

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDUARDO TUMAYAO, ALIAS LEONALDO TUMAYAO, AND LEONILO TUMAYAO, ACCUSED-APPELLANTS.*G.R. No. 137045. April 16, 2001*

Ponente: MENDOZA, J.

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This is an appeal from the decision,[1] dated December 11, 1991, of the Regional Trial Court, Branch 28, Mandaue City, finding accused-appellants Eduardo Tumayao, alias Leonaldo Tumayao, and Leonilo Tumayao guilty of murder and sentencing them both to suffer an indeterminate sentence of twelve (12) years, five (5) months, and eleven (11) days of reclusion temporal, as minimum, to reclusion perpetua, as maximum, and to indemnify the heirs of the victim, Romulo Cañete in the amount of P50,000.00 and to pay the costs. Originally taken to the Court of Appeals, the appeal was certified to this Court by the appeals court on the ground that the appropriate penalty is reclusion perpetua.[2] The information against accused appellants alleged:

That on or about the 22[nd] day of September 1985 at 7:00 o'clock in the evening, more or less, at Barangay Cabadiangan, Municipality of Liloan, Province of Cebu, Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused, with deliberate intent to take the life of Romulo Cañete, with treachery and evident premeditation and taking advantage of superior strength, conniving, confederating, and helping one another, did then and there willfully, unlawfully, and feloniously attack and stab Romulo Cañete with the use of a sharp bolo locally known as "plamengko," thereby inflicting upon the latter fatal wounds which caused his death shortly thereafter.[3]

When arraigned on February 14, 1985, accused-appellants, with the assistance of counsel, pleaded not guilty to the offense charged, whereupon the case proceeded to trial.

The prosecution presented three witnesses, namely, Prisca Cañete, Remigio Cañete, and Marcelino Canatan, whose testimonies show the following facts:

On September 22, 1985, after attending Segunda Wagas' interment, Remigio and Romulo Cañete, together with Jesus Tundag, Lucio Tundag, and Nora Taruja, took a cargo truck to take them home.[4] After some distance, however, the truck was forced to stop because the road was impassable. For this reason, the passengers disembarked and, walking single file, took a narrow footpath home.[5] According to Remigio Cañete, when the group reached the area across Liloan creek, the Barrio Captain suggested to Romulo that they take a shortcut. At that particular instant, Eduardo and Leonilo Tumayao sprang from their hiding place by the roadside and attacked Romulo.[6] Leonilo caught Romulo and held his hands, while Eduardo stabbed Romulo on the right side.[7] Romulo ran toward the junction of the road.[8] Leonilo Tumayao fired two shots, causing Remigio and company to take cover behind the bushes.[9] After accused-appellants had left, Remigio's group came out and took Romulo to the Southern Islands Hospital.[10] Segundino Cañete told Prisca Cañete what had happened to her husband, Romulo Cañete. Prisca Cañete lost no time. She proceeded to Southern Islands Hospital,[11] where she was told by Romulo that he had been stabbed by Eduardo Tumayao while Leonilo Tumayao held his hands.[12] Romulo

Cañete was thereafter transported to Velez General Hospital, where he eventually died. [13] Prisca Cañete said she incurred the following expenses for Romulo Cañete's hospitalization and death: P7,890.00 for hospitalization; P1,200.00 for the Southern Islands Hospital; P205.00 for mortgage of the cow; P1,200.00 for a loan; and P300.00 for transportation.[14] The items claimed are, however, unsupported by receipts.

