

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DIONISIO MAROLLANO @ “JUN,” ACCUSED-APPELLANT.

G.R. No. 105004. July 24, 1997

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Inconsistencies and contradictions in minor and trivial matters do not impair the credibility of a witness, specially after the trial court has accorded it full faith and credence. Nor do the defenses of alibi and denial prevail over the victim's own ante mortem statement which, as a dying declaration and/or part of the *res gestae*, points to the accused as the assailant.

Statement of the Case

These postulates are stressed by this Court in resolving this appeal from the Decision dated February 25, 1992 of the Regional Trial Court of Sorsogon, Sorsogon, Branch 52,[1] in Criminal Case No. 2627 convicting Accused-appellant Dionisio Marollano alias “Jun” of murder.

A Criminal Complaint was filed by Jeoffrey G. Gigantoca, INP Station Commander of Pilar, Sorsogon, in which appellant, Consorcio Molleno and one “John Doe” were accused of murder. After preliminary investigation, Sorsogon First Assistant Provincial Fiscal Honesto J. Borromeo filed an Information dated July 10, 1989 charging Appellant Marollano, Consorcio Molleno and John Doe with murder allegedly committed as follows:

“That on or about the 14th day of May, 1989, at barangay Sta. Fe, municipality of Pilar, province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with sharp bladed instruments with intent to kill, conspiring, confederating and mutually helping one another, with treachery and evident premeditation and without any justifiable cause and motive, did then and there, wilfully, unlawfully and feloniously, attack, assault and stab one Domingo Guadamor, inflicting upon the latter mortal wound which caused the death of said Domingo Guadamor, to the damage and prejudice of his legal heirs.”[2]

During arraignment, both accused[3] assisted by counsel de oficio pleaded not guilty to the charge.[4] After trial, Accused Molleno was acquitted while appellant was convicted of murder. The dispositive portion of the assailed Decision reads:[5]

“WHEREFORE, premises considered judgment is hereby rendered finding accused Dionisio Marollano alias ‘Jun’ guilty beyond reasonable doubt of the crime of Murder with neither aggravating nor mitigating circumstance attendant to its commission and hereby sentences him to suffer imprisonment of RECLUSION PERPETUA with all the accessories provided for by law, to indemnify the heirs of the victim Domingo Guadamor in the amount of P50,000.00, actual damages of P11,050.00 and unearned income of P360,000.00 without subsidiary imprisonment in case of insolvency, and to pay one-third (1/3) of the costs.

In the service of his sentence accused Dionisio Marollano alias Jun shall be credited with the full period of his preventive imprisonment pursuant to law.

For failure of the prosecution to establish his guilt beyond reasonable doubt, the accused Consorcio Molleno is hereby ACQUITTED with one-third (1/3) of the costs de oficio. Accordingly, his immediate release from custody is hereby ordered unless sufficient legal cause exists to warrant his further detention.

The case as against the accused John Doe is hereby provisionally dismissed subject to its immediate revival upon his proper identification and/or apprehension by the State.

SO ORDERED.”

The Facts Admission of Facts

The pre-trial conference held on November 23, 1989 yielded from the parties a stipulation of facts contained in the Order of the trial court dated November 23, 1989. The defense admitted:[6]

“(1) The existence of the Certificate of Death of the victim, Domingo Guadamor, injury sustained as indicated therein; cause of death; authenticity of said Certificate of Death; and the fact that may be testified to by the Resident Physician. Roy Palanca as to his opinion of the cause of injury sustained;

(2) That the two accused, namely: Dionisio Marollano and Consorcio Molleno, were both present at the scene of the subject incident; and,

(3) That subject incident occurred between 12:00 o’clock midnight of May 12, 1989 and 1:00 o’clock in the morning of May 14, 1989 at Barangay Sta. Fe, Pilar, Sorsogon.”

The prosecution, on the other hand, admitted that: (a) the incident in question occurred outside but near the dance hall; (b) a dance was actually in progress when the incident took place; and (c) both accused were arrested in their respective houses.

Evidence for the Prosecution

In the ensuing trial, the prosecution presented the testimonies of Witnesses Cesar Mapa,[7] Nildo Madronio, Jose Favia, Patrolman Andreo Somalinog and the victim’s widow, Belleza Favia Guadamor. The State also offered the following documents: Certificate of Death dated May 16, 1989 (Exh. “A”); Pre-trial Order dated November 23, 1989 (Exhs. “B,” “B-1” to “B-2”); and Receipt (Contract) No. 0792 issued by Bicolandia Funeral Service for P5,000.00 (Exhibit “C”).

The trial court narrated the testimonial evidence of the prosecution, thus:[8]

“In the evening of May 13, 1989, prosecution witness Cesar Mapa was in front of the dancing pavilion at Sta. Fe, Pilar, Sorsogon, together with the late Domingo Guadamor (victim in this case) erstwhile husband of Sta. Fe’s lady barangay captain Belleza Favia de Guadamor who was at the time inside the dancing pavilion watching the on-going dance. Mapa and the victim were then drinking a bottle of beer each near the gate of the dancehall when Guadamor (the victim) left Mapa and went momentarily to the side of the road to answer the call of nature, about 2 to 3 meters away from Mapa. While Guadamor was urinating, the latter suddenly shouted: ‘Manoy Cesar, I was stabbed. I was stabbed by Jun Marollano’. As Mapa went near the victim, Mapa saw three (3) persons- two of whom he recognized to be the herein accused Jun Marollano and Consorcio Molleno even as he did not recognize the other companion of the accused. The herein two accused were standing side by side with the late Domingo Guadamor (who was already holding his wounded right waist with his right hand) and the two accused, Jun Marollano and Consorcio Molleno, were there with their bladed weapons as they fled from the scene of the incident to follow their companion who was also already running away.

Mapa demonstrated in Court that the bladed weapons of the herein two accused were about one (1) foot in length and of the ‘ginunting Type’ (scissors-shaped) knives; that accused Jun Marollano, while behind the

victim, swung his right hand to the left hitting and wounding Guadamor on the right side of the body (waist), while his co-accused Consorcio Molleno was 'supposed to strike' Guadamor but because he (Mapa) approached him, the herein accused fled towards the eastern direction.

Mapa was able to recognize the herein accused although it was then already past midnight because aside from the half moon, there was a fluorescent lamp at the barrio hall and three (3) lighted bulbs at the gate of the dancehall; that aside from Mapa, those who gave assistance to the late victim after the stabbing incident were Nildo Madronio, Jose Favia and one named Samson who helped one another in bringing the victim to the latter's house. Thereafter, Madronio, Jose Favia and others accompanied the victim's wife Belleza Favia, in bringing him to the Albay Provincial Hospital at Daraga, Albay where the victim died. From the said Hospital, Guadamor's corpse was brought back to Sta. Fe, Pilar at about 10:00 o'clock in the morning of May 15, 1989 already inside a coffin. The accused Jun Marollano and Consorcio Molleno were meanwhile picked up by the military and brought to the municipal building.

