

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE VS. AARON BIONAT, ACCUSED-APPELLANT.

G.R. No. 121778. September 04, 1997

Ponente: DAVIDE, JR. J.

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DAVIDE, JR. J.:

In an information [1] filed on 15 July 1987 with the Regional Trial Court (RTC) of Surallah, South Cotabato, Branch 26, and docketed therein as Criminal Case No. 550-S, accused was charged with murder committed as follows:

That on or about the 12th day of August, 1985, at ten o'clock in the evening, more or less, at Sitio Asuncion, Barangay Naci, Municipality of Surallah, Province of South Cotabato, Philippines, and within the jurisdiction of the Honorable Court, said accused in company with some four companions who are all at large and whose identities are unknown, conspiring, and confederating together and mutually helping one another, all armed with firearms, with treachery, evident premeditation, cruelty and abuse of strength, did then and there take ERNESTO ROMAY from his residential house, bring him some seventy meters away, and did then and there willfully, unlawfully and feloniously attack, assault and stab the said ERNESTO ROMAY with the use of some bladed and sharp pointed instruments, inflicting on him ... various kinds of wounds, to wit:

- (1) Stab wound, incised with clean cut edges and sharp extremities, 2.5 cms. in length, gaping, superficial, located in the upper left side of the neck.
- (2) Stab wound, incised, with clean cut edges, extremities sharp, gaping, 4 cm. in length, superficial, located 2 cm. below wound No. 1
- (3) Stab wound, incised, with clean cut edges and sharp extremities, gaping, 1.5 cm. in length, superficial, located at the lower part, left side of the neck.
- (4) Incised wound, with both extremities sharp, both edges clean cut, gaping, 13 cms. in length, cutting underlying muscle, located at the 3rd intercostal space.
- (5) Stab wound, incised, 3.5 cm. in length, with clean cut edges and sharp extremities, gaping, located at the 6th left intercostal space along the anterior axillary line, directed medially, and to the right penetrating the heart and the left and right lungs, 19 cm. in depth.
- (6) Stab wound, incised, with clean cut edges and sharp extremities, gaping, 3.5 cm. in length, superficial, located at the 3rd thoracic intercostal space, right back, middle.
- (7) Stab wound, incised, with clean cut edges and sharp extremities, gaping, 3.5 cm. in length, superficial, located 3 cm. below wound No. 6.
- (8) Stab wound, incised, with clean cut edges and sharp extremities, gaping, 3.5 cm. in length, superficial, located at the back, left, along the 3rd intercostal space 4 cm. from midspinal line.

(9) Stab wound, incised, with clean cut and sharp extremities gaping, 3.5 cm. in length, superficial, 3 cm. below wound No. 8.

(10) Stab wound, incised, with clean cut edges and sharp extremities, gaping, 3.5 cm. in length, located at the 8th th[oracic into intercostal space, 3.5 cm. from midspinal line, directed anteriorly both chest, penetrating the left lungs, 18 cm. in depth.

and as a result thereof ERNESTO ROMAY died instantaneously.

CONTRARY TO LAW.

A warrant of arrest was issued on 21 July 1987; however, no return thereof was made despite the trial court's order[2] of 27 November 1987 that the return be made within five (5) days. On 27 July 1988 the trial court ordered the case archived.[3]

On 16 October 1991, upon motion[4] of the prosecution, the trial court issued an alias warrant of arrest[5] as accused was known to be at Lemery, Sara, Iloilo. The accused was arrested on 24 February 1994 and detained at the Surallah Municipal Jail.[6]

On 7 March 1994, accused filed a motion praying that his detention at the Surallah Municipal Jail continue "because he will execute an affidavit pointing to persons involved in the killing of one Ernesto Romay in exchange for [an] affidavit of desistance by the surviving spouse." [7] The trial court denied the motion on 28 March 1994.[8]

On 22 March 1994, accused filed an urgent motion for bail[9] which the prosecution would not oppose, provided that bail be fixed at P200,000.00. The trial court granted the motion on 6 May 1994.[10]

After accused entered a plea of not guilty at his arraignment[11] on 8 April 1994, trial on the merits was had on various dates.

