

ALFREDO DURAN, PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. L-39758. May 07, 1976

Ponente: ESGUERRA, J.

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ESGUERRA, J.:

This is a petition for review on certiorari of the decision of respondent Court of Appeals convicting petitioner of theft of mail matter.

Petitioner was charged before the Court of First Instance of Manila, Branch II, with having allegedly committed the crime of qualified theft under Article 310 of the Revised Penal Code, the object allegedly taken being an airmail letter addressed to the Credit Manager of Filipinas Investment & Finance Corporation of Manila from one Lolita L. Dizon of Houston, Texas, U.S.A., which is said to contain a check in the amount of US\$50.00.[1]

Alfredo Duran, petitioner herein, was accused in Criminal Case No. 90041 before the aforementioned trial court and was found guilty of the crime charged. The dispositive portion of the judgment of conviction reads:

"WHEREFORE, the accused is hereby found guilty of theft of mail matter penalized under Article 310 of the Revised Penal Code, and he is hereby sentenced to suffer an imprisonment of TWO (2) years, TWO (2) months and TWENTY-SEVEN (27) days of prision correccional, as a minimum, to TWELVE (12) years and ONE (1) day of reclusion temporal, as a maximum to indemnify the Filipinas Investment and Finance Corporation in the amount of \$50.00 or its equivalent in Philippine Pesos, and to pay the costs." [2]

Accused Alfredo Duran appealed the decision to respondent Court of Appeals which on September 30, 1974, rendered judgment affirming in toto the trial court's decision with costs against accused appellant.[3] It is this decision of respondent Court of Appeals that the present petition for certiorari filed by the petitioner seeks to reverse so as to be acquitted of the crime for which he was indicted and convicted. In particular, petitioner Alfredo Duran wants this Court to review the findings of facts and conclusion of law made by respondent Court of Appeals.

The records show the following:

1. Petitioner was an employee of the Letter Carrier Section of the Post Office of Manila whose duty was to verify wrong addresses;[4]
2. That on March 13, 1968, at around 9:55 in the morning, he left his office to go to the BIR office and while at Plaza Lawton, in front of the Bureau of Posts, waiting for transportation, two men accosted him and one of them "suddenly held his right arm and brought out a gun and threatened him not to make any move else he would be shot." Believing these two men to be holduppers, he ran towards a policeman. Upon reaching the policeman he was stopped by the latter and one of the two men in pursuit, on catching up with him, introduced himself as a Postal Inspector and then and there searched accused-petitioner but found nothing on his person.[5]

3. Not having found anything on the accused-petitioner, the said Postal Inspector, Jesus Bello, took the former to the office of the Investigation & Inspection Division of the Bureau of Posts where he was shown, displayed on a table, an envelope and a letter, later identified and marked as Exhibits "A" and "A-1", respectively. A person, later identified as Asterio Ramirez, had asked him to admit that the letter on the table was the same letter he took out from the office and then crumpled and threw away while being chased. Petitioner denied this and asked his interrogators to take him to the NBI, which request was turned down.[6]

Petitioner Duran, in his petition, assigned the following legal errors allegedly committed by respondent Court of Appeals:[7]

1. Respondent court erred in ordering petitioner to pay Filipinas Investment & Finance Corporation the check of \$50.00 or its peso equivalent when it never made any finding that petitioner asported said check;
2. Assuming arguendo that petitioner asported the said \$50.00 check, the court erred in sentencing petitioner to a prison term whose maximum is reclusion temporal without having established the Peso equivalent of said \$50.00 which is contrary to the provisions of Art. 309 of the Revised Penal Code which prescribes the prison terms to be imposed according to the peso equivalent of the property stolen;
3. Assuming that petitioner is guilty of the theft of the letter and envelope, still the respondent court erred in slapping a prison term as high as reclusion temporal when the value of said letter and envelope was never established;
4. Respondent court violated the constitutional rights of petitioner to equal protection of the law when it required petitioner to corroborate his testimony while the same requirement was not imposed on those of the witnesses for the prosecution.

