THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JERRY BANTILING, ACCUSED-APPELLANT.

G.R. No. 136017. November 15, 2001

Ponente: PUNO, J.

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PUNO, J.:

Self-defense, like alibi, is a defense which can easily be fabricated. Courts, knowing that in cases of indefensible homicide, the accused can rely on it with facility, are not likely to be deceived by the fabricated claim of the accused that he acted in self-defense.[1]

Before us on appeal is the decision of the Regional Trial Court, Branch 32, of Iloilo City in Criminal Case No. 37564 convicting accused-appellant Jerry Bantiling for the crime of murder and sentencing him to suffer imprisonment of Reclusion Perpetua. He was indicted and tried under the following Information:

> "That on or about Feruary 2, 1992, in the Municipality of Balasan, province of Iloilo, Philipppines, and within the jurisdiction of this Court, the above-named accused armed with a .12 gauge homemade shotgun (pugakhang) and with decided purpose to kill, with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack, assault, shoot and hit one SEVERINO DAMASO inflicting upon the victim fatal gunshot wounds which caused his death thereafter.
>
> CONTRARY TO LAW."[2]

On being duly arraigned, accused-appellant, assisted by counsel, pleaded not guilty. Thereafter, trial ensued.

The prosecution's version of how the killing transpired was based mainly on the eyewitness account of Rolando Damaso, the younger brother of the victim. He testified that on the evening of February 2, 1992, at about 9:30 PM, he was walking with a certain Milmar Domingo on a road at Brgy. Tinggi-an. They were going home after a day's work at his farm located at Brgy. Quiasan. Their stroll was interrupted when they heard a sudden explosion. Almost instinctively, he lighted his flashlight to where the sound came from. He saw accused-appellant shoot the victim with a pugakhang (shotgun) aimed at the latter. Accused-appellant then ran towards their house, shouting, "Cantoy, it is finished." He was sure that it was his voice since they oftentimes met, both of them being natives of Brgy. Tinggi-an, Balasan, Iloilo. Cantoy is the elder brother of accused-appellant. According to Rolando, he ran away after witnessing the crime. Fear enveloped him since he noticed that accused-appellant was with his brothers. He too was afraid that accused-appellant might also shoot him. It turned out that Milmar Domingo was likewise scurrying next to him. The two rushed straight to the victim's house, where they met his wife (Edna) and children. They related to her the shocking news. Edna demanded to see the body of her husband. They immediately proceeded to the scene of the incident. To their astonishment, the body was not there. So they went to the house of the Barangay Captain Genaro Ceracado and sought his help in finding it. The official readily obliged and accompanied them to the place. When they arrived, there was already a police patrol car on the site. This time, they saw the body of the victim inside the fenced yard of accused-appellant. Rolando entered it together with a policeman and the Barangay Captain. Edna was fainting so they brought her back to her house.

That very evening, pictures of the body were taken. He identified these pictures.

The testimony of Rolando was corroborated by Edna Damaso, the wife of the deceased. She narrated how the calmness of her night was disturbed by the tragic news about her spouse. Between the hours of 9:00 and 10:00 in the evening of February 2, 1992, while resting at their house at Brgy. Tinggi-an, her brother-in-law, Rolando, together with Milmar Domingo, unexpectedly pounded on their door. They told her the heartbreaking story that her husband was shot to death by accused-appellant. Upon her urging, they immediately revisited the place where the victim was killed. To their stupefaction, the dead body was no longer within the vicinity of the area. They headed to the house of the Barangay Captain to seek his help. They again went back, this time with the Captain, to the killing spot. Upon their return, they met several police officers who informed them that the body of her spouse was found inside the fenced yard of accused-appellant. Unfortunately, she was not able to get even a glimpse of her dear husband since she was taken back to their home. Edna, in addition, testified on the pecuniary damages they suffered. She stated that she spent P21,960.00 for the wake and burial of the deceased. His untimely death brought sadness and grief to an otherwise happy marriage and family. She estimated that her husband can harvest palay with a net income of P40,000.00 for four hectares in one year for only one cropping. Lastly, she agreed to pay for the services of their private prosecutor for the amount of P23,000.00.

