

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALFREDO NITO Y MIRANDA, DEFENDANT-APPELLANT.

G.R. No. 70305. December 15, 1993

Ponente: ROMERO, J.

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ROMERO, J.:

Alfredo Nito y Miranda, a 21-year-old bachelor who had yet to complete his elementary education, was charged with the rape of his girlfriend, Melba Llarena, who was then a 20-year-old student taking up Bachelor of Science in Elementary Education at the Bicol University, in the complaint filed on October 17, 1973 by Melba and her mother, Lourdes Llarena, before the Municipal Court of Daraga, Albay.[1]

In due course, the following information was filed against Nito before the then Court of First Instance of Albay, Branch I:

"That on or about October 12, 1973, in the Municipality of Daraga, Province of Albay, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, by means of force and intimidation and deprived Melba Llarena of reasons (sic), did then and there wilfully, unlawfully and feloniously have sexual intercourse with Melba Llarena against her will and consent, to her damage and prejudice.

CONTRARY TO LAW."

Nito pleaded not guilty to the offense charged.[2] At the trial, the lower court gathered from the prosecution's evidence the following facts:

Melba had known Nito since the elementary grades. While he did not court her, Nito once wrote her a letter. Melba also wrote him a letter dated September 20, 1972 wherein she addressed him as "Dearest Freddie" and related to him her group's activities during the Malabog fiesta. Calling him "Noy," Melba told Nito that she was staying with the children of Tang Senen because she would go home from school at 6:00 o'clock and nobody could fetch her anymore ("wala na sa akin magsusundo kaya natatakot akong umuwi ng gabi"). Melba asked Nito when he would go home ("Kailan ba ang uwi mo?") and ended the letter with "Eternally yours, Ne." Below this, Melba wrote "Good Luck Good Health God Bless You" and "I'll Never Change" in quotation marks.[3] She also gave Nito her picture dated March 3, 1972 with these inscriptions: "To Fred, A souvenir to you. If you are sad, remember God, If you are happy remember me. From, Melba." [4]

Late in the afternoon of October 12, 1973, Melba boarded a bus from the Bicol University. She alighted at the waiting shed in Malabog, Daraga, Albay and walked to her home in Lacag. After walking about a kilometer on the small trail, Nito suddenly appeared and pulled her towards the lower portion of the area where there was a small uninhabited hut. Nito dragged her for a distance of around five meters from the trail. Melba was shouting and boxing Nito but she was not able to free herself from his hold as he was "wrestling" with her. While seated, Nito forced her to remove her panty tearing it in the process as he continued boxing her and kneeling on her thighs. Melba tried to push him and kept on moving away even as he succeeded in laying on top of her and

forcing his penis into her vagina.

Nito fled when somebody arrived who helped Melba gather her things, including her umbrella. Since she was not feeling well, Melba "took some rest" and went home. She was crying on her way home and when her mother saw her soiled clothes and torn panty which she was not wearing anymore, her mother went to the barangay captain to complain.[5]

That night, Melba was examined by Dr. Leonila Ante of the Albay Provincial Hospital but because she was "not contented with the first doctor,"[6] she submitted herself to another medical examination at the Rural Health Unit in Daraga on October 16, 1973 by Dr. Rafael Navera who made the following findings:

"EXTERNAL FINDINGS:

- Neck: Two (2) finger nail marks right, 2 cms.
- Hands: Abrasion of tips.
- Thighs: Hematoma 2 cms. in diameter, right medial aspect.
- Buttocks: Abrasions 2 cms. bilateral

INTERNAL FINDINGS:

- Hematoma 1 o'clock urethral opening 1 cms. in diameter.
- Defloration of hymen 9, 11, and 1 o'clock.
- Admits 1 finger easily."[7]

Nito, however, presented evidence to the effect that the sexual intercourse between him and Melba that late afternoon of October 12, 1973 was with their mutual consent. According to Nito, Melba became his girlfriend in August 1972 and he would call her "Ne" as he was "Noy" to her. When she sent him the letter, he was working with Dr. Abis in Manila but he went home towards the end of October on account of her information that nobody could fetch her. From then on, he would meet her at the waiting shed in Malabog and accompany her to her home in Malada which is a sitio of Malabog.[8]

