PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE T. OBOSA, ACCUSED-APPELLANT.

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GONZAGA-REYES, J.:

On December 4, 1987 two Informations for murder were filed before the Regional Trial Court of Makati regarding the shooting incident wherein then Secretary of Local Government Jaime N. Ferrer and his chauffeur, Jesus D. Calderon, sustained multiple gunshot wounds. The Informations state as follows:

> CRIMINAL CASE NO. 011
>
> "The undersigned Senior State Prosecutor of the Department of Justice hereby accuses NIEVES CONSTANCIO, JR. Y BACUNGAY, RUEL VILLAHERMOSA Y FERNANDEZ alias "Dong", JOSE OBOSA Y TUTANA, several JOHN DOES as principals and VICTORIANO TOTAAN, as accessory to the crime of "MURDER", committed as follows:
> That on or about the 2nd day of August, 1987, in the Municipality of Paranaque, Metro Manila, 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 the attendance of the following qualifying/aggravating circumstances, to wit: treachery, evident premeditation, abuse of superior strength, nighttime purposely sought, and by a band did then and there wilfully, unlawfully and feloniously shoot by means of high powered firearms JAIME N. FERRER, then Secretary of Local Government, hitting him in different vital parts of his body, thereby causing his instantaneous death and thereafter accused Victoriano Totaan taking advantage of his public function as Superintendent of the Bureau of Prison, conceals accused Jose Obosa as one of the principals of the crime of Murder, to the damage and prejudice of the victim's heirs in such amount as may be awarded to them under the provisions of the Civil Code of the Philippines.
>
> **CONTRARY TO LAW."[1]**
>
> **CRIMINAL CASE NO. 012**

"The undersigned Senior State Prosecutor of the Department of Justice hereby accuses NIEVES CONSTANCIO, JR. Y BACUNGAY, RUEL VILLAHERMOSA Y FERNANDEZ alias"Dong", JOSE OBOSA Y TUTANA, several JOHN DOES as principals and VICTORIANO TOTAAN, as accessory of the crime of "MURDER", committed as follows:

> That on or about the 2nd day of August ,1987, in the Municipality of Paranaque, Metro Manila, 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 the attendance of the following qualifying/aggravating circumstances, to wit: treachery, evident premeditation, abuse of superior strength, nighttime purposely sought, and by a band, did then and there wilfully, unlawfully and feloniously shoot by means of high powered firearms JESUS CALDERON, hitting him in different vital parts of his body, thereby causing his instantaneous death and thereafter accused Victoriano Totaan taking advantage of his public function as Superintendent of the Bureau of Prison, conceals accused Jose Obosa as one of the principals of the crime of Murder, to the damage and prejudice of the victim's heirs in such amount as may be awarded to them under the provisions of the Civil Code of the Philippines.

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CONTRARY TO LAW."[2]

The Autopsy Report revealed that Secretary Ferrer sustained eight gunshot wounds and the cause of death is five gunshot wounds on the head and neck[3] while his driver Jesus Calderon sustained five gunshot wounds.[4] The Ballistics Report[5] based on the specimen submitted, i.e., one (1) deformed copper jacket from the body of Secretary Ferrer and three (3) jacketed bullets from the body of Jesus Calderon showed that the deformed copper jacket recovered from the body of Secretary Ferrer was fired from a .38 cal. pistol. Two (2) of the bullets recovered from the body of Jesus Calderon were fired from a .45 cal. pistol while the third bullet was fired from the same .38 cal. pistol that fired the bullet recovered from the body of Secretary Ferrer.

From the evidence presented by both parties the trial court made the following findings of fact:

> "1. Between 5:00 p.m. and 6:00 p.m. on August 2, 1987 while Sonia Alata, a police aid, was on board a mobile patrol car with Pats. Ferrer, Saura and Reyes to respond to a call for police assistance at Dongalo Paranaque, Metro Manila she saw accused Jose Obosa holding a gun in a brown envelope and standing with another person in front of Sun Gin (Sunbeam) Restaurant located at the corner of Quirinio Avenue and Victor Medina St., Dongalo, Paranaque, Metro Manila. When they returned to the Headquarters at past 6:30 p.m., she again spotted Jose Obosa standing beside the Minute Burger also located at Victor Medina St. near Quirino Avenue. Upon arrival at the Headquarters, they heard successive shots.
>
> 2. Victor Gomez who was playing basketball at the plaza near the church heard successive shots coming from the direction of Victor Medina St. at about 6:30 p.m. on that same day. When he peeped through the holes of the fence of the church compound shortly after he heard the shots, he saw accused Jose Obosa coming out of Victor Medina St. and holding a caliber .45 gun which he tucked on his waist. Jose Obosa proceeded towards Dongalo. Victor Gomez went to the place at Victor Medina St. where the car of Secretary Ferrer was and he saw bullet holes in it. He saw Secretary Ferrer bloody all over his body and his driver was already dead.
>
> 3. George Montabon who came from the St. Andrew Church and was in front of the Union Bank along Quirino Avenue near Victor Medina St., at about 6:30 on the same day, when he heard successive shots. He saw three (3) men firing at a car situated near the canteen at the corner of Victor Medina St. and Quirino Avenue. Two of the gunmen ran towards Quirino Avenue and fled on a jeep. The other man who was holding a caliber .45 gun whom he identified in Court as accused Jose Obosa ran towards Quirino Avenue and seemed to be looking for his companions. Jose Obosa passed in front of him about five meters away and he got scared.
>
> 4. Sometime in August or September, 1987, accused Jose Obosa confided to Ricardo Palquera, a detainee at the Maximum Security Camp at the New Bilibid Prison in Muntinlupa, that he killed Sec. Ferrer with the help of two civilian companions. Palquera revealed this matter in writing to Sec. Ileto.
>
> Upon scrutiny and evaluation, this Court finds to be credible and convincing as true the testimonies of the aforementioned witnesses. Sonia Alata, Victor Gomez and George Montabon who positively and unhesitatingly identified Jose Obosa as the same person they saw minutes before and shortly after the shooting of Sec. Ferrer and Jesus Calderon. The actuations of Obosa as described by them are sufficient circumstances as to lead to the conclusion that he was one of those who shot the two victims. Aside from that circumstancial evidence, more weight is added to the prosecution's proof by the voluntary confession of Jose Obosa to Ricardo Palquera that he killed Secretary Ferrer with the help of two other persons, which confession is an evidence of guilt of a high quality (People vs. Zea, 138 SCRA 77). Testimony against one's own interest is of immense value as evidence. (People vs. Caparas, 102 SCRA 791)."[6]

On May 25, 1990 the trial court rendered judgment finding herein appellant Obosa and his co-accused Nieves Constancio guilty of two counts of homicide while accused Victoriano Totaan was acquitted. The judgment reads:

> "WHEREFORE, finding accused Jose Obosa guilty beyond reasonable doubt of the commission of the offense

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> of homicide in two counts, as defined and penalized in Art. 249 of the Revised Penal Code, there being no aggravating or mitigating circumstance that attended the commission of the offense, he is hereby sentenced in each case to suffer an indeterminate penalty of imprisonment from eight (8) years and one (1) day of prision mayor medium as minimum to seventeen (17) years and four (4) months of reclusion temporal medium as maximum, to pay the heirs of Secretary Jaime Ferrer the sum of P30,000.00 for the lost of his life and another sum of P30,000 for moral damages and also to the heirs of Jesus Calderon the sum of P30,000 for the lost of his life and another P30,000.00 for moral damages, and to pay the costs of suit.
>
> The preventive imprisonment accused Jose Obosa may have undertaken shall be deducted from the term of imprisonment imposed herein to its full extent if he signed an agreement to abide by the same rules upon convicted prisoners while in confinement or only four-fifths (4/5) there of if he has not signed said agreement, pursuant to Art. 29 of the Revised Penal Code, as amended by Republic Act No. 6127.
>
> Considering that accused Nieves Constancio was at the time of the commission of the offense only seventeen years of age and classified as a youthful offender, pursuant to Art. 192 of Presidential Decree No. 603, otherwise known as the Child and Youth Welfare Code, the imposition and promulgation of the sentence on him is hereby suspended and he is committed to the custody and care of the Rehabilitation Center of the Department of Social Services and Development at the Boy's Town Vicente Madrigal, Tanay, Rizal, until he reaches the age of twenty-one (21) or a shorter period depending on the report and recommendation of the Department of Social Services and Development.
>
> The Officer concerned at the said Rehabilitation Center is ordered to submit to this Court every four (4) months a written report on the conduct of the accused as well as his intellectual, physical, moral, social and emotional progress.
>
> Depending on the report and recommendation of the Department of Social Services and Development, the accused shall, when the proper time comes, be dealt with under Art. 195 or Art. 196 of P.D. 603.
>
> For lack of proof beyond reasonable doubt as against accused Victoriano Totaan, he is hereby acquitted of the offense charged against him in the information. The bail bond posted by him is hereby cancelled.
>
> SO ORDERED."[7]

