

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. VICTOR VILLARINO Y MABUTE, APPELLANT.

G.R. No. 185012. March 05, 2010

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

In this special complex crime of rape with homicide, the unsolicited and spontaneous confession of guilt by the appellant to the police officer is admissible in evidence. The circumstantial evidence is also sufficient to sustain the conviction of the appellant even if no spermatozoa was found in the victim's body during an autopsy.

Factual Antecedents

On August 3, 1995, an Information[1] was filed charging appellant Victor Villarino y Mabute with the special complex crime of rape with homicide. The Information contained the following accusatory allegations:

That on or about the 29[th] day of April, 1995, at about 5:00 o'clock in the afternoon, at Barangay "D1", Municipality of Almagro, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, with lewd design, by means of force, violence and intimidation, did then and there, willfully, unlawfully and feloniously have carnal knowledge against a minor ten (10) years [sic], "AAA",[2] without the latter's consent and against her will, and thereafter, with deliberate intent to kill, did then and there willfully, unlawfully and feloniously inflict upon the said "AAA" mortal wounds on x x x different parts of her body, which caused her untimely death.

CONTRARY TO LAW.

Appellant pleaded not guilty to the crime charged. After the termination of the pre-trial conference, trial ensued.

The Version of the Prosecution

The case against the appellant, as culled from the evidence presented by the prosecution, is as follows:

On April 28, 1995, "BBB", together with her 10-year old daughter "AAA" and her younger son "CCC" went to the house of their relative in Barangay "D" to attend the fiesta to be held the next day.[3]

On even date, from 7:00 o'clock to 9:00 o'clock in the evening, SPO4 Jesus Genoguin (SPO4 Genoguin) was in his house in Barangay "D" entertaining his guests, one of whom was appellant. While personally serving food and drinks to appellant, SP04 Genoguin noticed that the latter was wearing a bracelet and a necklace with pendant. Appellant even allowed SPO4 Genoguin to put on the bracelet.[4]

On April 29, 1995, at around 9:00 o'clock in the morning, the appellant who was on his way to Barangay "D", passed by the house of Rodrigo Olaje (Rodrigo). At that time, Rodrigo noticed appellant wearing a bracelet and a necklace with pendant. He was also wearing a white sleeveless t-shirt (sando).[5]

At 11:00 o'clock in the morning, appellant was at the house of "BBB's" aunt. "BBB" offered him food. "BBB"

also noticed that he was dressed in a white sando and that he wore jewelry consisting of a bracelet and a necklace with pendant.[6] At 1:00 o'clock in the afternoon, he was seen wearing the same sando and jewelry while drinking at the basketball court in Barangay "D".[7]

At around 3:00 o'clock in the afternoon, "BBB" told "AAA" to go home to Barangay "D1" to get a t-shirt for her brother. "AAA" obeyed. However, she no longer returned. While "BBB" was anxiously waiting for "AAA" in the house of her aunt in Barangay "D",[8] she received information that a dead child had been found in Barangay "D1". She proceeded to the area where she identified the child's body as that of her daughter, "AAA".[9]

At around 4:00 o'clock in the afternoon, Rodrigo, who was the barangay captain of Barangay "D1" received information that a dead child was found in their barangay. He instructed a barangay tanod to inform the police about the incident. Thereafter, Rodrigo proceeded to the specified area together with other barangay tanods.[10]

SPO4 Genoguin also went to the crime scene after being informed by his commander.[11] Upon arrival, he saw the corpse of a little girl behind a big boulder that was about 10 meters away from the trail junction of the barangays.[12] People had gathered seven to 10 meters away from the dead body, but no one dared to approach.[13]

"AAA's" lifeless body lay face up with her buttocks on top of a small rock. Her body was slanted downward with her legs spread apart and dangling on the sides of the small boulder. She was no longer wearing short pants and panty, and blood oozed from her vagina. Wrapped around her right hand, which was positioned near her right ear, was a white sando.[14]

