PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RICARDO EMBERGA Y MIGUEL AND ROMEO EMBERGA Y MIGUEL, ACCUSED-APPELLANTS.

G.R. No. 116616. November 26, 1999

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

Accused-appellants Ricardo Emberga and Romeo Emberga were charged with murder in an Information[1] that reads as follows:

> That on or about the 28th and 29th of October, 1991 in Kalookan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually helping one another, and without justifiable cause, with deliberate intent to kill, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack and stab one RAFAELITO NOLASCO Y SARMIENTO with a bladed instrument on the different parts of the body, thereby inflicting upon the latter serious physical injuries, which injuries directly caused the victim's death.
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> CONTRARY TO LAW.

In a Decision dated March 3, 1994, the Regional Trial Court of Caloocan City[2] convicted accused-appellants of the crime of murder. The dispositive part of the decision states:

> WHEREFORE, the prosecution evidence having established the guilt of the accused, ROMEO EMBERGA and RICARDO EMBERGA, beyond reasonable doubt for the crime of Murder, with one aggravating circumstance and without any mitigating circumstance, the Court hereby imposes a penalty of reclusion perpetua for each of the said accused and for each of them to indemnify the heirs the sum of Fifty Thousand (P50,000.00) Pesos and the sum of Seventeen Thousand Five Hundred (P17,500.00) Pesos for actual or compensatory damages, and to pay the costs.

The prosecution presented four witnesses, namely: Milagros Resulta, sister-in-law of the victim and eyewitness to the crime; Dr. Ricardo Ibarrola, medico-legal officer of the National Bureau of Investigation who conducted an autopsy of the victim's body; Erlinda Resulta Nolasco, wife of the victim who testified on the claim of the victim's family for actual damages; and Vivencio Gamboa, the police officer who investigated this case.

Milagros Resulta testified that she came home from work at around 11:00 in the evening of October 28, 1991, and was resting in her house at 155 Socorro Street, Caloocan City when she heard a commotion outside. She looked out of her window and saw accused-appellants and their father chasing her brother-in-law, Rafaelito Nolasco. The place was well-lit by a bulb outside the store in front of her house. She heard her brother-in-law shout, "Bino, awatin mo ang mga anak mo." Resulta said that she felt afraid and sat on her bed. When she looked out the window again, she saw Rafaelito Nolasco lying on the ground, being stabbed by the accused-appellants. She sat on her bed again, and after a while, someone knocked on her door and told her that Rafaelito Nolasco was stabbed. She then went to her sister's house in Dalisay Street, also in Caloocan City, and informed her of the

stabbing of her husband. That same night, she went to the Caloocan police station and reported that she witnessed the stabbing incident.

Milagros also stated that it was only on that fateful night that she saw both accused-appellants for the first time, and that she came to know of their names only in court.

Dr. Ricardo Ibarrola testified that there were 25 stab wounds found on the victim's body, caused by one double-bladed weapon and one single-bladed weapon. The wounds inflicted by the double-bladed weapon were found on the left side of the head behind the ear, the upper left side of the chest, the abdomen, the left buttock, the right arm, and the left forearm. The single-bladed instrument was used to inflict stab wounds on the right middle aspect of the back. Dr. Ibarrola observed that there were about the same number of wounds on the front and back of the victim's body. The wounds on the back, caused by the single-bladed instrument, were "non-penetrating and non-fatal", while the wounds inflicted by the double-bladed instrument and located on the front part of the body were fatal.[3] Vital organs were hit, such as the diaphragm, left kidney, large intestine, spleen and pancreas.[4] The cause of death, as pointed out by Dr. Ibarrola, was massive loss of blood due to multiple stab wounds.[5]

Dr. Ibarrola further observed that the presence of wounds on the victim's arms, which he called "defensive wounds", as well as an incise wound on the left side of the neck[6], were indicative of a struggle between the assailants and the victim.

