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THIRD DIVISION

[G.R. No. 141186. November 27, 2003]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **RAUL S. PULANCO,** *appellant.*

SYNOPSIS

Appellant was found guilty by the trial court of the crime of rape for sexually abusing a fourteen-year old girl. The trial court disregarded appellant's sweetheart theory as no evidence was presented by the defense to prove that appellant and the victim were indeed lovers. Hence, this appeal.

In affirming the conviction of appellant, the Supreme Court ruled that as an affirmative defense, appellant's allegation that he and the victim were lovers needed convincing proof. However, other than this self-serving assertions, not an iota of evidence was adduced by appellant to establish the existence of such a romantic relationship. Even assuming that appellant and the victim were indeed sweethearts, such was not an excuse for rape. Sexual intercourse was sufficiently established, not with the victim's consent, but through force and intimidation.

The Court further ruled that the victim's alleged failure to resist appellant's sexual assault and to escape despite an opportunity to do so should not be interpreted as consent. These circumstances, by themselves, did not necessarily negate rape or taint her credibility.

The Supreme Court likewise held that the force necessary in rape is relative, depending on the age, the size and the strength of the parties. In the instant case, the appellant certainly employed an amount of force sufficient to consummate the rape.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; AFFIRMATIVE DEFENSES; SWEETHEART THEORY; TO PROSPER AS A DEFENSE, CONVINCING PROOF IS REQUIRED TO ESTABLISH THAT ACCUSED AND VICTIM ARE INDEED LOVERS.—

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Appellant's sweetheart theory does not deserve serious consideration. As an affirmative defense, appellant's allegation that he and Cecilia were lovers needed convincing proof. However, other than his self-serving assertions, not an iota of evidence was adduced by appellant to establish the existence of such a romantic relationship. Even assuming that appellant and Cecilia were indeed sweethearts, such was not an excuse for rape. Sexual intercourse was sufficiently established, not with Cecilia's consent but through force and intimidation. As held in *People vs. Domingo:* "(A) sweetheart cannot be forced to have sex against her will. From a mere fiancée, definitely a man cannot demand sexual submission and, worse, employ violence upon her on the mere justification of love. Love is not a license for lust." Moreover, if appellant and Cecilia had really been sweethearts, the latter would not have gone to the extent of filing this criminal action which exposed her to the discomforting experience of recounting in public how she was violated.

2. **CRIMINAL LAW; RAPE; FORCE NECESSARY IN RAPE IS RELATIVE, DEPENDING ON THE AGE, THE SIZE AND THE STRENGTH OF THE PARTIES; CASE AT BAR.**— The force necessary in rape is relative, depending on the age, the size and the strength of the parties. In *People vs. Antonio,* we ruled: "(i)t is not necessary that the force and intimidation employed in accomplishing it be so great and of such character as could not be resisted, it is only necessary that the force or intimidation be sufficient to consummate the purpose which the accused had in mind. Intimidation must be viewed in the light of the victim's perception and judgment at the time of the commission of the crime and not by any hard (and) fast rule." In the instant case, the appellant certainly employed an amount of force sufficient to consummate the rape. It must be stressed that, when the rape was committed, Cecilia was only 14 years old, hardly an adult. Appellant, on the other hand, was already 20 years old and physically strong, considering that he was a construction worker. The inequality of their physical strength made any resistance on the part of Cecilia futile. The physical advantage of appellant not only overpowered her but also broke her will to resist, specially when appellant poked a knife at her side with the threat to kill her if she resisted. Faced with such a predicament, it was not easy for her to defend herself, much less escape.

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3. **ID.; ID.; FORCE OR INTIMIDATION; THE USE THEREOF BY ACCUSED IN HAVING SEXUAL INTERCOURSE WITH VICTIM MUST BE ESTABLISHED BY THE PROSECUTION; CASE AT BAR.**— [T]he law does not impose the burden on the rape victim to prove resistance. What is simply required of the prosecution is to establish the use of force or intimidation by the accused to have sexual intercourse with the victim. The prosecution in this case proved beyond reasonable doubt that Cecilia was intimidated by appellant. Barely out of childhood, there was nothing she could do but resign herself to appellant's evil desires to protect her life. Minor victims like Cecilia are easily intimidated and browbeaten into silence even by the mildest threat on their lives.

4. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; WITNESS' TESTIMONY IS GIVEN FULL FAITH AND CREDIT IN THE ABSENCE OF IMPROPER MOTIVE TO FALSELY TESTIFY AGAINST ACCUSED.**— [T]he witness' testimony deserves full faith and credit where there exists no dubious reason or improper motive why she should testify falsely against the accused, or why she should implicate the accused in a serious offense.

