

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. PAULINO BUAYABAN, LARRY BETACHE, MARCIANO TOÑACAO (AT LARGE), YOYONG BUAYABAN (AT LARGE) AND PEDRO TUMULAK, ACCUSED. PEDRO TUMULAK, APPE...

G.R. No. 112459. March 28, 2003

Ponente: CORONA, J.

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CORONA, J.:

This is an appeal from the decision[1] of the Regional Trial Court of Cataingan, Masbate, Branch 49, in Criminal Case No. 471, finding the appellant Pedro Tumulak, together with his co-accused, Paulino Buayaban and Larry Betache, guilty beyond reasonable doubt of the crime of robbery with homicide and sentencing the appellant Pedro Tumulak and his co-accused Paulino Buayaban to suffer the penalty of reclusion perpetua and their co-accused, Larry Betache,[2] the indeterminate penalty of 6 years and 1 day of prision mayor, as minimum, to 12 years and 1 day of reclusion temporal, as maximum.

The information, dated May 7, 1990, charged the appellant Pedro Tumulak and his co-accused Paulino Buayaban, Larry Betache, Marciano Toñacao and Yoyong Buayaban, of the crime of "robbery in band with homicide," as follows:

That on or about January 2, 1990, in the evening thereof, at Barangay Maihao, Municipality of Cawayan, Province of Masbate, Philippines, within the jurisdiction of this Court, the said accused confederating together, conspiring and helping one another, with intent of gain and by means of violence and intimidation upon persons, and to ensure the commission of the crime of robbery, with intent to kill did then and there willfully, unlawfully and feloniously attack, assault and shot with a gun Dioscoro Abonales, on the neck thereby inflicting wound which directly caused his death, willfully, unlawfully and feloniously take, steal, rob and carry away cash amount of P30,000.00 from Dioscoro Abonales' wife, Josefa Abonales and P10,000.00 cash from Rolando Verdida to the damage and prejudice of said Josefa Abonales and Rolando Verdida in the amount of P30,000.00 and P10,000.00 respectively.

CONTRARY TO LAW.[3]

Upon arraignment on January 17, 1991, accused Pedro Tumulak, Paulino Buayaban and Larry Betache pleaded not guilty to the offense charged.[4] Their co-accused, Marciano Toñacao and Yoyong Buayaban, remain at large.

After arraignment, trial on the merits ensued. On August 11, 1993, the trial court rendered its decision, the dispositive portion of which states:

ACCORDINGLY, the court finds the accused guilty beyond reasonable doubt of the crime of robbery with homicide, and hereby sentences Paulino Buayaban and Pedro Tumulak each to suffer imprisonment of reclusion perpetua and Larry Betache to suffer an indeterminate penalty of 6 yrs. and 1 day of prision mayor, as minimum, to 12 yrs and 1 day of reclusion temporal, as maximum, shall return the sum of P30,000.00 to the legal heirs of Dioscoro Abonales and P10,000.00 to Rolando Verdida and shall indemnify the said legal heirs

the sum of P50,000.00 for the death of Dioscoro Abonales, P20,000.00 as moral damages and P20,000 as exemplary damages.

With costs de oficio.

SO ORDERED.[5]

Aggrieved, Pedro Tumulak, Paulino Buayaban and Larry Betache appealed the decision to us. Pedro Tumulak and Paulino Buayaban jointly filed their Appellant's Brief dated May 19, 1994.[6] Larry Betache adopted in toto their Appellant's Brief on November 2, 1994[7] but thereafter filed an Urgent Motion to Withdraw Appeal on November 29, 1996.[8] On September 20, 2002, Paulino Buayaban also filed an Urgent Motion to Withdraw Appeal.[9] Hence, the instant appeal leaves only Pedro Tumulak as the lone appellant.

The facts of the case, as culled from the testimonies of eyewitnesses, follow.

