

SALVADOR FLORDELIZ Y ABENOJAR, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.*G.R. No. 186441. March 03, 2010*

Ponente: NACHURA, J.

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For review are the Court of Appeals (CA) Decision[1] and Resolution[2] dated July 29, 2008 and February 16, 2009, respectively, in CA-G.R. CR No. 30949. The assailed decision affirmed the Regional Trial Court's[3] (RTC's) Joint Judgment[4] dated March 9, 2007, convicting petitioner Salvador Flordeliz y Abenojar of nine (9) counts of Rape and one (1) count of Acts of Lasciviousness, with a modification of the award of damages, while the assailed resolution denied petitioner's motion for reconsideration.

The case stemmed from the following facts:

Sometime in March 1995, ABC, the wife of petitioner and the mother of private complainants AAA and BBB, left for Malaysia as an overseas worker. AAA and BBB were left under the care and custody of petitioner. They resided in a small house in Quezon Hill, Baguio City.[5]

In April 1995, while sleeping with BBB and AAA, who was then eleven (11) years old, petitioner woke up AAA, touched her vagina, then played with it. AAA cried and told petitioner that it was painful. The latter stopped, but warned AAA not to tell anyone about it; otherwise, she would be harmed.[6] Petitioner allegedly committed the same acts against AAA repeatedly.

Petitioner and his daughters later transferred residence and lived with the former's siblings. Not long after, petitioner was convicted of homicide and imprisoned in Muntinlupa City. Consequently, AAA and BBB lived with their grandparents in La Trinidad, Benguet.[7] While petitioner was incarcerated, AAA and BBB visited him and sent him two greeting cards containing the following texts, among others: "happy valentine"; "ur the best dad in the world"; "I love you papa, love BBB, Love BJ"; "till we meet again"; portrait of Jesus Christ with a heart, "this is for you dad"; "flordeliz, AAA P., love AAA and Iyos." [8]

In 2001, petitioner was released on parole. He would frequently fetch AAA and BBB from their grandparents' house during weekends and holidays and they would stay with him in Gabriela Silang, Baguio City.[9]

Unsatisfied with the abuses committed against AAA, petitioner allegedly started molesting BBB in May 2002.[10] In 2003, BBB spent New Year's Day with her father. On January 3, 2003, while they were sleeping, petitioner inserted his two (2) fingers into BBB's vagina.[11] BBB did not attempt to stop petitioner because of fear. Thereafter, they slept beside each other.[12] BBB suffered the same ordeal the following night.[13]

On February 8, 2003, BBB visited petitioner. Again, petitioner held her vagina, played with it and inserted his fingers, which caused her pain.[14]

The same incident allegedly took place on August 3, 2003.[15] On October 26, 2003, a day before AAA's

birthday, while BBB was with petitioner, the latter committed the same dastardly act. This time, it was for a longer period.[16]

During All Saints' Day of 2003, BBB spent two nights with her father and, during those nights (November 1 and 2), she experienced the same sexual abuse.[17] The same thing happened on December 28, 2003.[18]

Notwithstanding the repeated incidents of sexual abuse committed against her, BBB did not reveal her ordeal to anybody because of fear for her life and that of her mother.[19]

AAA and BBB had the chance to reveal their horrifying experiences when their mother ABC arrived for a vacation. AAA immediately told ABC what petitioner did to her. When confronted by ABC, BBB likewise admitted the repeated abuses committed by petitioner. ABC forthwith reported the incidents to the National Bureau of Investigation.[20]

After conducting medical examinations on AAA and BBB, the attending physician remarked that there was a "disclosure of sexual abuse and she noted the presence of hymenal notch in posterior portion of hymenal rim that may be due to previous blunt force or penetrating trauma suggestive of abuse." [21]

With these findings, petitioner was charged with the crimes of Acts of Lasciviousness,[22] committed against AAA, and nine (9) counts of Qualified Rape through Sexual Assault,[23] committed against BBB, before the RTC. The crime of acts of lasciviousness was allegedly committed as follows:

That sometime in the month of April 1995 up to 1996 in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and deliberate intent to cause malice and satisfy his lascivious desire, did then and there willfully, unlawfully and feloniously touched and play the private part of the offended party AAA, a minor 14 years of age against her will and consent which act debased (sic), demeaned and degraded the intrinsic worth and dignity of the minor as a human being.

