

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JOHN MAMARION, LENY LEYSA (ACQUITTED), JULIET HARISCO, BEBOT DELA ROSA ALIAS “BEBOT VILLAROSA” (ACQUITTED), BENJIE BERNAJE (AT-LARGE); S...

G.R. No. 137554. October 01, 2003

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PER CURIAM:

This is an automatic review of the decision[1] of the Regional Trial Court of Bacolod City (Branch 50) in Criminal Case No. 96-17590 finding appellants John Mamarion y Hisugan, Charlito Domingo y Gorospe, Rolando Maclang y Ventura and Juliet Harisco y Carrera guilty beyond reasonable doubt of the crime of KIDNAPPING FOR RANSOM, sentencing each of them to suffer the penalty of DEATH and to indemnify solidarily the heirs of the late Roberta Cokin in the amount of P50,000.00.

An Information for Kidnapping For Ransom was initially filed on March 11, 1996 against appellant Mamarion together with Amado Gale, Jr. (Gale for brevity), Roger Biona and a John Doe[2] based on a Resolution dated March 4, 1996 issued by the Acting City Prosecutor and Assistant City Prosecutor of Bacolod City finding probable cause against them and dismissing the charges against Ronaldo Porquez and appellants Maclang and Harisco for insufficiency of evidence.[3]

On May 9, 1996, the Information was amended to include appellant Domingo as co-accused.[4]

Thereafter, a Second Amended Information was filed against appellants Mamarion, Domingo, Harisco and Maclang together with Gale, Biona, Leny Leysa, Bebot Dela Rosa @ Bebot Villarosa, Benie Bernaje, Sergio Mendoza @ SM @ Bambi @ Friday, Ronald Porquez, John Doe, Peter Doe, Richard Doe and Edward Doe as accused.[5] The Information reads:

That on or about July 16, 1995 or and sometime prior thereto, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused John Mamarion, Amado, Gale, Charlito Domingo, Roger Biona, Juliet Harisco, Leny Leysa, Bebot Dela Rosa @ Bebot Villarosa, Benie Bernaje, Sergio Mendoza @) SM @ Bambi @ Friday, Ronald Porquez, Rolando V. Maclang, together with John Doe, Peter Doe, Richard Doe and Edward Doe whose true names, identities and whereabouts are still unknown, conspiring, confederating and mutually helping one another with the use of firearms of different calibers by means of violence against and intimidation of person, did then, and there, kidnap ROBERTA COKIN, detain and deprive her of her liberty for the period of more than three (3) days for the purpose of extorting money in the amount of Two Million Pesos (P2,000,000.00) from her sister, Teresita Cokin, for her (Roberta's) release and that after the pay-off was intercepted and accused John Mamarion was arrested: as a consequence thereof, victim Roberta Cokin was inflicted multiple physical injuries on different parts of her body which caused her death, to the damage and prejudice of her heirs.

CONTRARY TO LAW.[6]

Only accused Gale and appellants Mamarion and Domingo were arraigned on January 27, 1997. The other

accused remained at-large. Gale and appellant Domingo pleaded "not guilty" while a plea of "not guilty" was entered by the trial court for appellant Mamarion as he refused to enter any plea.[7] Trial proceeded only with respect to Gale, appellants Mamarion and Domingo.

On March 23, 1997, accused Leysa was arrested in Tondo, Manila. Upon his arraignment on April 30, 1997, he pleaded "not guilty." [8] Trial then ensued with respect to him.

Meanwhile, accused Gale filed a motion, with the approval of the public prosecutor, seeking that he be allowed to plead guilty to a lesser offense, i.e., from Kidnapping for Ransom to Slight Illegal Detention.[9] Acting on said motion, the trial court conferred with the victim's sister, Teresita Cokin, and the latter agreed.[10] There being no evidence presented as yet against Gale[11] and on the condition that he will testify for the prosecution, the trial court found no impediment to grant the motion. Gale was re-arraigned and entered a plea of guilty to Slight Illegal Detention. Accordingly, the trial court rendered a Decision dated May 13, 1997, sentencing Amado Gale as follows:

In view of the foregoing, the Court finds the accused Amado Gale, Jr. guilty beyond reasonable doubt of the crime of Slight Illegal Detention defined and penalized under Art. 268 of the Revised Penal Code, and taking into consideration the mitigating circumstances of no intention to commit so grave a wrong and voluntary surrender, without any aggravating circumstance, the penalty that should be imposed on the accused is prision mayor in its maximum period. Applying the Indeterminate Sentence Law, the accused is sentenced to suffer the penalty of 4 years, 2 months and 1 day of prision correccional as minimum, to 10 years of prision mayor as maximum.[12]

On July 7, 1997, accused Villarosa was arraigned and pleaded "not guilty,"[13] and trial proceeded with regard to him.

