# PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VALERIANO AMESTUZO Y VIÑAS, FEDERICO AMPATIN Y SABUSAB, ALBINO BAGAS Y DALUHATAN AND DIASCORO VIÑAS Y ODAL, ACCUSED,

*G.R. No. 104383*. July 12, 2001*

Ponente: KAPUNAN, J.

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**KAPUNAN, J.:**

One of the cardinal rules of criminal law is that the guilt of the accused must be proven beyond reasonable doubt by the prosecution. If the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, then the evidence does not fulfill the test of moral certainty and is not sufficient to support a conviction.[1] In the present case, there being a doubt as to the guilt of accused-appellant, the constitutional presumption of innocence stands and he must be acquitted.

This is an appeal from the decision dated November 28, 1991 of the Regional Trial Court, Branch 131, Kalookan City in Criminal Case No. 36930 finding accused-appellant Albino Bagas guilty of the complex crime of robbery in band with double rape and sentencing him accordingly.

At about nine-thirty in the evening of February 22, 1991, a group of eight armed men wearing masks entered the house of complainant Perlita delos Santos Lacsamana at Sacred Heart Village, Kalookan City and robbed the said premises of valuables in the total amount of P728,000.00. In the course of the robbery, two members of the gang raped Maria Fe Catanyag and Estrella Rolago, niece and employee, respectively of complainant Lacsamana.

On February 27, 1991, accused-appellant Albino Bagas, Valeriano Amestuzo, Federico Ampatin, Dioscoro Viñas and four other accused, whose identities are unknown and who are still at large up to the present, were charged with the complex crime of robbery in band with double rape under the following information:

> That on or about the 22nd day of February 1991, in Kalookan City, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually helping one another, all armed with guns, with intent of gain, and by means of violence, threats and intimidation upon the person of Perlita delos Santos de Lacsamana, did then and there willfully, unlawfully and feloniously take, rob and carry away the following, to wit:
>
> Cash money in the amount of ----------
>
> P128,000.00
>
> Jewelries worth ----------
>
> 600,000.00

Total --

P728,000.00

all belonging to said complainant, to the damage and prejudice of the latter, in the aforesaid amount of P728,000.00; and on the occasion thereof, said accused conspiring together and mutually helping one another likewise by means of force and violence and with the use of their weapons, willfully, unlawfully and feloniously have sexual intercourse with Fe Catanyag y Cabañero and Estrella Rolago y Madrid both residents of said house, against their will and without their consent.

Contrary to law.[2]

On arraignment, all the accused including accused-appellant Albino Bagas pleaded "Not Guilty" to the charge. Thereafter, trial ensued.

The facts as found by the trial court and as presented in the Solicitor General's Brief are as follows:

The incident happened at the compound of Block 5, Road 32, Phase II of the Sacred Heart Village in Kalookan City (pp. 6-7, TSN, July 2, 1991). In the compound are the main house where Mrs. Perlita Lacsamana resides and another house which serves as the office and quarters for Lacsamana's employees. In between of these two houses is about three (3) meter-wide area where the dirty kitchen and the garage are found. In the first floor of the main house is the master's bedroom, and on the second floor is the guestroom" (pp. 6-8, TSN, July 2, 1991).

While at the master's bedroom on that particular evening at about 9:30 p.m., Lacsamana overheard her maid, cried `aray, aray, aray'. She immediately went out but as soon as she opened the door of her room, two (2) men (one of them is accused Amestuzo while the other one remains unarrested) poked their guns on her. At gun point, Lacsamana, Lea, Edwin, and Belen were forcibly brought to the second floor of the main house. Thereat, Lacsamana saw four (4) other male persons ransacking her premises. The said male persons, armed with guns and knives, tied her including all her employees and members of her household with the use of torn electric fan wire and television wire. After that they were told to lie down with face against the floor but a minute later she was asked where the master's bedroom is and when she answered that it is on the ground floor, she was again forcefully brought down. On her way down, she saw, aside from the six (6) male persons who were inside her house, two (2) other male persons (later identified as accused Ampatin and Viñas) outside the main house but within the compound (pp. 8-10, TSN, July 2, 1991).