Vivencio Gamboa testified that he was the police officer who went to the scene of the crime at about 12:00 to 1:30 in the morning of October 29, 1991 to investigate the stabbing incident. He interrogated the people milling around the area and found out from a certain SPO3 Ibe that the suspected perpetrators were the Emberga brothers. After trying, without success, to locate the Emberga brothers, he went back to the police station to prepare his report and found Milagros Resulta, who claimed to be a witness to the incident, at the station. He said that he interviewed Milagros Resulta but was unable to put her statement in writing because there was a "brownout" after the interrogation. Thus, he sent Resulta home. On November 13, 1991, on reporting to duty, he learned that accused-appellants were surrendered by their parents to the Pasay police station, and were later on taken to the Caloocan police headquarters. Gamboa testified that he was the one who interrogated accused-appellants and prepared their statements on the incident. On testimony, he declared that accused-appellants admitted their guilt to him. On the same day, he also took the statements of Gary Robinas and Danilo Ablaza, two alleged eyewitnesses to the incident who later testified in the trial as defense witnesses. He was also the same officer who prepared the statement of Erlinda Nolasco, the wife of the victim.[7]

Erlinda Nolasco testified to the amount of actual damages, corresponding to lost income and burial expenses, suffered by the family of Rafaelito Nolasco as a result of his death. She stated that she and the victim had five children, aged 19, 18, 16, 14 and 8 years, respectively. She estimated the income of her late husband, who was a vendor, at P200.00 a day. She declared the following funeral expenses: P10,000.00 for the casket, P1,000.00 per day for wake expenses which lasted five days, and P500.00 per day for funeral parlor services.

Meanwhile, the defense had four witnesses: accused-appellants Ricardo and Romeo Emberga, Gary Robinas and Danilo Ablaza. Accused-appellant Romeo Emberga admits to the killing of the victim, but he claims that he did so in defense of his brother, accused-appellant Ricardo Emberga. He recounted that at around 12:00 midnight on October 29, 1991, he and his brother Ricardo were walking home from the "peryahan" with two co-workers, Gary Robinas and Danilo Ablaza, when they passed by the victim, Rafaelito Nolasco, at Silangan Street. Allegedly, the victim attacked Ricardo Emberga unexpectedly and without warning, cursed him and stabbed him with a "veinte y nueve" knife. Ricardo Emberga ran away, while Romeo Emberga picked up a stone and a sharp piece of steel from the sidewalk and threw the stone at the victim, hitting him on the head. They ran towards Socorro Street and

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as the victim faced him he picked up another stone and threw it at the victim, this time hitting him on the chest. This caused the victim to drop the "veinte y nueve" knife that he was holding. Romeo Emberga lunged for the knife, and thrust it into the victim's body. "Nagdilim ang aking pag-iisip" was how he described his mental state during the incident, and he said that he could no longer remember how many times he stabbed the victim.[8]

On re-cross examination, however, Romeo Emberga departed from the above story and said that when he got hold of the victim's knife, the victim tried to grab the knife from him, and attacked him and punched him successively. It was at that point that he stabbed the victim.[9]

Accused-appellant Ricardo Emberga corroborated the above testimony by saying that he ran away as soon as Rafaelito Nolasco stabbed him. He said that he went home and had his wounds treated by his mother, and claims no further knowledge in respect of the killing of Rafaelito Nolasco that night.

Ricardo Emberga further stated that he sustained two wounds by virtue of the incident: one on the left side of his chest and another on his back. On testimony, he showed to the trial court two scars, on the left side of his chest and on his back, as proof of his injuries.[10] No medical certificate was presented, and Ricardo Emberga admitted that he did not submit himself to medical treatment, as the wounds were only "gasgas", or abrasions.[11] Neither did he report the matter to the police.[12]

In his testimony, Romeo Emberga said that he fled to the province after the stabbing incident, and that his brother Ricardo followed him there a day after, upon instructions of their father to fetch him and for the two of them to surrender to the police.[13] Ricardo Emberga, however, denies having gone to the province, and insisted that he remained in Caloocan City after the incident.[14]

Gary Robinas and Danilo Ablaza are co-workers of accused-appellants in the local "peryahan". During the investigation of the case, they executed sworn statements to the effect that they witnessed the killing of Rafaelito Nolasco by accused-appellants.[15] In their affidavits, they also stated that it was Ricardo Emberga who stabbed Rafaelito Nolasco in Silangan Street, contrary to the declarations of both accused-appellants that it was Nolasco who initially attacked Ricardo Emberga.[16]