Accused Biona was killed some time in October 1997 during an encounter with the military in Metro Manila.[14]

Accused Mendoza was arrested on October 6, 1997,[15] and on October 27, 1997, he was arraigned, to which he pleaded "not guilty." [16] The last to be arrested were appellants Maclang and Harisco who were brought to court for arraignment on November 7, 1997 and both pleaded "not guilty." [17] Joint trial was held with regard to these three accused.[18]

Based on the evidence presented before it, the trial court made the following findings of facts surrounding the kidnapping for ransom and death of Roberta Cokin:

. . . Roberta Cokin, nicknamed Obing, is a rich Filipino-Chinese businesswoman with business interests in Bacolod City and in the province and City of Iloilo. These varied business interest include a grocery store, commercial buildings, real estate and agricultural landholdings. Roberta or "Obing" as she is fondly called, lives together with her only surviving sister, Teresita Cokin, in their house at Mercedes St., in Bacolod City. Both Roberta and Teresita are spinsters.

x x x x x x x x

At about 11:45 in the evening of July 15, 1995, Roberta passed by her cockfarm situated in front of the Bacolod City National High School along Libertad Street (now Henares Street) in Bacolod City. She came from the Tangub cockpit where she attended a cockfight and she was alone driving by herself a Toyota Hi-Lux pick-up.

Roberta never made it home. A group of armed men came and took away Roberta and her pick-up. On the following morning, Teresita Cokin, Roberta's younger sister, saw the abandoned Hi-Lux pick-up in front of the San Sebastian Cathedral. Later, Teresita received a telephone call from one identifying himself as Bravo, informing her that Roberta was kidnapped and would be released only after a One Million Pesos

(P1,000,000.00) ransom is paid.

Andres Sumpay, the nephew of Roberta Cokin, was at the Cokin grocery early in the morning of July 15, 1995. He was minding the store when he noticed a man pacing the sidewalk in front of the store. The man later identified as the accused John Mamarion, handed over to Andres a plastic bag containing some papers. When this bag was later opened by Teresita Cokin, it contained the driver's license of Roberta. Inserted in the jacket cover of the driver's license of Roberta (Exh. I), is the ransom note (Exh. J), a piece of yellow pad paper on which appears, in Roberta's own handwriting, the following:

Teresita, please give the bearer One Million (P1,000,000.00) for I am kidnap by them. Don't tell the police or any law enforcer for my security reason." (Sgd) Obing. "Please produce immediately. Same"

Teresita had in mind to follow Obing's instruction and keep the police out of the incident but without her knowledge, her nephew, Andres Sumpay, with the help of a family friend a retired policeman Graciano Reyes, reported the kidnapping to the NBI. Teresita was at first furious when the NBI started to investigate but as she could do nothing more, she accepted and welcomed the NBI's intervention.

The NBI sought the assistance of the Bacolod Anti-Syndicated Crime Unit (BASCU) a unit of the Bacolod City Police specifically organized for the purpose of going after syndicated crimes and big-time criminals. The NBI set up shop in the house of Cokin and monitored the calls made by the kidnappers.

When Bravo made follow-up calls for the payment of the ransom money, Teresita, following the instructions of the NBI, demanded that she be allowed to talk with her sister. Teresita heard the voice of Roberta over the telephone but their conversation was very brief. All that Roberta said was for her sister to be obedient to the wishes of her kidnappers. Bravo thereafter told Teresita that the ransom money is raised to Two Million Pesos (P2,000,000.00). The NBI monitoring the call failed to trace its origin as the call was made with the use of a cellular telephone.

