

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BENJAMIN CAYABYAB Y BAGAYAN ALIAS BENJIE CAYABYAB, ACCUSED-APPELLANT.*G.R. No. 123073. June 19, 1997*

Ponente: PANGANIBAN, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-123073/>**PANGANIBAN, J.:**

In order that self-defense may totally exculpate an accused from criminal liability, he must prove with clear and convincing evidence all the elements of his chosen defense. As he has admitted to the killing, the accused must thus rely on the strength of his own evidence and not on the weakness of the prosecution's. However, we agree with the Solicitor General's recommendation that the accused should be held guilty only of homicide, not murder, because the prosecution failed to prove treachery as clearly and as cogently as the killing itself. Hence, the appellant is saved from the penalty of death.

Accused-appellant Benjamin Cayabyab y Bagayan was charged on March 8, 1994 by Third Assistant Dagupan City Prosecutor Chita Estrella D.N. Bonifacio with the crime of murder in an Information[1] which reads as follows:

"That on or about the 7th day of February, 1994 in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, BENJIE CAYABYAB, being then armed with a deadly weapon, with treachery and with intent to kill one ROMMEL P. TORIO, did then and there, wilfully, unlawfully and criminally attack, assault and use personal violence upon the latter by stabbing and hitting him on a vital part of his body with said weapon, thereby causing his death shortly thereafter due to 'Cardio Respiratory Arrest, Massive Intrathoracic Hemorrhage, Stab Wound' as per Autopsy Report issued by Dr. Tomas G. Cornel, Asst. City Health Officer, this City, to the damage and prejudice of the legal heirs of said deceased, ROMMEL P. TORIO, in the amount of not less than FIFTY THOUSAND PESOS (P50,000.00), Philippine currency, and other consequential damages."

On November 15, 1994 accused-appellant, with the assistance of his counsels de oficio, Florante S. Gabat and Carlos M. Taminaya of the Public Attorney's Office,[2] pleaded not guilty to the above charge. Pre-trial was waived. After due trial,[3] Judge Crispin C. Laron of the Regional Trial Court of Dagupan City, Branch 44, found the accused guilty beyond reasonable doubt of the crime of murder and imposed upon him the supreme penalty of death. The dispositive portion of the Decision[4] promulgated on April 24, 1995 reads as follows:

"WHEREFORE, the Court finds accused Benjamin Cayabyab y Bagayan alias Benjie Cayabyab guilty beyond reasonable doubt as principal of the crime of Murder defined and penalized under Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, An Act To Impose Death Penalty On Certain Heinous Crimes, and in view of the presence of the aggravating circumstance of nighttime which is not offset by any mitigating circumstances, the accused is hereby sentenced to suffer the Penalty of Death and to pay an indemnity to the heirs of the deceased Rommel Torio the amount of P50,000.00, plus costs.

“Accused is ordered to pay the amount of P50,000.00 representing funeral expenses, P30,000.00 for the interment, P4,300.00 as interment fee, P10,000.00 for the lot plus P100,000.00 representing moral damages to the heirs of the deceased.”[5]

The Facts

Version of the Prosecution

Evidence[6] for the prosecution tends to establish that in the evening of February 7, 1994, Victim Rommel Torio, Rosendo Bautista, Jr., Joselito Bautista, Marlon Santiago, Alvin Santiago and Carlito Biay had a drinking spree at the basketball court in front of the house of Rosendo Bautista located at Bonuan Gueset, Dagupan City. Richard Rabina was also with the group but did not join in drinking liquor. About 10:00 o'clock that evening, Accused Benjamin Cayabyab together with Robert Vidal passed by the group. Rommel Torio stood up and shook hands with Cayabyab. They talked for a while, then there seemed to be a disagreement between them, following which both stared sharply at each other. Cayabyab then left after uttering that he would return.

