

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LIBERATO “DUKDUK” SOLAMILLO AND JULIAN SOLAMILLO, ACCUSED-APPELLANTS.

G.R. No. 123161. June 18, 2003

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

For automatic review is the Decision[1] dated September 20, 1995 of the Regional Trial Court, Branch 1, Isabela, Basilan, in Criminal Case No. 2099 declaring Liberato "Dukduk" Solamillo and Julian Solamillo guilty beyond reasonable doubt of the complex crime of robbery with homicide and sentencing them to suffer the penalty of death. They were also adjudged to pay Aleli P. Guiroy, the daughter of the victim, Alexander Guiroy, P500,000.00 as moral damages, P200,000.00 as exemplary damages, P20,000.00 as attorney's fee and P500.00 as costs.

On March 23, 1994, an Information[2] was filed with the said trial court charging brothers Liberato "Dukduk" and Julian Solamillo, appellants, together with Edgardo Ebarle and Eddie "Angel" Trumata, with the crime of robbery with homicide, committed as follows:

"That on or about the 2[nd] day of March, 1994, and within the jurisdiction of this Honorable Court, viz., at Aguada Barangay, Municipality of Isabela, Province of Basilan, Philippines, the above-named accused, armed with a bolo, bakawan wood and wooden stool, conspiring and confederating together, aiding and assisting one with the other, with treachery and evident premeditation and with intent to kill and by means of force and violence upon person, did then and there willfully, unlawfully, and feloniously assault, club and hack at the person of Alexander Guiroy, proprietor of Liberty Bakery and Grocery, thereby inflicting hack wounds and bodily injuries on the different parts of the body of the latter, which caused his instantaneous death. That taking advantage that the victim, Alexander Guiroy, was already dead, and with intent to gain, the said accused forcibly took, stole and carted away the following described property belonging to the said Alexander Guiroy; viz., cash money equivalent to four-day income amounting to more or less P20,000.00, wristwatch "Seiko Diver" worth P3,000.00 and a wallet colored black, to the damages and prejudice of the legal heirs of the deceased Alexander Guiroy in the total amount of P23,000.00, Philippine Currency.

"Contrary to law."

Upon arraignment with the assistance of counsel, appellant Liberato "Dukduk" Solamillo and Edgardo Ebarle pleaded not guilty, while appellant Julian Solamillo entered a plea of guilty.[3] Eddie Trumata was not arraigned as he has been at large.

The prosecution filed a motion praying that Edgardo Ebarle be discharged as an accused to be utilized as a state witness. However, he died before he could testify.[4]

During the trial, the prosecution presented the following witnesses: Aleli P. Guiroy, Dr. Teresita L. Dans, Emmanuel Guiroy, SPO4 Pedro Oreta, and PO3 Celso Tan Sanchez. Their testimonies are summarized below.

The victim owned the Liberty Bakery and Grocery located at Rizal Avenue, Isabela, Basilan. His employees were appellant Julian Solamillo, Edgardo Ebarle and Eddie Trumata, who lived together in the bakery.[5]

On March 2, 1994, Edgardo Ebarle, Eddie Trumata and appellants were at the bakery. Aleli Guiroy, the victim's daughter, saw them when she arrived at around 5:00 p.m. until she left at 6:10 p.m.[6]

The next morning, Aleli returned to the bakery but was unable to open the doors. She sought help from her uncle, Lorenzo Guiroy who, in turn, asked Warlito Gonoz to accompany her back to the bakery. When Warlito peeped through a window, he saw the victim lying on the floor. Immediately, they reported the matter to the police.[7]

PO3 Celso Tan Sanchez arrived and found the victim's dead body, a wooden stool, a bolo and a piece of bakawan (firewood), all with blood. The table drawers were open and the bakery was in disarray.[8] Aleli informed PO3 Sanchez that her father's P20,000.00, wallet and Seiko watch were missing.[9]

Dr. Teresita Dans examined the victim's body. She confirmed her Post-Mortem Report[10] that the victim suffered 21 incised wounds, multiple contusion-hematoma and multiple abrasions which caused his death. According to her, the incised wounds were probably caused by a knife or bolo, while the multiple hematoma, contusions, and abrasions were caused by a blunt instrument, like a piece of wood or pipe.[11]

