

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PEDRO SASAN BARIQUIT, CRISTITUTO SASAN BARIQUIT, BASELINO LASCUÑA REPE, EMEGDIO LASCUÑA, JR., ACCUSED-APPELLANT.

G.R. No. 122733. October 02, 2000

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PER CURIAM:

In many ways - three times to be exact-the prosecution in the instant case, through the testimony of state witness Rogelio Lascuña, shatters the long-time aphorism that blood is thicker than water.

On appeal via automatic review is the decision[1] of the Regional Trial Court of Cebu City, Branch 18, in Criminal Case No. CBU-35462, dated 30 June 1995, as modified by its order[2] dated 20 July 1995, finding accused-appellants Pedro Bariquit, Cristituto Bariquit, and Emegdio Lascuña guilty of the special complex crime of Robbery with Homicide and sentencing them to suffer the penalty of death.

In its order dated 20 July 1995, modifying its decision dated 30 June 1995, the trial court, while likewise finding co-accused Baselino Repe guilty of the crime charged, Nonetheless appreciated the privileged mitigating circumstance of minority on Repe's favor, sentenced him to a reduced penalty of imprisonment of from six (6) years and one(1) day of prision mayor, as minimum, to twelve (12) years and one (1) day of reclusion temporal, as maximum, and redeemed him from the clutches of the supreme penalty of death. At the time of the commission of the crime, accused Repe was seventeen years old.

The antecedent facts and proceedings in the instant case unfold.

On 28 February 1994, Assistant Provincial Prosecutor Adolfo Alcoceba filed a motion to drop accused Rogelio Lascuña and Baselino Repe to be utilized as state witnesses, prompting the relatives of the deceased spouses Simon and Corazon Hermida to file a vehement opposition, to which comment thereto was filed by the prosecution.

On 28 June 1994, Baselino Repe and brothers Pedro and Cristituto Bariquit, and brothers Emegdio and Rogelio Lascuña, were charged, in a Second Amended Information,[3] with Robbery with Homicide, the accusatory portion of which reads:

"That on or about the 8th day of February 1994 at around 2:00 o' clock dawn, more or less, in the Municipality of Naga, Province of Cebu, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, by means of violence against and intimidation upon persons, with intent to gain, did then and there willfully, unlawfully and feloniously take, steal and carry away without the consent of the owner thereof one (1) gold necklace and Three Thousand Pesos (P3,000.00) cash, Philippine Currency, and one (1) blanket which were placed by the owner Spouses Simon Hermida and Corazon Manabat Hermida on their wooden trunk, to the damage and prejudice of the said owner spouses Simon Hermida and Corazon Manabat Hermida of said items and the cash aforesaid; that by reason or on occasion of the said robbery and for the apparent purpose of enabling the said accused to take, steal and carry away the aforesaid personal belongings of spouses Simon Hermida and Corazon Manabat Hermida, the

herein accused, in pursuance of their conspiracy, armed with bladed weapons, did then and there willfully, unlawfully and feloniously attack, assault, hack and stab the spouses Simon Hermida and Corazon Manabat Hermida and inflicting upon them several injuries which caused the said victims' death.

CONTRARY TO LAW."

In an order dated 14 July 1994, the trial court resolved to drop and discharge Rogelio Lascaña as "party-accused" in Criminal Case No. CBU-35462, for the purpose of utilizing him as state witness.

Upon arraignment, accused-appellant Pedro Bariquit entered a plea of guilty while accused-appellants Cristituto Bariquit, Emegdio Lascaña, Jr. and accused Baselino Repe, pleaded not guilty to the charge.

In the course of trial, however, accused-appellant Pedro Bariquit withdrew his earlier plea of guilty and, upon being re-arraigned, entered anew a plea of not guilty.

In handing down the judgment of conviction, the trial court appreciated the presence of conspiracy and relied on facts culled from the collective testimony of state witness Rogelio Lascaña and other prosecution witnesses namely: SPO3 Lino Tapao, PO1 Avelino Selloria, PO1 Kenneth Abella, PO1 Joel Faciolan, Dr. Florencio Ubas, and Emelia Hermida Mangila. Further, the trial court considered the testimony of co-accused Baselino Repe for the purpose of establishing the element of robbery in this special complex crime.

Records of the case reveal that state witness Rogelio Lascaña and all the accused-appellants are bound by close kinship; thus, Rogelio and Emegdio Lascaña are brothers. In the same manner, Pedro and Cristituto Bariquit are brothers. Moreover, Rogelio and Emegdio are nephews of Pedro and Cristituto. Baselino Repe, too, is a relative of Rogelio.[4]

Notwithstanding kinship and in utter disregard of blood ties, state witness Rogelio Lascaña, who at the time of the commission of the crime, was 14 years old,[5] recounted on the stand the details and circumstances which led to the death of spouses Simon and Corazon Hermida in the hands of accused-appellants.

Around midnight of 07 February 1994, Rogelio was at their house situated in Pandan, Naga, Cebu when his uncle Cristituto arrived thereat looking for Rogelio's older brother Emegdio. Rogelio told Cristituto that Emegdio and Pedro were in the upper area gathering coconuts.[6] Cristituto requested Rogelio to accompany him there.[7] Upon reaching the upper hill together with Cristituto, Rogelio saw Pedro, Emegdio and Baselino standing, not anymore engaged in gathering coconuts.[8]

Emegdio then asked his brother Rogelio if the latter would participate in executing a plan to rob a certain couple. Rogelio refused and verbally manifested to Cristituto his intention to just go home. Cristituto and Emegdio told Rogelio not to go home, fearing that Rogelio might reveal their devious plan to consummate the robbery.

On direct examination, Rogelio, likewise, testified that Pedro and Emegdio[9] threatened to kill Baselino in case the latter would not participate in the robbery. According to Rogelio, Cristituto who was then armed with a bolo, even held Baselino so as to prevent him from running away.[10]

On foot - Pedro, Emegdio, Cristituto, Baselino, and Rogelio trekked toward the house of Simon and Corazon Hermida situated in Batwan, Cantaw-an, Naga, Cebu. Upon arrival at the vicinity of the Hermida's house around 1:00 AM of 08 February 1994, the group of five saw three persons engaged in a drinking spree inside the Hermida residence. The interior of the house was illuminated by a fluorescent lamp while its exterior was lighted by a bulb. Notwithstanding ample lumination, Rogelio testified that the three persons inside the Hermida's house were unknown to him; he did not recognize them.

