

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROGELIO BONDOY, ACCUSED-APPELLANT.

G.R. No. 79089. May 18, 1993

Ponente: ROMERO, J.

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ROMERO, J.:

Failing to convince a thirty-one-year old storeowner and mother of two to drop the robbery charge she had filed against him, Rogelio Bondoy, after forcibly entering her store and nicking her abdomen with a sharp knife, raped her within hearing distance of her children. For such offense, Bondoy was arrested by the police on September 17, 1986[1] and on that same day, the offended party, Patria V. Sabularce, with the marital consent of her husband, filed a complaint for "rape with physical injuries" before the Municipal Trial Court of Tabaco, Albay.[2]

On October 24, 1986, an information for rape with the use of deadly weapon was filed against him before the Regional Trial Court of Albay, Branch 17 at Tabaco. The information reads:

"The undersigned Assistant Provincial Fiscal of Albay hereby accuses ROGELIO BONDOY of Sagurong, San Miguel Island, Tabaco, Albay of the crime of RAPE WITH THE USE OF DEADLY WEAPON under ARTICLE 335 OF THE REVISED PENAL CODE, committed as follows:

That on or about the 15th day of September, 1986 at more or less 2:00 o'clock in the morning, at Barangay Sagurong, San Miguel Island, Municipality of Tabaco, Province of Albay, Philippines and with the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously destroy the wall of the store in the house of PATRIA V. SABULARCE, through which accused entered, and once inside, with the use of a knife or deadly weapon and by means of force and intimidation and with intent to have carnal knowledge, committed the crime of consummated rape against Patria V. Sabularce, a married woman, wounding and inflicting physical injuries to her, grabbing and tearing her duster and undressing her, kissing her, mashing her breasts and by lying and having sexual intercourse with her, all against her will and consent.

That the following aggravating circumstances attended the commission of the crime, to wit:

1. That it was committed in the dwelling of the offended party without the latter giving any provocation;
2. That the crime was committed in the nighttime which facilitated its commission;
3. That the crime was committed after unlawful entry; and
4. That as a means to the commission of a crime a wall was broken.

ACTS CONTRARY TO LAW."[3]

On arraignment, Bondoy pleaded not guilty. Thereafter, the prosecution presented evidence proving the following:

Patria V. Sabularce, married to Domingo Sabularce, lived in a one-bedroom house with a store in Sagurong, San

Miguel, Tabaco, Albay. A native of Lubang, Mindoro, she and her husband arrived in Sagurong in December 1983 to put up a business as the factory where they were employed allowed them only three working days. Patria first met Bondoy through the sister of her husband, Milagros Boral, who recommended him to Patria as a baggage carrier.[4]

On August 12, 1986, Patria's house was burglarized by Bondoy. Desiderio Boral, the husband of Milagros, whipped Bondoy three times on the chest with an iron bar.[5] Having taken cash worth P800.00, twenty-two bottles of beer and several bottles of gin as well as bars of health soap after attacking Patria with a kitchen knife and inflicting upon her physical injuries, Bondoy was charged with the crime of robbery with physical injuries by the Tabaco police before the Municipal Trial Court.[6]

In the evening of September 14, 1986 or a month after the robbery, Patria slept in the room beside the kitchen with her seven and nine-year old children and nephew, Rommel Boral, the thirteen-year-old son of Milagros. At around 2:00 o'clock the following morning, Patria was roused from her sleep by the crushing noise of a wall being broken down. After hearing the sound of crashing bottles, she took her flashlight and made her way towards the kitchen. Bondoy who was at the doorway immediately grabbed Patria's right hand and poked a sharp instrument at her. Bondoy told her not to shout or else she would be killed. He then pulled her down the earthen floor of the kitchen and took her flashlight even as she cried. He said that he could do what he wanted to do with her because her defender, Desiderio Boral, was not around. When he asked her to withdraw the case she had filed against him, Patria told him that she could not very well do it; wherewith, Bondoy ordered her to take off her clothes. When she refused, a struggle ensued and she fell to the ground in a supine position. He then attempted to rape her but Patria fought back enabling her to sit up. Bondoy, however, forcibly undressed her and tried to pull down her panty.