Bravo's last call was made in the afternoon of July 20, 1995. Teresita had already raised the amount of Two Million Pesos (P2,000,000.00) in cash and Bravo wants the money to be delivered at the Holiday Restaurant in the place which is known as the Shopping Center. The person who is carrying the money should wear a red cap and the money should be given to one who will identify himself as Bravo. The pay-off time was at 5:30 p.m.

The NBI and the BASCU laid out a plan to apprehend the kidnappers and recover the ransom money during the pay-off. An NBI agent, Ed Rasco, together with a Bacolod City policeman, concealed themselves inside the KC-20 pick-up car driven by Mario Mahusay when the latter left to deliver the ransom money. Other BASCU personnel posted themselves at strategic places around Holiday Restaurant.

Mario Mahusay was very conspicuous with his red cap inside the Holiday Restaurant at about 5:30 p.m. that day, July 20, 1995. When the restaurant's telephone rung, Mario was told that someone would like to talk with him. It was Bravo on the other end of the line and he instructed Mario to take a taxi and proceed to the Tops Bowling Lanes which is about a little less than a kilometer away.

Fortuitously, a taxi was on hand when Mario stepped out of the restaurant. Mario boarded the taxi and it immediately sped away.

The NBI and the BASCU men were caught unprepared by the sudden turn of events. Their communication system heated up with frenzied calls and instructions. Jumping on their vehicles, they sped northward following the route taken by the taxi.

The taxi, with Mario Mahusay on board, stopped in front of Tops Bowling Lanes and Mario alighted. He went inside the building and waited. He did not wait long as in a few moments, a man came and identified himself as

Bravo. Mario delivered the bags containing the Two Million Pesos (P2,000,000.00) to the man who took them. The man gave Mario P50.00 and they both left the premises of Tops.

The BASCU team, on board their service vehicle, found no trace of the taxi. They proceeded to the Ceres bus terminal at the Shopping Center and looked over the buses and the passengers hoping to find suspicious looking characters. Not finding any, they again boarded their service vehicle and moved towards the direction of the Queen of Peace Church (Hua Ming Church). The church is just near the Top's Bowling Alley.

Before the BASCU team could reach the vicinity of the church, they chanced upon a man with a bag walking hurriedly. When accosted, the man fired at the BASCU team. After a brief firefight and the explosion of a grenade, the man was subdued. The bags containing the ransom money were recovered. The BASCU team also took from the man a .357 caliber homemade revolver with ammunitions and a holster (Exhs. A, B, C and D). The man was later identified as John Mamarion.

x x x x x x x x

The firearm recovered from Mamarion (Exh. A) was marked by Officer Tubongbanua with the initial "JM" and it was indorsed to the NBI together with the live ammunitions (Exh. B), the spent shells (Exh. C) and the holster (Exh. D). The bags containing the ransom money was also turned over to the NBI.

x x x x x x x x

The remains of Obing Cokin was discovered in a shallow grave in a secluded area of a sugarcane plantation in the town of Anilao, Iloilo on August 7, 1995. . . .

x x x x x x x x

Teresita Cokin positively identified the corpse to be that of her elder sister, Obing. There is absolutely no doubt in this identification as Teresita is intimately familiar with the features of her sister, including her dentures. Moreover, she knew the blouse of Obing which has a red and white fish design and a long sleeve. Accordingly, Teresita executed an affidavit of identification allowing Dr. Ricardo H. Jaboneta, Medico-Legal Officer of the NBI to autopsy the remains of Roberta Cokin.

x x x x x x x x

Roberta died of "Traumatic shock, secondary to multiple physical injuries." The autopsy was conducted on August 8, 1995. Dr. Jaboneta opines that Roberta died not earlier than August 1, 1995 and not later than August 5, 1995.[19]

The trial court relied principally on the testimony of Gale together with the corroborating testimonies of the other prosecution witnesses, namely: Andres Sumpay, Teresita Cokin and Mario Mahusay as to appellant Mamarion, establishing the participation of appellants in the commission of the crime of Kidnapping with Ransom, as follows:

(1)

June 18, 1995 — accused Ronaldo Porquez (at-large) together with appellants John Mamarion and Charlito Domingo, John's brother, Felipe "Oloy" Mamarion[20] and Gale, held a meeting at the Ocean City Restaurant in Iloilo City wherein Porquez introduced the plan of kidnapping Roberta Cokin for the ransom of one million pesos to be participated in by the group as follows — Porquez will finance the operation in Iloilo City, Gale will identify the victim and monitor her activities and the brothers Mamarion and Domingo were the ones who will abduct the victim;[21]