Dr. Brade Galo, a government physician, conducted a general physical examination on the dead body at Tinggi-an, Balasan, Iloilo on February 3, 1992. His Postmortem Findings disclose that the victim suffered 11 gunshot wounds located at the left lateral and posterior area of his body. According to him, all the wounds were directed towards the left lung and below the left lung, which when hit by a bullet would suffice to cause a person’s death. In his opinion, the point of the gun had been fired from the rear of the victim, rear left side of the body. The firearm used in the shooting, from what he heard, was a .12 gauge shotgun locally known as pugakhang.

A member of the local Philippine National Police force, Norberto Macheco, declared that in the evening of February 2, 1992, Apolinario Bantiling, the father of accused-appellant surrendered to him a .12 gauge homemade shotgun and ammunition, but not without first informing him that his son shot an unidentified man using the firearm. He noticed that Apolinario seemed to be telling the truth based on his observation that he was not nervous at all and appeared to be his normal self.

The Chief Investigator of the Balasan Police Station, Balasan, Iloilo, SPO3 Melanio Jordan, stated that in connection with the incident, he conducted an ocular inspection of the crime scene. He found two sets of blood stains in different locations: one, inside the fenced yard of accused-appellant at the exact point where the dead body of the victim was lying; and another, outside the yard, on the barangay road. He then prepared a sketch of the crime scene where the said bloodstains were denoted by red dots.

In a bid to exonerate himself, accused-appellant claims that he accidentally shot the victim in self-defense. The defense presented three witnesses, including himself.

It first called to the stand, Constancio Bantiling, who works and stays at the farm of accused-appellant in Brgy. Tinggi-an. On the evening of February 2, 1992, at about 8:00, he and accused-appellant went to the house of the latter’s parents, Apolinario and Arsenia Bantiling, to eat their supper. They carried their own flashlights. They stayed in the parent’s house for approximately an hour before deciding to leave. While walking back home, they heard the sound of a firearm being cocked. He directed his flashlight to where the sound came from. He saw a person, with his head bowed, and whom he did not recognize, holding a firearm. He whispered to accused-appellant to make a dash after the gun failed to fire. Upon reaching the house of accused-appellant, they sat on the edge of the fence and tried to observe the person who had the firearm. He then heard the fence crack. It

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turned out that the armed person was trying to break in. When he lighted his flashlight towards the person, he saw him stumble. When the person was about to stand up, he ordered accused-appellant to run to him and seize the firearm. Accused-appellant immediately did as he was told. He proceeded to the armed man (who has yet to stand up) and tried to grab from him the firearm. While the two were grappling for its possession, the gun suddenly exploded. Accused-appellant fell down. The armed attacker likewise fell with his face down on the ground. It turned out that the person was hit. He was able to recognize him as the victim. According to Constancio, he told accused-appellant to go back with him at the house of his parents since the victim possibly may have some companions, who similarly might attempt to kill them. When they arrived at the house, accused-appellant placed the firearm on a table and asked his father to surrender it to the authorities. Constancio further recalled an incident prior to the fateful night of February 2, 1992, involving the accused and the victim. A few days before, the carabao of the victim attacked that of the accused, and the two fought. The former suffered injuries. The next day, the victim confronted accused-appellant and demanded from him money for medicines. Accused-appellant refused insisting that "had not your carabao attacked my carabao, your carabao would not have been wounded." This, he remembered, made the victim lose his cool.

