PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ELPIDIO PAROHINOG ALEJANDRO, ACCUSED-APPELLANT.

G.R. No. 186232. September 27, 2010

Ponente: VILLARAMA, JR., J.

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VILLARAMA, JR., J.:

The instant appeal assails the Decision[1] dated October 15, 2008 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 00261-MIN affirming with modification the April 15, 2003 Decision[2] of the Regional Trial Court (RTC) of Isulan, Sultan Kudarat, Branch 19, convicting appellant of five (5) counts of rape.

In five (5) Informations all dated August 16, 2001, appellant Elpidio Parohinog Alejandro was charged for the rape of AAA,[3] his daughter, as follows:

> Criminal Case No. 2804
>
> That sometime in January 6, 1997 at Poblacion II, Municipality of Lebak, Province of Sultan Kudarat, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with lewd and unchaste design, and by means of force and intimidation, did then and there, wil[l]fully, unlawfully and feloniously, lie and succeeded in having carnal knowledge of one [AAA], his thirteen (13) year old daughter.[4]
>
> Criminal Case No. 2805
>
> That sometime on the third week of July 1998, at Poblacion II, Municipality of Lebak, Province of Sultan Kudarat, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with lewd and unchaste design, and by means of force and intimidation, did then and there, wil[l]fully, unlawfully and feloniously, lie and succeeded in having carnal knowledge of one [AAA], his fourteen (14) year old daughter.[5]
>
> Criminal Case No. 2806
>
> That sometime on the first week of September 1999, at Barurao II, Municipality of Lebak, Province of Sultan Kudarat, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with lewd and unchaste design, and by means of force and intimidation, did then and there, wil[l]fully, unlawfully and feloniously, lie and succeeded in having carnal knowledge of one [AAA], his fifteen (15) year old daughter.[6]
>
> Criminal Case No. 2807
>
> That on or about 3:00 o'clock (sic) in the afternoon of April 1, 2000, at Barurao II, Municipality of Lebak, Province of Sultan Kudarat, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with lewd and unchaste design, and by means of force and intimidation, did then and there, wil[l]fully, unlawfully and feloniously, lie and succeeded in having carnal knowledge of one [AAA], his sixteen (16) year old daughter.[7]
>
> Criminal Case No. 2808

> That on or about 4:30 o'clock (sic) in the afternoon of February 14, 2001, at Barurao II, Municipality of Lebak, Province of Sultan Kudarat, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with lewd and unchaste design, and by means of force and intimidation, did then and there, wil[l]fully, unlawfully and feloniously, lie and succeeded in having carnal knowledge of one [AAA], his seventeen (17) year old daughter.[8]

Subsequently, all five Informations were consolidated for joint trial. When arraigned on November 12, 2001, appellant pleaded not guilty to all charges.[9] Trial on the merits ensued.

The prosecution presented the testimonies of five witnesses: private complainant AAA, BBB, AAA's mother, Teofilo Sanchez, Dr. Johnny Y. Tan and PO1 Mary Grace T. Salvio. On the basis of the evidence for the prosecution, the rape incidents occurred as follows:

In the evening of January 6, 1997, AAA, thirteen (13) years old at that time and in first year high school, and her two younger brothers were sleeping in their house in Lebak, Sultan Kudarat, while their father, appellant herein, was out having a drinking spree. At that time, BBB was in Cotabato where she took her oath as teacher. Around 11:30 p.m., AAA was awakened when she felt someone was touching her private parts. Thereafter, she realized that it was appellant. She tried to resist but appellant boxed her on the right eye rendering her unconscious. She only regained consciousness the following morning. When she urinated that morning, she felt pain in her vagina and noticed traces of blood in her urine. She however did not report the incident to anybody because appellant threatened her that it will be embarrassing on her part.

In the third week of July 1997, at around 2:30 in the afternoon, AAA, then fourteen (14) years old and in second year high school, was sleeping inside the room of their house. At that time, BBB was in school and AAA's brothers were out of the house. She was then awakened by the noise of the trisikad of appellant being parked outside their house. Appellant then entered the room and lied down beside her. She tried to resist but appellant pulled her hair and prevented her from shouting. Appellant then removed his pants and AAA's panty and then inserted his penis into her vagina while mounting on top of her. AAA pleaded him to stop but her plea fell on deaf ears. After satisfying his beastly desire, appellant told AAA not to tell anyone as it will cause the family embarrassment.

