

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANIEL MALUENDA ALIAS “DONGKOY”; GIL BUENO; RAUL MONDAGA ALIAS “BOBONG”; AND RODRIGO LEGARTO, DANIEL MALUENDA AND RODRIGO LEGA...

G.R. No. 115351. March 27, 1998

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Conspiracy and/or direct participation in a crime may be proven by circumstantial evidence. However, the comprising circumstances must be duly proven, consistent with each other and lead with moral certainty to only one conclusion: that the accused is guilty. If the totality of such circumstances eliminates beyond reasonable doubt the possibility of innocence, conviction is proper; otherwise, the accused must be acquitted. If said accused, however, took advantage of the effects of the crime and profited thereby, he can be held criminally liable as an accessory.

[The Case]

This is an appeal from the March 18, 1994 Decision[1] of the Regional Trial Court of Lianga, Surigao del Sur, Branch 28, in Criminal Case No. L-1174, convicting Raul Mondaga, Rodrigo Legarto and Daniel Maluenda of kidnapping and sentencing them to *reclusión perpetua*.

In an Information dated November 20, 1992, Mondaga, Maluenda and Legarto, together with a certain Gil Bueno, were charged by Prosecutor II Florito G. Cuartero with kidnapping, committed as follows:[2]

“That on the 19[th] day of August 1992, at about 9:00 o’clock in the evening, more or less, at [B]arangay Diatagon, [M]unicipality of Lianga, [P]rovince of Surigao del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, did, then and there, willfully, unlawfully and feloniously kidnap Engr. Miguel Resus for the purpose of extorting money from Engr. & Mrs. Resus, and detaining said Engr. Miguel Resus for a period of four (4) days, to the damage and prejudice of the victim in the amount of P200,000.00, Philippine Currency.

CONTRARY TO LAW. (In violation of Article 267 of the Revised Penal Code).”

Warrants of arrest for the four accused were issued by the trial court, but Bueno eluded the authorities and remained at large.[3] At their arraignment and with the assistance of counsel, Legarto, Maluenda and Mondaga pleaded not guilty.[4]

After trial in due course, the lower court found the three accused guilty as charged and disposed as follows:[5]

“WHEREFORE, consistent with all the foregoing findings, this Court finds all the accuseds [sic], namely, Raul Mondaga, alias Bobong Gonzaga, 21 years old, single, driver by occupation, as alleged, and resident of Tagongon, Tagbina, Surigao del Sur; Rodrigo Legarto alias Rudy, 37 years old, married to Magdalena C. Legarto, gas man of the bankrupt Lianga Bay Logging Co., Inc. and a resident of New Highway, Purok III,

Diatagon, Lianga, Surigao del Sur and Daniel Maluenda, Alias Commander Dongkoy, 22 years old, single, and a farmer and goldminer, and resident of Purok 1, Barobo, Surigao del Sur, all guilty beyond reasonable doubt as co-principals of the crime of Kidnapping for Ransom, defined and penalized under the last paragraph of Article 267 of the Revised Penal Code as charged in the Information, and are hereby sentenced to suffer the penalty of reclusion perpetua, with all the accessory penalties provided by law, and to restitute to the private complainants, Engr. Miguel E. Resus and Dra. Bernardita R. Resus, jointly and severally, the amount of P200,000.00 corresponding to the aggregate of the money in cash and medicines extorted as per the demand of the accuseds [sic] and given by the kidnap victim's wife, including the subject motorcycle which has been paid for by the victim's ransom money; (Exh. 'E') with the down payment as per agreement advanced by the couple Resus for a total cost price of P46,895.00 (Exh. 'F') and to pay the costs.

Immediately after promulgation of this decision, so as not to render the sentence imposed ineffectual with respect to accused Rodrigo Legarto, alias Rudy, the bail bond posted for his provisional release is hereby cancelled and said accused ordered committed to the custody of the Provincial Warden of Surigao del Sur at Tandag, Surigao del Sur, preparatory to the service of his sentence.

In the service of this sentence, all the accused are ordered immediately turned over to the custody of the Director, Bureau of Corrections, at Muntinlupa, Metro Manila, pursuant to the mandate of Supreme Court Circular No. 4-92-A dated April 20, 1992.

Finally, let [an] alias warrant of arrest issue against accused Gil Bueno for distribution to the different investigative and law-enforcement agencies of the Government for their possible execution and return, and hereby consigning this case, with respect to said GIL BUENO, to the ARCHIVES to be reinstated to the active files of criminal cases upon his arrest."

In view of the penalty imposed, Legarto, Maluenda and Mondaga interposed this appeal directly before this Court.[6] However, on March 30, 1995, Mondaga withdrew his appeal.[7] Hence, this Court will now pass upon the criminal liability of Legarto and Maluenda only.

[The Facts Version of the Prosecution]

In the Appellee's Brief, the solicitor general presents the following narration of the kidnapping:[8]

"On August 19, 1992 at around 9:45 in the evening, Engr. Miguel E. Resus ('Engr. Resus') and his wife, Dr. Bernardita B. Resus ('Dr. Resus'), arrived at their residence/clinic at Diatagon, Lianga, Surigao del Sur, from a novena they attended. Waiting for the Resus spouses at the clinic which adjoins the Resus spouses' residence were three men who identified themselves as Commander Bobong Gonzaga (who is actually Raul Mondaga), Commander Bongkoy (who is actually Maluenda) and alias 'Alex'. Upon the arrival of the Resus spouses, Mondaga declared that they came upon orders of a certain Father Simon, an alleged NPA Commander, with his directive to solicit money and medicines needed for the victims of the recent military-NPA encounter at Melale, Agusan del Sur. The trio demanded from the couple medicines and money in the amount of P20,000.00, but when the couple told them that they did not have such an amount, they lowered their demand to P10,000.00, and reduced it still to P5,000.00 when the couple still could not produce the said amount. Finally, the demand was lowered to any amount the Resus couple could provide. The latter gave the amount of P500.00 plus assorted medicines worth P800.00. After they were given the money and medicines, the trio demanded that they be driven by Engr. Resus in his Volkswagen car to San Roque, Barobo, Surigao del Sur, but the couple begged off reasoning that their car [did] have any sufficient gasoline and that the car was not in good running condition to travel that night. Mondaga then demanded that very early in the morning, the couple should prepare the vehicle so Engr. Resus [could] drive them to San Roque, Barobo, Surigao del Sur. They left the clinic with [a] threat not to tell anybody about their coming, otherwise they [would] kill all the members of their family and blow-up the clinic.