5. **ID.; ID.; ID.; TESTIMONIES OF CHILD-VICTIM ARE GIVEN FULL WEIGHT AND CREDIT.**— [T]estimonies of child-victims are given full weight and credit. When a woman or a child says that she has been raped, she says in effect all that is necessary to show that rape was indeed committed.

6. **CIVIL LAW; DAMAGES; CIVIL INDEMNITY AND MORAL DAMAGES; AWARDED IN CASE AT BAR.**— While we affirm the award of ₱50,000 as civil indemnity, in crimes of rape, moral damages should also be awarded to the victim without need for pleading or proof. The fact that Cecilia suffered mental, physical and psychological trauma is sufficient basis for moral damages. There is no need to require the detailed recital thereof by the victim during the trial. The Court itself will assume and acknowledge such agony on her part as a gauge of her credibility. Cecilia is thus entitled not only to ₱50,000 civil indemnity but also to another ₱50,000 as moral damages.

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APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

CORONA, *J.*:

This is an appeal from the decision[1] dated October 4, 1999 of the Regional Trial Court, Branch 79, Morong, Rizal, in Criminal Case No. 2996-M, convicting appellant Raul S. Pulanco of rape as defined and penalized under Articles 266-A and 266-B of the Revised Penal Code, and sentencing him to *reclusion perpetua*.

The accusatory portion of the information against appellant Pulanco read as follows:

> That on or about the 11th day of March 1998, in the Municipality of Tanay, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused while armed with a deadly weapon, taking advantage of his superior strength and moral authority over Ma. Cecilia C. Gahol, a fourteen (14) year old girl, did, then and there wilfully, unlawfully and feloniously engage in sexual intercourse with her, against her will and without her consent.[2]

On arraignment, the appellant pleaded not guilty. Thereafter, trial on the merits ensued.

According to the prosecution, on March 11, 1998, at around 4:00 p.m., complainant Ma. Cecilia C. Gahol, a 14-year-old girl, together with her 10-year-old niece Gretchen Rivera, went to the house of a certain Barrientos inside Camp Capinpin, Tanay, Rizal to collect payment for the banana-cues they sold to camp employees on credit. The girls were told to return at around 7:00 p.m.[3] Cecilia and Gretchen returned to Camp

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[1] Penned by Judge Reynaldo G. Ros.

[2] Record, p. 1.

[3] TSN, October 6, 1998, p. 4; TSN, November 3, 1998, p. 3.

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Capinpin at 7:00 p.m. and, after collecting the payment from Barrientos, headed for home.[4]

While they were walking along a dark and isolated road inside the camp, Cecilia was suddenly accosted by appellant. He coiled his left arm around her neck and poked a knife at her side, warning her not to resist. Appellant threatened her "*Sige, gumalaw ka, tutuluyan kita.*" He pulled Cecilia towards his hut nearby. She shouted at Gretchen to call for help. Gretchen cried as she tried to pull Cecilia away from appellant but the latter pushed Gretchen so hard that she fell down and her back hit a hollow block.[5]

Again, Cecilia ordered Gretchen to run home and tell her Uncle Nestor what was happening. Appellant, however, exclaimed "*Sige magsumbong ka't papatayin ko kayo paglaya ko.*" Appellant then warned Cecilia to send her niece home but not to report the matter to anybody, otherwise he would kill both of them.[6] Gretchen initially refused to leave Cecilia but later acceded because of fear. Instead of going straight home, however, Gretchen went to her neighbor's house in tears and stayed there for about half an hour.[7]

Immediately after Gretchen left, appellant dragged Cecilia to his hut. Once inside, appellant put out the lighted candle and ordered Cecilia to undress, threatening to kill her if she refused. Cecilia unwillingly removed her blouse and macarena skirt but refused to take off her undergarments. It was appellant who removed them before taking his pants off. With both of them naked, appellant sprayed perfume on Cecilia's neck and ordered her to lie down. Appellant then lay beside her and started kissing her lips. She cried and boxed appellant but her struggle was futile.[8]

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[4] *Ibid.*

[5] TSN, October 6, 1998, pp. 4-5; TSN, November 3, 1998, p. 5.

[6] TSN, November 3, 1998, p. 5.

[7] TSN, October 6, 1998, pp. 5-7.

[8] TSN, November 3, 1998, pp. 6-8.