Once they were already inside the master's bedroom, the six (6 ) armed male persons (two (2) of them were Amestuzo and Bagas) ransacked the same and took all her monies, jewelries, shoes, jackets, colored television and imported wine. Likewise, aforesaid accused ate the foods found by them in their kitchen. (pp.10-11, 13, TSN, July 2, 1991).

After ransacking the room, two (2) of the accused, one (1) of them is Amestuzo, brought Estrella Rolago inside her room and afterwhich she was in turn brought to the guest room. Thereat she heard Rolago pleading "Maawa kayo, maawa kayo" then after ten (10) minutes, Rolago, with bloodstain on her shorts, was brought in back to the guest room (pp. 13-14, TSN, July 2, 1991). Rolago was raped by Amestuzo (pp. 17-20, TSN, July 3, 1991).

Almost simultaneously, Bagas likewise sexually assaulted and ravished Fe Catanyag (pp. 38-40, TSN, July 3, 1991; pp. 2-5, TSN, July 4, 1991). Thereafter, Bagas shouted at her to stand up and although she was experiencing pain on her private part which was bleeding at that time, she stood up, dressed up and proceeded to the servants' quarter (pp. 4-5, TSN, July 4, 1991).


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> Thereafter, Mrs, Lacsamana shouted for help. Sensing that the accused had already left, they locked the door. With the help of her employer and co-employees, more particularly Nanding, she and Rolago were brought the nearby Neopolitan Clinic and from there they proceeded to the St. Luke's Hospital where Dr. Brion treated Catanyag and Rolago (pp. 6-7, TSN, July 4, 1991; pp. 19-20, TSN, July 3, 1991).[3]

On November 28, 1991, the trial court rendered judgment convicting all the accused. The dispositive portion of the trial court's decision reads as follows:

> WHEREFORE, this Court renders judgment CONVICTING accused VALERIANO AMESTUZO y VIÑAS, FEDERICO AMPATIN y SABUSAB, ALBINO BAGAS y DALUHATAN, DIOSCORO VINAS y ODAL of the complex crime of ROBBERY IN BAND WITH DOUBLE RAPE and sentences each of them to suffer imprisonment of DOUBLE RECLUSION PERPETUA and orders them to jointly and severally indemnify to complainant Perlita delos Santos de Lacsamana the amount of P800,000.00 representing the value of monies and properties taken forcibly away by the accused and to indemnify, jointly and severally, Ma. Fe Catanyag and Estrella Rolago the amount of FIFTY THOUSAND (P50,000.00) PESOS each.
>
> SO ORDERED.[4]

From the judgment of conviction by the trial court, only herein accused-appellant Bagas appealed to this Court. His appeal is based mainly on (1) the alleged deprivation of his constitutional right to be represented by counsel during his identification, (2) the trial court's error in giving due weight to the open court identification of him which was based on a suggestive and irregular out-of-court identification, and (3) the trial court's improper rejection of his defense of alibi.

Accused-appellant maintains that from the time he was arrested until he was presented to the complainants for identification, he was deprived of the benefit of counsel. He narrates the circumstances surrounding his arrest and investigation as follows:

On February 26, 1991, four days after the alleged incident, a group of policemen together with accused Federico Ampatin, who was then a suspect, went to the handicrafts factory in NIA Road, Pasay City where accused-appellant was working as a stay-in shell cutter. They were looking for a certain "Mario" and searched the first and second floors of the building. Failing to find said Mario, the police hit Ampatin at the back of his neck with a gun and uttered, "Niloloko lang yata tayo ng taong ito" and "Magturo ka ng tao kahit sino." It was at this juncture that Ampatin pointed to accused-appellant Bagas as he was the first person Ampatin chanced to look upon.