During the trial, however, Gary Robinas and Danilo Ablaza appeared as witnesses for the defense, and the testimonies they rendered were in direct contravention of their earlier affidavits. Robinas testified that on October 29, 1991 at around 12:30 in the morning, he, Ablaza, and accused-appellants were walking along Silangan Street on their way home when Rafaelito Nolasco suddenly stabbed Ricardo Emberga.[17] After stabbing Ricardo Emberga, Nolasco fled and Romeo Emberga ran after him.[18] Robinas then said that he saw nothing else because at that point, he went home.[19]

Danilo Ablaza also stated that he saw Rafaelito Nolasco stab Ricardo Emberga, after which Ricardo Emberga ran away and Romeo Emberga faced Nolasco.[20] Ablaza then left to look for a barangay tanod. When he could not find one, he went back to the scene of the crime and saw that several persons have arrived and were standing about. He then decided to go home.[21]

Robinas and Ablaza swear by the truth of their testimonies, and alleged that their accounts in the affidavits dated November 13, 1991 were vitiated and rendered under duress. They also said that they did not voluntarily go to the police station to give their statements on the incident, but were arrested by the police. According to Robinas, a policeman made him state in his sworn statement that it was the Emberga brothers, and not Romeo Emberga alone, who stabbed the victim.[22] Robinas, however, could not identify this policeman who allegedly threatened him.[23] Ablaza also said that he was merely threatened by the victim's brother-in-law, Rolly Manalo, into signing his affidavit[24], and that the allegations in his affidavit were merely copied by the investigating officer

from the affidavit of Robinas.[25]

The trial court meted out its judgment of conviction on the basis of Milagros Resulta's positive identification of both accused-appellants as the perpetrators of the crime. It also accorded great weight to the autopsy findings, respecting the number and location of the stab wounds, in arriving at the conclusion that the stabbing of the victim could have only been inflicted by two assailants in concerted action.[26] It likewise found implausible accused-appellant Romeo Emberga's theories of self-defense and defense of relative. Accused-appellants' flight to the province was also read by the trial court as indicative of their consciousness of guilt.

Before us, accused-appellants assign the following errors:

> I
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> The trial court erred in giving credence to the conflicting, unreliable and incredible testimony of the prosecution witness Milagros Resulta.
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> II
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> The trial court erred in convicting Ricardo Emberga despite clear and convincing evidence presented by the defense that he was no longer present when his co-accused, Romeo Emberga, stabbed and killed Rafaelito Nolasco.
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> III
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> Despite clear and convincing evidence presented by the defense, the trial court failed to consider the exempting circumstance of self-defense in favor of the accused-appellants.

Anent the first assignment of error, the defense questions the credibility of Milagros Resulta's testimony of her behavior upon witnessing the killing of her brother-in-law. The records bear out that upon seeing her brother-in-law being chased by three men, she felt afraid and sat on her bed, and when she peeped out of the window again and saw the victim being stabbed by accused-appellants, she sat on her bed again and rose only when someone knocked on her door.[27] The defense argues that a person under the same circumstances would have shouted for help, instead of just looking helplessly at the victim being stabbed by the two men.[28]

This Court has repeatedly held that there is no standard form of behavioral response to a strange, startling and frightful event, and there is no standard rule by which witnesses to a crime must react.[29] That Milagros Resulta's reaction upon witnessing the killing of her brother-in-law does not conform with the expectations of the defense does not in any way undermine her credibility, or destroy the essential integrity of her testimony. Besides, to our mind, there is nothing unusual or suspect about her claim to have been reduced to a fearful and confused silence upon witnessing the chase and killing, especially since the incident took place a mere ten meters away from her and victimized a member of her family.

Moreover, Milagros Resulta's credibility is bolstered by her forthrightness in volunteering her knowledge on the killing to the authorities a few hours after the incident. That in the succeeding investigation, her statement was not taken down in writing and sworn to before an officer authorized to administer oath does not impede her being subsequently presented as a prosecution witness. There is no law which requires that the testimony of a prospective witness should be reduced into writing in order that his or her declaration in court may be believed.[30]

Next, the defense contends that the trial court erred in convicting accused-appellant Romeo Emberga inspite of clear and convincing evidence that he was no longer present when his fellow accused-appellant Ricardo Emberga stabbed and killed the victim. The evidence submitted by the defense anent this matter consisted of the

testimonies of the two accused-appellants, and the corroborating testimonies of Gary Robinas and Danilo Ablaza.