Accused-appellants, together with Rogelio, then waited near a mango tree which stood about 30 meters away

from the house.[11] Around 2:00 AM, the three persons drinking inside the house left. Thereafter, Pedro instructed Rogelio to stay at a pig pen located 15-20 meters away from the Hermida house after-which, Pedro walked toward the house[12] closely followed by Emegdio, Cristituto and Baselino.

Upon reaching the house, Pedro called Simon on the pretext that he would buy Kulafu and cigarettes.[13] However, Simon told Pedro that only cigarettes were available; Pedro retorted that he would just buy cigarettes after which Simon handed the cigarettes to Pedro.

Pedro then requested Simon for a light prompting the latter to open the door and accede to Pedro's request. Once inside the house - and as soon as Simon lit Pedro's cigarette - Pedro suddenly pulled out his knife and lunged it on Simon's neck.[14] While Simon was already lying prostrate on the floor,[15] Emegdio followed suit and hacked Simon once on the neck with a bolo. Pedro then stabbed Simon's wife, Corazon, who tried to fight back. Corazon managed "to pull a knife beside the wall," stabbing Pedro on his left palm.[16] However, Pedro stabbed Corazon again which, eventually, caused the latter's death.

At the time of the stabbing, Cristituto stayed outside the house,[17] holding Baselino, with his left hand and a bolo with his right hand. After witnessing the killing, Rogelio scampered toward his house and arrived thereat around 3:00 PM.

To bolster its case, the prosecution presented the testimony of Dr. Florencio Ubas, Medical Health Officer of Naga, Cebu, who conducted and prepared the autopsy report of the deceased spouses Simon and Corazon Hermida. According to Dr. Ubas, Corazon sustained thirteen (13) fatal wounds inflicted by a sharp-edged instrument[18] and a sharp-pointed instrument,[19] while Simon sustained five (5) wounds.

On the stand, Dr. Ubas testified that almost all of the wounds inflicted on Corazon were fatal, since they caused loss of blood. Further, Dr. Ubas explained that Simon's cause of death was similarly loss of blood due to hack wounds "at the region of the neck"[20] inflicted by a sharp-edged instrument. As a result of these fatal wounds, Simon's "major vessels" as well as the victim's vital organs were injured,[21] causing his death.

As to the element of robbery, co-accused Baselino Repe, although denying participation in the commission of the crime, narrated on the witness stand how the other accused-appellants stole the spouses' wooden trunk which contained money, necklace and blanket. Accused Baselino also corroborated with Rogelio Lascaña's eyewitness account of the killing of the Hermida spouses.

As to the robbery, accused Baselino testified that Pedro, after stabbing Corazon several times, went down the house.[22] Emegdio then requested Cristituto to help carry the wooden trunk.[23] According to Baselino, as all of these events transpired, Pedro guarded him with watchful eyes and grabbed his left hand.[24]

Subsequently, Cristituto and Emegdio brought the wooden trunk to the bushes. With Pedro's assistance, Cristituto and Emegdio opened said trunk which contained money, necklace and a blanket.[25] Baselino was then ordered to sit down beside the accused-appellants.[26] Thereafter, Pedro, Emegdio and Cristituto brought the money and necklace to the house of Emegdio with Pedro holding Baselino by the hand. At Emegdio's house, Emegdio told the other accused-appellants that they would divide the loot among themselves. Pedro, Emegdio and Cristituto then placed the loot on the floor.

Around 5:00 AM, Baselino, by jumping downstairs, managed to escape and fled home.[27] In the same morning, Pedro and Emegdio dropped by Baselino's house and tried to offer the necklace and part of the money to Baselino; however, Baselino refused, prompting Pedro and Emegdio to just leave the money and necklace on the floor of Baselino's house.[28] Before leaving the house, Pedro and Emegdio threatened to kill Baselino in case he squeals about the robbery and the killing.

On the stand, Baselino claimed that he never touched the money offered by Pedro and Emegdio. He asserted his innocence and categorically denied any participation in the commission of the crime. According to Baselino, his presence at the crime scene was against his free will, inasmuch as the other accused-appellants were steadfast in their threats to end his life if he were to divulge the crime and fail to participate, or join them in the execution thereof.

Similarly, the prosecution, in order to strengthen its bid for conviction, utilized the testimony of the police officers who responded to and investigated the robbery-killing. Thus, SPO3 Lino Tapao testified that around 7:30 AM of 08 February 1994, Feliciano Reponte, the Barangay Captain of Cantau-an, Naga, Cebu, reported to the police the death of the spouses Simon and Corazon Hermida. As a result, SPO3 Tapao responded to the alarm and proceeded to the Hermida house, accompanied by P03 Boy Celoria, Dr. Florencio Ubas, Barangay Captain Feliciano Reponte and several Barangay Tanods.[29]

Upon arrival at the Hermida house, the police laid eyes on the bloodied bodies of Simon and Corazon Hermida sprawled on the floor of the upper part of the victims' residence.[30] Further, the police recovered from the crime scene an "electrical switch" and "bark of tree", both stained with blood. Moreover, inside a culvert at Pandan, the police recovered a blanket.[31]

At the scene of the crime, the police interviewed relatives of the victims[32] and, from them, elicited information that the possible assailants were accused-appellants Pedro Bariquit, Emegdio Lascaña, Cristituto Bariquit and accused Baselino Repe.[33] Acting on such information, the police conducted a "hot pursuit" operation and proceeded to Umlang where barangay tanods met Pedro, who eluded arrest.

Eventually, Pedro was arrested at Sitio Nangka, Tuyan, Cebu. From his possession, cash amounting to P480.50[34] and Japanese wartime money were recovered by the police. According to SPO3 Tapao, Pedro, upon his arrest, told police that his hand was injured when Corazon resisted and stabbed him in the process.[35]

SPO3 Tapao further testified that Emegdio and Baselino were jointly arrested on 08 February 1994 at Sitio, Isabela, Pangdan, Cebu. During investigation, Emegdio admitted that "they were together, but they were not the one(s) who killed (the spouses)."[36]

Emegdio pointed to Pedro and Cristituto as the killers of Simon and Corazon Hermida.[37] Based on such information, Emegdio and Baselino were brought to the police station for further investigation.[38] Thereafter, at the police headquarters, Emegdio admitted that Rogelio was also one of their companions.[39] As a consequence, the police returned to Isabela, Pandan, where they saw Rogelio and invited him to the police station for questioning.[40]

According to SPO3 Tapao, the police recovered P480.50 from Pedro; gold necklace and P800.00 from Baselino;[41] and P800.00 from Emegdio.[42]

On direct examination, SPO1 Avelino Selloria testified to the effect that he recovered a knife from Baselino and that the latter admitted that said knife was the weapon Baselino brought during the incident.[43] Notwithstanding, Baselino claimed he had no participation in the commission of the crime. Further, Baselino allegedly told SPO1 Selloria that the money recovered from the former was Baselino's share of the proceeds of the crime.

