and wife for quite a long time already. He forgot the date when they started living together as husband and wife. Nor does he know exactly how many years they have lived together. But he is aware that they have eight children. The complainant AAA is his daughter with BBB.[15]
>
> He denied the charges that he raped his own daughter, AAA. The two charges of rape allegedly committed in 1994 and 1997 against his own daughter, AAA, was [sic] all fabricated by his brother-in-law, DDD. The latter was then mad at him because in one instance there was a trouble in the store where he was then drinking and said brother in law was there and he was able to club DDD. The latter insinuated AAA to file these two cases of rape against him, her own father. That his own daughter had been persuaded by his brother-in-law to file these two charges of rape against him. He was also aware that AAA delivered a child and he had been pointed to be the father of the child. The said accused denied having raped his own daughter, AAA. He claimed that he had not done everything [sic] that his own daughter had charged against him thru the insinuations of the material uncle of said AAA.[16] [Footnotes referring to the pertinent parts of the record supplied]

The RTC convicted the appellant on two (2) counts of qualified rape in its decision of September 8, 2005. The dispositive portion of this decision provides:

> WHEREFORE, having been found GUILTY beyond reasonable doubt of Qualified Rape, accused RESTITUTO VALENZUELA y CENTENO is hereby sentenced to suffer the capital penalty of DEATH by lethal injection in both Criminal Cases Nos. 8880 and 8881, to indemnify the victim AAA the sum of Fifty

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> Thousand Pesos (Php50,000.00); to pay the said victim the sum of Seventy-Five Thousand Pesos (Php75,000.00) as for moral damages; and to pay the costs of the proceedings.
>
> SO ORDERED.[17] [Emphasis in the original]

The appellant appealed the RTC decision to the CA under docket number CA-G.R. CR-HC No. 01784. The CA affirmed the RTC decision with the following modifications: (a) the penalty of death was reduced to reclusion perpetua; (b) the award of civil indemnity was increased to P75,000.00; and (c) the award of moral damages was reduced to P50,000.00.[18]

The appellant contends in his Brief that the RTC erred in finding him guilty of the crimes charged as the prosecution failed to prove his guilt beyond reasonable doubt.[19]

THE COURT'S RULING

We resolve to deny the appeal in Criminal Case No. 8880 and to grant the appeal in Criminal Case No. 8881.

I. Criminal Case No. 8880

Sufficiency of the Prosecution Evidence

Rape is defined and penalized under Article 335[20] of the Revised Penal Code, as amended,[21] which provides:

> ARTICLE 335. When and how rape is committed. - Rape is committed by having carnal knowledge of a woman under any of the following circumstances:
>
> - By using force or intimidation;
>
> - When the woman is deprived of reason or otherwise unconscious; and
>
> - When the woman is under twelve years of age or is demented.
> x x x

Rape under paragraph 3 of this article is termed statutory rape as it departs from the usual modes of committing rape. What the law punishes in statutory rape is carnal knowledge of a woman below twelve (12) years old. Thus, force, intimidation, and physical evidence of injury are immaterial; the only subject of inquiry is the age of the woman and whether carnal knowledge took place.[22] The law presumes that the victim does not and cannot have a will of her own on account of her tender years; the child's consent is immaterial because of her presumed incapacity to discern evil from good.[23]

AAA, while recounting her ordeal, positively identified the appellant as the perpetrator; she never wavered in this identification. To directly quote from the records:

> ASSISTANT PROSECUTOR ERNESTO M. SULAT, JR.:
>
> Q:
>
> Do you recall any having experienced any unusual incident with your father when you are just nine (9) years of age?
>
> [AAA]:
>
> A:
>
> Yes, sir.

Q:

Will you tell the Court what happened?

A:

In 1994, I was raped by my father.

COURT:

Q:

How did it happen?

A:

When my mother was not around.

x x x

ASSISTANT PROSECUTOR SULAT. JR.:

Q:

And what happened when you were told by your father to get inside the room?

A:

Then there I was raped by him.

COURT:

How did it happen?

A:

He forced me and he undressed me.

COURT:

Proceed.

