

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. HERNANDO DALABAJAN, DOMINADOR DALABAJAN AND FERNANDO DALABAJAN, DEFENDANTS AND APPELLANTS.

G.R. No. 105668. October 16, 1997

Ponente: HERMOSISIMA, JR., J.

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HERMOSISIMA, JR., J.:

This is an appeal interpose by Hernando, Dominador, and Fernando, all surnamed Dalabajan.

On May 21, 1986, an information^[1] accusing Hernando Dalabajan, Dominador Dalabajan, Fernando Dalabajan, Napoleon dela Torre, Charlie Paduga and Megdonio Sabinet of the crime of murder was filed before the Regional Trial Court of Palawan and Puerto Princesa City, stating:

“That on or about the 1st day of January 1986, at Barangay Cayapas, Municipality of Dumarán, Province of Palawan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another, with intent to kill, with evident premeditation and treachery, and taking advantage of superior strength, did then and there wilfully, unlawfully, and feloniously attack, assault and stab with a bladed weapon, strike with a banca paddle and piece of wood one Amado Zabalo Jr., hitting him various vital parts of his body and inflicting upon him injuries which were the direct and immediate cause of his instantaneous death.

CONTRARY TO LAW and committed with aggravating circumstances of treachery, evident premeditation and taking advantage of superior strength.”

Upon arraignment on separate dates, the aforesaid accused, duly assisted by counsel, voluntarily entered separate pleas of “not guilty” to the offense charged in the information.

In the course of trial, the charges against Megdonio Sabinet, Napoleon dela Torre and Charlie Paduga were dismissed for insufficiency of evidence upon recommendation of the provincial prosecutor.

The facts of the case, as found by the trial court, are as follows:

Sometime on January 1, 1986 at around 1:00 o'clock in the morning and while the people of Barangay Cayapas, Dumarán, Palawan were celebrating the New Year's eve with a dance at their Barangay Hall located near the seashore, Melencio dela Cruz saw Hernando Dalabajan kick and stab one Amado Zabalo, Jr. as the latter was coming out of the said Barangay Hall. Amado was kicked on his right thigh and stabbed on his right abdomen. Other residents, mostly relatives of the Dalabajans, then joined Hernando in mauling Amado. Amado tried to escape by running towards the nearby seashore and wading into the water. Hernando Dalabajan, together with co-accused Dominador and Fernando Dalabajan and the rest of their relatives, pursued Amado. Upon the reaching the seashore only the three accused-appellants took a banca and chased the latter. The rest of their relatives stayed by the seashore. When the accused-appellants were finally able to overtake Amado about 30-40 meters away from the shore, they helped one another in hitting him with bladed instruments, wooden clubs and a boat paddle on different parts of his body. Thereafter, the three accused left

the already unmoving body of the victim which was face down in the water and proceeded back towards the seashore. At this juncture, Melencio dela Cruz, who was hiding behind the bushes by the seashore from where he watched the incident happen, then went to the house of the victim and reported the incident to the latter's relatives.

Melencio dela Cruz also testified that he was able to witness the incident at the sea thirty meters from his hiding place and saw it clearly since it was full moon on that fateful night. There were many people who went to the shore and witnessed the incident in question, but most of these people belonged to the Dalabajan clan. This was the reason why he hid in the bushes, for fear of being discovered by any member of the Dalabajan clan, a clan reputed in their community for their clannishness. He also feared for his life because most of the Barangay Tanods were related to the Dalabajans. He was able to follow the whole incident from the time Amado Zabalo, Jr. was attacked in front of the Barangay Hall to the time the latter was chased and killed at sea.[2]

Amado Zabalo, Sr., the father of the victim, testified that, shortly after the incident, he was informed about it by some residents of their barangay. He immediately proceeded to the place of the incident and saw the already dead body of his son. The cadaver of the victim was then brought to the Barangay Hall. When the policemen arrived at 10:00 o'clock that night, they conducted an investigation and made a sketch showing the wounds sustained by the victim. No autopsy was conducted on the victim's cadaver since there was no doctor available.[3] The prosecution however submitted a death certificate in this connection signed by the victim's father and the Local Civil Registrar.