As Patria continued resisting, Bondoy repeatedly asked her to withdraw the case she had filed against him; otherwise, she and the children would all die. Upon her refusal to acquiesce to his demand, Bondoy ordered her to lie down. When she refused, Bondoy slashed her abdomen twice. Even as she fought back, Bondoy poked his knife at her. With his left hand, Bondoy pinned both her hands to the ground, lay on top of her and pulled down her panty. Although she tried to wiggle away from him, he succeeded in consummating his bestial desire. Since Patria was shouting, he covered her mouth, then focused the flashlight all over her body looking for her moles. Although Bondoy placed the knife near Patria's left hand, it was beyond her grasp.

After raping her, Bondoy stood up and held her by the neck. In her haste, she wore her underwear wrong side out. As she was still crying, Bondoy asked her for the key to the kitchen door and unlocked the same.

As she sat exhausted on the kitchen floor, she heard her child call out, "Mama." Bondoy ordered her to go upstairs while pointing the knife menacingly at her. Once inside the room, Bondoy held the hands of her two children, kicked Rommel and told him not to shout; otherwise he would kill them all. As he ordered them to go to the store, Bondoy told Patria that they would go to town to withdraw the case against him. Patria told him that she could not very well go with him without her clothes on. Bondoy then flicked the knife at her abdomen. Upon seeing this, Rommel pleaded with Bondoy, "Manoy Rogel, do not do that to Tiya. It's a pity." Bondoy hit Rommel and as the latter reeled, his forehead hit the wall.

Patria pleaded with Bondoy to spare the children. Promising that she would go with him, she asked for the sharp instrument he was holding. As she approached him, she held his hand that was holding the sharp instrument. Having succeeded in taking the knife, Patria stabbed Bondoy near the armpit. Struggling for the possession of the weapon and having retaken it, Bondoy stabbed her right forearm, whereupon she managed to shout for help. Somebody responded, "What's that, Patty?" Bondoy then dashed out of the house through the kitchen leaving his

t-shirt behind. Patria was left crying on the ground until, espying her duster, she put it on.[7]

According to Milagros Boral, at around 2:00 o'clock in the morning of September 15, 1986, she was awakened by the call of nature. Rising, she went to their kitchen, opened its door and went out. Then she heard someone weeping from the store of Patria which was more or less two and a half meters from her own kitchen door. She was surprised to see that the wall of Patria's store had been destroyed.[8] Overcoming her fear, she went to Patria's house, peeped through the pantry and saw Bondoy poking a sharp instrument at the latter and telling her not to make a noise; otherwise he would kill all of them. Bondoy also said in Tagalog, "Wala ang tagapagtanggol mo rito na si Derio." She recognized Bondoy because of the lighted lamp in Patria's house.[9]

As her husband was out at sea then, Milagros sought the help of Manuel Bermal whose house was just beside her own. Manuel replied that due to his old age, he was in no position to help, but told her to go instead to Alfredo Boqueo, the husband of her eldest sister. When he peeped through the bamboo slats of Patria's house, he also saw Bondoy pointing a knife at Patria and heard him ordering her to withdraw the case she had filed against Bondoy. Both Bondoy and Patria were in their underwear. Manuel also heard Bondoy order Patria to lie down. When she asked why, he saw Bondoy slash Patria's stomach twice even as his victim was already begging for mercy. Manuel then left as he could no longer stomach what he was witnessing.[10]

Meanwhile, Milagros had fetched Alfredo Boqueo and both of them ran the 200-meter distance downhill to Patria's house. When they learned from Manuel that Bondoy was still inside, the two men told her to fetch Domingo, the husband of Patria, at the Hacienda.

Milagros went to a neighbor who owned a motorboat and lied to her that Patria's daughter was ailing because the son of the motorboat owner was the compadre of Bondoy. She was still at the shore of the Hacienda when she began calling for her brother Domingo and posthaste, they went back to Sagurong. Learning from Manuel that Bondoy was still inside Patria's house, she held Alfredo and Domingo by their pants, pleading with them not to enter the house of Patria as something untoward might happen. But when they heard Patria shouting for help, the two men ran to give succor.

Gathering her wits about her, Milagros accompanied the two men who entered the house of Patria. They found a semi-conscious Patria sitting in the store dressed in a torn duster and with a bleeding arm. Milagros massaged Patria's chest and decided that they should bring Patria to Tabaco.[11]

Thirteen-year-old Rommel Boral testified that he was awakened by the kick delivered by Bondoy. He saw Bondoy embracing his aunt with a knife poked at her. Bondoy then brought him and Patria's two children to the store. Bondoy told Patria to come with him but Patria retorted that she could not do so as she was naked, as in fact she was only wearing her panty. After Bondoy slashed Patria's stomach, Rommel tried to restrain Bondoy from further harming Patria but Bondoy pushed him hard such that he hit his forehead on a hard object.