"AAA's" panty was found a meter away from her body, while her short pants was about two meters farther. A bracelet and a pendant were also recovered from the crime scene. Rodrigo and "BBB" identified these pieces of jewelry as those seen on the appellant. They also identified the sando on "AAA's" arm as the appellant's.[15] Thus, the hunt for appellant began.[16]

On the same day, the appellant was found in the house of Aurelia Susmena near the seashore of Barangay "D1". He was drunk and violent. He resisted arrest and had to be bodily carried to the motorboat that would take him to the municipal building in Almagro, Samar. The arresting team made the appellant take off his clothes since they were wet. When he complied, his briefs revealed bloodstains.[17]

"AAA's" corpse was taken to Calbayog District Hospital for autopsy. The Medico Legal Necropsy Report indicated the following injuries sustained by "AAA":

- Lacerated wounds:

1 - 2 cm. in length forehead

2 - 2 cm. in length globella

3 - 2.5 cm. in length, left lateral supraorbital region

4 - 3 cm. in length, left infraorbital region with fracture of underlying bone

5 - 4 cm. in left occiput with linear fracture of underlying bone

- Hematoma, confluent abrasion, 3 cm. in diameter, sacrum

- Genitalia grossly female, pre-pubertal

- Vaginal orifice admits two fingers with ease

- Laceration, posterior vagina wall 3 cm.

- Laceration, anterior vaginal wall (12 o'clock) 1.5 cm.

CAUSE OF DEATH: Cardiorespiratory Arrest secondary to:

Cerebral hemorrhage and concussion secondary to multiple lacerated wounds to skull fissure

Hypovolumic shock secondary to Massive Hemorrhage, secondary to third degree vaginal laceration.[18]

Dr. Arleen P. Lim, Medical Officer III, testified that four of the five lacerated wounds could have been caused by a hard irregular or blunt object, like a rock or stone.[19] While the fifth lacerated wound could have been the result of a strong force, as when the head is forcibly banged.[20] "AAA's" hematoma was just above her buttocks.[21] She further testified that the ease with which two fingers entered "AAA's" vaginal orifice could have been caused by sexual intercourse. The lacerations in her vaginal wall could also have been the result of sexual intercourse or by the forcible entry of an object into the vaginal canal, such as a penis.[22] Dr. Lim confirmed that the cause of death of "AAA" was cardio-respiratory arrest secondary to multiple lacerated wounds and skull fracture.[23]

Due to the death of "AAA", "BBB" incurred (1) P2,200.00 for the embalming and for the coffin (2) P700.00 for transportation and (3) P4,000.00 for the wake and construction of the tomb.

On May 2, 1995, the police brought appellant to Calbayog City for medical examination since he had scratches and abrasions on his body. While waiting for a boat ride at 4:00 o'clock in the morning, the police team took a coffee break. SPO4 Genoguin was momentarily left alone to guard the appellant. During this short period, the appellant voluntarily admitted to SPO4 Genoguin that he committed the crime charged. He also told SPO4 Genoguin that he could keep the pendant and bracelet if he would retrieve the t-shirt and throw it into the sea. SPO4 Genoguin rejected the appellant's offer and reminded him of his right to a counsel and that everything the appellant said could be used against him in court. Unperturbed, the appellant reiterated his offer.[24]

When they boarded the motorboat, the appellant repeatedly offered to give SPO4 Genoguin P20,000.00 if he would throw the sando into the sea. However, the police officer ignored the offer and instead reported the matter to the Chief of Police of Almagro, SPO4 Basilio M. Yabao.[25] Later, the appellant's mother, Felicidad Mabute y Legaspi, asked him not to testify against her son.[26]

At the Calbayog District Hospital, Senior Resident Physician Dr. Jose V. Ong, found that appellant's body had 10 healed abrasions and two linear abrasions or scratches, particularly, on his breast, knees, as well as right and left ears, that could have been caused by fingernails.[27]

