

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO SAMBULAN, LUCAS SAMBULAN AND ALFREDO SAMBULAN, ACCUSED. ROMEO SAMBULAN AND LUCAS SAMBULAN, ACCUSED-APPELLANTS.

G.R. No. 112972. April 24, 1998

Ponente: REGALADO, J.

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REGALADO, J.:

Accused-appellants Romeo and Lucas Sambulan, together with their brother Alberto Sambulan, were charged with murder before the Regional Trial Court, Branch 16, Tangub City, in an information alleging -

That on or about the 28th day of August, 1998, at 6:00 o'clock in the evening, in Barangay Manga, Tangub City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating (with) one another and armed with bolos, did then and there wilfully, unlawfully and feloniously, attack, strike and stab one Antonio Roda, hitting and inflicting multiple wounds on the different parts of his body, resulting in his instantaneous death.

CONTRARY TO LAW, with the qualifying circumstance of evident premeditation.[1]

Upon arraignment, the three accused pleaded not guilty to the charges filed against them.[2] At the trial and after the prosecution had rested its case, the lower court, upon motion of the defense, ordered the dismissal of the case against Alberto Sambulan for lack of evidence.[3] The trial then proceeded with regard to accused Romeo and Lucas Sambulan.

The prosecution presented five witnesses, namely, Antonia Roda, Saturnino* Mabalod, Felix Ano-os, Dr. Sinforiana del Castillo and Delfin Lumingkit. Their version of the incident, culled from their testimonies in the trial court, constitute the bases for the findings of facts narrated hereunder.

On August 28, 1992 at about 4:00 o'clock in the afternoon, according to Saturnino Mabalod, appellants' father, Pedro Sambulan, and the victim, Antonio Roda, were at the store of Lourdes Gulahab situated at Barangay Manga, Tangub City. Shortly thereafter, Pedro Sambulan approached the victim and told him that he is a crocodile ("buaya"). Offended, the victim replied, "Do not say that word, Nong, because that will cause me shame." As a result, the two engaged in a fistfight, whereupon Saturnino intervened and pacified them. He then brought Pedro Sambulan home. Nobody was present at the Sambulan household when they arrived.[4]

At about 6:00 o'clock in the evening of the same day, Felix Ano-os saw appellants Romeo and Lucas Sambulan at the cornfield of Esteban Gulahab hacking Antonio Roda with a bolo. This cornfield is situated at Barangay Manga, and witness Ano-os was then more or less 10 meters away from the crime scene. He later overheard Lucas Sambulan say, "We have already taken you, Ling," referring to the victim. From the cornfield, Felix Ano-os immediately went home and recounted what he saw to Delfin Lumingkit, the victim's brother-in-law who was his neighbor. The latter went to the house of his sister, Antonia Roda, and informed her about the incident.[5]

Thereafter, Delfin accompanied his sister to the locus criminis. There, Antonia Roda could hardly recognize her husband as his corpse lay on the cornfield covered with blood and bearing multiple wounds on the face and neck. She reported the incident to the police and then fetched Dr. Sinforiana del Castillo, City Health Officer of Tanguib City, to examine the body of her husband.[6]

Dr. Del Castillo testified in court that the multiple mortal wounds on the face and neck of the victim were the immediate cause of his death. According to her findings, the victim sustained 13 wounds described in the necropsy report as follows:

1. Open incised wound at the base of the anterior neck above Angle of Louis, deep 7 centimeters long across the neck. Extremity of wound at the right is round and at the left is sharp.
2. Immediately above is another open gaping incised wound, deep, 9.3 centimeters long across the neck. Trachea, esophagus and blood vessels completely cut. Both extremities of the wound sharp.
3. Open gaping incised wound across submandibular region 15 centimeters long from right face towards the left side of the neck.
4. Open wound cutting bones from left eye towards the right posterior portion of the neck obliquely 30 centimeters long.
5. Open gaping incised wound at the left face 7.5 centimeters long longitudinally. Both extremities of the wound is sharp.
6. Open wound 10.5 centimeters long from left to right cheek across the bridge of the nose.
7. Open wound across frontal region cutting bones 16 centimeters long from left ear to right eyebrow.
8. Stab wound located at left chest anterior, mid-clavicular line at the level of the nipple obliquely 3.2 centimeters, both extremities of wound sharp.
9. Open incised wound, deep, bones exposed at the right elbow lateral aspect 5 centimeters long, lower extremity of the wound is sharp, upper extremity round with continuity 10 centimeters linear superficial wound upward to the right arm lateral aspect.
10. Open gaping wound at left shoulder 13 centimeters towards upper 3rd of arm. Both extremities sharp.
11. Incised wound 3 centimeters across left forearm posterior deep.
12. Superficial wound of skin only 5 centimeters across left forearm.
13. Open wound right arm lateral aspect 4 centimeters long. Both extremities sharp.[7]