The next day or on August 20, 1992 at around 5:00 o'clock in the morning, Mondaga arrived at the residence

of the Resus couple. Mondaga hurried up Engr. Resus as he [would] meet his companions who were ferried by Legarto. Engr. Resus then drove Mondaga to Andanan. As the two passed along Andanan, they met Legarto, who was on his way back to Diatogon after his passengers, i.e., Maluenda and Alex, alighted from his motorcycle and [waited] for Mondaga and Engr. Resus at Andanan. Maluenda and Alex then rode with Mondaga and Engr. Resus to Barobo. Upon reaching Barobo, Mondaga told Engr. Resus that they [would] go to San Francisco instead of going to San Roque. They, however, did not reach San Francisco, and instead they stopped at Alegria. Upon reaching Alegria, Mondaga ordered Engr. Resus that he had to go with them. Against his will, Engr. Resus went with the three. They went to the mountain hiking for almost two (2) hours between the boundary of Cardon and Alegria. Upon reaching a hut, Mondaga told him that he had forgotten something and had to go back and that Engr. Resus had to stay there. So Engr. Resus, Maluenda, Alex and Gil Bueno passed the night in the farmhut.

Meanwhile at the house of the Resus couple, Dr. Resus was informed by the midwife that Mondaga came at around 4:00 p.m. when Dr. Resus was out. Mondaga told the midwife that he [would] come back. Mondaga arrived at the Resus clinic at around 7:00 in the evening. Mondaga demanded from Dr. Resus the amount of P300,000.00 for the release of Engr. Resus. Dr. Resus told Mondaga that she [could] only produce P10,000.00. Mondaga told Dr. Resus to reserve the amount for he [would] get it the following morning. He also instructed Dr. Resus to look for the firearm of her husband. Dr. Resus then searched for the gun (Exh. H) of her husband and after finding it in the cabinet in their room, gave the same to Mondaga. After [the gun was given to him], Mondaga demanded for the use of Engr. Resus' motorcycle, but Dr. Resus told him that the motorcycle [was] out of order. So Mondaga instructed Dr. Resus to get the motorcycle of Legarto, which Dr. Resus did.

On August 21, 1992, at around 4:45 a.m. Mondaga arrived at Dr. Resus' clinic. Shortly thereafter, Legarto also arrived in his motorcycle. Mondaga demanded that Dr. Resus go with them but the latter made excuses particularly her health. Dr. Resus asked that her helper Maria Abne go instead to which Mondaga agreed. At exactly 5:00 a.m., Mondaga, Legarto and Maria Abne left Dr. Resus' clinic, bringing with them the P10,000.00 Dr. Resus gave and the Magnum 22 of Engr. Resus. The three arrived at Alegria, San Francisco, Agusan del Sur at around 7:00 a.m. Legarto then safely kept his motorcycle after which they walked to the forest for about 2 hours until they reached a carabao crossing where Mondaga left Legarto and Maria Abne for 30 minutes. Mondaga went to the hut where he left Engr. Resus with a note from Dr. Resus which state[d], 'Daddy, I have committed only P10,000.00'. He gave the note to Engr. Resus but told Engr. Resus that 'you can afford P300,000.00'. Engr. Resus pleaded with Mondaga that they [did] not have such amount so Mondaga lowered his demand to P200,000.00. Engr. Resus then signed the note stating, 'Mommy, it is up to you to produce this amount.' With the note, Mondaga and Legarto went back to Alegria, while Abne was left with Engr. Resus. Legarto who was driving Engr. Resus' car, went to the house of Nora Gubantes where Dr. Resus was at that time and informed her that Mondaga [was] waiting [for] her at SSIFA, St. Christine. Dr. Resus went with Legarto at SSIFA, St. Christine where they met Mondaga, who joined them at the car after which the three proceeded to a deserted place. Mondaga then handed to Dr. Resus the note written by Engr. Resus where it was written the P200,000.00 ransom. [sic] Dr. Resus told Mondaga that she [could] only produce P100,000.00 Mondaga agreed to the P100,000.00 on the additional condition that he [would] no longer return the motorcycle of Legarto and instead to give to Legarto the amount of P50,000.00 as payment for the motorcycle. Mondaga also instructed Legarto to deliver the amount of P100,000.00 and the original license of the motorcycle. Dr. Resus and Legarto then went back to the clinic leaving Mondaga behind.

At around 1:30 p.m. of August 21, 1992, Dr. Resus, together with Nora Gubantes, went to Lianga to secure money from the relatives of Dr. Resus. Since Dr. Resus' cousins were out of town, the two proceeded to San Francisco, Agusan del Sur to see Dr. Presentacion Manatad, the mayor of San Francisco. Dr. Resus informed Mayor Manatad about the incident and asked the mayor to give her an amount of P150,000.00 in return for a PNB Check Dr. Resus [would] issue. Mayor Manatad gave her the amount after Dr. Resus issued PNB Check No. 621330-AJ in the amount of P150,000.00 (Exh. B). Dr. Resus gave the money to Nora Gubantes with the instruction to give the same to Legarto. Upon reaching Diatogon, Nora Gubantes gave the money to her

husband with the instruction to give the money to Legarto. Legarto acknowledged receiving the money from Mr. Gubantes on August 22, 1992.

On August 22, 1992, Mondaga arrived at the hut where Engr. Resus was and told that [sic] the latter that he would be released but that he [would] come back to get the balance of the P300,000.00 in three months. In the afternoon of August 22, 1992, Engr. Resus and Maria Abne were released. The two were driven by Legarto in Engr. Resus['] car.

Mondaga, Maluenda and Legarto were later arrested by the police.”

[Version of the Defense]

Appellant Legarto, the Resus couple’s former part-time driver, denies any criminal involvement in the kidnapping. He avows that he participated only in the delivery of the ransom money at the insistence of Dr. Resus herself. In Legarto’s Supplemental Brief, his counsel submits the following counter-statement of facts:[9]

“On August 19, 1992, at 9:45 in the evening, Engr. Miguel E. Resus and wife Dr. Bernardita B. Resus, arrived at their clinic near their residence at Diatagon, Lianga, Surigao del Sur after attending a novena. (TSN, March 16, 1993, p. 3). There were three (3) men who were waiting for them at the clinic, later identified as Commander Bobong Gonzaga (Raul Mondaga), Commander Bongkoy (Daniel Maluenda), and a certain ‘Alex’ (ibid.. p. 5). Mondaga, upon arrival of the spouses, solicited money and medicines from them, upon orders of a certain Father Simon, an NPA Commander (ibid.. p. 7). These money and medicines were needed for the victims of the recent military-NPA encounter at Melale, Agusan del Sur. (ibid..). At first, the three asked for P20,000.00 (ibid.. p. 8) but lowered it to P10,000.00, and still reduced it to P5,000.00. Finally, the Resus spouses could only give P500.00 together with P800.00 worth of medicines. (TSN, March 17, 1993 p. 42).

