

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANILO LAYNO AND ROBERT LAYNO, ACCUSED-APPELLANTS.

G.R. No. 110833. November 21, 1996

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

In denying this appeal, the Court finds occasion to reiterate some well-settled doctrines in determining the guilt of the accused, particularly in weighing the credibility of witnesses, determining the presence of conspiracy, and appreciating treachery and evident premeditation in the crime of murder.

This is an appeal from the Decision[1] dated February 26, 1993 of the Regional Trial Court of Malabon, Metro Manila, Branch 72,[2] convicting accused Danilo Layno @ Danny, and Robert Layno @ Boy of the crime of murder and sentencing them to "reclusion perpetua or life imprisonment."

On July 14, 1992, an Amended Information[3] was filed by 3rd Asst. City Prosecutor Bonifacio M. Sison charging appellants (together with others still at large) with murder, allegedly committed as follows:

"That on or about the 10th day of May, 1992, in the Municipality of Malabon, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping one another, with treachery and evident premeditation (sic) and with intent to kill and while armed with a gun and bladed weapon, did, then and there, wilfully, unlawfully and feloniously attack, assault, shot (sic) and stab RODOLFO GABUAT @ SPUD hitting the latter of (sic) the different parts of his body and as a consequence said RODOLFO GABUAT @ SPUD sustained injuries which directly caused his death.

CONTRARY TO LAW."

Accused Danilo Layno, assisted by counsel de parte, was arraigned on July 17, 1992, while accused Robert Layno, assisted by counsel de officio, was arraigned on September 23, 1992. Both pleaded not guilty to the crime charged.

The Facts

According to the Prosecution

The facts of the case as summarized by the trial court[4] are as follows:

"x x x Rodolfo Gabuat, who is known as 'Spud,' his wife Anna Marie and their child were sleeping in their house at 143 University Avenue, Malabon, Metro Manila in the early hours of May 10, 1992 when, at around 2:00 o'clock in the morning, they were awakened by shouts coming from the outside. Rodolfo opened the door and went down but he was suddenly pulled by the hand by accused Roberto (sic; should read 'Robert') Layno, who is called Boy, making Rodolfo stumble. The latter was then hit with a gun in the face by a certain 'Inag.' Alexander Layno alias Alex followed by stabbing Rodolfo at the back with an ice pick. Accused Roberto (sic) Layno then shot Rodolfo with a gun he was then armed as Rodolfo was already lying on the ground face down. Rodolfo was hit at the back. Accused Danilo Layno, who is known as Danny, was standing nearby when Rodolfo was shot.

Anna Marie, Rodolfo's wife saw what Boy, Inag and Alex did to her husband because she immediately followed him. She peeped from the house first and then went down to help her husband whom the three (3) left after Boy shot him. However, as Anna had approached Rodolfo, Danny started approaching them armed with a bladed weapon, making Anna Marie retreat to their house. Danny then left and again Anna Marie returned to Rodolfo. But Danny returned and Anna Marie retreated once more. When Danny finally left the place, Anna Marie shouted and asked their neighbors to help them. Rodolfo was brought to the Jose R. Reyes Memorial Hospital and then to the Chinese General Hospital where he died of pneumonia due to the fatal gunshot wound he sustained at the back (Exhs. G and F and testimony of Dr. Valentin Bernales, NBI Medico Legal Officer) on May 12, 1992.

Anna Marie later executed a sworn statement narrating the incident (Exh. B). She also claimed that P34,000.00 was spent for the death and burial of her husband."

According to the Defense

The trial court's summary[5] of the defense's version of the facts was reproduced in appellants' brief, thus:

"Accused Roberto (sic) Layno, known as Boy, and accused Danilo Layno, known as Danny, denied the accusation against them.

Boy maintained that he attended the wake of a certain Choleng Fornales, 80 to 100 meters away from his house, from 8:00 o'clock in the evening of May 9, 1992 to 3:00 o'clock in the morning of May 10, 1992. From the wake, Boy went home. He knows of no reason why Anna Marie Gabuat pointed to him as the one who killed her husband.