When asked on cross-examination if it could be possible that all the injuries found on the body of the victim may have been caused by one and the same kind of instrument, she answered in the negative because of the nature and shape of the wound found on his chest.[8]

Testifying in his defense, appellant Romeo Sambulan[9] admitted having killed the victim but invoked self-defense. He testified that on August 28, 1992, when he arrived home from Cagayan de Oro City after attending the fiesta, he found his father with hematoma on his face. When he inquired about the cause of the injuries, his father told him that he was boxed by Antonio Roda. Later, after taking a short rest, appellant went to the street crossing to buy cigarettes. On his way to the store, he met the victim by chance and he asked the latter why he boxed appellant's father. The victim got mad and said: "Are you going to defend him?" As the victim pulled out his long bolo, appellant kicked him in the groin. As soon as the victim fell, appellant grabbed the bolo and stabbed him, then hacked him several times, and ran away.

He immediately went to the house of his brother, Lucas, to ask the latter to accompany him to see their brother-in-law who was a councilman, so that appellant could surrender to the police. He thereafter did so and he also yielded to the police a bolo and its scabbard, claiming that it was the bolo he had wrested from the victim and the scabbard which he had removed from the latter's waist. He belied the claim of the prosecution that his brother, Lucas, took part in the killing of Antonio Roda. He insisted that it was he alone who committed the killing.

The foregoing testimony of appellant was corroborated by defense witness Rosalinda Undag Malig-on, an itinerant vendor of "amahong" shells, who allegedly happened to pass by the scene of the crime at the time of the killing. She claimed that she was then on her way home from Bongabong and passed by Barangay Manga at around 6:00 P.M. of that fatal day. She further confirmed that only appellant Romeo Sambulan and the victim were present at the time and place of the incident.[10]

The other appellant, Lucas Sambulan, denied participation in the killing of the victim. He declared that he was in his house at the time of the commission of the crime when his brother, Romeo, arrived. The latter asked for help because of his fight with the victim whose bolo he was bringing with him.[11] His testimony was echoed by Godofredo Dayo, who testified that on the day of the incident, he was in the house of Lucas watching television. He stated that at about 6:00 P.M., appellant Romeo Sambulan arrived and asked his brother, Lucas, to accompany him to the city in order to turn himself in to the authorities because he had wounded Antonio Roda.[12]

On September 10, 1993, the trial court, presided over by Executive Judge Dominador B. Borje, rendered the questioned decision finding both accused guilty beyond reasonable doubt of the crime of murder and sentencing them to serve the penalty of reclusion perpetua, to indemnify the heirs of the victim in the sum of P50,000.00, and to pay the costs.[13] Not satisfied, both accused interposed the present appeal.

On July 15, 1995, this Court received a letter from the Assistant Director of the Bureau of Corrections informing it that on May 23, 1994, appellant Lucas Sambulan died at the San Ramon Prison and Penal Farm in Zamboanga City.[14] Thereafter, appellant Romeo Sambulan manifested through his then counsel that he was no longer interested in pursuing his appeal.[15] On the basis thereof, the Court issued a resolution on November 13, 1995 dismissing the appeal and declaring this case closed and terminated.[16]

On January 12, 1995, however, the Court received a letter from appellant Romeo Sambulan, dated December 18, 1995, moving for the reconsideration of the said dismissal and requesting for the appointment of a new counsel to represent him.[17] In a resolution dated July 8, 1996, his appeal was reinstated and the Public Attorney's Office was appointed as his counsel de oficio.[18]

On September 27, 1996, the new counsel filed appellant's brief with the following assignment of errors:

1. The trial court erred in disregarding the theory of the accused Romeo Sambulan that he acted in self-defense.
2. The trial court erred in finding that the killing is qualified by evident premeditation and treachery and failed to appreciate in favor of the accused the mitigating circumstances of voluntary surrender and vindication of a grave offense.
3. The trial court erred in finding accused-appellants Romeo and Lucas Sambulan guilty beyond reasonable doubt of the crime of murder.[19]

There is obviously no need to discuss the merits of the appeal of appellant Lucas Sambulan. His criminal liability, as well as the civil liability based solely thereon, have been extinguished by his death. Upon the death of an accused pending appeal from his conviction, the criminal action is extinguished, and the civil aspect instituted therewith for recovery of civil liability ex delicto is ipso facto extinguished, grounded as it is on the criminal

action alone.[20]

As to the other appellant, Romeo Sambulan, we agree that his plea of self-defense was correctly rejected by the trial court. Long embedded in our jurisprudence is the decisional rule that where an accused admits having killed the victim but invokes self-defense to escape criminal liability, he assumes the burden of proof to establish his plea of self-defense by credible, clear and convincing evidence; otherwise, conviction would follow from his admission that he killed the victim.[21] Further, the accused must this time rely on the strength of his own evidence and not on the weakness of the prosecution. For, even if the prosecution evidence is weak, it could not be disbelieved after the accused himself had admitted the killing.[22]

On this score, for self-defense to prosper, it must be positively shown that there was a previous unlawful and unprovoked attack that placed the life of the accused in danger and forced him to inflict more or less severe wounds upon his assailant, employing therefor reasonable means to resist said attack.[23]

In the instant case, the defense failed to establish the primary element of unlawful aggression on the part of the victim. Even granting *arguendo* the truth of the version purveyed by appellant, the mere drawing by the victim of a bolo does not justify the acts of appellant of forthwith stabbing and repeatedly hacking the victim who was already lying immobilized on the ground after being kicked in the groin. From that moment, the supposed aggression had already ceased and the continuation of the offensive stance of the accused puts him in the place of the aggressor.[24] When an unlawful aggression which has begun no longer exists, the one making a defense has no right to kill or even to wound the former aggressor.[25]

Additionally, the nature, number and severity of the wounds sustained by the victim negate appellant's claim of self-defense. The necropsy report shows that the victim sustained 13 wounds, the majority of which were grave and inflicted on his neck and face, whereas appellant Romeo Sambulan suffered no bodily harm or injury whatsoever. The gruesome wounds sustained by the victim logically indicate that the assault was no longer an act of self-defense but a determined murderous aggression. Such wounds belie the exculpatory pretension of appellant and confirm the theory of the prosecution that appellant purposely and vigorously attacked the deceased in order to kill the latter.[26]

It is both a statutory and doctrinal axiom that for the justifying circumstance of self-defense, the presence of unlawful aggression is a condition *sine qua non*. There can be no self-defense to speak of, whether complete or incomplete, unless the victim has committed an unlawful aggression against the person defending himself.[27]

Another consideration that undermines the claim of self-defense is the fact that there is physical evidence which casts serious doubt on the story given by appellant Romeo Sambulan to the trial court. From the testimony of the doctor based on her necropsy report, the wounds of the victim must have been inflicted by at least two kinds of instruments.[28] This contradicts herein appellant's version of the incident that he used only the bolo of the victim in attacking him and that he alone killed the latter.

Ironically, the very submission of appellant that the bolo he used in hacking the victim belonged to the latter was rendered gravely doubtful by his own act of surrendering the bolo together with its scabbard to the police. His allegation that he removed the scabbard from the waist of the victim, so that he could also surrender it with the bolo[29] is incredible. It is not in accord with human behavior and the natural course of things that despite the frenzied attack launched by appellant against the victim which virtually mutilated the latter in the process, as well as the extremely agitated emotional and psychological state of mind of appellant at that time, he could still have the meticulousness to think of the niceties of surrendering the death weapon without overlooking its scabbard.

Appellant also faults the trial court for holding that the killing was qualified by treachery and evident

premeditation, hence constitutive of murder. We agree with appellant on these points.

It was error for the lower court to appreciate treachery as a qualifying circumstance for the simple and apparent reason that it was not so alleged in the information. Nor can it be appreciated as a generic aggravating circumstance, there being no showing that appellant employed means, methods or forms calculated to insure the execution of the killing without risk to himself arising from the defense the victim might have made.[30] This is a fundamental requirement which is mandated right in the codal provision therefor of our penal law.