Aleli testified that she spent more than P20,000.00 for the funeral of her father.[12]

On March 4, 1994, or two days after the incident, the police of Lamitan, the neighboring town of Basilan, informed Emmanuel Guiroy, the victim's brother, that they have apprehended Edgardo Ebarle. Forthwith, Emmanuel and SPO4 Pedro Oreta went to Lamitan. There the police turned over Edgardo to SPO4 Oreta. While on their way back to Isabela, Edgardo told Emmanuel that Eddie Trumata and appellants assaulted the victim, pulled him to the table and hit his head.[13]

On March 6, 1994, or four days after the incident, SPO4 Oreta arrested appellant Liberato Solamillo in Zamboanga City. While he was being investigated at the police station, SPO4 Oreta noticed that he was wearing a watch. Emmanuel confirmed that it belonged to the victim. SPO4 Oreta then asked appellant to open his traveling bag and found therein the victim's missing wallet and money amounting to P48.00.[14]

Upon the other hand, appellants, and their brother Melanio Solamillo have a different story to tell.

On March 2, 1994, the day of the incident, at around 4:00 p.m., Liberato visited his brother Julian at the victim's bakery. After about one hour, Liberato went to Melanio's house.[15] Meanwhile, at past 6:30 p.m., Julian started preparing the flour needed for baking, while Edgardo Ebarle and Eddie Trumata cooked their supper. But before they could eat, the victim scolded Edgardo and Eddie for creating a mess in the bakery. He continued scolding the two as he sat down to feed his cat. Suddenly, Julian saw Eddie hitting the victim's head with a piece of bakawan causing the latter to fall. He managed to get up and exchanged blows with Eddie. At this point, Edgardo got a bolo and attacked the victim. Julian could not intervene because Eddie threatened to kill him if he would do so.[16]

After beating the victim, Eddie and Edgardo ransacked the drawers and took the money. They then asked Julian to leave. But before he could do so, he managed to take P995.00 from the money scattered on the floor. Eddie and Edgardo headed off to Lamitan, Basilan,[17] while Julian passed by Zamboanga City on his way to Dumaguete City where he intended to surrender. While in Zamboanga City, he met his brother Liberato, who was then looking for him. Thereafter, Julian proceeded to Dumaguete City. Liberato was supposed to head back to Isabela but was forced to spend the night in Zamboanga City because he missed the boat.[18]

The next day, March 6, Melanio accompanied Emmanuel Guiroy and SPO4 Oreta to Zamboanga to look for both appellants. On the same day, Liberato was arrested.[19] While he was being interrogated at the Tetuan,

Zamboanga Police Sub-Station, SPO4 Oreta showed him a wallet, a watch and some money, stating that these are evidence against him. Liberato immediately denied having knowledge about the said items. Then, he was turned over to the Isabela police.[20]

Meanwhile, Julian surrendered to the police in Bacong, Dumaguete where he was detained until he was turned over to the Isabela police.[21] He pleaded guilty during the arraignment because a policeman named Bayabos threatened to kill him.[22]

On September 20, 1995, the trial court rendered a Decision,[23] the dispositive portion of which, reads:

"WHEREFORE, premises considered, this Court finds the accused, Liberato "Dukduk" Solamillo and Julian Solamillo GUILTY as principals beyond the shadow of any doubt of committing the crime of Robbery with Homicide as charged in the Information, which crime is defined and penalized under Art. 248 (should be Art. 294) of the Revised Penal Code, as amended by Sec. 6 (should be Sec. 9) of Republic Act No. 7659, the commission of which was attended by the following circumstances, to wit:

1. Committed by a band, there were four (4) persons who committed the offense. (par. 6, Art. 14, Revised Penal Code);
2. Committed with evident premeditation. (par. 13, Art. 14, supra);
3. Committed by treachery. (par. 16, Art. 14, supra); and
4. Committed with deliberate cruelty, considering that the victim suffered twenty-one (21) hack and stab-wounds and contusion and abrasions on different parts of his body.

