

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ELEUTERIO TAMPON, ACCUSED-APPELLANT.

G.R. No. 105583. July 05, 1996

Ponente: FRANCISCO, J.

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FRANCISCO, J.:

In an information dated October 26, 1990, appellant ELEUTERIO TAMPON was charged with the murder of ENTELLANO GONESTO committed as follows:

"That on or about the 1st day of September, 1990 at about 7:00 in the evening, more or less, at Barangay Laguna, Greenhills, Municipality of San Fernando, Province of Cebu, Philippines, x x x, the above-named accused, with deliberate intent and intent to kill, by means of treachery and evident premeditation, and taking advantage of nighttime, did then and there willfully, unlawfully and feloniously attack, assault and stab Entellano Gonesto with the use of a knife, thereby inflicting upon the latter fatal wounds on his breast which caused his death thereafter."[1]

When arraigned appellant pleaded not guilty, hence, trial ensued, after which, Branch 20 of the Regional Trial Court (RTC) of Cebu City rendered a decision convicting appellant of the crime charged and sentencing him to suffer the penalty of reclusion perpetua and to pay the amount of P50,000.00 as pecuniary liability to the victim's widow, Nenita Vda. de Gonesto.[2] Appellant seeks the reversal of the foregoing decision by this appeal, and assigns to the RTC the following errors:

"I -THE LOWER COURT ERRED IN CONVICTING THE APPELLANT OF MURDER.

"II -THE LOWER COURT ERRED IN GIVING CREDENCE THE PROSECUTION'S SOLE EYE-WITNESS TESTIMONY WHICH IS BELIED BY PHYSICAL FACTS AND MEDICAL EXPERT OPINION.

"III.-THE LOWER COURT ERRED IN REJECTING APPELLANT'S ASSERTION THAT HE ACTED IN SELF-DEFENSE."[3]

Whether or not the RTC committed the abovementioned errors can only be resolved by determining which of the two accounts of what happened on the fateful night of September 1,1990 - the prosecution's version or the defense's narration of the antecedent facts - should be given weight and credence. Thus, the issue here hinges mainly on the credibility of the prosecution vis a vis the defense witnesses.

The prosecution's story relies solely on Herman Tambacan's eyewitness testimony which is succinctly summarized by the RTC as follows:

"x x x on September 1,1990 at about 7:00 in the evening he (Herman Tambacan) was at his residence, more particularly at the door of his house at Green Hills, Laguna, San Fernando, Cebu; that on that occasion he saw Entellano Gonesto, the victim, passed (sic) by his house and later, he also saw Eleuterio Tampon who came out from (sic) the cotton tree and stabbed Entellano Gonesto; that the cotton tree is, more or less, 6 meters away from his house; x x x; that when the accused stabbed the victim the latter was hit on his left breast; that after

the victim was stabbed he ran away with the weapon stuck at the portion where he was hit; that he could not tell what kind of instrument hit the victim, whether it was a bolo, a dagger, a chisel, but he only saw that it was a sharp-bladed instrument; that said Entellano Gonesto was hit and ran away with the assailant chasing after him, x x x.

"x x x; that he was certain that there was only one (1) stab wound delivered to the victim x x x who was still able to run away for about 30 meters, more or less, from his (Tambacan's) house and that the victim fell not along the footpath but across the cornfield x x x; that after he (the victim) was hit and ran fast he saw the victim fell (sic) down because of his injury, with face to the ground; x x x; that he was able to see Eleuterio Tampon pulled (sic) the weapon from the breast of Entellano x x x.

