PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDWIN MORIAL, LEONARDO MORIAL ALIAS “CARDING” AND NONELITO ABIÑON ALIAS “NOLY,” DEFENDANTS-APPELLANTS.

G.R. No. 129295. August 15, 2001

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PER CURIAM:

Two of the three appellants herein were sentenced to death by the Regional Trial Court (RTC) of Southern Leyte for Robbery with Homicide. The other was sentenced to suffer only the penalty of reclusion perpetua on account of minority. The judgment of conviction is now before this Court on automatic review.

The information charging appellants reads as follows:

> That on the 6[th] day of January 1996, at about 6:30 o'clock [sic] in the evening more or less, in [B]arangay Cagnituan, [M]unicipality of Maasin, [P]rovince of Southern Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping one another, with intent to kill and with intent of [sic] gain, entered into [sic] the house of Paula Bandibas and Benjamin Morial and once inside did then and there willfully and unlawfully and feloniously attack, assault, box, beat and stab the victims Paula Bandibas and Albert Bandibas, with the use of sharp-pointed weapons and stones which the accused had provided themselves for the purpose, thereby inflicting upon the victims mortal wounds which caused their instantaneous death, after [which], said accused took, stole and carried away therefrom Cash in the amount of Eleven Thousand Pesos (P11,000.00) Philippine Currency, belonging to said Paula Bandibas and Benjamin Morial, to the damage and prejudice of the victims and of social order.
>
> CONTRARY TO LAW.[1]

Upon arraignment, the three accused pleaded not guilty.

The prosecution theorized that the accused committed the robbery in the early evening of January 6, 1996 so they would have money to spend for the dance later that night. To obtain the money or to silence any witnesses, the accused killed the occupants of the house, Paula Bandibas and her three-year old grandson Albert. In proving its theory, the prosecution offered the testimonies of Gabriel Guilao, Benjamin Morial, SPO4 Antonio Macion and Dr. Teodulo Salas.

The crime allegedly took place at 6:00 in the evening in Barangay Cagnituan, Maasin, Southern Leyte. Gabriel Guilao, 62, had just finished pasturing his horses and was on his way home. He was passing through the road near the house of Benjamin Morial when he heard the voice of Paula Bandibas pleading, "[P]lease don't kill me[.] I am going to give you money." Finding what he heard "weird," Gabriel paused and remained at a distance of about eight (8) meters from the yard of the house. From where he stood, Gabriel saw accused Nonelito Abiñon slap Paula Bandibas' neck. Paula fell and was stabbed by accused Edwin Morial with a small, sharp, pointed weapon. Accused Leonardo Morial stood outside the house.

Gabriel also saw Paula Bandibas' grandson, Albert Bandibas, run towards his grandmother's garden. Gabriel then heard the crushing sound of a stone against flesh.

The three accused stayed in the house for about ten minutes after the killing the victims. Thereafter, they departed and headed towards the nearby houses.[2]

Paula Bandibas' common-law husband, Benjamin Morial, 56, was in neighboring Barangay Maria Clara when the incident took place. He, along with the father of accused Leonardo Morial, and two others, Heracleo Alonzo and Leo Padilla, were having drinks in his Maria Clara residence.

Benjamin left Barangay Maria Clara the next day at 2:00 in the afternoon. He arrived in Barangay Cagnituan, 7½ kilometers away, two hours later. As was his wont, Benjamin called out Paula's name when he was some five (5) meters from the house. This time, however, there was no answer.

Benjamin raced to the house, heading straight to the bedroom. There, he found the clothes all topsy-turvy. The box where he and Paula hid their money was turned upside down. Someone had ransacked their house.

Benjamin moved back and saw Paula lying on the floor with a cut in her neck. He shouted for help. Responding to his cries, Benjamin's neighbors, including barangay kagawads Patricio Abiñon and Rufino Guilao, rushed to his house. Benjamin asked his neighbors to help search for Albert, who was found shortly some 50 meters from the house. Albert Bandibas laid flat on the ground with two stones near his head. Benjamin requested Patricio to send someone to report the incident to the police.[3]

Upon learning of Benjamin's return to Barangay Cagnituan, Gabriel Guilao also hurried to Benjamin's house.[4] He revealed to the grieving Benjamin that he witnessed Paula's killing and that the three accused, Edwin Morial, Leonardo Morial and Nonelito Abiñon, were the perpetrators. Benjamin advised Gabriel not to tell anyone about what he knew for fear that they would all be killed since the Abiñons were "saturated in [their] place." Gabriel heeded Benjamin's advice.[5]

The police arrived at around 10:00 that evening. SPO4 Antonio Macion, along with four other police officers, investigated the tragedy. They found wounds in Paula Bandibas' stomach, breast and neck. Albert Bandibas, on the other hand, had a contusion on the right side of his head. Beside him were two stones.[6]

After examining the victims' wounds, the police officers, along with Benjamin Morial, proceeded to the bedroom. Benjamin informed the officers that P11,000.00 was missing from the moneybox. Other than the cash, nothing else was missing.

Outside the house, Benjamin disclosed to the officers his three suspects, the accused in this case. He advised them, however, to bring only Leonardo and Edwin Morial into custody and not to include Nonelito Abiñon, who had many relatives in Cagnituan. As a former barangay captain of 22 years, he knew that the Abiñons were "most feared" in Cagnituan. Benjamin did not tell the police that Gabriel Guilao had witnessed the incident.[7]

The police found Edwin and Leonardo Morial in the house of Nonelito Abiñon and invited the two to the police station, where they were turned over to SPO4 Andres Fernandez. The investigation conducted by SPO4 Fernandez yielded an extra-judicial confession from accused Leonardo Morial,[8] who was assisted by Atty. Tobias Aguilar.

On January 8, 1996, Dr. Teodulo Salas, a rural health physician, conducted a post-mortem examination on the bodies of the victims. Dr. Salas found an incised wound at the upper portion of Paula Bandibas' neck, which he believed was caused by a sharp-edged weapon or instrument, possibly a knife. Two stab wounds on the chest below and above the right nipple, both punctured the lung. Another stab wound at the abdomen pierced the intestine. Dr. Salas concluded that the cause of death of Paula Bandibas is severe hemorrhages secondary to the incised wound.