"Without any mitigating circumstances to offset any of them, (this court) hereby sentences both and each of them to suffer the extreme penalty of DEATH and to pay the following damages to Miss Aleli Guiroy who in her youthful years has lost her father, upon whom her future security depends, to wit:

1. P500,000.00 as moral damages;
2. P200,000.00 as exemplary damages;
3. P20,000.00 as attorney's fee; and
4. P500.00 as judicial costs.

"x x x

"IT IS SO ORDERED."

Appellants Liberato and Julian Solamillo, in their brief, contend that the trial court erred in finding them guilty of the crime of robbery with homicide and in imposing upon them the death penalty.[24]

We disagree.

The trial court correctly convicted the appellants on the basis of the chain of circumstantial evidence established by the prosecution, thus:

1. Edgardo Ebarle, Eddie Trumata, and appellant Julian Solamillo worked and lived in the bakery owned by the victim. The other appellant, Liberato Solamillo, was also at the bakery in the afternoon of March 2, 1994. The following day, the victim was found dead;
2. After the commission of the crime, all four accused fled: Edgardo and Eddie to Lamitan, Basilan; Julian to Dumaguete City; and Liberato to Zamboanga City;
3. When Liberato was arrested in Zamboanga City, the victim's wristwatch and wallet were found in his

possession; and

4. Julian admitted that immediately after the victim was killed, he picked up P995.00 scattered on the bakery floor after Eddie and Edgardo ransacked the drawers containing money.[25]

Circumstantial evidence is sufficient basis for conviction as long as: (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[26] Thus, facts and circumstances consistent with guilt and inconsistent with innocence, constitute evidence which, in weight and probative force, may surpass even direct evidence in its effect upon the court.[27] These facts and circumstances are present here and constitute sufficient evidence which warrants the conviction of both appellants.

Liberato denied having the victim's personal effects in his possession, insisting that he saw these items for the first time when he was being interrogated.[28]

Section 3, Rule 131 of the Revised Rules on Evidence provides:

"Sec. 3. Disputable presumptions. — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

"x x x

(j) That a person found in possession of a thing taken in the doing of a recent wrongful act is the taker and the doer of the whole act; x x x"

We find that Liberato failed to overcome this presumption. He could not provide a satisfactory explanation why the victim's belongings were in his possession. Moreover, he could not show any ill motive on the part of SPO4 Oreta that would impel the latter to fabricate evidence against him. SPO4 Oreta enjoys the presumption that he has regularly performed his official duty.[29] Liberato likewise failed to overthrow this presumption.

We find untenable Liberato's explanation that he went to Zamboanga City after the commission of the crime to look for his brother Julian. True, flight per se cannot prove the guilt of an accused, but if the same is considered in the light of other circumstances, it may be deemed as a strong indication of guilt.[30] His flight to Zamboanga City when linked with his presence at the bakery, the crime scene, and his possession of the victim's effects upon his arrest, strongly indicate his participation in the commission of the crime. Thus, the trial court correctly held that the circumstances taken together point to the fair and logical conclusion that appellant Liberato Solamillo is guilty of the crime of robbery with homicide.

For his part, appellant Julian Solamillo maintains that the trial court erred in disregarding his tacit withdrawal of his guilty plea. He claims that policeman Bayabos threatened to kill him if he will plead not guilty.

Section 5, Rule 116 of the Revised Rules of Criminal Procedure, as amended, provides that "(a)t any time before the judgment of conviction becomes final, the court may permit an improvident plea of guilty to be withdrawn and be substituted by a plea of not guilty." The tenor of the quoted provision is clear. There should be a categorical declaration from the accused that he is withdrawing his plea of guilty and substituting it with a plea of not guilty.

There is nothing in the records to show that Julian filed a motion to withdraw his plea of guilty or that he, in any manner, manifested unequivocally that he was withdrawing his plea. He contends though that he made such manifestation when he testified on April 26, 1995, thus:

"Q Mr. Witness, from what you testified before this Court, you want to impress this Court that your only participation is the robbing or taking of the money that was scattered on the store of Mr. Guiroy on March 2,

1994. Then why did you plead guilty to the offense during the arraignment?

A I pleaded guilty because while I was in the police station, I was instructed to plead guilty and if I will not plead guilty I will be killed. I have a lawyer, but he will not sleep with me in the police station. That is the reason why I pleaded guilty here.