Rommel heard Patria telling Bondoy to give her his knife before they left. Suddenly, he saw Patria stab Bondoy and the two struggled for possession of the knife. Having succeeded in grabbing the weapon, Bondoy stabbed Patria on her right arm. It was at this moment that Patria shouted for help and somebody from outside the house asked, "What happened, Patty?," Bondoy then left the house through the kitchen.[12]

Patria was in a state of shock when she was brought by motorboat to the Tabaco police headquarters. Milagros tried to talk to her but Patria kept on crying. From the police headquarters, she was taken to the Ziga Memorial Hospital by her husband. There, Dr. Sonny Sta. Rosa conducted a vaginal examination on Patria which revealed the presence of spermatozoa in the cervical opening of her vaginal pool and canal.[13] Thereupon he issued a medical certificate showing that Patria sustained an incised 1.5 cm. wound at the lateral aspect of her right

forearm and multiple abrasions.[14] He later testified that Patria's incised wound could have been caused by a sharp instrument and that the other abrasions indicated in the medical certificate, which could also have been caused by a sharp instrument, were three in number and located in the area surrounding the umbilicus or navel.[15]

Lilia Colar, the medical technologist at the Ziga Memorial Hospital, examined the specimen of vaginal discharge taken from Patria and found that it was "positive for sperm cells." [16] She declared, however, that the sperm cells were non-motile or dead.[17]

The defense theory, on the other hand, is that Bondoy could not have had sexual intercourse with Patria without her consent because they were lovers. To prove this, the defense presented Emelita Bondoy, the defendant's wife.

Emelita testified that on the night of February 27, 1986, her husband asked her to watch his motorboat. After her husband left, she slept but she was awakened by an aching tooth. She went to Patria's store to buy medicine but when she was near the store, she heard someone crying. Peeping through a hole, she saw Patria sitting on the lap of her husband with her head on his chest. Patria was telling her husband to leave his family and go with her to Manila. Bondoy retorted that he would go with Patria only if she gave him five thousand pesos (P5,000.00) which he would leave with his family. Inasmuch as Patria said that she had only two thousand pesos (P2,000.00), Bondoy proposed that they had better stay where they were as they could still be happy.

Emelita heard Patria say that she wanted vengeance on her husband (Domingo) who was having an affair with Normilita, Patria's own sister. As she could no longer bear the conversation, Emelita went home and cried all night. When Bondoy returned the following morning, she confronted him and he admitted that he was indeed having a relationship with Patria. He consoled her, however, saying that he still loved his family.

After that incident, Emelita noticed that Bondoy and Patria were always together. Thus, in March, the two boarded a "sibid?sibid" and went to Hacienda. After her husband had been charged with robbery, Bondoy's family transferred to Rawis and returned to Sagurong in September. However, she admitted not knowing anything about the September 15, 1986 incident because she and her children were in Rawis.

On cross-examination, Emelita testified that on September 14, her husband left for Sagurong and he returned only at 9:00 o'clock in the morning of September 15. On further questioning, however, she said that her husband was sleeping with her between 2:00 and 3:00 o'clock in the morning of September 15. In spite of her knowledge about the relationship between Patria and her husband, she kept silent about it because she wanted to avoid a scandal.[18] In fact, she did not tell even her own parents about her husband's infidelity although she confided the same to Bondoy's own parents.

To buttress her testimony on the relationship between Patria and Bondoy, she produced in court a ring which Patria allegedly gave her husband. The ring was given to her by her husband after the rape case had been filed against him or just before she testified. She saw the ring on Patria's finger even before the robbery case was filed against Bondoy. When asked by the fiscal to wear the ring, it fitted Emelita's ring finger.[19]

Juan Bongalos, the brother-in-law of Bondoy, testified that at around 9:00 o'clock in the evening of September 14, he had supper with Bondoy whom he had invited. They talked about Bondoy's intimate relationship with Patria. After supper, he accompanied Bondoy home because Patria's relatives had been threatening Bondoy. Along the way, Patria called Bondoy and told him to go with her to her house. Bondoy, who had his shirt slung on his shoulder, reached only the kitchen door of Patria's house. Patria was forcing Bondoy to go inside her house but he declined the invitation. While Bondoy was raising his left hand, Patria suddenly stabbed him on his left side. Bondoy ran away and Juan followed him.[20]