Next to testify for the defense was the accused-appellant himself, Jerry Bantiling, a resident of Brgy. Tinggi-an, Balasan, Iloilo, a farmer and hog-raiser. His testimony essentially towed the line of Constancio's version of the incident. He stated that on the evening of February 2, 1992, he and Constancio went to his parent's house, about half a kilometer away, to eat their dinner. They stayed there for at least an hour and by 9:30 in the evening they were on the way home. According to him, while they were walking on a dike going to his house, they suddenly heard the clicking sound of a firearm. Both of them directed their flashlight to where the sound came from. They then saw a person in a crouching position holding a firearm, approximately two and a half (2½) feet long. Constancio asked him to flee after the gun apparently jammed. When they reached his house, they decided to observe the person who had the firearm by the edge of the fence. He then heard part of his fence crack. It turned out that the armed person was trying to break in. When he lighted his flashlight towards the person, he saw him stumble. Constancio next ordered him to seize the firearm. He ran towards the person and grabbed the firearm with his two hands. In the course of their struggle, he fell. Almost simultaneously, the gun exploded. After picking himself up, he focused his flashlight on the person lying on the ground with his face down. He was able to identify that person as the victim, Severino Damaso. He went straight to the house of his parents. There he revealed what happened, placed the gun on top of the table, and asked his father to surrender it to the Municipal Hall of Balasan. Accused-appellant, moreover, admitted that there was an incident which transpired involving their respective carabaos on January 23, 1992. According to him, the carabao of the victim, which got loose, attacked his carabao leading to a fight between the two. It appears that the carabao of the victim lost as it suffered more serious injuries. The very next morning, the victim demanded from him money for medicines for the injured beast. He refused the demand reasoning that it was the former's carabao which attacked his. This made the victim angry who warned him, "Be careful, you stupid, I will put a lug in your head." At that time, he did not mind those words, until after two weeks when the shooting happened.

Finally, the defense presented Apolinario Bantiling, the father of accused-appellant. He testified that on February 2, 1992, at about 7:00 in the evening, his son and Constancio went to their house to take their supper. The two went home only after approximately one hour. After they left, he went to bed. He was roused from his sleep by accused-appellant who was carrying with him a pugakhang. "Father, I grabbed this firearm from the possession of Severino Damaso," was what his son told him. Then, he and his other son, Jimmy, went to the Municipal Building, where they turned over the firearm to the policeman on guard, a certain Etok. Five minutes later, the Chief of Police arrived who allegedly harassed him by asking him whether he owns the gun. He replied that it was grabbed from the victim by his son. The Chief apparently did not buy his story and insisted that he admit

ownership of the weapon. The police gave him a piece of paper and made him sign it. Thereafter, they locked him in jail and was released only the next morning upon the arrival of accused-appellant.

In time, the trial court rendered a decision convicting accused-appellant, the dispositive portion of which states:

> "WHEREFORE, the Court finds the accused Jerry Bantiling GUILTY of the crime of Murder as charged in the Information and hereby sentences him to suffer imprisonment of Reclusion Perpetua, there being no other mitigating or aggravating circumstances attendant to the commission of the crime.
>
> Accused is likewise ordered to indemnify the heirs of the victim the sum of P50,000.00 as a mandatory death indemnity; P21,960.00 as actual damages; P50,000.00 by way of lost earnings; and P20,000.00 as moral damages.
>
> The one live ammo and one long firearm used in the commission of the crime are hereby forfeited in favor of the government.
>
> The branch Clerk of Court is hereby directed to submit the same to the proper Office for proper disposal.
>
> SO ORDERED."[3]

Aggrieved with the verdict of conviction, accused-appellant interposed the instant appeal. He has assigned the following errors in his brief:

> "I. The Trial Court gravely erred in not giving exculpatory weight to the defenses interposed by the accused-appellant.
>
> II. The trial court gravely erred in giving full weight and credence to the incredible and inconsistent testimony of prosecution witness Rolando Damaso."[4]

The appeal is devoid of merit. We affirm the conviction, subject to modifications, which we will discuss below.

Of unbroken consistency in this jurisdiction is the rule that when the accused has admitted that he is the author of the death of the victim and his defense is anchored on self-defense, it is incumbent upon him to prove this justifying circumstance to the satisfaction of the court. This circumstance he has to establish by clear and convincing evidence, the onus probandi having shifted to him.[5] He must rely on the strength of his own evidence and not on the weakness of the prosecution, for even if the prosecution evidence is weak, it could not be disbelieved after the accused himself admitted the killing.[6]

The trial court, after weighing the evidence presented by both sides, did not find credence in the version of the accused-appellant that he accidentally shot the victim in self-defense. It found his account highly improbable and unbelievable.

We agree. In the first place, the physical evidence on record belie the contention of accused-appellant that the shooting was accidental or that the fatal wounds were inflicted in the course of a struggle to get possession of the gun. From the medical findings of Dr. Galo, it can be derived that the gun was fired at level position. It was fired from the rear of the victim, rear left side of his body. Likewise, the investigating police officer who conducted the ocular inspection found two sets of blood stains in different locations: one, inside the fenced yard of the accused-appellant at the exact point where the dead body of the victim was lying; and another, outside the yard on the barangay road. All these should indicate that the deceased was actually waylaid on the road, before his lifeless body was transported inside the fence.

