

**MAYOR BAI UNGGIE D. ABDULA AND ODIN ABDULA, PETITIONERS,
VS. HON. JAPAL M. GUIANI, IN HIS CAPACITY AS PRESIDING JUDGE,
OF BRANCH 14 OF THE REGIONAL TRIAL COURT OF COTABATO
CITY,...**

G.R. No. 118821. February 18, 2000

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

At bench is a petition for certiorari and prohibition to set aside the warrant of arrest issued by herein respondent Japal M. Guiani, then presiding judge of Branch 14 of the Regional Trial Court of Cotabato City, ordering the arrest of petitioners without bail in Criminal Case No. 2376 for murder.

The antecedent facts of the case are as follows:

On 24 June 1994, a complaint for murder, docketed as I.S. No. 94-1361, was filed before the Criminal Investigation Service Command, ARMM Regional Office XII against herein petitioners and six (6) other persons^[1] in connection with the death of a certain Abdul Dimalen, the former COMELEC Registrar of Kabuntalan, Maguindanao.^[2] The complaint alleged that herein petitioners paid the six other respondents the total amount of P200,000.00 for the death of Abdul Dimalen.^[3]

Acting on this complaint, the Provincial Prosecutor of Maguindanao, Salick U. Panda, in a Resolution dated 22 August 1994^[4], dismissed the charges of murder against herein petitioners and five other respondents on a finding that there was no prima facie case for murder against them. Prosecutor Panda, however, recommended the filing of an information for murder against one of the respondents, a certain Kasan Mama. Pursuant to this Resolution, an information for murder was thereafter filed against Kasan Mama before the sala of respondent Judge.

In an Order dated 13 September 1994^[5], respondent Judge ordered that the case, now docketed as Criminal Case No. 2332, be returned to the Provincial Prosecutor for further investigation. In this Order, respondent judge noted that although there were eight (8) respondents in the murder case, the information filed with the court "charged only one (1) of the eight (8) respondents in the name of Kasan Mama without the necessary resolution required under Section 4, Rule 112 of the Revised Rules of Court to show how the investigating prosecutor arrived at such a conclusion." As such, the respondent judge reasons, the trial court cannot issue the warrant of arrest against Kasan Mama.

Upon the return of the records of the case to the Office of the Provincial Prosecutor for Maguindanao, it was assigned to 2nd Assistant Prosecutor Enok T. Dimaraw for further investigation. In addition to the evidence presented during the initial investigation of the murder charge, two new affidavits of witnesses were submitted to support the charge of murder against herein petitioners and the other respondents in the murder complaint. Thus, Prosecutor Dimaraw treated the same as a refiling of the murder charge and pursuant to law, issued subpoena to

the respondents named therein.[6] On December 6, 1994, herein petitioners submitted and filed their joint counter-affidavits.

After evaluation of the evidence, Prosecutor Dimaraw, in a Resolution dated 28 December 1994,[7] found a prima facie case for murder against herein petitioners and three (3) other respondents.[8] He thus recommended the filing of charges against herein petitioners Bai Unggie Abdula and Odin Abdula, as principals by inducement, and against the three (3) others, as principals by direct participation.

Likewise in this 28 December 1994 Resolution, Provincial Prosecutor Salick U. Panda, who conducted the earlier preliminary investigation of the murder charge, added a notation stating that he was inhibiting himself from the case and authorizing the investigating prosecutor to dispose of the case without his approval. The reasons he cited were that the case was previously handled by him and that the victim was the father-in-law of his son.[9]

On 2 January 1995, an information for murder dated 28 December 1994[10] was filed against the petitioner spouses and Kasan Mama, Cuenco Usman and Jun Mama before Branch 14 of the Regional Trial Court of Cotabato City, then the sala of respondent judge. This information was signed by investigating prosecutor Enok T. Dimaraw. A notation was likewise made on the information by Provincial Prosecutor Panda, which explained the reason for his inhibition.[11]

The following day, or on 3 January 1995, the respondent judge issued a warrant[12] for the arrest of petitioners. Upon learning of the issuance of the said warrant, petitioners filed on 4 January 1995 an Urgent Ex-parte Motion[13] for the setting aside of the warrant of arrest on 4 January 1995. In this motion, petitioners argued that the enforcement of the warrant of arrest should be held in abeyance considering that the information was prematurely filed and that the petitioners intended to file a petition for review with the Department of Justice.