In the first week of September 1999, between 2:30 and 3:00 in the afternoon, while AAA's mother and brothers were in school, AAA, who was then fifteen (15) years old, was alone with appellant in their house. Appellant then ordered her to go upstairs to look for some clothes to which she obliged. He then followed AAA to the room and prevented her from going out. Appellant then hugged her and attempted to touch her private parts. She tried to shout but appellant prevented her from doing so. He then laid her down on the floor, removed her shorts and panty, kissed her and then succeeded in inserting his penis into her vagina. Like the two previous incidents, she did not report to her mother what happened out of fear.

The fourth incident occurred on April 1, 2000 around 3:00 in the afternoon. AAA, who was sixteen (16) years old at that time, was again alone in the house while her mother and brothers were in school. When her father arrived, she tried to get out of the house to avoid him but he prevented her from leaving and ordered her to buy him a match. When AAA brought him the match, appellant pulled her inside the room and succeeded in removing her pants and panty. He then removed his own pants and again succeeded in inserting his penis into her vagina. Again, out of fear and shame, AAA chose to be quiet about the incident.

The last incident happened on February 14, 2001 around 4:00 p.m. AAA, then seventeen (17) years old, was fetched by appellant from school and was brought home so she could clean the house. Appellant then left but came back after a while and ordered her to stop cleaning. He then pulled her into the room and started hugging

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and kissing her. Appellant then laid her down on the floor, removed her shorts and panty, removed his own pants and again succeeded in inserting his penis into her vagina. Appellant thereafter left the house to fetch BBB and his two sons.

On May 8, 2001, AAA, accompanied by her maternal grandfather, left for General Santos City to study. As appellant was against her studying there, he decided to go to General Santos City himself to bring AAA home. Upon learning that her father was coming to fetch her, AAA decided to tell her granduncle, Teofilo Sanchez, Jr. (Teofilo) with whom she was staying, what appellant had been doing to her. Teofilo then hid her in another house in General Santos City. When appellant arrived on May 10, 2001, Teofilo told him that AAA was in Davao City for vacation. Failing to see AAA, appellant left for Cotabato City. Teofilo thereafter called Rene Sanchez (Rene), AAA's uncle and BBB's brother, who is residing in Lebak, and told him what AAA confessed to him. After that phone call, Rene told BBB about the molestation AAA underwent in the hands of her father. BBB then went to General Santos City to fetch AAA and to hear the truth straight from her daughter.

When AAA and BBB reached Lebak on May 15, 2001, instead of going home, they proceeded to Rene's house. Around 4:00 in the afternoon, they went to the residence of Dr. Johnny Y. Tan, Lebak Municipal Health Officer, to have AAA examined.

> The results of the medical examinations revealed the following:
>
> - Old healed, hymenal laceration located at 3 o'clock; 7 o'clock; [and] 11 o'clock position[s].
>
> - No vaginal discharges noted.[10]

Per Dr. Tan's account, the laceration "probably happened quite long before the examination" and "could have been caused by an object forcibly inserted into a small partially covered vaginal covering (sic) or probably by sexual intercourse."[11]

Around 10:00 p.m. that same night, AAA and BBB went to the Lebak Municipal Police Station. After investigation, PO1 Mary Grace T. Salvio of the Women and Children Complaint Desk took AAA's statement and prepared the criminal complaint against appellant. The following day, May 16, 2001, the complaint was filed with the Municipal Circuit Trial Court of Lebak-Kalamansig and the corresponding warrant of arrest was issued against appellant.[12] On May 17, 2001, appellant was arrested.[13]

During trial, AAA's birth certificate[14] which showed that she was born on May 25, 1983 and appellant is her father was presented as proof of her minority during the rape incidents as well as her relationship with appellant.