For its part, the defense presented five witnesses, namely, Cesario Gahi, Francisco Tundag, and accused-appellants Eduardo Tumayao, alias Leonaldo Tumayao, and Leonilo Tumayao. Their testimonies are as follows:

At 4 p.m. of September 21, 1986, both accused-appellants were at the deceased Segunda Wagas' home to butcher a pig for those attending the interment. They slept in Wagas' house. The next day, they acted as pallbearers in the funeral march to the Liloan Cemetery.[15] According to Eduardo, after the funeral, he boarded a cargo truck which had been rented to provide transportation for those who joined in the funeral march. The truck stopped at Cabadiangan at around 6 p.m., and everybody disembarked. Eduardo walked home in the company of Jose Pozon, Lucio Tundag, and other people.[16] Ahead of them was the group of Romulo Cañete. Romulo blocked their way. He tripped Eduardo, causing the latter to fall to the ground. When Eduardo got up, Romulo tried to hit him with a piece of wood, but Eduardo was able to evade the blow. After Romulo delivered two more blows, Eduardo retaliated by stabbing Romulo with a hunting knife. Romulo then fled.[17] Eduardo, for his part, threw the knife away.[18] Francisco Tundag testified that, as he and Lucio Tundag, Juana Talisuc, Rosing Tundag, Kolas Tunday, and Eduardo Tumayao were walking on their way home,[19] he heard Romulo shout at Eduardo, "Kadugay nimo, patyon taka!" ("You took so long, I'll kill you!") [20] and then gave him two blows. After evading the blows, Eduardo retaliated by stabbing Romulo in his right side.[21] Leonilo denied being present at the time of the commission of the crime.[22] He claimed that he left Eduardo's group and took the Bairan trail[23] because he was in a hurry to reach home so that the fish he was bringing could be had for dinner.[24] On the basis of the parties' evidence, the trial court rendered a decision, dated December 11, 1991, the dispositive portion of which reads:

WHEREFORE, the foregoing premises considered, Judgment is hereby rendered finding both accused EDUARDO TUMAYAO, alias Leonaldo Tumayao, and LEONILO TUMAYAO guilty beyond reasonable doubt for the crime of Murder. Both accused are hereby sentenced each to undergo the indeterminate penalty by imprisonment of TWELVE (12) YEARS, FIVE (5) MONTHS, and ELEVEN (11) DAYS of reclusion temporal, as minimum, to RECLUSION PERPETUA with the accessories of the law, to indemnify the legal heirs of the deceased Romulo Cañete jointly and severally in the amount of P50,000.00 without any subsidiary imprisonment in case of insolvency and to pay their proportionate share of the costs.

Both accused before they were granted bail for their provisional release . . . were able to post their respective property bonds. [They] are hereby credited full time . . . they have undergone preventive imprisonment.

SO ORDERED.[25]

On May 24, 1997, while the case was pending in the Court of Appeals, accused-appellant Eduardo Tumayao, alias Leonaldo Tumayao, died.[26] Unaware of the foregoing, the Court of Appeals, in its resolution, dated September 23, 1998, held both Eduardo and Leonilo Tumayao guilty of the murder and sentenced them both to reclusion perpetua. In accordance with Rule 124, §13 of the Revised Rules of Criminal Procedure, it thereafter certified the case to this Court for review.[27] Accused-appellants contend that:

- THE REGIONAL TRIAL COURT ERRED IN FINDING THAT THE ELEMENTS OF SELF-DEFENSE ARE WANTING IN THE INSTANT CASE.

- THE REGIONAL TRIAL COURT ERRED IN FINDING THAT THE ACCUSED ACTED IN

CONSPIRACY IN KILLING THE VICTIM.

- THE REGIONAL TRIAL COURT ERRED IN FINDING THAT TREACHERY WAS USED IN COMMITTING THE OFFENSE CHARGED.
- THE GUILT OF THE ACCUSED HAS NOT BEEN DULY ESTABLISHED BY DIRECT, CLEAR AND CONVINCING EVIDENCE THAT WARRANTS THE CONVICTION OF THE ACCUSED BEYOND REASONABLE DOUBT.[28]

We find accused-appellant's contentions to be without merit.