Danny, on the other hand, maintained that he was sleeping. He was awakened by shouts of Aling Dory (Rodora Nalus Trinidad) about a trouble outside. Danny was about to get out but was prevented by Aling Dory from doing so.

Rodora Nalus Trinidad, or Aling Dory, insisted that she was making doormats at about 2:00 o'clock in the morning of May 10, 1992 when she heard people uttering curses. She went out and saw Nancy embracing her husband Junior Gabuat and saying: 'tama na, tama na,' as Junior was himself uttering the words: 'putang ina mo, bumaba ka diyan ng makita mo ang hinahanap mo.' At this point, Spud, or Rodolfo Gabuat, Junior's brother, went down from his house. Junior then fired the gun he was holding at Rodolfo. Rodolfo fell down slowly at the stairs. Nancy said: 'hayan, putang ina ninyo. Tuloy kapatid mo ang tinamaan ng baril ninyo.' Junior lifted Rodolfo to the 'silong' of the house.

Myrna, sister of Junior and Spud, arrived and directed that the bloodstains be cleaned and said: 'pagdating ng pulis mga Layno ang isigaw ninyo, Boy Layno.' For this reason, Aling Dory's son-in-law Boy and the other Laynos are being charged for the killing of Spud.

Aling Dory added that she herself thereafter went to the nearby wake where (she) saw Boy playing cards. She saw Danny later about to get out of the house but prevented him from doing so. When it was already daylight, Aling Dory reported to the barangay captain the incident she witnessed. She also asked her 'bala' and her son to report the matter to the police but the two were told by new policemen to report the same to the detachment headquarters. Aling Dory also added she was asked by Myrna's husband what happened and she told him it was your 'bayaw' who killed your other 'bayaw.' Aling Dory, however, did not give any statement to the police."

However, Aling Dory's claim that the victim was killed by his own brother Junior Gabuat was denied by the latter's wife, Nancy Gabuat, who "stressed that Rodolfo had already (been) shot when she went down and that it was not Junior who shot him. Nancy executed a sworn statement narrating what she saw starting from the point when Anna Marie was already with her bloodied husband up to the time Danny finally left and what she did thereafter (Exh. C)."[6]

The Trial Court's Ruling

On February 26, 1993, the trial court rendered its Decision convicting the appellants of murder, the dispositive portion thereof reading as follows:

"WHEREFORE, premises considered, judgment is hereby rendered finding both accused, Danilo Layno @ Danny and Roberto (sic) Layno @ Boy GUILTY of the crime of Murder, defined and penalized under Article 248 of the Revised Penal Code. Said two (2) accused are hereby sentenced to reclusion perpetua or life imprisonment. They are also condemned to pay the heirs of their victim Rodolfo Gabuat the sum of P50,000.00 as indemnification for the loss of the said victim's life and the additional sum of P34,000.00 representing expenses incurred in connection with the death and burial of the said victim.

Both accused being detention prisoners are to be credited in full the period of detention they have already undergone in connection with this case if they (agreed) in writing that while under detention they can already be subjected to rules and regulations governing persons already serving sentence by virtue of final judgments. Otherwise, they shall be credited for 4/5 thereof only.

Costs against both accused."

The Issues

In their appeal brief, appellants made the following assignment of errors:[7]

"I. The lower court erred in convicting appellants on the basis of the prosecution evidence which, in view of material contradictions and inconsistencies, is inadequate to prove the guilt of appellants beyond reasonable doubt.

II. The lower court erred in holding that there was conspiracy between appellant Danilo Layno and the other accused.

III. Assuming appellants are guilty for the killing of Rodolfo Gabuat, the lower court erred in convicting them of murder instead only of homicide as the qualifying circumstances alleged in the amended information have not been established."