More specifically, for treachery to be appreciated, there must be proof that at the time of the attack, the victim was not in a position to defend himself and that the offender consciously and deliberately adopted the particular means, method or form of attack which he employed to ensure the accomplishment of his purpose with impunity.[31]

In the case at bar, the record is bereft of evidence showing the methods or the means employed by appellant in order to ensure his safety from any retaliation that could be put up by the victim.[32] The witness for the prosecution only saw the actual hacking of the victim and not the preceding events that led to it. Treachery cannot be considered where the lone witness did not see the commencement of the assault. The importance of such testimony cannot be overemphasized considering that treachery cannot be presumed nor established from mere suppositions.[33]

The trial court also erred in appreciating the qualifying circumstance of evident premeditation. To acknowledge the presence of this circumstance, it is necessary to establish (1) the time when the offender determined to commit the crime; (2) the act manifestly indicating that the culprit has clung to his determination; and (3) a sufficient lapse of time between the determination and execution to allow him to reflect upon the consequences of his act and to allow his conscience to overcome the resolution of his will had he desired to harken to its warnings.[34]

None of the abovestated elements has been established by the prosecution, although it was at least able to prove that there was a previous altercation between the victim and the father of appellant. This alone, of course, could not prove evident premeditation on the part of herein appellant. The mere existence of ill-feelings or grudges between the parties is not sufficient to sustain a conclusion of premeditated killing.[35]

The essence of premeditation is that the execution of the criminal act must be preceded by cool thought and reflection upon the resolution to carry out the criminal intent during a space of time sufficient to arrive at a calm judgment.[36] Where there is no showing as to how and when the plan to kill was hatched or what time had elapsed before it was carried out, evident premeditation cannot be considered to exist.[37] To show premeditation (*premeditación conocida*), it is required that the criminal intent must be evident, not merely suspected or thought of or contemplated mentally without an externalized act.[38]

The circumstances qualifying or aggravating the act must be proved in an evident and incontestable manner. They must be proved as conclusively as the acts constituting the offense itself.[39] They must be established by clear and positive evidence, mere presumptions and inferences being insufficient no matter how logical and probable they may be, and they cannot be drawn from mere conclusions for they must be evident and not merely suspected. And, whenever, their existence have not been established beyond doubt, the accused should be given the benefit of the doubt.[40]

In view of the absence of any qualifying circumstance, therefore, the crime committed by appellant Romeo Sambulan is homicide and not murder.[41]

Appellant also claims the benefit of two mitigating circumstances, namely, voluntary surrender and vindication of a grave offense. From the evidence on record, his submission on the first circumstance may be favorably

considered, but not that with respect to the second.

The mitigating circumstance of voluntary surrender should have been appreciated by the court below in the determination of the penalty. Appellant Romeo Sambulan did unconditionally surrender himself to the authorities immediately after the killing.[42] This was not disputed by the prosecution. In fact, the records show that herein appellant has been detained, upon a volitional arrangement, at the Tanguib City Jail since August 28, 1992.[43] For the circumstance of voluntary surrender, it is sufficient that it be spontaneous and made in a manner clearly indicating the intent of the accused to surrender unconditionally, either because he acknowledges his guilt or he wishes to save the authorities the trouble and expense which will necessarily be incurred in searching for and capturing him.[44]

However, appellant's claim for extenuation due to his having allegedly acted in vindication of a grave offense cannot be granted. The evidence for the defense shows that from the time appellant learned about the alleged fight between his father and the victim up to the time he met the victim by chance on his way to the store, a sufficient interval of time had elapsed for appellant to attain a cool composure. In fact, he testified that after his conversation with his father he even rested before going to the store and he only went out to buy cigarettes.[45] There can be no immediate[46] vindication of a grave offense when the accused had sufficient time to recover his serenity.[47]

Moreover, the benefit of the mitigating circumstance of vindication of a grave offense was negated by appellant himself. In substantiating his plea of self-defense, appellant claimed that it was the victim who initiated the fight with him and was, therefore, the unlawful aggressor. He insisted that it was not the fact that the victim had boxed his father which impelled him to kill the victim, to wit:

Q In other words when your father reported to you that he was boxed in the face by Antonio Roda you became very mad?

