

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GERRY SARABIA, ACCUSED-APPELLANT.

G.R. No. 124076. January 21, 1997

Ponente: PUNO, J.

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PUNO, J.:

Newspaper business is hazardous to health. Nesino P. Toling, publisher and editor of the Panguil Bay Monitor is another court exhibit proving this truism. On April 14, 1991, an assassin buried a bullet at the back of Toling's head. The gun burst delisted him from the land of the living and converted him to another crime statistic.

This is an appeal by GERRY SARABIA from the Decision of the Court of Appeals[1] affirming his conviction for Murder by the Regional Trial Court of Ozamiz City,[2] but modifying the penalty imposed upon him to reclusion perpetua.

In an Information, dated April 19, 1991, NELSON VERDIDA, alias Commander Ramil, and appellant GERRY SARABIA were charged with the Murder of Nesino P. Toling, as follows:[3]

"That at or about 6:05 o'clock in the evening of April 14, 1991, inside the Panguil Bay Monitor Office, Port Road, City of Ozamiz, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring with and helping each other, with intent to kill and with treachery and evident premeditation, did then and there wilfully, feloniously and unlawfully shoot one Nesino P. Toling, as a result of which, said Nesino Toling died instantaneously.

"That the crime was committed with the aggravating circumstance of nighttime and by the use of an unlicensed firearm.

"CONTRARY to Article 248 of the Revised Penal Code."

Only appellant Gerry Sarabia was apprehended. His co-accused Nelson Verdida eluded arrest and remains at large. Thus, trial proceeded only against appellant.

The identity of appellant as the gunman and his presence at the scene of the crime were established by two (2) prosecution witnesses, viz: Elmo Galinato and Marivic Cuamag.

Eyewitness ELMO GALINATO, a resident of Tinago, Ozamiz City, was a security guard of the Republic Security Agency. He was assigned to guard the building of Universal Construction, located along-Rizal Avenue, Ozamiz City. Galinato was posted in the middle of Rizal Avenue, in front of the Universal Construction building. Across the building stood Rose Pharmacy and beside it is the office of a local newspaper publication, Panguil Bay Monitor, where publisher-editor NESINO P. TOLING holds office.[4]

At about 6:25 p.m. of April 14, 1991, Galinato was standing in the middle of Rizal Avenue, about seven (7) meters away from the Office of the Panguil Bay Monitor newspaper. While at his post, he saw publisher-editor NESINO P. TOLING enter the newspaper office. Unknown to Toling, appellant GERRY SARABIA was behind

him. After a couple of minutes, appellant opened the glass door of the office, took one step inside and immediately fired three (3) shots at Toling. Appellant ran to the direction of the adjacent Rose Pharmacy. He returned to Toling's office a few minutes later and fired another round of shots at the victim. Appellant then walked away, passed by Petron Gasoline Station, and fled towards the direction of the public market.[5]

Galinato recognized appellant whose face and features were already familiar to him prior to the shooting incident. He knew appellant as a security guard connected with the Scepter Security Agency. He used to see appellant in various places in the area. When appellant worked as security guard at the Rachel Emporium, Galinato was the security guard at the nearby Quality Store, about two (2) blocks away from where appellant worked.[6]

Galinato described appellant's apparel. At the time of the incident, he wore a white polo shirt, with black stripes and black pants. Galinato also noticed another man near the scene of the crime at the time of the shooting. However, he was not sure if the man was appellant's companion. He did not recognize this other man.[7]

The next day, April 15, 1991, Galinato met Pat. Bernardo Gallardo, Jr., the police officer who investigated the shooting incident. Pat. Gallardo showed him a picture of appellant and asked him to confirm whether appellant shot Toling. Initially apprehensive, Galinato told Pat. Gallardo to return the next day. Upon his return, Galinato narrated what he saw and identified appellant as the gunman.[8]

Another prosecution witness MARIVIC CUAMAG confirmed appellant's presence at the scene of the crime immediately before the shooting. Cuamag works as a secretary at the nearby E. de Leon Gunstore, housed in the same building as the office of the victim.[9]