Thereafter, he was arrested and made to board the police vehicle together with accused Ampatin. While on board the jeep, accused Ampatin told him that he (Ampatin) committed an error in pointing him out to the police, "namumukaan lang niya ako, napagkamalian lang niya ako." They were brought to the Urduja Police Station in Kalookan City and placed under detention together with the other two accused, Amestuzo and Viñas. When the complainants arrived, accused-appellant was brought out, instructed to turn to the left and then to the right and he was asked to talk. Complainant Lacsamana asked him if he knew accused Amestuzo and Viñas. Accused-appellant answered in the negative. The policemen told the complainants that accused-appellant was one of the suspects. This incited complainants to an emotional frenzy, kicking and hitting him. They only stopped when one of the policemen intervened.[5]

Accused-appellant alleges that the trial court committed a serious error when it deprived him of his constitutional right to be represented by a lawyer during his investigation. His singular presentation to the complainants for identification without the benefit of counsel, accused-appellant avers, is a flagrant violation of the constitutional prerogative to be assisted by counsel to which he was entitled from the moment he was arrested by the police and

placed on detention. He maintains that the identification was a critical stage of prosecution at which he was as much entitled to the aid of counsel as during the trial proper.

The contention is not meritorious. The guarantees of Sec. 12 (1), Art. III of the 1987 Constitution, or the so-called Miranda rights, may be invoked only by a person while he is under custodial investigation.[6] Custodial investigation starts when the police investigation is no longer a general inquiry into an unsolved crime but has begun to focus on a particular suspect taken into custody by the police who starts the interrogation and propounds questions to the person to elicit incriminating statements.[7] Police line-up is not part of the custodial investigation; hence, the right to counsel guaranteed by the Constitution cannot yet be invoked at this stage.[8] This was settled in the case of People vs. Lamsing[9] and in the more recent case of People vs. Salvatierra.[10] The right to be assisted by counsel attaches only during custodial investigation and cannot be claimed by the accused during identification in a police line-up because it is not part of the custodial investigation process. This is because during a police line-up, the process has not yet shifted from the investigatory to the accusatory[11] and it is usually the witness or the complainant who is interrogated and who gives a statement in the course of the line-up.[12]

Hence, herein accused-appellant could not yet invoke his right to counsel when he was presented for identification by the complainants because the same was not yet part of the investigation process. Moreover, there was no showing that during his identification by the complainants, the police investigators sought to elicit any admission or confession from accused-appellant. In fact, records show that the police did not at all talk to accused-appellant when he was presented before the complainants. The alleged infringement of the constitutional rights of the accused while under custodial investigation is relevant and material only to cases in which an extra-judicial admission or confession extracted from the accused becomes the basis of his conviction.[13] In the present case, there is no such confession or extra-judicial admission.

Accused-appellant also makes much ado about the manner in which he was presented to the complainants for identification. It is alleged that the identification was irregular as he was not placed in a police line-up and instead, made to stand before the complainants alone.

Again, the contention has no merit. As aptly pointed out by the Solicitor General, there is no law requiring a police line-up as essential to a proper identification.[14] The fact that he was brought out of the detention cell alone and was made to stand before the accused by himself and unaccompanied by any other suspects or persons does not detract from the validity of the identification process.

However, we agree that complainants' out-of-court identification of accused-appellant was seriously flawed as to preclude its admissibility. In resolving the admissibility and reliability of out-of-court identifications, we have applied the totality of circumstances test enunciated in the case of People vs. Teehankee[15] which lists the following factors:

> xxx (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at that time; (3) the accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and (6) the suggestiveness of the identification process.

The out-of-court identification of herein accused-appellant by complainants in the police station appears to have been improperly suggestive. Even before complainants had the opportunity to view accused-appellant face-to-face when he was brought our of the detention cell to be presented to them for identification, the police made an announcement that he was one of the suspects in the crime and that he was the one pointed to by accused Ampatin as one of culprits. According to accused-appellant -

Q:

When the complaining witnesses arrived at the Urduja precinct at that time you mentioned, were you immediately kicked by them?

A:

No, sir.

Q:

How long a time from the time they arrived at the Urduja precinct to the time that you were kicked by them?

A:

Around 10 minutes, sir.

Q:

And how were you identified or recognized by the complaining witnesses?

A:

Because upon arrival at the Urduja police station, the policemen announced that I am one of the suspects in this case and thereafter, the complainants started kicking me, sir.

Q:

So that the announcement of the policemen that you were one of the suspects came first then they started kicking you?

A:

Yes, sir.[16]

It is, thus, clear that the identification was practically suggested by the police themselves when they announced to the complainants that accused-appellant was the person pointed to by Ampatin. The fact that this information came to the knowledge of the complainants prior to their identification based on their own recall of the incident detracts from the spontaneity of their subsequent identification and therefore, its objectivity.