A petition for review[14] was filed by the petitioners with the Department of Justice on 11 January 1995.[15] Despite said filing, respondent judge did not act upon petitioner's pending Motion to Set Aside the Warrant of Arrest.

Hence, this Petition for Certiorari and Prohibition wherein petitioners pray for the following:

- "1. upon filing of this petition, a temporary restraining order be issued enjoining the implementation and execution of the order of arrest dated January 3, 1995 and enjoining the respondent judge from further proceeding with Criminal Case No. 2376 entitled People of the Philippines vs. Bai Unggie D. Abdula, et al. upon such bond as may be required by the Honorable Court;
2. this petition be given due course and the respondent be required to answer;
3. after due hearing, the order of arrest dated January 3, 1995 be set aside and declared void ab initio and the respondent judge be disqualified from hearing Criminal Case No. 2376 entitled People of the Philippines vs. Bai Unggie D. Abdula, et al."[16]

In a Resolution[17] dated 20 February 1995, this Court resolved to require respondent judge to submit a comment to the petition. The Court further resolved to issue a temporary restraining order[18] enjoining the respondent judge from implementing and executing the Order of Arrest dated 3 January 1995 and from further proceeding with Criminal Case No. 2376.

At the onset, it must be noted that petitions for certiorari and prohibition require that there be no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law available to the petitioner.[19] In the instant case, it cannot be said that petitioners have no other remedy available to them as there is pending before the lower court an Urgent Motion[20] praying for the lifting and setting aside of the warrant of arrest. Ordinarily, we would have dismissed the petition on this ground and let the trial court decide the pending motion. However, due to the

length of time that the issues raised in the petition have been pending before the courts, it behooves us to decide the case on the merits in order to preclude any further delay in the resolution of the case.

Respondent Japal M. Guiani retired from the judiciary on 16 April 1996. For this reason, respondent is no longer the presiding judge of the Regional Trial Court Branch 14 of Cotabato City; and the prayer of petitioner as to respondent's disqualification from hearing Criminal Case No. 2376 is now moot and academic. Thus, there remain two issues left for the determination of the Court: first, the legality of the second information for murder filed before respondent's court; and second, the validity of the warrant of arrest issued against petitioners.

With respect to the first issue, petitioners aver that it is the respondent judge himself who is orchestrating the filing of the alleged murder charge against them. In support, petitioners cite five (5) instances wherein respondent judge allegedly issued illegal orders in a mandamus case pending in respondent's sala filed against petitioner Mayor Bai Unggie Abdula. These allegedly illegal orders formed the basis for a criminal complaint which they filed on 6 October 1994 against respondent and ten (10) others before the Office of the Ombudsman for Mindanao.[21] In this complaint, herein petitioners alleged that the respondent judge illegally ordered the release of the total amount of P1,119,125.00 from the municipal funds of Kabuntalan, Mindanao to a certain Bayoraiz Saripada, a purported niece of respondent judge. The Office of the Ombudsman for Mindanao, in an Order[22] dated 12 December 1994, found "sufficient basis to proceed with the preliminary investigation of the case" and directed the respondents therein to file their respective counter-affidavits and controverting evidence. From these facts, petitioners argue, it is clear that it is the respondent judge himself who is orchestrating and manipulating the charges against the petitioner.

Petitioners further state that respondent judge exhibited extreme hostility towards them after the filing of the said complaint before the Ombudsman. Petitioners claim that immediately after the issuance of the Order of the Ombudsman requiring respondent judge to file his counter-affidavit, respondent allegedly berated petitioner Bai Unggie Abdula in open court when she appeared before him in another case. Allegedly, in full view of the lawyers and litigants, respondent judge uttered the following words in the Maguindanaoan dialect:

"If I cannot put you in jail within your term, I will cut my neck. As long as I am a judge here, what I want will be followed." [23]