More importantly, accused-appellant's attempt to impress upon us his theory of self-defense must fail in light of the positive testimony of the eyewitness Rolando Damaso. The witness categorically narrated how he saw

accused-appellant shot the victim from behind on the barangay road, thus:

“ATTY. TEODOSIO: (to witness)

Q On the evening of Feb. 2/92 at about 9:30 more or less, where were you?

A We were walking on the road of Bgy. Tinggi-an proceeding home.

Q Who was your companion during that date and time?

A Milmar Domingo.

Q And from where did you come from?

A From my farm at Bgy. Quiasan.

Q While you were walking along that road in Bgy. Tinggi-an during that time, could you tell us if there was any unusual incident that happened?

A Yes, there was.

Q Could you tell us what was that incident about?

A While we were walking on the road there was a sudden explosion.

Q When you heard that explosion, what did you do?

A Because I was surprised I have my flashlight lighted.

Q And what did you see when your flashlight got lighted?

A I saw Jerry Bantiling shot Severino Damaso.

Q Do you know what weapon did you see used by Jerry Bantiling when you said him shot Severino Damaso.

A A homemade shotgun “pugakhang.”

Q What happened to Severino Damso when you saw him being shot by Jerry Bantiling?

A I saw him falling down.

Q About how far was Jerry Bantiling from you when you said you saw him shot Severino Damaso.

A Maybe about 15 meters.

Q And when you said about 15 meters meaning it was your estimate of the distance?

A Yes.

Q Now you said that Jerry Bantiling used a pugakhang or a homemade shotgun, when he shot Severino Damaso, how did Jerry Bantiling hold that shotgun when you saw him?

A He was aiming his shotgun to Severino Damaso (witness indicating that Jerry Bantiling was holding his shotgun with his left hand forward).

Q After you saw Jerry Bantiling shot Severino Damaso when you lighted your flashlight, can you tell us what did Jerry Bantiling do afterwards?

A He ran towards their house.

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Q Now were you able to hear any voice at that time when he ran towards his house?

A I heard Jerry Bantiling (witness pointing to the accused Jerry Bantiling) saying “Cantoy it is finished.”

Q Who is this Cantoy?

A Cantoy is the elder brother of Jerry Bantiling.”[7]

The trial court, in our opinion, accurately calibrated the import of Rolando’s testimony when it opted to believe him. To begin with, his declarations on the stand were forthright, categorical, and spontaneous. Testimonies which are unequivocal, forthright and replete with details are seals of self-authentication on their credibility.[8]

Furthermore, no evil motive has been proven against Rolando, or the other prosecution witnesses for that matter, which might prompt them to testify falsely against the accused-appellant.[9] When there is no showing that the principal witness for the prosecution was actuated by improper motive, the presumption is that he was not so actuated and his testimony is thus entitled to full faith and credit.[10] On the contrary, the earnest desire to seek justice for a dead kin is not served should the witness abandon his conscience and prudence and blame one who is innocent of the crime.[11] While revenge is a normal reaction of one who has lost a loved one, it does not follow that the desire to avenge such loss would include implicating even innocent persons.[12] In other words, it is not lightly to be supposed that a relative of the deceased would callously violate his conscience to avenge the death of a dear one, by blaming it on persons whom they believe to be innocent.[13] The fact that Rolando is the victim’s brother even lends more credence to his testimony as his natural interest in securing the conviction of the guilty would deter him from indicting persons other than the culprits for otherwise the latter would gain immunity.[14]

The alleged inconsistencies in the testimony of Rolando cited by the accused-appellant are too inconsequential and trivial to merit our attention. Minor and insignificant inconsistencies tend to bolster, rather than weaken, the credibility of the witness for they show that his testimony was not contrived or rehearsed.[15] They do not rock the pedestal upon which the credibility of the witness rests, but enhances credibility as they manifest spontaneity and lack of scheming.[16] Well to point, even the most truthful witnesses can sometimes make mistakes, but such minor lapses, do not necessarily affect their credibility.[17]

To our mind, the aforestated arguments raised by accused-appellant are factual in nature and boil down to the credibility of the witnesses and their respective testimonies. The time-honored doctrine is that the assessment of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses first hand and note their demeanor, conduct and attitude under grilling examination.[18] The issue on which witness to believe is one that should be best addressed by the lower court for the findings of fact of a trial judge are accorded great respect and are seldom disturbed on appeal for having the opportunity to directly observe the witnesses, and to determine by their demeanor on the stand the probative value of their testimonies.[19] Accused-appellant miserably failed to advance any cogent reason for us to deviate in this case from this established rule.

