

GIL MACALINO, JR., PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND COURT OF APPEALS, RESPONDENTS.

G.R. No. 121802. September 07, 2000

Ponente: DE LEON, JR., J.

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DE LEON, JR., J.:

Before us is a petition for review on certiorari seeking reversal of the Decision[1] of the Court of Appeals[2] dated August 31, 1995, in CA-G.R. CR No. 14513, convicting petitioner Gil Macalino, Jr. of the crime of Frustrated Homicide.

The record shows that on January 5, 1987, Provincial Fiscal Victoriano L. Tizon filed with the Regional Trial Court of Siquijor an Information charging Gil Macalino, Jr. with frustrated homicide, defined and penalized under Article 249 in relation to Article 250 of the Revised Penal Code, which was allegedly committed as follows:

That at about 8:00 o'clock in the evening of March 23, 1986, at the wharf area of Larena, Siquijor, situated at North Poblacion, Larena, Siquijor, Philippines, and within the jurisdiction of this Honorable Court, the accused with intent to kill, did then and there willfully, unlawfully, and feloniously stabbed one Fely "Pono" Garcia, using a bladed weapon, hitting the victim at the mid clavicular line, subcostal area (1) left; which injury would have caused the death of the victim had not been due to a timely and expert medical attendance extended to him and not by virtue of the assailants spontaneous desistance.

Contrary to the Provisions of the RPC.[3]

Arraigned on September 7, 1989, petitioner Gil Macalino, Jr., assisted by his counsel, pleaded "Not Guilty".[4]

The pertinent facts are the following:

Victim Fely Garcia testified that on March 23, 1986, at around 8:00 o'clock in the evening, he was in front of Virgie's Store at the wharf area of Larena, Siquijor with his friends, Salvador Rocamora and June Uzarraga, to have a drinking spree.[5] While waiting for their companions, Gil Macalino, Jr., along with his father and two other brothers, Manny and Ogie, arrived on board a jeep at Nicarter Mahusay Eatery, which was located beside Virgie's Store.[6] Fely Garcia approached the Macalinos to talk about the incident that happened between them on March 17, 1986 and to ask for forgiveness.[7] The March 17, 1986 incident involved a fistfight between the two younger brothers of Macalino, Jr. and the group of Fely Garcia, which resulted in the filing of a case against the group of Fely Garcia before the Metropolitan Trial Court. Macalino, Jr. did not reciprocate his plea for forgiveness and told Fely Garcia that he had another purpose, after which Fely Garcia went back to Virgie's Store.[8]

A few minutes later, Fely Garcia saw the Macalino brothers advancing towards him at Virgie's Store. Santos "Junjun" Garcia, a brother of Fely Garcia, went near his brother, Fely Garcia, but the latter shoved him away. Upon reaching Fely Garcia, Macalino, Jr. suddenly stabbed Fely Garcia.[9] The knife used was a rambo knife about 9 ½ inches long with a jagged edge.[10] After Fely Garcia was hit on the stomach, he ran for a distance of

about 30 meters towards the wharf, and then fell down. Fely Garcia was brought to Siquijor Provincial Hospital where he was treated for one (1) month. For the said medical treatment, Fely Garcia spent P9,000.00.[11]

Salvador Rocamora, Jr. corroborated the testimony of Fely Garcia on all material points. He further testified that Macalino, Jr. attempted to incite trouble in front of Virgie's Store which drew the ire of Santos Garcia. Santos tried to assault Macalino, Jr. but Salvador and Fely Garcia pushed him away. Turning to his right, after pushing Santos Garcia, Salvador saw Macalino, Jr. pulling back the hunting knife from the body of Fely Garcia.[12]

Dr. Timoteo J. Badoy, Jr., physician at Siquijor Provincial Hospital testified that on March 23, 1986, he treated a certain Fely Garcia for a stab wound on the stomach.[13] He issued a certification that contains the following findings:

Stab wound, mid-clavicular line, subcostal area (L) with:

1. Perforated penetrated jejunum
2. Hemoperitoneum
3. Hypovolemia[14]

Dr. Timoteo Badoy, Jr. likewise declared that the injury sustained by Fely Garcia was fatal and that he might have died if he had not been given medical attention. Dr. Badoy opined that a pointed and sharp-edge instrument caused the wound.[15]

Patrolman Fortunato S. Ates, member of the Siquijor Integrated National Police, was at the Larena wharf on the evening of March 23, 1986. While waiting for the departure of the boat, he heard someone shouting, "Help, there is a stabbing incident, Pano is stabbed." [16] Ates immediately rushed to the scene of the crime and saw Macalino, Jr. still holding the bladed weapon. Ates introduced himself as a policeman and asked Macalino, Jr. to drop his weapon. Macalino, Jr. did not resist the arrest by Ates who later turned Macalino, Jr. over to a certain Lt. Balimbingan.