In a similar case, People vs. Cruz,[17] accused Cruz, a suspected co-conspirator in a case of robbery with homicide, was presented to the witnesses alone and made to walk and turn around in their presence. Then the police pointed out to the accused and several others as the persons suspected by the police as the perpetrators of the robbery committed in Goso-on. The Court, in rejecting the subsequent identification made by the witnesses, reasoned that:

> The manner by which (witnesses) were made to identify the accused at the police station was pointedly suggestive, generated confidence where there was none, activated visual imagination, and all told, subverted their reliability as eyewitnesses.

In Tuason vs. Court of Appeals,[18] an NBI agent first pointed the accused to the witnesses after which the latter identified the accused. The Court held that such identification was doubtful as the same was not spontaneous and independent as there was improper suggestion coming from the NBI agent. We ruled that a "show-up" or the presentation of a single suspect to a witness for purposes of identification is seriously flawed as it "constitutes the most grossly suggestive identification procedure now or ever used by the police."


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Likewise in People vs. Meneses,[19] where the accused was presented to the lone witness as the suspect in the crime inside the police investigator's office, the Court pronounced that although the police officer did not literally point to the accused as in the Tuason case, the confrontation and the identification proceeding therefrom was objectionable.

The Court also finds that the trial court erroneously rejected accused-appellant's alibi.

Accused-appellant clearly and positively testified that at the time of the crime, February 22, 1991, he was working as a shell cutter in a factory in Pasay City where he was a stay-in employee. He rendered overtime work until ten o'clock in the evening that night because they had to rush work. After ten p.m., he, together with his stay-in co-workers, went to sleep. Four days later, he was arrested when accused Ampatin randomly pointed him out to the police.[20]

This testimony of accused-appellant was materially corroborated by two of his co-employees who were with him on the night of the incident. Rodolfo Rosales, his co-worker, testified that he worked overtime until 10 p.m. in the Pasay City factory together with accused-appellant. Upon finishing work, they went to sleep in their quarters on the second floor of the building because they were stay-in employees of the factory.[21] Another co-worker of accused-appellant, Clemente Gahelan, was similarly offered as a witness to corroborate Rosales' testimony and his testimony was duly admitted by the prosecution.[22]

The employer of accused-appellant Rolando Ocasla, likewise testified that on the night of the incident, accused-appellant worked overtime in his factory until 10 p.m. After 10 p.m., he personally locked the door of the premises which was the only means of ingress and engress, as he always does because it was his means of preventing any pilferage of materials. He was the only one who had keys to said door. Around five a.m. of the following day, he woke up accused-appellant and told him to drink his coffee. He also declared that there was nothing unusual about accused-appellant's behavior either, before, during or after the date of the alleged crime.[23]

The defense of alibi or denial assumes significance or strength when it is amply corroborated by a credible witness.[24] And to be given weight, accused must prove not only that he was somewhere else when the crime was committed but that he was so far away that it was physically impossible for him to be present at the crime scene or its immediate vicinity at the time of its commission.[25]

In this case, we find accused-appellant's alibi sufficiently corroborated by the testimonies of his co-workers and his employer who categorically stated that they were with accused-appellant on the night of the crime. There was no evidence that these witnesses were related to accused-appellant; neither was it shown that they had any personal interest nor motive in the case. As impartial credible witnesses, their testimonies cannot be doubted absent a clear showing of undue bias or prejudice, or convincing proof of the impropriety of their motives to testify for the accused.[26]

Accused-appellant vehemently argues that it was physically impossible for him to have been present at the scene of the crime or its immediate vicinity at the time of its commission. First, the crime was committed around 9:30 in the evening of February 22, 1991. Accused-appellant, as well as two other witnesses, testified that he worked in the factory until 10 p.m. that night and went to sleep after. Second, there was only one door in the factory which was the only means of entrance and exit and this door was kept locked by witness Ocasla after ten p.m. that night. Ocasla was the only person who had a key to this door. Third, the windows on the first floor of the building consisted of hollow blocks with small holes which do not allow passage. The second and third floor windows were 14 and 21 feet high, respectively. There was no possible means of exit through these windows without accused-appellant getting hurt or injured. Lastly, the crime took place in Kalookan City around 9:30 p.m. while


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accused-appellant's place of work was in Pasay City. Assuming for the sake of argument that he was able to leave the premises after 10 p.m. that night, by the time he reaches Kalookan, the crime would have already been completed.