The Version of the Appellant

In the afternoon of April 29, 1995, the appellant and his mother were at the residence of Aurelia Susmena. The appellant was sleeping in a hammock when he was abruptly awakened by Rodrigo, SPO4 Genoguin, and several policemen and barangay tanods. They tied his hands and feet with a nylon rope, and dragged him towards the seashore. Rodrigo hit the nape of the appellant with a gun then poked it at the appellant's mother, who wanted to help him. The appellant was then forcibly loaded in a motorboat.[28]

The appellant denied owning the bracelet, the pendant, and the sando found at the scene of the crime. He claimed it was impossible for him to buy these pieces of jewelry since he was only a cook in the fishing venture managed by Rodrigo. He maintained that he was not even paid for his services, for which reason he abandoned his work. This resulted in the failure of the fishing venture to operate for a day, which allegedly angered Rodrigo making him testify against him.[29]

The Decision of the Regional Trial Court

On May 19, 1999, the Regional Trial Court of Calbayog City, Branch 32 rendered a Decision[30] finding the appellant guilty beyond reasonable doubt of the complex crime of rape with homicide. It disposed as follows:

WHEREFORE, judgment is hereby rendered, finding the accused, VICTOR VILLARINO y Mabute, guilty

beyond reasonable doubt of the crime of rape with Homicide of a ten-year old minor, for which he is hereby sentenced to suffer the supreme penalty of DEATH, as provided for under R.A. No. 7659, to pay the complainant, BBB, the sum of P50,000.00 and P6,900.00 for actual expenses, plus all the accessory penalties provided by law, without subsidiary imprisonment in case of insolvency and to pay the costs.

IT IS SO ORDERED.

The Verdict of the Court of Appeals

The Court of Appeals (CA) found the appellant guilty only of homicide. The dispositive portion of its Decision[31] reads as follows:

WHEREFORE, the Decision dated May 19, 1999, of the RTC of Calbayog City, in Criminal Case No. 2069 is MODIFIED. As modified, accused-appellant VICTOR VILLARINO y MABUTE is found GUILTY of HOMICIDE and he is hereby sentenced to suffer an indeterminate penalty ranging from twelve (12) years of prison mayor in its maximum period, as minimum, to seventeen (17) years and four (4) months of reclusion temporal in its medium period, as maximum. The appealed Decision is AFFIRMED in all other respects.

SO ORDERED.[32]

Still unsatisfied, the appellant comes to us raising the following assignment of errors:

Issues

I

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT OF RAPE WITH HOMICIDE SOLELY ON THE BASIS OF CIRCUMSTANTIAL EVIDENCE.

II.

THE TRIAL COURT ERRED IN RENDERING A VERDICT OF CONVICTION DESPITE THE FACT THAT THE GUILT OF ACCUSED-APPELLANT WAS NOT PROVEN BEYOND REASONABLE DOUBT.[33]

Our Ruling

The appeal lacks merit.

In the special complex crime of rape with homicide, the following elements

must concur: (1) the appellant had carnal knowledge of a woman; (2) carnal knowledge of a woman was achieved by means of force, threat or intimidation; and (3) by reason or on occasion of such carnal knowledge by means of force, threat or intimidation, the appellant killed a woman.[34] When the victim is a minor, however, it is sufficient that the evidence proves that the appellant had sexual intercourse or sexual bodily connections with the victim.[35]

In the instant case, appellant voluntarily confessed to raping and killing "AAA" to SPO4 Genoguin. He even offered to give the pieces of jewelry to the latter if his sando is thrown into the sea. The appellant did not deny this accusation nor assail its truthfulness.