The defense gave a different version of the incident.

Gil Macalino, Sr., father of the accused, testified that at about 3:00 o'clock in the afternoon of March 23, 1986, he and some employees of the Department of Agriculture were having a "despedida" party in Tugawe Beach in Cang-alwang, Siquijor.[17] Suddenly, Alex Bonachita appeared in a motorcycle, and challenged the group asking "Who is brave among you?" [18] Before leaving, Alex Bonachita told them that he would be waiting for them at Larena.[19] Threatened, Macalino, Sr. sought assistance from the PC headquarters at Caipilan and was provided with security by Lt. Balimbingan.

Macalino, Sr. met Lt. Balimbingan at the Larena wharf that same evening and upon seeing him, the latter just nodded at him.

While Macalino, Sr. was waiting for his co-employees to board the ferryboat at the Larena wharf, Fely Garcia approached him and asked in a provocative manner, "What now sir?" Taken by surprise, Macalino, Sr. answered "Why?" [20] After such brief exchange of words, the boat signaled for departure so Macalino, Sr. returned to the restaurant.[21] However, before he could get out of the restaurant, a commotion occurred at the wharf which was about 2 to 3 meters away from the restaurant.[22] Later on, he learned of the stabbing incident and that his son, Macalino, Jr., was involved. The authorities brought Macalino, Jr. to the PC headquarters at Caipilan. While in jail, his son complained of some pain. Macalino Sr. accompanied his son to Lazi Medicare and Community Hospital in Siquijor where he was confined for more than two weeks.[23]

Dr. Magdalena Tan-Lim, physician of Lazi Medicare and Community Hospital treated Macalino, Jr. on March 24, 1986.[24] Macalino, Jr. was admitted in the hospital from March 24 to April 2, 1986. The medical certificate indicated the following injuries suffered by Macalino, Jr.: “hematoma on the left cheek and traumatic injury hypogastric region.”[25]

Vice-Mayor Soledado Lomosad, a resident of Larena, Siquijor for more than 62 years testified on the reputation and character of the Garcia brothers. He stated that the Garcias were troublemakers and, in fact, several criminal cases had been filed against them.

Petitioner Gil Macalino, Jr. testified that at around 8:00 o'clock in the evening of March 23, 1986, he was fetched at the instance of his father from his house in Bontod, Larena. He was asked to drive a vehicle taken by his father's companion.[26] Upon reaching the vehicle parked on the side of Nicarter Mahusay Eatery, his father came out of the restaurant and told him to stay. While sitting on the driver's seat, Lt. Balimbingan approached him and asked where his father was. Macalino, Jr. called his father who was then inside the Nicarter Mahusay Eatery, and thereafter, Macalino, Sr. and Lt. Balimbingan had a conversation.[27]

Lt. Balimbingan approached Macalino, Jr. for the second time and told him to settle his differences with the Garcias. At that instance, Macalino, Jr. alighted from the jeep and walked with Lt. Balimbingan toward Virgie's Store. After Lt. Balimbingan left, Fely Garcia and Santos Garcia arrived and approached him. He noticed that something was bulging on the right side of Santos Garcia's waist. Santos Garcia asked him, “What now, do you wish to fight” and immediately after, Santos Garcia kicked him. Macalino, Jr. was thus forced to bend down and before he could straighten up, Fely Garcia boxed him on the left side of his face causing him to reeled around. After that, he heard a shout saying “Watch out from behind Jun”. Macalino, Jr. then immediately faced the Garcia brothers. At that time, he noticed that Santos was holding a knife in his right hand. He immediately held Santos' hand and took hold of the knife, all in a span of one minute. Upon seeing Fely Garcia, together with his companions,[28] rushing towards him, he drew the knife from the scabbard and stabbed Fely Garcia.[29] While still holding the knife, a certain man in civilian clothes approached Macalino, Jr. The man identified himself as Patrolman Ates and ordered him to drop his weapon. Macalino, Jr. willingly complied with the order.[30]