(2)

June 19 to 22, 1995 — the group, consisting of the brothers Mamarion, Domingo and Gale, went around Iloilo and Bacolod City looking for a safehouse but was not successful; while they were in Bacolod City, the group used the Mitsubishi Lancer driven by Gale and owned by his cousin, Atty. Tranquilino Gale;[22]

(3)

June 22, 1995 — Gale met appellant Maclang for the first time in appellant Harisco's duplex in Capitol Heights, Bacolod City; in the afternoon of the same day, Bale, Oloy Mamarion, appellants Mamarion and Domingo proceeded to Harisco's store in Gatuslao-Gonzaga street, where appellant Harisco gave money to appellant Mamarion; they then went to Bata, Taculing and Mansilingan, looking for a safehouse; finding none, Gale brought them back to the duplex in Capitol Heights and appellant Maclang paid him P500.00 for his services;[23]

(4)

June 23, 1995 — Gale brought the group to Banago wharf and he was instructed by appellant Mamarion to come back for them in the morning of July 3, 1995;[24]

(5)

July 3, 1995 — Accused Biona, came into the picture; he arrived from Manila and was in camouflage uniform and armed;[25]

(6)

July 6, 1995 — a meeting was again held at the Ocean City Restaurant; Porquez informed Gale, the brothers Mamarion, Domingo, and Biona that the kidnapping will take place in Bacolod City and that appellants Maclang and Harisco will provide the funds in Bacolod City;[26]

(7)

July 10, 1995 — at 5:30 in the morning, the group had a breakfast meeting in Harisco's duplex, and appellants Maclang and Harisco gave "instructions" to the group; Maclang informed the group that Roberta Cokin will be abducted at the Tanguib cockpit on July 15, 1995 while Harisco said that it will be appellant Mamarion who will get Roberta as they trust him, and she will finance the operation; Harisco then borrowed the Lancer from Gale for 4 days, paid Gale P2,000.00 as rent, and told Gale that his services will not be needed in the interim; appellant Mamarion told Gale to be back on July 14, 1995;[27]

(8)

July 15, 1995 —

3:00 p.m. — Appellants Mamarion and Domingo, alias "Jack", Biona, two unidentified persons and Gale met in the public plaza, as agreed upon; Gale was instructed by Mamarion to drive to Tangub cockpit; on the way there, Domingo and Oloy Mamarion alighted at Goldenfield; upon reaching the cockpit, appellant Mamarion and Biona went down and Gale was instructed by appellant Mamarion to come back at 8:00 p.m.;[28]

8:00 p.m. — Gale fetched appellant Mamarion and Biona, and they proceeded to Goldenfield where Gale saw Oloy Mamarion and appellant Domingo having drinks at an open-space store;[29]

11:00 p.m. — Gale heard appellant Mamarion receive a message on his handset from a female voice, after which they left Goldenfield; while in traffic, they saw the white Hi-Lux pick-up of Roberta Cokin which they tailed; when they reached Cokin's cock farm in front of the Bacolod City High School, they saw her unloading several boxes and appellant Mamarion told Gale to park 20-25 meters away; appellants Mamarion and Domingo then got off the car and proceeded towards Cokin's pick-up while Biona told Gale to move away; they parked in Libertad Street and stayed there for 20 minutes; when Biona received a message in his handset, he told Gale to leave Libertad Street and when they passed by the cockfarm, Cokin's pick-up was no longer there; they proceeded to a newly-cemented portion between Homesite and Bata Subdivision, and saw Cokin's pick-up there; appellant Mamarion was holding Cokin's right hand while appellant Domingo was holding her left; she was struggling to free herself; upon seeing this, Gale cried as he took pity on Cokin; Gale was told to transfer to the victim's pick-up and together with Oloy Mamarion, they parked the pick-up in front of the Bacolod Cathedral; they alighted and went to the State Theater; meanwhile, appellants Mamarion and Domingo together with Biona, who were in the Lancer previously driven by Gale, proceeded towards Homesite; after an hour, appellant Mamarion arrived at the State Theater on board the Lancer, and Oloy Mamarion and Gale boarded the car; they went to a small house situated on a vacant lot in Homesite; appellant Mamarion left;[30]