Lolito Carceller, a member of the police force of Dumarán, Palawan testified that he was a member of the police team that investigated the incident in question. He was also the one who prepared the sketch of the victim's body showing the stab wounds and injuries sustained by the victim. Upon his examination, he saw that the cadaver of Amado Zabalo, Jr. bore the following wounds, to wit: one on the upper portion of the head, a stab wound on the left eye, a stab wound on the left ear, a stab wound on the left portion of the mouth, a stab wound on the right cheek and a stab wound on the stomach. In addition, the two fingers on the left hand of the victim were dislocated.[4]

On the other hand, one of the herein accused-appellants, Hernando Dalabajan, gave a different version of the incident. He contends that at around midnight on December 31, 1985, he was at the barangay hall of Bgy. Cayapas, Dumarán, Palawan. There were many people then at the said hall celebrating the New Year's eve as there was a dance to be held therein. Amado Zabalo, Jr., who was drunk at the time, went inside the Barangay Hall and began to look for a dance partner. Hernando accosted Amado and told him not to start dancing since the ladies were not yet in the dancing hall. Without saying a word, Amado left. After a while, the dance started and Hernando joined the other residents in dancing. Not long after, he went downstairs to answer the call of nature. From out of nowhere Amado suddenly appeared and hacked him with a bolo hitting him on his right elbow. Hernando ran away but Amado chased him. When Hernando stumbled to the ground Amado hacked him again hitting him this time at the left portion of his head. At this juncture, Hernando was able to get hold of a piece of wood with which he clubbed Amado. Thereafter, the people around ganged up on the latter as Hernando ran back to the Barangay Hall to seek the help of their Barangay Captain. He however lost consciousness upon reaching the Barangay Hall because of loss of blood which was oozing from his head. When he learned of Amado Zabalo, Jr.'s death the next day, he felt responsible for the victim's death and, thus, he went to the police and voluntarily surrendered, saying that he had clubbed the victim the night before.

Hernando Dalabajan further testified that he never saw prosecution witness Melencio dela Cruz at any time during that fateful night.[5]

Barangay Tanod Dominador Dalabajan, testified that he was also at the said Barangay Hall together with five other Barangay Tanods in the evening of December 31, 1985. They were requested by their Barangay Captain

Eulogio Sabinet, to maintain peace and order there in view of the dance to be held as part of the New Year's eve celebration. The said dance started at around 12:00 midnight. It was only the following day that he learned of Amado's death in the sea. He denies any participation in the killing of the deceased.[6]

For his part, Fernando Dalabajan did not even present any evidence, nor did he testify in order to controvert the prosecution's assertion linking him to the killing.

On February 26, 1990, after the case had been submitted for decision but prior to the promulgation thereof by the trial court, Amado Zabalo, Sr., the victim's father, executed an Affidavit of Desistance, which stated:

"SINUMPAANG SALAYSAY SA PAG-UURONG NG DEMANDA

AKO, si Amado Zabalo, Sr., nasa hustong gulang, may asawa at naninirahan sa Barangay Cayapas, Dumarán, Palawan, pagkatapos manumpa alinsunod sa batas, ay nagsasaad ng sumusunod:

1. Na ako ang ama ni Amado Zabalo, Jr. na namatay sa Cayapas, Dumarán, noong ika-1 ng Inero, 1986;
2. Na dahil sa pagkamatay ng aking anak, ako ay dumulog ng hablang 'murder' sa hukuman laban kina Dominador Dalabajan, Hernando Dalabajan at Fernando Dalabajan, at ang nasabing habla ay kasalukuyang nililitis sa sangay bilang 50 ng RTC-Palawan at may numerong criminal case No. 6315;
3. Na nitong mga huling araw pagkatapos kong magsagawa ng sariling pagsisiyasat ay napag-alaman ko sa aking boung kasiyahan na ang mag-amang si Dominador at Fernando Dalabajan ay wala palang mga kasalanan at anumang kaugnayan sa pagkamatay ng anak kong si Amado Zabalo Jr., at si Hernando Dalabajan naman ay napilitang magtanggol na lamang ng kanyang sarili sapagkat siya ay pinagtulungan nina Amado Zabalo Jr., at ng kanyang mga kasamahan;
4. Na hindi na ako interesado pang ipagpatuloy ang demanda ko laban sa nasabing mag-aama kaya't iniuurong ko na ang nasabing demanda laban sa kanila;
5. Na aking isigawa ang sinumpaang salaysay na ito ng kusang loob at buong laya, at ako'y hindi tinakot at inalok ng anumang pabuya o pangako at ginawa ko ang salaysay na ito upang patutuhan ang lahat ng aking mga isinasaad sa itaas.