Respondent judge, in compliance with the Order of this Court, filed a Comment dated 3 March 1995.[24] In this Comment, he argues that petitioners' enumeration of "incontrovertible facts" is actually a list of misleading facts which they are attempting to weave into Criminal Case No. 2376 for the purpose of picturing respondent as a partial judge who abused his discretion to favor petitioner's accuser.[25] He claims that the anti-graft charge filed by petitioners against him is a harassment suit concocted by them when they failed to lay their hands on the amount of P1,119,125.00 of municipal funds which respondent had previously ruled as rightfully belonging to the municipal councilors of Kabuntalan, Maguindanao. Respondent vehemently denies having personally profited from the release of the municipal funds. Moreover, respondent points out that the allegations in the complaint seem to imply that the Vice Mayor of Kabuntalan, Bayoraiz Sarupada, was a party to the mandamus case filed with respondent's court when in truth, there was no case filed by the vice mayor pending in his court. Finally, respondent denies berating petitioner Bai Unggie Abdula and uttering the words attributed to him in the petition. According to respondent, the last time petitioner Bai Unggie Abdula appeared in his sala on December 28, 1994, in connection with the lifting of an order for her apprehension in another case, he neither berated nor scolded her and in fact, he even lifted the said order of arrest.

In its Comment with Urgent Motion for the Lifting of the Temporary Restraining Order dated 5 June 1995,[26] the Office of the Solicitor-General states that petitioner's allegation that the respondent judge was biased and prejudiced was pure speculation as no proof was presented that respondent assumed the role of prosecutor.

Moreover, the OSG argued that the fact that the respondent judge and petitioners had pending cases against each other did not necessarily result in the respondent's bias and prejudice.

An analysis of these arguments shows that these should have been properly raised in a motion for the disqualification or inhibition of respondent judge. As previously stated however, the issue as to whether respondent should be disqualified from proceeding with the case has been rendered moot and academic as he is no longer hearing the case against petitioners. As such, there is no need for a prolonged discussion on this issue. It is sufficient to say that in order to disqualify a judge on the ground of bias and prejudice, petitioner must prove the same by clear and convincing evidence.[27] This is a heavy burden which petitioners have failed to discharge. This Court has to be shown acts or conduct of the judge clearly indicative of arbitrariness or prejudice before the latter can be branded the stigma of being biased and partial.[28]

Petitioners next argue that the act of respondent in motu proprio ordering a reinvestigation of the murder charge against them is another indication of the latter's bias and prejudice.[29] They claim that the filing of their complaint against respondent motivated the latter's Order of 13 September 1994 which ordered the return of the records of the murder case to the provincial prosecutor. Furthermore, they posit that the latter had no authority to order the reinvestigation considering that same had already been dismissed as against them by the provincial prosecutor in his Resolution dated 22 August 1994.

A review of the pertinent dates in the petition however show that respondent could not have been motivated by the Ombudsman's complaint when he issued the 13 September 1994 Order. Petitioner Bai Unggie Abdula filed the complaint before the Ombudsman of Cotabato City on October 6, 1994[30] or about a month after the issuance of the 13 September 1994 Order. As such, when respondent issued the said Order, the same could not have been a retaliatory act considering that at that time, there was as yet no complaint against him.

With respect to the allegation that the respondent had no legal authority to order a reinvestigation of the criminal charge considering that the said charge had been previously dismissed as against them, we hold that respondent did not abuse his discretion in doing so.[31]

It is true that under the circumstances, the respondent judge, upon seeing that there were no records attached to the complaint, could have simply ordered the office of the provincial prosecutor to forward the same. Upon receipt of these records, respondent judge would then have sufficient basis to determine whether a warrant of arrest should issue. However, from the bare terms of the questioned order alone, we fail to see any illegal reason that could have motivated the judge in issuing the same. The order merely stated that the records of the case should be returned to the Office of the Provincial Prosecutor for further investigation or reinvestigation. He did not unduly interfere with the prosecutor's duty to conduct a preliminary investigation by ordering the latter to file an information against any of the respondents or by choosing the fiscal who should conduct the reinvestigation which are acts certainly beyond the power of the court to do.[32] It was still the prosecutor who had the final say as to whom to include in the information.[33]

As pointed out by the Office of the Solicitor General, petitioners only imputed bias against the respondent judge and not against the investigating prosecutor.[34] Consequently, this imputation is of no moment as the discretion to file an information is under the exclusive control and supervision of the prosecutor and not of respondent judge. Furthermore, petitioners cannot claim that they were denied due process in the reinvestigation of the charges against them as they actively participated therein by submitting their joint counter-affidavit.