Jose Obosa appealed. The Court of Appeals upon review of the case found that the crime committed was qualified by treachery and that Obosa should be held guilty of two counts of murder. In view of the appropriate penalty imposable which is reclusion perpetua, the Court of Appeals refrained from entering judgment and referred the case to this Court.

The appellant's main line of defense rests on the alleged disparate testimonies of the prosecution witnesses and their inherent implausibility. Victor Gomez testified that after he heard the shots he saw a man holding a gun, presumably a .45 cal. because it looks like the gun used by Fernando Poe, Jr., in the movies, and tucked the gun in his waist, and that the lone gunman came out of Victor Medina street, where the shooting incident took place, and went towards Dongalo. On the other hand witness George Montabon stated in court that he saw three men shoot at a car along Victor Medina street. Sonia Alata, for her part, stated that she saw two men standing in front of the Sunbeam restaurant along La Huerta st. immediately before the shooting, one of whom she later identified as the appellant. The defense stands firm that if there were indeed more than one gunman it is beyond belief why these witnesses remembered only the appellant Obosa and failed to identify the others. Appellant posits that witnesses Gomez and Montabon being minors at the time were unduly pressured by the police to identify appellant Obosa while witness Alata, a police aid, who testified about three months after the incident that she saw Obosa at the scene of the crime did so only to aid the much publicized investigation. The defense claims that the trial and appellate courts erred in upholding the theory of the prosecution that the appellant, a prison inmate serving time

and who based on prison records was inside the prison premises at the time of the incident, would be allowed to roam outside the prison premises to participate in the killing of a cabinet official. The testimony of Ricardo Palquerra, cell mate of appellant Obosa, that the latter confided to him during several drinking sprees inside their prison cell that Obosa shot Secretary Ferrer and was paid millions of pesos for the "hit" should not have been given credence by the trial and appellate courts. Possession of alcoholic drinks is prohibited in prison and Obosa could not have confided to Palquerra about the killing since Palquerra himself admitted that he did not know Obosa very well. If indeed such statements were made the court should have dismissed them as plain braggadocio during drinking sprees. The appellant seeks an acquittal on the ground that the appellant was tagged as the fall guy to satisfy the public clamor for the arrest of the killer of Secretary Ferrer.

The Solicitor-General filed appellee's brief praying for the affirmance of the findings of the appellate court. The argued contradictions in the testimonies of the prosecution witnesses were explained by the trial court when it stated that the three witnesses observed the incident at different stages of execution or from different vantage points. The minor differences in their testimonies signify their candor and regardless of such minor differences the witnesses attest to a common fact that the appellant Obosa was at the scene of the crime. Appellee argues that witness Alata's delay in coming forth to testify cannot be taken as a sign of fabrication; such delay may have come from a person's natural reticence to get involved in a criminal proceeding. The testimony of Ricardo Palquerra, a convict serving time, cannot be disregarded by the court on that ground alone as a convicted felon is not disqualified to testify under the Rules on evidence. It is alleged that the appellant's attack on the credibility of the prosecution witnesses fails to overcome the long-standing rule that the findings of the trial court with respect to the credibility of witnesses are respected on appeal. The Solicitor-General stresses that the contention that accused-appellant could not have been at the scene of the crime because he was in jail does not establish the physical impossibility of his presence at the scene of the crime. The appellate court aptly observed that the entry in the logbook of the South gate of the Bilibid Prisons that the appellant returned to prison at 2:15 p.m. of August 2, 1987 is doubtful as the entry could have been easily intercalated and in view of the privileges which Obosa himself admitted he enjoyed such as, spending a few days outside the prison, further convinced the court that there is no physical impossibility that the appellant was at the scene of the crime.