The Court has held that where an accused sets up alibi as a defense, the courts should not be too readily disposed to dismiss the same, for, taken in the light of all the evidence on record, it may be sufficient to reverse the outcome of the case as found by the trial court and thereby rightly set the accused free.[27] Though inherently weak as a defense, alibi in the present case has been sufficiently established by corroborative testimonies of credible witnesses and by evidence of physical impossibility of accused-appellant's presence at the scene of the crime. Alibi, therefore, should have been properly appreciated in accused-apellant's favor.

Another significant evidence which the trial court failed to consider is the voluntary confession of accused Federico Ampatin absolving accused-appellant Bagas of the crime. Ampatin's testimony was clear and categorical:

> Q:
>
> When you reached that house where Bagas was working what happened?
>
> A:
>
> All the persons were ordered to lie down, sir.
>
> xxx
>
> Q:
>
> And what did they do to you?
>
> A:
>
> Immediately I was instructed to follow the policemen who went upstairs, sir.
>
> Q:
>
> Why did that policemen go upstairs?
>
> A:
>
> He was looking for Mario, sir.
>
> xxx
>
> Q:
>
> Upon reaching the second floor, what happened there?
>
> A:
>
> They did not see any person there, sir.
>
> Q:
>
> What followed next?
>
> A:
>
> P/O Melmida pistol-whipped me, sir.


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Q:

Where were you hit?

A:

On the left portion of my neck, sir.

Q:

Did Melmida utter any remark while hitting you?

xxx

A:

He told me to point to somebody else, sir, saying these words, "Magturo ka ng tao kahit sino."

xxx

Q:

So what did you do when you were ordered to point to anyone?

A:

Because at that time I cannot yet stand up he forced me to go downstairs, sir.

xxx

Q:

Were you able to reached (sic) the ground floor?

A:

Yes, sir.

Q:

And what happened there?

A:

I pointed to Albino Bagas, sir, because he was the only first person I saw there at the ground floor while his companions were on the other side because I don't want to get hurt anymore, Your Honor.

Court: When you see (sic) Bagas was lying face down at the tme you pointed to him?

A:

Yes, your Honor.

Court: You did not bother to look at his face?

A:

No more Your Honor because I was in a hurry to point to somebody because I was afraid that I will be hurt again, Your Honor.

xxx


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Court: You mean to say at the time you pointed to Albino Bagas you did not know him?

A:

No I don't know him, Your Honor.[28]

Ampatin and accused-appellant were charged as co-conspirators in the crime of robbery with rape. As a co-accused, it would have been more consistent with human nature for Ampatin to implicate accused-appellant if indeed he was one of the gang. In fact, the Court has recognized that "as is usual with human nature, a culprit, confessing a crime is likely to put the blame as far as possible on others rather than himself.[29] The fact that he testified to the innocence of a co-accused, an act which resulted in no advantage or benefit to him and which might in fact implicate him more, should have been received by the trial court as an indicum of the truth of Ampatin's testimony and the innocence of herein accused-appellant. Ampatin's testimony, therefore, should have been given weight by the trial court. More so, the same was substantially corroborated by another witness, Rodolfo Rosales, accused-appellant's co-worker and who was present when accused-appellant was arrested. Rosales testified as follows:

Q:

Now, do you know when was Albino Bagas arrested in connection with this case?

A:

Last February 25, that was Monday, sir.

Q:

And where were you when he was arrested?

A:

I was there at that time.

xxx

Q:

xxx what was the reaction of Albino Bagas when he was being pointed to and arrested by the arresting officers?

A:

The situation goes like this, sir, the policemen arrived there and they were holding the persons of Ampatin and they were looking for a person named Mario that was what I heard, sir, and then the policemen forced us to be identified or to be seen by the guide. Ampatin at first at the ground floor but since there was nobody there by the name of Mario they proceeded to the second floor and upon looking one of the policemen shouted, "Wala rito, niloloko lang tayo ng taong ito."