A I was not mad at that time.

Q Why do you say that you hacked Antonio Roda many times because he boxed your father?

A Because he attacked me first.

Q After thrusting you(r) bolo for the first time to the body of Antonio Roda he fell down, is that correct?

A Yes.

Q And after that you still inflicted 12 other injuries by hacking?

A Yes.

Q That is because he boxed your father?

A That is not the very cause and because he attacked me first I forgot my senses.

Q Now, when your father reported to you that he was boxed in the face by Antonio Roda you (were) still of sound senses, you did not still forget things?

A Not yet.[48]

Immediate vindication of a grave offense, like any other, modifying circumstance, should be affirmatively proven,[49] and this burden appellant failed to discharge. In fact, it is problematical if he was actually redressing a grave offense committed against his father, it appearing that the latter provoked the fight with the victim and they were mutual aggressors. Furthermore, in appellant's own fight with the victim wherein he claims self-defense

which presupposes a defensive stance, it is inapposite to likewise claim that he fought the victim to vindicate a wrong committed against his father, a posture founded this time upon an offensive assault initiated by him.

All told, the criminal liability of appellant is for simple homicide, with a mitigating circumstance of voluntary surrender and without any aggravating circumstance. Applying the Indeterminate Sentence Law, the maximum imposable penalty would be within the minimum period of reclusion temporal, and the minimum penalty would be within any of the three periods of prision mayor.

WHEREFORE, the appealed judgment is hereby MODIFIED. Accused-appellant Romeo Sambulan is declared GUILTY beyond reasonable doubt of the crime of homicide and is hereby sentenced to suffer an indeterminate sentence of eight (8) years of prision mayor, as minimum, to fourteen (14) years and eight (8) months of reclusion temporal, as maximum. In all other respects, the judgment of the trial court is AFFIRMED, with costs against said accused-appellant.

SO ORDERED.

Melo, Puno, Mendoza, and Martinez, JJ., concur.

[1] Rollo, 1.

[2] Original Record, 21.

[3] Ibid., 47.

* Erroneously referred to in some parts of the record as "Santiago."

[4] TSN, April 16, 1993, 8-9.

[5] Ibid, April 17, 1993, 11-14.

[6] Ibid., April 16, 1993, 5-6.

[7] Ibid., June 16, 1993, 5-9; Exhibits A and B; Folder of Exhibits, 1 and 2.

[8] Ibid., June 16, 1993, 12.

[9] Ibid., July 30, 1993, 4-5.

[10] TSN, July 30, 1993, 4-5.

[11] Ibid., id., 36-38.

[12] Ibid., July 29, 1993, 5-6.

[13] Original Record, 67-72.

[14] Rollo, 79.

[15] Ibid., 99.

[16] Ibid., 104.

[17] Ibid., 106-107.

[18] Ibid., 113.