KUSANG loob kong nilagdaan ang salaysay na ito nitong ika-26 ng Pebrero, 1990, dito sa lungsod ng Puerto Princesa.

Sgd.

AMADO ZABALO SR.

May-Salaysay"

On July 31, 1990, Melencio Dela Cruz, the sole eyewitness for the prosecution, executed an affidavit[7] recanting his testimony and instead stating that he did not witness the incident, viz.:

"AFFIDAVIT OF RECANTATION

I, MELENCIO DE LA CRUZ, Filipino, of legal age, married, and residing at Calero, Puerto Princesa City, under oath allege:

1. That I was presented in court as one of prosecution witnesses in Criminal Case No. 6315 entitled "People of the Philippines versus HERNANDO DALABAJAN et al."- for "Murder" now pending in Branch 50 of the Regional

Trial Court of Palawan and Puerto Princesa City.

2. That the truth of the matter is that I arrived at the scene of the incident only after AMADO ZABALO, JR., the victim, was brought to the shore and already dead. Hence, I was not able to witness the actual happenings which led to his death.

3. That there being no witness at the time the investigation was being conducted by the police concerning the death of AMADO ZABALO, JR., I was prevailed upon by the victim's father, AMADO ZABALO, SR., to testify for the prosecution and when I refused to cooperate he threatened to kill me. Thus, I was forced to sign an affidavit to attest that I saw the actual killing of AMADO ZABALO, JR., by the accused DOMINADOR DALABAJAN while accused MEGDONIO SABINET, CHARLIE PADUGA and NAPOLEON DELA TORRE were in the shore holding pieces of wood and waiting for AMADO ZABALO, JR. to come ashore so that they could block him.

4. That I am recanting my aforesaid affidavit as well as my testimonies in court because I am being bothered by my conscience for having testified against the accused without witnessing the whole incident.

FURTHER AFFIANT SAYETH NAUGHT.

Sgd.,

MELENCIO DELA CRUZ

Affiant"

In addition, the accused-appellants also submitted, along with their Appellant's Brief, a copy of a sinumpaang Salaysay executed by one Manuela Gabinete-Dacuan, a Barangay Kagawad, on August 3, 1991, wherein she stated that everything Melencio dela Cruz said during his testimony is false since the latter was not present at the crime scene at the time of the incident. However, Gabinete-Dacuan was never presented as a witness for the defense during the trial proper. These three documents were presented to the trial court as annexes in an Urgent Motion for Release on Bail[8] filed by the Dalabajans only after the promulgation of the decision convicting them.

The trial court did not find the accused-appellants' defense plausible and accordingly found them guilty beyond reasonable doubt of murdering Amado Zabalo, Jr. It thus stated in the dispositive portion of its Decision:[9]

"WHEREFORE, and in view of the foregoing consideration, judgment is hereby rendered finding the 3 accused in the above-entitled case guilty beyond reasonable doubt of the crime of murder as the same is defined and penalized of reclusion perpetua as well as to pay the costs. The 3 accused furthermore are hereby ordered jointly and solidarily to indemnify the heirs of the deceased the sum of P50,000.00 as and for the death of the deceased. They are furthermore ordered to indemnify jointly and severally the heirs of the deceased the sum of P1,000.00 and for actual damages.

SO ORDERED."

The accused-appellants are now before us on appeal with the following assignment of errors:

I

THE TRIAL COURT ERRED REVERSIBLY IN NOT ACCORDING ACCUSED THEIR CONSTITUTIONAL RIGHT TO BE PRESUMED INNOCENT AND TO AN IMPARTIAL TRIBUNAL.

II

THE TRIAL COURT ERRED REVERSIBLY IN ACCORDING WEIGHT TO THE UNTRUSTWORTHY AND IN FACT FABRICATED TESTIMONY OF THE SOLE SUPPOSED EYEWITNESS FOR THE PROSECUTION.

III

THE TRIAL COURT ERRED REVERSIBLY IN CONVICTING ACCUSED-APPELLANTS.

The accused-appellants, in denying culpability for the death of Amado Zabalo, Jr., insists that the latter was killed as a result of a tumultuous affray. They further insist that the testimony of the sole eyewitness, Melencio dela Cruz, be disregarded for being manifestly fabricated, more so now that the latter has executed an affidavit of desistance.