Apprehensive of the parting words of Cayabyab, the group dispersed. Prior thereto, they had arranged the plates and glasses they had used for drinking and returned them inside the house of Rosendo Bautista. Richard Rabina proceeded to his house which was just at the back of Rosendo's (about two meters away). Rabina, however, went out of his house again through its back door where he noticed Rommel Torio urinating beside the fishpond about eight (8) meters away. Then he saw Accused Cayabyab approach Torio and stab him on his left chest. Immediately thereafter, Cayabyab ran away. The premises at that time were illumined by light coming from the houses which were just about three (3) to five (5) meters from where the victim was stabbed.

Rabina and Alvin Santiago, who was at that same time waiting for Torio at the basketball court and who likewise witnessed the stabbing, immediately approached the victim and rushed him to the Pangasinan Medical Center. Torio was, however, pronounced dead on arrival. The cause of death, according to the findings of Asst. City Health Officer Tomas G. Cornel, was “Cardio Respiratory Arrest, Massive Intrathoracic Hemorrhage” due to the stab wound found “along the midclavicular line, level of the 5th intercostal space, left, 1” x ½”, penetrating.”[7] The health officer further noted in his report that part of the weapon was retrieved from the cadaver of Rommel Torio in the left intrathoracic cavity with its pointed portion embedded in the fifth thoracic vertebra. He opined that the recovered part was the tip of an ordinary kitchen knife.[8]

Mrs. Yolanda Torio, mother of the victim, further testified on the expenses incurred during the wake and interment of her son, which she estimated to be in the amount of P100,000.00, more or less. She also attested to the moral sufferings she experienced due to the death of her young son for which she sought justice.[9]

Version of the Defense

Based on the testimonies of accused-appellant[10] and his wife,[11] on that fateful evening, the spouses Cayabyab went to collect a debt owed to them when they walked past the group of Rommel Torio, which included Roberto[12] Vidal. Torio allegedly called on the accused to join them in drinking liquor. After drinking a glass of Tanduay rum and giving them P30.00 to buy more drinks, the accused bade them goodbye. Barely three meters away, Torio suddenly collared the accused from behind and tried to attack him with a knife which the latter was able to parry. Torio attempted to assault the accused two more times but again failed. His companions simultaneously kicked the accused, prompting the latter, in defense of himself, to grapple for possession of the knife. When he and Torio fell to the ground, the accused was able to get hold of the knife and thrust it upon the victim. He himself did not suffer any injuries, though. His wife witnessed everything and kept screaming during the affray. The accused, followed by his wife, ran away thereafter. They were allegedly chased by Carlito Biay,

Joselito Bautista, Rosendo Bautista, Jr. and Roberto Vidal, who were armed with stones and a bolo. Mrs. Cayabyab said she proceeded to the Maritime Command at Sabangan but found nobody there, so she went to the barangay captain but did not find him either. The accused did not surrender himself or report the incident to the police for fear that he would be killed.

In rebuttal, the prosecution presented Roberto Vidal who testified that in the same evening, about 7:00 o'clock, Accused Benjamin Cayabyab and a certain Alipio also had a drinking spree in the house of the latter. They drank two bottles of Tanduay rum for about an hour. Thereafter, he walked home with the accused, but after some distance they went their separate ways in order to reach their respective dwellings. Upon reaching his residence, Vidal ate dinner then slept. He denied the accused's statement that he was among those who chased said accused after the affray leading to the death of Rommel Torio.[13]

The Trial Court's Decision

The court a quo was not convinced by the accused's theory of self-defense. In its Decision, it discredited the version of the defense in the following manner:

"The version of accused does not inspire belief. He was not able to prove by clear and convincing evidence that he acted in legitimate self-defense. The testimony of the accused is clear that he and the victim struggled for the possession of the knife and after he (accused) was able to grab it he was able to thrust it on the victim. In this case, there was no peril to the life of the accused, and therefore, there was no unlawful aggression on the part of the victim. Ergo, there being no unlawful aggression, there was nothing to repel. So there is no basis for the second requisite of self-defense. Besides, the prosecution has adduced sufficient evidence that it was accused Benjamin Cayabyab who stabbed Rommel Torio when the latter was urinating. The testimonies of Richard Rabina and Alvin Santiago shattered and rendered unbelievable the defense of the accused." [14]