After the money and medicines were handed to them, the three people demanded that they be driven by Engr. Resus in his Volkswagen car to San Roque, Barobo, Surigao del Sur, but Engr. Resus declined saying that he could not drive them at 12:00 midnight because he [did] not have enough gasoline and that his service car [was] not in good condition to travel in the evening. (TSN, March 16, 1993, p. 8). But one person, Mondaga, insisted that the next morning, a vehicle should be prepared for a trip to San Roque, Barobo, Surigao del Sur. (TSN, March 17, 1993, p. 43)

At about 4:45 in the morning of August 20, 1992, Mondaga knocked at the door of the clinic. Engr. Resus was just busy preparing the vehicle, securing gasoline. (ibid., p. 44.) Mondaga rode in the vehicle of Engr. Resus and met his two companions at Andanan. (ibid..)

Instead of San Roque, the vehicle stopped at Alegria (TSN, March 16, 1993, p. 11). The three (Mondaga, Maluenda and Alex) asked Engr. Resus to go with them. (ibid..) They went to the mountains and hiked for almost two (2) hours between the boundary of Gordon and Alegria. (ibid..) When they reached the area, Mondaga went back to Alegria, leaving behind the three who passed the night in the area. (ibid., p. 12)

Mondaga arrived at around 4:00 in the afternoon at the clinic of Dr. Resus. (TSN, March 17, 1993, p. 47) Dr. Resus was out, but when Mondaga later came back at 7:00 in the evening and saw Dr. Resus (ibid., p. 48), he demanded the amount of P300,000.00. But since Dr. Resus had only P10,000.00, Mondaga told her to reserve it and he [would] get it the next morning. (ibid., pp. 48-49) After asking for the firearm of Engr. Resus, (ibid., p. 51) Mondaga demanded to use the motorcycle of Engr. Resus. (ibid..) Dr. Resus said that it was out of order. (ibid..) Mondaga ordered her to secure a motorcycle. (ibid.) Dr. Resus, together with her maid, Maria Abne, went to the house of their driver, Rudy Legarto. (TSN, November 23, 1993, p. 22) Dr. Resus requested Rudy Legarto to drive for Maria Abne and Mondaga in his motorcycle to Alegria and on his return, to drive for his Manong Mike. (ibid.) Legarto refused because of his work. (ibid.) But when Dr. Resus insisted and when told that it was very important to conduct Maria Abne and Mondaga, and because she was his boss, he agreed.

(ibid..) He was asked to file a leave of absence from his job. (ibid..) It is important to note that it was [Dr.] Resus who got Legarto involved in this drama.

At around 5:00 in the morning of August 21, 1992, Legarto drove for Maria Abne and Mondaga to Alegria at the behest of Dr. Resus. (ibid., p. 23) At Alegria, the three proceeded of [sic] Dr. Resus (ibid., p. 23) to a hilly side. (ibid..) Legarto and Maria Abne were left behind and Mondaga told them that he [would] inform his commander to release Engr. Resus. (ibid..) They were also warned not to escape because they were guarded. (ibid..)

At about 9:00 in the evening, Engr. Resus, together with Mondaga, arrived. Legarto was told by Engr. Resus not to worry as he was treated well. (ibid..) Engr. Resus told Mondaga that Legarto was his driver and Maria Abne was his helper. (ibid..) [O]n the way back, Legarto and Abne walked five (5) meters ahead while Mondaga and Engr. Resus walked side by side. Legarto and Abne heard their conversations (ibid., pp. 23-24) and Mondaga was demanding P300,000.00. Engr. Resus pleaded that he [did not] have that amount. (ibid.) Mondaga then ordered Engr. Resus to make a note to his wife, Dr. Resus stating that P300,000.00 be given. (ibid.) After the note was signed, Mondaga got the keys of the Volkswagen car and the motorcycle while Legarto was brought along to Alegria. (ibid., p. 25) Engr. Resus and Maria Abne were left behind. (ibid.) When they arrived at Alegria, Mondaga ordered him to drive the Volkswagen in going back to Diatagon while Mondaga drove the motorcycle of Legarto. (ibid..)

However, at Diatagon, Mondaga stopped Legarto near the School of Fisheries. (ibid..) He was ordered to fetch Dr. Resus and bring her to Mondaga for final negotiation. (ibid..) There was a threat not to disseminate the information because if he [did], then Legarto's family [would] be killed, including himself. (ibid..)

He was able to find Dr. Resus at the house of a certain Nora Gubantes and told her he was ordered to fetch her. Legarto asked Dr. Resus what [was] this incident about and Legarto was told immediately to shut up. (ibid., p. 26) Legarto asked her of her decision but was told to shut up again. (ibid..)

Dr. Resus rode with him in the Volkswagen car towards the area near the Fisheries School at St. Catherine, Lianga, Surigao del Sur. (ibid..) At some point Mondaga joined them in the car. Dr. Resus allowed Mondaga to sit at the back while she sat in front seat beside Legarto. They talked about the money, and Dr. Resus pleaded that she [could] only produce P100,000.00. (ibid., p. 27) Mondaga agreed, provided the motorcycle of Legarto be included. (ibid..) Legarto, at this point, intervened and told Dr. Resus not to include in the negotiation his motorcycle because the installment was not yet fully paid. (ibid..) Dr. Resus then told him to "just give his motorcycle." (ibid..) Then, Mondaga told Dr. Resus that Legarto would be the one who [would] bring the money to Alegria. He agreed again because Dr. Resus was his boss. (ibid..)

On August 22, 1992, at 4:00 in the afternoon, Eslao Gubantes and his son delivered P136,000.00 to Legarto plus P200.00 for gasoline (ibid., p. 28). The P36,000.00 [was] to be paid as partial payment for his motorcycle. (ibid.)

When he filed his leave of his [sic] absence, he talked to his Superintendent Virgilio Fernandez and others who told him he should have filed his leave of absence ahead because nobody was detailed at the depot, (ibid., p. 29) but he told them that, there was an emergency because Engr. Resus was held hostage and he [would] deliver the money. (ibid..)

On his way to Alegria, he met Dr. Resus together with her nephew riding a police car (ibid..). He was asked by Dra. Resus where the money [was] but he answered, he brought along with him P100,000.00. (ibid..) Dr. Resus told him to bring also the P36,000.00 and another P14,000.00 which was about to be given by Dr. Resus. (ibid..) However, he advised Dr. Resus that he would bring only P100,000.00 because that was what they [had] agreed upon. (ibid..) If Mondaga objects [sic] he [would] just come back. (ibid..) This was confirmed by Dr. Resus' nephew (ibid..)