As regards the alleged errors committed by respondent court in its appreciation of facts, petitioner enumerated them as follows:[8]

1. Respondent court erred in convicting accused when there was no evidence whatsoever to prove that he did take and steal the said envelope and letter, Exhibits "A" and "A-1". In fact there was not any competent and satisfactory evidence that accused had possession of said objects;
2. Even assuming that the accused was in possession of said Exhibits "A" and "A-1", the possession, however, was authorized by the very nature of his official duties as letter-carrier.
3. Respondent court erred in convicting the accused-petitioner on the basis of the biased and conflicting testimony of prosecution witness Asterio Ramirez and the insufficient identification made by him regarding the envelope and letter;
4. Respondent court erred in convicting herein petitioner on the basis of the improbable and inconsistent testimony of Jesus Belo, mentioning five of his improbable and inconsistent statements;
5. Respondent court erred in relying on the inherently improbable testimony of witness Patrolman Patenio that in a matter of seconds, the running, panting and gasping accused chewed and swallowed a piece of paper gratuitously presumed to be the \$50.00 check, in front of witnesses and while talking.

Before this Tribunal for its consideration is the question of whether or not the evidence and its evaluation of the findings of facts made by respondent Court of Appeals as well as the trial court are supported by the evidence.

While the power of the Supreme Court to review decisions or orders of the inferior courts or bodies which involve questions of law had never been questioned, the same power to examine and review findings of facts, particularly of the Court of Appeals, had heretofore been raised. In numerous instances, it had been declared that findings of facts of the Court of Appeals are generally and normally conclusive upon the parties and even on this Court.

However, as correctly pointed out by herein petitioner, upon certain circumstances and grounds, this Tribunal will not hesitate to review such findings of the Court of Appeals. Among the grounds for review of questions of fact are when the judgment is based on misapprehension of facts, or when the conclusion is grounded entirely on speculation, surmise and conjecture.[9]

In the matter respecting the findings of facts, the records of the case will be scrutinized in order to find out whether or not there is ground or basis for reviewing the findings made by the trial court as sustained by the Court of Appeals.

Projecting itself prominently is the fact that there were only five very abbreviated hearings on this case which involves, as it does, the liberty of the accused-the petitioner herein.

The transcripts of the stenographic notes taken during the hearings, consisting of not more than 65 pages, tell the story of the haste and undue brevity which characterized the proceedings had on this criminal case.

The transcript of the stenographic notes for the first hearing held on August 14, 1968, has no more than 5 pages, double-spaced. The second, on September 18th, has 7 pages while the third hearing was a session which has 28 pages of transcript, the longest in the entire criminal proceedings. The fourth has 21 pages of transcribed stenographic notes, while the fifth and last hearing, a mere rebuttal session for the benefit of the prosecution, has only 4 pages.

The first principal witness of the State was Asterio Ramirez, who was at that time a clerk in the City Delivery Division of the Post Office of Manila. According to the accused, this witness harbored ill-feeling and a grudge against him owing to the fact that witness Ramirez was suspended for alleged unauthorized taking of mail matters out of the Post Office and had suspected that the accused had informed on him.[10] This statement of accused Duran regarding the grudge harbored against him by witness Ramirez gains credence when Marcelo Mamaraglo, Chief of the Letter Carrier Section, testified that said Asterio Ramirez, formerly one of his letter carriers, was "grounded for reason that he was caught bringing out letters not under his district".[11]

Witness Ramirez testified in open court that he saw the accused, petitioner herein, sitting down at Plaza Lawton, reading an open letter and approached him. He then engaged the accused in a conversation for five minutes but confessed that he was not able to take a good look at the letter nor did he see the name of the addressee in the envelope. Here is his testimony on this point:

"Q - And you met Alfredo Duran there?

A - I saw him there sitting in Plaza Lawton.

Q - After seeing him, what did you do, if any?

A - Of course as my co-employee, and I saw him personally, I went near him.

