Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Appellee.

- versus -

PEDRO BANIG,
Appellant.

G.R. No. 177137

Present:

LEONARDO-DE CASTRO,*
Acting Chairperson,
BERSAMIN,
DEL CASTILLO,
VILLARAMA, JR., *and*
PERLAS-BERNABE,** *JJ.*

Promulgated:
23 AUG 2012

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DECISION

DEL CASTILLO, *J.*:

Weddings are joyous occasions wherein we witness the love and union between a man and a woman. In this case, instead of love, the victim witnessed man's bestiality when during the pre-nuptial dance, herein appellant forcibly had carnal knowledge of her. Worse, appellant used a knife to bring his victim into submission.

On appeal is the Decision[1] dated November 13, 2006 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02439, which affirmed with modification the Decision[2] dated July 17, 2000 of the Regional Trial Court (RTC), Branch 31, Cabarroguis, Quirino, in Criminal Case No. 1292, finding appellant Pedro Banig (appellant) guilty beyond reasonable doubt of the crime of rape.

* Per Special Order No. 1226 dated May 30, 2012.
** Per Special Order No. 1227 dated May 30, 2012.
1 CA *rollo*, pp. 184-205; penned by Associate Justice Vicente S.E. Veloso and concurred in by Presiding Justice Ruben T. Reyes and Associate Justice Juan Q. Enriquez, Jr.
2 Records, pp. 176-192; penned by Judge Moises M. Pardo.

Factual Antecedents

On July 1, 1996, appellant along with one Tony Ginumtad (Ginumtad) were charged with the crime of rape committed against "AAA"[3] in an Information[4] which reads:

> That on or about 3:00 o'clock dawn of March 28, 1996 in *Barangay* "XXX", Municipality of "YYY", Province of Quirino, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with prurient desires, and by means of force and intimidation, after conspiring and mutually helping one another, did then and there wilfully, unlawfully and feloniously have carnal knowledge [of] "AAA" against the latter's will.
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> CONTRARY TO LAW.[5]

Upon arraignment, appellant and Ginumtad pleaded not guilty to the crime charged. Trial on the merits subsequently followed.

Evidence for the Prosecution

The prosecution presented "AAA" as its first witness. She testified that on the night of March 27, 1996, she attended a pre-wedding dance in their barrio which lasted until the early hours of the next day, March 28, 1996. At about 3:00 a.m. of March 28, 1996, "AAA" felt the need to urinate. She thus left the dance hall and went up to a hill about 50-100 meters away.

Suddenly, two persons came out of nowhere, held her hands, poked a knife at her thigh, and warned her not to scream for help or else they would kill her. They then pushed her to the ground with her face up and her hands placed behind

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3 "The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 7610, An Act Providing For Stronger Deterrence And Special Protection Against Child Abuse, Exploitation And Discrimination, And For Other Purposes; Republic Act No. 9262, An Act Defining Violence Against Women And Their Children, Providing For Protective Measures For Victims, Prescribing Penalties Therefor, And For Other Purposes; and Section 40 of A.M. No. 04-10-11-SC, known as the Rule On Violence Against Women And Their Children, effective November 5, 2004." *People v. Dumadag*, G.R. No. 176740, June 22, 2011, 652 SCRA 535, 538.

4 Records, pp. 1-2.

5 Id. at 1.

her back crosswise.[6] Appellant proceeded to remove her pants and panties while Ginumtad pressed her shoulders down to the ground. When appellant was already on top of her, he spread her legs and inserted his penis into her vagina. Although "AAA" felt pain, she did not shout for fear that the appellant would kill her. After a while, Ginumtad took his turn and also inserted his penis into "AAA's" vagina. After Ginumtad's turn, appellant again had sexual intercourse with "AAA" and that was the time that she lost consciousness.[7]

When "AAA" regained consciousness, appellant was still on top of her making thrusting motions, while Ginumtad was already nowhere in sight. When done, appellant stood up and just left "AAA". Luckily, someone came and brought "AAA" to the house of the bride where she slept. The incident was then reported to the police authorities on April 15, 1996.