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On the remains of Albert Bandibas, Dr. Salas found multiple angular corrogated wounds on the head, which could have been caused by a heavy object such as a stone. Multiple stab wounds punctured the skull. There was also an abrasion on the right side of the face, which was grossly swollen and disfigured. The abrasion, according to Dr. Salas, might have been caused by a piece of wood, by friction with the ground, or by some rough material that struck the child's face. The last injury was a stab wound on the right forehead. Dr. Salas believed that the cause of death of Albert Bandibas is the intra-cranial hemorrhages secondary to the violent injury to the head.[9] The foregoing findings and conclusions were reduced to writing in the doctor's Necropsy Reports.[10]

The accused, all first-degree cousins, interposed denial and alibi as their defense. They denied being together at the time of the incident.

Accused Nonelito Abiñon, 22, claimed that he was in his house at around 6:00 in the evening of January 6, 1996. An hour later, he went to the house of his sweetheart, Rosalie Mepico, and the two later attended a dance at around 9:30 that evening. At the dance, they occupied a table with Renida Mepico, Renato Montederamos and Edwin Morial. Leonardo Morial, he said, was not with them.[11]

Accused Edwin Morial, 18, maintained that he was also at home on January 6, 1996. He slept from 6:00 until 7:30 in the evening. At 9:00 p.m., he went to the dance with Renato Montederamos. Nonelito Abiñon and Reneda Mepico were also at the dance.[12]

The defense pinned its bid for exculpation on the lengthy testimony of accused Leonardo Morial, 20. He narrated as follows:

At around 6:00 to 7:00 p.m. of January 6, 1996, he was at home washing dishes. He had supper at approximately 7:00 and went to sleep at about 7:30 or 8:00. Unlike his fellow accused, Leonardo did not go to the dance.[13]

At 4:00 in the afternoon of the next day, he was in the basketball court of their barangay watching Nonelito and Edwin playing basketball with Jaime Morial, Renato Montederamos, Jimmy Abiñon, Danilo Morial and Christopher Morial, among others.[14] Suddenly, they heard Benjamin Morial shout for help several times.[15] Nonelito and Edwin, along with the others in the basketball court, all rushed to Benjamin Morial's house.[16] Leonardo Morial also proceeded to Benjamin's house after bringing home his two-year old sister.[17]

At the house of Benjamin Morial, they found the lifeless body of Paula Bandibas on the floor underneath the kitchen table. Her hands were on her breast, one foot crooked and the other straight. She had wounds in her neck and breast. The corpse exuded a bad odor. Benjamin Morial was crying. He said that whoever killed Paula shall pay.[18] Edwin asked Daniel Morial who the suspects to the killing were. Daniel said he did not know. Edwin went home after about five minutes.[19]

After viewing Paula Bandibas' remains, Leonardo went out of the house because of the unpleasant smell and then headed home.[20] Nonelito, on the other hand, departed as people started looking for the body of Albert Bandibas since it was getting late. That was about 5:15 in the afternoon.[21]

That night, Edwin and Leonardo slept at Nonelito's house. Nonelito had invited Edwin to sleep over as they were going to dress a chicken,[22] and Edwin had told Leonardo about it. The cousins had the chicken for dinner. It was quite late when they finished their supper so Leonardo also decided to spend the night at Nonelito's house.[23] They slept at past 8:00 in the evening.[24] According to Nonelito, that was not the only time that the two had slept over. He said there were previous occasions that his cousins had spent the night at their place.[25]

The Abiñon household was to be roused from its slumber three hours later. At 11:00 p.m., the police arrived to investigate the killing of the Bandibases. A police officer asked Edwin where he was at 6:00 in the evening of

January 6, 1996. Edwin replied that he was in their house sleeping. They also asked the same question to Leonardo Morial, who answered that he was at home taking care of his younger siblings. Nonelito, however, was not questioned. A policeman informed Edwin and Leonardo that they would be brought to the police station for the continuation of the investigation.[26]

Edwin and Leonardo went with the police officers and arrived at the station at around 3:00 dawn the next day. The police told them to go to sleep.[27]

The suspects were interrogated after they awoke at past 6:00 that same morning. Edwin was advised to tell the truth so he would not be killed. Nevertheless, he refused to admit his alleged participation in the killings. Someone then struck his left hand with a pistol. His hand swelled. A policeman in uniform warned him that if he did not tell the truth, he would be brought to the toilet.

Sure enough, Edwin was subsequently brought to the lavatory where he was boxed at the back and instructed to undress. As Edwin stood naked, hands on his side, six tires were placed around his body. A towel soaked with water was pushed into his mouth. Fortunately, the towel did not go all the way to his throat since another policeman, a certain Leoni Egido, advised Edwin' s tormentors to stop and have pity on him. Edwin said that around seven policemen were in the toilet with him though he could not identify any of them in court. He claimed that he did not have his hand examined by a physician since he was afraid.[28]

Like Edwin, Leonardo was also asked where he was on January 6, 1996 at 6:00 in the evening. Leonardo reiterated that he was at home. He was then brought to a separate room where his interrogation continued.

Leonardo refused to own up to the incident so a policeman called two other policemen and directed them to gag Leonardo. The two held Leonardo's arms while the other stuffed a shirt into his mouth. One of them inflicted three successive painful blows on Leonardo's left side as the two others continued to hold his hands.

Leonardo was then seated and his gag removed. The police told Leonardo to confess to the killings. Leonardo professed that he did not witness the incident and could not tell them anything about it. Again, they gagged his mouth and the same policeman who had hit him then boxed him twice, this time on his right side. Thereafter, they released their hold and advised him to confess so they would not kill him. Leonardo repeated that he did not know anything about the incident. When a policeman attempted to box him again, Leonardo finally admitted that Nonelito Abiñon and Edwin Morial were responsible for the death of Paula Bandibas. Leonardo's interrogation lasted one and a half to two hours.

Asked in court to identify the uniformed policemen who beat him up, Leonardo said he could not recall their faces. He did not look at the policemen during his interrogation and did not see their nameplates.

Leonardo did not ask the police for a physician to examine him nor did he tell anyone about his injuries because he did not know he was permitted to do so.

Leonardo's statements were then reduced into writing. A policeman informed him that they were going to contact a lawyer to assist him during the investigation. Leonardo was told that his counsel would be a certain Atty. Aguilar whose office was very near the police station. Leonardo consented.

Having prepared Leonardo's statement, the police then told Leonardo to come with them to Atty. Aguilar's office, which was about 50 meters from the police station. There, he saw Atty. Aguilar for the first time. The lawyer read to him the document and asked him whether its contents were true. The police had instructed Leonardo to answer "yes" if he was asked that question, and Leonardo heeded the instructions.