"While he was holding the weapon, the accused went to him (Herman Tambacan), about 6 meters distance, more or less; x x x he was confronted by the accused whether he was taking side with the victim, and that he told the accused that he was a barangay tanod x x x; that after that the accused ran away towards the direction of his house; that after informing the barangay captain (Benigno Marilao) he (Tambacan) was brought to the municipal building of San Fernando, Cebu and an investigation was made and the barangay captain and the police went to arrest Eleuterio; x x x." [4]

On the other hand, appellant posits his own version of the facts in support of his allegation that he inflicted the fatal wound on Entellano Gonesto while acting in defense of himself. In his testimony in open court, he claimed the following: On September 1, 1990, at around 7:00 o'clock in the evening, he was on his way to the junction of Magtalisay, San Fernando, Cebu to meet his son who was coming home from work in the city. While on his way, at a distance of about 100 meters from the house of Herman Tambacan, he met Entellano who immediately lunged at him with a "flamingo" knife. He ran away but Entellano was able to grab his left shoulder dragging him down in the process. As his body was blocking the way, Entellano stumbled over him thereby losing grip of the "flamingo". Appellant was able to grab the "flamingo" and thrust it to the chest of Entellano. [5] He then fled the scene of the crime bringing with him the "flamingo" which he eventually threw away. [6]

Defense witness William Campugan who claimed to have witnessed the tragic incident on the night of September 1, 1990 corroborated the testimony of the appellant. He narrated that at around 7:00 o'clock in the evening of the said date, he and five (5) other persons were seated on a bench beside the road when a fight broke out between the appellant and Entellano some twenty (20) to thirty (30) meters from where they were seated. According to him, it was Entellano who started the fight as he was the one who pulled out a knife from his bag. He saw both the appellant and Entellano running in the direction of the farm. They wrestled with each other until the appellant stood up while Entellano was left lying on the ground. Appellant then proceeded home while witness, William Campugan and his companions went to the dance some 100 meters away to ask for assistance from the people there. [7]

After carefully weighing all the evidence before it, the RTC found the testimony of eyewitness Herman Tambacan to be "straightforward and spontaneous," [8] while it declared the story of appellant unworthy of credence for being riddled with material inconsistencies. In debunking appellant's claim of self-defense, the RTC pointed out the various inconsistencies between the statements he made in the affidavit which he executed on September 12, 1990 and his oral testimony in court. In his affidavit, the appellant stated:

"(3) That on September 1, 1990 after taking my supper at about 7:00 o'clock in the evening, more or less, I was to meet my son who is working in Cebu City and returns home every Saturday evening only.

"(4) That while I was walking towards the national road with the night so dark, I met a certain person and I paid my respect, but he did not say a word and at the same time he thrust a sharp-bladed weapon and I evaded.

"(5) That we wrestled and thanks that I was able to snatch his weapon then I stabbed him, and it was only then

that I realized that he was Entellano Gonesto who is a brother of my wife. He was already dead when I retreated." [9]

But appellant's story of what happened on the said night as recounted by him in open court differed materially in several respects. As correctly observed by the trial court, while the appellant claimed in his affidavit that the "night was so dark" that he was unable to recognize Entellano until he had already stabbed the latter and left him for dead, he categorically declared in open court that while on his way to meet his son, he encountered Entellano who was brandishing a "flamingo". [10] Appellant's allegation in his affidavit is immediately belied by the fact that the PAG-ASA report referred to by the RTC indicated that the moon was 84% illuminated on the said night. As the moon was bright on that night, appellant obviously lied when he claimed that he could not recognize his assailant at the onset. Further, in his affidavit, the appellant was not able to identify the sharp-bladed weapon allegedly carried by Entellano but in his oral testimony, he stated without prodding and hesitation that it was a "flamingo." Finally and more significantly, whereas during the direct examination of appellant he recounted that Entellano immediately lunged at him with the "flamingo", chased him after he was able to evade the initial attack, stumbled over him and lost grip of the "flamingo," no mention of any such "chasing" nor "stumbling" is made in appellant's affidavit.