We quote verbatim the trial court's summary of the prosecution's version of the events as testified to by its witnesses Myrna vda. de Romay, and Joseph Romay, to wit:

1. Myrna vda. de Romay was 44 years old, a housekeeper when she testified. She is the surviving widow of the victim Ernesto Romay.

At 10:00 p.m. on August 12, 1985 she was sleeping with her husband and their nine children in their house which was made of coconut lumber, cogon roofing and bamboo slats "tadtad" walling. The windows were yet not with window shutters and the floor still unfinished. It was a single story house with only a three-step ladder to go upstairs.

Someone called outside their house and when she rose up she saw five persons. Two persons were already up their house at a veranda and three were watching downstairs.

She told her husband the persons may do something to him. So her husband embraced her as the five persons appeared to have come from the mountain.

Her husband went out where there was a lamp at the veranda and with another lamp her husband lighted [sic]. She saw the faces of the five persons whose names she did not know. Her husband was invited by the five persons to go down their house as the alleged commander of said persons was there waiting outside.

But downstairs said persons tied her husband. One was watching upstairs telling her not to cry or shout or r[u]n away. Another searched their belongings.

Her husband was brought outside. She touched the accused in court to be one of those five persons.

In [sic] the following morning she asked her in-laws to look for her husband. A student passed by their house saying that the student saw a dead man on a [sic] roadside. Her husband had ten stab wounds when found dead.

After the death of her husband in September 1985 she did not see the accused anymore. But she saw the accused only on October 13, 1985 in her farm escorting a tractor brought there. She asked the accused why her farm was disc-harrowed. But accused just said that they should wait for Escovidal.

She told her in-laws that she saw the accused as one of the men who went to their house in [sic] the evening of August 12, 1985.

It was the accused who pointed a gun at her in [sic] the evening of the incident. At that time she had a land conflict with Escovidal with respect to the two-hectare farm she and her husband cultivated which was discharrowed by a tractor escorted by the accused. This two-hectare land was originally owned by Manuel Ginoca, the father-in-law of Escovidal.

The accused was an ICHDF member then whom she asked why they were getting the two-hectare lot.

She was delayed in reporting the case as she was yet verifying the name of said accused. She was investigated by the police (Exh. A) and also by the MCTC judge (Exh. B).

On cross examination the widow of the victim revealed that of the five persons who came and took her husband that night only accused Bionat was wearing a black sweat shirt with close neck and no head cover except a "tubaw" or Muslim neckerchief placed around Bionat's head.

When her husband stood up there were already two persons in their house so she stood up at once as her husband told her. The second person with accused was wearing a navy-blue sando, without a cover on the face.

On the night of the incident it was raining hard. Accused Bionat was at the foot of the stairs of her house which was only one meter away from where she was reclining. She was near the accused Bionat [who was] about two feet away. And the accused Bionat was about one meter away from one of the kerosene lamps. Accused was in front of said lamp standing on one side of the door.

When she stood up from where she was lying she was made to sit on the second step of the stairs two feet away from the accused.

She wanted to know the mastermind in the killing of her husband so she wanted to file an affidavit of desistance against accused Bionat. The wife and uncle of Bionat saw the widow who told her that the mastermind in the killing of her husband was a Sotero Escovidal. But she was not able to execute said desistance [sic] because of Fiscal Lechoncito.

2. Joseph Romay was 21 years old, single and a resident of Purok Sison, Poblacion, Surallah when he testified on August 22, 1994.

On August 12, 1985 at about 10:00 p.m. he was at home at Botong, Naci, Surallah. Five persons went up their house whom he saw without masks.

One of those persons was the accused Bionat who took and tied his father and brought his father away.

The following day his father was found dead in the middle of a cornfield about 50 meters away from their house.

The next time he saw the accused Bionat was when their land cultivated was discharrowed on October 13, 1985. The person who tied the hands of his father was the accused. A string used to tie a ro[o]ster was used in tying his father.

He told his mother that the accused was the same person who pointed a gun at her [sic] mother but they could do nothing then as those persons were armed when they discharrowed Romay's farm.

On cross examination Joseph Romay revealed that in the evening of the incident it was his father who lighted [sic] a kerosene lamp. His father was tied while still in their house. The hands were tied on [sic] his father's back.[12]

Accused had a different version of the events, as corroborated by Joy Bionat, his wife; Alberto Magbanua, his brother-in-law; and Paz Bionat, his aunt.