On November 9, 1992, the trial court rendered its decision convicting petitioner Gil Macalino, Jr., the dispositive portion of which reads:

WHEREFORE, the Court finds, and so holds, that Gil Macalino, Jr. is guilty beyond reasonable doubt of the crime of Frustrated Homicide defined and penalized in Art. 249 in relation to Art. 250 in the Revised Penal Code and judgment is hereby rendered sentencing the accused Gil Macalino, Jr., applying the Indeterminate Sentence Law, to an imprisonment of Two (2) years, Four (4) months and One (1) day of Prision Correccional as minimum to Ten (10) years of Prision Mayor as maximum together with all the accessory penalties prescribed by law, to pay the amount of NINE THOUSAND PESOS (P9,000.00) for actual damages, THREE THOUSAND PESOS (P3,000.00) for compensatory damages and FIFTEEN THOUSAND PESOS (P15,000.00) for moral damages and to pay the costs.

SO ORDERED.[31]

On December 14, 1992, Macalino, Jr. filed a Motion for Reconsideration[32] but, the same was denied for lack of merit.[33]

Dissatisfied, petitioner appealed the decision of the trial court to the Court of Appeals. Except for the deletion of the awards for actual and moral damages, the Court of Appeals affirmed the decision of the trial court, thus:

WHEREFORE, except for the deletion of the awards for actual and moral damages, the appealed judgment is hereby AFFIRMED, in all other respects. No pronouncement as to costs.

Hence, petitioner filed this appeal and interposed two (2) assigned errors, to wit:

I

THE KNIFE IN QUESTION IS OWNED BY THE BROTHER OF [sic] SANTOS GARCIA, WRENCHED SAID KNIFE INTENDED TO HARM THE ACCUSED-PETITIONER AND USED BY PETITIONER IN STABBING ONCE FELY GARCIA WHILE ATTACKING THE ACCUSED-PETITIONER WITH COMPANIONS OF SAID VICTIM; TO DISABLE THE SUPERIOR STRENGTH THAT WILL HARM THE ACCUSED; SAID EVIDENCE UNCONTRADICTED AND UNREBUTTED BY THE PROSECUTION, THEREFORE, THE SELF-DEFENSE OF ACCUSED UNREBUTTED.

II

THE CONVICTION CONCLUDED BY THE REGIONAL TRIAL COURT AND APPROVED BY THE COURT OF APPEALS IS BASED ON PROBABILITIES, SURMISES, CONJECTURES AND SUPPOSITION, INSTEAD OF THE EVIDENCE ON RECORD, THAT THE COURT OF APPEALS HAS NO AUTHORITY OR EXCEEDED ITS AUTHORITY, AMOUNTING TO GRAVE ABUSE OF DISCRETION.[34]

Thus, petitioner's grievances deal with issues of facts, which, in turn, eventually hinge upon the credibility of the witnesses.

In weighing the version of the prosecution as well as of the defense, the trial court found the testimonies of the prosecution witnesses more credible. It is a settled doctrine that, as a general rule, this Court will not interfere with the judgment of the trial court in the appreciation of evidence and credibility of witnesses for it is only the trial court that had the opportunity to observe, weigh and assess these matters. Only when it is evident in the records that some facts or circumstances of weight and influence have been overlooked by the trial court which, if considered, would affect the result, will this Court act otherwise.[35] In the present case, no cogent reason justifies our departure from the aforecited rule. Fely Garcia accurately narrated the manner of how Macalino, Jr. stabbed him, thus:

PROSECUTOR DOMINGUEZ:

While you were already back at the store of Virgie Gomez, did you know what these Macalino brothers do?

A

They approached towards us.

Q

And when they approached you, were you still standing with your companions Salvador Rocamora and June Uzarraga?

A

Yes.

xxx xxx xxx

Q

What happened when they were already in front or near you, can you recall what happened?

A

Yes.

Q

What happened.

A

I was stabbed.

Q

Who stabbed you?

A

Gil Macalino, Jr.

Q

Do you know Gil Macalino, Jr. personally?

A

Yes.

Q

If he is in the courtroom this morning, can you point to him?

A

Yes.

Q

Will you please point to him?

A

That one (witness pointed to a man who answered when asked that his name is Gil Macalino, Jr.).

Q

What did he use in stabbing you?

A

A hunting knife.

Q

Will you please describe how the stabbing incident started?