Prosecution asserted that right after the stabbing incident, Nildo Madronio and Jose Favia (barangay tanods and residents of Sta. Fe, Pilar, Sorsogon) were among those who went to the aid of the victim, Domingo Guadamor, and while the latter was being brought to his house that early morning, Guadamor told Madronio and Favia that it was herein accused Jun Marollano, a resident of barangay Lumbang, who stabbed him; that Madronio was also one of those who accompanied Guadamor and the latter's wife to the Albay Provincial Hospital; that the victim, Guadamor, rested on Madronio's arm while inside the jeep on the way to Daraga, Albay and when they reached the Hospital Guadamor again repeated that it was herein accused Jun Marollano who stabbed him; that at about 5' o'clock in the morning of the same day, Guadamor died; and, that when Madronio returned to Sta. Fe from the Albay Hospital, Madronio learned that the suspects, one of whom was Jun Marollano, was already brought to the Pilar Municipal building even as Madronio did not hear any other person being mentioned as suspect in the case except accused Jun Marollano.

However, on cross-examination Madronio admitted that he (Madronio) merely overheard the victim Guadamor saying that it was accused Jun Marollano who stabbed him because actually the latter did not directly or personally inform him (Madronio) [of] such thing.

The State furthermore claimed that earlier that same evening of May 13, 1989, or more particularly after about 9 to 10 o'clock while Jose Favia and his fellow barangay tanod Samson Vergara patrolled together on foot around the dancing pavilion, they saw accused Dionisio Marollano alias Jun and Consorcio Molleno who were drinking 'gin' about a meter away from them (Favia and Vergara). Then they both heard accused Consorcio Molleno telling accused Jun Marollano words to this effect: 'if you could not stab him, I will stab you'. They heard accused Molleno repeating such words of instructions to his herein co-accused Jun Marollano. But such fact notwithstanding, Favia and companion Samson Vergara did not give it any importance because after the two accused had consumed the bottle of 'gin' both left the place and Favia and Vergara did not mind making a surveillance even as they already heard and had known of the plan of accused to stab someone that evening.

Pat. Andreo Somalinog of the Pilar police force who accompanied the Pilar INP Station Commander to the house of accused Dionisio Marollano alias Jun on May 14, 1989 at Lumbang, Pilar, found the accused and his wife in said house and the policeman had observed that accused Marollano became pale (as if afraid) when Somalinog informed him that the INP Station Commander was inviting him to the Municipal building for questioning. Pat. Somalinog likewise noticed a drop of dry blood on Marollano's big toe but when he called Marollano's attention to it, the latter told him that the blood came from his pimple. Then, the accused went inside the room to change his clothes but when accused came out of the room, the dry blood on his toe was gone as his feet was already washed up (sic). At the Municipal building, accused Marollano was placed inside the jail and after a week's confinement thereat, Marollano, out of loneliness and thoughts for his children, became emotionally upset and cried, telling Pat. Somalinog that it was his co-inmate 'Consoy' (referring to co-accused Consorcio Molleno) who killed the victim and not he so why should he (Marollano) suffer in jail.

Belleza Favia vda. de Guadamor, the victim's widow, confirmed the fact that she was helped by the barangay tanods Samson Vergara, Jose Favia and Jose Padua, and some others, in bringing her husband to their house that early morning after the incident and that most of them even accompanied her and her wounded husband to the Albay Provincial Hospital where the victim eventually died at about 5 o'clock that same morning; that right after he was stabbed, the victim told her that he was stabbed by herein accused Jun Marollano- a statement which the victim again repeated even while he was already dying in the Albay Provincial Hospital.

In bringing the victim to the said hospital, the widow spent P300.00 for the jeep she hired for the purpose, P500.00 for hospital and medical expenses, plus P250.00 for the 500cc of blood she bought which was not anymore used. The victim's wake and vigil lasted for one (1) week, costing the family an expense of about P10,000.00 inclusive of the coffin bought from, and funeral services rendered by, the Funeraria Bicolandia (Exh. C).

At the time of his death, Domingo Guadamor was only 45 years of age, gainfully employed (since his marriage) at the Hacienda Turilla in Sta. Fe Pilar, Sorsogon, with a monthly salary of P2,000.00 and complete with SSS, Pag-ibig and Medicare coverage. In addition to the widow, the victim's other heirs are three (3) children namely, Bobby, 23 years old, Nove, 20 and Juvy, 16 years of age, two of whom (Bobby and Nove) had to stop schooling and had to leave for Manila after the victim's death. These heirs most especially the widow suffered sleepless nights and utter loneliness and bereavement for which they seek atonement by way of moral damages in the amount of at least P100,000.00."

Evidence for the Defense

Appellant and Accused Molleno claimed innocence by setting up the defenses of alibi and denial of any participation in the crime. In support thereof, the defense presented the testimonies of Mary Molleno, Lilia Lopez, David Tolosa, Rogelio Mape and Romulo Molleno; and the following pieces of documentary evidence: Sworn Statement of Cesar Mapa dated May 15, 1989 (Exh. "1"); TSN dated May 23, 1989 and bracketed portions thereof (Exhs. "2" and "2-A"); Sworn Statement of Jose Favia (Exh. "3"); and the Warrant of Arrest dated May 23, 1989 (Exhs. "4," "4-A" and "4-B"). Considering that Accused Molleno was acquitted, it is unnecessary to discuss his version of the facts.

From the testimony of the witnesses, the trial court gave the following summary of facts pertinent to Appellant Marollano:[9]

"Accused Dionisio Marollano alias Jun recalled that on the date and time in question he was actually having a drinking session of 'Beer Grande' with Rogelio Mape (whose wife is a cousin of herein private complainant, Belleza Favia vda. de Guadamor) who earlier (at about 7:30 that evening) invited him to watch the dance at the pavilion of Sta. Fe, Pilar, Sorsogon and David Tolosa, his own uncle by affinity (who joined them also after the latter bought cigarettes). The 'beers' were bought by them from the makeshift store of Romulo Molleno (located by the gate of the dancing pavilion) whose mother is an aunt of private complainant Belleza Favia vda. de Guadamor. The Guadamor widow is furthermore also a relative of prosecution witness, Cesar Mapa, whose mother is likewise another aunt of said widow. It was just after accused Marollano and companions consumed half of their third bottle of 'Beer Grande' when they heard someone shouting and announcing that Domingo Guadamor was stabbed; so, Marollano, Mape and Tolosa stood up and went to the succor of the victim, together with Romulo Molleno and Jose Favia.