At about 7:00 p.m. on January 2, 1990, at Barangay Maihao, Cawayan, Masbate, accused Paulino Buayaban, Larry Betache, Marciano Toñacao, Yoyong Buayaban and Pedro Tumulak, all armed, entered the house of Dioscoro Abonales. Pedro Tumulak and Paulino Buayaban immediately poked their guns at Rolando Verdida who was sitting near the balcony with his fiancée Elizabeth Abonales, the daughter of Dioscoro. They were ordered to lie flat on the floor. Marciano Toñacao and Yoyong Buayaban then proceeded to the room where Dioscoro was sleeping. Yoyong kicked Dioscoro in the face and when the latter stood up, Marciano shot him in the neck. Dioscoro died instantly.[10]

Meanwhile, Larry Betache went outside the house and stood guard at the door holding a knife. Pedro then went to the kitchen, grabbed the right arm of Josefa Abonales, wife of Dioscoro, and asked her where the money was. Frightened, Josefa quickly went to the room, followed by Marciano while Pedro returned to where Elizabeth and Rolando were lying down in order to watch over them. Marciano threatened Josefa with death if she refused to surrender the money. Josefa took the money amounting to P30,000 from the wooden chest, placed it inside a pillow case and she handed it to Marciano. The money was the family's capital in the business of buying and selling pigs.[11]

In the meantime, somebody forcibly took the wallet of Rolando while he was lying face down on the floor. The wallet contained P10,000 to be used for Rolando's wedding to Elizabeth and which Rolando brought to Elizabeth's house that night because they were preparing for the wedding.[12]

After the perpetrators forcibly took the money from Josefa Abonales and Rolando Verdida, they hurriedly went down the house. While escaping, however, and not far from the scene of the crime, the malefactors bumped into Artemio Abonales, the father of the victim, Dioscoro Abonales. Artemio was on his way to Dioscoro's house to investigate the gunshots he heard. He recognized the malefactors as they stopped momentarily. Paulino pointed the gun at Artemio and pulled the trigger but the gun did not fire. The malefactors then continued to run away. Not long thereafter, Artemio arrived at Dioscoro's house.[13] Neighbors started converging there. Without losing time, Rolando, together with his fiancée, reported the incident to the barangay captain who, together with three councilmen, responded and arrived at the scene of the crime at about 8:30 p.m.[14]

Appellant Pedro Tumulak put up the defense of alibi and denial. He testified that, on January 2, 1990, at around 7:00 p.m., he was talking with Barangay Captain Silverio Cortes in the latter's house in Barangay Pen-as, Cawayan, Masbate. At 9:30 p.m., he went to sleep in the house of Cortes. He was staying in the house of Cortes because the latter hired him to work in his fishpond. He worked for Cortes from November 4, 1989 up to January 4, 1990 when he was arrested by Alfredo Colambot in the house of Cortes. Prior to his arrest, he already knew that there was a robbery at the house of Dioscoro Abonales and that the latter was killed. He denied any

involvement in the crime. He knew his co-accused Paulino Buayaban, Larry Betache, Marciano Toñacao and Yoyong Buayaban as well as the victim Artemio Abonales and his family (Rolando Verdida, Josefa Abonales and Elizabeth Verdida) but he did not see any of them on January 2, 1990 at around 7:00 p.m.[15]

On cross-examination, he testified that the house of Cortes where he was allegedly staying was about six kilometers from the house of the victim, Dioscoro Abonales. His own house was about one kilometer from the house of the victim. In 1987, he was allegedly mauled by Rolando Verdida, the victim's perspective son-in-law, in Barangay Maihao but he did not ask why he was mauled nor did he report the incident to the police.[16]

The trial court, however, found the evidence of the prosecution more convincing and rejected the defense of alibi set up by appellant and his co-accused. Appellant Pedro Tumulak and his companions were positively identified as the perpetrators of the crime by eyewitnesses Rolando Verdida, Josefa Abonales and Artemio Abonales. Alibi, the trial court ruled, is a weak defense and is easy to fabricate. It cannot prevail over the positive identification of eyewitnesses unless clear and satisfactory evidence to the contrary exists. The crime committed was robbery with homicide inasmuch as there was a direct relation between the robbery and the killing, that is, the victim, Dioscoro Abonales, was killed by the malefactors for the purpose of consummating the robbery. Conspiracy existed as there was unity of purpose and design in the commission of the crime. Appellant Pedro Tumulak and his co-accused Paulino Buayaban and Larry Betache, being principals by direct participation in the killing of Artemio Abonales and in robbing his family, were accordingly convicted by the trial court of the crime of robbery with homicide.[17]

Appellant Pedro Tumulak assigns the following errors for our consideration:

I

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL FAITH AND CREDIT TO THE TESTIMONIES OF THE PROSECUTION WITNESSES AND TOTALLY DISREGARDING THAT OF THE DEFENSE.