Needless to say, these palpable contradictions are fatal in view of the fact that they go into the very essence of appellant's claim of self-defense. Hence, applicable to the case at bench is our pronouncement that:

"The Court is aware of the general rule that if there is an inconsistency between the affidavit and the testimony of a witness, the latter should be given more weight since affidavits being taken ex parte, are usually incomplete and inaccurate. But the Court likewise subscribes to the doctrine that where the discrepancies are irreconcilable and unexplained and they dwell on material points, such inconsistencies necessarily discredit the veracity of the witness' claim. [11] *[Italics supplied.]*

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William Campugan's testimony does more damage than good to the case of the defense. First, he claimed that the moon was not bright on the night of September 1, 1990 [12], yet he proceeded to narrate in detail the fight between Entellano and appellant which took place some 20 to 30 meters away. He unhesitatingly pinpointed Entellano as the assailant whom he saw rushing at the appellant with a knife, while appellant himself claimed that as the "night was so dark" he could not immediately identify the assailant even up close. Furthermore, considering that William Campugan was the nephew of appellant, it is inconceivable that he and his five (5) companions would merely watch the attack against his uncle and not even attempt to aid the latter. His testimony is clearly contrary to human experience and is thus, unbelievable, bespeaking only of his bias as a relative of the appellant.

In view of the foregoing, this Court is left with no choice but to concur with the RTC in disregarding the testimony of appellant and witness William Campugan while attributing full faith and credence to the testimony of eyewitness Herman Tambacan. This case affords no departure from the established rule in criminal jurisprudence that when the issue is one of credibility of witnesses, appellate courts will generally not disturb the findings of the trial court [13] This rule finds basis in the fact that it is the trial court which has the opportunity to accurately weigh the testimony of the witnesses in the light of the latter's demeanor, conduct and attitude at the trial. [14]

In the face of Herman Tambacan's eyewitness account, appellant miserably failed to prove self-defense. It is true that the cardinal principle in criminal law is that the burden of proving the guilt of the accused lies squarely on the shoulders of the prosecution. Conviction must rest, not on the weakness of the defense but on the strength of the prosecution. [15] However, in cases where the accused admits committing the crime but invokes self-defense to

escape liability. the rule is reversed and the onus probandi to prove the elements of his defense is on him.[16] He must prove clearly and convincingly the following: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself.[17] The initial crucial point of inquiry is whether there was unlawful aggression on the part of the victim for absent this essential element, no claim of self-defense can be successfully interposed. If there is no unlawful aggression, there is nothing to prevent or repel and the second requisite of self-defense would have no basis.[18] Unfortunately, what is immediately apparent from the testimony of Herman Tambacan is the fact that the unlawful aggression was initiated not by the victim, Entellano but by the appellant himself. As the absence of the first element suffices to override appellant's claim of self-defense, further discussion of the other two elements is no longer necessary.

Even granting arguendo that the initial act of aggression came from Entellano as alleged by the appellant, we still cannot sustain his plea of self-defense. As testified by the appellant, he grappled with Entellano for the knife and was able to take possession of the same. At this point, it was no longer necessary for appellant to stab Entellano in order to protect himself. His subsequent act of stabbing the now unarmed Entellano belies his claim that he acted in self-preservation, and indicates nothing more than the perverse desire to kill. Thus, this Court held in the case of *People v. So*[19] that "[a]fter appellant successfully wrested the knife from Tuquero, the unlawful aggression had ceased. After the unlawful aggression had ceased, the one making the defense has no more right to kill or even wound the former aggressor." [20]

Furthermore, appellant's act of throwing away the knife and his failure to report the incident to the police authorities are inconsistent with a clean conscience and signify instead his culpability of the crime charged. In the case of *People vs. Aliviado*, [21] this Court said that, "[t]he appellant's claim of self-defense is further negated by his subsequent conduct, viz., (a) the throwing away of the firearm he used in shooting the victims and his failure to report the incident to the police authorities and to lead them, after he was arrested, to the place where he threw the firearm; x x x." [22]

As a last ditch effort to exculpate himself from criminal liability, appellant invokes the testimony of the medical expert, Dr. Jesus Cerna to further assail the credibility of the prosecution's story. Dr. Cerna testified as follows:

"FISCAL FERNAN

Q There is a marking here with annotation "stab wound." Please tell the court the exact location of this stab wound reflected in the sketch.