On April 14, 1991, Cuamag reported for work at the gunstore. After her work ended at 6:00 p.m., Cuamag dropped by the office of Toling where her elder sister was employed. Toling was looking for her sister for he wanted her to do an errand. Cuamag volunteered to do the errand as her sister was not in the office. Toling requested her to buy some goods at the nearby Joy Mart grocery.[10]

Toling was handing her the list of articles to be purchased when Cuamag noticed appellant, wearing a white, striped polo shirt, standing by the glass door of the office. Appellant was about two (2) meters away from her. She thought appellant wanted to buy a copy of the Panguil Bay Monitor newspaper. When she got the shopping list and turned towards the door, appellant was no longer in sight. She left the office, crossed Rizal Avenue and headed towards Joy Mart grocery. She heard a gunshot but initially did not pay any attention to it. However, when she reached the Allied Hardware and looked back at the direction of Toling's office, she saw several people milling around the office. She hurriedly returned to the office and found Toling dead.[11]

Toling was brought to the Medina General Hospital where he was declared dead on arrival. DR. LEWIS TAN issued the death certificate and found the cause of death as cardiopulmonary arrest due to the fatal gunshot wound the victim sustained at the back of the head.[12]

DR. PEDRITA ROSAURO, City Health Officer of Ozamiz City, conducted an autopsy of the victim's cadaver. She recovered a .38 caliber slug on the left back portion of the victim's head. The victim also sustained two (2) other gunshot wounds: one at the right heel of the foot and another at the left hand, near the wrist. Since the entrance of all these wounds were at the back, Dr. Rosauro opined that the assailant was behind the victim at the time of the shooting.[13]

PAT. BERNARDO GALLARDO, JR. testified on the results of his investigation.

At about 1:00 to 1:30 a.m., sometime on April 3 or 4, 1991, days before the shooting of newspaperman Nesino Toling, Pat. Gallardo, together with Lt. Tome and Sgt. Morera, all assigned at the Intelligence Operations at Cotta,

466th PC Company in Ozamiz City, were on surveillance, patrolling the area of Rizal Avenue, Ozamiz City. They came upon appellant standing near the office of Toling at Panguil Bay Monitor. Pat. Gallardo inquired what appellant was doing in the area at that unholy hour. Appellant replied he was waiting for someone. The police officers asked appellant to produce his residence certificate. They verified his identity and advised appellant to go home. When appellant left, Pat. Gallardo saw an ID picture of appellant on the ground which presumably fell out of appellant's wallet. Pat. Gallardo kept it, unaware that it would be of use to him later on.[14]

On April 14, 1991, the brutal slaying of Nesino Toling occurred. Tasked to investigate the crime, Pat. Gallardo repaired to the crime scene to look for eyewitnesses to the shooting. He interviewed ELMO GALINATO, a security guard assigned to guard the Universal Construction building located across the victim's office.[15] Galinato gave an eyewitness account of the shooting. Galinato declared he was familiar with the assailant's face, the latter being a security guard like him. When Pat. Gallardo showed a picture of appellant, Galinato identified him as the assailant.[16]

Pat. Gallardo also interviewed MARIVIC CUAMAG who placed appellant in the vicinity of the crime scene immediately prior to the shooting. Her description of the gunman tallied with appellant's features.[17]

Following up his lead, Pat. Gallardo looked for appellant. On April 18, 1991, at about 11:30 p.m., he saw appellant near the Northpole Eatery, at the corner of Rizal and Don Bernad Avenues. The eatery was right across Rose Pharmacy, a stone's throw away from the crime scene.[18]

Pat. Gallardo alighted from his jeep and immediately frisked appellant for weapons. He then brought appellant to their headquarters for interrogation.

At the station, appellant denied responsibility for the killing. The police investigators found on appellant's left chest a tattoo of his alias name "Boy Bait" and an old gunshot wound on the stomach. Appellant said he sustained the gunshot wound when he was in Cebu.[19]

After the investigation, appellant was charged with the Murder of Toling and was temporarily detained at the headquarters. No bail was recommended.