Q - What happened when you went near him?

A - As I was nearing him, he stood up, because he was reading an open letter. When I saw Mr. Duran, who was sitting in Plaza Lawton, while I was nearing him, he stood up.

Q - When he stood up, what happened?

A - He was reading an open letter.

Q - Were you able to get a good look at that letter which he was reading?

A - No, sir, because the letter he was reading was face up before him, and what I saw only was the envelope of

the letter with the stamped portion towards my side.

Q - Were you able to get down the description of that letter mentally? Will you describe the envelope?

A - The envelope was a long-sized business envelope having the mark of airmail inscribed on the envelope itself.

* * * * *

Q - Did you see the name of the addressee on the envelope?

A - No sir."[12]

It was this same witness, who upon the arrival of accused Alfredo Duran inside the Investigation & Inspection Division of the Bureau of Posts with Postal Inspector Jesus Bello and Patrolman Bernabe Patenio, had manifested unusual interest in wanting to have the accused admit that the envelope and letter displayed on a table (to be known as Exhibits "A" and "A-1", respectively) were the ones the accused brought out with him.

Witness Ramirez also testified that petitioner Duran did not make any attempt to hide away from him such letter which the latter was reading while carrying on a conversation with the former. Here is how the witness Ramirez narrated this incident:

"Q - And naturally, when you approached the accused and you engaged in a conversation with him, he brought down his right hand?

A - He did not bring it down. He just held it that way when we were talking. He was holding the letter.

Q - For 5 minutes he was holding the letter like that?

A - Yes, sir. Sometimes when we were conversing sometimes he was reading the letter.

Q - In other words, you mean to imply to this Honorable Court that the accused was reading a letter while he was conversing with you?

A - Yes, sir."[13]

The next principal witness of the prosecution was Jesus Bello, a Postal Inspector of the Bureau of Posts.

According to witness Bello when he approached Duran at Plaza Lawton on the day in question, he was accompanied by a certain Germelo Battad, a senior document examiner of the Bureau of Posts. It was this same witness who chased the accused until the latter was stopped by a policeman, Pat. Bernabe, Patenio, and then right in front of the policeman frisked and searched the person of the accused but found nothing on him. He declared that while he was chasing the herein petitioner, the latter crumpled a piece of paper and then threw it away. He stated, however, that he did not stop to pick the said piece of paper. He testified that it was Germelo Battad who later gave him an envelope and a letter which allegedly were the same as those marked as Exhibits "A" and "A-1".[14]

The other witness for the State was Patrolman Bernabe Patenio of the Manila Police Department. This was how he narrated the incident:

"A - When I saw people running towards Intramuros while I was standing, I first observed the cause of the commotion, and when I saw another man ahead of the group I prepared to block the one ahead to investigate the reason. Then the man ahead of the group was already at a close distance but before I caught up with him I saw him took a piece of paper from his breast pocket, placed it in his mouth and then, that was the time I was able to hold him by the left hand."[15]

Witness Patenio, however, admitted that he was not able to see and, therefore, could not describe the piece of paper said to have been crumpled, placed inside the mouth of the accused and in matter of seconds, swallowed,[16] for he saw only a small part of said object, about more or less an inch. Here was his story regarding this incident:

"Q - With the permission of the Honorable Court. Mr. Witness, will you kindly tell us the length and width of that piece of paper which according to you, the herein accused brought out from his pocket and chewed?

A - It was too sudden, sir, I only saw a part of it, about more or less an inch."[17]

From the testimonies solely of the above-mentioned witnesses, the Prosecution rested its case. As a matter of observation, this Court finds it strange and disturbing that the Prosecution did not present another witness whose testimony directly and positively linked the accused to the important documents known as Exhibits "A" and "A-1" if We are to believe in the story of witness Jesus Bello. This could have been the mysterious Mr. Germelo Battad who, according to witness Bello, saw the accused throw the controversial papers while being chased. He was the person, according again to witness Bello, who gave said Exhibits "A" and "A-1" to him.[18] This Battad, if We take the words of witness Bello, was the only person who could positively declare that the crumpled envelope and letter were the very papers he saw accused throw away during his sudden flight and say that he picked them up himself and later gave them to Postal Inspector Jesus Bello; that these crumpled mail matters were the same as Exhibits "A" and "A-1". But amazingly, for one reason or another, the State did not see fit to place Battad on the witness stand. .