Court: Then what happened next?

Witness: And I noticed that the reaction of Federico Ampatin that he was afraid, so, because of fear he was able to point on the person of Albino Bagas but when asked he does not know the name of Albino Bagas, Your Honor.

Atty. Pacis: Before going to the second floor, because according to you the arresting officers and the guide went to the second floor, was Albino Bagas at the ground floor seen by the guide and the policemen?


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A:

We were the first group of persons seen by the policemen and Albino and I were beside each other, sir.

Q:

And you want to impressed (sic) upon this Honorable Court that at first at the ground floor, Albino Bagas was not identified by this Ampatin before going to the second floor?

A:

The guide was not able to identify the person of Albino Bagas and that was the reason why they still made searches at the second floor, sir.

Q:

How was Federico Ampatin able to identify Albino Bagas when he was accompanied by the policemen went downstairs?

A:

I noticed from the reaction of Federico Ampatin that he was afraid after hearing the shout of the policemen, sir.

xxx[30]

The testimony of witness Rosales corroborates Ampatin's declaration in court that he does not know herein accused-appellant and merely pointed to him out of fear of the police. These testimonies remain unrebutted by the prosecution as the arresting officers were not presented to refute or deny the same. The foregoing testimonies exculpating accused-appellant have sufficiently cast at least a shadow of doubt as to his guilt.

WHEREFORE, the decision of the trial court convicting accused-appellant Albino Bagas of the crime of robbery with multiple rape is hereby REVERSED and he is ACQUITTED of the crime charged. His immediate release is hereby ordered unless he is held for some other valid charges.

**SO ORDERED.**

Davide, Jr., C.J., (Chairman), Puno, Pardo, and Ynares-Santiago, JJ., concur.

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[*]This case was transferred to the ponente pursuant to the resolution in AM No. 00-9-03-SC. - Re: Creation of Special Committee on Case Backlog dated february 27, 2001.

[1] People vs. Libag, 184 SCRA 707 (1990).

[2] Rollo, pp. 5-6.

[3] Id., at 138-140.

[4] Id., at 44.

[5] TSN, August 14, 1991, pp. 20-21, TSN , August 15, 1991, pp. 2-10.

[6] People vs. Duero, 104 SCRA 379 (1981); People vs. Andal, 279 SCRA 474 (1997).

[7] People vs. Del Rosario, 305 SCRA 740 (1990); People vs. Labtan, 320 SCRA 140 (1999).

[8] People vs. Lamsing, 248 SCRA 471 (1995); People vs. Dela Torre, 294 SCRA 196 (1998).


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[9] Ibid.

[10] 276 SCRA 55 (1997). The case of People vs. Lamsing overturns the Court's prior ruling in the case of People vs. Macam, 238 SCRA 307, where identification of an uncounselled accused made in a police line-up at the start of the custodial investigation was held to be inadmissible.

[11] See note 10.

[12] People vs. Timple, 237 SCRA 52 (1994).

[13] People vs. Tiadula, 292 SCRA 596 (1998); People vs. Sabalones, 294 SCRA 751 (1998).

[14] Brief for the Appellee, pp. 7-8 citing the case of People vs. Espiritu, 191 SCRA 503 (1990).

[15] People vs. Teehankee, Jr., 249 SCRA 54, 95 (1995).

[16] TSN, August 15, 1991, pp. 8-9.

**[17] 32 SCRA 181 (1970).**

**[18] 241 SCRA 695 (1995).**

**[19] 288 SCRA 95 (1998).**

[20] TSN, August 14, 1991, pp. 18-21.

[21] Id. at 4-5.

[22] Id., at 17.

[23] TSN, August 21, 1991, pp. 14-23.

[24] People vs. Entila, 325 SCRA 226 (2000).

[25] People vs. Alib, 322 SCRA 93 (2000).

[26] People vs. Umali, 193 SCRA 493 (1991).

[27] People vs. Uson, 224 SCRA 425, 435-436

[28] TSN of August 22, 1991, pp. 29-30.

[29] People vs. Victor, 181 SCRA 818 (1990).

[30] TSN of August 14, 1991, pp. 5-8.


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