Additionally, the trial court reasoned:

"Coming back to the accused's claim that he acted in legitimate self-defense, the Court finds the contention devoid of merit. The accused is not entitled to self-defense because he did not even surrender to the police authorities x x x. Moreover, he did not even surrender the weapon used. These militate against his claim that he acted on (sic) legitimate self-defense." [15]

On further finding the presence of the qualifying circumstance of treachery, the trial court convicted accused-appellant of the crime of murder. It also found that the crime was aggravated by nighttime. Since the felony was committed on February 7, 1994 when Republic Act 7659 which reimposed the death penalty for certain heinous crimes was already in effect, the penalty of death was imposed upon appellant. Hence, this automatic review.

Issues

In his brief,[16] appellant assigns four errors in the trial court's Decision, to wit:

I. The trial court gravely erred in not giving exculpatory weight to the theory of self-defense interposed by the accused-appellant.

II. The trial court gravely erred in giving full weight and credence to the contradictory and conflicting testimonies of prosecution witnesses Richard Rabina and Albin (sic) Santiago.

III. The trial court gravely erred in appreciating the qualifying circumstance of treachery.

IV. The trial court gravely erred in appreciating the aggravating circumstance of nighttime despite failure of the

prosecution to prove that it was purposely sought by the accused-appellant to facilitate the commission of the crime.”[17]

This Court’s Ruling

This Court finds the appellant guilty of homicide, not murder.

First Issue: Self-Defense

According to appellant, it was Rommel Torio who first attacked and assaulted him with a knife, abetted by four others who kicked him at the same time, compelling him to repel the aggression by struggling for possession of the knife and thrusting it upon Torio.[18]

The Solicitor General, however, argues that the accused-appellant failed to adduce sufficient proof to support his theory of self-defense. The appellant claimed to have been repeatedly kicked and mauled by the four companions of the victim while the latter was trying to stab him with a knife, but did not report any injuries or submit himself to medical treatment thereafter. The fact that he resorted to flight immediately after the incident indicated guilt rather than self-defense.[19]

Appellant’s theory of self-defense fails to persuade us.

In order that self-defense may justify the commission of an offense, the presence of the following elements must be proved with clear and convincing evidence: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel the attack; and (3) lack of sufficient provocation on the part of the person defending himself.[20] Moreover, where the accused admits having committed the unlawful act but seeks to justify the same by claiming to have acted in defense of himself, the burden of evidence shifts upon him to prove the elements of his claim.[21] By alleging self-defense, the accused must rely on the strength of his own evidence and not on the weakness of the prosecution’s, because even if the latter is weak, it cannot be entirely disregarded after the accused’s open admission of responsibility for the killing.[22]

What appellant unrealistically tries to depict is that the drunken victim grabbed him from behind and suddenly swung a knife at him without warning or any known reason. He was able to parry three successive attempts of Torio to hit him. On the third try, he was able to grab Torio’s hand and, in the struggle for possession of the knife, both fell to the ground. Torio mounted appellant across his belly and, with both hands, tried to lunge the knife at him. Accused was, however, able to hold back both hands of Torio and twist them upwards, finally thrusting the knife, still in the hands of his aggressor who was astride him, into the latter’s body. All these occurred while Torio’s drinking companions were simultaneously kicking and mauling the appellant. And he managed to escape uninjured.[23] His reason for not surrendering to the police was his unfounded presumption that he would be killed not only by the victim’s friends but by the police as well.[24] Appellant did not offer any reason that could have impelled Torio, whom he claims to have known for five years, to attack him suddenly. Instead, he stated that they had no previous misunderstanding[25] whatsoever.

This Court finds occasion to apply a long-held doctrine that evidence to be believed must not only proceed from the mouth of a credible witness but must foremost be credible in itself.[26] Appellant’s version is replete with flagrant flaws. We unhesitatingly conclude that his account deviates from ordinary human experience and nature. Thus, we reject the same.