On September 7, 1973, Melba sent word to Nito through her sister, Evangeline, that she was sick. Hence, before going to her house, Nito bought milk, eggs and biscuits. With a friend, Ariston Mercadero, Nito proceeded to Melba's house. Evangeline left for the store. When told that their mother was in Daraga for the fiesta, Nito left his friend reading comics in the balcony and he entered Melba's room which was separated from the balcony by the sala. While talking with each other, Nito asked Melba if he "could use her and she consented." Nito kissed her and while he was embracing her, she removed her panty and they copulated. Afterwards, they told each other stories.[9]

On October 11, 1973, at the waiting shed in Malabog, Melba told Nito to break up with his other girlfriend from Alcala, Lilia Manzano. Nito obliged and focused his attention on Melba. Because Melba was jealous of that girl and had signified that she did not like him anymore, the following day, October 12, 1973, Nito waited for Melba at the Malabog waiting shed in hopes of reconciling with her, which did take place.[10]

He had been at the Malabog waiting shed since ten minutes before 5:00 o'clock when Melba arrived. While walking to Lacag, Nito asked Melba if he "could use her and she said, yes." She put her books on the trail and he kissed her. She embraced him as he began holding her private parts. Noticing that she was about to lie down, Nito told her that they should go a little farther "below." Melba was smiling as they went down the trail.

They were still standing while engaged in foreplay but as Melba sat down, she removed her yellow panty. As they were copulating, a certain Juan arrived. Nito signalled him to go away by waving his hand. Melba could not see Juan because he was around ten meters "above her head." The area where they had sexual intercourse was below the trail and dense "palomaria" or "ipil-ipil" trees blocked the view from the trail. They were between these trees and they were doing the act on the banana leaves which they had gathered and used to keep themselves from being soiled as the carabao grass on the area was sparse.[11]

After copulation, Nito and Melba proceeded home. On the way, Puring Lucas, a relative of Melba, who had apparently been told by Juan about what transpired below the trail, called Nito names.[12] Puring actually called him depota but he ignored her and they continued walking. Melba then told him to go home and she herself would go to her own home.[13]

To Nito's surprise, the police came that same night and took him to the jail in Daraga municipal hall. It was there that Nito learned that Melba had charged him with rape. The following morning, his statement was taken.[14]

After trial, the lower court rendered a decision[15] of conviction. It gave full credence to the testimony of the victim, pointing out that the "supposed inconsistencies" therein "refer to incidental details which do not affect the credibility of her main asseverations." The court said:

"The defense has not convincingly established that in accusing Alfredo Nito of such a serious offense, Melba had been actuated by some ulterior motive which induced her to resort to mere fabrication to attain her purpose. The claim of the accused that one reason why Melba signed the complaint is that she was under the moral ascendancy of her mother and elder brothers who did not like her to marry a poor and illiterate man because of her status as a BSEEd student teacher who was about to become a professional, is simply, to say the least, too preposterous and absurd to inspire credence. For indeed there is neither rhyme nor reason for the Llarenas to consider the marriage of Melba to a poor and illiterate man as a disgrace to their family and yet be so vile and heartless to go to the extent of exposing her to public ridicule, humiliation and obloquy as a victim of sexual assault just to prevent such marriage. But the fact is, no satisfactory evidence exists in the record showing that Melba's mother and elder brothers have harbored any ill-feeling against the accused. As the Court has stated earlier, no true Filipina would ever go around in public unravelling facts and circumstances of her sexual debauchery, if such were not true. Apart from these, the Court believes that the offended party's young mind and degree of understanding at the time were still quite raw and not so comprehensive enough to be entrusted with such confabulation too complicated and too evil for her to fully grasp.

On the other hand, the contention of the defense that the sexual intercourse between the accused and the victim on October 12, 1973, was mutually agreed upon is utterly incredible as it conflicts with the common and usual manner Filipino women deport and conduct themselves. It is highly improbable that Melba Llarena would agree to a coitus with the accused in an open space only five meters away from an elevated trail, where they could be easily discovered by passers-by. An affair such as that claimed by the defense is carried out in a discreet manner. Besides, if Melba Llarena consented to have coition with the accused, her conduct thereafter defies understanding. For if it is true that the sexual act was indeed mutually desired and performed, why did she complain not only to her mother but also to the authorities, such that the accused was immediately arrested from his house on the day following the incident. Furthermore, the statement of the accused to the Police on October 13, 1973 (Exhibit E) negates and contradicts this pretense of the defense. (This is followed by excerpts from the sworn statement of Nito in the Bicol dialect.) x x x.