Q You mentioned of threat, can you mention a police who threatened you?

A Yes, sir.

Q Who?

A Bayabos."[31]

The above testimony is not a positive and categorical declaration that appellant Julian was withdrawing his plea of guilty. Without any unequivocal act on his part, the trial court could not assume that he was withdrawing his original plea. Furthermore, by appellant's own admission, he went to Dumaguete City with the intention of surrendering to the authorities. This belies his contention that he was threatened into entering a guilty plea for if he was truly innocent, why is it that his first instinct was to surrender?

Even assuming that Julian made an improvident plea of guilty and subsequently withdrew it, such fact does not operate to automatically exculpate him from criminal liability. Convictions based on an improvident plea of guilty are set aside only if such plea is the sole basis of the judgment. If the trial court relied on sufficient and credible evidence to convict the accused, the conviction must be sustained because then it is predicated not merely on the guilty plea of the accused but on evidence proving his commission of the offense charged.[32]

In the instant case, the trial court, in determining the guilt of appellant Julian Solamillo, relied on the extensive evidence of the contending parties, not merely on his plea of guilty. Indeed his conviction can be sustained based on independent evidence other than his plea. Thus, whether or not his plea of guilty was improvidently made is inconsequential for the simple reason that his conviction was based on other evidence proving his culpability for the offense charged.[33]

In the offense of robbery with homicide, a crime primarily classified as one against property and not against persons, the prosecution has to firmly establish the following elements: (a) the taking of personal property with the use of violence or intimidation against a person; (b) the property thus taken belongs to another; (c) the taking is characterized by intent to gain or animus lucrandi; and (d) on the occasion of the robbery or by reason thereof, the crime of homicide, which is therein used in a generic sense, was committed.[34]

In this case, the prosecution amply established the said elements. Appellant Julian Solamillo's contention that he cannot be held liable for homicide because he only took money but did not participate in the victim's killing is untenable. What is essential in robbery with homicide is that there is a direct relation and intimate connection between robbery and the killing, whether the latter be prior or subsequent to the former or whether both crimes be committed at the same time.[35]

In his own testimony, appellant Julian Solamillo placed himself squarely at the crime scene when the victim was attacked:

"Q: So what happened at the time this Guiroy was scolding this Eddie Trumata and Edgardo Ebarle?

A After that, Mr. Guiroy fed his cat and he was murmuring and talking so many words while feeding his cat.

Q What was his position?

A He was sitting.

Q While he was sitting and feeding the cat and still murmuring to the two, what happened?

A Eddie hit him.

Q Hit him with his fist or what?

A With a piece of bakawan.

x x x

Q

After he was hit on the head, what happened to Mr. Guiroy?

A He fell.

Q What happened next when he was already there down?

A Guiroy stood up and there was an exchange of blows with Trumata.

Q While they were exchanging blows with Trumata, what did this Edgardo Ebarle do?

A Edgardo Ebarle got a bolo and hacked Mr. Guiroy.

Q Can you still recall how many times he hacked Mr. Guiroy?

A I don't remember anymore because I don't know what to do at that time.

Q After mauling or the hitting of the bakawan and bolo of Mr. Guiroy, what happened to Mr. Guiroy?

A He died."[36]

While Edgardo Ebarle and Eddie Trumata were attacking the victim, appellant Julian Solamillo did nothing nor sought help to stop them. Instead, he admitted taking some of the money:

"Q You said they took money, correct?

A Yes, sir.

Q Where did they take the money? From where?

A From the drawer.

Q What about you?

A I was able to get or pick-up money scattered on the floor.

Q Why did you pick-up the money?

A Because I don't have money for my fare and because I was told by them that, 'You will escape because you will be included in this incident.'

Q How much money did you get?

A P995.00.

Q You just picked the money according to you?