CONTRARY TO LAW.[24]

On the other hand, except for the dates of the commission of the crime, each Information for Rape reads:

That on or about the 8[th] day of February 2003, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation and taking advantage of his moral ascendancy over the private offended party he being the biological father of said offended party, did then and there remove the pants and underwear of said offended party and thereupon fondles her private part and forcibly inserted his finger into the vagina of the offended party BBB, a minor, 11 years of age against her will and consent, which acts constitute Rape as defined under Republic Act 8353 and which acts demeaned, debased and degraded the intrinsic worth and dignity of the minor as a human being.

CONTRARY TO LAW.[25]

Upon arraignment, petitioner pleaded "Not guilty" to all the charges. During trial, he interposed the defense of denial and insisted that the charges against him were fabricated by his wife to cover up the infidelity she committed while working abroad.[26] Petitioner also relied on the testimonies of Florabel Flordeliz, Levy Hope Flordeliz and Roderick Flordeliz, whose testimonies consisted mainly of the alleged infidelity of ABC; and petitioner, being a good father, was often visited by his daughters at his residence, where the rooms they occupied were only separated by see-through curtains.[27]

On March 9, 2007, the RTC rendered a Joint Judgment[28] finding petitioner guilty as charged, the dispositive portion of which reads:

WHEREFORE, premises all duly considered[,] the court finds that the prosecution has established the guilt of

the accused beyond reasonable doubt and hereby imposes upon him the following penalties:

1. In Criminal Case No. 23145-R for Acts of Lasciviousness, the Indeterminate Penalty of 6 months of Arresto Mayor as the minimum penalty to 6 years of Prision Correccional as the maximum penalty and to indemnify the victim AAA the amount of P20,000.00 as moral damages and to pay the costs.

The penalty shall also carry the accessory penalty of perpetual special disqualification from the right of suffrage (Art. 43, Revised Penal Code)[.]

2. In Criminal Cases Nos. 23072-R to 23080-R, the Indeterminate Penalty of twelve (12) years of Prision Mayor as the minimum penalty to twenty (20) years of Reclusion Temporal as the maximum penalty for each case or nine (9) counts of sexual assault considering the aggravating/qualifying circumstance of relationship against the accused and to indemnify BBB the amount of P75,000.00 as moral damages and to pay the costs.

The penalties shall carry with them the accessory penalties of civil interdiction for life and perpetual absolute disqualification (Art. 41, Revised Penal Code).

The accused shall be credited with 4/5 of his preventive imprisonment in the service of his sentences.

In the service of his sentences, the same shall be served successively subject to the provisions of Article 70 of the Revised Penal Code or the Three-Fold Rule.

SO ORDERED.[29]

On appeal, the CA affirmed petitioner's conviction with a modification of the amount of his civil liabilities.

Petitioner now comes before us, raising the following errors:

ACTS OF LASCIVIOUSNESS

The Honorable Court A Quo gravely erred in affirming the judgment of conviction of the Honorable Regional Trial Court for the crime charged despite the fact that the guilt of the petitioner has not been proven beyond reasonable doubt with moral certainty.

RAPES THROUGH SEXUAL ASSAULT

1. The Honorable Court A Quo gravely erred in affirming the judgments of conviction of the Honorable Regional Trial Court in Criminal Cases Nos. 23075-R (alleged rape through sexual assault sometime in May, 2002) and 23078-R (alleged rape through sexual assault on August 3, 2003) respectively, despite the complete absence of evidence to show how the alleged incidents of rape through sexual assault were committed by petitioner on said particular dates.

2. The Honorable Court A Quo gravely erred in affirming the judgments of conviction of the Honorable Regional Trial Court in the other alleged counts of rape through sexual assault despite the fact that the guilt of the petitioner has not been proven beyond reasonable doubt with moral certainty.[30]

Simply put, petitioner assails the factual and legal bases of his conviction, allegedly because of lack of the essential details or circumstances of the commission of the crimes. Petitioner, in effect, questions the credibility of the witnesses for the prosecution and insists that the charges against him were designed to conceal ABC's infidelity.