II

THE TRIAL COURT GRAVELY ERRED IN FINDING ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF ROBBERY WITH HOMICIDE.[18]

The appeal has no merit.

The main argument of the appellant is that Judge Henry B. Basilla, the judge who wrote the decision, was not the judge who observed firsthand the testimonies of the witnesses.[19] Thus, Judge Basilla, not having had the opportunity to observe the witnesses' demeanor and deportment on the witness stand, could not have discerned and gauged if said witnesses were telling the truth.[20]

The contention of the appellant has no merit. The fact that the judge who penned the decision was not the judge who heard the testimonies of the witnesses was not enough reason to overturn the findings of fact of the trial court on the credibility of the witnesses. Though ideally a judge should hear all the testimonies personally, at times the reality is that a different judge might pen the decision because the predecessor judge has retired, died or has been reassigned. In this situation, it cannot be assumed that the findings of fact of the judge who took over the case are not reliable and do not deserve the respect of the appellate courts. The judge who did not hear the testimonies personally can always rely on the transcripts of stenographic notes taken during the trial.[21] Such dependence does not violate substantive and procedural due process.[22] Indeed, the correctness of a decision is not impaired by the fact alone that the writer only took over from a colleague who had earlier presided at trial, unless there is a showing of grave abuse of discretion in the appreciation of factual findings reached by him.[23] The only reason

for disregarding the findings of fact of the trial court (which are ordinarily given great respect by the appellate courts) is when there is a manifest indication that the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which could have altered the conviction of the accused.[24] In this case, no such reason exists for us to set aside the trial court's findings of fact.

The testimonies of the prosecution witnesses prove clearly and in no uncertain terms, how the appellant and his companions carried out the execution of the crime. Paulino Buayaban, Pedro Tumulak, Marciano Toñacao, Yoyong Buayaban and Larry Betache, all armed, entered the house of Dioscoro Abonales, killed the latter by shooting him in the neck then forcibly took the sum of P30,000 from the victim's wife. They also got the wallet of Rolando Verdida, the future son-in-law of the victim, containing P10,000 which was the money prepared by Rolando for his wedding to the victim's daughter. After the robbery, they all fled. But, while escaping, they encountered Artemio Abonales, the father of the victim, who was responding to investigate the gunshots he heard. They all stopped momentarily and Paulino in fact tried but failed to shoot Artemio. Thereafter, all the accused continued their escape.

The appellant argues that, between the testimonies of Artemio Abonales and Larry Betache, the trial court erred in giving weight to the testimony of Artemio for the reason that he was not a credible witness. Artemio's eyesight was allegedly defective due to old age and his testimony was inconsistent. Appellant claims that Larry Betache, on the other hand, was a credible witness because, according to the report of the Department of Social Welfare and Development (DSWD), Larry Betache was a "good boy." [25]

We cannot accept the contention of the appellant. There is no reason to belittle the testimony of Artemio Abonales just because defense witness Larry Betache gave a different version. It must be noted that the positive identification of the appellant and his companions was made not only by Artemio Abonales but also by Rolando Verdida and Josefa Abonales whose testimonies were straightforward and categorical. Artemio Abonales told Judge Manuel C. Genova [26] that he could still see clearly and that he knew all the accused since their childhood. Thus he had no difficulty recognizing them when he bumped into them on his way to the house of the victim. He also clarified to Judge Genova that the distance between him and the malefactors when he met them was only about two meters. [27] In fact, his testimony shows that the malefactors halted briefly at which juncture Paulino Buayaban even tried to shoot him but the gun did not fire. Thereafter, the five accused continued to run away. [28]