(9)

July 16, 1995 —

6:00 a.m. — Appellant Mamarion came back, and with Gale and Oloy Mamarion, they went to Harisco's duplex; Gale remained in the car; appellant Mamarion came back and they picked up appellant Domingo; the three drove to the Cokin building in Lopez Jaena-Libertad Street, and parked along the street; Gale stayed behind in the car while appellants Mamarion and Domingo alighted; Domingo was holding a piece of yellow paper; shortly thereafter, the two came back and Domingo mentioned that the person who received the note was mestizo-looking; they proceeded to the public plaza and Gale saw appellant Mamarion talking in a public phone booth at Gonzaga street;[31]

— at around 6:00 a.m., Andres Sumpay noticed a man wearing a cap, pacing back and forth in front of the

Cokin Grocery; the man handed to him a plastic bag containing some papers which he later found out to be the driver's license of the victim; he gave the bag to Cokin's house helper, and told her to give it to Teresita Cokin; Andres Sumpay later identified the man as appellant Mamarion;[32]

— Teresita Cokin, after attending the 5:00 a.m. mass at the San Sebastian Cathedral, saw Roberta's pick-up in front of the church; when she got home she received a phone call from a certain Bravo who asked her if she got the ransom note with the victim's driver's license; she asked Andres Sumpay about it, and he told her that he gave it to Amparing, who placed it on the table; she then got the drivers license and ransom note;[33]

— after appellant Mamarion used the public phone, he went back to the car and told Gale that he talked to Teresita who got angry because there was blood in the pick-up; they went to Tops Bowling Lanes on 6th Street and appellant Mamarion alighted and went inside; when appellant Mamarion went back to the car, he told Gale that Teresita was still angry; they returned to the vacant lot and waited until evening; Gale told appellant Mamarion that the Lancer's papers are ready and he has to leave on the 18th to bring it to Manila; he referred Benjie Bernaje as the one who will substitute him in driving them around;[34]

(10)

July 17, 1995 — Gale and appellant Mamarion went to see Bernaje, who agreed to substitute for Gale; on the way to Banago wharf, they stopped by Tops Bowling Lanes where appellant Mamarion made another phone call to Teresita, asking if the money is ready; in Banago, appellant Mamarion gave the Lancer's key to Gale, and told Gale that he is going to Iloilo;[35]

(11)

July 19, 1995 —

— Gale, together with the Lancer, arrived in Manila in the afternoon, and proceeded to Atty. Tranquilino Gale's house in Alabang;[36]

— Teresita Cokin received another phone call from Bravo; she was able to talk to Roberta who told her to obey her captor's wishes; Bravo told her that they are raising the ransom amount to 2 million pesos;[37]

(12)

July 20, 1995 — Mario Mahusay, the Cokin's driver, handed the ransom money to a man wearing a red cap who

identified himself as Bravo, at the Tops Bowling Lanes; Mahusay later pointed to appellant Mamarion as the man who posed as Bravo; members of the Bacolod Anti-Syndicated Crime Unit (BASCU) team who were monitoring the pay-off apprehended appellant Mamarion in front of the Hua Ming Church after a brief gun fight;[38]

The trial court found appellants Mamarion, Domingo, Maclang and Harisco guilty beyond reasonable doubt of the crime of Kidnapping with Ransom in its Decision dated October 7, 1998, the dispositive portion of which reads as follows:

FOR ALL THE FOREGOING, this Court Finds the accused JOHN MAMARION y HISUGAN and CHARLITO DOMINGO y GOROSPE GUILTY beyond reasonable doubt as PRINCIPAL BY DIRECT PARTICIPATION and the accused ROLANDO MACLANG y VENTURA and JULIET HARISCO y CARRERA GUILTY beyond reasonable doubt as PRINCIPALS BY INDUCEMENT and all of them as CO-CONSPIRATORS of the crime of KIDNAPPING FOR RANSOM defined and penalized under Article 267 of the Revised Penal Code as amended. They are all sentenced to suffer the supreme penalty of DEATH. By way of civil liability, they are all ordered to pay solidarily the heirs of the late Roberta Cokin the sum of Fifty Thousand Pesos (P50,000.00) as indemnification for her death.