- [19] Brief for Appellants, 1; Rollo, 126.
- [20] *People vs. Sumaya*, G.R. Nos. 93281-84, November 17, 1994, 238 SCRA 201; *People vs. Bayotas*, G.R. No. 102007, September 2, 1994, 236 SCRA 239.
- [21] *People vs. Morato, et al.*, G.R. Nos. 95358-59, July 5, 1993, 224 SCRA 361; *People vs. Mercado*, G.R. No. L-33492, March 30, 1988, 159 SCRA 453.
- [22] *People vs. Tidong*, G.R. No. 101583, August 13, 1993, 225 SCRA 324; *People vs. Sazon*, G.R. No. 89684, September 18, 1990, 189 SCRA 700; *People vs. Rey*, G.R. No. 80089, April 13, 1989, 172 SCRA 149.
- [23] *People vs. Sarense, et al.*, G.R. No. 97433, October 20, 1992, 214 SCRA 780; *People vs. Madali, et al.*, G.R. Nos. 67803-04, July 30, 1990, 188 SCRA 69.
- [24] See *People vs. Ganzagan, Jr.*, G.R. No. 113793, August 11, 1995, 247 SCRA 220; *People vs. Binondo*, G.R. No. 97227, October 20, 1992, 214 SCRA 764.
- [25] Cf. *People vs. Alconga, et al.*, 78 Phil. 366 (1947).
- [26] *People vs. Macagaling*, G.R. Nos. 109131-33, October 3, 1994, 237 SCRA 299; *People vs. Marciales, et al.*, G.R. No. 61961, October 18, 1988, 166 SCRA 436.
- [27] *People vs. Sazon*, supra, fn. 21; *People vs. Batas, et al.*, G.R. Nos. 84277-78, August 2, 1989, 176 SCRA 46; *People vs. Bayocot*, G.R. No. 55285, June 28, 1989, 174 SCRA 285.
- [28] TSN, June 16, 1993, 11-13.
- [29] Ibid., June 30, 1993, 33.
- [30] *People vs. Salveron*, G.R. No. 102079, November 22, 1993, 228 SCRA 92; *People vs. Lubreo, et al.*, G.R. No. 74146, August 2, 1991, 200 SCRA 11; *People vs. Villapando*, G.R. No. 73656, October 5, 1989, 178 SCRA 34.
- [31] *People vs. Villapando*, G.R. No. 73656, October 5, 1989, 178 SCRA 341; *People vs. Espera, et al.*, G.R. No. 67173, July 31, 1989, 175 SCRA 728.
- [32] *People vs. Buela, et al.*, G.R. No. 92536, November 8, 1993, 227 SCRA 534; *People vs. Bustos*, G.R. No. 35475, March 16, 1989, 171 SCRA 243.
- [33] *People vs. Salvador, et al.*, G.R. No. 101215, July 30, 1993, 224 SCRA 819; *People vs. Tiozon*, G.R. No. 89823, June 19, 1991, 198 SCRA 368.
- [34] *People vs. Layno, et al.*, G.R. No. 110833, November 21, 1996, 264 SCRA 558; *People vs. Liwag, et al.*, G.R. No. 89112, August 3, 1993, 225 SCRA 46; *People vs. Talla, et al.*, G.R. No. L-44414, January 18, 1990, 181 SCRA 133.
- [35] See *People vs. Lacao, et al.*, G.R. No. L-32078, September 30, 1974, 60 SCRA 89.
- [36] See *People vs. Durante*, 53 Phil. 363 (1929).
- [37] *People vs. Narit*, G.R. No. 77087, May 23, 1991, 197 SCRA 334.
- [38] *People vs. Buela, et al.*, supra, fn. 31; *People vs. Lagarto*, G.R. No. 65833, May 6, 1991, 196 SCRA 611.
- [39] *People vs. Atienza*, G.R. No. 68481, February 27, 1987, 148 SCRA 147; *People vs. Tiongson*, G.R. Nos. L-35123-24, July 25, 1984, 130 SCRA 614.

[40] *People vs. Pastoral*, G.R. No. 51686, September 10, 1993, 226 SCRA 219; *U.S. vs. Alvarez*, 3 Phil. 24 (1903).

[41] *People vs. Adriano*, G.R. No. 104578, September 6, 1993, 226 SCRA 131.

[42] See *People vs. Morato, et al.*, G.R. Nos. 95358-59, July 5, 1993, 224 SCRA 361; *People vs. Curaraton*, G.R. No. 96765, July 5, 1993, 224 SCRA 372.

[43] Original Record, 9 and 11.

[44] *People vs. Bautista*, G.R. No. 109800, March 12, 1996, 254 SCRA 621; *People vs. Lagrana, et al.*, G.R. No. 68790, January 23, 1987, 147 SCRA 281; *People vs. Gervacio, et al.*, G.R. No. L-21965, August 30, 1968, 24 SCRA 960.

[45] TSN, July 30, 1992, 16.

[46] It may be noted that the English text providing for the immediate vindication of a grave offense is not an exact translation of the Spanish text which is controlling and states “La de haber ejecutado el hecho en vindicacion proxima de una ofensa grave.” However, in the factual context of this case, such divergence would be insignificant since proximate also means “that immediately preceding or following (as in a chain of events, causes or effects)” (Webster’s Third New International Dictionary, 1993).

[47] *People vs. Santos*, G.R. Nos. 99259-60, March 29, 1996, 255 SCRA 309; *People vs. Pajares*, G.R. No. 96444, June 23, 1992, 210 SCRA 237; *People vs. Benito*, G.R. No. L-32042, December 17, 1976, 74 SCRA 271.

[48] TSN, July 30, 1993, 19.

[49] See *People vs. Alconga, et al.*, *supra*, fn. 24.

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