On the other hand, the prosecution witnesses deny that unlawful aggression was initiated by the victim. Rather, as clearly related by Richard Rabina:

“Q Now, you said a while ago that you proceeded to your house, what did you do if there was any, while you

proceeded to your house?

A I returned home but went out of the back door and I saw Rommel Torio urinating beside the fishpond.

Q When you saw Rommel Torio urinating beside the fishpond, how far were you from Rommel Torio?

A I was only about eight (8) meters away.

Q Now Mr. Witness, while you saw Rommel Torio urinating beside the fishpond, what happened if there was any?

A I saw Benjie Cayabyab arrived (sic) and he stabbed Rommel Torio.”[27]

Alvin Santiago corroborated the same account.[28] Vis-à-vis the untenable version of the accused, we are more inclined to give credence to the prosecution’s account. Thus, absent an offensive attack on the part of the victim, the self-defense plea of the accused must fail.[29]

Second Issue: Credibility of Witnesses

Appellant contends that weight and credence should not be given to the inconsistent and conflicting testimonies of the prosecution eyewitnesses. Appellant specifically points to Richard Rabina’s testimony in court that he actually saw appellant stab the victim, contrary to the same witness’ statement given to the police right after the incident that he had learned from the victim himself that Benjie Cayabyab was the assailant. This unexplained contradiction should allegedly cast doubt on the appellant’s culpability.[30]

Secondly, appellant claims that Alvin Santiago’s testimony is unbelievable. If he actually saw the accused stab his drinking buddy, friend and neighbor, he should have at least tried to stop the attack. The absence of spontaneous reaction on the part of the alleged eyewitness, despite the startling event unfolding before him, defies human experience and runs counter to the natural course of human nature.[31]

The Solicitor General, on the other hand, refutes the presence of material discrepancy between Rabina’s sworn statement and his testimony in court since ex parte affidavits are generally incomplete, not always disclosing all the facts, and often inaccurate because they are usually executed when the affiant’s mental faculties are in a confused and shocked state. Nevertheless, he adds, the identity of the culprit is not even in issue since appellant admits having stabbed the victim albeit interposing self-defense. With respect to Witness Alvin Santiago, his reaction of immediately extending help to the victim is in accord with human nature.[32]

After a careful review of the sworn statements and testimonies in court of both prosecution witnesses, we find the contentions of the appellant unworthy of merit. In the first place, the Solicitor General is correct in observing that there is really no material discrepancy between Rabina’s written affidavit and testimony in court. The fact that his affidavit is deficient in some respect is of no real moment. Ex parte statements are generally incomplete, and they do not purport to contain a complete compendium of the details of the event narrated therein. There is no rule that estops an affiant from making an elaboration of his affidavit during the trial.[33] As satisfactorily explained by Rabina:

“PROS. MARAMBA:

Q I notice that in the sworn statement you did not state the facts as you stated before the court now that you saw accused Benjie Cayabyab stabbed (sic) Rommel Torio, but instead you said in answer to question number 7 of your sworn statement, question, ‘to (sic) whom did you know that Benjie Cayabyab stabbed Rommel Torio’, answer, ‘Thru the victim before he was rushed to PMC hospital of this city wherein he was pronounced DOA’, my question is, why did you not state before the Honorable Court in your sworn statement that you actually saw Benjie Cayabyab stabbed (sic) Rommel Torio on the night of February 7, 1994?

A Because I know that I will be testifying in this case and they are going to ask what actually happened, that is

why I did not state the same in my sworn statement.”[34]

The witness stood his ground on this point during his cross-examination.

“Q I would like to confront you with question number 7 and its answer in Exhibit A when the police investigator asked you ‘To (sic) whom did you know that Benjie Cayabyab stabbed Rommel Torio?’ and your answer was, ‘thru the victim before he was rushed to PMC Hospital of this city wherein he was pronounced DOA’, do you still affirm this statement Mr. Witness?

A Yes, sir.

Q And until now you will affirm the truthfulness of this statement before the Honorable Court that it is thru the victim?