First. At the outset, it must be stated that Eduardo Tumayao's death on May 24, 1997 extinguished his criminal and civil liability arising from such.[29] Be that as it may, the court will still make a determination of Eduardo's criminal liability. By invoking the justifying circumstance of self-defense, accused-appellant Eduardo Tumayao assumes the onus of proving: (1) unlawful aggression; (2) reasonable necessity of the means employed to prevent or repel the unlawful aggression; and (3) lack of sufficient provocation on the part of the person defending himself before he can avail of the said justifying circumstance.[30] Accused-appellant failed to discharge this burden.

The question in this case is whether assuming unlawful aggression by the deceased Romulo Cañete, accused-appellant Eduardo Tumayao used reasonable means in repelling the aggression. Accused-appellant Eduardo Tumayao claimed that the deceased tripped him and that, when he fell to the ground, Romulo tried to hit him with a piece of wood. It was to defend himself, according to accused-appellant Eduardo Tumayao, that he stabbed the deceased. He claimed that the means he used was reasonably necessary to repel the aggression.

Going by Eduardo's story, it would appear that he did not flee or run away after successfully avoiding the two blows allegedly delivered by the deceased. If we are to believe his claim, he did not move from where he was and only used his knife when the deceased Romulo tried to attack him a third time. However, the fact that he did not run away after allegedly evading the two blows could only mean he did not regard the threat to his life to be sufficiently serious, in which case he was not justified in stabbing Romulo Cañete. Eduardo could have simply engaged Romulo Cañete in a fight without killing him.

Moreover, as held in *People v. Piamonte*,^[31] the fact that accused-appellant threw the knife away, as in this case,^[32] instead of surrendering the knife to the authorities and reporting the incident to them negates the claim of self-defense. In any event, this discussion is moot and academic because, as previously stated, accused-appellant Eduardo Tumayao died on May 24, 1997,^[33] thus extinguishing his criminal and civil liability.^[34] Second. Accused-appellant Leonilo Tumayao, on the other hand, invokes the defense of alibi. This defense requires proof (1) that accused-appellants were present at another place at the time of the perpetration of the crime and (2) that it was the physical impossible for them to be present at the crime scene during its perpetration.^[35] Accused-appellants failed to present proof of these requirements.

Accused-appellant Leonilo Tumayao claimed that he parted with the group of Eduardo Tumayao and took a different trail (the Bairan trail) in going home after coming from the cemetery.^[36] His self-serving testimony, however, is uncorroborated. About the only testimonies on this question are those of Eduardo Tumayao and Francisco Tundag who stated that neither of them saw Leonilo Tumayao at the scene of the crime during the stabbing incident.^[37] Alibi becomes less plausible when it is corroborated by relatives and friends who may then not be impartial witnesses.^[38] Nor is there evidence showing that it was physically impossible for Leonilo Tumayao to have been at the scene at the time the crime took place. In any event, alibi cannot prevail over the positive identification of the accused as the perpetrator of the crime.^[39] In this case, Remigio Cañete testified that Leonilo Tumayao held Romulo Cañete's hands and such enabled Eduardo Tumayao to stab the victim.

The defense cites inconsistencies in Remigio Cañete's testimony and his affidavit.[40] The discrepancies between statements of the affiant in an affidavit and those made on the witness stand are not necessarily a cause for discrediting a witness.[41] Ex parte affidavits are generally incomplete and inaccurate.[42] The failure of Remigio Cañete to mention in his affidavit the presence of accused-appellant Leonilo Tumayao during the incident does not affect his testimony in which he implicated accused-appellant. He categorically stated in court that he saw accused-appellant Leonilo Tumayao hold the deceased's hands while accused-appellant Eduardo Tumayao stabbed the deceased.[43] In the absence of evidence supporting his alibi, we find that Leonilo was indeed present at the crime scene on the night the killing of Romulo Cañete took place and that he conspired with accused-appellant Eduardo Tumayao in the same. This conclusion disposes of accused-appellant's contention that there was no one with whom Eduardo Tumayao could have conspired as Leonilo Tumayao was not present at the time of the incident.