In English the above admissions of Alfredo Nito mean:

'Q - In your own personal knowledge, of what felony are you being accused by the mother of Melba Llarena?

A - Because of one thing that I did to Melba Llarena.

x x x x x x x x.

Q - What do you mean by 'one thing that you did to Melba Llarena?'

A - Sexual intercourse.

Q - When did this incident happen and in what place did it happen, if you still remember?

A - Yesterday, Friday, October 12, 1973 at about 5:00 o'clock in the afternoon and it happened there at Malabog, Daraga, Albay.

Q - In what particular place in Malabog, did you have sexual intercourse with Melba Llarena?

A - On the grass, near the house of Gaspar Gasino.

x x x x x x x x.

Q - With regards to this incident, was it really Melba's consent or did you force her?

A - I forced her (Bicol: Pigfuerza ko po).'

The admissibility of Exhibit E has not been assailed by the defense when the same was offered in the evidence by the prosecution. Moreover, the accused did not bother to explain his declarations therein despite the opportunities given him by the Court.

The defense likewise maintain that the testimony of Dra. Leonila Ante proves that the complainant had a previous carnal experience. The Court will go further than that and add that the medico-legal certificate (Exhibit 5) issued by this physician reveals that the hymen of Melba Llarena had old lacerations at 1, 9 and 11 o'clock positions. But these findings do not preclude the commission of rape (People vs. Espiritu, No. L-63451, May 31, 1984). Virginity of the offended party is not an essential element of this crime (People vs. Mesias, et al., Nos. L-40318-20, Feb. 29, 1984). The fact that the offended party was no longer a virgin is not a defense in a charge of rape, provided that the sexual act was committed with force and violence (People vs. Espiritu, supra; People vs. Mesias, et al., supra; People vs. Santos, 94 SCRA 277), just like in the present case.

The testimony of Juanito Nolasco has not improved the cause of his defense. This witness has categorically admitted that he would have testified for the prosecution had he not been rejected by the complainant. But because of his rejection by the offended party, he testified for the defense. x x x.

The Court cannot give any weight to the testimony of this defense witness who has offered to swear in favor of one side, and when he was rejected, he swore in favor of the adverse side. It is extremely dangerous to rely on the declaration of such witness who has lost his sense of justice and truth."

Thus, the lower court disposed of the case as follows:

"WHEREFORE, judgment is rendered pronouncing accused Alfredo Nito guilty beyond reasonable doubt, as principal, of the felony of rape, and sentencing him to reclusion perpetua.

Said accused is ordered to pay to Melba Llarena, the offended party, the sum of P15,000.00 and to her parents, another P10,000.00, for moral damages, with costs against the accused.

SO ORDERED."

Nito interposed the instant appeal questioning the lower court's findings that he employed force and violence upon the victim and that his guilt has been proven beyond reasonable doubt.

This case is not the ordinary rape case wherein no witnesses are present to support or demolish the testimony of either the accused or the victim. In this case, both the testimonies of the accused and the victim are corroborated

by other witnesses. Melba's testimony is supported by that of Jose Navarro who testified that he was walking on the trail that afternoon of October 12, 1993 when he heard the scream of a woman coming from below the trail. Thus, he proceeded to where the scream came from and saw a woman "being wrestled" by a man. He noticed that the panty of the woman "was already removed." [16] Navarro testified thus:

"Q - And where was the pantie of the woman because you said the pantie was already removed, what was the man doing?

A - I saw the man wrestling with the woman and the woman was struggling against the man. As a matter of fact, the woman was holding the trunk of a tree, and he (sic) was kicking the man.

Q - Now, you have not answered my question. My question is you said the pantie of the woman was already removed. What was the man doing when the pantie of the woman was already removed?

A - As I understood from the scene, when the pantie was removed, I think the man was wanting to do something wrong against the woman because the woman was struggling and he was not able or the purpose was not accomplished.

x x x x x x x x.

Q - What did the man want to do with the woman?

A - The man wanted to have sexual intercourse with the woman your Honor, that is what I understand of the scene, that the man wanted to have intercourse with the woman because the pantie was already removed and he was already on top of the woman.

Q - Now, are you sure if the penis was able to penetrate the vagina?

A - I am not sure whether the penis penetrated the vagina because I was at a distance.