We have repeatedly held that when the offended parties are young and immature girls, as in this case, 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 if the matter about which they testified were not true.[31]

It is not uncommon in incestuous rape for the accused to claim that the case is a mere fabrication, and that the victim was moved by familial discord and influence, hostility, or revenge. There is nothing novel about such defense, and this Court had the occasion to address it in the past. In *People v. Ortoa*,^[32] we held that:

Verily, no child would knowingly expose herself and the rest of her family to the humiliation and strain that a public trial surely entails unless she is so moved by her desire to see to it that the person who forcibly robbed her of her cherished innocence is penalized for his dastardly act. The imputation of ill motives to the victim of an incestuous rape [or lascivious conduct] becomes even more unconvincing as the victim and the accused are not strangers to each other. By electing to proceed with the filing of the complaint, the victim risks not only losing a parent, one whom, before his moral descent, she previously adored and looked up to, but also the likelihood of losing the affection of her relatives who may not believe her claim. Indeed, it is not uncommon for families to be torn apart by an accusation of incestuous rape. Given the serious nature of the crime and its adverse consequences not only to her, it is highly improbable for a daughter to manufacture a rape charge for the sole purpose of getting even with her father. Thus, the alleged ill motives have never swayed the Court against giving credence to the testimonies of victims who remained firm and steadfast in their account of how they were ravished by their sex offenders.^[33]

Neither can we sustain petitioner's claim that the charges against him were products of ABC's fabrication to cover up the infidelity she committed while working abroad. No matter how enraged a mother may be, it would take nothing less than psychological depravity for her to concoct a story too damaging to the welfare and well-being of her own daughter. Courts are seldom, if at all, convinced that a mother would stoop so low as to expose her own daughter to physical, mental and emotional hardship concomitant to a rape prosecution.^[34]

We now proceed to discuss the specific crimes with which petitioner was charged.

Criminal Case Nos. 23072-R, 23073-R, 23074-R, 23076-R, 23077-R, 23079-R, and 23080-R for Rape Through Sexual Assault

The RTC, affirmed by the CA, correctly convicted petitioner of Rape in Criminal Case Nos. 23072-R, 23073-R, 23074-R, 23076-R, 23077-R, 23079-R, and 23080-R.

In her direct testimony, BBB clearly narrated that, on seven (7) separate occasions, petitioner woke her up, held her vagina, played with it, and inserted his fingers. During trial, the prosecutor presented a small doll where BBB demonstrated how petitioner inserted his forefinger and middle finger, making an up and down motion between the doll's legs.^[35]

The insertion of petitioner's fingers into the victim's vagina constituted the crime of Rape through sexual assault^[36] under Republic Act (R.A.) No. 8353, or "The Anti-Rape Law of 1997," which in part provides:

Art. 266-A. Rape: When And How Committed. - Rape is committed:

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

- a) Through force, threat, or intimidation;
- b) When the offended party is deprived of reason or otherwise unconscious;
- c) By means of fraudulent machination or grave abuse of authority; and
- d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.^[37]

Aside from proving the fact that Rape was committed, the prosecution also established that petitioner is the biological father of BBB and that the latter was less than twelve (12) years old at the time of the commission of the crimes. Under Article 266-B of the Revised Penal Code (RPC), rape by sexual assault, if attended by any of the aggravating circumstances under paragraph 1[38] of Article 266-B, would carry the penalty of reclusion temporal, ranging from twelve (12) years and one (1) day to twenty (20) years.

Applying the Indeterminate Sentence Law, the maximum term of the indeterminate penalty shall be that which could be properly imposed under the RPC. Other than the aggravating/qualifying circumstances of minority and relationship (which are already taken into account to raise the penalty from prison mayor to reclusion temporal),[39] no other aggravating circumstance was alleged and proven. Hence, the penalty shall be imposed in its medium period, or fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months.

On the other hand, the minimum term of the indeterminate sentence should be within the range of the penalty next lower in degree than that prescribed by the Code which is prison mayor or six (6) years and one (1) day to twelve (12) years.

For each count of sexual assault, petitioner should be meted the indeterminate sentence of ten (10) years of prison mayor as minimum, to seventeen (17) years and four (4) months of reclusion temporal as maximum.