A

While I was standing in front of Virgie's store, they approached us and my younger brother Junjun Garcia thought that I was being ganged up, so he went near me and I shoved him aside.

ATTY. FUA:

Your Honor please, we move for the deletion of the thinking of his brother Your Honor.

xxx xxx xxx

WITNESS:

After I shoved him aside, I was hit here (witness pointed to the right side of his body showing a scar).

COURT:

Q

Who was the younger brother of yours?

A

Santos Garcia, Jr.

PROSECUTOR DOMINGUEZ:

Q

Do you mean to say that this is the scar of the wound that was inflicted on you by the accused, Gil Macalino, Jr.?

A

Yes.[36]

For his part, prosecution witness Salvador Rocamora testified in this wise:

ATTY. FUA:

Q

As far as Gil Macalino, Jr. actuations can you tell if Gil Macalino, Jr. was looking for trouble?

A

I could not tell.

Q

You could not tell because he was only listening to the advise [sic] of Lt. Balimbingan and his actuations were not looking for trouble?

A

Yes.

Q

And so when Junjun Garcia arrived, you pushed him away because to your mind there was no reason why he should rushed to Gil Macalino, Jr., is that correct?

A

Mine was only to pacify Junjun Garcia because I don't want trouble and I don't want him to be involved in a trouble.

Q

But until that moment when you pacified Junjun Garcia you were certain that Gil Macalino, Jr. did not yet stab Fely Garcia?

A

When Junjun Garcia rushed towards Gil Macalino, Jr. the first to parry him was Fely Garcia and Junjun Garcia was pushed towards me, so I have to push him out and when I pushed him out, I turned my head and I saw that Fely Garcia was being stabbed, and I saw the hunting knife being pulled out, and after that I could not remember, after I pushed out Junjun Garcia, Fely Garcia was facing already with Gil Macalino, Jr.

Q

As far as you can remember this Junjun Garcia was not able to rush at the accused here Gil Macalino, Jr. he was prevented by Fely Garcia and by you, is that correct?

A

Yes.

Q

And as far as you can remember Fely Garcia had not touched at all Gil Macalino, Jr., is that correct?

A

Yes.

Q

You are saying to the court, therefore, that on that entire evening of March 23, 1989 this Gil Macalino, Jr. never sustained any injury, which was inflicted by the Garcia brothers?

PROSECUTOR DOMINGUEZ:

Objection, Your Honor. The witness would be incompetent. This witness testified that he followed Fely Garcia to the hospital and he would not know whether there was anything that transpired during that After that.

COURT:

That is why the question is being asked. Let the witness answer.

A

I cannot be certain about that because after the incident, I followed Fely Garcia to the hospital, so that I could not know anymore what happened the rest of the evening.

COURT:

You mean the Court to understand that before you left the scene, you never saw Gil Macalino, Jr. being

inflicted with injuries from the hands of any Garcia?

A

I have never seen it.[37]

Based on the above testimonies, Santos “Junjun” Garcia had no opportunity to go near Macalino, Jr. How can Macalino, Jr., therefore, wrested the knife from the former? The Court of Appeals, in conformity with the observation of the trial court, stated that:

There is sustainable basis for the trial court’s observation that it was unbelievable for appellant to have wrested subject knife from Santos (Junjun) Garcia, Jr. Aptly rationalized and concluded the lower court:

xxx xxx xxx

x x x It is unbelievable that, alone at the time of the scuffle between him and Pano Garcia and Santos Garcia, Jr. he was able to wrest away the knife from Santos Garcia, Jr. And the knife was still in its scabbard when he wrested it from Santos Garcia. If Santos Garcia, Jr. really did wield the knife against Gil Macalino, Jr. surely Santos Garcia Jr. would have wielded the knife without scabbard. It is improbable that he got the knife from Santos Garcia, Jr., scabbard and all. The truth of the matter is that in all probability the knife was his own and he drew it from its scabbard and stabbed Pano Garcia with it.”[38]

Nonetheless, assuming arguendo that the questioned knife was actually owned by Santos Garcia, and that Macalino, Jr. merely used the same to ward off the attack of Fely Garcia, the question that now arises is: Would the act of stabbing Fely Garcia still be justified? We answer in the negative.

In this appeal, Macalino, Jr. reiterates his contention before the Court of Appeals that he acted in self-defense. He tries to maintain a posture of innocence, and to support his claim of self-defense, he presented a medical certificate[39] showing hematoma on his left cheek and traumatic injury hypogastric region.