The Court's Ruling

First Issue: Credibility of Witness

and Sufficiency of Prosecution's Evidence

The accused-appellants contend that the evidence presented by the prosecution was inadequate to prove their guilt beyond reasonable doubt. This contention is based largely on their submission that the affidavit and testimony of Anna Marie Gabuat contained discrepancies which totally destroyed her credibility as a witness. These alleged discrepancies as stated by the defense are as follows:

"1. In her testimony she stated that when she peeped through the door of her house after hearing voices outside, she saw 'Boy Layno, Inag, Alex, Danny.' In her sworn statement, she did not mention Danny or appellant Danilo Layno.

"2. In her testimony, she stated that while her husband was going down the stairs, Boy Layno pulled him by the hands, causing him to fall face down to the ground. Thereupon, Inag hit her husband on the face with a gun, Alex stabbed him twice on the back with an icepick and Boy Layno shot him once on the back. While this was going on, appellant Danilo Layno was allegedly simply standing by holding a bladed weapon. In her sworn statement, she made no mention of the presence of appellant Danilo Layno during the alleged incident, much less of his holding a bladed weapon.

"3. In her testimony, she stated that after the assault on her husband, the three, namely Boy Layno, Inag and Alex ran away. 'Matapos na masaksak, mabarily, at mapalo sa mukha ang mister ko, itong tatlo nagtatakbo at

ako naman nagmamadali akong lumapit sa mister ko.' In her sworn statement, she did not mention appellant Danilo Layno as one of the assailants who ran away.

"4. In her testimony, she stated that after the assault she approached her husband to help him, but appellant Danilo Layno appeared with a bladed weapon, so she retreated. When appellant left, she again tried to go to the aid of her husband, but appellant Danilo Layno returned and she retreated once more. When appellant Danilo Layno finally left, she and some of her neighbors, brought her husband to the hospital. In her sworn statement, she said that as she was going to her husband to help him, she saw appellant Danilo Layno coming, so she retreated. When appellant Danilo Layno left, she and her neighbors brought her husband to the hospital. She did not say that appellant Danilo Layno tried to stop her from helping her husband twice as she did in her testimony. Much less, did she mention that appellant Danilo Layno was armed with a bladed weapon." [8]

Appellants' contentions are without merit. The categorical and positive eyewitness testimony of Anna Marie Gabuat that Robert Layno shot her husband and that Danilo Layno while holding a knife approached her twice as she was trying to help her husband who had just been shot and stabbed, is clear, consistent, credible and sufficient to prove the guilt of the accused beyond reasonable doubt and to overturn the presumption of innocence in their favor. The alleged discrepancies between her affidavit or sworn statement given to the Malabon Police investigator on May 14, 1992 vis-a-vis her testimony in court are not fatal defects. In her affidavit, she related the following:

"7. T: Isalaysay mo ang pangyayari?

"S: Nagising kaming mag-asawa sa ingay sa labas ng bahaynamin. Ang mister ko, binuksan yung pinto, bumaba ng mga tatlong baytang sa hagdanan, sumilip. Nang pagsilip, nakita ko itong si Boy Layno hinatak sa kamay ang mister ko, nalaglag at napadapa. Nang mapadapa at makalabas sa kalsada, itong si Inag na kasama ni Boy Layno, pinalo ng baril sa mukha, samantalang itong si Alex, nakita kong sinaksak ni Alex ng icepick sa likod. Si Boy Layno naman binaril ang mister ko habang nakadapa ito. Nagsisigaw ako para humingi ng tulong, pero walang lumapit. Matapos na masaksak, mabaril, at mapalo sa mukha ang mister ko, itong tatlo nagtatakbo at ako naman nagmamadali akong lumapit sa mister ko. Nang makalapit ako sa mister ko, nakita ko naman itong si Danny, lumalapit sa amin, kaya napilitan akong umalis sa nakahandusay kong mister. Nang umalis na si Danny, saka ako uli bumalik sa mister ko. Nagsisigaw ako at humihingi ng tulong, saka naglabasan ang aking mga kapitbahay, at tinulungan ako, at dinala ang mister ko sa ospital." [9]

On the other hand, the relevant portion of her testimony in court is as follows:

"Q

How about you what did you do when you saw (that) your husband opened the door and went down?