Legarto proceeded to Alegria and subsequently delivered the money to Mondaga, which resulted [in] the release of Engr. Resus, together with Maria Abne. (ibid., p. 30) Engr. Resus and Maria Abne were brought back to Lianga, where they met Dr. Resus. Mayor Layno of Lianga commented that if not for your driver and Maria Abne, Engr. Resus [would] not be rescued. (ibid..) Engr. Resus and Dr. Resus remained at Lianga, while he and Maria Abne proceeded to Diatagon. (ibid..)

On September 18, 1992, Legarto and Maria Abne were brought to the municipal building to act as witnesses for Engr. and Dr. Resus. (ibid., p. 31) However, after executing his affidavit before the Municipal Judge, he was arrested just when he went out from the office (ibid., p. 31). He was brought to Patin-ay, Agusan del Sur, where he was detained. (ibid., p. 32) While there, he wrote a letter to Engr. and Dr. Resus for help. (ibid..) The letter expressed his sentiment and dismay that in spite of his help, he was included in the case. (ibid., p. 33) He denied having driven Mondaga alias Bobong Gonzaga at any other time.”

Similarly, Maluenda denies knowledge of Mondaga’s plan to commit the said crime. He accompanied the latter to Mahilom only to mine for gold and not to plan, much less commit, any crime. He alleges that he guarded the victim at the hut only because Mondaga threatened to kill him and his family. Through counsel, Maluenda presents his own version of the facts, as follows:[10]

“Daniel Maluenda testified that on August 20, 1992 at around 10:00 o’clock in the evening, he was in his house at Barobo when Raul Mondaga came over. Mondaga told him that he [had] a tunnel in Mahilom and offered Maluenda a fifty-fifty proposition to gold mine the tunnel. Maluenda, who [was] a farmer and at the same time a gold miner, agreed to the proposition.

On August 21, 1992 at around 7:00 o’clock in the morning, Maluenda together with Mondaga proceeded to Sitio Mahilom. Upon reaching Garden, Tambis, Surigao del Sur, Mondaga tried to give Maluenda a pistol and grenade but Maluenda questioned Mondaga’s purpose for bringing the same since they were just looking for gold inside the tunnel. Mondaga in turn told Maluenda to just follow what he [ordered] so that nothing will happen to him, and that Mondaga [would] not hesitate to kill a person, so Maluenda merely followed Mondaga as he was afraid.

Arriving at Mahilom, Mondaga and Maluenda proceeded to a hut where the latter saw Engr. Resus and some other persons. Mondaga ordered Maluenda to stay in the hut and feed these persons. Maluenda in turn retorted that their agreement was to mine for gold, but Mondaga told him ‘to just follow my order so that nothing will happen to you, or else I will blast your head and kill your family.’ Inside the hut, Maluenda and Engr. Resus talked and planned to escape.

The next day at around 2:00 in the afternoon, Maluenda, together with Engr. Resus, left but when they reached Alegria, they met Mondaga. Mondaga approached Engr. Resus, held his hand and said, do not be afraid because you can go home. Mondaga also told Maluenda not to report the matter to the authorities otherwise, they [would] all be killed.

Maluenda denied that he was at the clinic of Dra. Resus on August 19, 1992. Furthermore, he denied having received any money from Mondaga. (TSN, November 24, 1993, pp. 50-59)”

[Ruling of the Trial Court]

The trial court convicted Legarto, Maluenda and Mondaga, holding that they successfully perpetrated a clear case of kidnapping. It gave complete credence to the testimony of the prosecution witnesses whom it deemed unquestionably reliable, sincere and candid. The lower court held that Mondaga was the mastermind of the kidnapping. While Appellant Legarto portrayed himself as a good Samaritan to the Resus couple, the trial court stated that he was a wolf in sheep’s clothing and described his testimony as evasive, false and shallow.

The court a quo held: “[A]s to how accused Raul Mondaga came to know that the Resus couple could pay

ransom, the finger of suspicion points to Legarto as source.”[11] Legarto failed to satisfactorily explain why he did not testify against Mondaga in the criminal case for carnapping involving his motorcycle. His actuations from the outset until the time he delivered the ransom money betrayed his active participation as a co-principal by indispensable cooperation in the crime. Of the P136,000 handed to him for delivery to the kidnappers, Legarto kept P36,000 for himself. Legarto confidently refused to accept P14,000 more from Dr. Resus, saying that what he had was already sufficient. He further failed to report the incident to the police when he had the opportunity to do so.

The trial court also noted the following pieces of evidence which proved Legarto’s participation in the crime:

1. Witness Sanchez testified that she saw Mondaga frequenting Legarto’s house in Diatagon, and she even saw him and Mondaga riding on his motorcycle.
2. On August 20, 1992, Engineer Resus saw him convey Maluenda and “Alex” to Andanan, where Maluenda and “Alex” boarded Engineer Resus’s car.
3. He drove the victim’s car back to Diatagon from Alegria.
4. He delivered Mondaga’s ransom notes to Dr. Resus.
5. He also delivered the ransom money to the kidnappers.
6. He used P36,000 of the ransom money to pay the balance of the purchase price of his motorcycle.

All these allegedly show Legarto’s participation as a co-principal by indispensable cooperation in the crime.

Through the same witnesses for the prosecution, Maluenda, who introduced himself as Commander Dongkoy, was positively identified as one of the men who went to Dr. Resus’ clinic on August 19, 1992. The kidnap victim also identified him as the guard at the hideout in Alegria. Hence, the trial court convicted him as a co-principal.

[Assignment of Errors]

Legarto assigns the following errors allegedly committed by the trial court:[12]

I- The lower court erred in finding that, ‘as to how accused Raul Mondaga came to know that the Resus couple could pay ransom, the finger of suspicion points to Legarto, as source’.

II- The lower court erred in giving credence to the testimony of Norma Sanchez.

III- The lower court erred in finding that, ‘with respect to accused Rodrigo Legarto, there were several instances noted by the court which lead [sic] it to conclude that this particular accused was part of the criminal scheme to commits [sic] said kidnapping.’

IV- The lower court erred in holding, ‘that he has all the opportunity to report such criminal scheme to the police or military authorities, if he wanted to and his failure to do so plainly indicated his part in the criminal plan; and his actuations from the outset in a criminal plan was put to an [sic] effect, up to his rule [sic] in hand carrying the ransom money which he turned over to Mondaga at the mountain hideout which he know [sic] inevitably, shows his active participation as a co-principal by [indispensable] cooperation.

V- The lower court erred in not giving credence to the testimony of Rodrigo Legarto.

VI- The lower court erred in convicting the accused-appellant as co-principal of the crime of kidnapping for ransom defined and penalized under the last par. of Art. 267 of the Revised Penal Code as charged in the information and [in sentencing him] to suffer the penalty of reclusion perpetua, with all the accessory penalties provided by law.

VII- The lower court erred in ordering the confiscation of appellant's motorcycle."