In pleading self-defense, petitioner in effect admitted that he stabbed the victim. It was then incumbent upon him to prove that justifying circumstance to the satisfaction of the court, relying on the strength of his evidence and not on the weakness of the prosecution. The reason is that even if the prosecution evidence were weak, such could not be disbelieved after petitioner admitted the fact of stabbing the victim.[40] Hence, the burden of proof shifts to the petitioner, who must establish with clear and convincing evidence all of the elements of self-defense: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself.[41]

In the present case, petitioner’s claim of self-defense does not persuade us. His version of the events, does not support finding of unlawful aggression. Unlawful aggression presupposes an actual, sudden and unexpected attack or an imminent danger thereof, and not merely a threatening or intimidating attitude; there has to exist a real danger to the life or personal safety of the person claiming self-defense. Nothing of that sort could reasonably be said of the actuation of the Garcia brothers. At most, they merely displayed a threatening or intimidating attitude. This is evident from the testimony of petitioner himself, and we quote:

PROS. DOMINGUEZ:

What was the position of Junjun Garcia[42] when you saw him after you turned your back?

A

He was holding this way (witness demonstrates his two hands as if holding something).

Q

And it was in this position when you were able to get hold of the arm including the handle of the knife?

A

Not the handle but the hand that was holding the knife.

Q

You mean to say that you held the hand before any trusting motion was made?

A

Not yet because he made an attempt to draw the scabbard.

xxx xxx xxx

PROS. DOMINGUEZ:

In the middle of the fifth paragraph[43] do you remember having testified to this “When I heard a shout from my brother Elpedio who was standing near the jeep at that time, in vernacular “Bantay sa luyo, Jun”. Sensing that I was gravely in danger, I immediately made an about face when I discovered that Santos Garcia, Jr. had already drawn his knife and was making a thrust towards my stomach.” Do you remember having testified to this?

A

He just made an attempt to draw.

Q

So you are now repudiating the statement that you made in this counter affidavit in this particular portion the fact that he was already thrusting you?

A

Yes.

xxx xxx xxx

PROS. DOMINGUEZ:

When you were able to grab the knife together with the scabbard was the snap button that includes the handle of the knife already opened?

ATTY FUA:

We will object to that, Your Honor.

xxx xxx xxx

COURT:

So it is established that it is the same knife and there is a scabbard and over that scabbard is a little snap, [sic] that is closed by a snap. You agree [sic] that?

PROS. DOMINGUEZ:

Yes, Your Honor.

Was that snap already opened or closed when you got possession of the knife?

A

It was opened.

Q

Can you demonstrate how long did it take you to wrest the knife and to unsheath [sic] it?

A

One minute [sic] more or less when I grabbed for it.

Q

And did you not say that when you turned around you saw Junjun Garcia already holding a knife and you also saw Fely Garcia also holding his knife?

A

Yes, he was holding also a knife.

Q

And the knife that was held by Pano Garcia did not have any scabbard, it was already bare blade?

A

I was not able to notice whether there was a scabbard but he must have been holding the knife.

Q

When you tried to take hold of the hand of Junjun Garcia which held the knife and also tried to wrest the knife from him did you have to employ both of your hands?

A

Yes.

xxx xxx xxx

Q

And this process took you one minute?

A

Yes, more or less.

Q

And Fely Garcia who was only about one meter from you and also holding a knife was not able to do anything

in that one meter while both of your hands was employed in holding the arm of Junjun Garcia?

A

I did not notice because my intention was to the knife?[44]

The court finds it incredible that Fely Garcia did not, even once, make use of his knife in attacking Macalino, Jr. if such was indeed his intention. Incidentally, Macalino, Jr. admitted he was not alone that night. He even testified that his three younger brothers were in the crime scene and in fact one of them gave him a warning, "Watch out from behind, Jun". Macalino Jr. should have presented his brothers who were present in the crime scene, to corroborate his testimony, but he did not.

In the case of *People v. Jotoy*,[45] we ruled that:

But even if We assume that it was the deceased who attacked the accused with a knife, as the latter would make Us believe, We still hold that there was no self-defense because at that point when the accused was able to catch and twist the hand of the deceased, in effect immobilizing him, the unlawful aggression had already ended. Thus, the danger having ceased, there was no more need for the accused to start stabbing the deceased, not just once but five (5) times.