Accused Jun Marollano and Rogelio Mape came upon the victim, Domingo Guadamor, who was already seated in the sala of his residence and holding his wounded right waist. Marollano then helped in carrying the chair whereon the victim was seated and, together with Rogelio Mape, Romulo Molleno and another one (whose name was not revealed) brought the victim to the side of the street to await the vehicle that thereafter brought the wounded Guadamor to the hospital. Thereafter, accused Jun Marollano and companions Rogelio Mape and Romulo Molleno went home.

Accused Marollano vehemently denied having been seen and/or heard by prosecution witness Jose Favia being warned on the night in question by co-accused Molleno to better effect or execute the killing otherwise he (Marollano) instead be killed by Molleno; or, that it was he (Jun Marollano) who was actually seen by Cesar Mapa while in the act of stabbing Domingo Guadamor; and/or that co-accused Molleno (who was then also allegedly armed with a 'ginunting type' knife was 'supposed to stike (sic)' also the victim but Molleno, together with Jun Marollano and another companion, fled when Cesar Mapa tried to approach them.

Jun Marollano furthermore strongly denied being with and/or in the company of his co-accused Consorcio Molleno on the night, date and time in issue, explaining that the two of them never met each other during that night, not even in the early evening of May 13, 1989. He maintained that the widow (private complainant) got mad at him after he refused her request for him to testify in her favor and to just pinpoint or accuse someone as the killer of her late husband because she in fact failed to get witness in her favor other than her own relatives.

Although admitting that he really became pale and uneasy when policeman Somalinog arrived in his house at Mahamot, Lumbang, Pilar, Sorsogon, Marollano explained that he was so surprised as it was the very first time he was ever visited by a police authority so he became pale and somewhat uneasy; and, that he indeed cried when the same policeman Somalinog went to visit him in the municipal jail because he was a family man so he protested why he had to suffer unduly for the consequences of an act he did not at all commit.

x x x x x x x x

The rest of the defense witnesses, namely, David Tolosa, Rogelio Mape, Romulo Molleno, Molly Molleno, and Lilia Lopez, gave pertinent testimonial narrations as to the alleged whereabouts of the two accused, if only to corroborate (sic) the latter's alibi and/or denial, if not to discredit prosecution's eyewitness account of the incident at bar.

(1) David Tolosa- This witness narrated in substance, that on the night, place and time in question, he was drinking 'beer grande' with accused Dionisio Marollano and Rogelio Mape near the gate of the Sta. Fe (Pilar) dancing pavilion (about 50 meters away from the place of the incident (sic) when their attention was called by the voice of someone shouting that Domingo Guadamor was stabbed; that during those entire hours that the three of them were drinking their 'beer grande' accused Dionisio Marollano never left them not even just to urinate or relieve himself despite the 2 1/2 bottles of 'beer grande' consumed during that three (3) hours of drinking, more particularly at that precise time when they heard the shout that Domingo Guadamor was stabbed; and, that they never met or have seen at anytime that evening the other accused, Consorcio Molleno.

(2) Rogelio Mape- Mape testified that in the evening of May 13, 1989 he was drinking beer with accused Dionisio Marollano at the makeshift store of Romulo Molleno near the gate of the fence of Sta. Fe dancing pavilion; that at about 9:00 o'clock that evening while their drinking spree was in progress, he got drunk and fell asleep at the said store of Romulo Molleno; but, earlier that evening and before he got drunk, he invited David Tolosa (who also obliged) to join him and accused Marollano in their drinking; that he no longer noticed up to what time did David Tolosa stay with them because he (Mape) already drunk and fell asleep; that it was Romulo Molleno who woke him up when Romulo was already closing the store because according to Romulo someone was stabbed, although' at that time he (Mape) did not anymore notice accused Marollano and David Tolosa; xxx.

(3) Romulo Molleno- In substance, this witness asserted that while he was attending to his store on that night in question, he noticed the presence at his store of accused Jun Marollano and the latter's drinking partner, Rogelio Mape, both of whom started drinking beer early that evening; that he did not pay particular attention as to what time and up to when that Marollano and Rogelio Mape went drinking at his store because he went also inside the dancehall leaving the store to be tended by his wife; but, since he does not know David Tolosa, he had not noticed him that evening.

Molleno admitted that he is related to the Guadamors particularly to Belleza Favia vda. de Guadamor (whom

he calls ‘Manay’) because his own mother is surnamed Favia also. But such relationship notwithstanding, he would not hesitate to tell the truth since he knows the Guadamor spouses.

(4) Molly Molleno- Molly testified substantially that on the date and night in question, she and her mother, Lilia Lopez, fetched Consorcio Molleno’s daughter, MaryAnne, from Consorcio’s house at Lumbang, Pilar, Sorsogon at about 7:00 o’clock PM on their way to the dance at Sta. Fe, Pilar; x x x they proceeded to the dancehall at Sta. Fe arriving there at about 9:00 o’clock that same evening.

When they entered the dancehall they met prosecution witness Cesar Mapa from whom they solicited P5.00 contribution in exchange for a ticket for her (Molly’s) candidacy as Miss Santacruzana of Pilar, Sorsogon; that, in turn, Cesar Mapa asked her to dance with him but she refused to oblige as he was already reeking with liquor.

That thereafter at about midnight she and her group left the dancehall so as to proceed home. Outside the dancehall, she again saw Cesar Mapa who was leaning on a fence and whose eyelids were already drooping due to drunkenness. Mapa was holding a bottle of beer and was swaying. But no untoward incident happened at the dancehall at that time.

x x x x x x x x.”

Lilia Lopez substantially corroborated her daughter’s testimony.

Ruling of the Trial Court

After thorough evaluation and analysis of the conflicting versions of the incident, the trial court held that it was appellant who stabbed the victim. It rejected appellant’s alibi that he was with Defense Witnesses Tolosa and Mape at a drinking spree fifty meters away from the roadside, because (1) the defense failed to show the physical impossibility of appellant’s presence at the crime scene and, more importantly, (2) alibi cannot prevail over the positive identification of Marollano by Mapa and Belleza.

As stated earlier, appellant was convicted of murder because the killing was qualified by treachery. Appellant, armed with a deadly weapon, had attacked the victim without any warning and/or opportunity to defend himself.

Hence, this appeal.