When appellant confessed to the crime, he was alone with SPO4 Genoguin, and no force or intimidation was employed against him. The confession was spontaneously made and not elicited through questioning. The trial court did not, therefore, err in holding that compliance with the constitutional procedure on custodial interrogation is not applicable in the instant case.[36]

In *People v. Dy*,^[37] we held that:

Contrary to the defense contention, the oral confession made by the Accused to Pat. Padilla that "he had shot a tourist" and that the gun he had used in shooting the victim was in his bar which he wanted surrendered to the Chief of Police (t.s.n., October 17, 1984, pp. 6-9), is competent evidence against him. The declaration of an accused acknowledging his guilt of the offense charged may be given in evidence against him (Sec. 29, Rule 130, Rules of Court). It may in a sense be also regarded as part of the *res gestae*. The rule is that, any person, otherwise competent as a witness, who heard the confession, is competent to testify as to the substance of what he heard if he heard and understood all of it. An oral confession need not be repeated verbatim, but in such a case it must be given in substance (23 C.J.S. 196, cited in *People v. Tawat*, G.R. No. 62871, May 25, 1985, 129 SCRA 431).

What was told by the Accused to Pat. Padilla was a spontaneous statement not elicited through questioning, but given in an ordinary manner. No written confession was sought to be presented in evidence as a result of formal custodial investigation. (*People v. Taylaran*, G.R. No. L-19149, October 31, 1981, 108 SCRA 373). The Trial Court, therefore, cannot be held to have erred in holding that compliance with the constitutional procedure on custodial interrogation is not applicable in the instant case, as the defense alleges in its Error VII.^[38]

At any rate, even without his confession, appellant could still be convicted of the complex crime of rape with homicide. The prosecution established his complicity in the crime through circumstantial evidence which were credible and sufficient, and led to the inescapable conclusion that the appellant committed the complex crime of rape with homicide. When considered together, the circumstances point to the appellant as the culprit.

First. Prior to the incident, three witnesses saw the appellant wearing the white sleeveless t-shirt, a necklace with pendant and a bracelet. Rodrigo saw the appellant wearing the same sando and pieces of jewelry when the latter was working in his fishing venture. He again saw the appellant wearing the same apparel and jewelry on the day the victim was raped and murdered. SPO4 Genoguin recalled that he saw appellant wearing the necklace with pendant and the bracelet on the eve of the commission of the crime. On that fateful day, he noticed that the appellant was wearing the white sleeveless t-shirt and the same pieces of jewelry in a drinking spree a kilometer away from the crime scene. "BBB" also testified that on the day of her daughter's death, she saw the appellant wearing a white sleeveless t-shirt, a necklace with pendant, and a bracelet.

Second. The pendant and bracelet were later recovered a few meters away from the lifeless body of "AAA". The white sando was also found clasped in the right hand of the victim.

Third. The appellant could no longer produce the sando and pieces of jewelry after his arrest.

Fourth. The physical examination on the appellant revealed 10 healed abrasions and two linear abrasions or scratches on his breast, knees and ears which could have been caused by the fingernails of the victim. Appellant offered no plausible explanation on how he sustained said injuries.

Fifth. The victim had blood oozing from her vaginal orifice, while the appellant had human blood-stains on his briefs.

Sixth. The appellant attempted to bribe SPO4 Genoguin and the policemen who were escorting him to Calbayog City, by offering them P20,000.00 in exchange for the disposal of his white sleeveless t-shirt found in the crime scene.

Seventh. The appellant's mother requested SPO4 Genoguin not to testify against her son.

The appellant argues that the trial court erred in giving credence to the testimonies of the prosecution witnesses

which were replete with contradictions and improbabilities. According to him, Rodrigo's declaration that it was around 2:00 o'clock in the afternoon of April 29, 1995 when he was told of the discovery of a dead body contradicts "BBB's" testimony that she instructed the victim to go home to Barangay "D1" at around 3:00 o'clock in the afternoon of the same day. Moreover, Rodrigo's claim that the appellant, a fisherman, always wore the pieces of jewelry in question while at work, is contrary to human experience. Lastly, SPO4 Genoguín's contention that he saw appellant wearing the pieces of jewelry on separate occasions prior to the commission of the crime is inconsistent with his subsequent testimony that he was not even sure of the ownership of the said jewelry.