On May 11, 1991, appellant escaped from his detention cell by sawing its wooden grills. Appellant also left a handwritten note to Pat. Gallardo threatening to take revenge for his capture. He signed the note with his alias name "Boy Bait." [20] The note, when translated in English, reads:

"Boy Abtik," (Pat. Gallardo) Don't worry about my escape as I am here, for if I am lucky, I will collect one by one (from) all the people who oppressed me. My firearm could never ever be taken as it is in the possession of my 3 brothers.

"Boy Bait" [21]

Accused did not remain free for long. The next day, May 12, 1991, he was recaptured by Lt. Tome, Sgt. Teves and other policemen at the boundary of Lapasan and Clarin, Misamis Occidental. He tried to escape but was shot at the leg by the police. During his confinement at the hospital, Pat. Gallardo visited appellant where the latter admitted that he was the one who wrote and left the threatening letter in his cell.[22]

For his exculpation, appellant foisted the defenses of denial and alibi. He claimed that on April 11, 1991, at about 10:30 a.m., he left for Miligan, Molave, Zamboanga del Sur, to visit his friend RUBEN BERONDO.[23] He went to Ruben's house in Purok Ipil-Ipil where he met Ruben's wife and son. He spent that night at Ruben's house. He stayed there for two (2) days or until April 12, 1991.[24]

In the morning of April 13, 1991, appellant left Ruben's house and proceeded to Sto. Niño, Mahayag, Zamboanga

del Sur to visit his fiancée, the daughter of GERSON RAMAYRAT. When he reached Mahayag, he first dropped by the house of RAMON RAMAYRAT, a son of Gerson, who accompanied him to Gerson's house.[25]

The whole day of April 13, 1991, appellant, Ramon, Tikboy, Teodulo (nephews of Gerson), and several others had a drinking spree in Gerson's yard. The session lasted until late in the evening. He left Gerson's house after he told the latter that he would return to Ruben's house in Miligan where he was staying. On the way, however, appellant changed his mind. Ruben's house was quite far and he decided to spend the night at the nearby nipa hut of Gerson, along the creek.[26]

The next morning, April 14, 1991, appellant woke up at daybreak and returned to Ruben's house in Miligan. When he reached the house at about 7:00 a.m., Ruben, who was about to dress up for church, invited him to come along. He declined for he wanted to return to Gerson's place.[27]

After taking his breakfast in Ruben's house, he changed his clothes and went back to Gerson's house. He arrived at about 10:00 a.m. Before he could reach Gerson's house, he was met by Ramon and his drinking buddies and was invited to join them again in their drinking spree. He acceded. Their group commenced drinking by the well, near Gerson's house. At noontime, food was sent to them. The group continued drinking until nighttime. He spent the night of April 14, 1991 at the house of Gerson.[28]

In the morning of April 15, 1991, appellant woke up early. He bade good-bye to Dolo, a nephew of Gerson, and informed him he would be returning to Ruben's house in Miligan.

In Ruben's house, he only saw Rolando, Ruben's son. Ruben and the other family members were still asleep. He packed up his things and left for Ozamiz City where he had lunch at the house of one Pat. Hemorsina.

On April 17, 1991, at about 11:00 p.m., appellant passed by the Northpole Eatery in Ozamiz City and was buying "balut" when Pat. Gallardo grabbed him. He asked Gallardo what he had done but the latter simply told him to explain at the headquarters. Before he boarded the police jeep, Gallardo took and kept his wallet which contained his ID pictures and money amounting to P485.00.

When they arrived at the 466th Company, Cotta headquarters, Pat. Gallardo reported to his commander, thus: "Sir, this might be the suspect of that one who was killed." Appellant had no inkling what Gallardo was talking about. He was investigated by the police. They informed him that he was a suspect in the killing of the editor of Panguil Bay Monitor. He denied knowledge of and participation in the crime and told the investigators he was in Miligan on the date and time of the incident.