The prosecution then presented Dr. Briccio Macabangon (Dr. Macabangon), a medical doctor who examined "AAA" on April 23, 1996 at the "YYY" District Hospital. He issued a Medical Certificate with the following findings:

> Laceration, old, at 8:00 o'clock. Admits one finger with difficulty.[8]

As its third witness, the prosecution presented "BBB," the father of "AAA". He testified that Alejandro Pugong (Pugong), the brother-in-law of appellant, approached him during the pendency of the preliminary investigation and asked for the settlement of the case. They offered marriage between appellant and his 20-year old daughter, "AAA". This, however, infuriated "BBB," hence, he reported to the police authorities the said offer of settlement. The police then arrested appellant.

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6 TSN, February 18, 1997, p. 5.
7 Id. at 9.
8 Records, p. 10.

The last witness for the prosecution is Noel Dunuan, the *Barangay* Captain of *Barangay* "XXX". He corroborated the testimony of "BBB" and declared that Pugong and appellant's brother, Afeles Banig, came to his office asking for the settlement of the case.

Evidence for the Defense

The appellant denied the charges against him. He unfurled his own version of the events that transpired in this case as follows:

Appellant was invited to a pre-nuptial dance and wedding ceremony of Mercy Ananayo and Fernando Witawit. It was during the said dance in the evening of March 27, 1996 that he met "AAA". He danced with "AAA" several times during that night and eventually courted her by professing his love for her. Sensing that she was attracted to him, appellant concluded that he had a chance of winning her heart.[9]

After dancing for quite some time, appellant and "AAA" stepped away from the dance hall and sat down together in a dimly lit place about 8-10 meters away. Both of them stayed there for about an hour where they chatted and got to know each other better. When appellant sensed that no one was watching, he held "AAA's" hands and kissed her lips five times. They soon returned to the dance hall and continued to dance the night away until around 4:00 a.m. He told "AAA" that he loves her and asked her to wait for him to come back since he had another wedding to attend in Pangasinan. He promised her that upon his return, he will talk to her parents and formally ask their permission to marry her.

At around 6:00 a.m., appellant took a bath, accompanied by a certain Fernando Ananayo. Thereafter, he proceeded to have breakfast in the house of the bride and groom where he saw "AAA" also having her breakfast with other

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9 TSN, January 20, 1998, p. 8.

companions. After breakfast, appellant asked her permission to leave for Pangasinan to attend another wedding. "AAA" replied that if he really loves her, he will come back and talk to her parents.

Appellant went to Pangasinan and stayed there for a little over two weeks. Upon his return and as promised, he talked with "AAA's" parents. The mother of "AAA" informed appellant that if the two of them were really in love and wanted to marry, then they should start the process of securing the necessary papers for their marriage.[10] Thus, a date was set for the appellant and "AAA" to proceed to the Municipal Hall of "YYY" to apply for a marriage license. On such date, appellant and "AAA" went to "YYY" with "AAA's" mother and aunt. They first had lunch in a restaurant as it was already noon. After finishing their meal, a police officer came over and invited him for interrogation. Appellant obliged but was later arrested and put behind bars.

Appellant later learned that "BBB" filed a criminal case against him. According to the appellant, "BBB" must have felt embarrassed by the fact that people saw him and "AAA" embracing each other during the pre-nuptial dance. On that same day, "AAA" visited the appellant. When asked why they were putting him in jail, "AAA" replied that if she goes against the wishes of her father, her parents might disown her.[11]

Ruling of the Regional Trial Court

On July 17, 2000, the RTC convicted appellant of the crime of rape while his co-accused Ginumtad was acquitted for insufficiency of evidence. The dispositive portion of the judgment of conviction reads as follows:

> IN VIEW OF THE FOREGOING, this Court finds Pedro Banig guilty beyond reasonable doubt of the crime of rape as provided for under Article 335

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10 TSN, January 20, 1998, p. 16.
11 TSN, January 20, 1998, p. 19.