"A

I peeped.

"Q

When your husband went downstairs, did you see (any) other person outside your house?

"A

Yes, sir.

"Q

Whom did you see?

"A

Boy Layno, Inag, Alex, Danny.

"Q

Where were they when you saw them?

"A

They were downstairs.

"Q

Now, when you saw (that) your husband went downstairs, do you remember anything unusual that happened?

"A

He was pulled by his hands.

"Q

Who pulled him?

"A

Boy Layno.

"Q

And what happened to your husband when he was pulled by Boy Layno?

"A

He was (sic) stumbled.

"Q

And when he was stumbled, what happened if any?

"A

He was hit by a gun in the face.

"Q

Who hit him in the face?

"A

Inag.

"Q

And after Inag hit him in the face, what happened next?

"A

Alex stabbed him with an icepick.

"Q

How many times did you see Alex stabbed (sic) him?

"A

Two (2) times.

"Q

To what portion of the body did you see Alex stabbed (sic) him?

"A

At the back. (Witness pointing to the lower back).

"Q

After Alex stabbed your husband at the back what happened afterwards?

"A

He was shot.

"Q

Who shot him?

"A

Boy Layno.

"Q

How many times did Boy Layno shoot him?

"A

Once.

"Q

Where was he hit?

"A

At the back.

x x x x x x x x

"Q

You said that Danny was there, what was Danny doing at that time according to you your husband was pulled, hit in the face, stabbed at the back and shot?

"A

He was standing holding bladed weapon.

"Q

When you saw your husband lying on the floor after he was shot what did you do then?

"A

I helped him.

"Q

When you went down to help your husband what did these four (4) persons whom you earlier identified doing (sic) then?

"A

They left.

"Q

Now, were you able to help your husband?

"A

Yes, sir.

"Q

While you were helping your husband, what else if any happened?

"A

I was trying to lift my husband but then Danny came, so I left my husband and and (sic) went out.

"Q

Why did you leave your husband?

"A

Because he was approaching me there carrying bladed weapon.

"Q

How long did you stay upstairs?

"A

A matter of minute.

"Q

What did you do inside the house?

"A

None, sir.

"Q

Now, did you ever go downstairs?

"A

Yes, sir.

"Q

What did you do there?

"A

I helped my husband.

"Q

Do you remember what else happened while you were trying to help your husband?

"A

When I was helping my husband, Danny Layno approached us again.

"Q

What did you do when you saw Danny Layno approaching you?

"A

I left my husband.

"Q

Why did you leave your husband?

"A

Because he was approaching us.

"Q

And you again went upstairs?

"A

Yes, sir.

x x x x x x x x

"Q

What did you do there?

"A

I shouted.

"Q

You shouted for?

"A

To ask help from my neighbors.

"Q

Did anybody come to help you?

"A

Yes, sir.

"Q

Who in particular?

"A

Our neighbors.

"Q

What did you do with your husband?

"A

We brought him to the hospital." [10]

With respect to the alleged discrepancies pointed out by appellants, we recall our recent ruling in *People vs. Lazaro*, [11] where we held:

"The alleged inconsistencies between her testimony in open court and her sworn statement before the investigators are not fatal defects to justify a reversal of appellant's conviction. Such discrepancies do not necessarily discredit the witness since ex-parte affidavits are almost always incomplete. It bears emphasis that a sworn statement or an affidavit does not purport to contain a complete compendium of the details of the event narrated by the affiant. Sworn statements taken ex-parte are generally considered to be inferior to the testimony given in open court."