In line with prevailing jurisprudence, the victim of Rape through sexual assault is entitled to recover civil indemnity in the amount of P30,000.00 for each count. This is mandatory upon a finding of the fact of Rape.[40] Moreover, the award of moral damages is automatically granted without need of further proof, it being assumed that a rape victim has actually suffered moral damages entitling her to such award. She is, thus, entitled to recover moral damages of P30,000.00 for each count.[41] In addition, the presence of the aggravating circumstances of minority and relationship entitles her to an award of exemplary damages. The amount of P30,000.00 for each count is appropriate under the circumstances.

Criminal Case Nos. 23075-R and 23078-R

In Criminal Case No. 23075-R, it was alleged that petitioner sexually abused BBB on August 3, 2003. Indeed, the RTC and the CA stated in their narration of facts that on that particular date, while BBB was visiting her father, the incident happened. A perusal of the transcript of the prosecution witnesses' testimonies, however, reveals that no such incident took place. No details were related by BBB herself as to the circumstances surrounding the alleged incident.

In Criminal Case No. 23078-R, it was also stated in the Information that, from May 2002 to December 2003, petitioner committed the crime of Rape through sexual assault against BBB. The Court notes, however, that the RTC decision is silent as to the sexual abuse allegedly committed in May 2002. The RTC's narration of facts started only with the incident that occurred in January 2003. While the CA stated that, in May 2002, petitioner started sexually abusing BBB, the statement was merely a conclusion unsupported by proof of how the crime was committed. Assuming that acts of Rape were indeed committed in 2003 (which is within the period from May 2002 to December 2003 as stated in the Information), those instances could very well be the same incidents covered by the other Informations discussed earlier.

Absent specific details of how and when the sexual abuses were committed, petitioner should be acquitted in Criminal Case Nos. 23075-R and 23078-R.

Criminal Case No. 23145-R for Acts of Lasciviousness

In Criminal Case No. 23145-R, petitioner was charged with and convicted of Acts of Lasciviousness and sentenced to suffer the penalty prescribed by Article 336 of the RPC. While we sustain petitioner's conviction of acts of lasciviousness, we modify the assailed Decision in order to give the proper designation to the crime committed and the law violated, and eventually to impose the proper penalty.

It is undisputed that at the time of the commission of the sexual abuse, AAA was eleven (11) years old.[42] This calls for the application of R.A. No. 7610 or "The Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act," which defines sexual abuse of children and prescribes the penalty therefor in its Article III, Section 5, to wit:

SEC. 5. Child Prostitution and Other Sexual Abuse. -- Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

The penalty of reclusion temporal in its medium period to reclusion perpetua shall be imposed upon the following:

x x x x

(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse: Provided, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be reclusion temporal in its medium period.[43]

Paragraph (b) punishes sexual intercourse or lascivious conduct not only with a child exploited in prostitution, but also with a child subjected to other sexual abuses. It covers not only a situation where a child is abused for profit, but also where one -- through coercion, intimidation or influence -- engages in sexual intercourse or lascivious conduct with a child.[44]

However, pursuant to the foregoing provision, before an accused can be convicted of child abuse through lascivious conduct committed against a minor below 12 years of age, the requisites for acts of lasciviousness under Article 336 of the RPC must be met in addition to the requisites for sexual abuse under Section 5 of R.A. No. 7610.[45]

The crime of Acts of Lasciviousness, as defined in Article 336 of the RPC, has the following elements:

- (1) That the offender commits any act of lasciviousness or lewdness;
- (2) That it is done under any of the following circumstances:
 - By using force or intimidation; or
 - When the offended party is deprived of reason or otherwise unconscious; or
 - When the offended party is under 12 years of age; and
- (3) That the offended party is another person of either sex.[46]

In addition, the following elements of sexual abuse under Section 5, Article III of R.A. No. 7610 must be proven:

- (1) The accused commits the act of sexual intercourse or lascivious conduct;

- (2) The said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and
- (3) The child, whether male or female, is below 18 years of age.[47]

Section 32, Article XIII of the Implementing Rules and Regulations of R.A. No. 7610 defines lascivious conduct as follows:

[T]he intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person.[48]

Based on the foregoing definition, petitioner's act of touching AAA's vagina and playing with it obviously amounted to lascivious conduct. Considering that the act was committed on a child less than twelve years old and through intimidation, it is beyond cavil that petitioner is guilty under the aforesaid laws.