According to the accused, a member of the Integrated Civil Home Defense Forces (ICHDF), on 12 August 1985, at around nine o'clock in the evening, he was in his house at Block Daisy, Zone 6, Poblacion, Surallah. He did not leave his house at any time that evening. He lived there until January 1987 when he went to Sara, Iloilo with his family. He stayed in Sara from 1987 until 5 November 1993. Thereafter he returned to Surallah with his wife and one of his three children.

Accused further testified that on 12 October 1985, a certain Terry Escovidal went to his house and requested him to escort Escovidal in discharrowing Escovidal's farm in Barangay Naci. Accused agreed and informed his company commander, Capt. Dinglasan, of Escovidal's request. Thereafter, accused and his fellow ICHDF member Rowing Abalayon, together with a driver and Escovidal, went to the farm which was being discharrowed. Accused was in his ICHDF uniform and was carrying a firearm then. They stayed at the farm for 1½ hours, in which time, only 1½ hectares was actually discharrowed. They returned to Surallah before the discharrowing was completed.

Accused likewise disclosed that he was arrested on 24 February 1994. On 7 September 1994, the victim's wife, Myrna Romay, visited him in jail and asked him to implicate Terry Escovidal as the mastermind in the killing of her husband. But he refused and professed his innocence. That was the only time she visited him in jail.[13]

On cross-examination, accused admitted that Terry Escovidal requested that accused escort the latter because of a case Escovidal had with Myrna Romay concerning a parcel of land. That was the first time accused saw Myrna Romay as Terry Escovidal pointed her out to accused. He denied filing a motion with the trial court on 7 March 1994 wherein he prayed that he be allowed to remain in the Surallah Municipal Jail as he would execute an affidavit implicating the other persons involved in the killing of Ernesto Romay. He further explained that since life was difficult in Surallah, he decided to take his family to Sara, Iloilo, his wife's hometown, where they stayed in the farm of his wife's parents. He also admitted that he left his farm in Sara, Iloilo on 5 November 1993 and returned to Surallah for a vacation together with his wife and one of their three children.[14]

Joy Bionat, declared that her husband, herein accused, was at their house on the evening of 12 August 1985 and did not leave at any time that evening; that they were at their house with their children and aunt on the night when Ernesto Romay was killed; and that they left Surallah for Sara, Iloilo and stayed there until 1993 when they returned to Surallah with one of their three children for a vacation.

Joy likewise declared that her husband was arrested on 24 February 1994, and on 7 September 1994, Myrna Romay visited her husband in jail to ask him to implicate Terry Escovidal as the mastermind in the killing of Ernesto Romay in return for accused's freedom. But, her husband could not accede as he was innocent.[15]

On cross-examination, she told the court that her husband was a carpenter in Sara prior to coming over to Surallah in 1985, where he was employed as an ICHDF member. When they went back to Sara, her husband tilled a one-hectare farm. Life was hard for them but they took a vacation to Surallah in 1993 to see their parents.[16]

Alberto Magbanua, a farmer and neighbor of the accused, and married to accused's sister, testified that on the

evening of 12 August 1985, he was in the house of the accused from 8:00 p.m. to 11 p.m. watching television with the accused. Alberto left his wife and their child at home as it was only three meters from the accused's house. Alberto confirmed that accused did not at any time that evening leave the house.

Paz Bionat Jalapan, aunt of the accused, testified that she lived in the same house as the accused and was at home with the accused and his family the entire evening of 12 August 1985. She was ironing clothes until midnight.[17]

In giving full faith and credit to the prosecution's version, the trial court found that the widow, Myrna vda. De Romy, positively identified the accused to be among the five abductors of the victim, thus:

1. From the testimony of the widow of the victim, her husband when awakened by the call of the abductors embraced her when she said that something might be done to him. Her husband went out of the house to a balcony where there was another lamp which her husband lighted [sic]. The five abductors invited her husband to come down as their commander was waiting and her husband was tied.

One of the abductors was watching on the stairs pointing a gun at her and telling her not to cry, shout, or run away. And this abductor she identified as the accused Bionat who was then in a close-necked black sweat shirt without head cover except a "tubaw" or neckerchief around the head.