Testifying on his own behalf, Bondoy corroborated Bongalos' story on how he was wounded by Patria. He added that Patria stabbed him because he wanted to end their relationship. Bondoy repeated Emelita's story about the February 27 incident between himself and Patria that she allegedly witnessed. He also testified that he operates a motor banca between Sagurong and Tabaco to ferry cargo and passengers like Patria. He admitted having been employed by Patria as a baggage carrier and that she had been paying him for his services until they had a "love relationship" for one and a half years. During the relationship, he "used" her.[21]

Bondoy related that on one occasion, while riding together in a "sibid-sibid" towards Hacienda, he and Patria kissed each other. Patria gave him a ring as a symbol of her love for him.[22] He admitted wearing the ring on his left little finger. However, when asked by the fiscal to try on the ring, the court noticed that it did not fit him.[23]

On April 20, 1987, the lower court[24] rendered a decision convicting Bondoy of the crime charged. Its dispositive portion states:

"WHEREFORE, premises considered, this Court finds accused ROGELIO BONDOY of Sagurong, San Miguel Island, Tabaco, Albay GUILTY beyond reasonable doubt of the crime of RAPE with Physical Injuries and Use of a Deadly Weapon, attended to by the following aggravating circumstances: (1) it was committed in the dwelling of the offended party without the latter giving any provocation; (2) the crime was committed after unlawful entry; and (3) as a means to the commission of a crime a wall was broken. There is no mitigating circumstance.

For these reasons, said accused is hereby sentenced to suffer the penalty of RECLUSION PERPETUA.

With all the accessories of the law.

The accused is further ordered to pay unto the complainant the sum of SIXTY THOUSAND (P60,000.00) PESOS for and as moral damages and FIFTEEN THOUSAND (P15,000.00) PESOS for and as exemplary damages.

Costs against the accused.

SO ORDERED."

Bondoy interposed this appeal claiming that the lower court erred in: (a) finding that he had sexual intercourse with Patria on September 15, 1986; (b) giving credence to the testimonies of the prosecution witnesses, and (c) finding that he is guilty of the crime and/or the prosecution was able to prove his guilt beyond reasonable doubt.[25]

In disclaiming that he had sexual intercourse with Patria on September 15, 1986, appellant stresses that since not one of the other prosecution witnesses was able to confirm or corroborate Patria's testimony on the matter, this should be treated with extreme caution.

Even admitting that the testimony of a rape victim should be scrutinized carefully, considering the nature of the crime and the fact that the offense is, more often than not, committed without any witnesses, this Court has repeatedly held that when a woman says that she has been raped, she says all that is necessary to show that rape was indeed committed. If her testimony meets the test of credibility, the accused may be convicted solely on its basis.[26] Thus, even if the victim's testimony on how she was raped is uncorroborated, it is sufficient to justify a conviction for rape as long as it is credible and positive and satisfies the court of the guilt of the accused beyond reasonable doubt.[27]

On the credibility of Patria and her testimony, the lower court stated:

"The sordid details related by private complainant about how, when, and where the crime was committed

belies the denial and protestation of innocence by the accused. The deportment of Patria Sabularce in the witness stand, her willingness to divulge (sic) even the intimate details of the incident and which cannot be a mere product of her concoction (sic) are enough to convince the Court." [28]

There is, therefore, no reason to doubt the veracity of the occurrence of the sexual intercourse forced by appellant upon Patria. Contrary to appellant's contention, the testimony of the doctor who examined her and the medical technologist who examined the specimen taken from her body, as well as their respective written findings, corroborated rather than contradicted the complainant's testimony that she was raped. Appellant's undue emphasis on the fact that the spermatozoa found by Lilia Colar in the said specimen was nonmotile and therefore, no sexual intercourse could have occurred between appellant and Patria in the early morning of September 15, 1986, the specimen having been examined within the 72-hour period which Dr. Sta. Rosa himself admitted as the lifespan of a spermatozoa, is, to say the least, a desperate but futile attempt at exoneration.