A I know Benjie Cayabyab from the very start and that the victim told me that it was Benjie Cayabyab who stabbed him and kept on mentioning his name for several times.

Q My question is if you will affirm this statement of yours?

A Yes, sir.

Q That it was Rommel Torio who informed you that it was Benjie who stabbed him, is that correct?

A Yes, sir.

Q You did not actually see?

A I saw it, sir.

Q You did not actually see Benjie Cayabyab stabbed (sic) Rommel Torio?

A No, sir, I really saw it.

Q And you stated that in your affidavit?

A No, sir.

Q Despite the fact that you were given all the opportunity to state the facts several hours after the incident(,) you did not state that it was Benjie Cayabyab who stabbed Rommel Torio?

A I told what happened and those were the questions of the police and I gave my answers to the questions.”[35]

At any rate, the issue on which witness is to be believed is one best addressed by a trial court rather than by an appellate tribunal. Having the advantage of directly observing witnesses, “the trial judge is able to detect that sometimes thin line between fact and prevarication that will determine the guilt or innocence of the accused. That line may not be discernible from a mere reading of the impersonal record by the reviewing court. The record will not reveal those tell-tale signs that will affirm the truth or expose the contrivance, like the angry flush of an insisted assertion or the sudden pallor of a discovered lie or the tremulous mutter of a reluctant answer or the forthright tone of a ready reply. The record will not show if the eyes have darted in evasion or looked down in confession or gazed steadily with a serenity that has nothing to distort or conceal. The record will not show if tears were shed in anger, or in shame, or in remembered pain, or in feigned innocence. Only the judge trying the case can see all these and on the basis of his observations arrive at an informed and reasoned verdict.”[36] Thus, his factual findings are accorded high respect and are generally not disturbed by the appellate court unless found to be clearly arbitrary or unfounded. We do not find them to be so in the instant case; therefore, there is no reason to alter the findings of the court a quo.

Third Issue: Treachery as a Qualifying Circumstance

Appellant further posits that, granting *arguendo* that he was not acting in self-defense, the stabbing could not have been treacherous since he and the victim were facing each other when he allegedly stabbed the latter. Prosecution

evidence also showed that there was a previous altercation between the two which negated the suddenness of the attack.[37]

The Solicitor General opines that the prosecution failed to establish beyond reasonable doubt the presence of treachery in the killing of Rommel Torio. The eyewitnesses simply stated that they had seen accused-appellant approach and stab his victim who was urinating.[38]

For treachery to be present, two conditions must concur: (1) employment of means of execution that give the person attacked no opportunity to defend himself, much less retaliate; and (2) conscious and deliberate adoption of the means of execution.[39] More importantly, treachery must be based on some positive, conclusive proof and not only upon hypothetical facts or on mere supposition or presumption.[40] It must be proved as cogently as the killing itself.[41]

As observed by the Solicitor General, both eyewitnesses merely stated that they saw the accused approach the victim, then stab him. They did not say, however, whether he approached from behind or whether the attack was unexpected, catching the victim totally unaware of the oncoming danger. What is clear and indisputable is that the victim was stabbed on his left chest, making it likely that the attack was frontal and casting doubt on the presence of treachery. Besides, both prosecution eyewitnesses stated that Cayabyab and the victim had stared sharply at each other, before the former left the group saying that he would be back.[42] Witness Santiago said that, fearing the implication of Cayabyab's actuations, the drinking buddies dispersed.[43] From these, it seems that the victim was forewarned of a looming jeopardy. We cannot, thus, unequivocally infer that treachery attended the killing. There is indeed reasonable doubt on the presence of *alevosia*. Therefore, the crime committed by accused-appellant was only homicide, not murder.

Fourth Issue: Nighttime as an Aggravating Circumstance

We also agree with both the appellant and the Solicitor General that the circumstance of nocturnity did not aggravate the crime. Indeed, no evidence was presented to show that the darkness of the night had been purposely sought by the accused to facilitate his commission of the offense or to ensure his immunity from identification[44] or capture. The trial court, in the appealed Decision, merely concluded that "nighttime facilitated and aggravated the commission of the offense" without however explaining why.