Assignment of Error

In the Appellant’s Brief filed by the Public Attorney’s Office,[10] the defense alleges that:

“The Court a quo gravely erred in convicting the accused-appellant Dionisio Marollano of the crime charged despite the absence of evidence required to prove his guilt beyond reasonable doubt.”[11]

Appellant contends that the pieces of evidence presented by the prosecution were of doubtful plausibility and were insufficient to establish the appellant’s guilt. Allegedly, Witnesses Mapa and Belleza contradicted their own testimony, rendering the same unreliable. Witness Favia’s sworn but unsigned statement to the police was given only on July 21, 1989 or more than two months after the incident, showing that its presentation was a mere afterthought done to bolster the case of the prosecution. Having failed to secure a warrant for his arrest, Pat. Somalinog merely invited appellant for questioning and thus belied the prosecution’s allegation that Mapa positively identified appellant as the assailant.

The Court’s Ruling

The appeal is not meritorious.

Lone Issue: Credibility of Witnesses

Appellant concentrated his attacks on the credibility of the prosecution witnesses. At the outset, we lay down as premise the completely settled jurisprudence that the trial court's assessment of the witnesses' credibility is entitled to great weight and is even conclusive and binding on this Court, barring arbitrariness and oversight of some fact or circumstance of weight and influence.[12] As we have often said, credibility is a matter that peculiarly falls within the province of the trial court as it had the opportunity to watch and observe the demeanor and behavior of the witnesses at the time of their testimony.[13] However, appellant has raised several contradictions in the testimonies of Witnesses Cesar Mapa and Belleza Favia Guadamor, ostensibly rendering their testimonies unreliable. Against said legal doctrine, appellant's allegations of contradictions in the testimony of witnesses will be measured.

Admissions of Facts During Pre-Trial Must Be Signed by Accused

Although not raised by appellant, this Court notes that the Pre-trial Order dated November 23, 1989 lacked the signature of appellant and his counsel. Such signatures are required under Rule 118, Section 4 of the Rules of Court, to assure the acceptance in evidence of any admission made or agreement arrived at in the course of the pre-trial conference. Section 4 of Rule 118 is quoted below:

“SEC. 4. Pre-trial agreements must be signed.-- No agreement or admission made or entered during the pre-trial conference shall be used in evidence against the accused unless reduced to writing and signed by him and his counsel.”

The trial court appears to have overlooked this matter in said Order[14] and is now without jurisdiction to cure such defect. Consequently, the admissions cannot be used against appellant.

Luckily for the prosecution, the Certificate of Death was formally offered in evidence and was received[15] by the trial court without any objection from the defense, as the latter had not noticed the fatal defect in the Order. Widow Belleza also testified that her husband died at the Albay Provincial Hospital at five o'clock in the morning of May 14, 1989.[16] Thus, the fact of death was proven by the testimony of a witness[17] and by the Certificate of Death which was admitted without objection. As to the commission of the criminal act, the evidence presented by the prosecution will be analyzed vis-a-vis the alleged contradictions raised by appellant.

Re-Assessment of the Credibility of Witnesses

More than consistency, the best test of credibility is its compatibility with the common experience of man. A testimony deserves credence if it does not run counter to human knowledge, observation and experience; whatever is repugnant to these standards becomes incredible and lies outside of judicial cognizance.[18]

Appellant depicts Witness Mapa as an unreliable witness due to the contradictions and inconsistencies in his testimony. First, his testimony on direct examination that he saw appellant stab the victim allegedly contradicted his earlier testimony that, after the victim left to urinate, he suddenly heard the victim shout to him that appellant stabbed him (the victim). Appellant impresses on this Court that, following Mapa's earlier statement, said witness noticed appellant's predicament only after the victim was already stabbed, that is, when the latter's outcry caught his attention. In short, Mapa did not witness the stabbing.

But this contradiction is more apparent than real. According to the witness, instead of focusing his attention on something else, he continued to look at the victim as the latter left to relieve himself. On direct examination, he categorically stated that:[19]

“Q: All right, now, in what direction were you facing when you were sitting down on that bench?

Fiscal:

In relation to what?

Atty. Banares:

In relation to the front of the store.

A: I was facing the east.

Atty. Banares:

Q: But, of course, you were facing the front of the store?

A: The makeshift store was on my left side.

x x x x x x x x

Q: Now, you will agree with me that few meters about 2 or 3 meters, there were other persons there near the makeshift store?

A: There were many persons there, only that I did not mind them because we were planning to go home already.

Q: And you did not mind also when Domingo Guadamor told you that he will be urinating?

A: I minded him because I even told him that he just urinated behind me, but he insisted in urinating on the side of the road and I was looking at him.

x x x x x x x x

Q: He went at your back, of course.

A: No, sir. He passed in front of me going to the direction of the East.

x x x x x x x x

Q: Now, you said while ago that Domingo Guadamor passed in front of you. Will you demonstrate how did he pass?

A: (witness demonstrated by going down from the witness stand and made the interpreter as the witness and he passed in front of the interpreter).

Atty. Banares:

Will you please repeat.

A: Suppose you were me (witness referring to the interpreter as himself and the witness passed in front of the interpreter going to the left side). He went to the other side of the road and urinated.”

Even the demonstration of the position of the witness in relation to the victim and the assailant, conducted during direct examination, points to the fact that he had a clear view of the stabbing:[20]

“Fiscal:

Q: Will you demonstrate to the court what you saw?

A: I can.

Q: Please demonstrate.

A: (witness going down the witness stand and continued to state the following: Suppose this is the position of Domingo Guadamor, Jun was behind Domingo Guadamor and I was in this position (witness pointed to a place half meter away from Guadamor in oblique position) and the third one was there (witness pointed to a part inside the courtroom which is about 2 meters away from him)

Q: Let us begin one by one. Now, demonstrate to the Court what you saw with respect to Jun Marollano?

A: What I saw was that Jun Marollano stabbed Domingo Guadamor (witness demonstrated by placing himself behind the interpreter and swung his right hand to the left directly hitting the interpreter on the right side of his body)”

Considering also that the place at the side of the road where the victim urinated was only about 2½ meters away from him, Mapa was in a position to see the incident. In fact, during the cross-examination, the trial court declared as misleading the defense counsel’s question that the witness only heard the victim’s shout as it implied that, aside from hearing the victim’s shout, Mapa did not witness anything else.

The victim’s sudden outcry that appellant stabbed him did not render impossible Mapa’s actual witnessing of the stabbing incident. Mapa’s testimony dispelled the impression which appellant sought to create. Properly understood, his testimony is intrinsically credible, consistent with human experience and supported by other evidence on record.