Leonardo denied that Atty. Aguilar examined his body for any injuries. Atty. Aguilar did ask Leonardo if he was

forced or intimidated to execute the extra-judicial confession. Leonardo, however, did not tell his lawyer about his injuries since a police officer had warned him that he would be mauled again should he do so. Leonardo then signed the extra-judicial confession, after which Atty. Aguilar affixed his. The signing over, Leonardo was brought back to the police station.[29] Later in court, Leonardo claimed that he merely made up all the statements in the document because he was afraid.

At around 8:30 that morning, Nonelito visited Leonardo and Edwin at the police station. A police officer informed Nonelito that he was one of the suspects and handcuffed him.[30]

To belie Gabriel Guilao's eyewitness account, the defense also presented Patricio Abiñon and Eulogio Padilla. Patricio and Eulogio purportedly saw Gabriel in Barangay Maria Clara at the alleged time of the incident as well as the morning after.

On rebuttal, the prosecution offered the testomonies of Flora Bandibas, Martin Galope and Erlito Bandibas.

Flora and Martin were presented to disprove the testimony of the accused that Edwin Morial was not at the dance with his co-accused. Flora claimed that she saw the three together at the dance with Rosalia and Reneda Mepico occupying one table. Nonelito and Edwin danced joyfully, even somewhat unusually, and caught the attention of other people. Leonardo also danced but did not seem to enjoy himself.[31]

Martin, a barangay tanod, was at the dance to help preserve the peace. He maintained that he saw all the three accused, including Leonardo Morial, at the dance.[32]

The defense attempted to diminish these witnesses' credibility by showing their relation to the victim. On cross-examination, Flora admitted that she is the wife of Ireneo Bandibas, the barangay captain, and the son of Paula Bandibas.[33] Martin Galope, for his part, said that the same Ireneo Bandibas had appointed him barangay tanod.[34]

Erlito Bandibas' testimony, on the other hand, was intended to refute the testimonies of defense witnesses Patricio Abiñon and Eulogio Padilla that Gabriel Guilao, the alleged eyewitness to the killings, was in Maria Clara at the purported time of the incident.

On sur-rebuttal, the defense again presented Eulogio Padilla to dispute the testimony of Erlito Bandibas.

After trial, the RTC rendered a decision convicting all the three accused, thus:

> WHEREFORE, judgment is hereby rendered finding all the accused, namely: LEONARDO MORIAL, NONELITO ABIÑON and EDWIN MORIAL, GUILTY beyond reasonable doubt of the crime of ROBBERY WITH HOMICIDE as defined under Article 293 and penalized under Article 294 (1) of the Revised Penal Code and are hereby sentenced as follows:
>
> 1. Accused LEONARDO MORIAL and NONELITO ABIÑON to each suffer the supreme penalty of DEATH by lethal injection; and
>
> 2. Accused EDWIN MORIAL, due to his minority, to suffer the lesser penalty of RECLUSION PERPETUA.
>
> Civilly, the three (3) accused aforenamed are held liable JOINTLY and SEVERALLY as follows:
>
> 3. To indemnify the heirs of Paula Bandibas the amount of P50,000.00 as death indemnity;
>
> 4. To indemnify the heirs of Albert Bandibas the amount of P50,000.00 as death indemnity;
>
> 5. To indemnify complainant Benjamin Morial the amount of P20,546.00 as actual damages for the funeral, burial and wake expenses;

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6. To pay to the heirs [the] aforementioned moral damages of P60,000.00 for each death; and

7. To restitute or restore to private complainant Benjamin Morial the P11,000.00 amount robbed;

8. To pay the costs.

SO ORDERED.[35]

Appellants' conviction rests on two vital pieces of evidence: the extra-judicial confession of appellant Leonardo Morial and the eyewitness account of Gabriel Guilao.

The Court finds Leonardo Morial's extra-judicial confession invalid since he was effectively deprived of his right to counsel during the custodial investigation.

A custodial investigation is understood to mean as "any questioning initiated by law enforcement authorities after a person is taken into custody or otherwise deprived of his freedom of action in any significant manner."[36] It begins when there is no longer a general inquiry into an unsolved crime but starts to focus on a particular person as a suspect, i.e., when the police investigator starts interrogating or exacting a confession from the suspect in connection with an alleged offense.[37]

A person under custodial investigation is guaranteed certain rights, which attach upon the commencement thereof. These are the rights (1) to remain silent, (2) to competent and independent counsel, preferably of his own choice, and (3) to be informed of the two other rights.[38] The prosecution must prove with clear and convincing evidence that the accused was accorded said rights before he extra-judicially admitted his guilt to the authorities.[39]

Thus, the prosecution offered the testimonies of SPO4 Andres Fernandez and Atty. Tobias Aguilar. SPO4 Fernandez testified that the investigation he conducted resulted in an admission by Leonardo Morial that he was one of those who participated in the robbery with homicide. SPO4 Fernandez asked Leonardo whether he was willing to reduce his statement into writing and to sign the same. The suspect answered positively. SPO4 Fernandez then advised him of his right "to remain silent and [to] have a counsel[,] [and informed him that] whatever will be his answer will be used as evidence in Court."[40]

Leonardo told the investigator that he had no money to pay for the services of counsel. SPO4 Fernandez informed him that there are many lawyers in their municipality and named some of them. Leonardo said he did not know any of the lawyers mentioned. SPO4 Fernandez thus volunteered to obtain a lawyer for the suspect, to which Leonardo Morial consented. SPO4 Fernandez then contacted Atty. Aguilar.[41]

Atty. Tobias Aguilar arrived at about 8:00 that morning of January 9, 1996. After being introduced to Leonardo Morial, Atty. Aguilar had a short conference with him. He asked Leonardo if he was willing to answer the questions that may be propounded by the police investigator. Atty. Aguilar warned him that the statements that he may give might be used in evidence against him. Leonardo said he was willing to answer the questions voluntarily. According to Atty. Aguilar, Leonardo was bent on revealing what really happened. Thereafter, SPO4 Fernandez conducted the investigation in Cebuano.

Midway into the investigation, after the police investigator had asked "all the material points," Atty. Aguilar asked the investigator that he be given leave as he had a very important engagement. The investigator agreed to the lawyer's request.[42]

Before leaving, Atty. Aguilar asked Leonardo if he was willing to answer the questions in his absence. He also instructed the police that, after the written confession had been prepared, the accused and the document containing the confession should be brought to his office for "further examination." Atty. Aguilar was in the police station for

less than thirty minutes from the start of the interrogation.