> of the Revised Penal Code as amended by R.A. 7659 and hereby impose[s] upon him the penalty of Reclusion Perpetua. In addition, said accused Pedro Banig should pay the victim, "AAA", the amount of ₱50,000.00 as indemnity.
>
> As to accused Tony Ginumtad, this Court finds him Not Guilty for insufficiency of evidence.
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> SO ORDERED.[12]

In finding the appellant guilty, the RTC held that he had sexual intercourse with the victim through the use of force. It gave full credit and weight to the testimony of the prosecution witnesses, especially that of "AAA". On the other hand, it debunked appellant's "sweetheart theory" for being intrinsically weak.

Ruling of the Court of Appeals

On October 20, 2000, appellant filed a Notice of Appeal,[13] which was granted by the RTC.[14] Consequently, the records of this case were forwarded to this Court. Conformably with the ruling of this Court in *People v. Mateo,*[15] however, the case was transferred to the CA for intermediate appellate review. Then on November 13, 2006, the CA rendered its now assailed Decision[16] affirming with modification the RTC's judgment of conviction, thus:

> ***WHEREFORE***, the decision appealed from is **AFFIRMED** with **MODIFICATION** in that the accused-appellant is hereby ordered to pay the victim, "AAA", ₱50,000.00 as moral damages.
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> SO ORDERED.[17]

Hence, this appeal.

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12 Records, p. 192.
13 Id. at 212.
14 See Order dated October 20, 2000, id. at 213.
15 G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.
16 CA *rollo*, pp. 184-205.
17 Id. at 205.

Issue

In his brief, appellant made a single assignment of error that –

> THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT [OF] THE CRIME CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[18]

Our Ruling

The appeal lacks merit.

"[I]n resolving rape cases, primordial consideration is given to the credibility of the victim's testimony."[19] This is so because conviction for rape may be solely based on the victim's testimony provided it is credible, natural, convincing, and consistent with human nature and the normal course of things.[20] Both the RTC and the CA agree that "AAA" recounted her ordeal in a candid, straightforward and categorical manner. Thus:

> [FISCAL ORIAS]:
> Q: And, what transpired after these two persons placed your two hands at your back?
> A: When they put my hands at my back they removed my pants and panty, sir.
>
> x x x x
>
> Q: Who was that person who removed your pants and underwear?
> A: They were the ones, sir, Pedro Banig and Tony Ginumtad.
>
> x x x x
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> Q: After removing your pants and underwear, Madam witness, what did Pedro Banig do to you, if any?
> A: He insert[ed] his penis, sir.

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18 Id. at 98.
19 *People v. Noveras*, G.R. No. 171349, April 27, 2007, 522 SCRA 777, 787.
20 *People v. Nazareno*, G.R. No. 167756, April 9, 2008, 551 SCRA 16, 31.

FISCAL ORIAS -
Q: Where did he insert his penis?
A: [Into my] vagina, sir.

Q: What did you feel when he inserted his penis [into] your vagina?
A: It was painful, sir.

Q: Did you not shout?
A: No, sir, because they told me that if I x x x shout they [would] kill me, sir.

Q: Was Pedro Banig armed at that time?

ATTY. PAWINGI:
Leading, your honor.

[FISCAL ORIAS]:
That is a follow-up to what she answered, your honor.

COURT:
Let her answer.

A: Yes, sir.

[FISCAL ORIAS]:
Q: [With] what?
A: Knife, sir.

Q: What did he do next, Madam witness, when he inserted his penis [into] your vagina?
A: He made up and down movement, sir.[21]

Aggrieved that he was the only one convicted of the crime charged, appellant argues in his Brief[22] that the trial court erroneously concluded that he is the sole perpetrator of the crime charged. He claims that when his co-accused Ginumtad was acquitted, he was made to be the fall guy, "just because he is unrelated by blood to the private complainant."[23]

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21 TSN, February 18, 1997, pp. 5-7.