The invocation by accused-appellant of accident deserves scant consideration. Under paragraph 4 of Article 12 of the Revised Penal Code, a person, who while performing a lawful act with due care, causes an injury by accident without fault or intention of causing it, is exempt from criminal liability.[20] Having ruled, however, that self-defense was not present, then it cannot be said that accused-appellant was performing a lawful act.[21]

Be that as it may, all is not lost for accused-appellant. It may be recalled that the lower court convicted him for the crime of murder, attended by the qualifying circumstance of treachery. Its sole basis in arriving at such a conclusion was the physical finding that the mortal wounds were located at the back of the victim’s body. This singular circumstance led it to rule that Damaso was killed with treachery, thus:

> "From this testimony of Dr. Galo regarding the location of the wounds that the point of the gun had been fired from the rear of the victim or rear left side of the body. The aggravating circumstance of the treachery can safely be concluded on the part of the assailants (sic).
>
> According to the doctor the gun must have been fired from the rear of the victim, rear left side of the body. Furthermore, the doctor testified that the assailants (sic) was probably on the left rear side of the victim and the gun was at level with the victim.
>
> From the pictures presented in court, the victim was lying face down to the ground showing that he must have been shot at the back. This in turn show treachery on the part of the assailants (sic)."[22]

That the victim sustained wounds in the back is not sufficient in itself to prove treachery. The presence of treachery may not be simply assumed from the mere fact that the fatal wounds were found at the back of the deceased.[23] These wounds might have been the last ones inflicted in order to finish the victim, or might have been inflicted by accident, or inflicted in a frontal encounter.[24]

The essence of treachery is the sudden and unexpected attack by an aggressor against an unsuspecting victim, depriving the latter of any real chance to defend himself, thereby, ensuring its commission without risk to the aggressor, sans the slightest provocation on the part of the victim.[25] Where no particulars are known as to the manner the aggression was made or how the act resulting to the death of the victim, began and developed, it could not be established by mere suppositions that the accused perpetrated the killing with treachery.[26] There must be conclusive evidence that the person attacked had absolutely no opportunity to defend himself much less retaliate and that the means of execution was deliberately and consciously adopted by the accused.

Thus, treachery cannot be appreciated where the lone eyewitness to the killing was not able to see how the assault started.[27] The testimony of Rolando Damaso offers no sufficient basis for reasonably inferring that treachery attended the commission of the crime. Evidence on record does not adequately show the manner by which the attack was carried out. What Rolando only witnessed were the events subsequent to the firing of the shot, i.e., the accused-appellant holding literally a smoking gun aimed at the fallen victim and uttering the words, "Cantoy, it is finished." At that juncture, the killing of the deceased was already complete. Clearly, he was not able to see the commencement of the assault and there is no way for him to know whether the accused-appellant was able to deliberately adopt a sudden and unexpected method of attack which deprived the victim of an opportunity to defend himself.

In light of our finding that treachery cannot be appreciated to qualify the killing of the victim to murder, we modify his criminal liability to the crime of homicide. Accordingly, we lower the penalty imposed upon accused-appellant from reclusion perpetua to reclusion temporal in its medium period, there being no aggravating or mitigating circumstance attendant to the act. Applying the Indeterminate Sentence Law, the minimum term is anywhere within the range of prision mayor, or from six (6) years and one (1) day to twelve (12) years, and the maximum within the range of reclusion temporal in its medium period, or from fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months.