We find the appeal unmeritorious.

A recantation does not necessarily cancel an earlier declaration. Like any other testimony, it is subject to the test of credibility based on the relevant circumstances and especially the demeanor of the witness on the stand. Moreover, it should be received with caution as otherwise it could “make solemn trial a mockery and place the investigation of truth at the mercy of unscrupulous witnesses.”[10] In the case at bar, Dela Cruz’s recantation came only after a lapse of almost four (4) years from the date of his last testimony in open court. The case was submitted for decision before the trial court as early as January 12, 1990. However, promulgation of judgment had to be reset a number of times since the accused-appellants successively failed to appear on the dates set. It was only on July 26, 1991 that the accused-appellants finally appeared and the decision was promulgated. Thereafter, it was only on August 6, 1991, upon filing of an Urgent Motion for Release on Bail, that accused-appellants presented the Affidavit of Recantation executed by Dela Cruz.

It is highly doubtful that the eyewitness Dela Cruz, after through the trouble of being sworn in, testifying in open court, and being subjected to a rigid cross-examination by the defense counsel, wherein he unhesitatingly pointed to the accused-appellants as the perpetrators of the crime, would, after four years, suddenly turn around and reverse himself. We have previously held that mere retraction by a prosecution witness does not necessarily vitiate the original testimony if credible.[11] The Court looks with disfavor upon retractions of testimonies previously given in court. The rationale for the rule is obvious: Affidavits of retraction can easily be secured from witnesses, usually through intimidation or for a monetary consideration. Recanted testimony is exceedingly unreliable. There is always the probability that it will later be repudiated.[12]

A testimony solemnly given in court should not be set aside lightly, least of all by a mere affidavit executed after the lapse of considerable time. In the case at bar, although the Affidavit of Recantation was executed almost a year prior to the promulgation of the decision, the accused-appellants was it fit to inform the lower court of its existence only after the said promulgation, by attaching it as an annex in their Urgent Motion for Release on Bail filed on August 6, 1991.[13] Moreover, the promulgation of the decision was delayed and reset a number of times due to the failure of the accused-appellants to appear as scheduled. Thus, it is clear that the retraction is an afterthought and should not be given probative value.

The accused-appellants, in praying that the case at bench be remanded to the lower court for new trial, insist that the Affidavit of Desistance executed by Dela Cruz constitutes newly discovered evidence. We hold that it is not. Section 2 of Rule 121 of the Rules of Court provides that the only grounds for new trial are:

“(a) That errors of law or irregularities have been committed during the trial prejudicial to the substantial rights

of the accused;

(b) That new and material evidence has been discovered which the accused could not with reasonable diligence have discovered and produced at the trial, and which if introduced and admitted, would probably change the judgment.”

Obviously, an affidavit of desistance, even judging from the meaning of this caption itself, can not be said to be newly discovered evidence.

Anyway, the delay on the part of the accused-appellants in presenting the Affidavit of Desistance casts serious doubt upon the veracity of the statements made therein.

The case of *U.S. vs. Dacir*[14] first enunciated the principle regarding affidavits of recantation as basis for a new trial:

“In general, motions for new trial based on affidavits of this kind are entitled to but scant consideration. The mere fact that after a solemn trial in a court of justice has been terminated, one of the witnesses, in conversation with friends or under pressure from interested parties, may tell a different story as to the incidents testified to by him, does not necessarily destroy the probative testimony when on the witness stand. If new trials were granted in every instance where the interested party or parties succeed in including some of the witnesses to vary or modify their testimony outside of court and after the trial, there would never be an end of criminal litigation. x x x

The value as evidence of the testimony of a witness given in open court in the course of a trial had therein is due for the most part to the following considerations: That under such conditions it is given under the sanction of an oath and of the penalties prescribed for perjury; that the witness’ story is told in the presence of an impartial judge in the course of a solemn trial in open court; That the witness is subject to cross-examination, with all the facilities afforded thereby to test the truth and accuracy of his statements and to develop his attitude of mind toward the parties, his disposition to assist the cause of truth rather than to further some personal end; that the proceedings are had under the protection of the court and under such conditions as to remove, so far as is humanly possible, all likelihood that undue or unfair influences will be exercised to induce the witness to testify falsely; and finally, that under the watchful eye of a trained judge his manner, his general bearing and demeanor and even the intonation of his voice often unconsciously disclose the degree of credit to which he is entitled as a witness. Manifestly, loose statements or even sworn statements of witnesses, made after the trial has closed, varying or contradicting their testimony given at the trial, will rarely be sufficient in the absence of special circumstances, to raise such a doubt as to the truth of their testimony given at the trial and accepted as true by the trial judge, as to justify the granting of a new trial.”