Appellant's contentions are not worthy of credence. A perusal of the transcript of stenographic notes reveals that it was Prosecutor Feliciano Aguilar who supplied the time of 2:00 o'clock in the afternoon when Rodrigo was informed that a dead body of a child was found, thus:

Q

On April 29, 1995 at around 4:00 o'clock in the afternoon where were you?

A

I was in the house.

Q

Your house in what barangay or what place?

A

In Barangay "D1", Almagro, Samar.

Q

While you were in your house in Barangay "D1", Almagro, Samar was there any unusual incident that happened that you came to know [of] on April 29, 1995 in the afternoon at around 2:00 o'clock?

A

Yes, there was.[39]

Moreover, the time when Rodrigo was informed of the incident and the time stated by "BBB" when she sent "AAA" on an errand to Barangay "D1", were mere approximations, which cannot impair their credibility. An error in the estimation of time does not discredit the testimony of a witness when time is not an essential element.[40]

The inconsistencies indicated by the appellant are likewise inconsequential since they do not detract from the fact that "BBB" sent "AAA" on an errand in Barangay "D1" where her dead body was later discovered. Far from being badges of fraud and fabrication, the discrepancies in the testimonies of witnesses may be justifiably considered as indicative of the truthfulness on material points of the facts testified to. These minor deviations also confirm that the witnesses had not been rehearsed.[41]

The credibility of SPO4 Genoguín is not adversely affected by his inability to immediately identify the ownership of the jewelry found near the dead body of the victim despite his testimony that he saw the appellant wearing the same jewelry on previous occasions. The workings of a human mind placed under emotional stress are unpredictable leading people to act differently.[42] There is simply no standard form of behavioral response that can be expected from anyone when confronted with a startling or frightful occurrence.[43] SPO4 Genoguín, despite being a policeman since 1977,[44] was affected by the gruesome crime. His years in the police service did

not prepare him to witness the lifeless body of a 10-year old girl who had been brutally raped and murdered.

In sum, the inconsistencies raised by the appellant are too inconsequential to warrant a reversal of the trial court's ruling. The decisive factor in the prosecution for rape with homicide is whether the commission of the crime has been sufficiently proven. For a discrepancy or inconsistency in the testimony of a witness to serve as a basis for acquittal, it must establish beyond doubt the innocence of the appellant for the crime charged.[45] As the contradictions alleged by the appellant had nothing to do with the elements of the crime of rape with homicide, they cannot be used as ground for his acquittal.[46]

The appellant imputes improper motive to witness Rodrigo who, allegedly, had an axe to grind against him because Rodrigo's fishing venture incurred huge losses after appellant abandoned his job as a cook. Such imputation, however, deserves scant consideration. Other than appellant's self-serving allegation, there is no proof that his sudden departure from work adversely affected the operations of the fishing venture.

Against the prosecution's evidence, the appellant could only offer a mere denial and alibi. However, denial and alibi are intrinsically weak defenses and must be supported by strong evidence of non-culpability in order to be credible. Courts likewise view the defense of alibi with suspicion and caution, not only because it is inherently weak and unreliable, but also because it can be fabricated easily.[47] Also, the testimonies of appellant's mother and Aurelia Susmena, a close family friend, deserve no probative weight. In *People v. Sumalinog, Jr.*,[48] we held that when a defense witness is a family member, relative or close friend, courts should view such testimony with skepticism.

Besides, in order for alibi to prosper, it is not enough to prove that the appellant was somewhere else during the commission of the crime; it must also be shown that it would have been impossible for him to be anywhere within the vicinity of the crime scene.[49] In the case at bench, the appellant was in the house of Aurelia Susmena which is located in the same barangay where the body of the victim was discovered. Thus, it was not at all impossible for the appellant to be at the scene of the crime during its commission.