During that time the accused was at the foot of the stairs only two feet away from her where she was lying down. And there were two lamps that evening, the other one was with her before which the accused was facing. She even asked the accused why her husband was tied and the accused said that they were borrowing her husband. Then the accused told her to go upstairs as her husband was brought away.

Thus, for a long time the widow of the victim was in confrontation with the accused under a lamp light. She was favored by the lamp light and considering the startling event which transpired, she could have recollected well who the abductor was on August 12, 1985.

Not knowing the name of the accused then, the widow was delayed in giving her statements to the police. After knowing the name of the accused whom she met on October 13, 1985 in the morning at the tenanted farm near her house, she then gave her statements to the authorities on October 30, 1985 (Exh. A to A-4).[18]

The RTC also found that Joseph Romy, who was 12 years old when his father was abducted, was able to identify the accused as one of the abductors since Joseph also saw the accused that night. Furthermore, Joseph recognized the accused after the incident when accused came over to their farm escorting Escovidal.[19]

The trial court rejected the accused's defense of alibi and denial for his failure to overcome the positive identification made by and the affirmative testimony of the prosecution's witnesses; and appreciated accused's transfer of residence to Sara, Iloilo after the filing of the information as "flight" from justice and, therefore, evidence of guilt. As to the delay in the filing of the information, the trial court noted:

The information was filed only on July 15, 1987 although the widow had given statements pointing to accused on October 30, 1985. The information was directly filed before this court by the provincial fiscal. Although the police and the then Municipal Trial Court had conducted their investigations (Exh. A to A-4 and B to B-3), no case before the municipal court appeared to have been filed. The reason could have been that policemen fraternized with ICHDF members.[20]

The trial court appreciated against the accused the qualifying circumstance of treachery, thus:

They came to the house of the victim at about ten o'clock in the evening when it was raining. So they came unnoticed by any person on the way or in houses they passed by. They awakened the victim and the victim's family from their sleep, so surprising the victim who could have not thought of escaping. They hog-tied the victim, brought him not far from the house of the victim and left the victim with ten stab wounds dead along the road.[21]

Accordingly, in its Decision[22] of 7 March 1995, the trial court found the accused guilty beyond reasonable doubt of murder as charged in Criminal Case No. 550-S and sentenced him to suffer the penalty of reclusion perpetua and to indemnify the heirs of the victim in the sum of P50,000.00 for the death of the victim and P30,000.00 for moral and exemplary damages.

Accused seasonably appealed to us from the decision. We accepted his appeal in the resolution of 10 July 1996.

In his Appellant's Brief, the accused interposes the following assignment of errors:

1. THE HONORABLE TRIAL COURT ERRED IN FINDING THE ACCUSED GUILTY NOTWITHSTANDING ABSENCE OF EVIDENCE AS TO THE ACTUAL PARTICIPATION OF THE ACCUSED IN THE ALLEGED KILLING OF THE VICTIM
2. THE HONORABLE TRIAL COURT ERRED IN HOLDING THAT THE ACCUSED TOOK FLIGHT AFTER THE ALLEGED KILLING
3. THE HONORABLE TRIAL COURT ERRED IN HOLDING THAT THE CRIME COMMITTED IS MURDER
4. THE HONORABLE TRIAL COURT ERRED IN NOT GIVING CREDENCE TO THE DEFENSE OF THE ACCUSED
5. THE HONORABLE TRIAL COURT ERRED IN NOT HOLDING THAT THE ACT OF ACCUSED OF RETURNING TO HIS RESIDENCE IN SURALLAH IS INDICATIVE OF HIS INNOCENCE.

Accused argues that the testimonies of the prosecution witnesses do not point to him as having participated in the actual killing of Ernesto Romay, as his alleged participation was limited to tying up the victim. Accused also contradicts the trial court's finding that he fled after the killing, calling our attention to the fact that he did not leave Surallah after the alleged killing as the prosecution witnesses even saw him two months thereafter when he escorted Escovidal in going to their farm. Furthermore, accused contends that if he were indeed guilty, then he could have stayed in Sara, Iloilo to avoid prosecution. Accused also insists that the failure of the widow to confront him when she first saw him and her eagerness to find out from him who the mastermind of the killing of her husband was, when taken together with the other circumstances exposing the frailty of the prosecution's evidence linking him to the actual killing of the victim, are indicative of doubt on the part of the prosecution regarding the identity of the perpetrators of the crime.