A I just picked it up on the floor because the money were scattered on the floor."[37]

The rule is well-established that whenever homicide has been committed as a consequence of or on the occasion of the robbery, all those who took part as principals in the robbery shall also be held guilty as principals of the special complex crime of robbery with homicide whether or not they actually participated in the killing, unless it clearly appears that they endeavored to prevent the homicide.[38]

Appellant Julian Solamillo justifies his taking the money because he needed it for his fare. Such an excuse is ridiculous and self-serving. By his own account, Edgardo Ebarle and Eddie Trumata were the ones who killed the victim. If this were so, why did he leave the bakery immediately after the incident? And why did he proceed to Dumaguete City to surrender? His conduct is certainly inconsistent with rational human behavior. For, if he were really guilt-free, he should have reported the incident to the authorities instead of taking the money and fleeing to Dumaguete City.

Julian insists that he did not participate in killing the victim and that he could not have prevented it since the other accused threatened to kill him if he interfered.[39] But he failed to show that the threat was of such character as to leave him no opportunity for escape or to prevent the homicide. Accordingly and considering his self-admitted participation in the robbery, he is liable for the complex crime of robbery with homicide.

However, the trial court erred in appreciating against appellants the aggravating circumstances that the crime was committed: (a) by a band; (b) with evident premeditation; (c) with deliberate cruelty; and (d) with treachery.

The trial court declared that the crime was committed by a band "because there were four (4) persons who committed the offense." [40] Paragraph 6, Article 14 of the Revised Penal Code, as amended, provides:

"Art. 14. Aggravating circumstances. — The following are aggravating circumstances:

x x x

6. That the crime be committed in the nighttime or in an uninhabited place, or by a band, whenever such circumstances may facilitate the commission of the offense.

"Whenever more than three armed malefactors shall have acted together in the commission of an offense, it shall be deemed to have been committed by a band."

This aggravating circumstance requires that there should be at least four persons who commit the crime, all of whom should be armed. Even if there are four offenders, but only three or less are armed, it is not a band. Here, there is no evidence that all four accused were armed at the time of the perpetration of the crime. Hence, this circumstance cannot be appreciated against the appellants.

For evident premeditation to be considered as an aggravating circumstance, it must be shown that the execution of the criminal act was preceded by cool thought and reflection upon the resolution to carry out the criminal plan.[41] The requisites of evident premeditation are:

- (1) the time the accused decided to commit the crime;
- (2) an overt act manifestly indicating that he clung to his determination; and
- (3) sufficient lapse of time between the decision and the execution to allow the accused to reflect upon the consequence of his act.[42]

When it is not shown how and when the plan to kill was hatched or what time had elapsed before it was carried out, evident premeditation cannot be considered.[43] Here, we cannot discern from the records the presence of the foregoing essential element.

The trial court held that the crime was committed with deliberate cruelty "considering that the victim suffered twenty-one (21) hack and stab-wounds, contusions and abrasions on the different parts of his body." The number of wounds is not the criterion for the appreciation of cruelty as an aggravating circumstance.[44] The mere fact that wounds in excess of what is necessary to cause death were inflicted upon the body of the victim does not necessarily imply that such wounds were inflicted with cruelty.[45] It is necessary to show that the accused intentionally and deliberately increased the victim's suffering. In this case, there is no evidence showing appellants' intent to commit such cruelty.

Furthermore, in *People vs. Lobitania*,[46] we held that "treachery is applicable only to crimes against persons. Inasmuch as robbery with homicide is a crime against property and not against persons, treachery cannot be validly considered x x x."

Under Article 294 of the Revised Penal Code, as amended by Section 9 of R.A. No. 7659, the prescribed penalty for robbery with homicide is composed of two indivisible penalties, reclusion perpetua to death. In the absence of any mitigating or aggravating circumstance, the proper penalty to be imposed upon appellants Liberato "Dukduk" Solamillo and Julian Solamillo is reclusion perpetua.[47]

Regarding damages, the trial court failed to award civil indemnity to the victim's heirs. When death occurs as a result of a crime, the heirs of the deceased are entitled to the amount of P50,000.00 as civil indemnity for the death of the victim without need of any evidence or proof of damages.[48]

As to Aleli Guiroy's claim that she spent P20,000.00 for her father's funeral expenses and that there was at least P20,000.00 in the bakery's secret compartment when the robbery occurred, we find the same unsubstantiated. In *People vs. Abrazaldo*,[49] we ruled that to be entitled to the award of actual damages, "it is necessary to prove the

actual amount of loss with a reasonable degree of certainty, premised upon competent proof and on the best evidence obtainable to the injured party." While the prosecution failed to present any receipt to prove the claim for funeral expenses, however, we are aware that funeral expenses were incurred by the family of the deceased.