(The witness then went on to demonstrate how the woman was holding on to the trunk of a tree as she struggled by pushing the man and kicking him.)

x x x x x x x x.

Q - Now, how many times more or less did you see the woman kicking and pushing the man atop of her with her right hand?

A - I could not count how many times she was kicking because the woman was crying or weeping as she was kicking the man and pushing him.

x x x x x x x x.

Q - When you arrived at the scene, did you see any other person?

A - Yes, sir.

Q - Who was that person?

A - I do not know the name of the man because it was the first time that I saw him.

Q - Now, when you were already both there, what did the man whom you saw do?

A - He was looking.

Q - What did that man aside from looking do?

A - That man shouted to the man who was wrestling the woman.

Q - And what did the man wrestling the woman do when he was shouted at?

A - He looked around and after seeing us, he ran away.

x x x x x x x x.

Q - This man who was wrestling the woman, before he ran away, what did he do to himself if any?

A - He wore his pants.

Q - Why, at the time he was wrestling the woman, where was his pants or what happened to it?

A - I think he removed his pants because I saw the pants beside himself.

Q - What else happened after the man ran away?

A - No more, sir.

Q - What did you do also?

A - I told the other man to take care of the woman so that I will be able to inform the Barrio Captain that something happened." (Underscoring supplied)[17]

On the other hand, Nito's testimony was buttressed by that of Juanito Nolasco who, on that fateful October day, saw Nito and Melba embracing and kissing each other. He was approximately ten (10) meters away from the couple who, at first, was standing. After the woman sat down on the ground the man followed suit and they embraced each other. As the woman lay down, Nito rolled down his pants up to the knees. Melba also removed her panty and she had sexual intercourse with Nito. As they were copulating, Melba was embracing Nito and they did not detect that they were being watched.[18]

Nolasco saw Melba's books on the side of the trail, some of which had rolled down the sloping ground. There were several "palomaria" or "ipil-ipil" trees in the area but when Nito saw him, he signalled Nolasco to go away. Melba did not see him and there was no other person in the area at the time.[19]

According to Nolasco, Melba at first asked him to testify but he eventually testified for Nito because Melba did not want him to testify (for her) anymore.[20] In fact, as early as the same evening of the incident, Melba's uncle went to his house and asked him to testify. Hence, Nolasco executed the affidavit dated October 16, 1973 wherein he stated that he saw a woman embracing a man.[21] This was thereafter offered in evidence as Exhibit D.[22] However, before he executed the affidavit, Nolasco was told by Melba's mother that should he be asked the names of Melba and Nito, he should tell the police that he did not know their names.[23]

Another piece of evidence presented by the defense was Nito's testimony on rebuttal that while they were having their "sexual play," Melba glanced upward, saw Nolasco and told Nito about his presence.[24] Being contrary to Nito's earlier testimony that Melba could not see Juanito because he was above her, the lower court obviously considered this as a mark of weakness of the defense evidence.

While the issue of credibility is clearly within the jurisdiction of the trial court and its findings on this issue must generally be respected on appeal unless certain facts of substance and value have been overlooked which, if considered, might affect the result of the case,[25] in rape cases this rule must be considered in light of the following principles: (a) an accusation for rape can be made easily but it is difficult to prove and much more difficult for the person accused, though innocent, to disprove; (b) in view of the intrinsic nature of the crime whereby only two (2) persons are usually involved, the testimony of the complainant must be scrutinized with great caution, and (c) evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to

draw strength from the weakness of the evidence for the defense.[26]

Upon a scrutiny of the details of the evidence at hand, we find that although the defense evidence is weak, neither is the prosecution evidence strong enough to merit a finding of guilt beyond reasonable doubt. Indeed, we find pieces of evidence which strike negatively at the very essence of the crime - casting doubt on whether force or intimidation was in fact employed upon the victim when she and the appellant performed the sexual act.

Melba's contention that she was continuously boxed by appellant who also knelt on her thighs is belied by the two medical certificates presented in evidence. The first medical certificates which was issued after she was examined by Dr. Leonila Ante right after Melba was allegedly raped,[27] states:

"October 16, 1973

MEDICO - LEGAL CERTIFICATE

TO WHOM IT MAY CONCERN:

This is to certify that Miss MELBA LLARENA, 20 years old, female, Filipino and a resident of Lacag, Daraga has been physically examined in this hospital on October 12, 1973 with the following findings:

X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X

- VAGINA ADMITS TWO FINGERS.