Accused Alfredo Duran, an employee of the Letter Carrier Division of the Post Office of Manila whose duty was to verify wrong addresses on mail matters, denied having stolen the envelope and letter identified as Exhibits "A" and "A-1", respectively. He denied having taken any check or having chewed and swallowed a \$50.00 check. He categorically belied the whole story of prosecution witness Asterio Ramirez. He declared that he had never seen, much less conversed, with said Ramirez at Plaza Lawton on the day of the incident at said place.[19] He testified that he ran away from Jesus Bello when the latter drew a gun on him. He thought witness Bello and his companion were holduppers. He ran towards a policeman, later identified as Pat. Bernabe Patenio of the Manila Police Department, in order to get protection from the two men he thought to be holduppers.[20] He belied the testimony of witness Bello that the policeman, Pat. Patenio, held him by the mouth. He denied having crumpled Exhibits "A" and "A-1" and throwing them away while being chased by Bello. Accused likewise denied having chewed and swallowed a bank check.[21] Accused admitted, however, that witness Bello, after having caught up with him in front of Pat. Patenio and having been identified as a postal inspector, did search him in the presence of the policeman but found nothing on his person. That when he was accused by postal inspector Bello of having stolen a mail envelope containing an American bank check in the amount of \$50.00, accused Duran riposted that he should be brought to the NBI (National Bureau of Investigation). He said this was not heeded, however, and instead was brought and kept in the office of the Inspection Division of the Bureau of Posts for interrogation.[22]

Accused Alfredo Duran did not present any witness for himself. The only witness that corroborated a certain statement of accused was Marcelo Mamaraglo, Chief Letter Carriers Section, Manila Post Office, who incidentally was presented as a prosecution witness.

Mamaraglo testified that he remembered having "grounded" Asterio Ramirez, a letter carrier then, for " * * * bringing out papers not under his district". He said that accused Duran was under him and aside from the present case, he did not know of any previous record against said Duran.[23]

At this point, it is clear that the Prosecution tried to establish:

1. That there was a mail matter, an airmail envelope, addressed to the Credit Manager of the Filipinas

Investment & Finance Corporation and that the envelope contained a letter and a US bank check in the sum of \$50.00;

2. That the said mail matter was stolen by accused Alfredo Duran, presumably, with the intention of appropriating said check for his benefit;

3. That the accused, after having asported said mail matter, proceeded to a public place, the Plaza Lawton, opened the same and proceeded to read the letter extracted from it, and calmly read and continued to read it, even in the face of Asterio Ramirez, a co-employee who, the accused suspected, was harboring ill-feelings against him for purportedly having informed on said Ramirez;

4. That when the accused was asked by witness Jesus Bello, who sometime later also approached him, what he was reading, the accused took to flight and while dashing away, crumpled the incriminating envelope and letter (Exhibits "A" and "A-1") and threw them right in the path of his pursuer;

5. That the pursuer, Postal Inspector Jesus Bello, said to be keeping the accused under surveillance for suspicion of stealing mail matters, and now in hot pursuit of an evidence that could nail down his suspect, unfortunately, did not pick up the incriminating papers but chose to collar the person of his suspect and thus continued to pursue the accused;

6. That upon realizing that he was in imminent danger of being cornered with the incriminating check in his possession, the accused proceeded to put the said American bank check in his mouth, masticated the same and swallowed the whole thing in a matter of seconds, this whole procedure being done while the accused was panting and gasping for breath due to his sudden dash from his pursuer.