ASSISTANT PROSECUTOR SULAT. JR.:

Q:

Can you tell the Court, what happened next?

[AAA]:

A:

When my father undressed me, he sucked my breast.

COURT:

You mean to say, at the age of nine (9) your breast is [sic] already developed?

A:

No, not yet, but there is [sic] already small breast.

Q:

Then what happened after that?

A:

He kept on kissing me, in my whole body.

Q:

In that instance, what did you do?

A:

I tried to struggle.

COURT:

Proceed.

ASSISTANT PROSECUTOR SULAT. JR.:

Q:

You said, you were undressed by your father, what portion of your dress [was] taken off?

[AAA]:

A:

He removed my short [sic].

Q:

Only your short [sic]?

A:

And also my panty.

Q:

How about your upper garments?

A:

He just raised it.

Q:

After you were undressed, suck with [sic] your father, what did he do of [sic] the other part of your body?

A:

Then he fingered my vagina.

Q:

And after that, what did your father do?

A:

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Then he inserted his penis into my vagina.

COURT:

How did you feel?

A:

I felt pain.

COURT:

Proceed.

ASSISTANT PROSECUTOR SULAT. JR.:

Q:

You felt pain, where?

[AAA]:

A:

In my vagina.

Q:

Why were you so sure that it was the penis of your father [that] penetrated in your vagina?

A:

Because I feel [sic] it.

COURT:

Which is bigger, the sex organ of your father or his finger?

A:

The penis.

Q:

So, that is why you concluded that it was the penis which inserted [sic] to your vagina?

A:

Yes, ma'am.

COURT:

Proceed.

ASSISTANT PROSECUTOR SULAT. JR.:

Q:

During that time that your father's sex organ [was] inside you, what was your position with regard to your father?

[AAA]:

A:

I was lying flat and my hands was raised up.

COURT:

You were lying down facing up, is that what you mean?

A:

Yes, ma'am.

ASSISTANT PROSECUTOR SULAT. JR.:

Q:

How long did [sic] your father sex organ inside you?

A:

I cannot estimate.

COURT:

Q:

What was the position of your father?

[AAA]:

A:

He was on top of me.

Q:

Was he dressed or naked?

A:

He just pulled down his dress.

Q:

How about his brief?

A:

He pulled down to his knees.

ASSISTANT PROSECUTOR SULAT. JR.:

Q:

And what happened thereafter?

[AAA]:

A:

Then he made pumping motion on me.

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Q:

What were you doing while your father made pumping motion?

A:

I cried.

Q:

Then what happened thereafter?

A:

After that he stood up and he let me stood [sic] up also.

Q:

What did he tell you, if any?

A:

He warned me not to tell to anybody or else he will harm me.

Q:

What did you notice with your sex organ after that?

A:

There is [sic] blood coming out.

x x x [24] [Emphasis ours]

Thus, not only did AAA identify his father as her rapist, but she also recounted the rape in detail, particularly how the sexual intercourse took place.

In rape cases, the accused may be convicted solely on the testimony of the victim, provided the testimony is credible, natural, convincing, and consistent with human nature and the normal course of things.[25] Our examination of the records shows no indication that we should view AAA's testimony in a suspicious light. Her account of her harrowing experience was candid and straightforward. She remained resolute and unswerving even on cross-examination.[26] To our mind, her testimony deserves full faith and credit.

In considering AAA's testimony, we particularly took into account her relationship with the person who sexually violated her. We find it highly unlikely that AAA would fabricate an accusation of rape against her own father in view of the seriousness of the charge and the social stigma that marks a woman sexually abused by her own kin. Thus, in our view, no less than evidence of the highest order is required to refute the testimony of AAA and hold it unworthy of belief.