Appellant, as lone witness for the defense, denied the charges against him. He claimed that as trisikad driver, he was out of the house everyday from 6:30 a.m. until 6:00 p.m. Appellant testified that in the evening of January 6, 1997, it was the birthday of his youngest son and that they had visitors including the parents and siblings of his wife. He testified that his in-laws even stayed in their house until 11:00 p.m. that night. Appellant claimed that he cannot do what he is being accused of because he loves his children.

As to the July 1998 and September 1999 rape incidents, he denied the allegations against him and claimed that he was out of the house and was busy working.

As to the April 1, 2000 incident, appellant testified that the whole family went to the beach in Sodoy that day. He claimed that they left for the beach at 10:00 a.m. and returned home at 3:00 p.m. He denied that he molested AAA in the afternoon of said date.

As to the February 14, 2001 incident, appellant simply denied that he sexually molested AAA.

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On April 15, 2003, the RTC promulgated a decision finding appellant guilty of five counts of rape, the fallo of which reads:

> WHEREFORE, upon all the foregoing considerations, the Court finds the accused, Elpidio P. Alejandro, guilty beyond reasonable doubt of five (5) counts of rape, as separately charged against him in Criminal Case Nos. 2804, 2805, 2806, 2807 and 2808.
>
> Accordingly, as mandated by law and existing jurisprudence, the Court hereby sentences the accused, ELPIDIO PAROHINOG ALEJANDRO:
>
> IN CRIMINAL CASE NO. 2804
>
> (a) - to suffer the extreme penalty of DEATH;
> (b) - to indemnify the private offended party, [AAA]:
>
> 1- the amount of FIFTY THOUSAND (P50,000.00) PESOS, as moral damages;
> 2- the amount of SEVENTY[-]FIVE THOUSAND (P75,000.00) PESOS, by way of civil indemnity, consistent with the current prevailing jurisprudence;
> 3- the amount of TWENTY-FIVE THOUSAND (P25,000.00) PESOS, as exemplary damages; and

to pay the costs.

> IN CRIMINAL CASE NO. 2805
>
> (a) - to suffer the extreme penalty of DEATH;
> (b) - to indemnify the private offended party, [AAA]:
>
> 1- the amount of FIFTY THOUSAND (P50,000.00) PESOS, as moral damages;
> 2- the amount of SEVENTY[-]FIVE THOUSAND (P75,000.00) PESOS, by way of civil indemnity, consistent with the current prevailing jurisprudence;
> 3- the amount of TWENTY-FIVE THOUSAND (P25,000.00) PESOS, as exemplary damages; and

to pay the costs.

> IN CRIMINAL CASE NO. 2806
>
> (a) - to suffer the extreme penalty of DEATH;
> (b) - to indemnify the private offended party, [AAA]:
>
> 1- the amount of FIFTY THOUSAND (P50,000.00) PESOS, as moral damages;
> 2- the amount of SEVENTY[-]FIVE THOUSAND (P75,000.00) PESOS, by way of civil indemnity, consistent with the current prevailing jurisprudence;
> 3- the amount of TWENTY-FIVE THOUSAND (P25,000.00) PESOS, as exemplary damages; and

to pay the costs.

> IN CRIMINAL CASE NO. 2807
>
> (a) - to suffer the extreme penalty of DEATH;
> (b) - to indemnify the private offended party, [AAA]:
>
> 1- the amount of FIFTY THOUSAND (P50,000.00) PESOS, as moral damages;
> 2- the amount of SEVENTY[-]FIVE THOUSAND (P75,000.00) PESOS, by way of civil indemnity, consistent with the current prevailing jurisprudence;
> 3- the amount of TWENTY-FIVE THOUSAND (P25,000.00) PESOS, as exemplary damages; and

to pay the costs.

IN CRIMINAL CASE NO. 2808

(a) - to suffer the extreme penalty of DEATH;
(b) - to indemnify the private offended party, [AAA]:

1- the amount of FIFTY THOUSAND (P50,000.00) PESOS, as moral damages;
2- the amount of SEVENTY[-]FIVE THOUSAND (P75,000.00) PESOS, by way of civil indemnity, consistent with the current prevailing jurisprudence;
3- the amount of TWENTY-FIVE THOUSAND (P25,000.00) PESOS, as exemplary damages; and

to pay the costs.