We are aware that the Information specifically charged petitioner with Acts of Lasciviousness under the RPC, without stating therein that it was in relation to R.A. No. 7610. However, the failure to designate the offense by statute or to mention the specific provision penalizing the act, or an erroneous specification of the law violated, does not vitiate the information if the facts alleged therein clearly recite the facts constituting the crime charged. The character of the crime is not determined by the caption or preamble of the information nor by the specification of the provision of law alleged to have been violated, but by the recital of the ultimate facts and circumstances in the complaint or information.[49]

In the instant case, the body of the Information contains an averment of the acts alleged to have been committed by petitioner and unmistakably describes acts punishable under Section 5(b), Article III of R.A. No. 7610.

It is also undisputed that petitioner is the father of AAA. The RTC did not appreciate the alternative circumstance of relationship, because it was not alleged in the Information. We do not agree.

The resolution[50] of the investigating prosecutor, which formed the basis of the Information, a copy of which is attached thereto, stated that petitioner is the victim's biological father. There was, therefore, substantial compliance with the mandate that an accused be informed of the nature of the charge against him.[51]

In crimes against chastity, like acts of lasciviousness, relationship is considered aggravating.[52] Considering that AAA was less than twelve (12) years old at the time the crime was committed, petitioner should be meted the penalty of reclusion temporal in its medium period, or fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months. Applying the Indeterminate Sentence Law, petitioner should be meted the indeterminate penalty of thirteen (13) years, nine (9) months and eleven (11) days of reclusion temporal as minimum, to sixteen (16) years, five (5) months and ten (10) days of reclusion temporal as maximum.

With respect to the lascivious conduct amounting to child abuse under Section 5(b) of R.A. No. 7610 committed by petitioner, we impose a fine of P15,000.00.[53]

Civil indemnity ex delicto in the amount of P20,000.00 shall be awarded.[54] Additionally, upon a finding of guilt of the accused for acts of lasciviousness, the amount of P15,000.00 as moral damages may be awarded to the victim in the same way that moral damages are awarded to victims of rape even without need of proof because it is assumed that they suffered moral injury.[55] In view of the presence of the aggravating circumstance of relationship, the amount of P15,000.00 as exemplary damages should likewise be awarded.

WHEREFORE, premises considered, the Court of Appeals' July 29, 2008 Decision and February 16, 2009 Resolution in CA-G.R. CR No. 30949 are AFFIRMED with MODIFICATIONS. The Court finds petitioner

Salvador Flordeliz y Abenojar:

1. GUILTY of seven (7) counts of RAPE Through Sexual Assault in Criminal Case Nos. 23072-R, 23073-R, 23074-R, 23076-R, 23077-R, 23079-R, and 23080-R. He is sentenced to suffer the indeterminate penalty of ten (10) years of prision mayor, as minimum, to seventeen (17) years and four (4) months of reclusion temporal, as maximum, for each count. Petitioner is ordered to indemnify BBB P30,000.00 as civil indemnity; P30,000.00 as moral damages; and P30,000.00 as exemplary damages, for each count;
2. GUILTY of ACTS OF LASCIVIOUSNESS in Criminal Case No. 23145-R. He is sentenced to suffer the indeterminate penalty of thirteen (13) years, nine (9) months and eleven (11) days of reclusion temporal, as minimum, to sixteen (16) years, five (5) months and ten (10) days of reclusion temporal, as maximum. He is likewise ordered to pay a fine of P15,000.00 and to indemnify AAA P20,000.00 as civil indemnity, P15,000.00 as moral damages, and P15,000.00 as exemplary damages;
3. NOT GUILTY in Criminal Case Nos. 23075-R and 23078-R.

SO ORDERED.

Corona, (Chairperson), Velasco, Jr., Del Castillo,[*] and Mendoza, JJ., concur.

[*] Additional member in lieu of Associate Justice Diosdado M. Peralta per Special Order No. 824 dated February 12, 2010.

[1] Penned by Associate Justice Magdangal M. de Leon, with Associate Justices Josefina Guevara-Salonga and Ramon R. Garcia, concurring; CA rollo, pp. 392-402.

[2] Id. at 412-413.

[3] Branch 59, Baguio City.

[4] Penned by Judge Iluminada P. Cabato; records (Criminal Case Nos. 23072-R), pp. 691-715.

[5] Rollo, p. 95.

[6] Records (Criminal Case No. 23072-R), p. 701.

[7] Rollo, p. 95.

[8] Id.

[9] Id.

[10] Id.