According to SPO1 Selloria, he recovered P800.00 from Emegdio;[44] Emegdio allegedly got the P800.00 from the "upper portion of his house", turned over said amount to Selloria and admitted that said cash was his share.[45]

Upon the arrest of Baselino and Emegdio, the police immediately commenced investigation of the two accused by

propounding questions regarding the commission of the crime even while they were still walking along the highway, on their way to the police station.[46] (emphasis ours)

According to SPO1 Selloria, SPO4 Marcelino Perez, Jr. conducted further questioning of the accused "in the investigation room" of the Police Station, to wit:[47]

"Q:

Who conducted then the custodial investigation of this case?

A:

SPO4 Marcelino Perez, Jr.

Q:

Where was the accused investigated?

A:

At the investigation room.

Q:

And where was this investigation room located?

A:

Inside the police station, in a certain room.

Q:

When the accused were investigated, were you present?

A:

We were there but we did not listen to the investigation.

Q:

But you could see the accused being investigated?

A:

No sir. That time, there were many people looking but the investigation room was closed in order that people will not disturb the investigation.

Q:

At the time when the accused was investigated, was there any lawyer who assisted him at the time of the investigation?

Atty. Flores:

Immaterial and irrelevant, Your Honor because as a matter of fact, Your Honor, also, Your Honor, another ground is that witness was not around, he did not see whether there was a lawyer or not.

COURT:

No. The ground for that is not correct, because the testimony witness stated (sic) he drive away some of the

onlookers.

Atty. Dela Victoria:

He was not listening.

Court:

Yes, he was not listening.

Atty. Dela Victoria:

It was your theory that there was actually an investigation conducted?

COURT:

There was an investigation, according to him, by an investigator and you asked him whether he was present during that investigation. He said he was present, only he did not hear and see the investigation because the door was closed, and you asked him whether at the time of the investigation, accused was assisted by a lawyer during that custodial investigation.

(to witness):

Q:

You did not see any lawyer there to assist the accused during investigation?

A:

I did not notice.

Q:

You mean to say there was a lawyer but you did not notice?

A:

I don't know whether there was lawyer at that time the investigation was conducted." (emphasis ours)

At the trial, the prosecution likewise presented PO1 Kenneth Abella and PO1 Joel Faciolan, who corroborated the testimonies of SPO3 Lino Tapao and SPO1 Avelino Selloria.

As to the aspect of civil liability, Emelia Hermida Mangila, daughter of the deceased spouses, took the witness stand to prove the funeral and burial expenses incurred as a result of the death of her parents,[48] which totaled P70,000.00. The prosecution submitted in evidence a receipt issued by the Holy Spirit Funeral Home[49] covering said expenses.

On the other hand, the accused-appellants - with the exception of accused Baselino Repe who maintained that he had no participation in the commission of the crime - raised the twin defenses of alibi and denial. Thus, accused-appellant Emegdio Lasuña testified that around 2:00 AM of 08 February 1994, he was sleeping in his parents' house at Isabela, Naga, Cebu, together with his siblings George and Estela, and his grandmother. On the stand, Emegdio admitted that he and the deceased spouses were neighbors inasmuch as Simon and Corazon lived "just a kilometer away from Emegdio's house." [50]

Emegdio added that he only acquired knowledge of the commission of the crime from his neighbor's aunt, Conchita Tam-isan, who informed him thereof around 7:00 AM of 08 February 1994. Further, Emegdio declared that the travel time from his house to the Hermida residence is approximately twenty (20) minutes.[51]

In the same manner, Cristituto Bariquit claimed innocence of the charge by interposing the defense of alibi. Cristituto alleged that at the time of the commission of the crime, he was cooking rice in the house of his parents-in-law in Sitio Isabela,[52] in preparation for his carpentry work for the day. He also testified that he witnessed the simultaneous arrest of Baselino and Emegdio by the police on 08 February 1994.

For his defense, Pedro Bariquit, a former farm worker of the Hermida spouses,[53] relied similarly on alibi to substantiate his claim that at the time of the commission of the crime, he was asleep with his wife and three children in their house from 8:00 PM of 07 February to 08 February 1994.[54] Pedro testified that it would take an hour, by foot, for a person to reach the Hermida residence from his house. He, too, is unaware of any reason on the part of Rogelio to implicate him to the robbery-killing.[55]

On direct examination, Pedro admitted that the police recovered the amount of P600.00 from his possession. Nonetheless, he denied knowing the owner of said amount, claiming that when Emegdio brought the money to his house and gave it to his wife, he was not present.[56]

At the time of Pedro's arrest, he had a wound on his "knuckle and palm" which he allegedly sustained in an accident with his "tri-sikad" on 07 February 1995.

Thus, on cross-examination:[57]

"Q:

What cause (sic) that wound, stone or a knife when you stumbled?

A:

Certain sharp object, it so happened when I stumbled, I accidentally placed my hand left palm on it (sic).

Q:

And it penetrated your palm front and back?

Atty. Dela Victoria:

Already answered.

COURT:

For emphasis witness may witness.

Witness:

Yes it penetrated in the other side (sic)."

Unlike the other accused-appellants, accused Baselino Repe negotiated a different road in his bid for acquittal. Thus, while Pedro, Emegdio and Cristituto relied on alibi and denial, Baselino admitted, on the stand, his presence at the crime scene, narrated the harrowing details of the robbery-killing, yet, denied participation in the execution thereof.

Hence, Baselino, in the course of trial, labored to establish that he was not part of the conspiracy and was only coerced to join accused-appellants for fear of his life. According to Baselino, he was left with no choice inasmuch as the other accused-appellants-the actual authors of the crime-threatened to kill him and, in fact, employed physical force so that he would not leave the group and squeal about the crime.

On 30 June 1995, the RTC of Cebu City, Branch 18, in appreciating the presence of conspiracy, convicted

accused-appellants Pedro Bariquit, Emegdio Lascaña, Cristituto Bariquit and accused Baselino Repe of the special complex crime of robbery with homicide and, accordingly, sentenced them to death.