Temperate damages, in lieu of actual damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot be proved with certainty.[50] In *Abrazaldo*, we computed temperate damages at P25,000.00, or one-half of the current indemnity *ex delicto*, which is fixed at P50,000.00. We award the same in this case.

As for the award of P200,000.00 as exemplary damages, we find the same to be unjustified. Article 2230 of the Civil Code provides that in criminal offenses, exemplary damages as a part of civil liability may be imposed only when the crime was committed with one or more aggravating circumstances. Considering the absence of any aggravating circumstance in the commission of the crime charged, no exemplary damages may be awarded. And since there are no exemplary damages, the award of P20,000.00 as attorney's fee is also deleted.

As to the trial court's award of moral damages in the amount of P500,000.00, we find the same to be excessive. In similar cases,[51] we awarded the victim's heirs the amount of P50,000.00 as moral damages. For verily, moral damages are not intended to enrich the victim's heirs; rather they are awarded to allow them to obtain means for diversion that could serve to alleviate their moral and psychological sufferings.[52]

WHEREFORE, the Decision of the Regional Trial Court, Branch 1, Isabela, Basilan, in Criminal Case No. 2099, is **AFFIRMED** but with modification.

Appellants Liberato "Dukduk" Solamillo and Julian Solamillo are found **GUILTY** of the crime of **ROBBERY WITH HOMICIDE**, and are sentenced to suffer the penalty of **RECLUSION PERPETUA**. They are ordered to pay the heirs of the late Alexander Guiroy (a) P50,000.00, as civil indemnity; (b) P50,000.00, as moral damages; and (c) P25,000.00, as temperate damages.

Costs de oficio.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Carpio, Corona, Carpio-Morales, Callejo, Sr., and Azcuna, JJ., concur.

Austria-Martinez, J., on official leave.

[1] Penned by Judge Salvador A. Memoracion. Rollo at 17-36.

[2] Records at 1-2.

[3] *Id.* at 26.

[4] RTC Decision dated September 20, 1995, rollo at 19.

[5] TSN, February 1, 1995 at 32-41.

[6] *Id.* at 42-44, 48.

[7] *Id.* at 49-64.

[8] TSN, February 13, 1995 at 42-55.