The affidavit of Desistance executed by the victim’s father also merits scant consideration, for it is axiomatic in our jurisdiction that for such desistance to benefit the accused, it must be given prior to the filing of a criminal complaint.[15] Here, the Affidavit of Desistance was filed long after the trial had concluded. As such, like the Affidavit of Recantation executed by Dela Cruz, Amado Zabalo, Sr.’s sworn statement cannot serve as basis for the acquittal of the accused-appellants. We cite with approval the argument of the Solicitor General with regard to the said affidavits:

“Even on their merits, the sworn statements are not impressed with faith and credit. Melencio dela Cruz alleges that he testified for the prosecution because Amado Zabalo, Sr. ‘threatened to kill me.’ If true, why did it take him more than four long years to wean away from the threat and retract his testimony[?] On the other hand, Amado Zabalo, Sr.’s affirmation of the alleged innocence of accused-appellants is devoid of any probative value being hearsay and a mere factual conclusion. And Kagawad Manuela Gabinete-Dacuan’s narration of the alleged incident exculpating the accused-appellants is clearly and indubitably a fabricated afterthought.

Neither constituting newly discovered evidence nor of such probative weight as would probably change the judgment, the sworn statements in question cannot even be a valid ground for new trial under Rule 121 of the Rules of Court. According to this Honorable Court in *People vs. Bigcas* (211 SCRA 630):

‘As a general rule a motion for new trial will not be granted if based on an affidavit of recantation of a witness whose effect, is to free the appellant from participation in the commission of the crime. It would be a dangerous rule to reject the testimony taken before the court of justice simply because the witness who has given it later on changed his mind for one reason or another, for such a rule will make a solemn trial a mockery and place the investigation at the mercy of unscrupulous witnesses. Because affidavits of retraction can easily be secured from poor and ignorant witnesses, usually for monetary consideration, the Court has invariably regarded such affidavits as exceedingly unreliable (*de Guzman vs. IAC*, 184 SCRA [April 4, 1990])’ (underscoring supplied).”

The accused-appellants assert that inconsistencies abound in the testimony of Dela Cruz, that it is uncorroborated, and has no probative value, it being a mere fabrication. Contrary to this contention, upon close examination of the testimony given by Melencio dela Cruz, we find that Dela Cruz’s testimony is credible, detailed, and was given in a forthright manner. His narration of what transpired remained unshaken even when he was subjected to rigid cross-examination by the defense counsel. Moreover, the testimony of Lolito Carceller, who examined the corpse of the victim as to the location of the wounds corroborates the testimony of Dela Cruz. Most of the wounds inflicted upon the deceased which were examined and noted by Carceller were located on the upper part of the body, specifically, above the armpits. The site of the wounds lends credence to Dela Cruz’s testimony that the victim was hit and stabbed by the accused-appellants while the former was in armpit-deep water and the accused were aboard a banca.

The accused-appellants insists that Dela Cruz could not have been able to identify Zabalo’s assailants from a distance of thirty (30) to (40) meters. This contention is incorrect. It had been established that Dela Cruz witnessed the attack on Amado Zabalo, Jr. by the accused-appellants from the time of its inception, when Hernando Dalabajan stabbed the victim, to the time when the victim tried to escape by wading out to sea, and up to its horrible climax when the victim was mercilessly killed by the three accused who unrelentingly pursued him. Dela Cruz fully witnessed the attack on the victim.

Hernando Dalabajan insists that Dela Cruz was not present at the time of the incident. However, upon cross-examination, it can be gleaned that his only basis for such an assertion is that he did not see Dela Cruz that night, but he did not discount the possibility that Dela Cruz was somewhere in the vicinity but out of sight.[16]

The trial court correctly appreciated the aggravating circumstance of treachery in qualifying the criminal offense to murder:

“The Court in assessing the circumstances of the killing of the deceased Amado Zabalo, Jr. by all the 3 accused who actively helped one another in perpetrating the killing could not but rule that the killing was attended by treachery to qualify the offense to murder. The above finding was primarily premised on the fact that at the time the attack was launched at the sea by the 3 accused, the victim was not in a position to defend himself. Thus, at the time of attack the victim was in the water with a depth up to his armpit. In the situation he found himself it is quite obvious his freedom of movement to adequately protect and defend his person was very much restricted taken in conjunction with the 3 aggressors who were riding in a banca and hitting him all at the same time.