As correctly expounded by the Solicitor General, Dr. Sta. Rosa's testimony that a spermatozoa has a lifespan of 72 hours simply means that it can live up to 72 hours. [29] By the same token, it can die within said period of time. Its presence in the specimen taken from the body of Patria reveals that indeed she has had sexual intercourse with appellant. As she herself swore at the witness stand, before September 15, 1993, Patria had performed the connubial act with her husband on September 7, 1993. [30]

Nevertheless, it should be underscored that the presence or absence of spermatozoa in the vagina is not determinative of the commission of rape because a sperm test is not a sine qua non for the successful prosecution of a rape case. Thus, the lack of spermatozoa in the victim's body does not even negate the crime of rape. [31] The important element in rape is penetration of the pudenda and not emission of seminal fluid. [32]

In assailing the lower court's stamp of credibility on the prosecution witnesses and their testimonies, appellant enumerates what he considers as circumstances which belie the victim's claim of rape, thus: Patria shouted for help only after she was stabbed in the forearm; her failure to shout when she was raped; her conversation with appellant on a "topic different from the alleged crime of rape" obviously referring to his order to Patria to drop the robbery charge against him; his having asked her to go to town at 2:00 o'clock in the morning; his having asked for a key when the kitchen door was already open after he had made his entry, and Patria's failure to testify that he removed his pants.

As earlier stated, all of these circumstances may be subsumed under the subject of credibility of the witnesses and their testimonies. Credibility, to state what is axiomatic, is the sole province of the trial court. [33] In the absence of any showing that it overlooked, misunderstood or misapplied some facts or circumstances of weight and substance that would have affected the result of the case, the trial court's findings on the matter of credibility of witnesses will not be disturbed on appeal. [34] As such, the trial court's evaluation of the credibility of the witnesses who appeared before it deserves this Court's utmost respect, for it had the advantage of having directly observed their demeanor in court. [35] We can do no less in this case.

Indeed, while there might have been lapses in the complainant's testimony such as her failure to testify on whether or not appellant removed his shorts before he violated her, the Court declares that such detail, whether present or absent in the testimony of the complainant, is immaterial and its absence is not sufficient to reverse the finding of guilt. Like Patria's failure to notice whether appellant ejaculated while raping her, it is understandable that such detail might have escaped her attention due to the stress of the moment. Furthermore, it was simply not asked of her. To repeat, her statement that she was raped said it all.

Moreover, complainant's testimony is not the only basis for the finding of appellant's guilt beyond reasonable doubt. Although circumstantial in nature, the testimonies of the other witnesses likewise point to his culpability.

That except for Dr. Sta. Rosa and Lilia Colar, the prosecution witnesses are all related to the complainant does not in the least weaken the prosecution's theory of the crime, for even the appellant's own witnesses are related to him. It must be stressed that the crime was committed in a remote rural island where everyone is kin to each other. It is immaterial that the prosecution witnesses are related to the victim as long as their testimonies, independent of the relationship, are not inherently improbable in themselves.[36]

Appellant's insistence that rape could not have been committed because of the alleged amorous relationship between him and the complainant was correctly disregarded by the lower court. It noted that Patria's behavior after the commission of the crime "speaks of a desire to abide by the law and let our Courts of Justice take care of the wrong done to her." [37] Hence, she proceeded immediately to the police headquarters and later allowed an examination of her private parts. It should be added that at the trial, she endured the shame and rigors of recalling her harrowing ordeal before complete strangers. As the lower court correctly observed, if indeed Patria had an illicit relationship with appellant even before he robbed her store, then certainly, she would not have lodged the robbery charge, much less maintained the liaison, for such behavior would have been incongruous with the alleged facts.

That appellant broke the wall of Patria's house to effect entry, also belies his claim that Patria was his paramour. She could have allowed him easy access to her home as her husband was elsewhere, but she refrained from doing so. Appellant would have the Court believe that Patria openly asked him to come inside her house in the presence of his brother-in-law and, failing to get what she wanted, stabbed him. To say the least, this tale is incredulous, if not absurd.

On the basis of the testimonies presented, the Court is legally and morally convinced that appellant committed the crime of rape qualified by the use of a deadly weapon, as defined and penalized in Art. 335 of the Revised Penal Code. However, the Court finds inaccurate the ruling below that the crime committed is "rape with physical injuries and use of deadly weapon." The physical injuries sustained by Patria are part and parcel of the commission of the crime of rape, there being no separate treatment in the case of the physical harm done to Patria. Moreover, although mentioned in the complaint filed by Patria, the crime of physical injuries (lesiones), whether serious, less serious or slight, was not specifically alleged in the information. This is a deviation from the provision of Sec. 7, Rule 110 of the Rules of Court, as the complaint or information did not even refer to the provision of law punishing the offense of physical injuries. As such, the ambiguity of the information in this regard should be resolved in favor of the accused.