Petitioners likewise allege that the information charging petitioners with murder is null and void because it was filed without the authority of the Provincial Prosecutor. They note that in the Resolution dated 28 December 1994 and in the corresponding information, it clearly appears that the same were not approved by the Provincial

Prosecutor as it was signed only by the investigating prosecutor, Anok T. Dimaraw.

Petitioners' contention is not well-taken.

The pertinent portion of the Rules of Court on this matter state that "(n)o complaint or information shall be filed or dismissed by an investigating fiscal without the prior written authority or approval of the provincial or city fiscal or chief state prosecutor (underscoring ours)." In other words, a complaint or information can only be filed if it is approved or authorized by the provincial or city fiscal or chief state prosecutor.

In the case at bench, while the Resolution and the Information were not approved by Provincial Prosecutor Salick U. Panda, the filing of the same even without his approval was authorized. Both the Resolution and information contain the following notation:[*]

"The herein Provincial Prosecutor is inhibiting himself from this case and Investigating Prosecutor Enok Dimaraw may dispose of the case without his approval on the following ground:

That this case has been previously handled by him, and whose findings differ from the findings of Investigating Prosecutor Dimaraw; and the victim is a relative by affinity, he being a father-in-law of his son.

(Signed) Salick U. Panda
Provincial Prosecutor

It must be stressed that the Rules of Court speak of authority or approval by the provincial, city, or chief state prosecutor. The notation made by Prosecutor Panda clearly shows that Investigating Prosecutor Dimaraw was authorized to "dispose of the case without his approval." In issuing the resolution and in filing the information, the investigating prosecutor was acting well within the authority granted to him by the provincial prosecutor. Thus, this resolution is sufficient compliance with the aforecited provision of the Rules of Court.

Having thus ruled on the validity of the information filed against the respondents, we now address the issue as to the legality of the warrant of arrest issued by respondent judge by virtue of the said information.

On this issue, petitioners, citing the case of *Allado vs. Diokno*[35] argue that the warrant for his arrest should be recalled considering that the respondent judge "did not personally examine the evidence nor did he call the complainant and his witnesses in the face of their incredible accounts." As proof, he points to the fact that the information was filed at around 4:00 p.m. of the January 2, 1995 and the order of arrest was immediately issued the following day or on January 3, 1995. Moreover, petitioner argues, respondent judge did not even issue an order stating that there is probable cause for the issuance of the warrant of arrest, a clear violation of the guidelines set forth in the *Allado* case.

Respondent, in his Comment, denies any irregularity in the issuance of the warrant of arrest. He argues as follows:

"Written authority having been granted by the Provincial Prosecutor, as required by the third paragraph of Section 4, Rule 112 of (the) Rules on Criminal Procedure, and there having been no reason for the respondent to doubt the validity of the certification made by the Assistant Prosecutor that a preliminary investigation was conducted and that probable cause was found to exist as against those charged in the Information filed, and recognizing the prosecution's legal authority to initiate and control criminal prosecution (Rule 110, Section 5) and considering that the court cannot interfere in said prosecution's authority (*People vs. Moll*, 68 Phil. 626), the respondent issued the warrant for the arrest of the accused pursuant to paragraph (a), section 6, Rule 112;"[36]

The OSG, in defending the act of respondent judge, argues that the allegation that respondent did not personally examine the evidence is not supported by current jurisprudence. In support, the OSG invokes the pronouncement

in *Soliven vs. Makasiar*[37] that "(I)n satisfying himself of the existence of probable cause, the judge is not required to personally examine the complainant and his witnesses." Moreover, the OSG points out that the judge enjoys a wide degree of latitude in the determination of probable cause for the issuance of warrants of arrest depending on the circumstances of each case.[38]

The OSG further argues that the case of *Allado vs. Diokno*, relied upon by petitioners, has no application in the case at bar considering that in the cited case, the documents submitted before the court failed to establish any probable cause as they were conflicting and contradictory. Significantly, the OSG continues, petitioners could not point out a single flaw in the evidence presented by the prosecutor to negate the existence of probable cause. Finally, the OSG points out that petitioner's unfounded allegations cannot prevail over the well-settled rule that official duty is presumed to be regularly performed.[39]

After a careful analysis of these arguments, we find merit in the contention of petitioners.