A The stab wound as indicated in the sketch is situated on the left side of the chest at the level of the 5th intercostal space or that space between the 4th or 5th or 6th rib.

FISCAL FERNAN

Q In Exhibit "C-2" the bracketed portion, there is phrase which states: "penetrating left thoracic cavity." Please tell this court what does this mean, "left thoracic cavity?"

A Left thoracic cavity is that cavity of the chest which encloses the heart, the lungs and pulmonary vessels.

Q Dr. Cerna, when you were talking of heart, the heart was damaged by the stab wound?

ATTY. ENRIQUEZ

It is already testified that it was hit.

FISCAL FERNAN

Q Just to make it clear.

A Yes, it was hit.

Q For the same reason that the lung was likewise hit?

A Yes, sir.

Q Now, please tell the court in this particular case of the victim how long do you think did he die (sic) upon being hit (sic) this vital organ?

A Well, as a general rule, sir, injuries or wounds involving vital organs of the body like the heart, the lungs, the big blood vessels, the liver and the stomach, are immediately fatal, although there are recorded cases that sometimes it (sic) will not prevent the victim from performing volitional movement for a while.

COURT

Q What do you mean by volitional movement?

A Like for example walking or movements of the body, Your Honor.

Q And it also depend (sic) upon the physique or build of the person?

A Yes, Your Honor. It will depend upon the resistance of the victim?

Q When you viewed the cadaver was it in good physique?

A He was approximately 120 lbs but somewhat tall. He was about 172 cms in length and about five six in height.

Q He was of normal build?

A Normal build.

COURT

Proceed.

FISCAL FERNAN

Q With this kind of injuries (sic) sustained by the victim, a few seconds thereafter, could you tell the court if he can still talk, Doctor?

A Well, again wounds involving vital organs of the body like the heart, the lungs and the liver, as I said, although as a general rule they are fatal immediately after the incident, but there are cases in the past recorded that sometimes they could not prevent the victim from performing volitional movement like for example walking.

COURT

Q And you will also agree with the court that it will also depend upon the will-power of the victim himself and what kind of physique he has?

A It depends upon the organs involve (sic), Your Honor. For example, if the organs or the apparatus (sic) for speech is involved, naturally it will prevent the victim from speaking or talking. For example if the voice, the trachea is involved, it will prevent him from talking. But sometimes, although the trachea is not injured if there will be the presence of foreign bodies that will be lodged in the trachea like for example blood clots coming from the lungs, of course this will incapacitate the victim from talking.

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ATTY. ENRIQUEZ

Q Now, you described the wound which is very serious, perforating the heart and the liver and other organs. There is testimony that the weapon used after being embedded in the body, left chest of the victim was not pulled out and the victim was still able to run for about 30 to 50 meters from the place where he was stabbed. Is that possible, Doctor, considering the nature of his wound?

COURT

In other words, from the place where he was stabbed the weapon embedded (sic) after the victim was killed.

ATTY. ENRIQUEZ

Q From where he fell which is about 25 meters according to the prosecution, is that possible that he could still run?

A Well, actually, Your Honor, although as I said before, wounds involving vital organs of the body are immediately fatal, but it will not be impossible sometimes for a person to run for a short distance after he sustained the injury. But for me, 25-30 meters, considering that the auricle was involved, the pulmonary vessel was also involved, I think that is far, quite very far. That distance is too far for a victim sustaining that kind of wound to run.

Q As a matter of fact, the maximum distance which he could have run from the place where he received that wound to the place where he fell is more/less 3 to 5 meters distance. Is it not?