Now, conspiracy denotes an intentional participation in the transaction with a view to the furtherance of the common design and purpose.[44] In this case, the evidence shows a common design on the part of both accused-appellants to kill Romulo Cañete.[45] Consequently, the act of one is the act of all,[46] and Leonilo Tumayao is as guilty as Eduardo Tumayao.

Third. In the alternative, both accused-appellants contended that the killing of Cañete should be held to be only homicide, and not murder, as the prosecution allegedly failed to prove the qualifying circumstance of treachery. But the testimonies of Remigio Cañete and Marcelino Canatan prove the suddenness of the attack on Romulo Cañete giving him no chance to defend himself. Remigio Cañete testified:

Q

At what place did the alleged incident happened?

A

That was in Cabadiangan across the creek in Liloan.

Q

How far were you from Romulo Cañete when Romulo Cañete was held by Leonilo Tumayao and stabbed by Eduardo Tumayao?

A

Less than two arms' length.

Q

How were you going together with Romulo Cañete? Were you on single file or were you abreast with each other?

A

Following each other.

Q

Why, what is the condition of the road?

A

Footpath.

Q

Before you reached that place where Romulo Cañete was stabbed by Eduardo Tumayao and held by Leonilo Tumayao, have you seen them before you reached that place where the incident occurred?

A

No, sir.

Q

Where did they came from?

A

They were just behind the bushes and suddenly appeared.[47]

....

Q

You said that you were about two arms length from Romulo when Romulo was held by Leonilo and stabbed by Eduardo Tumayao. Have you heard anything that was said by either Eduardo or Leonilo Tumayao to Romulo?

A

I did not hear any other utterances because after they appeared they immediately held and stabbed Romulo.

Q

Was Romulo able to defend himself?

A

No, sir.

Q.

Why?

A.

He was caught unaware.

Q

How many times did Eduardo stab Romulo?

A.

Once.[48]

He also stated:

Q

You said that before Eduardo Tumayao stabbed Romulo Cañete Leonilo Tumayao was holding Romulo Cañete. What part of the body was held by Leonilo Tumayao?

A

At the left side, sir, holding both hands of the victim.

Q

Have you seen Leonilo Tumayao before he held both hands of Romulo Cañete?

A

No, it was only at the time when he held the hand of Romulo when I saw Leonilo, sir, and right at this moment Eduardo stabbed.

Court: How far were you from the incident?

A

More than an armlengths.

Court: From the stabbing?

A

Yes, sir.

Court: Proceed.

Q

Can you describe to this place, that particular place where the alleged stabbing occurred whether that is clear or there are bushes there?

A

There are bushes around.

Q

As you have seen it, can you tell the court whether Romulo Cañete was forewarned of the impending attack of these two accused?

A

No, Sir.[49]

Marcelino Canatan likewise testified:

Q

Sometime in September 22, 1985 particularly at around 7:00, more or less, in the afternoon and evening, do you remember where you were at that time?

A

Yes, I remember.

Q

Where were you at that time?

A

I was in Bo. Cabadiangan.

Q

Do you remember where were you from before reaching Bo. Cabadiangan?

A

I came from the store buying medicine.

Q

Now, on that particular date and time and place in Cabadiangan, Lilo-an, do you remember if there was an untoward incident?

A

Yes, there was.

Q

What was that incident about?

A

It was Romulo Cañete sir, who just jumped towards the road coming from the burial in the town and then after jumping there, I have heard the barrio captain in our place in Bo. Tabla saying, "Doy, let us stop at the cross road to make a short cut."

Q

Who is this "Doy" you are referring to?

A

Romulo Cañete, the nickname is "Dodoy".

Q

Then after hearing the barrio captain calling Romulo Cañete saying, "Doy, we will pass the short cut", what happened next?

A

When the barrio councilman shouted, these persons (witness pointing to the two accused Eduardo Tumayao and Leonilo Tumayao) were pursuing them and they passed by me.