The accused JOSE VILLAROSA, LENY LEYSA and SERGIO MENDOZA are all acquitted as their guilt have not been proved beyond reasonable doubt. Their immediate release is ordered unless they are detained for some other cause.[39]

Hence, this automatic review pursuant to Article 47 of the Revised Penal Code, as amended.

In their respective briefs, appellants raise the following assignments of errors, to wit:

For appellant John Mamarion:

- THE LOWER COURT ERRED IN APPRECIATING THE TESTIMONY OF AMADO GALE, JR. AGAINST ACCUSED JOHN MAMARION.
- THE LOWER COURT ERRED IN HOLDING ACCUSED JOHN MAMARION GUILTY BEYOND A REASONABLE DOUBT OF THE CRIME OF KIDNAPPING FOR RANSOM AND FOR THE DEATH OF ROBERTA COKIN.[40]

For appellant Charlito Domingo:

- THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE TESTIMONIES OF PROSECUTION WITNESSES.
- THE TRIAL COURT ERRED IN DISCREDITING THE TESTIMONIES AND EVIDENCE FOR APPELLANT CHARLITO DOMINGO, PARTICULARLY HIS DEFENSE OF ALIBI.
- THE TRIAL COURT ERRED IN NOT ACQUITTING APPELLANT CHARLITO DOMINGO ON REASONABLE DOUBT.[41]

For appellant Juliet Harisco:

I

THE TRIAL COURT ERRED IN CONVICTING JULIET HARISCO OF KIDNAPPING FOR RANSOM AND SENTENCING HER TO DEATH WITHOUT SUFFICIENT EVIDENCE.

A.1 PARTICIPATION AS PRINCIPAL BY INDUCEMENT AND CONSPIRACY ON THE PART OF JULIET HARISCO ARE NOT ESTABLISHED.

A.2 AMADO GALE IS A POLLUTED AND INCREDIBLE WITNESS, WHOSE TESTIMONY IS NOT CORROBORATED BY ANY OTHER EVIDENCE.

A.3 THE TESTIMONY OF AMADO GALE, A CONFESS (sic) CO-CONSPIRATOR IS NOT ADMISSIBLE IN THE ABSENCE OF INDEPENDENT EVIDENCE OF CONSPIRACY.

B. THE HONORABLE COURT ERRED IN ADMITTING AS SINCERE, CREDIBLE AND TRUTHFUL THE TESTIMONY OF AMADO GALE, AN ACTIVE PARTICIPANT IN THE PLANNING AND ACTUAL KIDNAPPING FOR RANSOM OF HER FORMER EMPLOYER, ROBERTA COKIN, DESPITE THE MANY INCONSISTENCIES ON MATERIAL POINTS.

C. THE TRIAL COURT ERRED IN CONVICTING ACCUSED JULIET HARISCO ON THE BASIS OF THE SOLE AND UNCORROBORATED TESTIMONY OF AMADO GALE DESPITE THE FACT THAT THE LATTER FAILED ON TWO (2) OCCASIONS TO IDENTIFY HER PERSON.

D. THE TRIAL COURT ERRED IN ARBITRARILY ACCEPTING HOOK, LINE AND SINKER THE EXPLANATION OF AMADO GALE THAT HE DID NOT IDENTIFY ACCUSED JULIET HARISCO (AND CO-ACCUSED ROLANDO MACLANG) BECAUSE HE WAS AFRAID FOR HIS LIFE AND THAT OF HIS FAMILY.

E. THE TRIAL COURT ERRED IN NOT GIVING CREDENCE TO THE TESTIMONIES OF JOE JOVEN AND JOI SIMPAS, BJMP SECURITY ESCORTS OF AMADO GALE DURING THE AUGUST 8, 1996 REINVESTIGATION, WHO TESTIFIED THAT, DURING AFORESAID HEARING IN ILOILO CITY, AMADO GALE ACTED NORMALLY AND DID NOT APPEAR TO BE NERVOUS OR APPREHENSIVE AND FURTHERMORE, THAT AMADO GALE DID NOT GO TO THE COMFORT ROOM AS HE ALLEGED WHERE HE WAS HANDED A WRITTEN DEATH THREAT.

F. THE TRIAL COURT ERRED IN CONVICTING ACCUSED JULIET HARISCO DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH MOTIVE ON HER PART FOR PARTICIPATING IN THE CRIME CHARGED.