In the Supplemental Brief, Legarto's other counsel adds the following issues:[13]

"I. The participation of Legarto was not proven beyond reasonable doubt.

II. Legarto was convicted on mere suspicion of one prosecution witness.

III. Legarto [had] no motive in kidnapping Engr. Resus.

IV. Lower court erred in holding that Legarto [was] a co-principal by indispensable cooperation.

V. The lower court erred in ordering the confiscation of the motorcycle of Legarto."

For his part, Maluenda submits the following as his lone assignment of error:[14]

"The trial court erred in finding the accused guilty of the crime charged despite the fact that his guilt was not proven beyond reasonable doubt."

For clarity and order, the Court will separately discuss the participation of the appellants, and the probative value of the evidence presented against each of them.

[The Court's Ruling]

The appeal is partially meritorious as regards Legarto who, in the light of the evidence presented, should be held liable only as an accessory. In contrast, Maluenda's conviction deserves affirmation, as his culpability in the kidnapping was clearly proven.

[Legarto's Culpability]

[Sufficiency of Circumstantial Evidence]

The solicitor general argues for the affirmation of Legarto's conviction on the ground that the trial court's assessment of the credibility of the prosecution witnesses is generally accorded great respect on appeal. However, the Court believes that the resolution of this appeal transcends the issue of the credibility of the witnesses. There is need to evaluate the sufficiency of the circumstantial evidence presented to sustain Legarto's conviction.

The trial court found Legarto guilty as a principal by indispensable cooperation on the basis of several pieces of circumstantial evidence, which the solicitor general depicts as clearly demonstrating his participation. On the other hand, Legarto asserts that the same set of evidence is frail and inconclusive.

Legarto's contention merits consideration. A principal by indispensable cooperation is defined by Article 17 of the Revised Penal Code thus:

"ART. 17. Principals. – The following are considered principals:

x x x x x x x x

3. Those who cooperate in the commission of the offense by another act without which it would not have been accomplished."

Legarto cannot be convicted under this definition because the prosecution failed to allege, much less prove, any overt act on his part showing direct participation in the kidnapping itself, his participation in the incident being limited to acts committed after the abduction was already consummated. He was not with the kidnappers (1) when they forcibly solicited money and medicine from the Resus couple, (2) when they brought the kidnap victim to Alegria, and (3) when Mondaga demanded ransom for the victim's release. Together with the Resus' housemaid,

he accompanied Mondaga to the hideout in Alegria only upon Dr. Resus' request. In short, the prosecution failed to piece together a clear story as to how Legarto figured in the kidnapping caper.

Admittedly, circumstantial evidence may be sufficient to convict an accused as a principal by indispensable cooperation in accordance with Sec. 4, Rule 133 of the Rules of Court.[15] It may also show conspiracy. Thus, this Court meticulously examined the pleadings, the records and the assailed Decision, in order to evaluate the sufficiency of Legarto's conviction. The pieces of circumstantial evidence used by the prosecution and accepted by the trial court are enumerated and evaluated seriatim.

[Acquaintance Is Inconclusive Proof of Participation]

That Mondaga frequented the house of Legarto in Diatagon proves that he knew the latter. Witness Sanchez testified that she even saw them riding Legarto's motorcycle during the town fiesta on June 24, 1992. However, this event occurred about two months before the kidnapping on August 19 to 22, 1992. Considering that the prosecution did not present any evidence to show that the plan to kidnap Engineer Resus was hatched as early as June 24, 1992, the fact that Legarto and Mondaga were together during the town fiesta should not be considered as proof of Legarto's direct participation in the crime. Likewise, that Legarto was acquainted with Mondaga does not prove that the former had a hand in the kidnapping.

[Conveying Maluenda and Bueno Does Not Conclusively Prove Participation]

The solicitor general harps on the fact that, on August 20, 1992, Legarto was seen transporting Maluenda and "Alex" to Andanan on his motorcycle. He claims that this is strong proof of Legarto's complicity, as it shows that Legarto had knowledge of the plan to kidnap Engineer Resus. The trial court, for its part, said that this fact "points to the clear perception that xxx he was part of the dubious criminal plan." The "fact" relied upon by the solicitor general and the trial court, however, is a mere speculation. This is clear from Engineer Resus' testimony, the pertinent portion of which is reproduced below:[16]

"Q On the following day, August 20, 1992, where were you?

A I was at my residence, sir.

Q While you were in your residence, what transpired, if there was any?

A I got ready of [sic] my car, at the same time Raul Mondaga came in, sir.

Q What time did Raul Mondaga enter your residence?

A At about 5:00 o'clock early in the morning, sir.

X X X X X X X X

Q Where was the accused Maluenda at that time?

A At that time Maluenda was not around, sir.

Q Now, while you were preparing your car, what happened next?

A I parked my car in front [sic] of the clinic, sir.

Q Then what happened next after parking your car in front [sic] of your clinic?

A Raul Mondaga hurried me up to go with his companion who was ferried by Rudy Legarto, sir.

X X X X X X X X

Q When you arrived at Andanan, what happened?

A As we passed along Andanan, I met Rudy Legarto on the way going back to Diatagon, with his two (2) passengers already alighted from his motorcycle and waiting for us at Andanan and then took a ride with us on our way to Barobo, sir.” (Underscoring supplied.)

Engineer Resus merely said that he saw Legarto heading back to Diatagon. He did not witness Maluenda and “Alex” on board Legarto’s motorcycle or alighting therefrom; he only saw the two at Andanan waiting for Mondaga and him. In fact, Engineer Resus did not actually see Legarto transport Mondaga’s companions. Hence, the statement that Legarto did so is a conclusion unsupported by Resus’ testimony, a mere speculation of the event that might have preceded what Engineer Resus saw. Its true nature as a conjecture is evident from the averment of the trial court that “xxx they were conveyed there by Rodrigo Legarto with the use of his motorcycle, as he was even encountered on the road on his return back to Diatagon that morning by Engr. Resus.”

From the foregoing, it is clear that Legarto’s alleged direct participation in the kidnapping is without factual basis; it is nothing more than an inference drawn from a presumption. And because circumstantial evidence not adequately established cannot become the basis of conviction, such inference cannot be given evidentiary weight to support Legarto’s conviction as a principal by indispensable cooperation.[17]

[No Specific Demand for Legarto’s Motorcycle]

The solicitor general avers that Mondaga’s instruction to Dr. Resus to requisition Legarto’s motorcycle proves Legarto’s complicity in the felonious scheme. The averment is inaccurate because Mondaga, in accordance with Dr. Resus’ testimony, had originally requisitioned the victim’s motorcycle, but the latter told him that it was out of order.[18] So, Mondaga asked for Legarto’s motorcycle instead.