At about 1:30 or 2:00 in the afternoon, Leonardo and his policeman-escort arrived at Atty. Aguilar's office. Atty. Aguilar asked the accused whether he was maltreated while he was away and examined the suspect's body for contusions or abrasions. Leonardo told him that he was not harmed by the police officer. The lawyer then studied the document to determine whether its contents conformed to the answers given by the accused in his (counsel's) presence. He propounded questions to Leonardo with reference to the document. Atty. Aguilar asked him whether he understood its contents and whether he was willing to sign it. Leonardo replied in the positive and signed the document in the presence of Atty. Aguilar and the policeman-escort.[43]

SPO4 Fernandez confirmed that Atty. Aguilar left during the investigation. On direct examination, SPO4 Fernandez said the lawyer left the station while the investigation was still going on, saying that he had so many things to do in his office.[44] On cross-examination, SPO4 Fernandez hesitated a little when he testified that Atty. Aguilar "might" have probably gone out in the middle of the investigation.[45] Later, he clarified that while in the process of drafting the statement, Atty. Aguilar told him that he had to go to his office to attend to some matters.[46] SPO4 Fernandez added that while Atty. Aguilar was "in the police station during the investigation," "he (Atty. Aguilar) [would] come and go but within the police station."[47]

During and despite Atty. Aguilar's absence, SPO4 Fernandez continued with the investigation and propounded several more questions to Leonardo, which the latter answered.[48]

The Court has stressed that an accused under custodial interrogation must continuously have a counsel assisting him from the very start thereof.[49] In People vs. Lucero,[50] where the suspect's counsel left just when the interrogation was starting, this Court chastised both counsel and the trial court for their lack of zeal in safeguarding the rights of the accused.

SPO4 Fernandez cannot justify Atty. Aguilar's leaving by claiming that when the lawyer left, he knew very well that the suspect had already admitted that he (Leonardo) and his companions committed the crime.[51] Neither can Atty. Aguilar rationalize his abandoning his client by saying that he left only after the latter had admitted the "material points," referring to the three accused's respective participation in the crime.[52] For even as the person under custodial investigation enjoys the right to counsel from its inception, so does he enjoy such right until its termination -indeed, "in every phase of the investigation."[53] An effective and vigilant counsel "necessarily and logically requires that the lawyer be present and able to advise and assist his client from the time the confessant answers the first question asked by the investigating officer until the signing of the extrajudicial confession."[54]

Furthermore, Section 2(a) of R.A. No.7438[55] requires that "[a]ny person arrested, detained or under custodial investigation shall at all times be assisted by counsel." The last paragraph of Section 3 of the same law mandates that "[i]n the absence of any lawyer, no custodial investigation shall be conducted."

The right of appellant to counsel was therefore completely negated by the precipitate departure of Atty. Tobias before the termination of the custodial investigation. In People vs. Deniega,[56] we explained the rationale for the rule requiring counsel's continuing presence throughout the custodial investigation:

> Conditions vary at every stage of the process of custodial investigation. What may satisfy constitutional requirements of voluntariness at the investigation's onset may not be sufficient as the investigation goes on. x x x. The competent or independent counsel so engaged should be present from the beginning to end, i.e., at all stages of the interview, counseling or advising caution reasonably at every turn of the investigation, and stopping the interrogation once in a while either to give advice to the accused that he may either continue, choose to remain silent or terminate the interview.

If it were true that Atty. Tobias had to attend to matters so pressing that he had to abandon a client undergoing custodial investigation, he could have terminated the same to be continued only until as soon as his schedule permitted, advising the suspect in the meantime to remain silent. This he failed to do. Apallingly, he even asked his client whether he was willing to answer questions during the lawyer's absence. The records also disclose that Atty. Tobias never informed appellant of his right to remain silent, not even before the custodial investigation started.[57]

Atty. Tobias, by his failure to inform appellant of the latter's right to remain silent, by his "coming and going" during the custodial investigation, and by his abrupt departure before the termination of the proceedings, can hardly be the counsel that the framers of the 1987 Constitution contemplated when it added the modifier "competent" to the word "counsel." Neither can he be described as the "vigilant and effective" counsel that jurisprudence requires. Precisely, it is Atty. Tobias' nonchalant behavior during the custodial investigation that the Constitution abhors and which this Court condemns. His casual attitude subverted the very purpose for this vital right, which is to:

> x x x curb the uncivilized practice of extracting confession even by the slightest coercion as would lead the accused to admit something false. What is sought to be avoided is the "evil of extorting from the very mouth of the person undergoing interrogation for the commission of an offense, the very evidence with which to prosecute and thereafter convict him." These constitutional guarantee have been made available to protect him from the inherently coercive psychological, if not physical, atmosphere of such investigation.[58]

Even granting that appellant consented to Atty. Aguilar's departure during the investigation and to answer questions during the lawyer's absence, such consent was an invalid waiver of his right to counsel and his right to remain silent. Under Section 12 (3), Article III of the Constitution, these rights cannot be waived unless the same is made in writing and in the presence of counsel. No such written and counseled waiver of these rights was offered in evidence.

That the extra-judicial confession was subsequently signed in the presence of counsel did not cure its constitutional defects. In People vs. Compil,[59] this Court held:

> x x x it is evident that accused-appellant was immediately subjected to an interrogation upon his arrest in the house of Rey Lopez in Tayabas, Quezon. He was then brought to the Tayabas Police Station where he was further questioned. And while on their way to Manila, the arresting agents again elicited incriminating information. In all three instances, he confessed to the commission of the crime and admitted his participation therein. In all those instances, he was not assisted by counsel.
>
> The belated arrival of the CLAO lawyer the following day even if prior to the actual signing of the uncounseled confession does not cure the defect for the investigators were already able to extract incriminatory statements from accused- appellant. The operative act, it has been stressed, is when the police investigation is no longer a general inquiry into an unsolved crime but has began to focus on a particular suspect who has been taken into custody by the police to carry out a process of interrogation that lends itself to eliciting incriminatory statements, and not the signing by the suspect of his supposed extrajudicial confession. Thus in People v. de Jesus [213 SCRA 345 (1992)] we said that admissions obtained during custodial interrogations without the benefit of counsel although later reduced to writing and signed in the presence of counsel are still flawed under the Constitution. [Underscoring supplied.]