During his detention, the police returned to him his money, less a hundred pesos. He registered his complaint with PC soldier EDWIN AREVALO who informed Pat. Gallardo about his grievance. Arevalo reprimanded Gallardo, saying: "Boy, why are you taking the money. If you are arresting a person without evidence, you better return the things you took from him." But Gallardo never returned his P100.00 pesos. During his detention, he spent all his money to buy food since there was no provision for meals for detention prisoners. He begged the jail guards to give him their leftover food. Finally, he requested that he be transferred to the City Jail where there was provision for meals. Unable to tolerate the inhumane condition in his cell, he escaped at dawn of May 11, 1991. He was recaptured the following day.[29]

Appellant was asked why prosecution witnesses ELMO GALINATO and MARIVIC CUAMAG pointed to him as the gunman. He opined they were brainwashed by Pat. Gallardo. He explained that he would not have stayed in Ozamiz City if he was involved in the shooting.[30] He denied knowing prosecution witnesses Galinato and Cuamag before they identified him as the gunman.[31]

GERSON RAMAYRAT corroborated appellant's story. He testified that at about 9:00 a.m. of April 13, 1991, appellant arrived at their house in Sto. Niño, Mahayag, Zamboanga del Sur. Gerson's son, Ramon Ramayrat, together with his nephews, had a drinking spree in their yard the whole day, until about 8:00 p.m. That night, appellant bade Gerson good-bye and told him he would return to the house of Ruben Beronda in Miligan where he was staying. After a while, Teodulo Malmis, one of his nephews, informed him that instead of leaving, appellant slept at their nipa hut by the creek, about 40 meters away from their house. Gerson then asked Teodulo to invite appellant to sleep in their house for it was too cold in the nipa hut. Appellant allegedly declined.[32]

The next morning, April 14, 1991, a Sunday, Gerson no longer saw appellant. He learned that appellant had left for Miligan. He went to mass in the morning and when he returned in the afternoon, he saw his son Ramon, his nephews Teodulo and Tikboy Malmis, and appellant having another round of tuba in their nipa hut.[33]

After a while, Gerson asked Teodulo why appellant was again at the nipa hut. Teodulo replied that appellant had been there since morning that day. Appellant and his drinking buddies stayed at the nipa hut until about 6:00 p.m. Thereafter, the group went to Gerson's house and continued their conversation. Then, Gerson heard over the radio that Toling, a known newspaperman, was murdered. Gerson left his son and appellant and went upstairs to his daughter Ilona, who was also listening to the radio, to verify this news. Thereafter, he called his son and appellant for supper but the two refused and took their supper later that night.[34]

The next day, April 15, 1991, Gerson woke up at about 6:00 a.m. He did not see appellant that day. When he asked his nephew Teodulo as to the whereabouts of appellant, he was informed that appellant had already left.[35]

About 4-5 days after the shooting, some military men, including Pat. Gallardo, went to his house to investigate the whereabouts of appellant on April 14, 1991. Gerson informed the police that appellant was with them on that day and spent the night in their house. He also told the police that appellant left their house only on April 15, 1991.[36]

Days later, he received a letter from appellant asking his help. He visited appellant in his detention cell at Ozamiz City. He also went to the Citizen's Legal Assistance Office (CLAO) to get legal assistance for appellant.[37]

On cross-examination, Gerson admitted that his son, Ramon, was a close friend of appellant. Appellant, who was originally from Cebu City, went to their place in Zamboanga to marry a certain Ms. Berondo from Miligan. Appellant was staying at the house of Ruben Berondo in Miligan, the father of his fiancée. He did not personally see appellant spend the nights in question at their nipa hut. He was just informed about it by his nephew.[38]

He confirmed he is also a close friend of appellant. He spent his own money to attend the hearings of the case in Ozamiz City. He personally looked for a lawyer for appellant.