In People v. Bon, we held:

> Besides, no sane woman, least of all a child, would concoct a story of defloration, allow an examination of her private parts, and subject herself to public trial or ridicule if she has not in truth been a victim of rape and impelled to seek justice for the wrong done to her. Testimonies of child-victims are normally given full weight and credit, since when a woman, more so if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape has been committed. Youth and immaturity are generally badges of truth and sincerity. The weight of such testimonies may be countered by physical evidence to the contrary, or

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> indubitable proof that the accused could not have committed the rape, but in the absence of such countervailing proof, these testimonies shall be accorded utmost value.[27]

A major point in the appellant's case is the lack of laceration or injury in AAA's private part indicating that she had been forcibly violated. Dr. Hernandez, however, duly explained that the absence of any laceration or injury is due to the time that has lapsed since the rape charged took place; any injury sustained would have been healed since the rape alleged in Criminal Case No. 8880 was committed in 1994, while the medical examination took place on August 7, 1998 (or four [4] years later). In any case, we have held in several cases that the absence of fresh lacerations does not preclude the finding of rape, as neither hymenal rupture, vaginal laceration or genital injury is an element of the crime of rape. Their absence does not negate a finding of forced sexual coitus.[28] In the present case where statutory rape is charged, force is not even an element that must be proven.[29]

The Appellant's Defenses

The appellant denied having raped AAA, insisting that AAA only filed her complaint at the instigation of his brother-in-law, DDD, who was mad at him; he had struck his brother-in-law at one time when they had an altercation.

Denial, as a defense, is an inherently weak defense. It cannot prevail over positive identifications, unless supported by strong evidence of lack of guilt.[30] In the context of this case, the appellant's mere denial, unsupported by any other evidence, cannot overcome the child-victim's positive declaration on the identity and involvement of the appellant in the crime attributed to him.[31]

In addition, we find the appellant's allegation that AAA only complained at DDD's instigation, to be flimsy. Under the appellant's own admission that he had a harmonious relationship with AAA who grew up with him, we find it illogical and beyond the limit of believability that an uncle could prevail upon her to concoct a story and impute a bestial act against her very own father.

The Proper Penalty

The RTC found the appellant guilty of qualified rape under Article 266 of the Revised Penal Code, as amended by Republic Act No. 8353, and imposed on him the death penalty. The legal basis for the conviction assumes special significance because R.A. No. 8353 took effect only on October 22, 1997. Since the rape charged was committed in 1994, the RTC should have convicted the appellant under Article 335 of the Revised Penal Code, and not under Article 266, although in either case death is the imposable penalty when the qualifying circumstances of age and relationship are present. To quote Article 335:

> x x x x
>
> 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;
>
> x x x x [Emphasis ours]

As shown by her Certificate of Live Birth, AAA was born on January 17, 1985. Therefore, she was only nine (9) years old in 1994 when the rape took place. The qualifying circumstance of minority of AAA is thus proven

beyond reasonable doubt.

The evidence on record shows that the appellant was the common-law husband of the victim's mother, BBB, at the time the rape was committed. However, this circumstance was not alleged in the Information. Hence, the common-law relationship cannot be appreciated as a special circumstance to qualify the crime even if it was duly proven at the trial; otherwise, the appellant would be deprived of his right to be informed beforehand of the charge against him.[32]

We note too that to be appreciated as a special qualifying circumstance, minority and the special relationship must both be pleaded and proven. In other words, in the absence of one or the other or in the absence of the appropriate allegation in the Information and proof, no special qualifying circumstance exists under Article 335. So it is with this case. With the required relationship unavailable because of the prosecution's failure to allege relationship in the Information, no special qualifying circumstance under Article 335 can be recognized and the death penalty cannot be imposed.[33] The RTC thus erred in imposing the death penalty on the appellant.

The CA similarly erred when it concurred with the imposition of the penalty of death on the appellant based on the concurrence of the qualifying circumstances of minority and relationship, although it imposed the reclusion perpetua in light of R.A. No. 9346, entitled an "An Act Prohibiting the Imposition of Death Penalty in the Philippines" enacted on June 30, 2006. While the resulting penalty of reclusion perpetua is correct,
the basis should be Article 355 of the Revised Penal Code,[34] not R.A. No. 9346. The conviction under Article 335 should be based on the circumstance that the victim was below 12 years of age at the time of the rape. The proper term for the offense should be statutory rape, not qualified rape that is based on the qualifying circumstances of age and relationship.