Moreover, appellant's policeman-escort was also present in the lawyer's office as attorney and client discussed the voluntariness of the latter's confession. One can hardly expect the suspect, in the face of such intimidating presence, to candidly admit that he was coerced into confessing.

As appellant Leonardo Morial was effectively deprived of his right to counsel during custodial investigation, his

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extra-judicial confession is inadmissible in evidence against him.[60]

The confession is also inadmissible against appellant Leonardo Morial's co-accused, Nonelito Abiñon and Edwin Morial. The rule on res inter alios acta provides that the rights of a party cannot be prejudiced by an act, declaration, or omission of another [61]

An exception to the res inter alios acta rule is an admission made by a conspirator. Section 30, Rule 130 of the Rules of Court provides that the act or declaration of the conspirator relating to the conspiracy and during its existence may be given in evidence against the co-conspirator provided that the conspiracy is shown by evidence other than by such act or declaration. The exception, however, does not apply in this case since the confession was made after the alleged conspiracy and not while the declarant was engaged in carrying out the conspiracy.[62]

Notwithstanding the inadmissibility of the extrajudicial confession executed by Leonardo Morial, the conviction of appellants is fully supported by the other pieces of evidence adduced by the prosecution. It is well settled that where there is independent evidence, apart from the accused's alleged uncounseled confession, that the accused is truly guilty, the latter nevertheless faces a conviction.[63] Here, the testimony of eyewitness Gabriel Guilao certainly deserves credence. He recounted before the trial court:

> Q
>
> Now, do you still recall Mr. Witness where you were on January 6, 1996 at more or less 6:00 o'clock in the afternoon?
>
> A
>
> I can remember, sir.
>
> Q
>
> Where were you if you can recall?
>
> A
>
> I was pasturing my horse.
>
> Q
>
> How many horses do you have?
>
> A
>
> One mature and one young horse, the young one is not yet tied up.
>
> Q
>
> So you have two horses all in all?
>
> PROS. RUIZ:
>
> Q
>
> Do you have carabao, Mr. Witness?
>
> A
>
> None, Sir.
>
> Q

Now, while you were pasturing your horse at more or less 6:00 o'clock in the afternoon of January 6, 1996, I withdraw that question, Your Honor.

COURT:

Reform.

PROS. RUIZ:

Q

Now, how long did you stay in that pasture land?

A

Two minutes, Sir, then I went home.

Q

So, after pasturing your horse for two minutes, after that you went home? Now, on your way home, do you remember what happened if any?

A

Yes, Sir.

Q

What was that incident are you referring to?

A

When I went home, I passed by on the road near the house of Benjamin Morial, then I heard the voice of Paula saying: "please don't kill me I am going to give you money."

Q

Now, when you said, Paula are you referring to Paula one of the victim in this case?

A

Yes, Sir.

PROS. RUIZ

Q

Now, when you heard that voice of Paula, what did you do?

A

I paused for a while because what I heard I found it weird.

Q

Where did you stay at that moment as what you have said that you stayed for a while?

A

I stayed at a distance of about 8 meters from their yard.

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Q

Were there trees in the place where you were staying at that time?

A

Yes, Sir.

Q

While staying at the distance of 8 meters away from the yard of the house of Benjamin Morial, what did you observe if any?

A

I saw that the old woman was slapped by Nonelito Abiñon on her neck.

Q

What else have you observed if any?

A

Then the old woman was down and when she was down, this Edwin Morial stabbed her.

Q

Would you please tell this Honorable Court what was that weapon used in stabbing the old woman by Edwin Morial?

A

A small sharp pointed weapon, Sir.

Q

Now, have you seen Leonardo Morial in the house of Benjamin Morial?

WITNESS:

A

Leonardo Morial was just outside the house of Paula Bandibas.

PROS. RUIZ:

Q

What was Leonardo Morial doing outside the house of Benjamin Morial?

A

He was just standing thereat.

Q

Now, in your estimate, how long did Nonelito and Edwin were inside the house of Benjamin Morial?

WITNESS:

After they have killed the old woman, two minutes. . .

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ATTY. GABUCAN:

The answer is not responsive, the question was how long?

PROS. RUIZ:

That is the answer of the witness.

COURT:

Continue with the answer.

WITNESS:

A

After killing the old woman, they stayed inside the house for about ten minutes, Sir.

Q

Now, after ten minutes, what did they do Mr. Witness?

A

They went out of the house.

PROS. RUIZ:

Q

After getting out from the house, what did they do?

A

They went home, Sir.

Q

In what direction?

A

Towards the houses nearby.[64]

The defense has tried to discredit Guilao by harping on the latter's relationship with private complainant, Benjamin Morial, who is the brother of Gabriel's wife,[65] conveniently forgetting that Gabriel is also related to all of the accused who are all his nephews.[66] On this score, the Court has held that the weight of testimony of a witness is not impaired or in any way affected by his relationship to the victim when there is no showing of improper motive on the part of the witness.[67] A person who was close to the victim would not callously violate his conscience by blaming it on someone he believed innocent thereof,[68] especially if the accused were his blood relatives.

Anent the failure of Guilao to either attend to the victims or to report the matter immediately to the authorities, it should be remembered that different people react differently to an unusual event and there is no standard of behavior when a person becomes a witness to something so shocking or gruesome as murder especially if the assailant is near.[69] The initial reluctance of the eyewitness to disclose what transpired was sufficiently explained: Gabriel, who was 62 years old at the time of the incident, was too afraid to share what he saw even to his wife,[70] and while he wanted to tell their barangay captain, the latter was in Davao at that time.[71] Instead,

he made up his mind to tell only Benjamin,[72] the common-law husband of the victim Paula, which he promptly did upon Benjamin's arrival at his house from Maria Clara.[73] The failure of Gabriel to execute an affidavit on what he witnessed was in fact due to the request of Benjamin who advised him not to tell anybody for fear that they might all be killed,[74] as the Abiñons were the most feared persons in this place.[75]

The defense, likewise, tried to show that Gabriel could not have possibly witnessed the crime because he was in Maria Clara at that time. Patricio Abiñon, a relative of the accused Nonelito Abiñon,[76] testified that he saw Gabriel at Maria Clara at around six o'clock in the evening of 06 January 1996,[77] and again at around eight o'clock in the morning the following day.[78] He surmised that Gabriel stayed in Maria Clara because it would take him about two (2) hours of hiking to travel from Maria Clara to Cagnituan. However, it could not be discounted that Patricio was merely making an opinion as to the travel or hiking time of Gabriel and he also admitted that he was not wearing a timepiece.[79] Hence, as observed by the trial court, it was not farfetched that Gabriel was in Maria Clara in the afternoon of 06 January 1996, hiked to Cagnituan in time to witness the incident and then returned to Maria Clara in the morning of 07 January 1996 to buy some fish.