CESAR DELA TORRE, the barangay captain of Sto. Niño, Mahayag, Zamboanga del Sur, and a neighbor of Gerson Ramayrat, also testified for appellant. He confirmed that he saw appellant in Gerson's house on April 14 and 15, 1991 while the latter was having a drinking spree with Ramon, Tikboy, Teodulo and others at Gerson's house. He was surprised when he learned that appellant was a suspect in the killing of Toling. When Gerson asked his advice, he prepared a letter (Exh. "2"), signed by him and the residents of the barrio who saw appellant on April 14, 1991, attesting to appellant's presence in their barrio on that day.[39]

The defense also called to the stand SPO2 JULIUS ROSALES, another police officer who investigated the shooting of Nesino Toling. Rosales testified that on April 16, 1991, at about 11:00 a.m., Pat. Gallardo brought to their headquarters for interrogation five (5) minor children, among whom was Lowe Ebarle. In the course of his interrogation, he showed Ebarle a picture of NELSON VERDIDA whom Ebarle said resembled the gunman. He reduced Ebarle's statement into writing. Thereafter, he showed Ebarle a picture of appellant. Initially, Ebarle said

that appellant appears to be the gunman but later became uncertain as to the gunman's identity.[40] On cross-examination SPO2 Rosales confirmed that they also investigated two (2) other witnesses, Galinato and Cuamag, who positively identified appellant as the gunman.[41]

LOWE EBARLE, a 14-year old, grade five student in Ozamiz City testified that on April 14, 1991, at about 6:00 p.m., he and his friends were working at Rose Pharmacy when he heard two (2) gunshots coming from the newspaper office of Nesino Toling. He then saw a man walk away, with a gun in hand. The man, who was wearing a black t-shirt with white dots, passed by them and headed towards the public market. He declared the gunman was not appellant.[42] On cross-examination, however, Ebarle admitted that when he was first shown appellant's picture, he said appellant seemed to be the assailant, but later on, when he was also shown the picture of fugitive NELSON VERDIDA, he changed his mind and told the investigators he could no longer remember the gunman's face. He also admitted the gunman passed by them after the shooting for only a fleeting moment and he only saw the side of his face. Thus, when he was investigated by the police, he told them he could no longer recall the face of the gunman.[43]

As rebuttal witness, the prosecution presented EDWIN AREVALO, the police officer at the detention cell who was allegedly sympathetic to appellant's grievance that Pat. Gallardo refused to return his money. Arevalo denied knowledge about appellant's gripe and clarified that it was standard operating procedure for a PC officer to take care of a prisoner's possessions to prevent their use to escape from detention.[44]

After trial, the lower court convicted appellant of the crime charged.[45] The dispositive portion reads:

"WHEREFORE, in view of the foregoing premises, the Court finds and so holds that the accused Gerry Sarabia (is) guilty beyond reasonable doubt of the crime of Murder, defined and penalized under Article 248 of the Revised Penal Code, qualified by the circumstance of treachery, and accordingly, he is hereby sentenced to an indeterminate penalty of imprisonment ranging from Seventeen (17) Years, Four (4) Months and One (1) Day, as minimum, to Twenty (20) Years of reclusion temporal, as maximum, to indemnify the heirs of the deceased Nesino P. Toling in the amount of P50,000.00, to suffer the other accessory penalties of the law and to pay the costs of the proceedings.

"SO ORDERED." (Emphasis supplied)

Unsatisfied, appeal was made to the Court of Appeals which affirmed the Decision of the trial court but modified the penalty imposed on appellant, thus:[46]

"WHEREFORE, except for the modification that the herein appellant Gerry Sarabia should be as he is hereby sentenced to suffer and undergo the penalty of reclusion perpetua with all the accessory penalties provided for by law, the decision under appeal is hereby AFFIRMED in all other respects, and this appeal is DISMISSED.

"Let the entire records of the instant case be elevated to the Honorable Supreme Court for proper disposition.

"No pronouncement as to costs.

"SO ORDERED."

Before this Court, appellant insists that the Court of Appeals committed a reversible error in affirming his conviction. Appellant faults respondent court for dismissing the testimony of defense witness Lowe Ebarle to the effect that he was not the gunman he saw fleeing from the crime scene. In his sworn statement, Ebarle pointed to one NELSON VERDIDA, a fugitive, as the gunman. Appellant urges that Ebarle's testimony merits greater weight than that of prosecution witness Galinato.