22 CA *rollo*, pp. 96-116.

23 Id. at 106. The co-accused Tony Ginumtad is related to the private complainant. In his direct examination, Ginumtad testified that the complainant "AAA" is his relative within the fifth degree of consanguinity. He specifically stated that:
Q: By the way, Mr. Witness, how are you related to the complainant in this case "AAA", if any?
A: There is, sir.
Q: Do you know the degree of your relationship?
A: She and [I are] **fifth cousins**, sir. (TSN, October 6, 1997, pp. 8-9. Emphasis supplied.)

A judgment of acquittal is final and is no longer reviewable.[24] As we have previously held in *People v. Court of Appeals,*[25] "[a] verdict of acquittal is immediately final and a reexamination of the merits of such acquittal, even in the appellate courts, will put the accused in jeopardy for the same offense."[26] True, the finality of acquittal rule is not one without exception as when the trial court commits grave abuse of discretion amounting to lack or excess of jurisdiction. In such a case, the judgment of acquittal may be questioned through the extraordinary writ of *certiorari* under Rule 65 of the Rules of Court. In the instant case, however, we cannot treat the appeal as a Rule 65 petition as it raises no jurisdictional error that can invalidate the judgment of acquittal. Suffice it to state that the trial court is in the best position to determine the sufficiency of evidence against both appellant and Ginumtad. It is a well-settled rule that this Court accords great respect and full weight to the trial court's findings, unless the trial court overlooked substantial facts which could have affected the outcome of the case.[27] It is not at all irregular for a court to convict one of the accused and acquit the other. The acquittal of Ginumtad in this case is final and it shall not be disturbed.

The appellant assails "AAA's" credibility by arguing that the place where the alleged rape took place "is not one where no other person would be able to hear her had she opted to cry for help, because it is just ten to fifteen (10-15) meters away from an inhabited house."[28] He also asserts that "AAA's" actuations during the alleged sexual assault failed to show the kind of resistance expected of a young woman defending her virtue and honor.[29] To further cast doubt on "AAA's" credibility, appellant points to the fact that "AAA" did not report the

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24 *People v. Terrado*, G.R. No. 148226, July 14, 2008, 558 SCRA 84, 93.
25 G.R. No. 159261, February 21, 2007, 516 SCRA 383.
26 Id. at 397.
27 *People v. Montinola*, G.R. No. 178061, January 31, 2008, 543 SCRA 412, 427.
28 CA *rollo*, p. 108.
29 Id. at 108-109.

offense at the first opportunity.[30] Moreover, he questions the conduct of "AAA" as she appeared to be not indisposed in the morning after the alleged rape.[31]

The appellant's arguments are misplaced. The CA correctly ruled that "AAA" could not cry for help as she was intimidated and overpowered by her aggressors who threatened her with a sharp-bladed knife.[32] Besides, it is important to underscore that the proximity of an inhabited house to the place where the crime took place does not rule out the possibility of the commission of rape. We have previously held in *People v. Mabonga*[33] that:

> [I]t is a common judicial experience that 'the presence of people nearby does not deter rapists from committing their odious act. Rape can be committed even in places where people congregate, in parks, along the roadside, within school premises, inside a house where there are several occupants and even in the same room where other members of the family are sleeping'.

It is well-settled that lust respects neither time nor place. "There is no rule that rape can be committed only in seclusion."[34] What the evidence reveals is that despite the proximity to neighboring houses, the appellant, by means of force or intimidation, did in fact have sexual intercourse with "AAA" against her will. Thus, it is immaterial that an inhabited house was near the place where the crime was committed. This fact will neither render "AAA" any less credible nor make the commission of the crime less conceivable.