As regards the defense testimonies that Gabriel could not have possibly seen the incident from the trail, it should be stressed here that Gabriel categorically stated that he was about eight (8) meters from the yard of Benjamin’s house when he saw Nonelito Abiñon slap Paula on the neck after which Edwin Morial stabbed her.[80] In addition, defense witnesses Patricio Abiñon and Eulogio Padilla even contradicted each other when the former stated it would be possible to see the inside of the house if the light was on[81] while the latter stated that any person inside could not be seen even if the light was on.[82]

Pending review of this case, Gabriel Guilao filed before this Court a three page “Manifestation with Prayer,” dated 22 June 2000, which in effect, was a recantation of his testimony in the trial court. He declared that he was “utilized” by Benjamin Morial against the three accused because the latter had a long-standing grudge against them and was impelled by “hatred” and a “false sense of anger.” Since Benjamin could not “pinpoint” the killer of Paula and Albert Bandibas, it was decided that the three accused be implicated to the crime "as a way of getting revenge." Gabriel's relation to Benjamin, whose wife is the sister of Gabriel's wife Regina, accounted for Benjamin's influence over him. In sum, Gabriel maintained that appellants Edwin Morial, Leonardo Morial and Nonelito Abiñon had "nothing to do with the crime charged."

The attitude of courts towards affidavits of retraction is one of distrust, if not of disapprobation, because

> x x x affidavits of recantation can easily be secured from poor and ignorant witnesses for monetary consideration or through intimidation. Recanted testimony is exceedingly unreliable for there is always the probability that it may later be repudiated. Courts thus look with disfavor at affidavits of retractions of testimony given in open court, and are wary or reluctant to allow a new trial based on retracted testimony. Indeed, it would be a dangerous rule to reject the testimony taken before the court of justice simply because the witness later on changed his mind for one reason or another, for such a rule will make a solemn trial a mockery and will place the investigation of truth at the mercy of unscrupulous witnesses.[83]

Further, the defense, during the trial of this case, failed to establish any grudge or animosity between and against the accused and Benjamin Morial, as well as against the accused and Gabriel Guilao. In fact, when Edwin's father died, Benjamin accommodated Edwin and his mother in his nipa house "kamalig" for more than two (2) years.[84] Nonelito Abiñon also testified that he could not recall having personal differences with Benjamin.[85]

The accused have no other excuse other than alibi. Interestingly, they all testified that they were in their respective homes at the time of the incident. Edwin Morial was sleeping,[86] Leonardo Morial was cooking,[87] while Nonelito Abiñon was at home, not doing anything.[88] In a number of cases, the Court as ruled that alibi is the

weakest of all defenses as it is easy to fabricate and difficult to disprove, and it is practically worthless in the face of positive identification of the accused.[89] The Court noted that none of the accused even presented any of their supposed home companions to prove that they were at home when the killings took place. In addition, it was not established that it would have been physically impossible for them to be at the scene of the crime at the time of its commission.[90] The house of Edwin Morial was about two hundred (200) meters from the house of Benjamin,[91] the house of Leonardo Morial only about sixty (60) meters away,[92] while the house of Nonelito Abiñon was about seven hundred (700) meters from the house of Benjamin and he could negotiate the distance in about ten (10) minutes.[93] Equally unnatural were the respective reactions of the accused when the bodies of Paula and Albert were discovered. Leonardo Morial went home after seeing the body of Paula,[94] Edwin Morial looked at the body of Paula for five (5) minutes after which he went home,[95] while Nonelito Abiñon left the house of Benjamin while the others who went there upon hearing the shouts of Benjamin were still searching for the body of Albert.[96] The prosecution was also able to establish that the three accused were in one table during the benefit dance which transpired on the eve of the incident,[97] contrary to statements of Edwin Morial and Nonelito Abiñon.

The trial court correctly ruled when it found the accused guilty of robbery with homicide. It was established that all the elements of the crime were present; i.e., (1) the taking of personal property perpetrated by means of violence or intimidation against a person; (2) the property taken belongs to another; (3) the taking is characterized by intent to gain or animus lucrandi; and (4) on the occasion of the robbery or by reason thereof, the crime of homicide was committed.[98]

In this case, Benjamin, upon arrival at his house, found that their room as in disarray, the clothes were scattered and the box where they kept their money was already turned upside down.[99] The amount of P11,000.00 contained in the box was already missing,[100] Paula was already lifeless[101] and Albert was nowhere to be found.[102]

The trial court also correctly ruled that the accused conspired to commit the crime. Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony, and decide to commit it.[103] It may be inferred from the acts of the accused before, during and after the crime, which are indicative of a joint purpose, concerted action and concurrence of sentiments.[104] Where the acts of the accused collectively and individually demonstrate the existence of a common design towards the accomplishment of the same unlawful purpose, conspiracy is evident and all the perpetrators will be liable as principals.[105] To exempt himself from criminal liability, the conspirator must have performed an overt act to dissociate or detach himself from the unlawful plan to commit the felony.[106]

In this case, it was established that after the killing of Paula, the accused even stayed inside the house for about ten (10) minutes,[107] presumably to look for the hidden money. After about ten (10) minutes, they left the house of Benjamin and went home.[108] Clearly, Paula and Albert were already dead or dying but not one of the accused lifted a finger to show any pity or remorse. Hence, they should all be made liable for the crime.