Hence, the appellant's twin defenses of denial and alibi pale in the light of the array of circumstantial evidence presented by the prosecution.[50] The positive assertions of the prosecution witnesses deserve more credence and evidentiary weight than the negative averments of the appellant and his witnesses.

The CA ruled that the evidence adduced by the prosecution are sufficient to produce a conviction for homicide but not for the crime of rape. In so ruling, the CA ratiocinated that while there were lacerations in the vaginal orifice of the victim, the absence of spermatozoa, however, belied that she was raped.

We disagree. The absence of spermatozoa does not necessarily result in the conclusion that rape was not committed.[51] Convictions for rape with homicide have been sustained on purely circumstantial evidence.[52] In those cases, the prosecution presented other tell-tale signs of rape such as the laceration and description of the victim's pieces of clothing, especially her undergarments, the position of the body when found and the like.[53]

Here, we reiterate that there is an unbroken chain of circumstantial evidence from which we can infer that the appellant raped "AAA". In a secluded area, her undisturbed corpse was discovered lying face-up and slanting downward with her buttocks on top of a small boulder. Her 10-year old lifeless body was naked from waist down with legs spread apart and dangling from the rock. Blood oozed from the vaginal orifice. Wrapped around her right hand was the appellant's sando. Her shorts were found a few meters away, just like the appellant's pendant and bracelet. Moreover, the appellant confessed to having raped "AAA". These circumstances lead to one fair and reasonable conclusion that appellant raped and murdered "AAA".

The Penalty

Article 335 of the Revised Penal Code in relation to RA 7659[54] provides that when by reason or on the occasion of the rape a homicide is committed, the penalty shall be death. However, in view of the passage on June 24, 2006 of RA 9346, entitled "An Act Prohibiting the Imposition of the Death Penalty in the Philippines" we are mandated to impose on the appellant the penalty of reclusion perpetua without eligibility for parole.[55]

The Damages

In line with current jurisprudence,[56] the heirs of the victim are entitled to an award of P100,000.00 as civil indemnity, which is commensurate with the gravity of the complex crime committed. As actual damages, the heirs of "AAA" are entitled to an award of P6,900.00 only since this was the amount of expenses incurred for "AAA's" burial. Moral damages in the amount of P75,000.00 must also be awarded.[57] Lastly, the heirs are entitled to an award of exemplary damages in the sum of P50,000.00.[58] Article 229 of the Civil Code allows the award of exemplary damages in order to deter the commission of similar acts and to allow the courts to forestall behavior that would pose grave and deleterious consequences to society.[59]

WHEREFORE, the appeal is DISMISSED. The Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 00065 is MODIFIED. Appellant Victor Villarino y Mabute is found guilty beyond reasonable doubt of the complex crime of rape with homicide and is hereby sentenced to suffer the penalty of reclusion perpetua without eligibility for parole and to pay the heirs of "AAA" the amounts of P100,000.00 as civil indemnity, P6,900.00 as actual damages, P75,000.00 as moral damages, and P50,000.00 as exemplary damages. No costs.

SO ORDERED.

Carpio, (Chairperson), Brion, Abad, and Perez, JJ., concur.

[1] Records, p. 1.

[2] Pursuant to Section 44 of Republic Act (RA) No. 9262, otherwise known as the Anti-Violence Against Women and Their Children Act of 2004, and Section 63, Rule XI of the Rules and Regulations Implementing RA 9262, the real name of the child-victim is withheld to protect his/her privacy. Fictitious initials are used instead to represent him/her. Likewise, the personal circumstances or any other information tending to establish or compromise his/her identity, as well as those of his/her immediate family or household members shall not be disclosed.

[3] TSN, June 19, 1996, pp. 6-7, 9 and 28.

[4] TSN, March 7, 1996, pp. 27-28.

[5] TSN, November 13, 1995, p. 72

[6] TSN, June 19, 1996, pp. 8-9 and 25-26.

[7] TSN, March 8, 1996, p. 13.

[8] Id. at 29-30.