Appellant pointed out that it was absurd for Artemio Abonales to find Rolando Verdida and Elizabeth Abonales still lying face down on the floor inside the victim's house, since he testified that his wife and daughter, who went before him to investigate the gunshots, were already at the scene of the crime when he arrived. [29] Surely, the presence of his (Artemio's) wife and daughter at the place of the crime would have alerted the victims that the robbery was over and that they could already stand up. This inconsistency, however, is a minor one and does not in any way affect the credibility of Artemio Abonales. Minor inconsistencies in the testimonies of witnesses do not detract from their credibility; on the contrary, they serve to strengthen their credibility and are taken as badges of truth rather than as indicia of falsehood as they erase the suspicion of rehearsed testimony. [30]

The argument of the appellant that Larry Betache was a credible witness because he was a "good boy," according to the DSWD report, is totally devoid of merit. It does not follow that just because the DSWD said that Larry Betache was a "good boy," his testimony was credible. His testimony should be taken with caution as he was a defense witness and a youthful offender (co-accused of appellant Pedro Tumulak in the present case) entitled to suspended sentence. He had nothing to lose by freeing appellant from criminal responsibility. His uncorroborated testimony that appellant Pedro Tumulak and Paulino Buayaban were not part of the group that robbed and killed Dioscoro Abonales wilts under the positive identification of Rolando Verdida, Josefa Abonales and Artemio Abonales.

In an effort to destroy the testimonies of Rolando Verdida and Josefa Abonales, the appellant argues that: (1) Rolando Verdida could not have identified him and his companions, and could not have seen what was going on during the incident because he was lying face down on the floor, and (2) Josefa Abonales did not really know him and his companions because she admitted she only got to know them when her father-in-law told her their names.[31]

The argument of the appellant does not hold water. Even if eyewitness Rolando Verdida was made to lie face down on the floor by the malefactors, he was not prevented from getting a glimpse of the malefactors as they moved inside the house. It must be noted that the house was a small nipa hut where one could see without obstruction what was going on in another part of the house.[32] In addition, the house was well-illuminated because there were three lamps, one in the balcony, another at the door of the bedroom and a third in the kitchen.[33] The testimony of Rolando Verdida, showing that he knew what was going on during the incident even if he was lying face down on the floor, was:

Q:

Now you testified during the direct examination that you saw Marciano Toñacao but in the cross examination you said you were ordering (sic) to lay flat on the floor, when did you see him, after your father was shot or before?

A:

Before the shooting.

Q:

How were you able to see this shooting?

A:

I was near with my (sic) my father-in-law (witness is pointing from where he is seated to the place where the lawyers seated (sic) which is about around 2½ meters).

Q:

What was the condition of the place where the fatal shooting was made?

A:

No obstruction. He was sleeping at the door.

Q:

What about the place where you are situated to the kitchen where your mother is preparing the table?

A:

No obstruction from my place to the kitchen.

Q:

Did you see them get the money?

A:

Yes, sir.

Q:

How was it taken?

A:

Yoyong Buayaban and Marciano Toñacao get (sic) the money inside the wooden chest.

Q:

From the wooden chest were (sic) was it placed?

A:

I did not see.

Q:

So you see the bundele (sic) of money being handed to the robbers?

A:

It was placed inside the pillow.

Q:

It was placed in the pillow when it was get (sic) by the robber?

A:

Yes, sir.

xxx xxx xxx

Q:

These robbers did not use any mask when they went there?

A:

No, sir.

Q:

That is why you were able to identify them because you were from that place?

A:

Yes, sir. [34]

Moreover, before Rolando was ordered to lie flat on the floor, he had a good look at the accused when they entered the house as he was seated near the balcony. In fact, two of the accused, herein appellant Pedro Tumulak and Paulino Buayaban, pointed their guns at him the moment they entered the house.[35]

We find as baseless the argument of the appellant that the testimony of Josefa Abonales was not credible because she allegedly admitted that she only obtained the names of the malefactors from her father-in-law, Artemio Abonales. There is no such admission in her testimony. What she said in direct examination was that her father-in-law met five persons: Paulino Buayaban, Pedro Tumulak, Larry Betache, Yoyong Buayaban and Marciano Toñacao. She never said that it was only then that she got to know the names of the malefactors. Her direct testimony which the defense erroneously interpreted as an admission went as follows:

Q:

So what did you do when you discovered that your husband was already dead?