On 20 July 1995, however, the trial court modified its decision as to the penalty imposed on accused Repe, considering that he was a minor at the time of the commission of the crime. Repe opted not to appeal his conviction; the conviction of the other accused-appellants, however, was elevated to this High Court via automatic review as a consequence of the death penalty involved.

In the appellant's brief,[58] the following errors were ascribed to the trial court, to wit:

"1. The trial court erred in giving weight and credit to the testimony of state witness Rogelio Lascaña despite lack of corroboration in its material points.

"2. The trial court erred in convicting accused-appellants despite failure of the prosecution to prove their guilt beyond reasonable doubt."

We find the guilty verdict of the trial court, as to accused-appellants Pedro Bariquit, Cristituto Bariquit and Emegdio Lascaña, in order.

As to the first assigned error, accused-appellants in effect assail the propriety of the discharge of Rogelio Lascaña as state witness on the ground that Rogelio's testimony was not corroborated in its material points, allegedly in violation of Section 9, Rule 119 of the 1985 Rules on Criminal Procedure, which enumerates the requisites of a proper discharge, to wit:

"a) There is absolute necessity for the testimony of the accused whose discharge is requested;

"b) There is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of said accused;

"c) The testimony of said accused can be substantially corroborated in its material points;

"d) Said accused does not appear to be the most guilty;

"e) Said accused has not at anytime been convicted of any offense involving moral turpitude." (emphasis ours)

On this score, we are of the firm view that the testimony of state witness Rogelio Lascaña was, in its material points, substantially corroborated by the testimony of accused-appellant Baselino Repe, and the findings of Dr. Valentin Ubas, who conducted and prepared the autopsy report of the victim spouses, and who testified thereon in the course of trial. Verily, corroborative evidence refers to additional evidence of a different kind and character tending to prove the same point.[59]

Notably, the respective testimonies of Baselino Repe and Dr. Ubas lends material corroboration to the eyewitness account of Rogelio Lascaña, specifically as to the killing of the spouses Simon and Corazon. During trial, both Rogelio and Baselino positively identified Pedro and Emegdio as the assailants who stabbed and hacked the victim spouses with a knife and bolo on that fateful early morning of 08 February 1994. The witnesses also depicted how the conspiracy was hatched and carried out, with accused-appellant Cristituto directly participating therein. Moreover, Dr. Ubas testified that Simon and Corazon died as a result of several stab and hack wounds, inflicted by sharp-pointed and sharp-edged instruments, on different parts of their bodies.

Beyond this, long-settled is the rule that the discharge of a defendant, in order that he may be called to testify against his co-defendants, is within the sound discretion of the court;[60] the discharge of an accused in order that he may be utilized as a state witness is expressly left to the sound discretion of the court.[61]

Indeed, the Court has the exclusive responsibility to see that the conditions prescribed by the rule exist.[62] For the law seeks to regulate the manner of enforcement of the regulations in the sound discretion of the court. The grant of discretion in cases of this kind under this provision was not a grant of arbitrary discretion to the trial courts, but such is to be exercised with due regard to the correct administration of justice.

Under these circumstances, the trial court, in ordering the discharge of Rogelio Lascuña as state witness, merely exercised its discretion in a manner consistent with the law and prevailing jurisprudence.

Even so, this Court has time and again declared that even if the discharged witness should lack some of the qualifications enumerated by Section 9, Rule 119 of the Rules of Court, his testimony will not, for that reason alone, be discarded or disregarded. In the discharge of a co-defendant, the court may reasonably be expected to err; but such error in discharging an accused has been held not to be a reversible one. This is upon the principle that such error of the court does not affect the competency and the quality of the testimony of the discharged defendant.[63]

Stated differently, the improper discharge, of an accused will not render inadmissible his testimony nor detract from his competency as a witness.[64] (emphasis ours)

Once the discharge is ordered, any future development showing that any, or all, of the five conditions have not been actually fulfilled, may not affect the legal consequences of the discharge,[65] and the admissibility and credibility of his testimony if otherwise admissible and credible.[66] Any witting or unwitting error of the prosecution in asking for the discharge, and of the court granting the petition, no question of jurisdiction being involved, cannot deprive the discharged accused of the acquittal provided by the Rules,[67] and of the constitutional guarantee against double jeopardy.[68]

As to the second assigned error, accused-appellants aver that the prosecution failed to establish their guilt beyond reasonable doubt. In support thereof, accused-appellants question the admissibility of the testimonies of the police officers who propounded questions and conducted the custodial investigation without apprising them of their constitutional rights. Moreover, accused-appellants argue that certain physical evidence such as the blanket, passbook, bolo, knife, necklace, Japanese money, wallet and cash are likewise inadmissible in evidence, inasmuch as the same were recovered and obtained by the police as a result of accused-appellants' uncounselled admission.

After an exhaustive perusal of the records, we find inadmissible the uncounselled extra-judicial admission of accused-appellants, as well as the testimonies of the police officers pertaining thereto, for having been obtained in clear violation of accused-appellants' rights enshrined in the Constitution.

Section 12, Article III of the Constitution explicitly provides:

" 1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

"X X X X X X X X

"3) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him.

"X X X"

Verily, the mantle of protection under this constitutional provision covers the period from the time a person is taken into custody for investigation of his possible participation in the commission of a crime, or from the time he

is singled out as a suspect in the commission of the crime, although not yet in custody.[69] Courts are not allowed to distinguish between preliminary questioning and custodial investigation proper when applying the exclusionary rule. Any information or admission given by a person while in custody - which may appear harmless or innocuous at the time without the competent assistance of an independent counsel - should be struck down as inadmissible.[70]

It bears stressing that the rights under Section 12 are accorded to "any person under investigation for the commission of an offense." An investigation begins when it is no longer a general inquiry into an unsolved crime but starts to focus on a particular person as suspect, i.e., when the police investigator starts interrogating or exacting a confession from the suspect in connection with an alleged offense.[71]

Thus, in *People vs. Bolanos*,[72] we considered inadmissible the verbal extra-judicial admission of accused-appellant Ramon Bolanos on the ground that he, "being already under custodial investigation while on board the police patrol jeep on the way to the Police Station where formal investigation may have been conducted, should have been informed of his constitutional rights "under Article 3, Section 12" of the 1987 Constitution."