The apparent discrepancies between Anna Marie Gabuat's affidavit and her testimony are minor and do not affect her credibility as a witness. They merely show that her affidavit is incomplete with respect to certain details which do not in any way detract from the overall veracity of her testimony. What is clear is that her affidavit and her testimony concur on all material points and establish the presence of accused-appellants at the scene of the crime, and the manner in which they surprised, assaulted and killed the victim. Moreover, as observed by the Solicitor General, "the failure of this eyewitness to mention in her affidavit the presence of appellant Danilo Layno during the alleged incident does not, in any way, affect that part of her testimony which clearly implicates said appellant. What is important is that she had testified categorically that appellant Danilo Layno was standing nearby and was holding a bladed weapon at the time his co-accused were assaulting the victim in the early morning of May 10, 1992 (p. 11, tsn, August 5, 1992)." [12] Indisputably, her narration of the incident establishes beyond the shadow of a doubt appellant Danilo Layno's participation in the treacherous killing.

Furthermore, "it is well-settled that this Court will not interfere with the judgment of the trial court in passing on the credibility of the witnesses, unless there appears in the record some fact or circumstance of weight and influence which has been overlooked or the significance of which has been misapprehended or misinterpreted. The reason for this is that the trial court is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial." [13] In the case before us, we find no cogent reason to disturb the findings and assessment of the trial court as to the credibility of the witnesses, which we quote with approval below:

"The Court can not believe the testimony of Aling Dory (Rodora Nalus Trinidad) because it is a biased one and did not explain nor touch points which are material to the essence or substance thereof and a material aspect of the case.

Admittedly, Boy is the son-in-law of Aling Dory who claimed that after witnessing the shooting of Rodolfo by Junior, she went to the nearby wake and thereat saw Boy playing cards. She never bothered, however, to call Boy to tell and warn him about the plot of the Gabuats to implicate the Laynos, particularly Boy, to the

shooting of Rodolfo.

Aling Dory also claimed she later saw Danny about to leave his house and prevented him from doing so without, however, giving him any warning of the impending false accusation against him.

Aling Dory alleged she reported the matter to the Barangay Captain but no record of this report or verbal confirmation thereof was made by any barangay official.

And what about the punctured (sic) wound sustained by Rodolfo at the back (Exhs. K and K-1) which, according to Nancy, was inflicted by Alex who stabbed Rodolfo with an ice pick. Dr. Ernesto Brion who attended to the victim at the Chinese General Hospital found this punctured (sic) wound and concluded that an ice pick or any sharp pointed instrument will cause said injury. Aling Dory never mentioned having seen, and she allegedly saw it all, Rodolfo being stabbed by anyone.

Aling Dory's relationship with Boy made her testimony a biased one.

On the other hand, the prosecution presented witnesses whose declarations concerning the participation of the Laynos, particularly Boy and Danny, are clear and convincing and who, at the first opportunity, gave sworn statements narrating what they actually witnessed. These witnesses also can not be wrong in the identification of the two (2) accused as they live near each other and must have known each other for some time already."^[14]

Appellants further asseverate that the widow's testimony is biased because of her relationship to the victim and therefore unreliable and not worthy of credence. We, however, reiterate the familiar rule that the clear and positive testimony of witnesses is not devalued or impaired by the mere fact of relationship to the victim, when there is no showing of improper motive on the part of said witnesses. Indeed, their natural interest in obtaining justice and redress by securing the conviction of the parties responsible for the crime would deter these relatives from implicating persons other than the real culprits.^[15] No improper motive to testify falsely against the accused was imputed against the widow of the victim, hence, there is no reason not to accord her testimony full faith and credit.

Likewise, the appellants' defense of alibi cannot but fall. It is an oft-repeated rule that alibi is one of the weakest defenses an accused can invoke,^[16] and courts have always looked upon it with caution, if not suspicion, not only because it is inherently unreliable but likewise because it is rather easy to fabricate.^[17] It cannot prevail over the positive identification of the accused by the prosecution's witness who has no motive to testify falsely against them.^[18] For the defense of alibi to prosper, the accused must show that he was at such other place for such a period of time that it was physically impossible for him to have been at the place where the crime was committed at the time of its commission.^[19] In the present case, the place where appellant Robert Layno claims to have been at the time of the incident was a mere 80 to 100 meters away from the scene of the crime,^[20] while in appellant Danilo Layno's case, he claims that he was at home when the killing occurred, but the victim was killed just outside Danilo's house.^[21]