The supposition that Romeo Emberga had no participation in the subsequent killing of Nolasco, having come from Romeo Emberga himself and from his brother and fellow accused-appellant, Ricardo Emberga, amounts to nothing more than a denial which is self-serving and cannot prevail over the positive identification of a credible witness, Milagros Resulta.[31]

Neither may the testimonies of Gary Robinas and Danilo Ablaza defeat the positive identification by Milagros Resulta of Ricardo Emberga. Robinas and Ablaza could have had no personal knowledge of the stabbing and killing of Rafaelito Nolasco because, as they respectively declared, after seeing the victim stab Ricardo Emberga, Robinas went home and Ablaza left to find a barangay tanod. Robinas's later declaration on cross-examination that he witnessed Romeo Emberga, alone, kill Nolasco[32] is totally in conflict with his story on direct examination that after seeing Nolasco stab Ricardo Emberga, he went straight home. Post-haste, he attempted to cover the inconsistency by saying that he saw Romeo Emberga kill the victim from outside his house, which is too incredible because Robinas lived in Silangan Street while the killing took place in Socorro Street.

It is axiomatic that appellate courts accord the highest respect to the assessment of witnesses' credibility by the trial court.[33] The opinion of the trial court as to who among the witnesses should be believed is entitled to great respect, the latter having had the unequalled opportunity to directly observe the witnesses and to determine by their demeanor on the stand the probative value of their testimonies.[34] In this light, we see no reason to contest the trial court's appreciation of the incredibility of the testimonies of Robinas and Ablaza.

It is also worth noting that Gary Robinas and Danilo Ablaza earlier executed affidavits stating that it was Ricardo Emberga who attacked and stabbed Rafaelito Nolasco in Silangan Street. In his affidavit, Robinas went on to describe how both accused-appellants, Ricardo Emberga and Romeo Emberga, pursued Nolasco to Socorro Street upon whence they eventually caught up with him, stabbed him successively and slit his neck.[35]

Accused-appellants also assign error on the trial court's refusing to give credence to their theory of defense of relative and self-defense. In order that defense of relative may apply, the following requisites must concur: (1) unlawful aggression, (2) reasonable necessity of the means employed to repel or prevent it, and (3) in case the provocation was given by the person attacked, the one making the defense had no part therein.[36]

Based on accused-appellants' version of the incident, it was Rafaelito Nolasco who attacked Ricardo Emberga in Silangan Street and stabbed him twice, after which Romeo Emberga pursued Nolasco to Socorro Street and there fought with him and killed him. The trial court, in ruling out the possibility of defense of relative, considered the following dearth in the evidence of the defense: (1) no medical certificate was submitted to prove that Ricardo Emberga was stabbed on the chest and on his back; and (2) the mother of Ricardo Emberga, who was said to have treated Ricardo's wounds after the alleged stabbing incident, was not presented as a witness. It was also hard put to believe that: (1) the victim would have dared to stab Ricardo Emberga in the presence of his brother and their two other companions, Gary Robinas and Danilo Ablaza; and (2) the long-bladed instrument used to inflict wounds on the victim's back allegedly produced only abrasions when used by the victim on Ricardo Emberga.

We agree with the trial court that accused-appellants failed to satisfactorily prove the first and basic element of unlawful aggression. Other than their self-serving testimonies and the testimonies of Robinas and Ablaza, there is nothing to anchor the supposition that Rafaelito Nolasco first attacked and stabbed Ricardo Emberga. As a matter of fact, in the affidavits of Robinas and Ablaza, they declared that it was Rafaelito Nolasco who stabbed Ricardo Emberga in Silangan Street.[37]

We are also not persuaded by accused-appellant Ricardo Emberga's attempt to prove the fact that he was attacked

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first by Rafaelito Nolasco by showing in open court two small scars on his body --- one on the left side of his chest and another on his back. To our mind, the defense was unable to establish a logical nexus between these scars and the alleged stabbing of him by Nolasco. In other words, the showing of these scars in open court still leaves unresolved the question of whether the wounds which caused those scars were in fact inflicted by an unlawful attack by Rafaelito Nolasco on the early morning of November 28, 1991.