That Mondaga chose Legarto’s motorcycle when he could have demanded any other two-wheel vehicle can be explained by the fact that, several times prior to the kidnapping, he had taken a ride on the said motorcycle. Note that Legarto used the motorcycle as a vehicle for hire in the area.

[Delivering the Ransom Money and Keeping Part of It]

[Do Not Prove Conspiracy]

The solicitor general avers that the complete trust of Mondaga in Legarto, whom the former designated as collector of the ransom money, proves the latter’s participation. The trial court, on the same point, said:[19]

“xxx His subsequent direct involvement in the negotiations with Dra. Resus when he was made to drive the Volkswagen car to Diatagon, contact Dra. Resus in the final negotiations, and delivery of the ransom money agreed upon [sic] to Raul Mondaga, admitting having withheld at his house a part of the ransom money amounting to P36,000.00(?) and paying off the balance of the motorcycle with it, as evidenced by the receipt of payment, demonstrates very strongly and beyond doubt to [sic] his participation in that criminal act, as now charged. xxxx.”

These averments, however, are sufficiently rebutted by Legarto’s allegation that, out of loyalty to his former boss, he participated in the release of the kidnap victim, not in his detention. The testimony of Engineer Resus -- that Legarto was at Alegria in order to fetch the former -- is cited by the defense as follows:[20]

“Q Do you confirm x x x the statements in these affidavits which you subscribed and sworn [sic] to before Judge Ricardo L. Mosquera III on September 18, 1992 and September 23, 1992?

A Yes, Sir.

Q In your affidavit on September 16, 1992 subscribed before Judge Mosquera, you never mentioned Rudy Legarto as one of the kidnappers, am I correct?

A Yes, Sir.

Q In fact, you will agree [with] me that the presence of Maria Abne and Rudy Legarto was for them to fetch you. Am I correct?

A Yes, Sir.

x x x x x x x x.”

Regarding the P36,000 which he kept, Legarto alleges that this was payment for his motorcycle which was taken by Mondaga. He claims that he had initially refused to give his motorcycle to Mondaga, but was prevailed upon by Dr. Resus who told him that she would replace it.[21] Confirming this, Dr. Resus testified that she told Mrs. Gubantes that the money was payment for Legarto’s motorcycle,[22] not his share in the ransom. Thus, such payment could not rationally constitute evidence of direct participation or of conspiracy in the kidnapping.

[Non-appearance at the Hearings of the Carnapping Case]

The solicitor general and the trial court posit that direct participation was established by the failure of Legarto to testify against Mondaga in the criminal case for the carnapping of Legarto’s motorcycle. The excuses of Legarto for his inability to attend the hearings -- that he did not have transportation and that he had stomach ache -- were branded by the solicitor general as “flimsy and incredible.” After all, Legarto was able to appear sans such problems when the trial court ordered the release of the motorcycle.

The contention is untenable. Legarto’s lack of interest in pursuing the criminal case against Mondaga may be less than laudable, but it does not necessarily show direct participation in the kidnapping. Dismissal of cases due to failure to prosecute is a common legal experience. Legarto’s excuses for failing to prosecute may be dubious, but they cannot become the basis for his conviction as a principal by indispensable cooperation in this case.

[“Finger of Accusation” Was Baseless]

In the assailed Decision, the trial court states, “As to how accused Raul Mondaga came to know that the Resus couple could pay [the] ransom, the finger of suspicion points to Legarto as [the] source.”[23] However, an examination of the transcripts of stenographic notes reveals no testimony that Legarto provided the kidnappers with information regarding the spouses’ finances. This was pure speculation or suspicion –nothing more, nothing less.

[Elements Required to Convict By Circumstantial Evidence]

A conviction based on circumstantial evidence requires the concurrence of the following elements: (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; and (c) the combination of all the circumstances produces a conviction beyond reasonable doubt.[24] For such a conviction to withstand judicial scrutiny, the prosecution must further show that all the circumstances are inconsistent with the hypothesis that the accused is innocent or with any other rational hypothesis except that of his guilt.[25]

In this case, the totality of the pieces of circumstantial evidence being imputed to Legarto does not foreclose the possibility that he took no part in the criminal enterprise and does not, therefore, overcome his constitutional right to be presumed innocent.[26]

The presumption of innocence is founded upon substantive law and basic principles of justice. It serves to balance the scales of justice in what would otherwise be an uneven contest between a single individual accused of a crime

and the prosecution which has all the resources of the government at its command. Thus, this presumption cannot be overcome by mere suspicion or conjecture that the defendant probably committed the crime or that he had the opportunity to do so. The prosecution is required to prove the guilt of the accused beyond reasonable doubt. Otherwise, the accused must be set free in accordance with the rule that conflicts in and insufficiency of evidence must be resolved in favor of the theory of innocence rather than the theory of guilt.[27]

[Same Circumstances Do Not Conclusively Show Conspiracy]

Although the trial court did not pass upon conspiracy as a source of Legarto's culpability, we deem it proper to do so, since it was alleged in the Information. In theory, conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[28] Once established, the act of one becomes the act of all. Further, conspiracy must be shown to exist as clearly as the commission of the offense itself, although direct proof is not essential.[29] Prior agreement or assent to the crime is usually inferred from the acts of the accused showing concerted action, common design and objective, actual cooperation, concurrence of sentiments, or community of interest.[30] In most cases, like the one at bar, proof of conspiracy is frequently made by evidence of a chain of circumstances only.[31] But such proof must always be established by evidence that satisfies the requirement of proof beyond reasonable doubt.[32]

In Legarto's case, conspiracy was not at all established by the prosecution. The familiarity between Legarto and Mondaga is insufficient proof, as conspiracy transcends companionship.[33] Moreover, Mondaga's act of meeting Legarto on the road to Andanan does not show conspiracy, because a merely casual or unintended meeting, like passive presence, is not proof of conspiracy.[34] Similarly insufficient as circumstantial evidence to prove conspiracy were Mondaga's demand for the use of Legarto's motorcycle, Legarto's collecting the ransom money and delivering part of it, and Legarto's failure to testify against Mondaga due to either refusal or neglect. We stress that conspiracy must be founded on facts, not on mere inferences and conjectures.[35] Without an allegation of any overt act showing community with the kidnappers, inferences do not adequately establish participation in a criminal conspiracy.[36]

[Legarto's Criminal Liability]

Despite its belief that Legarto was not a co-principal or a co-conspirator, this Court cannot completely free him from criminal liability. Established by the prosecution are the following: (1) he reported the "loss" of the motorcycle to the police authorities despite the fact that it had been given to Mondaga as part of the ransom; (2) he had received P36,000 for it; (3) he paid the balance of the purchase price of the motorcycle with the said money; and (4) he claimed, regained and retained its possession.