A:

I cried.

Q:

You cried and what happened after that?

A:

My father-in-law arrived.

Q:

When your father-in-law arrived what happened?

A:

He told us he met five (5) persons.

Q:

Did your father-in-law tell you who were those five (5) persons he met?

A:

Yes, sir.

Q:

What did your father-in-law tell you about these five (5) persons?

A:

He met Paulino Buayaban, Larry Betache, Pedro Tumulak, Marciano Toñacao and Yoyong Buayaban.

Q:

So who else arrived after your father-in-law arrived if there were any?

A:

Our neighbors. [36]

In fact, it was clear from Josefa's direct testimony that she knew the accused. Her testimony was:

Q:

What did they do inside your house?

A

They went up our house and shot my husband.

Q:

Who shot your husband?

A:

Marciano Toñacao.

Q:

Were you able to know these five (5) persons who went inside your house?

A:

Yes, sir.

Q:

Why were you able to identify these five (5) persons?

A:

Because we have a light inside our house.[37]

And on cross-examination, she categorically stated that she really knew the accused because they lived in the same place and they were neighbors. [38]

Against the positive identification of the prosecution witnesses, appellant Pedro Tumulak set up the defense of alibi. Appellant claimed that, at the time the crime occurred, he was talking with Barangay Captain Silverio Cortes in the latter's house in Barangay Pen-as, Cawayan, Masbate. At 9:30 p.m., he went to sleep in the house of Cortes. He claimed he was staying there because Barangay Captain Cortes hired him to work in his fishpond. The barangay captain, however, did not testify despite several subpoenas sent to him.[39] The defense instead presented Laurencio Villegas who claimed to be the co-worker of appellant in Cortes' fishpond. Laurencio Villegas testified that he and appellant Pedro Tumulak ate together on the date and at the time of the crime and that they slept in one mat. He said Pedro went to sleep ahead of him.[40]

To properly appreciate the defense of alibi, the requirements of place and time must be strictly met.[41] The

accused must prove not only that he was somewhere else when the crime was committed but also that it was physically impossible for him to be at the scene of the crime at the time of its commission.[42] Here, we find no physical impossibility for the appellant to have been at the place of the commission of the crime and to have actually participated in it.

The alleged place where the appellant claimed he was at the time of the crime (house of Barangay Captain Silverio Cortes) was not that far from the scene of the crime as it is situated only in an adjacent barangay. Appellant could reach the house of the victim after only an hour's walk.

We rule that there was conspiracy between the appellant and his co-accused. Conspiracy can be inferred from the acts of the perpetrators before, during and after the crime, which indicate a common design, concerted action and concurrence of sentiments.[43] From the testimonies of eyewitnesses, the acts of the appellant and his co-accused showed unity of purpose and design in the execution of the offense. The malefactors, all armed, entered the house of Dioscoro Abonales. Paulino Buayaban and Pedro Tumulak stood guard over Rolando Verdida and Elizabeth Abonales as they lay flat on the floor. Meanwhile, Yoyong Buayaban and Marciano Toñacao woke up the victim by kicking him in the face and when the victim tried to get up, Marciano shot him in the neck, killing him instantly. Larry Betache, on the other hand, stayed at the door to act as a look-out. After the perpetrators forcibly seized the money from the wife of the victim and from Rolando Verdida, they all ran away from the place of the crime.

The five accused clearly conspired in committing the crime; the unity of purpose and design was evident. When conspiracy is shown, the act of one is the act of all.[44] Thus, appellant Pedro Tumulak, though he was not personally the one who killed the victim and forcibly took the money from the victim's wife, is liable as principal by direct participation for Dioscoro's death as an incident to or as a result of the robbery.

In the information, the People erroneously charged the accused with "robbery in band with homicide." There is no such crime in the Revised Penal Code. The felony is properly called robbery with homicide. In the landmark case of *People vs. Apduhan, Jr.*,[45] we ruled that if robbery with homicide is committed by a band, the indictable offense would still be denominated as "robbery with homicide" under Article 294(1) of the Revised Penal Code, but the circumstance that it was committed by a band would be appreciated as an ordinary aggravating circumstance.