Q

Who are they pursuing?

A

Dodoy.

Q

Who is that Dodoy?

A

Romulo because he is fondly called in our place as Dodoy.

Q

In effect, did these two accused catch up with Romulo Cañete?

A

Yes and Iloy (Leonilo) was able to hold him.

Q

What part of the body of Romulo was held by Leonilo?

A

By the hand.

Q

What happened next?

A

Eduardo stabbed Romulo.

Q

Do you know if Romulo Cañete was hit by the stab of Eduardo Tumayao?

A

He was hit because Romulo said, "What is this?" and Leonilo said, "This is a combat already." [50] It is clear from the foregoing testimonies that accused-appellants caught Romulo, who was unarmed, by surprise. Even if Romulo had been armed, the same would not help him as the suddenness of the attack caught him off guard. After stabbing Romulo, Leonilo fired two shots apparently to scare people who might have thought of helping the deceased.

The essence of treachery is the sudden and unexpected attack by an aggressor on an unsuspecting victim depriving the latter of any real chance to defend himself and thereby ensuring without risk to the aggressor the commission of the crime. [51] To prove the presence of treachery, the following must be established: (a) the employment of means of execution that gives the person attacked no opportunity to defend himself or retaliate and (b) the means of execution were deliberately or consciously adopted. [52] Contrary to accused-appellants' contention, the evidence in the record shows that they employed treachery in killing Romulo Cañete, qualifying the killing as murder.

Fourth. The trial court erred in sentencing accused appellant Leonilo Tumayao to an indeterminate prison term of twelve (12) years, five (5) months and eleven (11) days of reclusion temporal, as minimum, to reclusion perpetua,

as maximum. At the time of the commission of the crime of September 22, 1985, the penalty for murder under Article 248 of the Revised Penal Code was reclusion temporal in its maximum period to death. Under Article 64 of the Revised Penal Code, where there is neither aggravating nor mitigating circumstance in the commission of the crime, the penalty should be imposed in its medium period, which in this case is reclusion perpetua.[53] Pursuant to the ruling in *People v. Bayotas*,[54] the criminal liability of accused-appellant Eduardo Tumayao, alias Leonaldo Tumayao, is deemed extinguished by reason of his death during the pendency of his appeal. In *People v. Bayotas*, it was held that the death of the accused before final judgment terminates his criminal liability as well as his civil liability directly arising from, or based solely on, the offense committed.

As regards accused-appellant Leonilo Tumayao, the civil indemnity awarded by the trial court should be affirmed, consistent with the current rulings of this Court setting the award of civil indemnity at P50,000.00.[55] It is to be noted that neither the trial court nor the appellate court ruled on the damages sought to be recovered by the widow of the victim. Prisca Cañete testified that she incurred expenses for the hospitalization, the wake, and the burial of Romulo Cañete in the amount of P10,795.00. However, only those items of expenditure supported by receipts or which appear to have been genuinely incurred in connection with the death, wake, and burial of the victim can be allowed.[56] In this case, the records do not show any receipt in support of the claim for expenses. Actual damages, therefore, cannot be granted to the victim's legal heirs.

Anent moral damages, the victim's widow stated that her sorrow due to her husband's death could not be measured by money.[57] Be that as it may, moral damages, which include physical suffering and mental anguish, may be recovered in criminal offenses resulting in physical injuries or the victim's death. An award of P50,000.00 for moral damages should be given to the legal heirs of Romulo Cañete in accordance with current rulings.[58] WHEREFORE, the decision of the Court of Appeals finding accused-appellant Leonilo Tumayao guilty of murder and sentencing him to reclusion perpetua is **AFFIRMED** with the **MODIFICATION** that the amount of P50,000.00 as moral damages, in addition to the amount of P50,000.00 as civil indemnity awarded by the trial court, is granted to the legal heirs of Romulo Cañete.