In the recent case of *People vs. Bravo*,[73] where we applied the exclusionary rule, this Court, speaking through Madame Justice Minerva Gonzaga-Reyes, aptly observed:

"The accused was under arrest for the rape and killing of Juanita Antolin and any statement allegedly made by him pertaining to his possible complicity in the crime without prior notification of his constitutional rights is inadmissible in evidence. The policeman's apparent attempt to circumvent the rule by insisting that admission was made during an 'informal talk' prior to custodial investigation proper is not tenable."

Analogously in the present case, the police authorities, upon the arrest of Emegdio and Baselino, immediately asked questions and conducted custodial investigation of said accused-appellants regarding their participation in the commission of the crime, even while they were still walking along the highway on their way to the police station. Records reveal that no counsel was present to assist Emegdio and Baselino during the interrogation nor was accused-appellants informed of their rights under the Constitution.

During trial, SPO1 Avelino Selloria testified:

"Q:

Along the way, as you said, you have conducted investigation on Repe. What questions did you ask Mr. Repe?

"A:

We asked both Repe and Emegdio as to who were their companions.

"Q:

That was all you asked both of them? That was the only question you asked them?

"A:

We asked them who were their companions and where were they.

"Court:

"Q:

And what was their answer?

"A:

They mentioned, as their companions, Pedro Bariquit, Cristituto Bariquit and Roel Lascuña and they further informed me they had come here already to Tuyan. Pedro and Roel were in Tuyan. They informed me that and (sic) Roel was just in Isabela, Pangdan.

X X X X X X X X

"Q:

So aside from these 2 questions, no other questions were asked on Emegdio Lascuña and Baselino Repe?

"A:

Yes sir.

"Q:

What (was) their answer?

"A:

We asked them why they robbed and killed.

"COURT:

"Q:

What was their answer?

"A:

They said they had planned the robbery.

"ATTY. SARINO:

"Q:

Who said that?

"A:

Emegdio.

"Q:

It was only Emegdio who said that?

"A :

Because it was him whom I asked, because we were walking along the road." (emphasis ours)

Moreover, on cross-examination, SPO1 Selloria stated:[74]

"A:

From the area where we arrested them, we asked questions along the way.

"Q:

When you asked questions, the accused were already under your custody?

"A:

Yes, sir. We were walking along.

"Q:

Therefore, when under custody, that person is under custodial investigation?

"Atty. Flores:

He is asking for opinion.

"COURT:

Reform.

"Atty. Dela Victoria:

"Q:

What were the questions you asked to the accused?

"A:

We asked whether they were the ones who robbed the couple, Simon Hermida and Corazon Hermida."
(emphasis ours)

To our mind, the interrogation conducted by the police on accused-appellants Emegdio and Baselino falls under the term "custodial investigation" pursuant to prevailing jurisprudence and the provisions of Republic Act 7438. It may not be amiss to observe that under R.A. 7438, the requisites of a "custodial investigation" are applicable even to a person not formally arrested but merely "invited for questioning."^[75]

In the case before us, it is of no moment that the questioning was done along the highway while Baselino and Emegdio were being led by the police to the station. To put it differently, the place of interrogation is not at all a reliable barometer to determine the existence or absence of Custodial investigation. Of striking material significance is and the fact that the tone and manner of questioning by the police, as gleaned from the records, reveal that they already presumed accused-appellants as the perpetrators of the crime and singled them out as the despicable authors thereof.

Under these circumstances, the police authorities should have properly apprised them of their constitutionally-protected rights, without which such uncounselled admissions or any other evidence obtained as a result thereof, or proceeding therefrom - the putrid source - are deemed likewise inadmissible in evidence against the accused-appellants.

In this jurisdiction, the burden to prove that an accused waived his rights to remain silent and the right to counsel before making a confession under custodial investigation rests with the prosecution. It is also the burden-of the prosecution to show that the evidence derived from confession is not tainted as "fruit of the poisonous tree." The burden has to be discharged by clear and convincing evidence.^[76]

In the instant case, the police officers were remiss in performing such duty and the prosecution equally failed to discharge such burden. The records, indeed, are bereft of any finding that the police labored to properly apprise accused-appellants of their rights. Further, no counsel was present when Emegdio and Baselino answered the questions propounded to them by the police, both along the highway and at the police station.

In view of these constitutional infirmities attendant to the interrogation, we consider the extrajudicial admissions of accused-appellants and the testimonies of the police officers in relation thereto inadmissible.

For, even if the confession contains a grain of truth, but it was made without the assistance of counsel, it becomes inadmissible in evidence, regardless of the absence of coercion or even if it had been voluntarily given.[77]

Applying the exclusionary rule, we also declare inadmissible the money and necklace recovered from accused-appellants for being tainted as "fruits of the poisonous tree." Clearly, the records show that such evidence were derived or recovered from a polluted source, to wit, the accused-appellants' uncounselled admissions.

In *People vs. Alicando*,[78] this Court explicated the principle, to wit:

"We have not only constitutionalized the Miranda warnings in our jurisdiction. We also have adopted the libertarian exclusionary rule known as the "fruit of the poisonous tree", a phrase minted by Mr. Justice Felix Frankfurter in the celebrated case of *Nardone vs. United States*. [79] According to this rule, once the primary source (the 'tree') is shown to have been unlawfully obtained, any secondary or derivative evidence (the 'fruit') derived from it is also inadmissible. Stated otherwise, illegally seized evidence is obtained as a direct result of the illegal act, whereas the fruit of the poisonous tree' is the indirect result of the same illegal act. The fruit of the poisonous tree' is at least once removed from the illegally seized evidence but it is equally inadmissible. The rule is based on the principle that evidence illegally obtained by the State should not be used to gain other evidence because the originally illegally obtained evidence taints all evidence subsequently obtained."

Notwithstanding the inadmissibility of the uncounselled confessions and certain pieces of object evidence such as the necklace and money, we still hold that the prosecution clearly proved the guilt of accused-appellants Pedro Bariquit, Cristituto Bariquit and Emegdio Lascuña, beyond reasonable doubt. It is well to note that the eyewitness account of Rogelio Lascuña, coupled with the testimony of accused Baselino Repe and further corroborated by the testimony and findings of Dr. Valentin Ubas, suffice to convict accused-appellants of the crime charged.

In the instant case, the prosecution, through the testimony of state witness Rogelio Lascuña, as corroborated by the recollection of Baselino Repe on the witness stand, indubitably established the presence of conspiracy among the accused-appellants Pedro, Cristituto and Emegdio in the commission of the crime. Clearly, the acts of Pedro, Emegdio and Cristituto before, during and after the commission of the crime confirm that the accused-appellants -- animated by a joint purpose and corrupt design, that is to rob the Hermida spouses-acted in unison and concerted effort in the execution of the planned robbery.