The pertinent provision of the Constitution reads:

"Section 2 [Article III]. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce and particularly describing the place to be searched and the persons or things to be seized." (Italics supplied.)

It must be stressed that the 1987 Constitution requires the judge to determine probable cause "personally," a requirement which does not appear in the corresponding provisions of our previous constitutions. This emphasis evinces the intent of the framers to place a greater degree of responsibility upon trial judges than that imposed under previous Constitutions.[40]

In *Soliven vs. Makasiar*, this Court pronounced:

"What the Constitution underscores is the exclusive and personal responsibility of the issuing judge to satisfy himself of the existence of probable cause. In satisfying himself of the existence of probable cause for the issuance of a warrant of arrest, the judge is not required to personally examine the complainant and his witnesses. Following established doctrine and procedure, he shall: (1) personally evaluate the report and the supporting documents submitted by the fiscal regarding the existence of probable cause and, on the basis thereof, issue a warrant of arrest; or (2) if on the basis thereof he finds no probable cause, he may disregard the fiscal's report and require the submission of supporting affidavits of witnesses to aid him in arriving at a conclusion as to the existence of probable cause."

Ho vs. People[41] summarizes existing jurisprudence on the matter as follows:

"Lest we be too repetitive, we only wish to emphasize three vital matters once more: First, as held in *Inting*, the determination of probable cause by the prosecutor is for a purpose different from that which is to be made by the judge. Whether there is reasonable ground to believe that the accused is guilty of the offense charged and should be held for trial is what the prosecutor passes upon. The judge, on the other hand, determines whether a warrant of arrest should be issued against the accused, i.e., whether there is a necessity for placing him under immediate custody in order not to frustrate the ends of justice. Thus, even if both should base their findings on one and the same proceeding or evidence, there should be no confusion as to their distinct objectives.

Second, since their objectives are different, the judge cannot rely solely on the report of the prosecutor in finding probable cause to justify the issuance of a warrant of arrest. Obviously and understandably, the contents of the prosecutor's report will support his own conclusion that there is reason to charge the accused for an offense and hold him for trial. However, the judge must decide independently. Hence, he must have supporting evidence, other than the prosecutor's bare report, upon which to legally sustain his own findings on

the existence (or nonexistence) of probable cause to issue an arrest order. This responsibility of determining personally and independently the existence or nonexistence of probable cause is lodged in him by no less than the most basic law of the land. Parenthetically, the prosecutor could ease the burden of the judge and speed up the litigation process by forwarding to the latter not only the information and his bare resolution finding probable cause, but also so much of the records and the evidence on hand as to enable the His Honor to make his personal and separate judicial finding on whether to issue a warrant of arrest.

Lastly, it is not required that the complete or entire records of the case during the preliminary investigation be submitted to and examined by the judge. We do not intend to unduly burden trial courts by obliging them to examine the complete records of every case all the time simply for the purpose of ordering the arrest of an accused. What is required, rather, is that the judge must have sufficient supporting documents (such as the complaint, affidavits, counter-affidavits, sworn statements of witnesses or transcript of stenographic notes, if any) upon which to make his independent judgment or, at the very least, upon which to verify the findings of the prosecutor as to the existence of probable cause. The point is: he cannot rely solely and entirely on the prosecutor's recommendation, as Respondent Court did in this case. Although the prosecutor enjoys the legal presumption of regularity in the performance of his official duties and functions, which in turn gives his report the presumption of accuracy, the Constitution, we repeat, commands the judge to personally determine probable cause in the issuance of warrants of arrest. This Court has consistently held that a judge fails in his bounden duty if he relies merely on the certification or the report of the investigating officer." (citations omitted)

In the case at bench, respondent admits that he issued the questioned warrant as there was "no reason for (him) to doubt the validity of the certification made by the Assistant Prosecutor that a preliminary investigation was conducted and that probable cause was found to exist as against those charged in the information filed." The statement is an admission that respondent relied solely and completely on the certification made by the fiscal that probable cause exists as against those charged in the information and issued the challenged warrant of arrest on the sole basis of the prosecutor's findings and recommendations. He adopted the judgment of the prosecutor regarding the existence of probable cause as his own.