IT IS SO ORDERED.[15]

With the imposition of the death penalty on appellant, the case was elevated to this Court on automatic review. Pursuant to the Court's ruling in People v. Mateo,[16] the case was transferred to the CA.

On October 15, 2008, the CA promulgated a decision affirming with modification the RTC decision and disposing as follows:

FOR REASONS STATED, the decision of the Regional Trial Court (Branch 19) of Isulan, Sultan Kudarat in Criminal Case Nos. 2804, 2805, 2806, 2807 and 2808 finding appellant Elpidio Parohinog Alejandro guilty beyond reasonable doubt of five (5) counts of rape is AFFIRMED WITH MODIFICATION. With respect to the death penalty, the same is reduced to reclusion perpetua without eligibility for parole in accordance with RA 9346. Hence, for each count of rape, he is sentenced to suffer the penalty of reclusion perpetua and ordered to pay the offended party (to be identified through the Informations in this case) P75,000.00 as civil indemnity, P75,000.00 as moral damages and P25,000.00 as exemplary damages pursuant to prevailing jurisprudence.

SO ORDERED.[17]

On March 23, 2009, the Court directed the parties to file their respective supplemental briefs if they desire.[18] Appellant and the Solicitor General[19] manifested that they are adopting their previous briefs filed before this Court when the case was elevated previously on automatic review. Thus, the errors raised in appellant's Brief[20] dated August 30, 2004 are now deemed adopted in this present appeal:

I.

THE TRIAL COURT ERRED IN FINDING THAT CARNAL KNOWLEDGE WAS SUFFICIENTLY ESTABLISHED IN CRIMINAL CASE NO. 2804.

II.

THE TRIAL COURT ERRED IN GIVING FULL CREDENCE TO THE TESTIMONY OF THE PRIVATE COMPLAINANT.

III.

THE TRIAL COURT ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.[21]

As to the first count, appellant argues that the prosecution failed to adduce evidence of carnal knowledge. He claims that AAA could not completely testify on, much less assume, what had transpired between the time when he allegedly boxed her and when she finally regained consciousness. Appellant also contends that AAA faltered in recounting events on the alleged rape particularly on the alleged threats he posed on her. He also points that it appears no one in AAA's family noticed any trace/indication that she indeed was punched which would have

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raised suspicion among the other family members. Appellant also assails AAA's credibility with regard to her testimony on the second count. Appellant points out that though the information clearly stated the second rape allegedly on July 1998, AAA's testimony brought confusion when it really happened - if it was on July 1998 or July 1997.

Appellant argues that the foregoing flaws in AAA's testimony took a toll on her credibility.

The appeal has no merit.

We disagree with appellant's contention that the prosecution failed to establish carnal knowledge during the first rape. The prosecution sufficiently established the following: first, aside from appellant, AAA was only with her two (2) younger brothers in the house that night; second, appellant lied down beside AAA and began touching her private parts despite her resistance; third, as AAA continued to struggle, appellant boxed her on the right eye rendering her unconscious; and fourth, when she regained consciousness the following morning, she felt pain in her vagina when she urinated and saw traces of blood in her urine.

The combination of these circumstances establishes beyond moral certainty that AAA was raped while she was in a state of unconsciousness and that appellant was the one responsible for defiling her. These circumstances constitute an unbroken chain of events which inevitably points to appellant, to the exclusion of all others, as the guilty person, i.e., they are consistent with each other, consistent with the hypothesis that appellant is guilty of the rape that occurred on January 6, 1997 and at the same time inconsistent with any other hypothesis.[22]

As to appellant's argument that there was confusion as to when the second rape took place, whether it was in July 1998, as alleged in the information, or in July 1997, he refers to the following portion of AAA's testimony:

> ATTY. RAMOS
>
> Q -
>
> That incident that happened on the third week of July 1998, happened in the Poblacion?
>
> A -
>
> Yes, sir.
>
> Q -
>
> Can you still remember that you also testified that you transferred to Barorao on June 1998?
>
> A -
>
> Yes, sir.
>
> Q -
>
> And how come that the second incident happened in the poblacion?
>
> A -
>
> The first week of July 1997 that was the second incident that happened and in June 1998 that was the time we transferred to Barorao, sir.
>
> Q -
>
> The Information state that the incident happened in the third week of July 1998 and not 1997, or you could not remember whe[n] the second incident happened?