Second, appellant asserts that Mapa’s answer on cross-examination that he was not told by the victim of the latter’s being attacked by three persons contradicted his sworn statement to the police as follows: [21]

“Q: Upon hearing those words, what did you do?

A: I immediately went near him in order to give aid and then he said to me that they were three.”

Anent these statements, suffice it to say that an affidavit taken ex parte is judicially considered to be almost always incomplete and often inaccurate, sometimes from partial suggestions and sometimes from want of suggestions and inquiries, without the aid of which the witness may be unable to recall the connected circumstances necessary for his accurate recollection of all that pertains to the subject.[22] Furthermore, this issue has been settled in the discussion above. The witness saw the victim being stabbed by appellant who was accompanied by two other persons.

Thus, we declare that his testimony cannot be disregarded as he had satisfactorily explained on the stand the alleged contradictions. The contradictions imputed by appellant to Mapa did not establish arbitrariness or oversight that would warrant a reversal of the trial court’s ruling to accord full faith in his testimony. Inconsistencies and contradictions in minor and trivial matters do not impair a witness’ credibility.[23]

The defense also capitalizes on the contradictions in Widow Belleza’s account of the incident. On this point we agree with the defense. Parts of her testimony contradict not only themselves but also Mapa’s. First, she said her husband disclosed to her, outside the dance pavilion,[24] that appellant stabbed him in contradiction to her earlier statement that these utterances were made at their house.[25] She explained that she was standing by the gate of the dance pavilion while her husband stepped outside to urinate. Then, she heard him say, “Ning, I was stabbed.” She went outside, and upon seeing her bloodied husband, she shouted for help and the barangay tanods came out of the dance pavilion to respond. At the same time, she noticed that her husband was looking at some persons running away.[26]

On cross-examination, however, she reverted to her original testimony that she was inside their house, conversing with her sister,[27] when her husband, who was two meters away, shouted that he was stabbed.[28] She went to him and cried for help. Still, she claimed to have seen three men, whose backs were turned to her, fleeing together.[29]

Apparently, the change was intended to strengthen the evidence on the assailant’s identity because according to her, the victim even pointed to the direction of three persons running away from the scene of the crime,[30] one of whom she presumed was appellant because her husband repeatedly mentioned the latter’s name.

In order to save her testimony, she said that their house was adjacent to the dance pavilion, but on

cross-examination, she admitted that between their house and the dance pavilion there were two houses that obstructed her view of the latter.[31]

Consequently, instead of saving her testimony, her wavering declarations confounded it further. If she was at their house when she saw the victim, then it contradicts Mapa's testimony that she came out of the pavilion when she heard that her husband was stabbed.[32] In any case, she contradicted her own testimony. Worse, she appeared to have a different scenario for each place, raising the suspicion that she was not given such information by the victim at this time.

These contradictions as to where she was when she learned that her husband was stabbed and who his assailants were are not minor or trivial points as they destroy the consistency of the account of the principal occurrence and the positive identification of the assailant.[33] They run counter to the testimonies of the other prosecution witnesses, not to mention her own testimony. Thus, we cannot say that these inconsistencies tend to strengthen rather than weaken her credibility, or that they erase any suspicion that she was a rehearsed witness.

Expectedly, the trial court did not give much credence to Belleza's identification of the culprit, implying that the testimony of Mapa was already sufficient. Said the trial court:[34]

"After a thorough albeit impartial evaluation and analysis of the parties' conflicting versions, the Court is convinced Dionisio Marollano alias Jun who stabbed and killed the victim Domingo Guadamor on the night, date and time in question. This is clear from the positive identification of said accused made by prosecution witness Oscar Mapa[35] who, in open Court, demonstrated that it was while the said victim was relieving himself (urinating) by the roadside near the dancehall at Sta. Fe, Pilar, Sorsogon (after having inbibed (sic) or drank beer) when accused Dionisio Marollano (armed with a foot-long-'scissor type' knife) attacked the victim from behind and stabbed him on the right waist thereby mortally wounding him. Thereafter, Marollano ran away. x x x.

The victim was forthwith brought that early morning of May 14, 1989 to the Albay Provincial Hospital where he passed away at about 5 o'clock that same morning. But even just a moment after he was stabbed, the victim immediately shouted that herein accused Jun Marollano stabbed him. And, even while in the Albay Provincial Hospital, immediately preceding his death, the victim repeated his assertion that it was accused Dionisio Marollano alias Jun who stabbed him."

Nonetheless, the trial court believed that the identity of the victim's assailant was still disclosed to her by the victim himself at the hospital while the victim's wounds were being treated.[36] This part of her testimony remains undisputed and finds corroboration from the other prosecution witnesses.

The assertion that Nildo Madronio's testimony is hearsay evidence and, therefore, inadmissible does not persuade us. On cross-examination, the counsel for the defense elicited an affirmation from Madronio that he was not directly informed by the victim of his dying declaration. Rather he merely overheard the victim.[37] However, this is belied by Madronio's testimony that, with his arms, he supported the victim inside the jeep on the way to the hospital, during which the latter declared that appellant had stabbed him.[38] Such testimony is based on his own knowledge and derived from his own perception. Thus, while said affirmative answer was vague, it was insufficient to disprove his earlier statement.

Evaluation of the testimonies of Jose Favia and Pat. Somalinog is unnecessary as they only corroborate Mapa's testimony. Even without their testimonies, the positive identification and dying declaration would still stand.

Evaluation of the Ante Mortem Statement

Equally crucial in the resolution of this appeal is the question of whether the victim's revelation to the prosecution witnesses is a dying declaration. The trial court ruled it to be so.

A dying declaration, as an exception to the general rule on the inadmissibility of hearsay evidence, is entitled to highest credence because no person who knows of his impending death would make a careless and false accusation.[39] When a person is at the point of death, every motive for falsehood is silenced and the mind is induced by the most powerful consideration to speak the truth. Such a declaration, made in extremis when the party is at the point of death and the mind is induced by the most powerful consideration to speak the truth, occasioned by a situation so solemn and awful, is considered by the law as creating an obligation equal to that which is created by a positive oath administered in a court of justice. The idea, more succinctly expressed, is that “truth sits on the lips of dying men.”[40]

As an exception to the hearsay rule, the requisites for its admissibility are as follows: (1) the declaration was made by the deceased under the consciousness of his impending death; (2) the deceased was at the time competent as a witness; (3) the declaration concerns the cause and surrounding circumstances of the declarant’s death; and (4) it is offered in a criminal case wherein the declarant’s death is the subject of inquiry.[41]