However, in the present case, we cannot treat the ordinary aggravating circumstance of band because it was not alleged in the body of the information. Though it is an ordinary aggravating circumstance, the 2000 Rules on Criminal Procedure[46] require that even generic aggravating circumstances must be alleged in the Information.[47] Thus, Sections 8 and 9, Rule 110, of the said Rules provide:

Section 8. Designation of the offense.- The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

Sec. 9. Cause of the accusation.- The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment. (Italics ours)

Section 8 simply provides that the information or complaint must state the designation of the offense given by the statute and specify its qualifying and generic aggravating circumstances. With regard to Section 9, we held in

People vs. Nerio Suela [48] that the use of the word "must" in said Section 9 indicates that the requirement is mandatory and therefore, the failure to comply with Sec. 9, Rule 110, means that generic aggravating circumstances, although proven at the trial, cannot be appreciated against the accused if such circumstances are not stated in the information. It is a cardinal rule that rules of criminal procedure are given retroactive application insofar as they benefit the accused.[49]

In this case, we cannot properly appreciate the ordinary aggravating circumstance of band in the commission of the crime since there was no allegation in the information that "more than three armed malefactors acted together in the commission of the crime." [50]

All things considered, we find Pedro Tumulak guilty beyond reasonable doubt of the crime of robbery with homicide as defined and penalized under Article 294 of the Revised Penal Code by reclusion perpetua to death. But since there was no appreciable aggravating circumstance, the penalty of reclusion perpetua should be the proper penalty.

As to the civil liability of the appellant, we affirm the award of damages by the trial court except the grant of exemplary damages in the amount of P20,000 which we hereby delete and the amount of moral damages which we hereby increase from P20,000 to P50,000.

The award of exemplary damages is deleted because the crime was not committed with any aggravating circumstance. Under Article 2230 of the Civil Code, exemplary damages can only be awarded in criminal actions if the crime was committed with aggravating circumstances.

As to the award of moral damages which the trial court properly awarded to the wife and family of Dioscoro Abonales for the pain and anguish they suffered,[51] we increase it to P50,000 in conformity with existing jurisprudence.[52]

The trial court did not award actual damages for the funeral and burial of the victim because no receipts were presented by the prosecution. This is correct. However, we recently ruled in the case People vs. Abrazaldo, G.R. No. 124392, February 4, 2003, that temperate damages in the amount of P25,000 shall be awarded where no documentary evidence of actual damages (e.g. receipts of funeral and burial expenses) were presented in the trial court because it is reasonable to presume that, when death occurs, the family of the victim necessarily incurred expenses for his wake and funeral. Accordingly, in the present case, in addition to the damages already awarded by the trial court, we add temperate damages in the amount of P25,000.

WHEREFORE, the decision of the Regional Trial Court of Cataingan, Masbate, Branch 49, in Criminal Case No. 471, convicting appellant Pedro Tumulak of the crime of robbery with homicide and sentencing him to suffer the penalty of reclusion perpetua is AFFIRMED with MODIFICATION in the award of damages. Moral damages in favor of the heirs of the victim, Dioscoro Abonales, are hereby increased from P20,000 to P50,000; exemplary damages in the amount of P20,000 are hereby deleted for lack of basis while temperate damages in the amount of P25,000 are hereby awarded in conformity with current jurisprudence.

The award of civil indemnity in favor of the heirs of the victim in the amount of P50,000 and the restitution of the sum of money forcibly taken by the appellant and his co-accused from the victim and his family in the total amount of P40,000 (P30,000 to be returned to the heirs of the Dioscoro Abonales and P10,000 to Rolando Verdida) is hereby affirmed.

No costs.

SO ORDERED.

Puno (Chairman), Panganiban, Sandoval-Gutierrez, and Carpio-Morales, JJ., concur.

[1] Penned by Judge Henry B. Basilla.