By and of itself, nighttime is not an aggravating circumstance. It becomes so only when (1) it is specially sought by the offender; or (2) it is taken advantage of by him; or (3) it facilitates the commission of the crime, by insuring the offender's immunity from capture.[45] It is not specially sought when the notion to commit the crime was conceived only shortly before its commission[46] or when the crime was committed at night upon a mere casual encounter. It facilitates the commission of the offense or is taken advantage of by the offender if it was availed for the purpose of impunity, i.e. to prevent the accused's being recognized or to secure himself against detection and punishment.[47] In the instant case, all incidents leading to the ultimate act of the accused occurred closely in point of time that same night. Other than the time of the crime, nothing else suggests that appellant deliberately availed himself, or took advantage, of the circumstance of nighttime.

The penalty imposed for homicide under Article 249 of the Revised Penal Code is reclusion temporal. There being no aggravating or mitigating circumstances, the penalty imposable is reclusion temporal in its medium period. Applying the Indeterminate Sentence Law, the penalty that shall be imposed upon accused-appellant is an indeterminate sentence within the range of *prision mayor*, as the minimum, and reclusion temporal in its medium period, as the maximum.[48]

Amount of Damages

There is need to modify the actual damages awarded by the trial court because some of the enumerated expenses are not substantiated in the records. Of the expenses allegedly incurred, courts may consider only those supported by credible evidence and which appear to have been genuinely incurred in connection with the death, wake or burial of the victim.[49] In one case, we even rejected receipts representing expenses incurred for purely aesthetic or social purposes, expenditures which could not be reasonably itemized or determined to have been incurred in connection with the death, wake or burial of the victim, and those which were not in fact shouldered by the immediate heirs of the victim.[50] In the instant case, no receipts were offered in evidence, although the victim's mother stated during her testimony that she had the receipt for the interment fee[51] in the amount of P4,300.00. The actual damages should thus only be P4,300.00. Consistent with prevailing jurisprudence, we affirm the award of P50,000.00 as indemnity without need of proof other than the fact of the victim's death.

There is sufficient evidence[52] given by Mrs. Yolanda Torio, the victim's mother, that she suffered sleepless nights, anxiety, moral shock and wounded feelings. Hence, the award for moral damages is proper. However, damages that are incapable of pecuniary estimation, though recoverable if they are the proximate result of defendant's wrongful act or omission, are not intended to enrich the plaintiff at the expense of the defendant. The same must not be palpably or grossly excessive as to indicate that they were the result of passion or prejudice on the part of the trial court.[53] Thus, in the exercise of this Court's discretion, we deem it appropriate and reasonable to reduce moral damages from P100,000.00 to P50,000.00.[54]

WHEREFORE, premises considered, the questioned Decision is hereby MODIFIED. Accused-appellant Benjamin Cayabyab is found GUILTY of homicide and SENTENCED to an indeterminate penalty of ten (10) years of prision mayor, as minimum, to seventeen (17) years and four (4) months of reclusion temporal, as maximum. Appellant is further ORDERED to pay P50,000.00 as indemnity to the heirs of the victim, P4,300.00 as actual damages and P50,000.00 as moral damages to the victim's mother, Mrs. Yolanda Torio. SO ORDERED.

Narvasa, C.J., Padilla, Regalado, Davide, Jr., Romero, Melo, Puno, Vitug, Mendoza, Hermosisima, Jr., and Torres, Jr., JJ., concur.

Bellosillo, Kapunan, and Francisco, JJ., on leave.

[1] Rollo, p. 4.

[2] On appeal, the Free Legal Assistance Group filed two notices of appearance for the accused, one filed (undated) on July 9, 1996 and the other on October 9, 1996, but withdrew such appearance on November 12, 1996 because "the brief for the appellant has already been filed (by PAO) after the appearance of the Task Force and without appellant's consent or knowledge."

[3] In Criminal Case No. 94-00477-D.

[4] Rollo, pp. 70-78.