In the Appellee's Brief, the Office of the Solicitor General recommends our affirmance in toto of the challenged decision.

Our evaluation of the evidence on record leads us to no other conclusion than to agree with the trial court that the evidence for the prosecution established with moral certainty that the accused committed the crime charged and is guilty thereof.

Firstly, accused claims that it was error for the court to convict him of murder absent an eyewitness detailing his actual participation in the killing of the victim. While it is true that there was no eyewitness to the actual killing of Ernesto Romay, this does not preclude accused's conviction based on circumstantial evidence.

Section 4, Rule 133 of the Rules of Court provides that 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 the circumstances is such as to produce a conviction beyond reasonable doubt.

As jurisprudentially formulated, a judgment of conviction based on circumstantial evidence can be upheld only if the circumstances proved constitute an unbroken chain which leads to a fair and reasonable conclusion which points to the accused, to the exclusion of all others, as the guilty person; i.e., the circumstances proved must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with any other hypothesis except that of guilt.[23]

The following circumstances, duly established by the evidence for the prosecution which the accused's defense of alibi could not surmount, proved that the accused was one of those who participated in the killing of Ernesto Romay and is therefore guilty beyond reasonable doubt:

1. Accused was positively identified by both Myrna and Joseph Romay, the wife and son of the victim, as one of the five armed men who called on their home and invited her husband to come down as their commander was waiting for him downstairs.
2. Her husband was tied-up upon going downstairs.
3. Accused was pinpointed by Myrna Romay as the one who pointed a gun at her and told her to go upstairs and not cry or shout or else her family would be killed as his other companions searched the house for guns prior to taking her husband away..
4. The five men, one of whom was the accused, brought the victim out of the house. That was the last time Myrna and her family saw the victim alive.
5. Ernesto Romay was found dead the next day, 50 meters from the road and 20 meters from his house, bearing stab wounds on different part of his body.[24]

It is thus apparent that accused was one of the last identified persons seen with the victim before the discovery of the victim's corpse the next day not far from where he was picked up by the accused and his companions. Accused's identity was unmistakably confirmed by the victim's wife and son when the accused had occasion to escort one Escovidal, who happened to be the victim's adversary in a land dispute, to the victim's farm only a couple of months after the victim's violent death.

Moreover, it is not indispensable that accused kill the victim himself. His actions more than evince the fact that he conspired with his four companions to kill the victim. For conspiracy to exist, it is not required that there be an agreement for an appreciable period prior to the occurrence, it is insufficient that at the time of the commission of the offense, the accused had the same purpose and were united in its execution. Direct proof of a previous agreement to commit a crime is not necessary; it may be deduced from the mode and manner in which the offense was perpetrated, or inferred from the acts of the accused which point to a joint purpose and design, concerted action and community of interest.[25] From the time accused and his companions entered the victim's house up to when they left taking the victim with them, Bionat acted in unison with his companions.

As to accused's claim that he should not have been considered as having fled since he did not leave immediately after the date of the killing, the same deserves scant consideration. It must be recalled that the victim's wife and son only knew the face of the accused, not his identity. Hence, there was no reason for accused to flee right after the incident because he had not yet been identified or named as one of the five men who killed the victim. Accused's identity and personal circumstances only became known to Myrna and Joseph Romay when they saw accused escorting Escovidal to the victim's farm and they ascertained accused's identity as a certain Aaron Bionat, at which time, Myrna Romay promptly instituted the criminal case.

It is interesting to note that as soon as the information was filed and the corresponding warrant of arrest issued,

accused could not be found in Surallah, which resulted in the archiving of the case. It is thus plain that accused left Surallah to avoid arrest and prosecution. That he subsequently returned to Surallah in 1993 for a vacation does not diminish the consequence of his previous flight, for it is probable that he did so in the belief that the Government had forgotten his case or that it was no longer interested in prosecuting him. In any case, non-flight is not evidence of innocence. Unlike flight of an accused, which is competent evidence against him as having a tendency to establish his guilt, non-flight is simply inaction, which may be due to several factors. Hence, it may not be positively construed as an indication of innocence.[26]

We now come to the third assignment of error concerning the qualifying circumstance of treachery. Accused argues that treachery may not be appreciated in this instance because there was no proof of the details and circumstances of the killing.[27]

There is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.[28] Here, treachery attended the killing of the victim even if there was no eyewitness to testify as to the details and circumstances of the actual killing itself, as there was, in fact, testimony as to the commencement of the attack on the victim. The victim was hog-tied and taken away by accused and his companions in front of his family. We agree with the observation of the trial court that having tied the victim, the accused and the four other abductors saw to it that the victim could not raise any defense; therefore, they insured that there was no risk to them arising from the defense which the victim might make.