With respect to "AAA's" actuations during the commission of the crime, it is not necessary on the part of the victim to put up a tenacious physical struggle. As previously pointed out, "AAA" was threatened with a sharp-bladed knife. One shrill cry or a flurry of violent kicks from her could mean the end of her life. In

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30 Id. at 114.
31 Id. at 113.
32 Id. at 194-195.
33 G.R. No. 134773, June 29, 2004, 433 SCRA 51, 65 citing *People v. Belga,* 402 Phil. 734, 742 (2001); *People v. Antonio*, 388 Phil. 869, 877 (2000); and *People v. Lusa*, 351 Phil, 537, 545 (1998).
34 *People v. Arraz*, G.R. No. 183696, October 24, 2008, 570 SCRA 136, 146.

People v. Corpuz,[35] we ruled that "physical resistance need not be established in rape when threats and intimidation are employed and the victim submits herself to the embrace of her rapist because of fear." When the sharp point of a knife is staring down the eyes of the victim, struggle is futile and the only option left in the mind of a frightened lady is to submit rather than lose her life. That the victim allowed the entry of her aggressor's penis rather than his knife does not detract from the fact that rape was committed by means of force and intimidation and certainly against her will.

As to the matter of delay in reporting the rape incident, the same does not affect the credibility of "AAA". "[I]t is not unusual for a rape victim immediately following the sexual assault to conceal at least momentarily the incident x x x."[36] "Delay in reporting a rape incident renders the charge doubtful only if the delay is unreasonable and unexplained."[37] "[T]here is no uniform behavior expected of victims after being raped."[38] In this case, the delay in reporting the incident only consists of a little over two weeks. Such a span of time is not unreasonable when coupled by the fact that the victim "AAA" was threatened by her aggressor. In *People v. Dumadag*,[39] we stressed that "not all rape victims can be expected to act conformably to the usual expectations of everyone."

Still insisting on his innocence, appellant likewise invites this Court's attention to the findings of Dr. Macabangon in his medical report. He argues that it is "highly abnormal and quite amazing for the victim to incur just a single and quite old laceration."[40]

The contention deserves scant consideration. "It is well entrenched in our jurisprudence that a medical examination of the victim is not indispensable in a

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35 G.R. No. 175836, January 30, 2009, 577 SCRA 465, 473.
36 *People v. Malana*, G.R. No. 185716, September 29, 2010, 631 SCRA 676, 693.
37 *People v. Arellano*, G.R. No. 176640, August 22, 2008, 563 SCRA 181, 187.
38 *People v. Arraz*, supra note 34 at 147.
39 Supra note 3 at 546, citing *People v. Madia*, 411 Phil. 666, 673 (2001).
40 CA *rollo*, p. 110.

prosecution for rape inasmuch as the victim's testimony alone, if credible, is sufficient to convict the [appellant] of the crime."[41] Be that as it may, in *People v. Ortoa*,[42] where the medico-legal findings showed that the victim is still in a state of virginity when she was examined, we held that:

> [T]he lack of lacerated wounds does not negate sexual intercourse. A freshly broken hymen is not an essential element of rape. Even the fact that the hymen of the victim was still intact does not rule out the possibility of rape. x x x Penetration of the penis by entry into the lips of the vagina, even without rupture or laceration of the hymen, is enough to justify a conviction for rape. (Citations omitted.)

The laceration found by Dr. Macabangon in the medical examination confirms the victim's testimony that she was raped. In his testimony, Dr. Macabangon stated that the laceration of the hymen usually heals in less than 10 days. In "AAA's" case, she was examined on April 23, 1996, or more than three weeks after the rape incident occurred on March 28, 1996. This explains why the findings showed that the laceration of the hymen was old.

Appellant further argues that "AAA" agreed to marry him, suggesting that her presence during a meeting with the *barangay* captain is a sign of his innocence of the crime of rape.