Evidently, the meeting at the upper hill area, the hatching of the planned robbery, the stabbing, hacking and killing of the Hermida spouses, the threats directed against Baselino Repe, the asportation of the wooden trunk containing the valuables and the division of the loot -- taken collectively -- substantiate and lend a formidable factual basis to the trial court's finding of conspiracy among Pedro, Emegdio and Cristituto. Crystalline is the rule that where conspiracy is established, the precise modality or extent of participation of each individual conspirator becomes secondary and the act of one is the act of all. The degree of actual participation in the commission of the crime is immaterial.[80]

Consequently, accused-appellants' defense of alibi must fail in view of the positive identification of Pedro, Emegdio and Cristituto as the perpetrators of the crime. Alibi is one of the weakest defenses an accused can invoke, and the courts have always looked upon it with caution, if not suspicion, not only because it is inherently unreliable, but likewise because it is easy to fabricate.[81] To prosper, alibi must strictly meet the requirements of time and place.[82] Thus, the accused must establish by clear and convincing evidence that he was so far away that it was not possible for him to have been physically present at the locus criminis or its immediate vicinity at the time the crime was committed.

Again, the accused-appellants miserably failed to discharge this burden. On the stand, Emegdio testified that his house is merely twenty minutes away from the Hermida residence.[83] In the same vein, Pedro testified that a

person coming from his house could reach, by foot, the Hermida residence in about an hour.

To our mind, the short distances and negligible time between accused-appellants' residences and the place of the commission of the crime negate their defense of alibi. Beyond this, alibi is unavailing in light of the positive identification by credible witnesses who narrated the details of the killing and the robbery.

This Court affords ample weight and credence to the testimonies of state witnesses Rogelio Lascaña and Baselino Repe. In doing so, we are not unmindful of the principle that the testimony of a co-accused turned state witness should be received with great caution and should be carefully scrutinized.^[84] Hence, we treated with circumspection the gleaming fact that Rogelio Lascaña is a blood relative of accused-appellants. The records show that state witness Rogelio Lascaña and accused-appellant Emegdio are brothers.

To be sure, this circumstance has not escaped our focus and attention, thus the rationale for the greater weight and credibility accorded to Rogelio's narration. Human experience and common knowledge taught us that no brother would ever thrust his own flesh and blood down the pit of death, fully cognizant of the irreversible repercussions of his in-court testimony, were he not impelled by the strongest urge to speak the language of truth. Only a man cursed with a depraved mind and a perverted heart could perpetrate such falsehood.

The trial court, in believing the version of facts as recollected by Rogelio Lascaña, found the state witness to have spoken only one language—that of truth. Absent any clear showing that Rogelio was actuated by ill-motive and selfish ends, and fortified by the fact that Rogelio is a close relative of accused-appellants, this Court a fortiori finds his narration truthful and unblemished by falsehood.

Many times beyond numbering, we have enunciated the rule that to sustain a conviction for the crime of robbery with homicide, it is imperative that the robbery itself be proven conclusively as any other essential element of a crime.^[85]

To this end, the prosecution clearly established that the purpose of the accused-appellants in killing the victim spouses was to ensure the success of their previous devious plan—to rob Simon and Corazon Hermida. Thus, while it may be true that the "homicide" preceded the taking of the victims' valuables, the killing of the spouses was nonetheless perpetrated for the aim of eliminating an obstacle, removing an opposition to the robbery and doing away with witnesses. Accordingly, the death of the victims arose by reason, or on occasion, of the robbery; the pieces of evidence adduced and presented by the prosecution divulge a direct relation and intimate connection between the asportation of the Hermida's valuables and their brutal death in the hands of the accused-appellants.

Hence, the conviction of accused-appellants Pedro Bariquit, Cristituto Bariquit and Emegdio Lascaña stands. As to the aggravating circumstances, we hold that the trial court erred in appreciating the presence of treachery and band in the commission of the felony.

In the present case, the accused-appellants were charged with, tried, and convicted for the crime of robbery with homicide. In our jurisdiction, this special complex crime is primarily classified as a crime against property and not against persons, homicide being a mere incident of the robbery with the latter being the main purpose and object of the criminal.^[86]

Under Article 14 of the Revised Penal Code, treachery is applicable only to crimes against persons.^[87] Accordingly, inasmuch as robbery with homicide is a crime against property and not against persons, treachery cannot be validly considered in the present case.

Further, the aggravating circumstance of band may not be appreciated in the commission of the crime. Jurisprudence is consistent that band is deemed aggravating whenever more than three armed malefactors shall

have acted together in the commission of the offense.[88] (emphasis ours)

In view of the fact that only three accused-appellants- Pedro Bariquit, Cristituto Bariquit and Emegdio Lascuña-conspired and participated in the robbery-killing, band was not attendant in the commission of the felony.

Nevertheless, this Court considers the attendance of fraud, dwelling and evident premeditation in the commission of the offense.

Fraud consists of insidious words or machinations used to induce the victim to act in a manner which would enable the offender to carry out his design.[89] Hence, in a decided case where the defendants, upon the pretext of wanting to buy a bottle of wine, induced the victim to go down to the lower story of his dwelling where the wine was stored, entered it when the door was opened to him, and there commenced the assault which ended in his death,[90] this Court appreciated the aggravating circumstance of fraud.[91]

In the case before us, accused-appellants managed to enter the house of the victims-spouses by employing insidious words and machinations, specifically by feigning to buy Kulafu and cigarettes from Simon. Pedro even requested Simon to light his cigarette so that the latter would open the door and pave the way for the accused-appellants' entry into the house.

Likewise, dwelling is deemed aggravating in the instant case where the crime was perpetrated in the house where the Hermida Spouses lived, and without any provocation from the victims Simon and Corazon.[92]

Similarly, evident premeditation attended the commission of the felony. For evident premeditation to aggravate a crime, there must be proof, as clear as the evidence of the crime itself, of the following elements: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that he clung to his determination; and (3) sufficient lapse of time, between determination and execution, to allow himself to reflect upon the consequences of his act[93] and to allow his conscience to overcome the resolution of his will had he desired to harken to its warnings.[94]

The prosecution in the present case established by clear and convincing evidence, as to how and when the planned robbery was hatched. As borne by the records, accused-appellants met at the upper hill area around 12:00 AM of 08 February 1994, where the planned robbery was agreed upon and visualized. Thereafter, accused-appellants, armed with bladed weapons, trekked from the place of assemblage toward the victims' residence and, upon arrival at the vicinity thereof, waited under a mango tree for approximately an hour before finally proceeding to the house to consummate the robbery-killing.