Anent the first requisite, the issue of whether a declaration was made under the consciousness of an impending death, is a matter of evidence.[42] It must be shown that such a declaration was made under a realization by the decedent that his demise or at least, its imminence and not so much its rapid occurrence, was at hand.[43] This may be proven by the statement of the victim himself or inferred from the nature and extent of his wounds, or other relevant circumstances.[44]

In the case at bar, even if the victim did not express in words his consciousness of his inevitable demise, the nature of his wound, i.e., a stab wound on the right side of the stomach that was causing tremendous loss of blood, indubitably generated a consciousness that death was near. Judging from the nature and extent of said injury, the seriousness of his condition was so apparent that it may safely be inferred that his utterances were made under a consciousness of an impending death.[45] That his demise came only hours thereafter further suggests the victim’s realization of the hopelessness of recovery.[46]

The victim’s words pinpointed appellant as the one who stabbed him. It was no less than a positive identification of his own assailant. Witness Mapa narrated in his testimony how the victim made such a disclosure to him, thus:[47]

“x x x x x x x x

Q: What did you do when you saw Domingo Guadamor stabbed by Dionisio Marollano together with Consorcio Molleno?

A: I immediately went near Domingo because I aided him.

x x x x x x x x

Q: When you approached Guadamor, was he still alive?

A: He was still alive.

Q: Was he still standing?

A: Yes, sir.

Q: Can he still talk?

A: Yes, sir.

Q: Did you hear him talked?

A: What I heard from him was that the one who stabbed him was Jun Marollano.

Q: Was he stating this with his mouth opened and in loud voice?

A: It was in a loud voice when he was shouting that it was Jun Marollano who stabbed him.”

The same words were repeated by the victim to Nildo Madronio en route to the hospital, corroborating Mapa’s testimony. He said:[48]

“Q: We would like to have this clarified. While you were inside the dancing pavilion, you came to know that somebody was stabbed. Who told you?

A: I overheard from the people inside the dancing pavilion that somebody was stabbed.

Q: Upon hearing that report, what exactly did you do?

A: I immediately went out of the dancing pavilion and ran to the aid of Domingo Guadamor.

Q: What kind of aid did you give him?

A: I aided by means of supporting him, so that he could walk.

Q: Where did you bring him?

A: To his house.

Q: From the place where you found him to the house while supporting him, was he talking with you?

A: What I heard is that, he only said that it was Jun Marollano, a resident of Lumbang, who stabbed him.

Q: After that where did you bring him.

A: From his house, we brought him to the Albay Provincial Hospital.

x x x x x x x x

Q: From Sta. Fe to Albay was he still talking?

A: He talked when we reached the Albay Provincial Hospital.

Q: What did he say?

A: That it was Jun Marollano, a resident of Lumbang, who stabbed him.

Q: You were the one told?

A: Yes, sir, because I was the one who was holding him.”

Even to his widow at the hospital, the victim, while his wounds were being treated, pointed to appellant as his assailant.[49]

The victim was not suffering from any disability and, were it not for his own demise, he would have been competent as a witness. All requisites having been satisfactorily established, the victim’s condemnatory ante mortem statement naming appellant as his assailant deserves full faith and credit and is admissible in evidence as a dying declaration.[50]

One more point. The same declaration can also be admitted in evidence as part of the *res gestae*. In his Separate Opinion in *People vs. Israel, Mr. Justice Florenz D. Regalado* explained:

“The requisites for the admissibility of the victim’s ante-mortem statement as part of the *res gestae* and also as a dying declaration are present in this case, hence the same should be admitted under both exceptions to the hearsay rule. (Citing *People vs. Gueron, et al.*, L-29365, March 25, 1983, 121 SCRA 115; *People vs. Baltao*, L-47686, June 24, 1983, 122 SCRA 859) While the admissibility thereof would naturally not be affected whether viewed under either or both consideration the advantage of resting the issue on the aforesaid dual bases is that its admission would be invulnerable to a theorized absence of an element of one of said exceptions. This is particularly important in this case, considering that the very identification of the assailant and the accuracy thereof are essentially based on that declaration of the victim.”[51]

A declaration is deemed as part of the *res gestae* and thus admissible in evidence as an exception to the hearsay rule when the following requisites concur: (1) the principal act, the *res gestae*, is a startling occurrence; (2) the statements were made before the declarant had time to contrive or devise; and (3) the statements must concern the occurrence in question and its immediately attending circumstances.[52] The victim was stabbed from behind while relieving himself. That he was stabbed while he was in such a vulnerable position was undoubtedly a startling occurrence. His utterances identifying appellant as his assailant were made (1) immediately thereafter, (2) while being transported to the hospital and (3) at the hospital. Under these circumstances, it appears to be improbable for the victim to have concocted such a story. His declaration definitely relates to the occurrence in question. We hold, therefore, that the utterances of the victim are admissible as part of the *res gestae*.

Alibi and Denial vs. Dying Declaration

and Positive Identification

Appellant sets up alibi and denial as his defense. He denied having stabbed the victim, asserting that at the time of the incident, he was in a drinking spree with David Tolosa and Rogelio Mape. In jurisprudence, alibi is one of the weakest defenses that can be resorted to by an accused, not only because it is inherently weak and unreliable but also because of its susceptibility to fabrication without much opportunity to check or rebut it. For this defense to prosper, appellant must prove not only that he was somewhere else when the crime was committed, but also that he could not have been physically present at the crime scene or even its immediate vicinity at the time of its commission.[53]

Appellant testified that he and his group were drinking at Romulo Molleno's store, which was located by the gate of the dance pavilion;[54] and Romulo Molleno confirmed that his store was about six (6) meters from the gate of the dance pavilion.[55] Mapa testified that the victim and he were drinking beer about five (5) meters away from the gate.[56] The close proximity of the victim and appellant bars the assertion that it was physically impossible for him to have been at the scene of the crime. Thus, the alibi cannot stand. We agree with the trial court's rejection of appellant's alibi of having been more than fifty (50) meters away from the roadside during the commission of the crime.

Appellant also claimed that after he heard that the victim was stabbed, he stood up and went to the victim's succor. He, Mape, Romulo Molleno, and Jose Favia chanced upon the victim at his house, seated on a chair with his hand on his stomach. They allegedly helped the victim by placing the chair at the roadside while waiting for the vehicle, which was to take the victim to the hospital. After the victim was loaded into the vehicle, appellant left.[57]

The trial court correctly rejected this assertion. Although both Romulo Molleno and Mape confirmed that appellant was at Romulo's store, they did not corroborate appellant's claim that they helped the victim at all. Neither was there any mention of any action on their part tending to corroborate said claim. If appellant's claim was true, then these two persons would have confirmed it. Instead, counsel for the defense failed to elicit this vital information from the witnesses. Therefore, appellant's claim that he even helped the victim was merely an uncorroborated self-serving allegation.