It is the opinion of this Court that, taken as a whole, the position of the defense was, to say it mildly, weak. Except for the testimony of his office chief, Marcelo Mamaraglo, that the accused did not have any record against him and that as testified to by accused Duran earlier, prosecution witness Asterio Ramirez had truly been previously "grounded", accused did not present any corroborative witness to buttress his case. It is, however, an accepted axiom in this jurisdiction that the prosecution cannot rely on the weakness of the defense to gain conviction. This Court had adhered strictly to the doctrine that in order that conviction may lie, the prosecution must produce proof to prove beyond reasonable doubt the guilt of the accused. The burden rests on the prosecution to establish beyond reasonable doubt every circumstance which is an essential element of the crime charged. The accused does not have to prove his innocence for that is presumed. The weakness of the defense cannot be made the basis of conviction which can only rest upon the strength of the prosecution's evidence.[24]

The burden of proof lies with the prosecution and in the light of the facts thus established, We shall ascertain if the prosecution had been able to prove the guilt of the accused in accordance with the aforecited legal yardstick.

The felony of theft consists in the taking, with the intent of gain, animus lucrandi, of the personal property of another without the latter's consent. It is consummated by the offender actually taking the property, even if he does not succeed in profiting thereby.

As mentioned earlier, the prosecution tried to establish that there was an envelope containing a letter (Exhibits "A" and "A-1") and enclosed therein was a check against an American bank reportedly valued at \$50.00, the same being addressed to the credit manager of the Filipinas Investment & Finance Corporation, and importantly, was allegedly stolen by the accused Alfredo Duran. Unfortunately, however, the State had not satisfactorily shown that said mail matter, Exhibits "A" and "A-1", had really been stolen. Except for the testimony of the credit manager of the Filipinas Investment and Finance Corporation who said that he had not received said mail matter which was purportedly sent by a Miss Lolita L. Dizon, whose signature he knew,[25] no other evidence was introduced to prove that said mail matter was asported or stolen.

Of course, the matter of the \$50.00 American check being truly enclosed in said mail envelope and, therefore, was missing or presumed to have been stolen, had never been clearly shown or proved. We will assume, however, that said mail envelope had really been asported and that enclosed in it were a letter and the controversial \$50.00 check. The question now is: Who stole it?

The Prosecution tried to establish that accused Alfredo Duran was the thief on evidence that are purely circumstantial, flimsy and conjectural. Thus:

- 1) That the accused was seen reading a letter at the crowded Plaza Lawton by witness Asterio Ramirez and without this witness seeing and ascertaining the exact nature of the alleged letter being read, in fact he had not seen the face of the letter, jumped to the conclusion that the alleged letter was indeed the same letter identified as Exhibit "A-1".

It appears incredible to Us that, stupid though the accused may have been, and there was no showing that he was indeed a stupid fool, he would go to an open and public place like Plaza Lawton and there open a stolen mail envelope and after ascertaining that it contained a check for a certain amount, proceeded coolly, calmly and deliberately to read the letter contained therein. So undistracted was his interest in the content of the letter that even in the face and close presence of someone who may see in his hand an incriminating paper that can even up a score which this person may have been aching to do, the accused would continue reading the stolen letter, amazingly and unbelievably unaffected by normal fears that would subject an ordinary person under the same circumstance. The elan and ostentatious unconcern manifested by the accused-petitioner in continuing to display and read the said stolen letter while prosecution witness Asterio Ramirez was right there in front of him was indeed very extraordinary, especially when considered in the light of the standing fear of the accused that witness Ramirez suspected of having informed on said Ramirez. That is, if We are to believe in the story unfolded by witness Asterio Ramirez. This Court is not ready to believe that the accused, a lowly letter carrier, is such a sophisticated and experienced man of the world to have shown such amazingly cool and composed conduct under the circumstance previously narrated. We are inclined and ready to believe, however, that the reason for this "cool as cucumber" behavior was the fact that he was not reading a stolen letter or that the story regarding this episode was not reflective of the truth but a pure concoction of the witness Asterio Ramirez who, as intimated, had an axe to grind or a score to settle with the accused.