Second Issue: Conspiracy Was Proven

The defense contends that the prosecution had failed to prove conspiracy in regard to accused-appellant Danilo Layno because there was no proof of actual agreement among the accused to kill the victim, and that the act of Danilo Layno in twice approaching, knife in hand, the victim's wife who was attempting to succor her fallen husband, does not show conspiracy. This contention is bereft of merit. Article 8, paragraph 2 of the Revised Penal Code states that, "a conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it." Jurisprudence teaches us that "proof of the agreement need not rest on direct evidence, as the agreement itself may be inferred from the conduct of the parties disclosing a

common understanding among them with respect to the commission of the offense." [22] Therefore, "if it is proved that two or more persons aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their acts, though apparently independent, were in fact connected and cooperative, indicating a closeness of personal association and a concurrence of sentiment, then a conspiracy may be inferred though no actual meeting among them to concert means is proved." [23] Hence, conspiracy was properly appreciated by the trial court because, even though there was no direct proof of the accuseds' agreement to kill the victim, their individual acts when taken together as a whole showed that they were acting in concert and cooperating to achieve the same unlawful objective. Danilo's presence with a bladed weapon in hand during the commission of the crime and his repeated threatening approaches were patently meant to scare off the victim's wife and anyone else who might have been minded to interfere and/or render assistance to the victim. Danilo's actuations all too clearly bear out the fact that he was in conspiracy with the other assailants. And his subsequent failure to flee along with the other attackers does not negate the existence of conspiracy, because the simple refusal or failure to flee with one's co-accused does not, by itself, necessarily imply that one had never conspired with them. [24] "(T)here is no law or principle which guarantees that non-flight per se is proof, let alone conclusive proof, of one's innocence and, as in the case of alibi, such a defense is unavailing when placed astride the undisputed fact that there is positive identification of the felon." [25]

Third Issue: Treachery And Evident Premeditation

We agree with the trial court in appreciating treachery in this case. Treachery or *alevosia* is properly appreciated "when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure the execution thereof, without risk to himself arising from the defense which the offended party might make." [26] And, "an unexpected and sudden attack under circumstances which render the victim unable and unprepared to defend himself by reason of the suddenness and severity of the attack constitutes *alevosia*." [27] In this case, the attack employed by the four (4) assailants was clearly attended by treachery because they first drew the victim out of his house by creating a disturbance outside his door, and when the rudely-awakened and unsuspecting victim came out to investigate what the commotion was about, Robert Layno suddenly and unexpectedly grabbed and pulled the hand of the victim causing the latter to stumble and fall face down on the ground, thus rendering him defenseless, vulnerable and without means of escape. To disable him and prevent him from fighting back or fleeing, "Inag" struck the victim in the face with his gun. This was immediately followed by the accused Alex twice stabbing him with an ice pick. And while the victim lay mortally wounded face down on the ground, he was shot in the back by Robert Layno. In short, they pounced upon him without any warning -- swiftly and with deadly precision, they delivered the fatal blows.

However, we differ with the trial court in its finding of evident premeditation in this case. For evident premeditation to be appreciated, it is necessary that the prosecution prove the following elements: (1) the time when the accused decided to commit the crime; (2) an overt act showing that the accused had clung to their determination to commit the crime; and (3) the lapse of a sufficient period of time between the decision and the execution of the crime, to allow the accused to reflect upon the consequences of the act. The mere lapse of time is not enough, however, because premeditation is not presumed from the mere lapse of time. [28] It must be "evident" or manifest in the overt act. The prosecution failed to present evidence to establish any of the three elements aforementioned in this case.