- HYMEN LACERATED AT 1, 9, AND 11

O'CLOCK POSITIONS. - OLD LACERATIONS

- PATIENT IS IN MENSTRUATION.

X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X

ISSUED per request of the Daraga Police Department, Daraga, Albay.

By:

(Sgd.)

LEONILA A. ANTE, M.D.

Resident Physician"

At the witness stand, Dr. Ante, a 61-year-old retired physician at the Albay Provincial Hospital who practiced obstetrics and gynecology and who, as chief of clinics, had attended to more than ten medico-legal cases, categorically testified that upon being informed that Melba had been raped, she "examined her physically if there (were) bruises, contusion, signs of struggle" but because she "did not find any injuries," she did not include any such findings in the medical certificate.[28] On why she did not include "negative findings," Dr. Ante testified:

Q - Will you tell us why did you not put the negative findings of yours in the medical certificate you issued?

A - That is what I did. I did not include the negative findings.

Q - Why did you not include your negative findings of the physical examination of the patient?

A - Because I did not find anything.

Q - Why, precisely, why did you not state in this medical certificate whether you made physical examination on the patient? Why?

A - I did not see anything that is why I did not write anything in the medical certificate. What is there . . . the thing I placed there was what I saw.

FISCAL TOLOSA

Q - Doctora, is it not also a policy in your office, in the hospital, that whenever you conduct examination whether there is negative or positive findings you note it in the medical certificate?

A - But not at all times. But oftentimes I do not include. I do not write there when I could not find anything.

Q - You mean to say sometimes if the findings is negative you also put it in the medical certificate?

A - Maybe the other physician(s), but me, I usually do not write anymore the negative findings.

COURT

Q - What is your reason for not writing negative findings?

A - I do not include any negative findings. I have not been asked by other judges. That is why I continued doing that."[29]

Dr. Ante's finding that Melba had menstrual flow on October 12, 1973 was verified by Melba herself who admitted that it was her fourth day of menstruation and that the bloodstains found in her panty were caused by it.[30] But, as Melba herself stated, her dissatisfaction with the findings of Dr. Ante led her to submit to another medical examination by Dr. Navera four days after the incident or on October 16, 1973. We find, however, that Dr. Navera's "external findings" that she had two fingernail marks on the neck, abrasions on the tips of her hands, a 2-cm. hematoma on the right medial aspect of the thigh and 2-cm. abrasions on the bilateral aspect of her buttocks scarcely proved the "continuous boxing" that Melba swore she suffered from the hands of appellant. Dr. Navera's medical certificate also shows that Melba "was not able to move due to body pains and (she was) in a state of shock." [31] And yet, Melba testified that after the incident on Friday, she went to school "the following Monday," which was October 15, 1973, one day before Dr. Navera examined her.[32]

With regard to the use of force during the incident, worth noting is the fact that apart from the repeated general statement that she was "boxed continuously" by appellant, Melba did not specify the particular part of the body where she was boxed. If it were really true that appellant boxed her so that she would submit to his lustful intention, she would have revealed the same as early as the preliminary investigation of the case. However, as the defense counsel pointed out at the trial, nowhere in the transcripts of the preliminary investigation is there a narration about appellant's having used his fist to consummate his bestial desire.[33] On the other hand, Melba seemed to be so observant as to have noticed the length and size of appellant's sex organ and to describe it during the preliminary investigation although at the trial, she claimed to have seen it only for "a fleeting moment." [34]

Jose Navarro's corroborative testimony was neither of any help to the prosecution with regard to the punches suffered by Melba. All he stated at the trial was that Melba was shouting as she "wrestled" with appellant. Asked to demonstrate how the two "wrestled," Navarro obliged by showing that the right hand of appellant was embracing the back of Melba while his left hand was "holding or touching the right nipple and (he was) kissing the woman on the neck." [35]

Moreover, to an unbiased mind, a reading of the testimony of Melba reveals that she was not the credible witness that the lower court found her to be. For one thing, on cross-examination, Melba admitted that she had known appellant since the elementary grades but she "did not mind" him. She flatly denied that he courted her in the

same breath that she categorically denied that he wrote her letters.[36] But after having been shown her letter to appellant, she admitted that she wrote him a letter and that he, too, did write her once.[37] Eventually, she admitted authorship of the "Dearest Freddie" letter.[38]