The Proper Indemnity

The award of civil indemnity to the rape victim is mandatory upon the finding that rape took place.[35] The imposable indemnity is P75,000.00 if the death penalty is imposed, and P50,000.00 if the penalty is reclusion perpetua. Since the latter is the proper penalty, only P50,000.00 should be imposed as civil indemnity.

Moral damages - awarded to rape victims without need of proof other than the fact of rape under the assumption that the victim suffered moral injuries from the experience she underwent - finds full justification in this case. This award is separate and distinct from the awarded civil indemnity.[36] In light of current jurisprudence, we affirm the award of P50,000.00 as moral damages.[37]

Finally, exemplary damages in the sum of P25,000.00 are likewise imposed on the appellant by way of example to deter other fathers with perverse tendencies and aberrant sexual behavior from preying upon and sexually abusing their daughters.[38]

II. Criminal Case No. 8881

The appellant claims with respect to Criminal Case No. 8881 that his conviction was not supported by evidence.

We agree.

The Information in Criminal Case No. 8881 alleged that the appellant had carnal knowledge with AAA on December 1997. For precision and clarity, we reproduce hereunder AAA's testimony on the incident:

> x x x x
>
> ASSISTANT PROSECUTOR ERNESTO M. SULAT, JR.:
>
> Q:

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Until you reached this age nothing happened?

[AAA]:

A:

There is [sic].

Q:

Then tell to this Court what happened.

A:

He repeated again [sic]. He raped me.

COURT:

How many times?

A:

Many times.

ASSISTANT PROSECUTOR SULAT, JR.:

Q:

Can you count in [sic] your finger for how many?

A:

I cannot remember.

COURT:

Meaning to say, you were made sex slave by your father?

A:

Yes, ma'am.

Q:

And when was the last time, if you can still remember?

A:

On [sic] January 1998.

ASSISTANT PROSECUTOR SULAT, JR.:

Q:

You said, in your affidavit the last time was on [sic] December 7, 1997?

x x x

A:

On [sic] January 1998.

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COURT:

There was already a statement that she cannot understand but she can narrate the time that she can remember.

Q:

You cannot remember the exact date?

A:

Yes, ma'am.

Q:

How did that happen?

A:

He did the same thing to me.

Q:

Who undressed you at the last time of incident [sic]?

A:

He was [sic].

Q:

Doing all those incidents he did not threaten you but he just made sexual intercourse against your will?

A:

He threatened me.

Q:

How did he threaten you?

A:

Not to tell to anybody.

Q:

On [sic] January 1998, where was your mother then?

A:

She went for weeding. [39]

Each and every charge of rape is a separate and distinct crime that the law requires to be proven beyond reasonable doubt.[40] The prosecution's evidence must pass the exacting test of moral certainty that the law demands and the rules require to satisfy the burden of overcoming the appellant's presumption of innocence.[41]

We find AAA's testimony in this second charge of rape to be overly generalized; it lacks specific details on how the rape was committed. Her bare statement that the appellant undressed her and repeated what he had done to her the first time is inadequate to establish beyond reasonable doubt that a succeeding rape took place. The testimony should have mentioned, at the very least, that the appellant's organ touched the victim's private part. This, among

others, is the fact in issue that the prosecution must demonstrate in sufficient detail and which this Court must pass upon based on the evidence presented. Whether the facts alleged and proven constitute the crime of rape is a legal conclusion for this Court to make. Lacking in these details, we cannot conclude that the victim's testimony constitutes proof beyond reasonable doubt of the appellant's guilt.

WHEREFORE, premises considered, we AFFIRM the October 17, 2007 Decision of the CA in CA-G.R. CR-HC No. 01784 with the following MODIFICATIONS:

(a) the appellant is found GUILTY of statutory rape in Criminal Case No. 8880;

(b) civil indemnity is REDUCED to P50,000.00;

(c) the appellant is ORDERED to PAY the victim the amount of P25,000.00 as exemplary damages; and

(d) the appellant is ACQUITTED in Criminal Case No. 8881.

SO ORDERED.