Incidentally, we should mention that the penalty of "reclusion perpetua or life imprisonment" imposed by the trial court, is erroneous because one is distinct and different from the other. This Court had distinguished between the two penalties in many previous decisions, going as far back as *People vs. Mobe*, [29] and even as recently as *People vs. Antonio Magana*, [30] in which was reiterated the following differentiation:

"The Code (Revised Penal Code) does not prescribe the penalty of 'life imprisonment' for any of the felonies therein defined, that penalty being invariably imposed for serious offenses penalized not by the x x x Code but by special law. Reclusion perpetua entails imprisonment for at least (30) years, after which the convict becomes eligible for pardon. It also carries with it accessory penalties, namely: perpetual special disqualification, etc. It is not the same as life imprisonment which, for one thing, does not carry with it any accessory penalty, and for another, does not appear to have any definite extent or duration."

WHEREFORE, the appeal is DENIED. The Decision appealed from, convicting appellants Robert Layno and Danilo Layno of the crime of murder is hereby AFFIRMED, with the modification that the words "or life imprisonment" in the dispositive portion thereof are DELETED.

SO ORDERED.

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

[1] Rollo, pp. 18-22.

[2] Judge Benjamin M. Aquino, Jr., presiding.

[3] Original Record, p. 18.

[4] Decision, pp. 1-3; Rollo, pp. 18-20.

[5] Decision, pp. 2-3; Rollo, pp. 19-20.

[6] Decision, p. 3; rollo, p. 20.

[7] Appellants' brief, pp. 9-10; Rollo, pp. 53-54.

[8] Appellants' Brief, pp. 15-18; Rollo, pp. 59-62.

[9] Appellants' Brief, pp. 14-15; Rollo, pp. 58-59.

[10] TSN, August 5, 1992, pp. 8-14.

[11] 249 SCRA 234, 241, October 12, 1995, citing *People vs. Dabon*, 216 SCRA 656, 664, December 16, 1992, *People vs. Gabas*, 233 SCRA 77, 83, June 13, 1994, and *People vs. Loveria*, 187 SCRA 47, 59, July 2, 1990.

[12] Appellee's Brief, p. 8; Rollo, p. 103.

[13] *People vs. Dismuke*, 234 SCRA 51, 58, July 11, 1994; citing *United States vs. Ambrosio and Falsario*, 17 Phil. 295, November 12, 1910, *People vs. Tismo*, 204 SCRA 535, December 4, 1991, *People vs. Lee*, 204 SCRA 900, December 20, 1991, *People vs. Simon*, 209 SCRA 148, May 21, 1992, *People vs. Jumamoy*, 221 SCRA 333, April 7, 1993, and *People vs. Kyamko*, 222 SCRA 183, May 17, 1993.

[14] Decision, pp. 3-4; rollo, 20-21;

[15] *People vs. Pasiliao*, 215 SCRA 163, 172-173, October 26, 1992, Citing *People vs. De Mesa*, 188 SCRA 48, July 28, 1990, also, *People vs. Pugal*, 215 SCRA 247, 262, October 29, 1992.

[16] *People vs. Manzano*, 248 SCRA 239, September 15, 1995.

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

[18] *People vs. Pacapac*, 248 SCRA 77, 92, September 7, 1995.

- [19] *People vs. Pacapac*, supra; also, *People vs. Esquilona*, supra. Likewise, *People vs. Mariñas*, 248 SCRA 165, September 14, 1995.
- [20] TSN, December 16, 1992, p. 3.
- [21] TSN, January 6, 1993, pp. 3-4.
- [22] *People vs. Abarri*, 242 SCRA 39, 45, March 1, 1995.
- [23] *People vs. Miranday*, 242 SCRA 620, 627, March 23, 1995.
- [24] *People vs. Punzalan*, 203 SCRA 364, 379, November 8, 1991.
- [25] *People vs. Armania*, 248 SCRA 486, 493, September 21, 1995.
- [26] *People vs. Soldao*, 243 SCRA 119, 127, March 31, 1995.
- [27] Ibid.
- [28] *People vs. Silvestre*, 244 SCRA 479, 494-495, May 29, 1995.
- [29] 81 Phil. 58 (1948).
- [30] G.R. No. 105673, July 26, 1996; citing *People vs. Baguio*, 196 SCRA 459, April 30, 1991.

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