Legarto may not have had a direct hand in the kidnapping, but he received part of the ransom and used it to pay off his arrears in his motorcycle loan. Thus, having knowledge of the kidnapping for ransom and without having directly participated therein, he took part in the crime subsequent to its commission by profiting from its effects.[37] He may not be the devil with the face of an angel that the trial court described, but he is definitely not a saint. He is criminally liable as an accessory to the crime of kidnapping for ransom.

Under Article 19 of the Revised Penal Code, accessories are defined as those who (1) have knowledge of the commission of the crime, (2) did not take part in its commission as principal or accomplice, but (3) took part in it subsequent to its commission by any of the three modes enumerated in this article,[38] one of which is by profiting or by assisting the offender to profit from the effects of the crime.[39] These elements are all present and proven in Legarto's case.

As an accessory to the consummated crime of kidnapping, the penalty imposable upon Legarto is two degrees

lower than that prescribed by law under Article 267 of the said Code.[40] Since no modifying circumstance is appreciated for or against him, the imposable penalty should be in the medium period of the indeterminate sentence applicable under RA 4103, as amended.[41]

[Affirmation of Maluenda's Conviction]

Acquittal is sought by Maluenda on the ground that only Mondaga executed the acts constituting kidnapping with ransom; i.e., demanding and receiving money, medicine and ransom from the Resus couple and detaining Engineer Resus. He avers that his presence at the hideout in Alegria was involuntary because Mondaga had threatened his life and the lives of the members of his family.

Such contention is patently bereft of merit. Maluenda's conviction deserves affirmation based on the precept that actions speak louder than words. Established by the prosecution beyond cavil was his direct participation in the criminal conspiracy to kidnap Engineer Resus, who testified that Maluenda was one of the men who had, on the night of August 19, 1992, extorted money and medicine from him and his wife, who corroborated this story.[42] Engineer Resus testified:[43]

“Q: So what time did you arrive at your residence?

A: About 9:45 in the evening, more or less, sir.

x x x x x x x x

ATTY ALVIZO:

Q: When you arrived [at] your residence, what happened, if any?

WITNESS:

A: When I arrived at our house, the midwife on duty told us that we [had] visitors, sir.

x x x x x x x x

Q: Who were your visitors?

A: Alias Bobong Gonzaga but his true name, after interrogation by the police which I happened to know later, is Raul Mondaga, sir. And the other one is Dongkoy but after interrogation by the police, they told me that the true name is Daniel Maluenda; then alias ‘Alex’ whose identity is still unknown because he is not yet arrested. These were the three (3) people in my residence at that time, sir.

x x x x x x x x

Q: What happened, after introducing themselves to you?

x x x x x x x x

A: This Raul Mondaga drew his revolver and also his grenade ready to be blown-up and introduced himself to us that NPA Commander Father Simon [had] instructed them to solicit funds for the victims in the recent Melali, Agusan del Sur, military-NPA encounter, sir.”

The kidnap victim also testified that he conducted Maluenda and his companions to Alegria in his car the following day:[44]

“Q: When you arrived [at] Andanan, what happened?

WITNESS:

A: As we passed along Andana, I met Rudy Legarto on the way going back toDiatagon [sic], with his two (2) passengers already alighted from his motorcycle and waiting for us at Andanan and then took a ride with us on our way to Barobo, sir.

Q: Who were your passengers then when you reached Barobo?

A: Raul Mondaga, Maluenda and alias Alex, sir.”

Maluenda also guarded the victim at the farm hut in Alegria.[45]

“Q: (PROS. CALVIZO)

Where did you go?

A: (ENGR. RESUS)

We went to the mountain and hiked for almost two (2) hours between the boundary of Garden and Alegria, sir.

x x x x x x x x

Q: While you were there, what happened next, if any?

A: Raul Mondaga told me that he [had] forgotten something, he [had] to go back and I [had] to stay there because the camp of the NPA still further away and that we [had] to pass the night in that NPA hut, sir.

Q: Who were your companions in that place?

A: Daniel Maluenda and Alex plus another reinforcement, Gil Bueno, sir.

x x x x x x x x

Q: In the following morning, August 21, 1992, what happened next?

x x x x x x x x

A: When Raul Mondaga arrived with a note from my wife and that was the time when they started to grind me, sir.

x x x x x x x x

ATTY. ALVIZO:

Q: After the accused Raul Mondaga took the note from you, what happened next?

x x x x x x x x

WITNESS:

A: I waited at the farmhut where I was guarded by the three (3) persons, sir.

Q: Who were guarding you at that time?

A: Daniel Maluenda, Alex and Gil Bueno were guarding me at that time, sir.”

Engineer Resus’ testimony that Maluenda guarded the kidnappers’ hideout was corroborated by Abne, the housemaid, as follows:[46]

“Q: Where were you bound for with your companions, Rudy Legarto and Bobong Gonzaga?

A: To the forest where Engr. Resus was kept or held, sir.

x x x x x x x x

Q: Did you see Engr. Resus?

A: Yes, sir.

x x x x x x x x

Q: And what happened, after that?

A: Bobong Gonzaga and Rudy Legarto went back to Alegria, sir.

x x x x x x x x

Q: What about you, where were you?

A: I and Engr. Resus were left in the forest [sic] with the guards, Alias Dongkoy and Alex, sir.

Q: And where did you spend your night on August 21, 1992?

A: In the forest, sir.

x x x x x x x x

Q: And who was one of the guards?

A: Alias Dongkoy, Alias Alex and Alias Gil, sir.”

Although only Mondaga verbally extorted money and demanded ransom from the Resus couple, it is evident that the kidnapping was committed with Maluenda’s participation. Beyond reasonable doubt, Maluenda’s actions exhibited a community of interest and a concurrence of sentiment with Mondaga. Consequently inevitable as they relate to Maluenda are the following holdings of the trial court:[47]

“xxx Simply stated, the witnesses for the prosecution, in contrast to that [of] the defense, are, in the Court’s assessment, unquestionably reliable, sincere and candor [sic] in their testimonies which [were] very logical and credible.

x x x x x x x x

and, as between the affirmative testimony of the prosecution witnesses and that of the negative versions of the defense, the former [was] more stronger [sic]. The accuseds [sic] resorted to unfounded denials.

x x x x x x x x

To summarize, the Court finds that a clear case of kidnapping for ransom [had] been successfully committed by all the accuseds [sic] charged in the information, who are all private individuals; that the victim of that heinous crime [was] Engr. Miguel E. Resus; that ransom money was actually paid in consideration of his release on the third day that he was forcibly deprived of his liberty; xxx.

Accused Raul Mondaga, alias Bobong Gonzaga, and Accused Daniel Maluenda, alias Commander Dongkoy have both been positively identified as among the active perpetrators. x x x x.”