The accused-appellant filed Reply brief highlighting the inconsistencies in the testimonies of Gomez and Montabon, as well as Alata's delay in informing the police that she saw the appellant at the scene of the crime, seriously weakened their credibility and showed that they were coaxed by the police to implicate the appellant in the case. The accused-appellant alleges that the trial court connived with the police to convict the appellant when the trial court misstated in its decision that Alata saw Obosa holding a gun when a casual examination of Alata's testimony would show that she made no such statement; she testified that she saw Obosa holding a brown envelope. The accused-appellant claims that his alleged presence at the scene of the crime is quite absurd as he was escorted by prison guards in all his trips out of prison and if indeed he was able to flee it is unbelievable for an escaped convict to commit a crime then return to prison when he could have simply walked his way to freedom.

The appeal is without merit.

The apparent discrepancies in the testimonies of the three prosecution witnesses, Gomez, Montabon and Alata as to the number of gunmen who participated in the killing of Secretary Ferrer and Jesus Calderon do not undermine their evidentiary value. The appellate court aptly held that the prosecution witnesses observed the incident from different stages of execution, or from different vantage points and their testimonies when taken together reveal a coherent narration of the incident. Witness Alata admitted she did not see the actual shooting but she remembered seeing a man holding a brown envelope standing with another man in a leather jacket in front of the Sunbeam

restaurant along Medina street when she left the precinct to respond to a call for police assistance. On her way back to the precinct she saw the same man holding the brown envelope, this time, standing near the Minute Burger kiosk also along Medina street. A few minutes after passing by this man she heard successive gunshots.[8] Witness Montabon testified that he actually saw the shooting.[9] After hearing mass at the St. Andrew's Church and while walking in front of Union Bank he heard gunshots coming from the direction of the corner of Victor Medina street and Quirino Avenue and saw three men firing at a car in front of the canteen at the corner. Then two of the gunmen headed for Quirino Avenue and rode a jeepney while the third gunman holding a .45 cal pistol passed him by from a distance of five meters headed towards Dongalo. Witness Gomez admitted that he did not see the actual shooting but when the shooting subsided he saw from a distance of about six arms length alone gunman coming out of Medina street headed for Dongalo holding a .45 cal. pistol and tucking the gun into his waist.[10]

Variance in some detail in the narration of the incident by three witnesses do not debunk the testimonies as false but are an indication of spontaneity and candor and show that the witnesses were not coached.[11] Alata saw two gunmen, Montabon saw three, while Gomez saw only one, because Alata passed by the scene of the crime before it happened whereas Montabon saw three gunmen during the actual shooting and Gomez saw a lone gunman after the shooting. Gomez' agreement with the defense counsel's suggestion that the shooting took about five minutes while Montabon's estimate that the shooting happened "in a matter of seconds"[12] do not necessarily impair the essence of the testimonies in question. The discrepancies do not detract from the material fact that they all recognized the appellant Obosa as the man they saw at the scene of the crime, and in Montabon's case, that Obosa actually shot at the car of Secretary Ferrer. The minor variations in the testimonies of the three witnesses do not discredit but enhance their credibility as unrehearsed statements. It suffices that all three witnesses positively identified Obosa in court.

With respect to the alleged misstatement made by the trial court that Alata testified that she saw Obosa standing in front of the Sunbeam Restaurant holding a gun whereas the transcript of stenographic notes shows that Alata testified that she saw Obosa holding a brown envelope, the inaccuracy does not negate her testimony that Obosa was at the scene of the crime. Alata's delay in coming forth to testify cannot be taken as an indication of fabrication. It has been the consistent ruling of this court that a witness' delay in testifying does not affect his credibility.[13] Alata explained in court that she told the investigators that she saw Obosa near the scene of the crime but she was told to wait and she might be taken as a witness. Her written statement was taken almost a month later.[14]