From the manner of attack employed by the accused, it may reasonably be deduced or inferred that accused consciously adopted the mode of attack employed by them to insure its success. When they pursued the victim who run towards the seashore and opted to go to the water, it must be construed when they availed themselves of a banca, they did so with a decided advantage on their part without risk to their personal safety. It can thus

be seen that at the time the fatal blows were delivered treachery can thus be firmly appreciated against them.

‘Treachery may not be present at the inception of the attack, but if the attack is continuous and treachery existed at the time of the consummation of the killing the crime committed is not homicide but murder.’ (People vs. Cariño, et al., 55 SCRA 516).”

We find no merit in the contention of accused-appellants that Amado Zabalo, Jr. died on the occasion of a tumultuous affray. Pertinent provision of the Revised Penal Code on death caused in a tumultuous affray reads:

“Death caused in a tumultuous affray. – When, while several persons, not composing groups organized for the common purpose of assaulting and attacking each other reciprocally, quarrel and assault each other in a confused and tumultuous manner, and in the course of the affray someone is killed, and it cannot be ascertained who actually killed the deceased, but the person or persons who inflicted serious physical injuries can be identified, such person or persons shall be punished by prision mayor. x x x” (Art. 251 of the Revised Penal Code) [Penalties omitted]

Consequently, the following elements must concur:

- (1) That there be several persons;
- (2) That they did not compose groups organized for the common purpose of assaulting and attacking each other reciprocally;
- (3) That these several persons quarreled and assaulted one another in a confused and tumultuous manner;
- (4) That someone was killed in the course of the affray;
- (5) That it cannot be ascertained who actually killed the deceased;
- (6) That the person or persons who inflicted serious physical injuries or who used violence can be identified.

In the case at bench, there were no groups of persons organized for the common purpose of assaulting and attacking each other reciprocally. Consequently, there was no affray among several groups of persons in the course of which Amado Zabalo, Jr. died. The fact is that there was only one group of persons, the accused themselves, who caused an attack on a single victim, Amado Zabalo, Jr. This group of persons, motivated as they were, attacked and killed the aforesaid victim. The persons who assaulted and killed the victim were clearly identified. Since it was ascertained as to who actually killed the deceased, the death of the victim cannot be said to have been caused in a tumultuous affray.

There is, appreciated herein, as recommended by the Solicitor General, the mitigating circumstance of voluntary surrender in the case of Hernando Dalabajan. This mitigating circumstance is, however, offset by the aggravating circumstance of evident premeditation and abuse of superior strength. Treachery has qualified the killing to murder. Consequently, as correctly found by the trial court, the penalty of reclusion perpetua should be imposed. WHEREFORE, the judgment of the court a quo is hereby **AFFIRMED** in all respects.
SO ORDERED.

Davide, Jr., (Chairman), Bellosillo, Vitug, and Kapunan, JJ., concur.

[1] Rollo, p. 8.

[2] Testimony of Melencio dela Cruz, August 28, 1987.

[3] Testimony of Amado Zabalo, Sr., TSN, pp. 2-11, September 2, 1987.

[4] TSN, pp. 2-10, January 19, 1989.

[5] TSN, pp. 3-20, September 19, 1989.

[6] TSN, pp. 21-33, September 19, 1989.

[7] Attached as Appendix “B” to the Appellant’s Brief.

[8] Filed on August 6, 1991; Original Records pp. 298-299.

[9] Crim. Case No. 6315. Penned by Judge Angel R. Miclat, dated January 16, 1991; Rollo, p. 22.

[10] People vs. Davatos, 229 SCRA 647 (1994).

[11] People vs. Dulay, 217 SCRA 103 (1993).

[12] Lopez vs. Court of Appeals, 239 SCRA 562 (1994).

[13] Original Records, p. 298.

[14] 26 PHIL 503 (1913).

[15] Arroyo, Jr. vs. Court of Appeals, 203 SCRA 750 (1991).

[16] Cross Examination of Hernando Dalabajan, T.S.N., September 19, 1989, pp. 21-24; Rollo, pp. 120-123.

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