II

THE TRIAL COURT ERRED IN NOT ACQUITTING JULIET HARISCO BASED ON REASONABLE DOUBT AND THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE IN HER FAVOR.

III

THE CONVICTION OF JULIET HARISCO IS A GROSS INJUSTICE THAT REQUIRES IMMEDIATE VINDICATION AND RECTIFICATION BY THE EARLY RESOLUTION OF HER APPEAL.

IV

THE TRIAL COURT ERRED IN NOT GRANTING NEW TRIAL.[42]

For appellant Rolando Maclang:

I

THE TRIAL COURT ERRED IN ALLOWING PRINCIPAL ACCUSED AMADO GALE TO CHANGE HIS PLEA OF NOT GUILTY TO A LESSER OFFENSE OF SLIGHT ILLEGAL DETENTION IN CONSIDERATION OF HIS UNDERTAKING TO TESTIFY AS ONE OF THE PROSECUTION WITNESSES.

II

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED, ROLANDO V. MACLANG BASED ON THE UNCORROBORATED TESTIMONY OF PRINCIPAL ACCUSED TURNED PROSECUTION WITNESS, AMADO GALE, WHOSE PREVIOUS TESTIMONY IN THE PRELIMINARY INVESTIGATION STAGE WAS TOTALLY REJECTED BY THE TWO (2) SETS OF INVESTIGATORS, AND WAS NOT MADE THE BASIS OF INDICTING THE ACCUSED.

III

THE TRIAL COURT ERRED IN HOLDING THAT THE TESTIMONY OF PRINCIPAL ACCUSED TURNED PROSECUTION WITNESS AMADO GALE IS ENTITLED TO FULL FAITH AND CREDIT.[43]

The Office of the Solicitor General (OSG) supports the convictions handed down by the trial court. However, it recommends that the award of civil indemnity in the amount of P50,000.00 should be shouldered by each of the appellants, following the award made by the Court in *People vs. Yambot*, G.R. No. 120350, October 13, 2000.[44]

The Court will first determine whether or not the trial court erred in allowing Gale to plead to a lesser offense in consideration of testifying as a prosecution witness.

Appellants assail Gale's plea to a lesser offense arguing that it should have been made during the plea bargaining stage of the trial and that it should not be subject to the condition that he will testify against appellants. In the Brief for the State, the OSG maintains that Gale was validly discharged as a state witness. Under the circumstances, it is not correct to state that Gale was discharged as a state witness under Section 9, Rule 119 of the Rules of Court. Gale was allowed to change his plea pursuant to the then prevailing Section 2, Rule 116 of the Rules of Court,[45] which provided:

Sec. 2. Plea of guilty to a lesser offense. — The accused, with the consent of the offended party and the fiscal, may be allowed by the trial court to plead guilty to a lesser offense, regardless of whether or not it is necessarily included in the crime charges, or is cognizable by a court of lesser jurisdiction than the trial court. No amendment of the complaint or information is necessary.

A conviction under this plea, shall be equivalent to a conviction of the offense charged for purposes of double jeopardy.

Records show that during the May 13, 1997 hearing, the Chief State Prosecutor manifested that he has approved Gale's motion to be allowed to plead to a lesser offense, i.e. Slight Illegal Detention.[46] Private complainant Teresita Cokin, upon query of the trial court, consented to Gale's offer of plea to a lesser offense Slight Illegal Detention.[47]

It is immaterial that said plea was not made during the pre-trial stage or that it was made only after the prosecution already presented several witnesses. In *People vs. Villarama, Jr.*,[48] a 1992 case, the trial court allowed the accused therein to change his plea even after the prosecution had rested its case, applying the herein above-quoted Section 2, Rule 116 of the Rules of Court. The Court elucidated, thus:

Plea bargaining in criminal cases, is a process whereby the accused and the prosecution work out a mutually satisfactory disposition of the case subject to court approval. It usually involves the defendant's pleading guilty to a lesser offense or to only one or some of the counts of a multi-count indictment in return for a lighter sentence than that for the graver charge. Ordinarily, plea-bargaining is made during the pre-trial stage of the criminal proceedings. However, the law still permits the accused sufficient opportunity to change his plea thereafter. Thus, Rule 116 of the Rules of Court, Section 2 thereof, provides:

x x x x x x x x

However, the acceptance of an offer to plead guilty to a lesser offense under the aforequoted rule is not demandable by the accused as a matter of right but is a matter that is addressed entirely to the sound discretion of the trial court.