There is likewise the need to modify the civil liability of accused-appellant. We deem it necessary to increase the award of moral damages from twenty thousand pesos (P20,000.00) to fifty thousand (P50,000.00) pesos, in accordance with existing jurisprudence.[28]

The amount of fifty thousand pesos (P50,000.00) given to the heirs of the victim as indemnity for the latter's loss of earning capacity should similarly be augmented. The following factors should be considered in determining the compensable amount of lost earnings: (1) the number of years for which the victim would have otherwise lived; and (2) the rate of loss sustained by the heirs of the deceased. Life expectancy is computed using the formula

adopted in the American Expectancy Table of Mortality or the Actuarial Combined Experience Table of Mortality: 2/3 x (80 - age at death).[29] The rate of loss is arrived at by multiplying life expectancy by the net earnings of the deceased, i.e., the total earnings less expenses necessary in the creation of such earnings or income and less living and other incidental expenses.[30] The net earning is ordinarily pegged at fifty percent of the gross earnings.[31]

Evidence on record reveals that the victim was 50 years old at the time of his death. From the testimony of his wife, witness Edna Damaso, he was making about P40,000.00 as net income in one crop year. This was not disputed by the defense. Thus, applying the formula above, the accused-appellant should pay his heirs P800,000.00, as shown by the following computation:

> 2/3 x (80 - 50 [age at the time of death]) = 20 (life expectancy)
>
> 20 x P40,000.00 (net annual income) = P800,000.00
>
> Loss of earning capacity = P800,000.00.[32]

IN VIEW WHEREOF, the assailed Decision is hereby AFFIRMED with modification. The accused-appellant is found guilty of Homicide and an indeterminate sentence of ten (10) years of prision mayor medium as minimum to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal medium as maximum is imposed upon him. He is likewise ordered to pay the heirs of the victim P50,000.00 as civil indemnity, P21,960.00 for actual damages, P50,000.00 as moral damages, and P800,000.00 for loss of earning capacity.

SO ORDERED.

Davide, Jr., CJ., (Chairman), Kapunan, Pardo, and Ynares-Santiago, JJ., concur.

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[1] I Aquino, Revised Penal Code 184 (1997 ed.).

[2] Information, Rollo, p. 10.

[3] Decision, pp. 12-13; Rollo, pp. 35-36.

[4] Brief for the Accused-Appellant, p. 1: Rollo, p. 68.

[5] People v. Alapide, 236 SCRA 555 (1994).

[6] People v. Maceda, 197 SCRA 499 (1991).

[7] TSN, June 18, 1992, pp. 3 - 4.

[8] People v. Guarin, 259 SCRA 34 (1996).

[9] People v. Apawan, 262 SCRA 564 (1996).

[10] People v. Hernandez, 304 SCRA 186 (1999).

[11] People v. Realin, 301 SCRA 495 (1999).

[12] People v. Baccay, 284 SCRA 296 (1998).

[13] See People v. Gondora, 265 SCRA 408 (1996).

[14] People v. Abria, 300 SCRA 565 (1998).

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[15] People v. Sagun, 303 SCRA 382 (1999).

[16] People v. Cristobal, 252 SCRA 507 (1996).

[17] People v. Reduca, 301 SCRA 516 (1999).

[18] People v. Ombrog, 268 SCRA 93 (1997).

[19] People v. Villanueva, 265 SCRA 216 (1996).

[20] “Art. 12. Circumstances which exempt from criminal liability.- The following are exempt from criminal liability:

x x x

4. Any person who, while performing a lawful act with due care, causes an injury by mere accident without fault or intention of causing it.”

x x x."

[21] People v. Cario, 288 SCRA 404 (1998).

[22] Decision, p. 11; Rollo, p. 34.

[23] People v. Borreros, 306 SCRA 680 (1999).

[24] I Aquino, op.cit., 403.

[25] People v. Vermudez, 302 SCRA 276 (1999).

[26] People v. Real, 308 SCRA 244 (1999).

[27] People v. Bautista, 312 SCRA 214 (1999).

[28] People v. Panado, G.R. No. 133439, December 26, 2000.

[29] People v. Villanueva, 302 SCRA 438 (1999).

[30] People v. Reyes, 309 SCRA 622 (1999).

[31] People v. De Vera, Sr., 308 SCRA 102 (1999).

[32] See People v. Langit, G.R. Nos. 134757-58, August 4, 2000.

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