The case against Eduardo Tumayao, alias Leonaldo Tumayao, is hereby **DISMISSED** by reason of his death.

SO ORDERED.

Bellosillo (Chairman), Quisumbing, Buena, and De Leon, Jr., JJ., concur.

[1] Per Judge Mercedes Gozo-Dadole.

[2] Per Justice Eugenio S. Labitoria and concurred in by Justices Jesus Elbinias and Marina L. Buzon.

[3] CA Rollo, p. 5.

[4] TSN, p. 8, May 21, 1986; TSN, p. 11, June 6, 1986.

[5] TSN, p. 10, May 21, 1986.

[6] TSN, p. 4, June 6, 1986.

[7] TSN, p. 14, May 21, 1986; TSN, p. 5, June 6, 1986.

[8] TSN, pp. 19-20, May 21, 1986.

[9] TSN, p. 11, May 21, 1986; ; TSN, p. 5, June 6, 1986.

[10] TSN, p. 20, May 21, 1986.

[11] TSN, p. 5, April 17, 1986.

[12] Id., p. 15.

[13] [Id.,][pp. 5-6.]

[14] Id., p. 8.

[15] TSN, pp. 3-5, June 2, 1988; TSN, pp. 1-2, March 16, 1989; TSN, pp. 3-4, Sept. 1, 1987.

[16] TSN, pp. 7-10, June 2, 1988.

[17] Id., pp. 10-16.

[18] Id., p. 18.

[19] TSN, p. 4, March 16, 1989.

[20] Id., p. 6.

[21] Id., pp. 7-8.

[22] TSN, p. 12, Oct. 13, 1987.

[23] TSN, p. 7, July 21, 1988.

[24] Id., p. 8.

[25] Records, p. 186.

[26] Per certified machine copy of death certificate of Leonaldo Tumayao (Eduardo Tumayao's alias), Rollo, p. 369.

[27] CA Rollo, p. 117.

[28] See Accused-appellants' Brief, p. 1; CA Rollo, p. 43.

[29] *People v. Bayotas*, 236 SCRA 239 (1994).

[30] E.g., *People v. Cotas*, G.R. No. 132043, May 31, 2000. See also *People v. Bautista*, G.R. No. 131840, April 27, 2000; *People v. Santillana*, 308 SCRA 104 (1999).

[31] 303 SCRA 577 (1999). See also *People v. Tampon*, 258 SCRA 115 (1996); *People v. Aliviado*, 247 SCRA 300, (1995); *People v. Jotoy*, 222 SCRA 801 (1993).

[32] TSN, p. 18, June 2, 1988.

[33] Rollo, p. 369.

[34] *People v. Bayotas*, supra. See also *People v. Abungan*, G.R. No. 136843, Sept. 28, 2000; *People v. Yanson*, 320 SCRA 585 (1999); *Racquiza v. Court of Appeals*, 271 SCRA 148 (1997).

[35] *People v. Macaliag*, G.R. No. 130655, Aug. 9, 2000; *People v. Flora*, G.R. No. 125909, June 23, 2000; *People v. Gomez*, G.R. No. 132171, May, 31, 2000; *People v. Saban*, 319 SCRA 36 (1999); *People v. Floro*, 316 SCRA 304 (1999); *People v. Ortiz*, 316 SCRA 407 (1999); *People v. Villanueva*, 302 SCRA 380 (1999); *People v. Rada*, 308 SCRA 191 (1999); *People v. Manalili*, 294 SCRA 220 (1998); *People v. Andal*, 279 SCRA 475 (1997); *People v. Ballabare*, 264 SCRA 350 (1996).

[36] TSN, p. 8, July 21, 1988.

[37] TSN, p. 9, March 16, 1989.

[38] *People v. Agomo-o*, G.R. No. 131829, June 23, 2000. See also *People v. Quilllosa*, G.R. No. 115687, Feb. 11, 2000; *Naval v. Panday*, 321 SCRA 290 (1999); *People v. Araneta*, 300 SCRA 80 (1998).