Furthermore, alibi is unavailing as a defense where there is an ante-mortem declaration received in evidence either as a dying declaration or as part of *res gestae*. [58] Even his allegation that Belleza and Jose Favia implicated him for his refusal to identify the culprits hardly deserves belief by this court. This does not qualify as an "ill motive" which will render suspect any testimony unfavorable to him. The normal tendency of the family and relatives of the victim is to bring to justice the malefactor, not an innocent bystander.[59] By rejecting his alibi and the alleged ill motive, appellant's denial is reduced to an unsupported allegation that bears little

persuasive effect, definitely insufficient to prevail over the prosecution's evidence on positive identification.

Treachery

Treachery attended the killing. According to Mapa, appellant stabbed the victim from behind while the latter was answering the call of nature. The victim's situation bespeaks the futility of any defense he could mount under these circumstances. Appellant employed means, method or form in the execution of the felony which insured its commission without risk to him coming from any defense that the victim might take.[60]

We are fully aware that despite the weakness of appellant's alibi and denial, his conviction must still rest on the strength of the prosecution's evidence and not on the weakness of that of the defense. We hold however that the positive identification and the dying declaration are more than sufficient to sustain appellant's conviction. Appellant failed to divest the vital prosecution witnesses of their credence. It also failed to overturn the doctrine that the trial court's assessment of credibility should be given full faith on appeal. Consequently, the conviction stands.

Damages

The trial court had ordered appellant to pay the heirs of Domingo Guadamor an indemnity of P50,000.00, actual damages of P11,050.00 and "unearned income" of P360,000.00.

In line with current jurisprudence, we sustain the award of indemnity. This may be granted without need of proof other than the fact that a crime has been committed and that the accused was responsible therefor.[61]

In support of the claim for actual damages, the widow testified that she spent P300.00 for the jeep they hired in bringing the deceased to the Albay Provincial Hospital, P750.00 for hospital and medical expenses, and P10,000.00 for the services of Bicolandia Funeral Service and other expenses during the wake.[62] To justify an award of actual damages, it is necessary "to prove with a reasonable degree of certainty, premised upon competent proof and on the best evidence obtainable by the injured party, the actual amount of loss." [63] Of the expenses allegedly incurred, this Court can give credence only to those that are supported by receipts and appear to have been genuinely incurred in connection with the death, wake and burial of the victim. In the present case, the only receipt presented by the prosecution was for the payment made to Bicolandia Funeral Service in the amount of five thousand pesos (P5,000.00).[64] Although the receipt was only a photocopy, the defense counsel admitted its authenticity and the amount contained therein.[65]

In justifying the award of "unearned income" of P360,000.00, the trial court found that Domingo Guadamor, 45 years old at the time of his death, was earning a monthly salary of P2,000.00 at the Hacienda Turilla in Sta. Fe, Sorsogon and was expected to live for another fifteen years.

The foregoing award of "unearned income" is based on Article 2206 of the Civil Code which provides:

"Art. 2206. The amount of damages for death caused by a crime or quasi-delict shall be at least three thousand pesos, even though there may have been mitigating circumstances. In addition:

(1) The defendant shall be liable for the loss of the earning capacity of the deceased, and the indemnity shall be paid to the heirs of the latter; such indemnity shall in every case be assessed and awarded by the court, unless the deceased on account of permanent physical disability not caused by the defendant, had no earning capacity at the time of his death;

(2) If the deceased was obliged to give support according to the provisions of article 291, the recipient who is not an heir called to the decedent's inheritance by the law of testate or intestate succession, may demand support from the person causing the death, for a period not exceeding five years, the exact duration to be fixed by the

court;

(3) The spouses, legitimate and illegitimate descendants and ascendants of the deceased may demand moral damages for mental anguish by reason of the death of the deceased.” (Italics supplied)

We cannot sustain the trial court’s computation of the legal loss of earning capacity. In the first place, it computed the amount of the award based on the gross monthly salary of the deceased. This Court stresses, however, that living and other necessary expenses should be deducted from the total earnings of the deceased. In *Villa Rey Transit vs. Court of Appeals*,^[66] this Court held:

“In the determination of the losses or damages sustained by dependents and intestate heirs of the deceased, said damages consist not of the full amount of his earnings, but of the support they received or would have received from him had he not died in consequence of the negligence of defendant. In fixing the amount of that support, the necessary expenses of deceased of his own living should be deducted from his earnings. Thus, it has been consistently held that earning capacity, as an element of damages to one’s estate for his death by wrongful act is necessarily his net earning capacity, or his capacity to acquire money less than the necessary expense for his own living. Stated otherwise, the amount recoverable is not the loss of the entire earning, but rather the loss of that portion of the earnings which the beneficiary would have received. In other words, only net earnings, not gross earning, are to be considered, that is, the total of the earnings less expenses necessary in the creation of such earnings or income and less living and other incidental expenses.”^[67] (Italics supplied)

From the P2,000.00 gross monthly income of the deceased, this Court finds it reasonable to deduct living and other incidental expenses of P1,000.00.

Furthermore, the trial court failed to apply the formula for the computation of life expectancy adopted by the Court in *Villa Rey*^[68] and reiterated in *People vs. Teehankee, Jr.*^[69] as follows:

$\frac{2}{3} \times [80 - \text{age of victim at time of death}] \times \text{a reasonable portion of the net income which would have been received by the heirs as support.}$

As stated earlier, the victim was 45 years old at the time of his death, and that his net monthly income after deducting his living and other expenses was P1,000.00. Applying the above formula, we fix the award for loss of earning capacity of Domingo Guadamor at P280,000.00.

While the trial court did not award moral damages to the spouse of the deceased, we find it proper to do so pursuant to Article 2206 of the Civil Code.^[70] Belleza Favia Guadamor testified, *inter alia*, that “I am feeling so lonely, I sustained heartaches and mental anguish due to the death of my husband. In fact, I got sick after the death of my husband,”^[71] and similar testimony. Thus, we award her moral damages in the amount of twenty thousand pesos (P20,000.00).

WHEREFORE, the appeal is hereby DENIED and the assailed Decision convicting appellant, imposing the penalty of reclusion perpetua and awarding civil indemnity of fifty thousand pesos (P50,000.00) to the heirs of the deceased is AFFIRMED, with the following MODIFICATIONS:

1. Appellant is ordered to pay Belleza Favia Guadamor the amount of twenty thousand pesos (P20,000.00) as moral damages;
2. Reimbursement for loss of earning capacity is reduced to two hundred eighty thousand pesos (P280,000.00); and
3. The award of actual damages is reduced to five thousand pesos (P5,000.00).