Clearly, the lapse of two hours-from 12:00 AM to 2:00 AM-suffice to satisfy the third requisite and allow accused-appellants to meditate and reflect upon the consequences of their criminal acts.

Thus, in one case,[95] we held that there was evident premeditation where two hours passed from the time the accused clung to his determination to kill the victim, up to the actual perpetration of the crime. Moreover, evident premeditation can be presumed where conspiracy is directly established[96], as in the instant case.

By way of civil indemnity, we affirm the trial court's award of P100,000.00 for the deaths of Simon and Corazon Hermida. Further, we hold accused-appellants liable to pay the amount of P50,000.00 as moral damages pursuant to Articles 2219(1) and 2206(3) of the Civil Code.

Considering that the crime was committed with the presence of three aggravating circumstances,[97] the amount of P20,000.00 is also awarded as exemplary damages. Likewise, we grant an award of P70,000.00 as actual damages representing the funeral and burial expenses incurred as a result of the death of Simon and Corazon

Hermida, inasmuch as the evidence on record supports such award.[98]

Four Justices of the Court have continued to maintain the unconstitutionality of Republic Act No. 7659 insofar as it prescribes the death penalty; nevertheless, they submit to the ruling of the majority to the effect that the law is constitutional and that the death penalty can be lawfully imposed in the case at bar.

Nonetheless, as to accused Baselino Repe, we hold that the prosecution failed to prove his guilt beyond reasonable doubt and that the trial court gravely erred in convicting Repe of the crime charged considering that the lower court overlooked circumstances and misappreciated certain material facts, which, if weighed and treated with deeper circumspection, would lead to Repe's acquittal.

At this point, it bears emphasis that the basis of Repe's conviction is riveted on the trial court's conclusion, albeit erroneous, that accused Repe conspired and cooperated with the other accused-appellants in the commission of the crime.

Certainly, a painstaking review and appraisal of the evidence disclose that, contrary to the trial court's findings, Repe was not part of the conspiracy; the prosecution was remiss in establishing Repe's overt acts clearly showing his intention and participation in the criminal design. Needless to say, evidence of intentional participation is indispensable.[99]

To this end, overt acts of the accused may consist of active participation in the actual commission of the crime itself, or it may consist of moral assistance to his co-conspirators by being present at the time of the commission of the crime, or by exerting moral ascendancy over the other co-conspirators by moving them to execute or implement the conspiracy.[100]

On the contrary, Repe did not actively participate in the commission of the crime; Repe did not extend any moral assistance to the other accused-appellants, as in fact, from the time of inception of the plan up to its execution, he strongly refused to assent and join the malefactors or profit from the fruits of the crime. Moreover, Repe did not exercise moral ascendancy over the accused-appellants, as he was even the one coerced and threatened to be present at the crime scene, for fear of his own life.

By itself, mere presence at the scene of the crime at the time of its commission is not sufficient to establish conspiracy.[101]

Likewise, the records are clear that the threats directed against Repe by the three accused-appellants-his relatives at that were real and present. Accused-appellants Pedro, Emegdio and Cristituto were all armed with bladed weapons and persistently and aggressively showed their resolve to harm and kill Repe if the latter would not participate or join them at the scene of the crime; the chance for escape was hence-nil. Pitted against Pedro, Emegdio and Cristituto-Repe was clearly no match.

Stated differently, the compulsion exerted was of such nature and character as to leave him no genuine opportunity for self-defense in equal combat or for escape.[102]

Even state witness Rogelio Lascaña testified that the accused-appellants hurled serious threats and employed physical force against Repe.[103] Similarly, the records are bereft of any showing that Repe agreed with Pedro, Emegdio and Cristituto to join the robbery, nor that Repe acted in a manner manifesting commonality of design and purpose.[104] The fact that Repe and Emegdio were arrested together around 3:00 PM of 08 February 1994 does not militate against Repe's bid for acquittal inasmuch as the records reveal that it was Emegdio who approached and visited Repe in his house to ask the latter for a "young coconut." [105] All told, without evidence-clear and convincing at that-as to how accused Repe participated in the perpetration of the crime,

conspiracy cannot be appreciated against him.[106]

Undoubtedly, a verdict of conviction must hinge itself on the strength of the prosecution's evidence, definitely not on the weakness or impotency of the evidence for the defense. As the evidence for the prosecution fell short of the quantum of proof required to prove Repe's guilt beyond the peradventure of doubt, this Court is then duty-bound to pronounce Repels acquittal and strike down the judgment of conviction upon him.

WHEREFORE, in view of the foregoing, accused Baselino Repe is hereby ACQUITTED on grounds of reasonable doubt and ordered released immediately, unless he is being detained for some other legal cause.

As to the accused-appellants Pedro Bariquit, Cristituto Bariquit and Emegdio Lascaña, this Court finds them guilty of the special complex crime of Robbery with Homicide and hereby sentences each of them to suffer the supreme penalty of death.

In addition, accused-appellants Pedro Bariquit, Cristituto Bariquit and Emegdio Lascaña are ordered to pay jointly and severally the heirs of Simon and Corazon Hermida the amount of P100,000.00 as civil indemnity; P50,000.00 as moral damages; P20,000.00 as exemplary damages; and P70,000.00 as actual damages.

Pursuant to Section 25 of Republic Act No. 7659, amending Article 83 of the Revised Penal Code, upon finality of this decision, let the records of this case be forwarded to the Office of the President for possible exercise of the pardoning power.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., JJ., concur.

[1] Rollo, pp. 39-57.

[2] Ibid., pp. 154-156.

[3] Records, pp. 73-74.

[4] TSN, 18 August 1994, p. 10.

[5] Affidavit; Records, p. 7.

[6] TSN, 16 August 1994, p. 9.

[7] Ibid, p. 10.

[8] Ibid.

[9] TSN, 17 August 1994, p. 4.

[10] Ibid.

[11] Ibid., p. 3.

[12] Ibid., p. 4.

[13] TSN, 18 August 1994, p. 2.

[14] left side of the neck; TSN, 18 August 1994, p. 4.

[15] TSN, 07 September 1994, p. 12.

[16] Ibid., p. 5.

[17] Ibid, p. 6.

[18] TSN, 19 October 1994, p. 7.

[19] Ibid, p. 8.

[20] Ibid, p. 12.