- 2) That the accused inserted in his mouth an American bank check, chewed it and swallowed the same in matter of seconds. This was done, while he was dashing away from his pursuer and thus gasping for breath and dry in the mouth.

When it is considered that an ordinary American bank check is normally of strong and heavy paper, and so made as to make it highly resistant to ordinary destructive processes like grinding it to shreds inside a human mouth in just a few seconds, the story of the chewing and swallowing of this \$50.00 American bank check while the accused was running, panting, gasping for breath, and certainly very dry in the mouth is highly incredible.

In this light, this Tribunal declares that the alleged act of check chewing and swallowing narrated by witness Patenio for the Prosecution is against human experience and does violence to the reasoning faculties of man. We find it unbelievable for a person to have done what the Prosecution said the accused did with the said check in the latter's physical condition, at that time and for the few seconds he had, to masticate and swallow such thick piece of paper as an American bank check. Like what We have said in some earlier cases, when the testimony of a witness is inconsistent with human experience or against the ordinary or natural course of things, it will not be credited.[26] This Court is thus constrained to declare, as it hereby declares, that the same is not to be given any credence.

- 3) That Prosecution witness Pat. Patenio saw, for just a flitting moment, a very small piece of the end of a

piece of paper, about an inch, placed in the mouth of the accused, chewed and swallowed. Conclusion: That paper must be the \$50.00 check.

We have examined thoroughly the testimony of witness Patenio and nowhere could We find anything therein which categorically identified the alleged paper swallowed by the accused as the check in question. From the witness's very vague description of an inch piece of paper as allegedly swallowed by the accused, this Court is not prepared to accept the theory of the Prosecution that what was chewed and swallowed, assuming that this really took place, was indeed the very \$50.00 check in question.

The above stories of the witnesses for the Prosecution having been passed upon, We shall now take up two mysteries which enshrouded this case.

The first of these was the undisputed request of accused Duran to be brought to the NBI (National Bureau of Investigation) for investigation which was not heeded by those investigating him at the Bureau of Posts. If Postal Inspector Jesus Bello was truly desirous of ferreting out the truth about this particular theft of a mail matter, We think that he should have acceded to the request of the accused. Not having done so, We can assume two possibilities: Firstly, the officials of the Bureau of Posts did not want a professional investigating agency of the government to look into it perhaps because it might in the process, discover something fishy in this case. Secondly, accused Alfredo Duran had a clear conscience insofar as the said allegedly stolen mail matter and \$50.00 check were concerned otherwise, he would not have asked to be taken to the NBI.

The other mystery was when the Prosecution did not place on the witness stand the only vital witness for the State: Germelo Battad.

The events showing how the documents, Exhibits "A" and "A-1", came into the possession of Postal Inspector Jesus Bello are very vague, if not mysterious. Records tend to indicate that witness Jesus Bello was, on the day of the incident, at Plaza Lawton accompanied by Germelo Battad, a senior document examiner of the Bureau of Posts. Bello testified that Battad gave the envelope and letter to him. This was his story:

"Q - About the crumpled letter, what happened?

A - The crumpled letter was later given to me by Mr. Battad after Mr. Duran was already caught." [27]

A close scrutiny of the records do not show that this Mr. Battad was ever placed on the witness stand if only to explain how he came into possession of said Exhibits "A" and "A-1". All this Court had to rely on was the statement of witness Jesus Bello that the crumpled envelope and letter were given to him by Germelo Battad and, by mere insinuation, were the same papers identified as Exhibits "A" and "A-1".