A Well, I would not say maximum but that distance of 25 meters, considering the wound, it is quite far."[23]

Appellant contends that the medical expert opinion is more consistent with the facts as alleged by the defense. He asseverates that the nature of the wound sustained by Entellano renders impossible the testimony of Herman Tambacan that after sustaining such injury, Entellano was still able to run a distance of some thirty (30) meters before finally falling. But even the medical expert admits that, although highly improbable, such an occurrence is not totally impossible. Medical opinion has established that although as a general rule, penetrating wound of the heart is considered to be instantaneously fatal, experience shows that the victim may still be capable of locomotion. Rupture of the organs is not always followed by death. The victim may retain the capacity to move or speak for sometime.[24] In one case, a man who received a wound half an inch long in the intrapericardial part of the superior vena cava of the heart was still able to make his way through a fence and walk thirty (30) yards before collapsing.[25] Similarly, a man who was stabbed through the left ventricle of his heart was able to run 18 yards after his assailant and lived for six (6) hours afterward.[26]

It is also argued that the prosecution's story is further belied by the physical evidence, more particularly, the absence of traces of blood at the place where Entellano was allegedly stabbed. Appellant cites the following pertinent testimony of Dr. Jesus Cerna:

"ATTY. ENRIQUEZ

Q Now, you said that the cause of death was hemorrhage or (sic) secondary to stab wound. Considering that the heart was penetrated including the lungs and vital organs of the body, naturally doctor the moment these organs were pierced an amount of big volume of blood will ooze out from his body. Is it not?

A Yes, sir, that is true. Especially that in the injury or wound in the heart, part of the heart that was penetrated was the auricle. And considering that the auricle has a thinner wall than the ventricle, so the loss of blood will be more massive because the auricle having a thin wall will easily permit the flow of the blood outside as

compared with ventricle whose wall is thick.

Q Thus, naturally, that blood oozing from the body of the deceased will have to flow to the ground so that there will be traces of blood right on the spot where he was stabbed. Is it not?

A Yes. Especially that there was a communication between the heart and the outside when the stab wound exist, (sic) it follows that there will be blood coming out from the stab wound which fall to the ground.

Q In other words to determine the place or location where the victim was stabbed, we can determine by looking at the ground if there are traces of blood thereon?

A Yes, sir.

Q If the place allegedly where the victim was stabbed had no traces of blood, that must be an indication that he was not stabbed there. Is it not?

A Well, that is true, sir. As a matter of fact, one of the legal importance of stabbing incident is to determine the place where the crime was committed, because if the victim was killed on the very spot where his body is found, there (sic) will be full of blood around his body. As a matter of fact, that is one way of determining whether the victim was salvaged in their place and was just placed or dumped in another place.

Q Considering the nature of wound and the vital organs involved as described by you doctor, if the victim after being stabbed will run towards a distance about 20 to 30 feet, (sic) naturally, you can see traces of blood towards that direction. Is it not?

A Yes, sir, because immediately after the infliction of the stab wound, blood will ooze right away from the blood vessels. And it will ooze from the stab wound easily especially that the length of the stab wound is quite big, between five (5) cms.

ATTY. ENRIQUEZ

Q So, in the absence of any blood stains on the ground which would show that the victim ran from one place to another, that will negate the theory that the victim after being hit was still able to walk or run away for 20 to 30 meters, but was really hit and stabbed on the place where there (sic) was full of blood on the ground. Is it not?

A Pardon, sir?

COURT

Q The victim was able to run or walk but he was killed in (sic) the spot.

ATTY. ENRIQUEZ

That he was killed really in (sic) the spot not elsewhere because of the absence of blood in any other place?

A Well, the place where the body is found and within (sic) the body there was blood, most probably that is the place where he was stabbed.

COURT

Q When a person is stabbed and then he was able to ran (sic) away and was killed in some other place, in the absence of blood where he was stabbed and the presence of blood where he was killed?

A Well, Your Honor, it is, shall we say, common sense that when a person was stabbed in the very place where his body is found, you can expect the place to be full of blood.