Insofar as Maluenda is concerned, we find applicable the well-entrenched rule that the factual findings of the trial court are binding on the appellate court.[48] In this light, our earlier holding negating the trial court’s assessment of the circumstantial evidence pertains only to Appellant Legarto, not to Appellant Maluenda.

WHEREFORE, the appeal is partially granted. The assailed Decision is hereby AFFIRMED as regards Maluenda, but MODIFIED as regards Legarto. Legarto is hereby found GUILTY as an ACCESSORY only and is

ORDERED to serve the indeterminate sentence of two (2) years, four (4) months and one day of prisión correccional, as minimum, to eight (8) years and one day of prisión mayor, as maximum. He is further ordered to RETURN to Engineer and Dr. Miguel E. Resus the amount of thirty-six thousand pesos (P36,000) corresponding to the amount he used to pay his loan arrears. The amount which the trial court ordered to be restituted by Mondaga and Maluenda is accordingly reduced by said amount.

SO ORDERED.

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

[1] Penned by Judge Bernardo V. Saldares; Rollo, pp. 14-37.

[2] Rollo, p. 6.

[3] Records, p. 74.

[4] Records, pp. 116-117.

[5] Rollo, pp. 36-37.

[6] Rollo, pp. 38-39.

[7] Rollo, pp. 123-124. This case was deemed submitted for decision on October 29, 1996 upon the submission of the Appellee's Brief. The filing of a reply brief was deemed waived.

[8] Rollo, pp. 136-147. References to the TSNs were omitted.

[9] Supplemental Brief for Appellant Legarto prepared by the Misa Law Office, as represented by Attys. Claudine O. Montenegro and Joaquin L. Misa, pp. 3-10; Rollo, pp. 166-173. Atty. Romeo C. Buenaflor filed the main Appellant's Brief for Legarto.

[10] Rollo, pp. 226g-226h. Appellant Maluenda's Brief was signed by Attys. Exaltacion L. Carlos, Arceli Adan-Rubin, Amelia C. Garchitorena and Jerry F. Ibay of the Public Attorney's Office.

[11] Rollo, p. 21.

[12] Rollo, pp. 53-54.

[13] Rollo, p. 175.

[14] Rollo, p. 226-b.

[15] "SEC. 4. Circumstantial evidence, when sufficient.—Circumstantial evidence is sufficient for conviction if:

(a) There is more than one circumstance;

(b) The facts from which the inferences are derived are proven; and

(c) The combination of all circumstances is such as to produce a conviction beyond reasonable doubt." People vs. Ragon, G.R. No. 100593, November 18, 1997, pp. 8-9; People vs. Verano, 264 SCRA 546, 554, November 21, 1996; and People vs. Malimit, 264 SCRA 167, 178, November 14, 1996.

[16] TSN, March 16, 1993, pp. 9-11.

[17] People vs. Parel, 261 SCRA 720, 736, September 16, 1996, per Bellosillo, J.

[18] TSN, March 17, 1993, p. 51.

[19] Rollo, p. 31.

[20] TSN, March 16, 1993, pp. 24-25.

[21] TSN, March 17, 1993, pp. 56-57, and TSN, November 23, 1993, p. 27.

[22] Ibid, pp. 62 & 87.

[23] Rollo, p. 21

[24] *People vs. Ragon*, G.R. No. 100593, November 18, 1997, p. 8-9; *People vs. Verano*, 264 SCRA 546, 554, November 21, 1996; and *People vs. Malimit*, 2643 SCRA 167, 178, November 14, 1996.

[25] *People vs. Casingal*, 243 SCRA 37, 44, March 29, 1995, p. 44; and *People vs. Abitona*, 240 SCRA 335, 340, January 20, 1995.

[26] *People vs. Verano*, supra, p. 554; *People vs. Dulatre, Jr.*, 248 SCRA 107, 120-121, September 7, 1995.

[27] *People vs. Godoy*, 250 SCRA 676, 727-728, December 6, 1995.

[28] *People vs. Abarri*, 242 SCRA 39, 45, March 1, 1995; *People vs. Cayanan*, 245 SCRA 66, 77, June 16, 1995.

[29] *People vs. Salodaga*, 247 SCRA 98, 106, August 7, 1995; *People vs. Dulatre, Jr.*, supra, p. 119.

[30] *People vs. Miranday*, 242 SCRA 620, 627, March 23, 1995; *People vs. Torres*, 247 SCRA 212, 217-218, August 11, 1995; *People vs. Asoy*, 251 SCRA 682, 689, December 29, 1995; *People vs. Tami*, 244 SCRA 1, 22, May 2, 1995; *People vs. Compil*, 244 SCRA 135, 145, May 15, 1995; *People vs. De Leon*, 245 SCRA 538, 546-547, July 3, 1995.

[31] *People vs. Miranday*, supra.

[32] *People vs. Orehuela*, 232 SCRA 82, 93, April 29, 1994; *People vs. Villagonzalo*, 238 SCRA 215, 230-231, November 18, 1994; *Fonacier vs. Sandiganbayan*, 238 SCRA 655, 695, December 5, 1994.

[33] *People vs. Padrones*, 189 SCRA 496, 506-507, September 13, 1990, per Sarmiento, J.

[34] *People vs. Vda. de Quijano*, 220 SCRA 66, 71, March 17, 1993; *People vs. Buntan, Sr.* 221 SCRA 421, 430, April 12, 1993; *People vs. Garcia*, 215 SCRA 349, 361, November 4, 1992.

[35] *People vs. Halili*, 245 SCRA 340, 352, June 27, 1995; *Sabiniano vs. Court of Appeals*, 249 SCRA 24, 29, October 6, 1995; *People vs. Argawanon*, 231 SCRA 614, 618, March 30, 1994.

[36] *People vs. Orehuela*, supra, p. 94.

[37] Art. 18, Revised Penal Code.

[38] *People vs. Lojo*, 122 SCRA 753, 757-758, June 24, 1983.

[39] Art. 19(1); *People vs. Cordova*, 224 SCRA 319, 338, July 5, 1993; *People vs. Verzola*, 80 SCRA 600, 608, December 21, 1977; and *People vs. Amajul*, 1 SCRA 682, 689-690, February 28, 1961.

[40] Art. 53, Revised Penal Code.

[41] Art. 64(1), Revised Penal Code.

[42] TSN, March 17, 1993, pp. 40-47.

[43] TSN, March 16, 1993, pp. 4-7.

[44] Ibid., pp. 10-11.

[45] Ibid., pp. 11-15.

[46] TSN, June 2, 1993, pp. 3-8.

[47] Rollo, pp. 31-34.

[48] *People vs. Ramos*, 240 SCRA 191, 201, January 18, 1995; *People vs. Dolar, et al.*, 231 SCRA 414, 422-423, March 24, 1994; *People vs. De Guzman*, 216 SCRA 754, 759-760, December 21, 1992.

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