Why we require clear and convincing evidence to support a claim of defense of relative is clearly because the invocation of a justifying circumstance, by its nature, correspondingly occasions admission of the slaying of the victim. Having owned up to the killing of Rafaelito Nolasco, accused-appellant Romeo Emberga stands criminally liable unless he is able to convince the Court that he acted in legitimate defense of his brother.[38] In this light, we cannot accommodate accused-appellants' theory of defense of relative solely on the basis of the scars shown by Ricardo Emberga, there being no independent and credible evidence that the aggression which led to the infliction of these wounds was instigated by Rafaelito Nolasco.

On the matter of self-defense also being invoked by Romeo Emberga, it is required that there be: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means used to prevent or repel the attack; and (3) lack of sufficient provocation on the part of the person defending himself.[39]

Earlier in our discussion we have emphasized that unlawful aggression is a condition sine qua non for the justifying circumstance of self-defense. Unlawful aggression presupposes an actual, sudden and unexpected attack, or an imminent danger thereof, and not merely a threatening or intimidating attitude.[40]

It is clear even from Romeo Emberga's testimony alone that when he threw a stone at Rafaelito Nolasco, causing the latter to drop the knife he was holding, there was no longer any imminent risk or danger to his life. Thus, when Romeo Emberga went on to lunge for the victim's knife on the ground and thrust it for an untold number of times into the victim's body, he was not acting to repel an attack or to protect himself from the aggression of the victim. It strains credulity to accept the version of the defense that despite dropping the knife, the victim still faced Romeo Emberga in a menacing manner and "with the intention of killing him". Furthermore, the nature, number and location of the wounds sustained by the victim are indicative of a determined effort to kill and not just to defend.[41] The presence of defensive wounds on the forearms of the victim only serves to reinforce the impression that the victim was clearly overpowered and could not, under the circumstances, have been the aggressor.

The 25 stab wounds on the front and back of the victim's body, found to have been caused by two different weapons, leave us convinced that the slaying was committed by more than one person. More so, the categorical and uncontroverted testimony of Milagros Resulta leaves no doubt on the identity of the perpetrators as being the herein accused-appellants.

We cannot, however, affirm the holding of the trial court that the killing is qualified to murder by the attendance of treachery. The settled rule is that treachery cannot be presumed but must be proved by clear and convincing evidence, or as conclusively as the killing itself.[42] For treachery to lie, the following conditions must concur: (1) the accused employed means of execution that gives the person attacked no opportunity to defend himself or retaliate; and (2) said means of execution was deliberately and consciously adopted.[43] In cases of continuous aggression, the circumstance of treachery must be shown present at the inception of the attack in order for it to be appreciated as a qualifying or generic aggravating circumstance.[44]

In the instant case, we find that the prosecution failed to satisfactorily prove that accused-appellants purposely adopted treacherous means to ensure the killing of Rafaelito Nolasco. It must be remembered that before the slaying witnessed by Milagros Resulta in Socorro Street, the victim was first pursued by accused-appellants from

nearby Silangan Street, where the aggression presumably originated. The circumstances surrounding the inception of the attack, particularly, who provoked the fight and whether the victim and accused-appellants were initially armed, are essential to the determination of the attendance of treachery. That the final fatal blows may have in truth been delivered under conditions exhibiting some features of treachery, as in this case where the victim was said to have dropped his knife and was thus attacked by accused-appellants who were both armed, does not remedy the fact that the prosecution failed to prove the existence of treachery at the onset of the attack.[45]

We also cannot appreciate cruelty as an aggravating circumstance. For cruelty to be taken into consideration, it is essential for the prosecution to have proved that the multiple wounds found on the body of the victim were inflicted unnecessarily while he was still alive in order to prolong his physical suffering.[46] The mere fact that the wounds were in excess of what was indispensably necessary to cause death does not necessarily imply that they were inflicted with cruelty.[47]

Thus, what the prosecution had established beyond reasonable doubt is the guilt of the accused for the crime of homicide only, not murder, for which the Revised Penal Code imposes the penalty of reclusion temporal. In the absence of aggravating or mitigating circumstances and applying in his favor the Indeterminate Sentence Law, the accused may thus be sentenced with an indeterminate penalty ranging from eight (8) years and one (1) day of prision mayor, as minimum, to fourteen (14) years and eight (8) months and one (1) day of reclusion temporal, as maximum, with all the accessory penalties prescribed by law.[48]

Lastly, on the matter of actual damages, we note from the records that private complainants have not substantiated, in terms of commercial receipts, income tax receipts, or similar documents, the actual damages, equivalent to burial expenses and lost income, incurred as a consequence of the victim's death. While we cannot grant the claim for lost income for not having been duly proved, we award the claim for P17,500.00, corresponding to funeral and wake costs, based on the testimony of the victim's wife, Erlinda Nolasco.