Q But this is also a way of finding out where he was stabbed, that the place where he was stabbed there are (sic) also blood?

A Well, because immediately after the infliction of the injury blood will come out from that wound, naturally there will be some or little amount of blood that will be found, especially Your Honor that the organs inflicted were the heart and the lungs.

Q But in a case where from the place where he was stabbed there was blood and the place where he was killed there was blood, what could you say about it?

A If the place where the alleged crime was committed there was blood and also the place where his body was found there was blood, so the presumption is that, the victim was able to walk from the place where he was stabbed to the place where he fell.

Q Could there be no possibility that in between the place there is no blood but in the place where he was stabbed there was blood and the place where he was killed there was blood?

A Now, I think in my honest opinion, Your Honor, it is very unlikely that in between the place where the crime was committed to the place where his body was found you cannot trace blood because bleeding there is profuse."[27]

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This Court believes that the prosecution is correct in pointing out the logical explanation for the absence of traces of blood at the place where Entellano was stabbed and on the path leading to the cornfield where he finally fell. Thus:

"The physical findings are easily explained by the fact that when Entellano ran away after having been stabbed by Tampon, the victim ran with the bladed weapon still lodged at his breast, thereby averting any blood flow, despite the deep penetration of the stabbing. It was only when the victim fell about thirty (30) meters away, that Tampon pulled out the bladed weapon. And the moment that the bladed weapon was removed, blood would naturally ooze out from the stab wound, as is the common observation and as it did happen in this case. This explains how the victim was able to run for a distance of thirty (30) meters and why there were no blood stains found at the place of stabbing whereas a lot of bloodstains were found only at the spot where the victim fell-because this was where Tampon pulled out the bladed weapon from the victim's breast."[28]

Finally, appellant argues that even assuming that it was he who assaulted Entellano, the RTC erred in appreciating the qualifying circumstance of treachery because the attack was frontal,[29] as testified by prosecution witness Herman Tambacan. This Court is not persuaded. "The essence of treachery is the sudden and unexpected attack by an aggressor on an unsuspecting victim[30] depriving the latter of any real chance to defend himself and thereby ensuring without risk its commission."[31] Appellant, coming out from behind the cotton tree, instantly and without warning attacked the unarmed and unwary Entellano with a knife. The latter was clearly taken by surprise and left without any means of defending himself. Even a frontal attack can be treacherous when it is sudden and unexpected and the victim is unarmed[32], as in this case.

However, as correctly averred by the defense, the stabbing of Entellano was not attended by nocturnity nor evident premeditation. As regards the aggravating circumstance of nocturnity, no proof was offered that appellant deliberately sought the cover of darkness for the more successful consummation of his plans, or to prevent his being recognized.[33] As a matter of fact, as found by the RTC, the crime was committed on a night sufficiently illuminated by the light of the moon. Likewise, there is no evidence of the requisite elements of evident premeditation, to wit: (1) a previous decision by the appellant to commit the crime; (2) an overt act/acts manifestly indicating that the appellant clung to his determination; and (3) a lapse of time between the decision to commit the crime and its actual execution sufficient to allow the appellant to reflect upon the consequences of his acts.[34] "Time and again, we have held that evident premeditation cannot be appreciated x x x in the absence of

direct evidence of the planning and preparation to kill when the plan was conceived." [35] In the case at bench, the prosecution failed to prove that appellant had planned and prepared to kill Entellano previous to that fatal stabbing. Indeed, the records are bereft of any indication of such a plot. [36]

WHEREFORE, the assailed decision of the RTC convicting appellant of the crime of murder and sentencing him to reclusion perpetua and to pay the amount of Fifty Thousand Pesos (P50,000) as pecuniary liability to the widow of the victim, Nenita Vda. de Gonesto is hereby AFFIRMED.

SO ORDERED.

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

[1] Information dated October 26, 1990, Rollo, p. 6.

[2] Decision dated January 15, 1992, p. 26; Rollo, p. 42.