Quisumbing, (Chairperson), Carpio Morales, Tinga, and Velasco, Jr., JJ., conur.

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[1] Penned by Associate Justice Myrna Dimaranan Vidal, and concurred in by Associate Justice Jose L. Sabio, Jr. and Associate Justice Noel G. Tijam; rollo, pp. 3-20.

[2] Penned by Judge Jacinta B. Tambago; CA rollo, pp. 10-14.

[3] This appellation is pursuant to our ruling in People v. Cabalquinto, in G.R. No. 167693, September 19, 2006, 502 SCRA 419, wherein this Court has resolved to withhold the real name of the victim-survivor and to use fictitious initials instead to represent her in its decisions. Likewise, the personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well as those of their immediate family or household members, shall not be disclosed.

[4] Records, p. 1.

[5] Records, Vol.II, p. 1.

[6] TSN, October 25 2000, pp. 9-10.

[7] Id., pp. 11-14.

[8] Id., pp. 15-17.

[9] Id., pp. 17-19.

[10] Id., p. 22.

[11] TSN, February 13, 2001, pp. 2-4.

[12] Id., pp. 5-6.

[13] TSN, May 21, 2001, pp. 3-5.

[14] Id., p. 5.

[15] TSN, October 8, 2002, pp. 2-3.

[16] Id., pp. 3-9.

[17] CA rollo, p. 14.

[18] CA decision of October 17, 2007.

[19] CA rollo, pp. 28-36.

[20] The crime subject of Criminal Case No. 8880 was committed in 1994, or before Article 335 of the Revised Penal Code, as amended, was repealed by Republic Act No. 8353 (the Anti-Rape Law of 1997).

[21] Amended by Republic Act No. 7659, entitled An Act to Impose the Death Penalty on Heinous Crimes Amending for that Purpose the Revised Penal Code, as Amended, Other Special Laws, and for Other Purposes, which took effect on December 31, 1993.

[22] People v. Pancho, G.R. Nos. 136592-93, November 27, 2003, 416 SCRA 506.

[23] People v. Natan, G.R. No. 181086, July 23, 2008.

[24] TSN, October 25, 2000, pp. 9-15.

[25] People v. Glivano, G.R. No. 177565, January 28, 2008, 542 SCRA 656.

[26] See People v. Zamoraga, G.R. No. 178066, February 6, 2008, 544 SCRA 143, 151.

[27] G.R. No. 166401, October 30, 2006, 506 SCRA 168, 187.

[28] See People v. Pancho, G.R. Nos. 136592-93, November 27, 2003, 416 SCRA 506; People v. Tampos, G.R. No. 142740, August 6, 2003, 408 SCRA 403.

[29] See People v. Escultos, G.R. Nos. 149366-67, May 27, 2004, 429 SCRA 651.

[30] People v. Malones, G.R. Nos. 124388-90, March 11, 2004, 425 SCRA 318.

[31] People v. Olaybar, G.R. Nos. 150630, October 1, 2003, 412 SCRA 490.

[32] People v. Negosa, G.R. No. 142856-57, August 25, 2003, 409 SCRA 539.

[33] People v. Miclat, Jr., G.R. No. 137024, August 7, 2002, 386 SCRA 515.

[34] ART. 335. When and how rape is committed. - Rape is committed by having carnal knowledge of a woman under any of the following circumstances.

x x x

3. When the woman is under twelve years of age or is demented.

The crime of rape shall be punished by reclusion perpetua.

[35] People v. Natan, supra note 23.

[36] People v. Jacob, G.R. No. 177151, August 22, 2008.

[37] People v. Lizano, G.R. No.174470, April 27, 2007, 522 SCRA 803.

[38] People v. Gregorio, Jr., G.R. No. 174474, May 25, 2007, 523 SCRA 216; People v. Zamoraga, supra.

[39] TSN, October 25, 2000, pp. 17-20.

[40] See People v. Tabio, G.R. No. 179477, February 6, 2008, 544 SCRA 156.

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[41] See People v. Fernandez, G.R. Nos. 139341-45, July 25, 2002, 385 SCRA 224.

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