[11] BBB demonstrated how her father touched her vagina with her forefinger and middle finger by making a sliding up and down motion on the area between the two legs of the doll. (Id. at 96.)

[12] TSN, February 7, 2005; records (Criminal Case No. 23072-R), pp. 441-445.

[13] TSN, June 2, 2005; id. at 452-453.

[14] Id. at 454-455.

[15] Rollo, p. 96.

- [16] TSN, June 2, 2005; records (Criminal Case No. 23072-R), pp. 456-457.
- [17] Id. at 458-461.
- [18] Id. at 461-462.
- [19] Rollo, p. 97.
- [20] Id.
- [21] Records (Criminal Case No. 23072-R), p. 7.
- [22] Docketed as Criminal Case No. 23145-R.
- [23] Docketed as Criminal Case Nos. 23072-80.
- [24] Records (Criminal Case No. 23145-R), p. 1.
- [25] Records (Criminal Case No. 23072-R), p. 1.
- [26] Rollo, p. 98.
- [27] Id. at 98-99.
- [28] Records (Criminal Case No. 23072-R), pp. 691-715.
- [29] Id. at 714-715.
- [30] Rollo, pp. 26-27.
- [31] *People v. Candaza*, G.R. No. 170474, June 16, 2006, 491 SCRA 280, 295-296.
- [32] G.R. No. 176266, August 8, 2007, 529 SCRA 536.
- [33] Id. at 552.
- [34] Id. at 553.
- [35] Records (Criminal Case No. 23072-R), p. 702.
- [36] *People v. Hermocilla*, G.R. No. 175830, July 10, 2007, 527 SCRA 296; *People v. Palma*, 463 Phil. 767 (2003).
- [37] Emphasis supplied.
- [38] Article 266-B. Penalties. - x x x.

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

[39] See *People v. Noveras*, G.R. No. 171349, April 27, 2007, 522 SCRA 777, 794; see also *People v. Tonyacao*, G.R. No. 134531-32, July 7, 2004, 433 SCRA 513, 534.

[40] *People v. Bunagan*, G.R. No. 177161, June 30, 2008, 556 SCRA 808, 814; *People v. Hermocilla*, *supra* note 36, at 305.

[41] *People v. Bunagan*, supra, at 814; *People v. Hermocilla*, supra note 36, at 305.

[42] TSN, March 8, 2005; records (Criminal Case No. 23145-R), p. 217.

[43] Emphasis ours.

[44] *Malto v. People*, G.R. No. 164733, September 21, 2007, 533 SCRA 643, 656-657.

[45] *Navarrete v. People*, G.R. No. 147913, January 31, 2007, 513 SCRA 509, 517; *Amployo v. People*, 496 Phil. 747, 755 (2005).

[46] *Navarrete v. People*, supra, at 517; *Amployo v. People*, supra, at 755; *People v. Bon*, 444 Phil. 571, 583-584 (2003).

[47] *People of the Philippines v. Salvino Sumingwa*, G.R. No. 183619, October 13, 2009; *People v. Montinola*, G.R. No. 178061, January 31, 2008, 543 SCRA 412, 431; *Navarrete v. People*, supra note 45, at 521; *Olivarez v. Court of Appeals*, G.R. No. 163866, July 29, 2005, 465 SCRA 465, 473; *Amployo v. People*, supra note 45, at 758.

[48] *Navarrete v. People*, supra note 45, at 521-522; *Olivarez v. Court of Appeals*, supra, at 473-474; *People v. Bon*, supra note 46, at 584.

[49] *People of the Philippines v. Salvino Sumingwa*, supra note 47, citing *Malto v. People*, supra note 44; and *Olivarez v. Court of Appeals*, supra note 47.

[50] Records (Criminal Case No. 23145-R), p. 3.

[51] *Olivarez v. Court of Appeals*, supra note 47, at 478-479.

[52] *People of the Philippines v. Salvino Sumingwa*, supra note 47; *People v. Montinola*, supra note 47, at 432.

[53] *People of the Philippines v. Salvino Sumingwa*, supra note 47; *People v. Montinola*, supra note 47; *People v. Candaza*, supra note 31; *Amployo v. People*, supra note 45, at 762-763.

[54] See *People v. Palma*, supra note 36.

[55] *Amployo v. People*, supra note 45, at 761-762.

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