A -

As I can recall I was in the Second Year and it was in the month of July, sir.

Q -

As you could remember the second incident happened in 1997?

A -

What I can remember I was in Second Year at that time during the first week.

Q -

Not in the third week?

A -

I wanted to correct my statement that it was in the third week of July and the first week of September that the incidents happened.

Q -

But the second incident you could not remember what year was that?

A -

I am sure that I was in the second year high school at that time, sir.[23]

x x x x

When AAA was testifying on the first incident, she categorically stated that it occurred on January 6, 1997 when she was in first year high school. And based on the above-quoted testimony on the second incident, though she appeared unsure whether it occurred in 1997 or 1998, she was certain that it happened in the month of July when she was in second year high school. If in January 1997 AAA was in first year high school, the July when she was in second year high school is probably in 1997 considering that the school calendar starts in June and usually ends in March of the following calendar year.

It appearing that what has been proved - that the second incident occurred in July 1997 - is different from what was alleged in the information - that it occurred in July 1998 - appellant should have made a timely objection on such variance instead of using it to impeach AAA's credibility to gain his acquittal. As ruled by this Court in People v. Rivera,[24] citing United States v. Bungaoil:[25]

> The Court, in U.S. vs. Bungaoil, where the information alleged that the therein accused stole a cow in February, 1915, whereas the evidence at the trial established that it was stolen seven years earlier in 1908, pointed out through the late Justice Moreland that "a variance between the allegations of the information and the evidence of the prosecution with respect to the time when the crime was committed would not result in an acquittal of the accused; but if the accused interposed timely objection to such variance and showed that it was prejudicial to his interests in that it deceived him and prevented him from having a fair opportunity to defend himself, the trial court might grant an adjournment for such time as would enable the defendant to meet the change in date which was the cause of his surprise," and that the accused must take advantage of the variance "some time during the trial by appropriate objection and satisfy the trial court that he had been prejudiced by reason thereof" so that the trial court may "take such measures (as an adjournment) as would give the defendant an opportunity to produce such witnesses or evidence as the variance x x x made necessary."[26]

The determinative factor in the resolution of the question involving a variance between allegation and proof in

respect of the date of the crime is the element of surprise on the part of the accused and his corollary inability to defend himself properly.[27] Appellant, after the prosecution has finished its case, entered upon his defense and testified on his behalf and was given the chance to present evidence with regard to every detail concerning which the prosecution's witnesses had offered their testimony which includes the rape incident that occurred in July 1997 and not July 1998. There can be no surprise to speak of when it turned out that the second incident happened in 1997 since appellant was given the opportunity to refute said claim.

This Court recognizes the fact that AAA's testimony is not flawless. However, it is but ordinary for a witness, a rape victim no less, to have some inconsistencies in her statements since not only had the rapes occurred four or five years prior to her testimony but her testimony pertains to facts and details of shameful events that she would rather forget. Truly, if not for the motivation to seek justice for the molestations she had gone through, AAA would choose to bury those details in the deepest recesses of her memory. Moreover, inconsistencies may be attributed to the well-known fact that a courtroom atmosphere can affect the accuracy of the testimony and the manner in which a witness answers questions.[28] Likewise, inconsistencies in the testimony of a rape victim are inconsequential when they refer to minor details that have nothing to do with the essential fact of the commission of the crime -- carnal knowledge through force or intimidation.[29]

Thus, appellant failed to sufficiently show any reversible error committed by the CA in affirming his conviction for all five counts of rape. Besides, he only proffered unsubstantiated defenses of alibi and denial vis-à-vis the positive and unequivocal identification of AAA that he is the perpetrator. It is doctrinally settled that alibi and denial are worthless and cannot prevail over positive identification that is categorical, consistent and without any showing of ill-motive on the part of the witness. Appellant's bare denial amounted to nothing more than negative and self-serving evidence unworthy of weight in law. His defense of alibi will not prosper either since he failed to prove that he was at some other place at the time the crime was committed and that it was physically impossible for him to be at the locus criminis at the time.[30]

With the concurrence of the qualifying circumstances of minority of the victim and relationship to the offender, the instant rape cases are considered heinous crimes and would have been punishable by death. However, in light of R.A. No. 9346 or the Anti-Death Penalty Law, which prohibits the imposition of the death penalty, the CA's imposition of the penalty of reclusion perpetua, instead of death, for each count of qualified rape, on appellant, without eligibility for parole under the Indeterminate Sentence Law, is in order.