[5] Assailed Decision, p. 9; Rollo, pp. 32 and 78.

[6] TSN, December 9, 1994, pp. 4-19; December 12, 1994, pp. 6-32.

[7] Exhibit "C"; records, p. 19.

[8] TSN, December 12, 1994, p. 36.

[9] TSN, December 12, 1994, pp. 47-48.

- [10] TSN, February 2, 1995, pp. 4-10, 14-19, 24-34.
- [11] TSN, February 20, 1995, pp. 3-9, 18-21.
- [12] Addressed by prosecution witnesses as “Robert.”
- [13] TSN, February 24, 1995, pp. 11-16.
- [14] Assailed Decision, p. 7; rollo, p. 76.
- [15] Ibid., p. 8; rollo, p. 77.
- [16] Rollo, pp. 50-69.
- [17] Appellant’s Brief, pp. 1-2; rollo, pp. 53-54.
- [18] Ibid., pp. 10-11; Rollo, pp. 62-63.
- [19] Appellee’s Brief, pp. 11-12; rollo, pp. 114-115.
- [20] *People vs. Morin*, 241 SCRA 709, February 24, 1995.
- [21] *People vs. Nuestro*, 240 SCRA 221, January 18, 1995; *People vs. Rivero*, 242 SCRA 354, March 15, 1995; *People vs. So*, 247 SCRA 708, August 28, 1995.
- [22] *People vs. Obzunar*, G.R. No. 92153, December 16, 1996.
- [23] TSN, February 2, 1995, pp. 8-9, 15-16, 24-27.
- [24] Ibid., pp. 10, 17 & 22.
- [25] Ibid., p. 37.
- [26] *People vs. Isleta*, G.R. No. 114971, November 19, 1996.
- [27] TSN, December 9, 1994, pp. 8-9.
- [28] TSN, December 21, 1994, p. 11.
- [29] *People vs. Obzunar*, *supra*.
- [30] Appellant’s Brief, p. 12; Rollo, p. 63.
- [31] Ibid., p. 13; *ibid*, p. 64.
- [32] Appellee’s Brief, pp. 13-15; rollo, pp. 116-118.
- [33] *People vs. Villanueva*, G.R. No. 116610, December 2, 1996.
- [34] TSN, December 9, 1994, p. 18.
- [35] Ibid., pp. 22-24.
- [36] *People vs. De Guzman*, 188 SCRA 405, 410-411, August 7, 1990.
- [37] Appellant’s Brief, p. 14; Rollo, p. 66.
- [38] Appellee’s Brief, p. 15; rollo, p. 11.
- [39] *People vs. Ledesma*, 250 SCRA 166, November 20, 1995; *People vs. Silvestre*, 244 SCRA 479, May 29,

1995.

[40] *People vs. Morin*, *supra*.

[41] *People vs. Silvestre*, *supra*.

[42] TSN, December 9, 1994, p. 7; December 12, 1994, p. 6.

[43] TSN, December 12, 1994, p. 7.

[44] *People vs. Ronquillo*, 247 SCRA 793, August 31, 1995.

[45] Luis B. Reyes, *The Revised Penal Code*, Book One, 12th ed., 1981, citing *People vs. Boyles*, 11 SCRA 88, May 29, 1964. See also *People vs. Marra*, 236 SCRA 565, September 20, 1994.

[46] *Ibid.*, citing *People vs. Pardo*, 79 Phil. 568, 578-679 (1947).

[47] *Ibid.*, citing *People vs. Matbagon*, 60 Phil. 887 (1934).

[48] *People vs. Mejos*, G.R. No. 111541, December 17, 1996.

[49] *People vs. Rosario*, 246 SCRA 658, 671, July 18, 1995.

[50] *People vs. Degoma*, 209 SCRA 266, 274, May 22, 1992.

[51] TSN, December 12, 1994, p. 48.

[52] *Supra*, note 9.

[53] *People vs. Wenceslao*, 212 SCRA 560, August 12, 1992.

[54] *People vs. Quilaton*, 205 SCRA 279, January 23, 1992.

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