WHEREFORE, the decision appealed from is hereby MODIFIED, and accused-appellants Ricardo Emberga y Miguel and Romeo Emberga y Miguel are found guilty beyond reasonable doubt of the crime of Homicide and sentenced to an indeterminate penalty of eight (8) years and one (1) day of prision mayor, as minimum, to fourteen (14) years and eight (8) months and one (1) day of reclusion temporal, as maximum. They are further ordered to pay the heirs of the victim P50,000.00 as civil indemnity and P17,500.00 as actual damages.

SO ORDERED.

Melo (Chairman), Vitug, Panganiban, and Purisima, JJ., concur.

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[1] Rollo, 9.

[2] Branch 120; presided by Judge Arturo A. Romero.

[3] TSN, January 21, 1992, 8-11.

[4] Ibid., 14.

[5] Ibid., 11.

[6] Exhibit "H"; Records of the Case, 60.

[7] TSN, February 3, 1992, 3-11.

[8] TSN, March 3, 1992, 4-5.

[9] Ibid., 20-22.

[10] TSN, March 16, 1992, 5.

[11] Ibid., 6.

[12] Ibid.

[13] TSN, March 3, 1992, 23-24.

[14] TSN, March 16, 1992, 10.

[15] Exhibits "I" and "J"; Records of the Case, 61-62.

[16] Ibid.

[17] TSN, April 7, 1992, 7.

[18] Ibid.

[19] Ibid., 8.

[20] TSN, July 21, 1992, 8.

[21] Ibid., 8-9.

[22] TSN, April 7, 1992, 10.

[23] Ibid., 27.

[24] TSN, July 21, 1992, 17, 23-25.

[25] Ibid., 16-17.

[26] RTC Decision; Rollo, 26.

[27] TSN, January 5, 1992, 6-9.

[28] Accused-Appellant's Brief; Rollo, 47-48.

[29] People vs. Dansal, 275 SCRA 549; People vs. Naredo, 276 SCRA 489; People vs. Erardo, 277 SCRA 643; People vs. Letigio, 268 SCRA 227.

[30] People vs. Nardo, 270 SCRA 672.

[31] See People vs. Alvarado, 275 SCRA 727; People vs. Castro, 274 SCRA 115.

[32] TSN, April 7, 1992, 29-30.

[33] People vs. Lacerna, 278 SCRA 561; People vs. Peñero, 276 SCRA 564; People vs. Marollano, 276 SCRA 84.

[34] People vs. Dadles, 278 SCRA 393.

[35] Exhibit "I"; Records of the Case, 61.

[36] People vs. Cortes, 286 SCRA 295; People vs. Santos, 255 SCRA 309; People vs. Bausing, 199 SCRA 355.

[37] Exhibits "I" and "J"; Records of the Case, 61-62.

[38] See People vs. Capoquian, 236 SCRA 655.

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[39] People vs. Angeles, 275 SCRA 19; People vs. Cayabyab, 274 SCRA 387; People vs. Tobias, 267 SCRA 229.

[40] People vs. Cario, 288 SCRA 404; People vs. Baniel, 275 SCRA 472.

[41] People vs. Baniel, 275 SCRA 472.

[42] People vs. Garma, 271 SCRA 517.

[43] People vs. Serzo, 274 SCRA 553; People vs. Baydo, 273 SCRA 526; People vs. Israel, 272 SCRA 95.

[44] People vs. Zumil, 275 SCRA 182.

[45] People vs. Magallanes, 275 SCRA 222.

[46] People vs. Curaraton, 224 SCRA 373; People vs. Pacris, 194 SCRA 654.

[47] People vs. Alban, 245 SCRA 549.

[48] People vs. Mangahas, G.R. No. 118777, July 28, 1999; People vs. Albao, G.R. No. 117481, March 6, 1998.

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