Considering the principle that all doubts must be resolved in favor of the accused, these weak points in the prosecution evidence must certainly tilt the scale in favor of the appellant especially because the lower court gave credence to evidence which should not have been considered against him. This is the confession executed by the appellant before the Daraga police which the lower court considered weighty enough because its offer in evidence was not objected to by the defense. To recall, on October 13, 1973, the 1973 Constitution was in full force and effect. Sec. 20 of its Bill of Rights which provides for the right of the accused to counsel during custodial investigation should, therefore, be respected even when the accused is waiving the same.[39] While appellant's confession was sworn to before the municipal judge, there is no indication at all that it was executed in the presence of appellant's counsel. Hence, said confession should not have been given evidentiary value.

Considering the heinous nature of the crime of rape, the heavy hand of the law should make itself felt in order to send the message that the same shall not be condoned, but rather condemned strongly by the government. Nonetheless, in the prosecution of the crime, as in any other crime, moral certainty, though not absolute certainty, is required of the proof requisite to produce conviction of the accused. By reasonable doubt is meant that doubt engendered by an investigation of the whole proof and an inability, after such investigation, to let the mind rest easy upon the certainty of guilt.

To be sure, a sexual offender deserves no place in society, but because the evidence adduced by the prosecution in this case failed to measure up to the degree of proof required by law, we cannot convict the accused on the basis thereof. As the Court has repeatedly observed, it is better to set a guilty man free than to incarcerate an innocent one.

WHEREFORE, the decision of the trial court is hereby REVERSED AND SET ASIDE. Appellant Alfredo Nito y Miranda is ACQUITTED of the charge of rape and is ordered released from prison immediately.

SO ORDERED.

Feliciano, (Chairman), Bidin, Melo, and Vitug, JJ., concur.

[1] Exh. "A."

[2] Record, p. 80.

[3] Exh. "I;" Record, p. 113.

[4] Exh. "H-2" inside envelope; Record, p. 114.

[5] TSN, March 11, 1976, pp. 5-15.

[6] Ibid, at pp. 37-39.

[7] Exh. "B;" Record, p. 5.

[8] TSN, March 9, 1984, pp. 5-11.

[9] Ibid, pp. 15-20.

[10] TSN, May 30, 1984, pp. 60-65.

[11] TSN, March 9, 1984, pp. 20-41.

[12] Ibid, pp. 42-44.

[13] TSN, April 13, 1984, pp. 16-18.

[14] Ibid, pp. 20-27.

[15] Penned by Judge Ramon P. Makasiar.

[16] TSN, July 10, 1975, pp. 4-6.

[17] Ibid, pp. 6-12.

[18] TSN, January 23, 1984, pp. 5-11.

[19] Ibid, pp. 14-18.

[20] Ibid, p. 21.

[21] There is no English translation in the record but the gist of the affidavit is that while on his way home at around 5:00 o'clock in the afternoon of October 12, 1973, Nolasco saw scattered along the trail several books and an umbrella and that when he looked below the trail he saw a man and a woman whose names he did not know, with the woman embracing the man ("nahiling kong babae na nakokopo kan lalake").

[22] Ibid, p. 31.

[23] TSN, January 23, 1984, p. 25.

[24] TSN, October 24, 1984, p. 10.

[25] People v. Matrimonio, G.R. Nos. 82223-24, November 13, 1992, 215 SCRA 613.

[26] People v. Batis, G.R. Nos. 94188-89, December 17, 1992, 216 SCRA 673, 680 citing People v. Tismo, G.R. No. 44773, December 4, 1991, 204 SCRA 535.

[27] Exh. "5;" Record, p. 359.

[28] TSN, August 21, 1984, p. 10.

[29] Ibid, pp. 13-14.

[30] TSN, December 1, 1976, pp. 21-22.

[31] Exh. "B."

[32] TSN, March 11, 1976, p. 18.

[33] TSN, December 1, 1976, p. 18.

[34] Ibid, pp. 21-22.

[35] TSN, July 10, 1975, p. 21.

[36] TSN, March 11, 1976, p. 22.

[37] Ibid, p. 26.

[38] Exh. "I."

[39] People v. Dacoycoy, G.R. No. 71662, May 8, 1992, 208 SCRA 583.

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