Although the prosecutor enjoys the legal presumption of regularity in the performance of his official duties, which in turn gives his report the presumption of accuracy, nothing less than the fundamental law of the land commands the judge to personally determine probable cause in the issuance of warrants of arrest. A judge fails in this constitutionally mandated duty if he relies merely on the certification or report of the investigating officer.

To be sure, we cannot determine beforehand how cursory or exhaustive the respondent's examination of the records should be.[42] The extent of the judge's examination depends on the exercise of his sound discretion as the circumstances of the case require. In the case at bench, the respondent had before him two different informations and resolutions charging two different sets of suspects. In the face of these conflicting resolutions, it behooves him not to take the certification of the investigating prosecutor at face value. The circumstances thus require that respondent look beyond the bare certification of the investigating prosecutor and examine the documents supporting the prosecutor's determination of probable cause. The inordinate haste that attended the issuance of the warrant of arrest and respondent's own admission are circumstances that tend to belie any pretense of the fulfillment of this duty.

Clearly, respondent judge, by merely stating that he had no reason to doubt the validity of the certification made by the investigating prosecutor has abdicated his duty under the Constitution to determine on his own the issue of probable cause before issuing a warrant of arrest. Consequently, the warrant of arrest should be declared null and void.

WHEREFORE, premises considered, the petition for certiorari and prohibition is GRANTED. The temporary

restraining order we issued on 20 February 1995 in favor of petitioners insofar as it enjoins the implementation and execution of the order of arrest dated 3 January 1995 is made permanent. Criminal Case No. 2376 is REMANDED to Branch 14 of the Regional Trial Court of Cotabato City for a proper determination of whether a warrant of arrest should be issued and for further proceedings.

SO ORDERED.

Melo, Vitug, Panganiban, and Purisima, JJ., concur.

[1] The six other respondents in I.S. No. 94-1361 are Undong Dumamba Magelna, Kongan Mabang, Badrudin Mamad, Guialal Kudarat, Kasan Mama and Cuenco Usman.

[2] Records, p. 57.

[3] Rollo, pp. 57-58.

[4] Annex "L" Petition; Rollo, pp. 57-60.

[5] Annex "M", Petition; Rollo, p. 61.

[6] Rollo, p. 62.

[7] Annex "N", Petition, Rollo, pp. 62-67.

[8] The three other respondents are Kasan Mama, Cuenco Usman and Jun Mama.

[9] Rollo, p. 67.

[10] Annex "O," Petition; Rollo, pp. 68-69.

[11] Rollo, p. 69.

[12] Annex "P", Petition; Rollo, p. 70.

[13] Annex "Q", Petition; Rollo, pp. 71-75.

[14] Annex "R", Petition; Rollo, pp. 76-88.

[15] The Petition for Review was subsequently dismissed by the Department of Justice in a Resolution dated 6 June 1997.

[16] Rollo, pp. 22-28.

[17] Rollo, p. 81.

[18] Rollo, pp. 82-83.

[19] Section 1, Rule 65, Rules of Court.

[20] Annex "Q", Petition; Rollo, pp. 71-73.

[21] Annex "I", Petition; Rollo, pp. 42-52.

[22] Annex "J", Petition; Rollo, pp. 53-54.

[23] Rollo, p. 8.

[24] Rollo, pp. 95-101.

[25] Rollo, p. 3.

[26] Rollo, pp. 116-123.

[27] Webb vs. People, 276 SCRA 243.

[28] Aparicio vs. Andal, 175 SCRA 569.

[29] Rollo, p. 12.

[30] Rollo, p. 12.

[31] Placer vs. Villanueva, December 29, 1983.

[32] Abugotal vs. Tiro, 66 SCRA 196.

[33] Lim, Sr. vs. Court of Appeals, 222 SCRA 279.

[34] Rollo, p. 119.

[*] Rollo, p. 67 and 69.

[35] 232 SCRA 192.

[36] Rollo, pp. 96-97.

[37] 167 SCRA 398.

[38] Lim vs. Felix, 187 SCRA 292.

[39] La Tondena Distillers, Inc. vs. Court of Appeals, 209 SCRA 544.

[40] Ho vs. People, 280 SCRA 365.

[41] Ibid.

[42] Lim, Sr. vs. Felix, *supra*.

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