[39] E.g., *People v. Montano*, G.R. No. 130836, August 11, 2000; *People v. Ladrillo*, 320 SCRA 61 (1999); *People v. Macahia*, 307 SCRA 404 (1999); *People v. Banela*, 301 SCRA 84 (1999).

[40] Rollo, pp. 53-56.

[41] *People v. Bergonio*, G.R. No. 133981, Sept. 13, 2000. See also *People v. De la Cruz*, G.R. No. 118967, June 14, 2000; *People v. Agando*, G.R. No. 130670, May 31, 2000; *People v. Garbo*, G.R. No. 126114, May 11, 2000; *People v. Ibalang*, 286 SCRA 387 (1998); *People v. Villanueva*, 265 SCRA 216 (1996).

[42] *People v. Barro*, G.R. No. 129892, Oct. 16, 2000. See also *People v. Dagami*, G.R. No. 123111, Sept. 11, 2000; *People v. Antonio*, G.R. No. 128900, July 14, 2000; *People v. Sirad*, G.R. No. 130594, July 5, 2000; *People v. Sarellana*, 233 SCRA 31 (1994).

[43] TSN, p. 9, 11, May 2, 1986.

[44] *People v. Juan*, 322 SCRA 598 (2000); *Dela Peña v. Sandiganbayan*, 316 SCRA 25 (1999); *People v. Del Rosario*, 305 SCRA 740 (1999); *Pecho v. People*, 262 SCRA 518 (1996).

[45] *People v. Orillo*, G.R. No. 125896, May 11, 2000. See also *People v. Roche*, G.R. No. 115182, April 6, 2000; *People v. Antonio*, 303 SCRA 414 (1999); *People v. Benemetrio*, 264 SCRA 677 (1996).

[46] E.g., *People v. Carugal*, G.R. No. 123229, Sept. 23, 2000; *People v. Catuiran*, G.R. No. 134761, Oct. 17, 2000; *People v. Candare*, G. R. No. 129528, June 8, 2000; *Madrid v. Court of Appeals*, G.R. No. 130683, May 31, 2000; *People v. Ladit*, G.R. No. 127571, May 11, 2000; *People v. Antonio*, 303 SCRA 414 (1999).

[47] TSN, pp. 9-10, May 21, 1986.

[48] *Id.*, p. 12 (emphasis added).

[49] *Id.*, pp. 14-15 (emphasis added).

[50] TSN, pp. 3-5, June 6, 1986.

[51] *People v. Chua*, G.R. Nos. 126255-56, Aug. 31, 2000; *People v. De la Tongga*, G.R. No. 133246, July 31, 2000; *People v. Francisco*, G.R. No. 121682, April 12, 2000.

[52] *People v. Samolde*, G.R. No. 128551, July 31, 2000; *People v. Suplito*, 314 SCRA 493 (1999); *People v. Bautista*, 312 SCRA 477 (1999); *People v. Verde*, 302 SCRA 690 (1999).

[53] REVISED PENAL CODE, ART. 64 (1). See also *People v. Berzuela*, G. R. No. 132078, Sept. 25, 2000; *People v. Undong*, 66 SCRA 386 (1975).

[54] 236 SCRA 239 (1994).

[55] E.g., *People v. Panida*, 310 SCRA 66 (1999); *People v. Piamonte*, *supra*; *People v. Gatchalian*, 300 SCRA 1 (1998).

[56] *People v. Samolde*, *supra*. See also *People v. Gutierrez*, 302 SCRA 643 (1999); *David v. Court of Appeals*,

290 SCRA 727 (1998).

[57] TSN, p. 14, April 17, 1986.

[58] *People v. Vital*, G.R. No. 130785, Sept. 29, 2000. See also *People v. Orillo*, *supra*; *People v. Francisco*, G.R. No. 121682, April 12, 2000.

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