SO ORDERED.

Narvasa, C.J., (Chairman), Davide, Jr., Melo, and Francisco, JJ., concur.

[1] Presided by Judge Eudarlo B. Valencia.

[2] Records, p. 15.

[3] The identity of “John Doe” was not disclosed before, during or after the trial; he remains at large,

[4] Records, p. 27.

[5] Rollo, pp. 31-32.

[6] Rollo, pp. 34-35.

[7] Sometimes spelled as “Mape” in the TSN.

[8] Rollo, pp. 21-23.

[9] Rollo, pp. 24-28.

[10] Signed by Attys. Al A. Castro, Bartolome P. Reus and Amelia C. Garchitorena.

[11] Appellant’s Brief, p.1; Rollo, p. 41.

[12] People vs. Ombrog, G.R. No. 104666, February 12, 1997, pp. 11-12; People vs. Cogonon, G.R. No. 94548, October 4, 1996, pp. 13-14; People vs. Gamiao, 240 SCRA 254, 260, January 19, 1995; People vs. Morin, 241 SCRA 709, 716, February 24, 1995.

[13] People vs. Morin, Id.; People vs. Cogonon, Id.

[14] Records, pp. 34-35.

[15] TSN, July 17, 1990, pp. 24-25.

[16] TSN, July 17, 1990, p. 9.

[17] See People vs. Bello, 237 SCRA 347, 352, October 4, 1994.

[18] People vs. Escalante, 238 SCRA 554, 563, December 1, 1994.

[19] TSN, March 6, 1990, pp. 37-41.

[20] TSN, March 6, 1990, pp. 13-14.

[21] Records, p. 3.

[22] People vs. Ferrer, 255 SCRA 19, 34, March 14, 1996; People vs. Fulinara, 247 SCRA 28, 42, August 3, 1995; People vs. Ariza, 237 SCRA 410, 417, October 7, 1994; People vs. Ponayo, 235 SCRA 226, 230, August 10, 1994; and People vs. Segwaben, 194 SCRA 239, 247, February 19, 1991.

[23] People vs. Panganiban, 241 SCRA 91, 99-100, February 6, 1995

[24] TSN, July 17, 1990, pp. 4-5.

[25] Ibid., p. 3.

[26] *Id.*, p. 6.

[27] *Id.*, p. 17.

[28] *Id.*, pp. 19-20.

[29] *Id.*, p. 21.

[30] *Id.*, pp. 5-7.

[31] *Id.*, p. 19.

[32] TSN, March 6, 1990, p. 19.

[33] *People vs. Panganiban*, *supra*; *People vs. Parica*, 243 SCRA 557, 568, April 21, 1995; *People vs. Morico*, 246 SCRA 214, 219, July 14, 1995.

[34] Rollo, p. 29.

[35] The trial court made a mistake here as the witness' correct name is Cesar Mapa.

[36] *Id.*, pp. 8-9.

[37] TSN, March 6, 1990, p. 67.

[38] *Ibid.*, pp. 65-66.

[39] *People vs. Esquilona*, 248 SCRA 139, 142, September 8, 1995.

[40] *People vs. Hernandez*, 205 SCRA 213, 221, January 21, 1992.

[41] *People vs. Hernandez*, *supra.*, pp. 220-221; *People vs. Israel*, 231 SCRA 155, 161-162, March 11, 1994; *People vs. Apa-ap, Jr.*, 235 SCRA 468, 473, August 17, 1994; *People vs. Pama*, 216 SCRA 385, 402-403, December 11, 1992.

[42] *People vs. Hernandez*, *Ibid.*; *People vs. Santos*, G.R. No. 94545, April 4, 1997, p. 18.

[43] *Id.*

[44] *Id.* and *People vs. Macalino*, 177 SCRA 185, 193, August 31, 1989.

[45] *People vs. Apa-ap, Jr.*, *supra*, p. 473.

[46] *Ibid.* and *People vs. Briosos*, 37 SCRA 336, 341, January 30, 1971.

[47] TSN, March 6, 1990, pp.17-19.

[48] TSN, March 6, 1990, pp. 65-66.

[49] TSN, July 17, 1990, pp. 8-9.

[50] *People vs. Montilla*, 211 SCRA 119, 127-128, July 3, 1992 and *People vs. Pama*, *supra*, p. 403.

[51] *Supra*, p. 168.

[52] *People vs. Peralta*, 237 SCRA 218, 224, September 28, 1994 and *People vs. Maguikay*, 237 SCRA 587, 600, October 14, 1994.

[53] *People vs. Morin*, 241 SCRA 709, 715, February 24, 1995; *People vs. Lopez*, 249 SCRA 610, 621-622,

October 30, 1995; and *People vs. Jose*, 250 SCRA 319, 322, November 24, 1995.

[54] TSN, November 7, 1990, pp. 24-25.

[55] TSN, November 29, 1990, p. 25.

[56] TSN, March 6, 1990, p. 17.

[57] TSN, November 7, 1990, pp. 27-30, and TSN, November 29, 1990, pp. 18-25.

[58] *People vs. Israel*, supra, p. 163; *People vs. Estrera*, 207 SCRA 703, 709, March 31, 1992; and *People vs. Montilla*, supra, p. 127.

[59] *People vs. Panganiban*, supra.

[60] *People vs. Loste*, 210 SCRA 614, 623, July 1, 1992; *People vs. Molina*, 213 SCRA 52, 69, August 28, 1992; *People vs. Serdan*, 213 SCRA 329, 343, September 2, 1992; *People vs. Cruz*, 213 SCRA 611, 620, September 4, 1992; and *People vs. Alcantara*, 206 SCRA 662, 667, February 28, 1992.

[61] *People vs. Ramirez*, G.R. No. 97920, January 20, 1997.

[62] TSN, July 17, 1990, pp. 8-11.

[63] *People vs. Rosario*, 246 SCRA 658, 671, July 18, 1995.

[64] Exhibit "C"; records, p. 72.

[65] TSN, July 17, 1990, pp. 10-11.

[66] 31 SCRA 513,517-518, February 18,1970.

[67] See also *People vs. Teehankee, Jr.*, 249 SCRA 54, 120-121, October 6, 1995; *People vs. Quilaton*, 205 SCRA 279,290, January 23,1992.

[68] Supra.

[69] Supra.

[70] Supra.

[71] TSN, July 17,1990, p. 14.

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