We affirm appellant's conviction. There is no cogent reason to disturb the finding of guilt made by the trial court

and affirmed by the appellant court. The age-old rule is that the task of assigning values to the testimonies of witnesses in the stand and weighing their credibility is best left to the trial court which forms its first-hand impressions as a witness testifies before it. It is also axiomatic that positive testimony prevails over negative testimony. In the case at bar, the positive testimony of prosecution witness Galinato narrating in detail the events leading to the shooting of the victim and his positive identification of appellant as the assailant carries more weight than the negative testimony of defense witness Lowe Ebarle that appellant was not the gunman. To be sure, the testimony of Galinato was categorical. Galinato was only seven (7) meters from the crime scene and had all the time to see and remember the details of the shooting. He saw the victim enter the office, with appellant following behind. He saw appellant pull the trigger thrice and walk away from the crime scene, only to return after a couple of minutes and fire another volley of shots at the hapless victim. Under the circumstances, Galinato had a clear opportunity to identify appellant. Well to note, appellant's face was familiar to Galinato as both of them are security guards in the area of Tinago, Ozamiz City. Galinato's eyeball account was strengthened by MARIVIC CUAMAG who established appellant's presence at the scene of the crime immediately prior to the shooting.

In contrast, the negative testimony of Ebarle is open to doubt. Ebarle saw the alleged assailant for only a fleeting moment as the latter passed before him. In fact, Ebarle admitted that he merely saw the side of the gunman's face.^[47] Anent Ebarle's sworn statement, he initially pointed to the picture of fugitive Nelson Verdida as the gunman, but after his statement was reduced to writing and he was shown appellant's picture, he became uncertain whether it was Verdida or appellant who shot the victim.

The positive identification of appellant by Galinato is bolstered by the physical evidence presented by the prosecution. Galinato testified that appellant was wearing a white polo shirt with black stripes (Exhibit "S") at the time of the shooting. A similar shirt was left by appellant in his cell and found by the authorities after appellant escaped from his detention cell. Moreover, before his escape, appellant left a handwritten note for Pat. Gallardo bragging that he still has his firearm and would retaliate in due time. Appellant's escape is hardly consistent with his claim of innocence.

Appellant likewise contends that Exhibit "2", the letter/certification signed by the barangay captain and some of the residents of Sto. Niño, Mahayag, Zamboanga del Sur, attesting to his presence in the house of Gerson Ramayrat on the date and time of the incident should exculpate him. Again, we find no cogent reason to disturb the trial court's appreciation of the evidence. These alleged barrio residents were not presented in court to testify on the (circumstances as to when and how exactly they saw appellant on that fateful day. Indeed, even Ruben Ramayrat and Dolo, a nephew of Gerson, who allegedly actually saw appellant in Zamboanga del Sur in the early morning of April 15, 1991 were not called as witnesses. Their non-presentation cannot but weaken appellant's alibi.

We further note that there is nothing to indicate that prosecution witnesses Galinato and Cuamag were actuated by ill-motive to implicate appellant in such grievous offense. Appellant confirmed that prior to their testimony in court, he did not know Galinato and Cuamag.^[48] Finally, appellant failed to establish that it was physically impossible for him to have been at the scene of the crime at the time of its commission. Even defense witness Gerson Ramayrat testified that his house is about 65 kilometers from Ozamiz City and may be negotiated by bus in just over two (2) hours.^[49]

We come now to the penalty.

In his Brief,^[50] it is stressed that Article 248 of the Revised Penal Code which defines the crime of Murder and provides for the penalty of reclusion temporal, maximum period to death, has been amended by R.A. 7659 (New

Death Penalty Law) by increasing the penalty of Murder to reclusion perpetua to death. It is further contended that under Section 21 of R.A. 7659, the penalty of reclusion perpetua has a definite duration of twenty (20) years and one (1) day to forty (40) years. Appellant urges that said law is favorable to him and should be given retroactive application. He concludes that if found guilty, his penalty should be reclusion perpetua medium or twenty-five (25) years of reclusion perpetua.

The contention lacks merit. In our en banc Resolution, dated January 9, 1995,[51] we modified the 1994 Decision of the First Division[52] in the case of *People v. Lucas* by deleting therefrom the disquisition's on whether reclusion perpetua is a divisible penalty and setting aside the division of reclusion perpetua into three (3) periods. We stressed that reclusion perpetua remains an indivisible penalty.[53] Thus, its graduation into periods is not allowed.