[2] He is entitled to one degree reduction of the penalty and to an indeterminate penalty under the Indeterminate Sentence Law (Act No. 4103) by virtue of the privileged mitigating circumstance of minority. Decision of the trial court, p. 4; Rollo, p. 13.

[3] Rollo, p. 4.

[4] Records, pp. 15-16.

[5] Rollo, p. 13.

[6] Id., p. 31.

[7] Id., pp. 52-54.

[8] Id., pp. 68-69.

[9] Id., pp. 118-119.

[10] TSN, August 12, 1991, pp. 1-6.

[11] TSN, August 13, 1991, pp. 6-8; TSN, August 12, 1991, pp. 6-7.

[12] TSN, August 12, 1991, pp. 7-8, 11.

[13] TSN, January 14, 1992, pp. 4-7.

[14] TSN, August 12, 1991, pp. 8-9.

[15] TSN, January 15, 1992, pp. 11-15.

[16] Id., pp. 15-17.

[17] Rollo, pp. 10-13.

[18] Appellant's Brief, pp. 20-28; Id., p. 31.

[19] Except the last two defense witnesses, Silvino Buayaban and Laurencio Villegas, whom Judge Basilla personally heard on the witness stand. TSN, March 3, 1992, pp. 1-10. TSN, March 18, 1993, pp. 1-8A.

[20] Appellant's Brief, pp. 20-25; Rollo, p. 31.

[21] People vs. Rogelio Sansaet y Santoja, G. R. No. 139330, February 6, 2002; People vs. De Paz, 212 SCRA 56, 63 [1992].

[22] People vs. Rogelio Sansaet y Santoja, G. R. No. 139330, February 6, 2002.

[23] Id.

[24] People vs. Rodolfo Castellano, G.R. No. 130596, February 15, 2002.

[25] Appellant's Brief, p. 25; Rollo, p. 31.

- [26] The judge who first presided over the case.
- [27] TSN, January 14, 1992, pp. 4-5.
- [28] TSN, January 14, 1992, pp. 5-6.
- [29] Appellant's Brief, pp. 21-22; Rollo, p. 31.
- [30] People vs. Robert Dinglasan, 267 SCRA 26 [1997]; People vs. Cesar Givera, 349 SCRA 513 [2001].
- [31] Appellant's Brief, p. 26; Rollo, p. 31.
- [32] TSN, August 12, 1991, pp. 12-13.
- [33] TSN, August 13, 1991, p. 6.
- [34] TSN, August 12, 1991, pp. 15-16.
- [35] Id., pp. 4-5.
- [36] TSN, August 13, 1991, p. 9.
- [37] Id., p. 5.
- [38] Id., p. 15.
- [39] A total of 8 subpoenas sent in a period of 10 months. Records, pp. 148, 157, 161, 165, 168, 170, 177, 184.
- [40] TSN, March 18, 1993, pp. 1-8.
- [41] S/Sgt. Elmer T. Vergara vs. People of the Philippines, G.R. No. 128720, January 23, 2002; People vs. Diasanta, 335 SCRA 218 [2000].
- [42] People vs. Rogelio Sansaet y Santoja, G.R. No. 139330, February 6, 2002; People vs. Marollano, 276 SCRA 84, 110 [1997].
- [43] People vs. Manuel Gutierrez, G.R. Nos. 137610-11, February 6, 2002.
- [44] Id.

[45] 24 SCRA 798 [1968].

- [46] The latest Revised Rules of Criminal Procedure took effect December 1, 2000.
- [47] JUSTICE OSCAR HERRERA, TREATISE ON HISTORICAL DEVELOPMENT AND HIGHLIGHTS OF AMENDMENTS OF RULES ON CRIMINAL PROCEDURE 37 (2001); People vs. Nerio Suela, G.R. No. 133570-71, January 15, 2002.
- [48] G.R. Nos. 133570-71, January 15, 2002.
- [49] Id.
- [50] Article 14, paragraph 6, Revised Penal Code.
- [51] TSN, August 13, 1991, pp. 9-10.
- [52] People vs. Roberto Cabillan, et al., G.R. No. 131808, February 6, 2002; People vs. Cariño, G.R. No. 129960, August 28, 2001; People vs. Panado, 348 SCRA 679 [2000].

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