As to damages, we likewise uphold the CA's award of P75,000.00 as civil indemnity and P75,000.00 as moral damages for each count of rape. We however modify the award of exemplary damages and increase it from P25,000.00 to P30,000.00 following current jurisprudence.[31]

WHEREFORE, in view of the foregoing, the October 15, 2008 Decision of the Court of Appeals in CA-G.R. CR-HC No. 00261-MIN is AFFIRMED with MODIFICATION in that the exemplary damages awarded to AAA is increased to P30,000.00 for each count of rape.

With costs against the accused-appellant.

SO ORDERED.

Carpio Morales, (Chairperson), Peralta,[*] Bersamin, and Sereno, JJ., concur.

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[*] Designated additional member per Special Order No. 885 dated September 1, 2010.

[1] Rollo, pp. 4-14. Penned by Associate Justice Edgardo T. Lloren, with Associate Justices Edgardo A. Camello

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and Jane Aurora C. Lantion concurring.

[2] Records, Vol. I, pp. 88-134. Penned by Judge German M. Malcampo.

[3] Pursuant to the Court's ruling in People v. Cabalquinto, G.R. No. 167693, September 19, 2006, 502 SCRA 419, and Section 44 of Republic Act No. 9262 otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004" the real names and personal circumstances of the victims as well as any other information tending to establish or compromise their identities or those of their immediate family or household members are withheld. Fictitious initials and appellations are used instead to represent them.

[4] Records, Vol. I, p. 1.

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

[6] Records, Vol. III, p. 1.

[7] Records, Vol. IV, p. 1.

[8] Records, Vol. V, p. 1.

[9] Records, Vol. I, p. 32.

[10] Exhibit "B," records, Vol. I, p. 8.

[11] TSN, June 20, 2002, pp. 8-9.

[12] Records, Volume I, p. 13.

[13] Id. at 14.

[14] Exhibit "D," records, Vol. I, p. 80.

[15] Records, Volume I, pp. 131-134.

[16] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[17] Rollo, pp. 13-14.

[18] Id. at 20.

[19] Id. at 22-26.

[20] CA rollo, pp. 83-100.

[21] Id. at 94.

[22] People v. Villanueva, G.R. No. 138364, October 15, 2003, 413 SCRA 431, 438; See also People v. Mendoza, G.R. Nos. 152589 & 152758, January 31, 2005, 450 SCRA 328.

[23] TSN, June 26, 2002, p. 6.

[24] No. L-27825, June 30, 1970, 33 SCRA 746.

[25] 34 Phil. 835 (1916).

[26] People v. Rivera, supra note 24, at 752-753.

[27] People v. Bugayong, G.R. No. 126518, December 2, 1998, 299 SCRA 528, 538.

[28] People v. Bon, G.R. No. 166401, October 30, 2006, 506 SCRA 168, 184, citing People v. Perez, 337 Phil. 244, 250-251 (1997).

[29] People v. Biong, G.R. Nos. 144445-47, April 30, 2003, 402 SCRA 366, 377, citing People v. Cula, G.R. No. 133146, March 28, 2000, 329 SCRA 101, 112.

[30] People v. Moreno, G.R. No. 140033, January 25, 2002, 374 SCRA 667, 679.

[31] People v. Llanas, Jr., G.R. No. 190616, June 29, 2010, p. 11, citing People v. Dalisay, G.R. No. 188106, November 25, 2009, 605 SCRA 807, 821 & People v. Perez, G.R. No. 189303, October 13, 2009, 603 SCRA 689, 691.

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