We are not convinced. "The 'sweetheart theory' hardly deserves any attention when an accused does not present any evidence, such as love letters, gifts, pictures, and the like to show that, indeed, he and the victim were sweethearts."[43] Appellant's bare testimony that he and "AAA" are lovers who agreed to get married is insufficient for the defense of "sweetheart theory" to prosper. Moreover, even if it were true that they were sweethearts, mere assertion of a romantic relationship would not necessarily exclude the use of force or

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41 *People v. Baring, Jr.*, 425 Phil. 559, 570 (2002).
42 G.R. No. 174484, February 23, 2009, 580 SCRA 80, 95-96.
43 *People v. Madsali*, G.R. No. 179570, February 4, 2010, 611 SCRA 596, 609.

intimidation in sexual intercourse. In *People v. Cias*,[44] this Court held that "[a] love affair does not justify rape for a man does not have the unbridled license to subject his beloved to his carnal desires against her will."

With respect to the propriety of the award of moral damages, the CA is correct in awarding "AAA" moral damages in the amount of ₱50,000.00, in addition to the award of civil indemnity. "The award of civil indemnity to the rape victim is mandatory upon a finding that rape took place. Moral damages, on the other hand, are awarded to rape victims without need of proof other than the fact of rape under the assumption that the victim suffered moral injuries from the experience she underwent."[45]

Under Article 335 of the Revised Penal Code which is the law then in force at the time of the commission of the crime, when the rape is committed with the use of a deadly weapon, the crime takes a qualified form and the imposable penalty is *reclusion perpetua* to death. In the instant case, we note that the use of the knife, which is a deadly weapon, was not specifically alleged in the Information. However, it was duly proven during the proceedings below that appellant armed himself with a knife which facilitated the commission of the crime. In *People v. Begino*,[46] we held that "the circumstances that qualify a crime should be alleged and proved beyond reasonable doubt as the crime itself. These attendant circumstances alter the nature of the crime of rape and increase the penalty. As such, they are in the nature of qualifying circumstances."[47] "If the same are not pleaded but proved, they shall be considered only as aggravating circumstances since the latter admit of proof even if not pleaded."[48]

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44 G.R. No. 194379, June 1, 2011, 650 SCRA 326, 341.

45 *People v. Mercado*, G.R. No. 189847, May 30, 2011, 649 SCRA 499, 504; *People v. Cañada*, G.R. No. 175317, October 2, 2009, 602 SCRA 378, 397.

46 G.R. No. 181246, March 20, 2009, 582 SCRA 189.

47 Id. at 196.

48 Id. at 198. See *People v. Montesclaros*, G.R. No. 181084, June 16, 2009, 589 SCRA 330, 342 where we held: "Under the 2000 Rules of Criminal Procedure, which should be given retroactive effect following the rule that statutes governing court proceedings will be construed as applicable to actions pending and undetermined at the time of their passage, every Information must state the qualifying and aggravating circumstances attending the commission of the crime for them to be considered in the imposition of the penalty."

Consequently, the use of a deadly weapon may be considered as an aggravating circumstance in this case. As such, exemplary damages may be imposed on the appellant in addition to civil indemnity and moral damages.[49] Thus, exemplary damages in the amount of ₱30,000.00 is hereby awarded.[50]

Finally, on the damages awarded, an interest at the rate of 6% *per annum* shall be imposed, reckoned from the finality of this judgment until fully paid.[51] Appellant is also not eligible for parole pursuant to Republic Act No. 9346.[52]

WHEREFORE, the Decision of the Court of Appeals dated November 13, 2006 in CA-G.R. CR-H.C. No. 02439 is **AFFIRMED WITH MODIFICATIONS** that appellant Pedro Banig is not eligible for parole and ordered to further pay "AAA" ₱30,000.00 as exemplary damages and interest at the rate of 6% *per annum* is imposed on all the damages awarded in this case from the date of finality of this judgment until fully paid.

SO ORDERED.

MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:

TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson

Article 2230 of the Civil Code provides: "In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party."

See *People v. Dumadag*, supra note 3 at 550.

Id.

An Act Prohibiting The Imposition of Death Penalty In The Philippines, Approved June 24, 2006.

LUCAS P. BERSAMIN
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson

CERTIFICATION

I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Senior Associate Justice
(Per Section 12, R.A. 296,
The Judiciary Act of 1948, as amended)