[21] Ibid, p. 14.

[22] TSN, 21 February 1995, p. 7.

[23] Ibid, p. 8.

[24] Ibid, p. 9.

[25] Ibid, p. 10.

[26] Ibid.

[27] Ibid, p. 11.

[28] Ibid, p. 12.

[29] TSN, 13 September 1994, p. 10.

[30] Ibid, p. 11.

[31] TSN, 14 September 1994, p.4.

[32] Ibid, p. 6.

[33] Ibid.

[34] TSN, 09 September, p. 8.

[35] Ibid, p. 9.

[36] TSN, 14 September 1994, p. 7.

[37] Ibid, p. 8.

[38] Ibid, p. 9.

[39] Ibid.

[40] Ibid, p. 10.

[41] TSN, 22 September 1994, p. 9.

[42] Ibid.

[43] TSN, 11 October 1994, p. 13.

[44] Ibid, pp. 15-16.

[45] Ibid, p. 16.

- [46] Ibid., p. 24.
- [47] Ibid, pp. 23-24.
- [48] TSN, 09 November 1994.
- [49] Exhibit "O."
- [50] TSN, 13 December 1994, p. 6.
- [51] Ibid, p. 12.
- [52] TSN, 03 January 1994, p. 6.
- [53] Ibid., p. 5.
- [54] TSN, 21 March 1995, p. 4.
- [55] Ibid, p. 7.
- [56] Ibid, p. 10.
- [57] TSN, 22 March 1995.
- [58] Rollo, pp. 120-134; Appellant's Brief for Pedro Bariquit, Cristuto Bariquit and Egmedio Lascuña.
- [59] Wyne vs. Newman, 75 Va. 811, 817 cited in Francisco, R.J., " Evidence, Rules of Court in the Philippines, Rule 128-134", Third Edition, 1996, pp. 2-3; People vs. Platon, 08021-CR, 12 February 1971.
- [60] Lugtu vs. Court of Appeals, 183 SCRA 388 [1990]; People vs. Tabayoyong, 104 SCRA 724 [1981]; People vs. Bautista, 106 Phil. 39 [1959]; People vs. Ibañez, 92 Phil. 933 [1953]. People vs. Bautista, 49 Phil. 389 [1926].
- [61] Ramos vs. Sandiganbayan, 191 SCRA 671 [1990].
- [62] Ibid; People vs. Ibañez, 92 Phil. 936 [1953].
- [63] Mangubat vs. Sandignbayan, 135 SCRA 732 [1985].
- [64] People vs. Aniñon, 158 SCRA 701, 711 [1988].
- [65] Ibid.
- [66] People vs. Bautista, 106 Phil. 39 [1959].
- [67] Section 10, Rule 119, Rules of Court.
- [68] People vs. Aniñon, 158 SCRA 701, 711 [1988] citing People vs. Mendiola, 82 Phil. 740 [1949].
- [69] People vs. Andan, 269 SCRA 95 [1997], cited in People vs. Bravo, G.R. No. 135562, November 22, 1999.
- [70] People vs. Bravo G.R. No. 135562, November 22, 1999; People vs. Isla, 278 SCRA 47 [1997]; People vs. Binamira, 277 SCRA 232 [1997]. Gamboa vs. Cruz, 162 SCRA 642 [1988].
- [71] People vs. Andan 269 SCRA 95 [1997]; People vs. Macam 238 SCRA 306 [1994]; People vs. Bandula, 232 SCRA 566, 575 [1994]; People vs. De Guzman, 224 SCRA 93 [1993]; People vs. Olvis, 154 SCRA 513 [1987].

[72] 211 SCRA 262 [1992].

[73] Supra at footnote 70.

[74] TSN, 19 October 1994, p. 22.

[75] Sanchez vs. Demetriou, 227 SCRA 627 [1993].

[76] People vs. Alicando, 251 SCRA 293 [1995].

[77] People vs. Tan, 286 SCRA 207 [1998].

[78] Supra at footnote 74.

[79] 308 US 388, 60 S. Ct. 266, 84 L. ed. 307 (1939).

[80] People vs. Lising, 285 SCRA 595 [1998]; People vs. De Roxas, 241 SCRA 369 [1995].

[81] People vs. Ayugue, 268 SCRA 711 [1997].

[82] People vs. Piandong, 268 SCRA 555 [1997].

[83] TSN, 13 December 1994, p. 6.

[84] Ramos vs. Sandiganbayan, 191 SCRA 671 [1990].

[85] People vs. Laurente, 255 SCRA 543 [1996].

[86] People vs. Navales, 266 SCRA 569 [1997]; People vs. Cabiles, 248 SCRA 207 [1995].

[87] People vs. Alfeche, 294 SCRA 352 [1998].

[88] People vs. Lungbus, 162 SCRA 383 [1988]; People vs. GA, 186 SCRA 790 [1990].

[89] Reyes, Luis B., The Revised Penal Code, Book One, Fourteenth Edition, p. 393.

[90] U.S. vs. Bundal, 3 Phil. 89 [1903].

[91] Reyes, L.B., p. 393.

[92] People vs. Prades, 293 SCRA 411 [1998].

[93] People vs. Sumalpong, 284 SCRA 464 [1998]; People vs. Castillo, 289 SCRA 213 [1998]; People vs. Tulop, 289 SCRA 316 [1998].

[94] People vs. Sambulan, 289 SCRA 500 [1998].

[95] People vs. Bibat, 290 SCRA 27 [1998].

[96] People vs. Padian, 290 SCRA 388 [1998].

[97] Article 2230, Civil Code.

[98] Receipt issued by the Holy Spirit Funeral Homes marked as Exhibit "O"; TSN, 09 November 1994, p. 9.

[99] People vs. Ragon, 282 SCRA 90, 101 [1997] cited in People vs. Patalinghug, G.R. No. 125814-15, November 16, 1999.

[100] People vs. Berroya, 283 SCRA 111 [1997].

[101] People vs. Taacal, 178 SCRA 56 [1989].

[102] People vs. Lising, 285 SCRA 595 [1998].

[103] TSN, August 17, 1994, p. 4; TSN, August 18 1994, p. 6.

[104] People vs. Ragon, 282 SCRA 90, 101 [1997] cited in People vs. Patalinghug, G.R. No. 125814-15, November 16, 1999.

[105] TSN, December 13, 1994, p. 13.

[106] People vs. Furugganan, 193 SCRA 471 [1991]; People vs. De Dios, 187 SCRA 228, 247 [1990].

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