We reiterated the same rule in *People vs. Tampon*,[46]

Even granting arguendo that the initial act of aggression came from Entellano as alleged by the appellant, we still cannot sustain his plea of self-defense. As testified by the appellant, he grappled with Entellano for the knife and was able to take possession of the same. At this point, it was no longer necessary for appellant to stab Estellano in order to protect himself. His subsequent act of stabbing the now unarmed Estellano belies his claim that he acted in self-preservation, and indicates nothing more than the preserve desire to kill.

In sum, petitioner failed to prove self-defense by clear and convincing evidence. His testimony suffers seriously from want of credibility; it is more of denial, which, like alibi, is inherently a weak defense and can easily be concocted.[47]

Therefore, we find no error in the trial court in finding petitioner Gil Macalino, Jr. responsible for stabbing the victim Fely Garcia.

With regards to damages, the Court of Appeals is correct in deleting the award of actual or compensatory damages and moral damages. Moral damages cannot be awarded without factual basis or proof of physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation and similar injury.[48] Likewise, the court can only grant actual or compensatory damages for such expenses if supported by receipts.[49]

WHEREFORE, the assailed decision dated August 31, 1995 of the Court of Appeals in CA-G.R. CR No. 14513 is hereby AFFIRMED and the instant petition is DENIED.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing, and Buena, JJ., concur.

[1] Penned by Associate Justice Fidel P. Purisima (now Associate Justice of the Supreme Court) and concurred in by Associate Justices Eubulo G. Verzola and Godardo A. Jacinto.; Rollo, pp. 21-31.

[2] Special Second Division.

- [3] Original Record, p. 2.
- [4] Original Record, p. 46.
- [5] TSN, October 23, 1989, pp. 4-6.
- [6] TSN, October 23, 1989, pp. 6, 10.
- [7] TSN, October 23, 1989, pp. 29-30.
- [8] TSN, October 23, 1989, p. 8.
- [9] Id., p.12.
- [10] Id., p. 20.
- [11] Id., pp. 16-17.
- [12] TSN, October 23, 1989, pp. 71-72.
- [13] TSN, October 24, 1989, p. 5.
- [14] Rollo, pp. 24-25.
- [15] TSN, October 24, 1989, p. 10.
- [16] TSN, October 24, 1989, pp. 13-15.
- [17] TSN, October 30, 1989, p. 5-6.
- [18] Id., p. 7.
- [19] Id., p. 10.
- [20] Id., p. 16.
- [21] Id., p. 44.
- [22] Id., pp. 44-45.
- [23] Id., p. 25.
- [24] TSN, October 31, 1989, pp. 4-5.
- [25] Original record, p. 67.
- [26] TSN, November 6. 1989, p. 11.
- [27] Id., pp. 14-15.
- [28] Composed of Era Samson, Flyn Garcia, Alex Bonachita and Boboy Calibo.
- [29] Id., pp. 16-17, 19-20, 22-27.
- [30] Id., p. 27-28.
- [31] Original Record, p. 88.
- [32] Id., pp. 93-98.
- [33] Id., p. 106.

[34] Rollo, pp. 12, 17.

[35] *People v. Tanoy*, G.R. No. 115692, May 12, 2000; *People v. Repollo*, G.R. No. 134631, May 4, 2000; *People v. Gaviola*, G.R. No. 126125, March 9, 2000; *People v. Galedo*, G.R. No. 128883, February 22, 2000.

[36] TSN, October 23, 1989, pp. 10-13.

[37] TSN, October 23, 1989, pp. 96-100.

[38] Rollo, p. 30.

[39] Original Record, p. 67

[40] *People v. Francisco*, G.R. No. 121682, April 12, 2000.

[41] *People v. Cotas*, G.R. No. 132043, May 31, 2000.

[42] Nickname of Santos Garcia.

[43] Referring to Macalino Jr.'s counter affidavit executed before Fiscal Tizon.

[44] TSN dated November 6, 1989, pp. 63-70.

[45] *People v. Jotoy*, 222 SCRA 801, 806 [1993].

[46] 258 SCRA 115, 124 [1996].

[47] *People v. Mier*, G.R. No. 130598, February 3, 2000.

[48] Article 2217 of the Civil Code; *People v. Cara*, 283 SCRA 96, 109 [1997]; *People v. Teodoro*, 280 SCRA 384, 399 [1997].

[49] *People v. Go-od*, G.R. No. 134505, May 9, 2000; *People v. Gutierrez*, 268 SCRA 643, 666 [1999] .

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