The lower court correctly imposed the penalty of reclusion perpetua inasmuch as the crime was attended by the aggravating circumstances of dwelling and unlawful entry.[38] The qualifying circumstance of breaking down a wall should be deemed absorbed in unlawful entry. There being two aggravating and no mitigating circumstances, the penalty of death would have been the proper penalty were it not for the fact that such penalty is constitutionally banned. The victim, being entitled to moral damages under Art. 2219 of the Civil Code, appellant should be held liable in the amount of fifty thousand (P50,000.00) as indemnity for the commission of the crime[39] instead of the total damages of seventy-five thousand pesos (P75,000.00) imposed by the lower court.

WHEREFORE, the decision of the lower court convicting Rogelio Bondoy of the crime of rape by the use of a deadly weapon and imposing on him the penalty of reclusion perpetua is hereby affirmed. The same penalty is modified by directing Rogelio Bondoy to indemnify Patria V. Sabularce in the amount of fifty thousand pesos (P50,000.00). Costs against the appellant.

SO ORDERED.

Feliciano, (Chairman), Bidin, Davide, Jr., and Melo, JJ., concur.

[1] Record, back of p. 16.

[2] Exhibit F.

[3] Ibid, pp. 20-21.

[4] TSN, December 4, 1986, p. 28; TSN, January 9, 1987, p. 38.

[5] TSN, January 9, 1987, pp. 26-27.

[6] Exh. M.

[7] TSN, December 18, 1986, pp. 17-28.

[8] Exh. "B" (photograph of damaged wall).

[9] TSN, November 28, 1986, pp. 34-39.

[10] TSN, November 21, 1986, pp. 23-35.

[11] TSN, November 28, 1986, pp. 39-50.

[12] TSN, December 18, 1986, pp. 5-8.

[13] TSN, November 21, 1986, pp. 5-6.

[14] Exh. "A".

[15] TSN, November 21, 1986, pp. 8-9.

[16] Exh. "C".

[17] TSN, January 14, 1987, p. 8.

[18] TSN, February 13, 1987, pp. 4-12.

[19] Ibid., pp. 19-21.

[20] TSN, March 11, 1986, pp. 3-7.

[21] TSN, March 13, 1987, pp. 5-6.

[22] Ibid., pp. 9-10.

[23] Ibid., p. 29.

[24] Presided by Judge Cesar B. Pimente.

[25] Appellant's Brief, p. 6; Rollo, p. 115.

[26] *People v. Biendo*, G.R. No. 84731, December 16, 1992 citing *People v. De los Reyes*, G.R. No. 85771, November 19, 1990, 203 SCRA 707.

[27] *People v. Villorente*, G.R. No. 100198, July 1, 1992, 210 SCRA 647 citing *People v. Soliao*, G.R. No. 91131, February 19, 1991, 194 SCRA 250.

[28] Decision, p. 30; Rollo, p. 52.

[29] Appellee's Brief, p. 12; Rollo, p. 145.

[30] TSN, January 9, 1993, p. 11.

[31] *People v. Paciente*, G.R. No. 94309, June 18, 1992, 210 SCRA 86 citing *People v. Baracia*, L-48360, June 24, 1985, 137 SCRA 148.

[32] *People v. Paciente*, supra citing *People v. Sonico*, G.R. No. 70308, December 14, 1987, 157 SCRA 419; *People v. Managbanag*, G.r. No. 66550, November 27, 1987, 155 SCRA 669; *People v. Man-aay*, L-47489, June 18, 1987, 151 SCRA 31.

[33] *People v. Dacquel*, G.R. No. 97917, June 22, 1992, 210 SCRA 215 citing *People v. De la Cruz*, G.R. No. 84714, October 5, 1990, 190 SCRA 328.

[34] *People v. Villorente*, supra, citing *People v. Baduya*, G.R. No. 84448, February 7, 1990, 182 SCRA 57.

[35] *People v. Dacquel*, supra, citing *People v. Lim*, G.R. No. 86454, October 18, 1990, 190 SCRA 706.

[36] *People v. Bragaes*, G.R. No. 62359, November 14, 1991, 203 SCRA 555.

[37] Decision, p. 32; Rollo, p. 54.

[38] Arts. 335 and 64 (a), Revised Penal Code.

[39] *People v. Tismo*, L-44773, December 4, 1991, 204 SCRA 535.

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