This Tribunal feels that a declaration by Germelo Battad that he saw the accused throw the controversial papers during the latter's flight and the same were retrieved by him and turned over to Postal Inspector Jesus Bello, as surmised and conjectured by the Prosecution, would have carried more weight than all the testimonies given by the three principal witnesses of the Government. As observed earlier, We declare that We find it strange why such vital witness was not presented by the Prosecution. Herein lies the weakness of the case for the State. We have said before in another case that where the evidence submitted by the Prosecution did not show, in a complete and conclusive manner, the guilt of the accused, said accused should be acquitted because the proof required must be conclusive in order to establish the existence of the crime. [28] We are convinced that the inculpatory facts in this case are not clear-cut and are susceptible of different interpretations. If the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused of the crime charged and the other consistent with his guilt, then the evidence does not fulfill the test of moral certainty and is not sufficient to support conviction. [29] The reason for this rule is based upon the broad principle of humanity

which forbids the infliction of punishment until the commission of the crime is established with reasonable and moral certainty.

Because of the foregoing, this Court hereby declares that the two essential elements of theft as defined by Art. 308 of the Revised Penal Code, i.e., the taking and intent of gain (*animus lucrandi*) have not been established by the Prosecution with reasonable and moral certainty. Hence, We cannot see Our way clear to sustaining the sentence of guilt rendered by the trial court and affirmed by the respondent Court of Appeals. This Court is convinced that the evidence presented by the prosecution was not such as to find accused guilty beyond reasonable doubt; that the conclusions arrived at by the trial court and the respondent Court of Appeals were based on speculations, surmises and conjectures; and that the decision of respondent Court of Appeals dated September 30, 1974, was founded on a misapprehension of facts.

Wherefore, the aforesaid decision of the trial court as affirmed by the Court of Appeals is hereby reversed and the accused - Alfredo Duran, is hereby acquitted of the crime charged. Costs de oficio.

So ordered.

Teehankee, (Chairman), Makasiar, Muñoz Palma, and Martin, JJ., concur.

[1] Brief for Appellant, CA, pp. 1-2, Annex "C", Petition; Rollo, p. 53.

[2] Decision, p. 7A, Appendix, Brief for Appellant, CA, Annex "C", Petition; Rollo, p. 53.

[3] The Solicitor General's Comment, p. 2; Rollo, p. 67.

[4] Brief for Appellant, *supra*.

[5] TSN, pp. 9-11, Hearing of December 16, 1968; Decision, p. 4-A.

[6] TSN, p. 12, Hearing of December 16, 1968.

[7] Petition, pp. 2-4; Rollo, pp. 8-10.

[8] *Supra*, pp. 2-4; pp. 8-10.

[9] Pio L. Tolentino vs. Francisco de Jesus, et al., G.R. No. L-32797, March 27, 1974, 56 SCRA 167; Tagumpay Minerals & Mining Association vs. Masangkay, et al., G.R. No. L-28946; Napolis vs. Court of Appeals, et al., G.R. No. L-28865.

[10] TSN, pp. 17-18, Hearing of December 16, 1968; Decision, p. 4, Annex "A"; Rollo, p. 48.

[11] TSN, pp. 5-6, Hearing of December 16, 1968.

[12] TSN, p. 3, Hearing of August 14, 1968.

[13] TSN, pp. 5-6, Hearing of Oct. 30, 1968.

[14] TSN, pp. 16-18, *supra*.

[15] TSN, p. 25, *supra*.

[16] TSN, p. 27, *supra*.

[17] *Ibid*.

[18] TSN, p. 16, Hearing of Oct. 30, 1968.

- [19] TSN, p. 14, Hearing of December 16, 1968.
- [20] TSN, p. 11 & 15, *supra*.
- [21] TSN, pp. 15-16, *supra*.
- [22] TSN, p. 12, *supra*.
- [23] TSN, pp. 4-6, Hearing of December 16, 1968.
- [24] *People vs. Barrera*, 82 Phil. 391.
- [25] TSN, pp. 1-4, Hearing of September 18, 1968.
- [26] *U.S. vs. Sison*, 18 Phil. 557; *People vs. Diño*, 46 Phil. 395.
- [27] TSN, p. 16, Hearing of October 30, 1968.
- [28] *U.S. vs. Melliza*, 9 Phil. 495.
- [29] *People vs. Parayno*, G.R. No. L-24804, July 5, 1968.

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