[9] Id. at 10-11, 30.

[10] TSN, November 13, 1995, pp. 18, 20-22.

[11] TSN, March 7, 1996, pp. 26-27.

[12] Id. at 27-28; TSN, March 8, 1996, pp. 18-19.

- [13] Id. at 28 and 34; TSN, March 7, 1996, p. 28.
- [14] Id. at 34-35; TSN, March 8, 1996, pp. 9-11; TSN, November 13, 1995, pp. 23-24.
- [15] TSN, November 13, 1995, pp. 69-72; TSN, June 19, 1996, pp. 10, 14-17; March 7, 1996, pp. 30-32 and 38-39.
- [16] TSN, March 7, 1996, pp. 35-36.
- [17] TSN, November 13, 1995, pp. 29-30, 36-37.
- [18] Records, p. 8.
- [19] TSN, November 15, 1995, pp. 9-13.
- [20] Id. at 13-14.
- [21] TSN, November 14, 1995, p. 15.
- [22] Id. at 20-21.
- [23] Id. at 21-22.
- [24] TSN, March 7, 1996, pp. 56-61; TSN, March 8, 1996, pp. 7-8.
- [25] Id.; id. at 18-19 and 32-35.
- [26] Id. at 63-65.
- [27] TSN, June 20, 1996, pp. 2 and 5-20.
- [28] TSN, June 2, 1997, pp. 6-10; TSN, June 3, 1997, pp. 9-17; TSN, February 18, 1998, pp. 13-20.
- [29] TSN, March 18, 1998, pp. 10-11, 14.
- [30] Records, pp. 242-250; penned by Judge Renato G. Navidad.
- [31] Rollo, pp. 4-21; penned by Associate Justice Francisco P. Acosta and concurred in by Associate Justices Pampio A. Abarintos and Amy C. Lazaro-Javier.
- [32] Id. at 21.
- [33] Id. at 65.
- [34] *People v. Yatar*, G.R. No. 150224, May 19, 2004, 428 SCRA 504, 521.
- [35] *People v. Domantay*, 366 Phil. 459, 478 (1999)
- [36] *People v. Dy*, 241 Phil. 904, 917 (1988).
- [37] Id.
- [38] Id. at 916-917.
- [39] TSN, November 13, 1995, pp. 20-21.
- [40] *People v. Baniego*, 427 Phil. 405, 415 (2002).
- [41] *People v. Empleo*, G.R. No. 96009, September 15, 1993, 226 SCRA 454, 470-471.

- [42] *People v. Peñero*, 342 Phil. 531, 536 (1997).
- [43] *People v. Dulay*, G.R. No. 174775, October 11, 2007, 535 SCRA 656, 661.
- [44] TSN, March 7, 1996, p. 22.
- [45] *People v. Masapol*, 463 Phil. 25, 33 (20003).
- [46] *People v. Bang-ayan*, G.R. No. 172870, September 22, 2006, 502 SCRA 658, 669.
- [47] *People v. Pascual*, G.R. No. 172326, January 19, 2009, 576 SCRA 242, 259.
- [48] 466 Phil. 637, 650-651 (2004).
- [49] *People v. Espino, Jr.*, G.R. No. 176742, June 17, 2008, 554 SCRA 682, 702.
- [50] See *People v. Pascual*, *supra* note 47.
- [51] *People v. Magana*, 328 Phil. 721, 745 (1996).
- [52] *People v. Domantay*, 366 Phil. 459, 481-482 (1999).
- [53] See *People v. Develles*, G.R. No. 97434, April 10, 1992, 208 SCRA 101; *People v. Magana*, *supra*.
- [54] The prevailing law at the time of the commission of the crime in 1995.
- [55] *People v. Pascual*, *supra* note 47 at 260; *People v. Bascugin*, G.R. No. 184704, June 30, 2009.
- [56] *Id* at 261.
- [57] *Id*.
- [58] *Id*.
- [59] *Id*.

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