The appellant's theory that the fact that the three witnesses identified Obosa but failed to identify the other co-accused indicated that they were coaxed by the police investigators to pinpoint Obosa is untenable. All three witnesses recognized Obosa because they encountered him on the day in question and their testimonies of the encounter were not discredited by the defense. The appellant's theory that the police zeroed in on Obosa is not supported by the evidence. There were other witnesses who encountered the other gunmen when the latter transferred to another vehicle near the Maranao Restaurant, and who were presented by the prosecution to identify the other co-accused. Witness Edwin Gipaya, a "watch-your-car" boy at the parking lot of Maranao restaurant identified Nieves Constancio as one of the four gunmen who was left behind and rode a jeepney.[15] Constancio was found guilty as a co-conspirator but his appeal from the decision of the trial court was dismissed by the appellate court for failure to file brief. The testimonies of the witnesses[16] who identified the other co-accused were not touched upon by the appellate court because they do not pertain to the guilt or innocence of appellant Obosa. Needless to state, the findings of the trial court as to the credibility of witnesses are accorded the highest respect as the trial judge had the direct opportunity to observe the demeanor of the witnesses on the stand. Appellant failed to establish before this Court that the findings are tainted with arbitrariness or palpable error.[17]

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The appellant's defense is that as a prison inmate who based on prison records was inside the compound of the National Bilibid Prisons on the date and time of the incident, he could not have participated in the ambush; and if indeed he was able to leave the prison premises it is unbelievable that an escaped convict would return to prison. The appellant's line of defense fails to persuade. This Court agrees with the appellate court that the cited circumstances do not present a physical impossibility for the appellant to have participated in the commission of the crime. First, the log book presented in court to show that Obosa left the premises on July 28, 1987 at 4:25 a.m. to attend a court hearing in Sariaya Quezon and returned to prison on August 2, 1987 at 2:10 p.m. refers only to the south gate of the Bilibid prison. The Director of the Bureau of Prisons, General Meliton B. Goyena,testified that he investigated the activities of inmate Obosa and found that he was given preferential treatment in prison. Goyena found that Obosa's vehicle was allowed to park inside the prison compound despite the prohibition against this practice. Goyena further stated:

> Q: When you said he was indeed given VIP treatment, does it consist of getting out of Muntinlupa compound and returning back without being reported?
>
> A: It consist of private accommodations that was given to him, not bringing Obosa direct back to Prison from court allowing him to stay in his private residence.[18]

Appellant Obosa himself admitted that he was allowed to stay a few days outside prison in the house of one of the prison guards without being reported to the prison authorities.[19] Thus, the positive identification made by three witnesses that they saw the appellant Obosa at the scene of the crime is not improbable. The same holds true with the appellant's contention that the appellant could not have returned to prison after the ambush. It appears that the appellant although officially committed to the National Bilibid Prisons was granted special privileges and was allowed to leave the prison premises from time to time.

The appellant's objection to the admissibility and weight accorded by the court to the testimony of Ricardo Palquerra is similarly without merit. A convicted felon is not disqualified by the Rules of Evidence from testifying in Court.[20] At any rate, the judgment of conviction did not rest on the alleged confession made by Obosa to his prison cell mate, Ricardo Palquerra, that someone contracted him and two others to kill Secretary Ferrer for a few million pesos. The eyewitness account of George Montabon that he saw Obosa shoot at the car of Secretary Ferrer and that of Victor Gomez to the effect that he saw Obosa coming out of the scene of the crime holding a gun, not to mention Alata's declaration which corroborated the cited testimonies with respect to Obosa's presence at the scene of the crime during the incident in question, clinched the case against the accused-appellant.

Finally, the conclusion of the appellate court that the crimes committed were qualified by treachery and that the appellant should be held guilty of two counts of murder instead of homicide is well-founded. The appellate court correctly observed:

> "It is not disputed that Secretary Ferrer and his driver Jesus Calderon were waylaid while they were in the Secretary's car passing through Victor Medina street (RTC Decision, p. 737, Vol II Records). The ambush was carried out precisely while the Secretary's car was slowing down as they were approaching the corner of Victor Medina street and Quirino Avenue ensuring the accomplishment of the attack and at the same time eliminating any risk from possible defenses that the victim may put up. The victims who were then seated inside the car were in no position to escape nor offer any form of defense. They were, at that point, helpless prey. Hence, accused-appellant Obosa should be found guilty not only of two counts of homicide but of two counts of murder defined and penalized in Art. 248 of the Revised Penal Code. There being no other aggravating nor mitigating circumstances, the penalty should be imposed in its medium period, which is the indivisible penalty of reclusion perpetua.