Accused also assails the credibility of prosecution witness Myrna Romay on two points: (1) Myrna Romay did not confront accused as to why he killed her husband; and (2) she admitted that she was willing to execute an Affidavit of Desistance in favor of the accused should the latter point to the mastermind of the killing of her husband.

These allegations are patently misleading. As astutely observed by the Solicitor General in its Appellee's Brief:[29]

Firstly, Myrna Romay did confront appellant, through his companion (Escovidal) at that time, about the killing of her husband. When Escovidal, however, kept his silence, Myrna Romay did not say anything further. Secondly, the alleged eagerness of Myrna Romay to execute an affidavit of desistance may be explained by the fact that she was then being tricked by appellant's wife and uncle to sign the same in exchange [for] supposed information as to who masterminded the killing. In any event, said affidavit of desistance did not materialize.

In addition, the victim's family pursued the case despite accused's absence for an extended period of time, specifically from 1987 to 1994, when he was finally arrested. This tenacity only confirms that Myrna Romay and her family were determined to find the killers of her husband and bring them to justice. This they did by persevering in bringing the case against the accused.

At any rate, where the issue of credibility of witnesses is concerned, appellate courts will not generally disturb the findings of the trial court considering that the latter is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial, unless certain facts of value have been plainly overlooked which, if considered, might affect the result of the case. [30] The exception finds no room for application here.

In light of the foregoing, we are left with no other recourse than to affirm the challenged decision.

WHEREFORE, premises considered, the instant appeal is DISMISSED and the challenged decision of 7 March

1995 of the Regional Trial Court of South Cotabato, Branch 26 at Surallah, in Criminal Case No. 550-S is AFFIRMED in toto, with costs against accused-appellant.
SO ORDERED.

Narvasa, C.J., (chairman), Melo, Francisco, and Panganiban, JJ., concur.

[1] Original Record (OR), 2-3.

[2] OR, 6.

[3] Id., 8.

[4] Id., 10.

[5] Id., 13.

[6] OR, 15.

[7] Id., 14.

[8] Id., 21.

[9] Id., 23-24.

[10] Id., 28.

[11] Id., 25.

[12] OR, 76-78.

[13] Transcript of Stenographic Notes (TSN), 28 September 1994, 4-10.

[14] Id., 10-17.

[15] Id., 19-26.

[16] TSN, 28 September 1994, 26-29.

[17] Id., 29 November 1994, 10-12.

[18] OR, 80-81.

[19] Id., 81.

[20] Id., 82.

[21] Id.

[22] OR, 74-83. Per Judge Cristeto D. Dinopol.

[23] *People v. Alvero, Jr.*, 224 SCRA 16, 27 [1993]; *People v. De la Cruz*, 229 SCRA 754, 764-765 [1994]; *People v. Tabao*, 240 SCRA 758, 770-771 [1995]; *People v. Lagao*, G.R. No. 118457, 8 April 1997 at 11.

[24] TSN, 4 July 1994, 4-7; TSN, 22 August 1994, 3-4.

[25] *People v. Hubilla*, 252 SCRA 471, 480 [1996]; *People v. Landicho*, 258 SCRA 1, 31 [1996].

[26] *People v. Comia*, 236 SCRA 185, 195 [1994].

[27] Citing *People v. Lumayag*, 13 SCRA 502 [1965].

[28] *People v. De la Cruz*, 242 SCRA 129, 142-143 [1995]; *People v. Rivero*, 242 SCRA 354, 360 [1995]; *People v. De Leon*, 248 SCRA 609, 623 [1995].

[29] *Rollo*, 101-102.

[30] *People v. Camahalan*, 241 SCRA 558, 572 [1995]; *People v. Hubilla, Jr.*, 252 SCRA 471, 478 [1996].

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