Dwelling was correctly appreciated as an aggravating circumstance because of the sanctity that the law accords to the privacy of the human abode.[109] The home is considered a sacred place to its owners, and one who goes to another house to slander or hurt him, or do him wrong, more guilty than he who offends him elsewhere.[110] However, evident premeditation is inherent in robbery and should not have been considered against the accused.[111] Treachery could only be appreciated in crimes against persons,[112] the same way with disregard of respect due to sex and age which can be considered only in cases of crimes against persons and honor.[113]

Nevertheless, accused Edwin Morial should still be spared the death penalty. The records would show that he was

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a minor at the time of the execution of the crime.[114] In People vs. Villagracia,[115] the Court ruled:

> In this case, the trial court failed to consider the age of appellant Nixon Ledesma when the crime was committed. At the time he testified on May 17, 1989, he stated that he was only 15 years old (TSN, May 17, 1989, p. 31). No contradictory evidence was presented by the prosecution. So, when the crime was committed on September 23, 1987, or more than a year before he was presented as a witness, Nixon Ledesma was less than 15 years old.
>
> In People vs. Lugto, 190 SCRA 754 [1990], we held that the accused has the burden of proof that he was minor at the time of the commission of the crime. However, in People v. Tismo, 204 SCRA 535 [1991], we upheld appellants' claim that he was 17 years old at the time the crime was committed even without any proof to corroborate his testimony. Considering that the prosecution failed to present contradictory evidence, we applied to appellant therein the privileged mitigating circumstance of minority under the second paragraph of Article 13 of the Revised Penal Code.
>
> Lugto appears to be an aberration from the long line of decisions antedating it. From U.S. v. Bergantino, 3 Phil. 118 [1903] to People v. Ebora, 141 SCRA 282 [1986], we have consistently ruled that, although the accused did not offer any evidence to support his claim of minority, this fact will remain as such, until disproved by the prosecution (See also U.S. v. Barbicho, 13 Phil. 616 [1909]; U.S. vs. Agadas, 36 Phil. 247 [1917]; People v. Ebora, 141 SCRA 282 [1986]; People v. Bernalde, 139 SCRA 426 [1986]).

Article 294 (1) of the Revised Penal Code prescribes the penalty of reclusion perpetua to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed. As the aggravating circumstance of dwelling attended the commission thereof, the greater penalty, i.e., death, shall be imposed[116] upon appellants Nonelito Abiñon and Leonardo Morial.

However, appellant Edwin Morial, who was over 15 but under 18 years of age at the time of the commission of the crime, is entitled to the privileged mitigating circumstance of minority. Accordingly, the penalty next lower,[117] i.e., reclusion temporal, shall be imposed upon him in its maximum period,[118] there being one aggravating circumstance (dwelling).

Said appellant is further entitled to the benefits of the Indeterminate Sentence Law.[119] Under Section 1 thereof, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the Revised Penal Code, and the minimum which shall be within the range of the penalty next lower to that prescribed in the Code for the offense. Thus, appellant Edwin Morial is hereby sentenced to an indeterminate penalty of ten (10) years and one (1) day of prision mayor as minimum to seventeen (17) years, four (4) months and one (1) day of reclusion temporal as maximum.

As regards the civil liability of appellants, the award of P60,000.00 to he heirs of each victim as moral damages is hereby reduced to P50,000.00 each, in conformity with recent jurisprudence.[120]

Four members of the Court maintain their position that Republic Act No. 7659, insofar as it prescribes the death penalty, is unconstitutional; nevertheless, they submit to the ruling of the Court, by majority vote, that the law is constitutional and the death penalty should be imposed accordingly.

WHEREFORE, finding the accused guilty beyond reasonable doubt of the crime of "Robbery with Homicide," with the aggravating circumstance of dwelling, Leonardo Morial and Nonelito Abiñon are hereby sentenced to suffer the penalty of death by lethal injection, while Edwin Morial, on account of his minority, is hereby sentenced to the indeterminate penalty of from ten (10) years and one (1) day of prision mayor as minimum, to seventeen (17) years, four (4) months and one (1) day of reclusion temporal as maximum. The accused are

likewise sentenced, jointly and severally, to:

(1) indemnify the heirs of Paula Bandibas in the amount of Fifty Thousand (P50,000.00) Pesos as death indemnity;

(2) indemnify the heirs of Albert Bandibas in the amount of Fifty Thousand (P50,000.00) Pesos as death indemnity;

(3) indemnify the heirs of Paula Bandibas and Albert Bandibas in the amount of Fifty Thousand (P50,000.00) Pesos for each death as moral damages;

(4) indemnify Benjamin Morial in the amount of Twenty Thousand Five Hundred Forty-Six (P20,546.00) pesos as actual damages for funeral, burial and wake expenses;

(5) restitute Benjamin Morial the amount of Eleven Thousand (P11,000.00) Pesos representing the stolen money.

Cost against accused-appellants.

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

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., JJ., concur.
Quisumbing, J., out of town on O.B.
Gutierrez, J., on leave.

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[*] Also appears as “Abiñon” in the records.

[1] Records, p. 1.

[2] TSN, March 29, 1996, pp. 2-12.

[3] TSN, June 17,1996, pp. 2-9.

[4] TSN, March 29,1996, pp. 10-11.

[5] TSN, June 17,1996, p. 10.

[6] TSN, April 16, 1996, pp. 3-9. The stones were marked as Exhibit "A."

[7] TSN, June 17, 1996, pp.11-14.

[8] TSN, April 16, 1996, pp. 5-12. The extra-judicial confession was marked as Exhibit "B."

[9] TSN, April 18, 1996, pp. 3-10.

[10] Exhibits "C" and "D."

[11] TSN, October 4, 1996, pp. 2-12, 29-32.

[12] TSN, October 9, 1996, pp. 2-13.

[13] TSN, November 13, 1996, pp. 2-8.

[14] TSN, October 4, 1996, p. 14; TSN, October 9, 1996, pp. 13-15.

[15] TSN, October 4, 1996, pp. 14-17; TSN, October 9, 1996, pp. 14-15; TSN, November 13, 1996, pp. 9-10.

[16] Id., at 16-17; TSN, October 9, 1996, pp. 15-16.

[17] TSN, November 13, 1996, pp. 9-11.

[18] TSN, October 4, 1996, pp. 17-19; TSN, October 9, 1996, p. 17; TSN, November 13, 1996, p. 11.

[19] TSN, October 9, 1996, p. 39.

[20] TSN, November 13, 1996, p. 12.

[21] TSN, October 4, 1996, p. 19.

[22] TSN, October 9, 1996, p. 21.

[23] TSN, November 13, 1996, pp. 13-14.

[24] TSN, October 9, 1996, p. 22; TSN, November 13, 1996, p. 15.

[25] TSN, October 4, 1996, p. 21.

[26] Id., at 20-23; TSN, October 9, 1996, p. 22-24; TSN, November 13, 1996, pp. 15-19.

[27] TSN, October 9, 1996, pp. 24-25; TSN, November 13, 1996, p. 19.

[28] Id. at 26-31.

[29] TSN, November 13, 1996, pp. 4-36; TSN, November 18, 1996, pp. 3-28.