The evidence on record also bears out the fact that the car of Secretary Ferrer was riddled with bullets and shot at

close range by at least three men, sum of whom carried long fire arms while the others carried pistols,[21] and that immediately after the shooting the gunmen dispersed; Obosa left the scene on foot while Constancio forcibly took a jeepney which he later parked in the middle of the road presumably to block police authorities who may follow him and again stole another vehicle and headed for MIA road, while the others had a vehicle waiting for them in front of the Maranao Restaurant.[22] The synchronized execution of the ambush lead us to the conclusion that the perpetrators are professional hit men who acted in conspiracy with each other to insure the death of their hapless victims.

The crime was committed after the effectivity of the 1987 Constitution and during the suspension of the imposition of the death penalty. Under Art. 248 of the Revised Penal Code the penalty for murder is reclusion temporal maximum to death. Conformably with People vs. Munoz[23] and subsequent cases,[24] the penalty should be imposed in its medium period which is reclusion perpetua.

Wherefore, the decision of the appellate court is affirmed in toto. The appellant Jose Obosa y Tutana is hereby found guilty of two counts of murder for the death of Secretary Jaime N. Ferrer and Jesus Calderon and is sentenced to reclusion perpetua and to indemnify the heirs of the victims the sum of fifty thousand pesos each and to pay the cost of the suit.

SO ORDERED.

Melo, (Chairman), Vitug, and Purisima, JJ., concur.

Panganiban, J., on leave.

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[1] pp. 135-136, OR.
[2] pp. 139-140, OR.
[3] Autopsy Report Exh. F, pp. 17-18, Folder of Exhibits; Dr. Victor Garcia, tsn., October 17, 1998, p. 25.
[4] Autopsy Report Exh. J, p. 25, Folder of Exhibits; Garcia, ibid.
[5] Ballistics Report, Exh. S, pp. 41-42, Folder of Exhibits.
[6] RTC Decision, pp. 36-38. OR pp. 738-740.
[7] pp. 45-46, RTC Decision, OR, pp. 747-748.
[8] Alata, tsn., March 8, 1989, pp. 7-8, 10; Alata, Sworn statement, pp. 43-47, folder of exhibits.
[9] Montabon, tsn., April 4, 1989, p. 5.
[10] Gomez, tsn., November 3, 1988, pp. 9-14; Exh. O, pp. 33-35, folder of Exhibits.
[11] People vs. Acob, 246 SCRA 715; People vs. Obello, 284 SCRA 79.
[12] Montabon, ibid.
[13] People vs. Teehankee, Jr., 249 SCRA 54.
[14] Alata, tsn., March 10, 1989, pp. 22-23.
[15] Gipaya, tsn., November 9, 1988, pp. 11-19, 23.
[16] Gipaya, tsn., November 28, 1988; Lauron, tsn., November 11, 1988.
[17] People vs. Molina, 292 SCRA 742; Pag-ibig Village Association vs. Angon, 294 SCRA 554.
[18] Goyena, tsn., August 14, 1989, pp. 2-3; 11-12.
[19] Obosa, tsn., July 4, 1989, pp. 13-19.
[20] Section 20, Rule 130, Rules on Evidence.
[21] Gomez, tsn. November 3, 1988, p. 15; Sworn Statement Exh O, p. 33 Folder of Exhibits; Gipaya, tsn., November 9, 1988, pp. 13-23; Lauron, tsn., November 11, 1988, pp. 10-16.
[22] Montabon, tsn., April 4, 1989, pp. 5-6; Alata, tsn., March 10, 1989, pp. 10-13; Sworn Statement, p. 47,

Folder of Exhibits; Gipaya, ibid.,; Lauron, ibid.
[23] 170 SCRA 107.
[24] People vs. Quiboyen, G.R. No. 130636, July 14, 1999; People vs. Parojinog, 203 SCRA 273; People vs. Dela Cruz, 216 SCRA 476; People vs. Artiaga, 274 SCRA 685.

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