- [9] TSN, February 1, 1995 at 46-47, 68-69.
- [10] Dated March 3, 1994, Records at 78.
- [11] TSN, February 1, 1995 at 21-23.
- [12] Id. at 76.
- [13] TSN, February 2, 1995 at 20-24.
- [14] TSN, February 13, 1995 at 4-20, 35-39.
- [15] TSN, July 20, 1995 at 8-10.
- [16] TSN, April 26, 1995 at 18-21, 60-63.
- [17] Id. at 21-24.
- [18] TSN, July 20, 1995 at 9-18.
- [19] TSN, July 18, 1995 at 16-17, 25.
- [20] TSN, July 20, 1995 at 22A-23.
- [21] TSN, April 26, 1995 at 76-79.
- [22] Id. at 30-31.
- [23] Judgment penned by Judge Salvador A. Memoracion, rollo at 16-36.
- [24] Rollo at 59.
- [25] Id. at 86-87.
- [26] Section 4, Rule 133 of the Revised Rules on Evidence; *People vs. Solis*, G.R. No. 138936, January 30, 2001, 350 SCRA 608, 615-616; *People vs. Valdez*, G.R. No. 128105, January 24, 2001, 350 SCRA 189, 196; *People vs. Dacibar*, G.R. No. 111286, February 17, 2000, 325 SCRA 725, 741; *People vs. Zuela*, G.R. No. 112177, January 28, 2000, 323 SCRA 589, 608.
- [27] *People vs. Dacibar*, supra citing *People vs. Mahinay*, G.R. No. 122485, February 1, 1999, 302 SCRA 455, 469.
- [28] TSN, July 20, 1995 at 23.
- [29] Section 3(m), Rule 131 of the Revised Rules on Evidence.
- [30] *People vs. Rabanal*, G.R. No. 119542, January 19, 2001, 349 SCRA 655, 661; *People vs. Suitos*, G.R. No. 125280, March 31, 2000, 329 SCRA 440, 448.
- [31] TSN, April 26, 1995 at 30-31.
- [32] *People vs. Nadera, Jr.*, 381 Phil. 484, 499 (2000) citing *People vs. Lakindanum*, G.R. No. 127123, March 10, 1999, 304 SCRA 429.
- [33] *People vs. Alborida*, G.R. No. 136382, June 25, 2001, 359 SCRA 495, 502 citing *People vs. Tahop*, G.R. No. 125330, September 29, 1999, 315 SCRA 465, 471; *People vs. Arizapa*, 384 Phil. 766, 774 (2000) citing *People vs. Derilo*, G.R. No. 117818, April 18, 1997, 271 SCRA 633.

[34] *People vs. Del Rosario*, G.R. No. 131036, June 20, 2001, 359 SCRA 166, 173-174 citing *People vs. Gavina*, G.R. No. 118076, November 20, 1996, 264 SCRA 450; *People vs. Cando*, G.R. No. 128114, October 25, 2000, 344 SCRA 330, 342 citing *People vs. Paraiso*, G.R. No. 127840, November 29, 1999, 319 SCRA 422.

[35] *People vs. Navales*, 266 SCRA 569, 594 (1997).

[36] TSN, April 26, 1995 at 19-21.

[37] *Id.* at 22-23.

[38] *People vs. Cabilto*, G.R. No. 128816, August 8, 2001, 362 SCRA 325 citing *People vs. Magdamit*, 279 SCRA 423, 433 (1997); *People vs. Cando*, *supra*; *People vs. Robles*, 333 SCRA 107, 119 (2000) citing *People vs. Nang*, 289 SCRA 16, 33-34 (1998).

[39] TSN, April 26, 1995 at 62-63.

[40] *Rollo* at 35.

[41] *People vs. Sesbreno*, G.R. No. 121764, September 9, 1999, 314 SCRA 87, 114.

[42] *People vs. Javier*, G.R. No. 130489, February 19, 2002 citing *People vs. Sesbreno*, *supra*.

[43] *People vs. De Leon*, G.R. No. 126287, April 26, 2001, 356 SCRA 471, 481 citing *People vs. Enolva*, 323 SCRA 295, 310-311 (2000).

[44] *People vs. Tonog, Jr.*, 205 SCRA 772, 782 (1992) citing *People vs. Siblag*, 37 Phil. 703 (1918), *People vs. Luna*, 58 SCRA 198 (1974), and *People vs. Manzano*, 58 SCRA 250 (1974).

[45] *People vs. Almendras*, G.R. No. 137277, December 20, 2001; *People vs. Emberga*, 377 Phil. 317, 335 (1999) citing *People vs. Alban*, 245 SCRA 549 (1995).

[46] G.R. No. 142380, September 5, 2002 citing *People vs. Bariquit*, 341 SCRA 600, 625-626 (2000).

[47] Pursuant to Paragraph 2, Article 63 of the Revised Penal Code.

[48] *People vs. Narca*, 339 SCRA 76, 85 (2000).

[49] G.R. No. 124392, February 7, 2003.

[50] *People vs. De la Tongga*, 336 SCRA 687, 700 (2000).

[51] *People vs. Marquez*, G.R. No. 136736, April 11, 2002; *People vs. Yatco*, G.R. No. 138388, March 19, 2002; *People vs. Matic*, G.R. No. 133650, February 19, 2002.

[52] *People vs. Pacina*, 338 SCRA 195, 215-216 (2000).

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