[3] Appellant's Brief, p. 2; Rollo, p. 61a.

[4] Decision, *supra* note 2, pp. 1-3; Rollo, pp. 17-19.

[5] TSN, Eleuterio Tampon, Hearing on July 22, 1991, pp. 5-7.

[6] *Id.*, p. 9.

[7] TSN, William Campugan, Hearing on September 13, 1991, pp. 3-5.

[8] Decision, *supra* note 2, p. 25; Rollo, p. 41.

[9] Affidavit of Eleuterio Tampon dated September 12, 1990; Records, p. 20.

[10] TSN, Eleuterio Tampon, *supra* note 5, p. 5.

[11] *People vs. Aniscal*, 228 SCRA 101 p. 112; *People vs. Tulagan*, 143 SCRA 107; *People vs. Casim*, 213 SCRA 390.

[12] TSN, William Campugan, *supra* note 7, p. 3.

[13] *People vs. So*, G.R. No. 104664, August 28, 1995; *People vs. Laspona*, G.R. No. 108084, August 14, 1995; *People vs. Bondoc*, 232 SCRA 478; *People vs. Nimo*, 227 SCRA 69; *People vs. Dominguez*, 217 SCRA 170; *People vs. Caraig*, 202 SCRA 357.

[14] *People vs. So*, *id.*; *People vs. Bondoc*, *id.*; *People vs. Ocampo*, 226 SCRA 1; *People vs. Juma*, 220 SCRA 432; *People vs. Banez*, 214 SCRA 109.

[15] *People vs. Ganzagan*, G.R. No. 113793, August 11, 1995, p. 17; *People vs. Capilitan*, 182 SCRA 313; *People vs. Bustarde*, 182 SCRA 554.

[16] *People vs. Ganzagan*, *id.*; *People vs. Ronquillo*, G.R. No. 96125, August 31, 1995, *People vs. Aliviado*, G.R. Nos. 113782-84, August 14, 1995.

[17] Article 11(1) of the Revised Penal Code.

[18] *People vs. So*, *supra* note 13, p. 12; *People vs. Morato*, 224 SCRA 361; *Ortega vs. Sandiganbayan*, 170 SCRA 361.

[19] *Supra* note 13.

- [20] Id. at p. 13; *People vs. Ganzagan*, supra note 15, p. 18; *People vs. Jotoy*, 222 SCRA 801; *People vs. Gomez*, 235 SCRA 444.
- [21] Supra note 16.
- [22] Id., at p.10.
- [23] TSN, Dr. Jesus Cerna, Hearing on April 16, 1991, pp. 4-9.
- [24] Legal Medicine by Pedro P. Solis, 1987 edition, p. 296.
- [25] Black's Medical Series: Forensic Medicine by Douglas Kerr, 5th edition, 1954, p. 126.
- [26] Id. at p. 127.
- [27] TSN, supra note 23, pp. 7-8.
- [28] Appellee's Brief, pp. 17-18; Rollo, pp. 108-109.
- [29] TSN, Herman Tambacan, March 5, 1991, pp. 5-6.
- [30] *People vs. Ronquillo*, supra note 16, p.8; *People vs. Abapo*, 239 SCRA 469.
- [31] *People vs. Ronquillo*, id.; *People vs. Vinas*, G.R. No. 112070-71, 29 June 1995; *People vs. Lualhati*, 234 SCRA 325.
- [32] *People vs. Ronquillo*, id.
- [33] *U.S. vs. Billedo*, 32 Phil. 574; *People vs. Matbagon*, 60 Phil. 887; *People vs. Salvador*, 224 SCRA 819; *People vs. Rodriguez*, 193 SCRA 231.
- [34] *People vs. Ganzagan*, supra note 15, p. 21.
- [35] Id. *People vs. Salvador*, supra note 33; *People vs. Wenceslao*, 212 SCRA 560.
- [36] *People vs. Ganzagan*, id. at pp. 21-22.

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