[30] TSN, October 4, 1996, pp. 26-28.

[31] TSN, November 21, 1996, pp. 4-8.

[32] TSN, November 22, 1996, pp. 3-7.

[33] TSN, November 21, 1996, p. 9.

[34] TSN, November 22, 1996, pp. 7-9.

[35] Rollo, pp. 54-55.

[36] People vs. De la Cruz, 279 SCRA 245 (1997), cited in People vs. Tan, 286 SCRA 207 (1998). See also People vs. Andan, 269 SCRA 95 (1997).

[37] People vs. Andan, supra.

[38] CONSTITUTION, ARTICLE III, SECTION 12 (1).

[39] See People vs. Paule, 261 SCRA 649 (1996).

[40] It has not escaped this Court's attention that the police investigator informed Leonardo Morial of his rights only after he allegedly admitted his participation in the killings. Apparently, a "preliminary" questioning had been undertaken. (TSN, April 17 , 1996, pp. 4-5.)

[41] TSN, April 17, 1996, pp. 4-5.

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[42] TSN, September 10, 1996, p. 6.

[43] Id., at 3-21.

[44] TSN, April 17, 1996, p. 6.

[45] Id., at 13.

[46] Id., at 14.

[47] Id., at 11.

[48] Id., at 15.

[49] People vs. De la Cruz, supra.

[50] 244 SCRA 425 (1995).

[51] TSN, April 17, 1996, p. 16.

[52] TSN, September 10, 1996, p. 15.

[53] People vs. Paule, supra.

[54] People vs. Labtan, 320 SCRA 140 (1999), citing People vs. Bacamante, 248 SCRA 47 (1995).

[55] An Act Defining Certain Rights of Persons Arrested, Detained or under Custodial Investigation as well as the Duties of the Arresting, Detaining, and Investigating Officers and Providing Penalties for violations thereof.

[56] 251 SCRA 626 (1995).

[57] TSN, September 10, 1996, pp. 5-6.

[58] People vs. Olivarez, 299 SCRA 635 (1998).

[59] 244 SCRA 135 (1995).

[60] CONSTITUTION, ARTICLE III, SECTION 12 (3).

[61] RULES OF COURT, RULE 130, SECTION 26.

[62] See People vs. Camat, 256 SCRA 52 (1996).

[63] People vs. Gonzales, 311 SCRA 547 (1999).

[64] TSN, Gabriel Guilao, 29 March 1996, pp. 6-10.

[65] TSN, Nonelito Abenion, 04 October 1996, p. 7.

[66] TSN, Gabriel Guilao, 29 March 1996, p. 5.

[67] People vs. Carpio, 282 SCRA 23 (1997).

[68] People vs. Cario, 288 SCRA 404 (1998).

[69] People vs. Naredo, 276 SCRA 489 (1997).

[70] TSN, Gabriel Guilao, 29 March 1996, p. 10.

[71] Id., at 14.

[72] Id., at 31.

[73] Id., at 10-11.

[74] TSN, Benjamin Morial, 17 June 1996, p. 10.

[75] Id., at 13.

[76] TSN, Patricio Abenion, 25 September 1996, p. 5.

[77] Id., at 9.

[78] Id., at 12.

[79] Id., at 40-41.

[80] TSN, Gabriel Guilao, 29 March 1996, p. 8.

[81] TSN, 25 September 1996, p. 47.

[82] TSN, 26 September 1996, p. 17.

[83] People vs. Garcia, 288 SCRA 382 (1988), citing Ibabao vs. People, 132 SCRA 216 (1984); See also Molina vs. People, 259 SCRA 138 (1996); People vs. Soria, 262 SCRA 679 (1996).

[84] TSN, Benjamin Morial, 17 June 1996, p. 6.

[85] TSN, 04 October 1996, p. 36.

[86] TSN, 09 October 1996, p. 8.

[87] TSN, 13 November 1996, p. 6.

[88] TSN, 04 October 1996, p. 8.

[89] People vs. Pedres, 306 SCRA 579 (1999); People vs. Monsayac, 307 SCRA 560 (1999); People vs. Velasco, 307 SCRA 684 (1999).

[90] People vs. Reduca, 301 SCRA 516 (1999); People vs. Verde, 302 SCRA 690 (1999).

[91] TSN, 19 October 1996, pp. 37-38.

[92] TSN, 18 November 1996, p. 26.

[93] TSN, 04 October 1996, p. 31.

[94] TSN, 13 November 1996, p. 12.

[95] TSN, 09 October 1996, p. 18.

[96] TSN, 04 November 1996, p. 19.

[97] TSN, Flora Bandibas, 21 November 1996.

[98] People vs. Sumallo, 307 SCRA 521 (1999); People vs. Faco, 314 SCRA 505 (1999).

[99] TSN, Benjamin Morial, 17 June 1996, p. 8.

[100] Id., at 11.

[101] Id., at 8.

[102] Id., at 9.

[103] People vs. Nava, 306 SCRA 15 (1999).

[104] People vs. Manes, 303 SCRA 231 (1999); People vs. Macahia, 307 SCRA 404 (1999); People vs. Lotoc, 307 SCRA 471 (1999).

[105] People vs. Antonio, 303 SCRA 414 (1999).

[106] See People vs. Nuñez, 276 SCRA 9 (1997).

[107] TSN, Gabriel Guilao, 29 March 1996, p. 9.

[108] Id., at 9-10.

[109] People vs. Dizon, 320 SCRA 513 (1999).

[110] People vs. Molina, 311 SCRA 517 (1999); People vs. Biñas, 320 SCRA 22 (1999).

[111] People vs. Pulido, 85 Phil. 695 (1950).

[112] People vs. Ramos, C.A., 470. G. 1913, cited in I Reyes, The Revised Penal Code, 1993 ed., p. 143.

[113] People vs. Padilla, 301 SCRA 265 (1999).

[114] Records, p. 494.

[115] 226 SCRA 381 (1993).

[116] Art. 63, Revised Penal Code.

[117] Article 68 (2), Revised Penal Code.

[118] Article 64 (3), Revised Penal Code.

[119] People vs. Cempron, 187 SCRA 248 (1990).

[120] People vs. Bantilao, 314 SCRA 380 (1999); People vs. Calabroso, et al., G.R. No. 126368, 14 September 2000; People vs. Emoy, et al., G.R. No. 109760, 27 September 2000; People vs. Temarel, et al., G.R. No. 97138-38, 28 September 2000.

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