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Cecilia tearfully begged appellant "*maawa na po kayo, huwag n'yo na pong ituloy ang binabalak ninyo,*" but appellant ignored her plea. Instead, he went on top of her and placed her legs on his shoulders before inserting his penis into her vagina. She felt pain in her genitals. She could not do anything though as appellant had pinned her down, his left hand holding her right hand and his right hand poking a knife at her side.[9]

While appellant was having carnal knowledge of Cecilia, he whispered that he had raped and killed many. Appellant stayed on top of her for about three minutes. Amidst her helplessness, she could only mutter "*Putang ina mo. Mamatay ka na sana. Hayop ka.*"[10]

After appellant satisfied his lust, he put on his pants and ordered her to dress up. She pleaded with appellant to let her go because her niece was waiting for her. Appellant initially refused but gave in later after she assured him that she would not file any charges.[11]

Cecilia headed for home, unaware that appellant was following her. When she was about to knock at their door, the appellant suddenly called her and gestured to her to come back. Cecilia refused. At that point, her brother Nestor opened the door and asked her about the man who was following her. She told her brother that the man had raped her. Overcome with anger, Nestor went to the *barangay* hall and reported the incident. After Cecilia gave her statement to a barangay official, a *kagawad* ordered some barangay tanods to arrest appellant. That same night, appellant was brought to the police station at the Tanay Municipal Hall for investigation.[12]

The following day, March 12, 1998, Cecilia was examined at the PNP crime laboratory.[13] The report stated:

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[9] *Ibid.*, pp. 8-9.

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

[11] *Ibid.*, pp. 10-11.

[12] TSN, October 6, 1998, pp. 8-10; TSN, November 3, 1998, pp. 10-16.

[13] TSN, November 3, 1998, p. 17.

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GENITAL

There is moderate growth of pubic hair. Labia majora are full, convex and coaptated with the pinkish brown labia minora representing in between. On separating the same disclosed an elastic fleshy-type hymen with healed shallow laceration at 3 o'clock position and deep-healed lacerations at 6 and 8 o'clock positions. External vaginal orifice offers strong resistance to the examining index finger. Vaginal canal is narrow with prominent rugosities. Cervix is firm and closed.

CONCLUSION

Findings are compatible with recent sexual intercourse.

Barring unforeseen complications, it is estimated that the above injuries *will resolve in 4-6 days*.[14]

The appellant denied the charge. Uncorroborated by the testimony of any other witness, appellant testified that he and Cecilia were sweethearts and had long been engaging in sexual intercourse.

According to appellant, at around 6:00 p.m. on March 11, 1998, he was at the barracks cooking supper when Cecilia and a little girl arrived. After finishing his chores, he and Cecilia listened to music and played *tong-its*. Before Cecilia and the little girl went home, he and Cecilia had sexual intercourse at around 7:00 p.m. Then, about 8:00 p.m., he accompanied the girls home. He headed back to his house to sleep after Cecilia told him to go home. Moments later, he was roused by several *barangay* tanods who arrested and brought him to the Tanay Municipal Hall. He later learned that Cecilia filed a complaint for rape against him.[15]

The trial court gave weight to the prosecution evidence and convicted appellant of rape. The trial court disregarded appellant's "sweetheart theory" as no evidence was presented by the defense to prove that appellant and Cecilia were indeed lovers.

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[14] Record, p. 9.

[15] TSN, July 13, 1999, pp. 3-6.

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In this appeal, appellant raises the following assignments of error:

I

THE COURT *A QUO* GRAVELY ERRED IN ACCORDING WEIGHT AND CREDENCE TO THE PROSECUTION'S EVIDENCE DESPITE THE FACT THAT IT IS WEAK AND INSUFFICIENT TO CONVICT, CONSIDERING THAT IT IS PERFORATED WITH MATERIAL FLAWS.

II

THE COURT *A QUO* LIKEWISE ERRED IN NOT ACCEPTING THE ALIBI AND SWEETHEART THEORY OF THE APPELLANT ALTHOUGH THERE IS AMPLE EVIDENCE ON RECORD TO BUTTRESS THIS.[16]

Appellant maintains that Cecilia consented to have sexual intercourse with him. Her failure to exert even token resistance proved that there was no rape. Moreover, she did not escape even if she had the opportunity to do so. Her acts indicated submissiveness and mutual agreement, as sweethearts, to engage in sexual contact.

Appellant further claims that the reason behind the filing of the complaint for rape by Cecilia was probably because she was a scorned lover.

We are not persuaded.

Appellant's sweetheart theory does not deserve serious consideration. As an affirmative defense, appellant's allegation that he and Cecilia were lovers needed convincing proof.[17] However, other than his self-serving assertions, not an iota of evidence was adduced by appellant to establish the existence of such a romantic relationship.

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[16] *Rollo*, p. 45.