Hence, the range of penalty imposable on appellant who committed the crime of Murder before the passage of R.A. 7659 on December 31, 1993, is the penalty of reclusion temporal, maximum to death. The medium period of this penalty, which is reclusion perpetua, was thus properly imposed on appellant, there being no aggravating or mitigating circumstance which attended the commission of the crime.[54]

IN VIEW WHEREOF, the Decision of respondent Court of Appeals is AFFIRMED in toto. Costs against appellant.

SO ORDERED.

Regalado, (Chairman), Romero, Mendoza, and Torres, Jr., JJ., concur.

[1] Third Division, penned by Associate Justice Cancio C. Garcia and concurred in by Associate Justices Arturo B. Buena and Eugenio S. Labitoria.

[2] Tenth Judicial Region, Branch XV.

[3] Original Records, p. 1.

[4] TSN, September 23, 1991, pp. 3-4, 11.

[5] *Id.*, pp. 6-8, 11-15.

[6] *Id.*, pp. 5, 16.

[7] *Id.*, p. 9.

[8] *Id.*, pp. 9-10.

[9] TSN, September 26, 1991, pp. 2-3.

[10] *Id.*, pp. 3-4, 13.

[11] *Id.*, pp. 4-8.

[12] TSN, September 25, 1991, pp. 21-23.

[13] *Id.*, pp. 26-33.

[14] TSN, September 23, 1991, pp. 23-24.

[15] *Id.*, pp. 32-33.

[16] *Id.*, p. 33.

- [17] Id., p. 34.
- [18] Id., p. 34.
- [19] Id., pp. 35-36.
- [20] Id., p. 37.
- [21] RTC Decision, at p. 5; CA Rollo, p. 87.
- [22] Id., pp. 38-39.
- [23] Referred to in other parts of the transcript as Robin Berondo.
- [24] TSN, November 12, 1991, pp. 7-8.
- [25] Id., pp. 8-9.
- [26] Id., pp. 9-10.
- [27] Id., p. 10.
- [28] Id., p. 11.
- [29] TSN, November 12, 1991, pp. 16-18; TSN, November 13, 1991, p. 6.
- [30] TSN, November 13, 1991, pp. 4-5.
- [31] Id., p. 14.
- [32] TSN, October 21, 1991, pp. 2-6.
- [33] Id., pp. 7-8.
- [34] Id., pp. 9-10.
- [35] Id., p. 11.
- [36] Id., pp. 11-12.
- [37] Id., pp. 13-15.
- [38] Id., pp. 15-18.
- [39] TSN, October 25, 1991, pp. 2-8.
- [40] TSN, November 15, 1991, pp. 8-14.
- [41] Id., p. 15.
- [42] TSN, November 21, 1991, pp. 2-4.
- [43] Id., pp. 5-9.
- [44] TSN, November 21, 1991, pp. 10-12.
- [45] RTC Decision, dated March 25, 1992; Penned by Judge Felicidadario M. Batoy, RTC, 10th Judicial Region, Branch 15, Ozamiz City; Rollo, pp. 83-102.
- [46] CA Decision, September 13, 1995; Third Division, Penned by Associate Justice Cancio C. Garcia and

concurring in by Associate Justices Arturo B. Buena and Eugenio S. Labitoria; CA Rollo, pp. 141-150.

[47] TSN, November 21, 1991, pp. 5-9.

[48] TSN, November 13, 1991, p. 14.

[49] TSN, October 21, 1991, p. 15.

[50] Rollo, pp. 28-29.

[51] 240 SCRA 66 (1995).

[52] 232 SCRA 537, 551-552 (1994).

[53] See also *People v. Baculi*, 246 SCRA 756 (1995); *People v. Uycoque*, 246 SCRA 769 (1995).

[54] Article 64 (1), Revised Penal Code; *People v. Abrenica*, 252 SCRA 55 (1996); *People v. Amigo*, 252 SCRA 43; *People v. Flores*, 252 SCRA 31 (1996).

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