[17] *People vs. Monfero*, 308 SCRA 396 [1999]; *People vs. Palma*, 308 SCRA 446 [1999] citing *People vs. Bayani*, 262 SCRA 660 [1996].

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Even assuming that appellant and Cecilia were indeed sweethearts, such was not an excuse for rape. Sexual intercourse was sufficiently established, not with Cecilia's consent but through force and intimidation. As held in *People vs. Domingo*:[18]

> (A) sweetheart cannot be forced to have sex against her will. From a mere fiancée, definitely a man cannot demand sexual submission and, worse, employ violence upon her on the mere justification of love. Love is not a license for lust.

Moreover, if appellant and Cecilia had really been sweethearts, the latter would not have gone to the extent of filing this criminal action which exposed her to the discomforting experience of recounting in public how she was violated.[19]

Cecilia's alleged failure to resist appellant's sexual assault and to escape despite an opportunity to do so should not be interpreted as consent. These circumstances, by themselves, did not necessarily negate rape or taint her credibility. At any rate, it was evident from Cecilia's testimony that appellant employed force and intimidation against her, and that she resisted from the moment appellant dragged her to his hut:

Q Now, when Raul Pulanco started to pull you, what did he say, if any?
A He told me not to resist. There is a knife poking at me.

Q Did you actually see the knife poked at you?
A No, sir.

Q What was your reaction, if any, to this statement of Raul Pulanco?
A None, sir.

Q You did not shout or cry for help?
A How can I shout, the knife poked at me is hurting.

Q How about Gretchen, what was she doing when Raul Pulanco dragged you and poked a knife at you?

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[18] 226 SCRA 156 [1993]; see also *People vs. Baltar*, 335 SCRA 319 [2000].

[19] *People vs. Cepeda*, 324 SCRA 290 [2000].

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A A little bit far from me.

Q What was she doing at that time?
A Walking, sir.

Q Did you come to know if she saw you being pulled by Raul Pulanco?
A Yes, sir.

Q How did you know that Gretchen saw you being pulled by Raul Pulanco?
A I shouted at her, sir.

FISCAL RAMIREZ:

Q What did you shout at Gretchen?
A "Lapad, *tulungan mo ako.*"

Q When you said Lapad, to whom are (*sic*) you referring to?
A My niece, sir.

Q Now, what was your (*sic*) reaction of Gretchen to your cries for help?
A She's pulling me, sir.

Q You mentioned that Raul Pulanco poked a knife at you, what part of your body did he poke his knife?
A Right side of my body, sir.

Q And what was the relative position of Raul Pulanco with respect to you when he poked that knife to (*sic*) you?
A One of the hands of Raul Pulanco is (*sic*) on my shoulder and the other one is (*sic*) holding a *balisong*.

Q Will you kindly demonstrate to us how Raul Pulanco put his hand on your shoulder and how he poked the knife at you?
A Raul Pulanco was at my back with his left arm encircling my neck and the left hand placing (*sic*) my right shoulder, and his right hand with a *balisong* was on the right side of my body.

Q What did you feel if any when Raul Pulanco put his hand on your neck and poked a knife at your right side?
A It hurt, sir.

Q Were you afraid at that time?
A Yes, sir.

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Q Why are (*sic*) you afraid?
A Because of a *balisong* poked at me, sir.

Q After he poked that knife at you, what did he do next?
A He instructed me to tell my niece to go home and if I don't do that he will kill us.

Q And did you comply to (*sic*) this order of Raul Pulanco?
A I complied with his order because I don't (*sic*) want to involve my niece, sir.

FISCAL RAMIREZ:

Q. What did Gretchen do after you instructed her to leave?
A She said that she will not go home unless I am with her, sir.

Q And what happened due to this statement of Gretchen?
A I repeated my request for her to go home and she goes (*sic*) home because she will be involved.

Q And what happened after Gretchen left?
A He forced me to go to his hut.

Q How did he force you?
A He threatened me that he will kill me if I did not go with him.

Q How did you and Raul Pulanco go to the hut?
A He's pulling me, sir.

Q Will you kindly demonstrate to us again how this Raul Pulanco pulled you to the hut?
A Raul Pulanco did not change his position. His left hand still encircled my neck and touching my shoulder. We both walking (*sic*) backward.

Q How far is this hut where Raul Pulanco brought you from the place where he initially dragged you?
A Around ten to twelve meters, sir.

Q What happened after he was able to pull you inside the hut?
A He brought me up (*sic*) to the hut.

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Q Now, after he brought you inside the hut, what happened next?

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A He instructed me to undress and if I will not undress he will kill me, sir.

Q Did you comply to (*sic*) this order of Raul Pulanco?
A Yes, sir, because I am (*sic*) afraid.

FISCAL RAMIREZ:

Q And after that, what happened?
A He kissed my lips and then he inserted his organ to mine.

Q What did you do if any when Raul Pulanco kissed you in the lips?

A I was crying and I am (*sic*) boxing him.[20]

The force necessary in rape is relative, depending on the age, the size and the strength of the parties.[21] In *People vs. Antonio*,[22] we ruled:

(i)t is not necessary that the force and intimidation employed in accomplishing it be so great and of such character as could not be resisted, it is only necessary that the force or intimidation be sufficient to consummate the purpose which the accused had in mind. Intimidation must be viewed in the light of the victim's perception and judgment at the time of the commission of the crime and not by any hard (and) fast rule.

In the instant case, the appellant certainly employed an amount of force sufficient to consummate the rape. It must be stressed that, when the rape was committed, Cecilia was only 14 years old, hardly an adult. Appellant, on the other hand, was already 20 years old and physically strong, considering that he was a construction worker. The inequality of their physical strength made any resistance on the part of Cecilia futile.[23] The physical advantage of appellant not only overpowered her but also broke her will to resist, specially when appellant poked a knife at

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[20] TSN, November 3, 1998, pp. 4-8.

[21] *People vs. Moreno*, 294 SCRA 728 [1998].

[22] 233 SCRA 283 [1994].

[23] *People vs. Ferrer*, 295 SCRA 190 [1998].

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her side with the threat to kill her if she resisted. Faced with such a predicament, it was not easy for her to defend herself, much less escape.

Be that as it may, the law does not impose the burden on the rape victim to prove resistance. What is simply required of the prosecution is to establish the use of force or intimidation by the accused to have sexual intercourse with the victim.[24] The prosecution in this case proved beyond reasonable doubt that Cecilia was intimidated by appellant. Barely out of childhood, there was nothing she could do but resign herself to appellant's evil desires to protect her life. Minor victims like Cecilia are easily intimidated and browbeaten into silence even by the mildest threat on their lives.[25]

In any case, appellant failed to prove any ill motive on the part of the victim to testify falsely against him. His argument that she filed the complaint because she was "probably a scorned lover" was a flimsy defense, a desperate attempt to stave off certain conviction. It has been consistently held that the witness' testimony deserves full faith and credit where there exists no dubious reason or improper motive why she should testify falsely against the accused, or why she should implicate the accused in a serious offense.[26] It is likewise settled jurisprudence that testimonies of child-victims are given full weight and credit. When a woman or a child says that she has been raped, she says in effect all that is necessary to show that rape was indeed committed.[27]

Undoubtedly, Cecilia's testimony bears all the hallmarks of truth which cannot be defeated by appellant's bare denial. Her straightforward narration of the facts leads this Court to conclude

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[24] *People vs. Segundo*, 228 SCRA 691 [1993].

[25] *People vs. Ortega*, G.R. No. 137824, September 17, 2002.

[26] *People vs. Lomerio*, 326 SCRA 530 [2000]; *People vs. Merino*, 321 SCRA 199 [1999].

[27] *People vs. Ferrer*, 295 SCRA 190 [1998]; *People vs. Domingo*, 226 SCRA 156 [1993].

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that the trial court was correct in convicting appellant of the crime charged.

All told, this Court affirms the conviction of appellant for the crime of rape punishable under Articles 266-A and 266-B of the Revised Penal Code. However, the decision of the trial court should be modified in relation to the award of damages. While we affirm the award of ₱50,000 as civil indemnity, in crimes of rape, moral damages should also be awarded to the victim without need for pleading or proof. The fact that Cecilia suffered mental, physical and psychological trauma is sufficient basis for moral damages. There is no need to require the detailed recital thereof by the victim during the trial. The Court itself will assume and acknowledge such agony on her part as a gauge of her credibility.[28] Cecilia is thus entitled not only to ₱50,000 civil indemnity but also to another ₱50,000 as moral damages.

WHEREFORE, the decision of the trial court dated October 4, 1999 convicting appellant Raul S. Pulanco of rape as defined and penalized under Articles 266-A and 266-B of the Revised Penal Code and sentencing him to *reclusion perpetua* is hereby *AFFIRMED*, subject to the *MODIFICATION* that appellant is also ordered to pay complainant Ma. Cecilia C. Gahol the additional amount of ₱50,000 as moral damages.

SO ORDERED.

Vitug (Chairman), Sandoval-Gutierrez and *Carpio Morales, JJ.*, concur.

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[28] *People vs. Mostrales*, 294 SCRA 701 [1998].