In the case at bar, the private respondent (accused) moved to plead guilty to a lesser offense after the prosecution had already rested its case. In such situation, jurisprudence has provided the trial court and the Office of the Prosecutor with a yardstick within which their discretion may be properly exercised. Thus, in *People vs. Kayanan*, we held that the rules allow such a plea only when the prosecution does not have sufficient evidence to establish the guilt of the crime charged.[49] (Emphasis supplied)

Gale's testimony was crucial to the prosecution as there was no other direct evidence linking appellants to the commission of the crime. Hence, the trial court did not err in allowing Gale to plead guilty to a lesser offense.

The Court will now determine: (1) whether or not the trial court erred in giving full faith and credit to the testimony of Gale; and (2) whether or not the participation and conspiracy of the four appellants in the commission of the crime of Kidnapping for Ransom had been proved beyond reasonable doubt.

On the first issue:

As a general rule, the testimony of a co-conspirator is not sufficient for the conviction of the accused unless other evidence supports such testimony.[50] There is, however, an exception to said rule. In *People vs. Sala*,[51] the Court said:

It is true that the testimony of a co-conspirator is not sufficient for the conviction of the accused unless such testimony is supported by other evidence. Such testimony comes from a polluted source and, therefore, must be received with caution. As an exception, however, the testimony of a co-conspirator, even if uncorroborated, will be considered sufficient if given in a straightforward manner and it contains details which could not have been the result of deliberate afterthought.[52] (Italics supplied)

In upholding the credibility of Gale, the trial court stated in its decision, thus:

The testimony of Amado Gale on how the conspiracy to kidnap Roberta Cokin was hatched and implemented resounds with all the earmarks of sincerity and truth. His testimony is sox (sic) rich with details of persons, time, places and things and portrays with vivid imagery the action and the happenings as he saw them. This is the kind of testimony that carries the hallmarks of honesty and truth.

Testimonies which are unequivocal, forthright and replete with details are seals of self-authentication in their credibility.

Moreover, Amado Gale is only a driver whose educational attainment is only Grade II. It will require a good measure of ingenuity to invent a story of kidnapping, abundant with all the gory details, an ingenuity which Amado certainly do (sic) not possess.[53] . . .

Appellants take exception to such finding arguing that the prosecutors had previously rejected Gale's testimony during the second re-investigation and his testimony is incredible and full of inconsistencies. The Court is not convinced.

The trial court's assessment of Gale as a credible witness and the credibility of his testimony is binding upon the Court. This is so because the trial court had the opportunity to observe and examine the witness' conduct and demeanor on the witness stand, having personally heard and observed him, and thus, it is in a better position to decide the question of his credibility.[54]

A perusal of the transcripts of Gale's testimony confirms the trial court's assessment. Notably, Gale testified twice.

The first time was against appellants Mamarion and Domingo as well as accused Villarosa and Leysa. The second instance was against appellants Maclang and Harisco, and, accused Mendoza. All throughout his testimony, his narration of the events, from the moment he was first taken in by the group on June 18, 1995 up to the time he was fetched by his wife and the authorities in Laguna on September 25, 1995, Gale was consistent in his account. Even during the rigorous cross-examination conducted by appellants' counsel, Gale was steadfast in his account of the commission of the crime and the participation of all appellants.

The fact that the trial court found the testimony of another prosecution witness Ruperto Legarda, Jr. to be replete with inconsistencies and incongruities pertaining to significant and important details and "suffers from serious improbabilities" does not lessen the credibility of Gale.

The testimony of Gale, sans that of Legarda, Jr., is sufficient to convict appellants. Truth is established not by the number of witnesses but by the quality of their testimonies.[55] The testimony of a single witness if positive and credible is sufficient to support a conviction, as convictions rest not on the number of witnesses, but on the credibility of the testimony of even one witness who is able to convince the court of the guilt of the accused beyond a shadow of doubt.[56]

Appellants Maclang and Harisco insist that Gale's testimony is incredible and replete with inconsistencies. They maintain that Gale was inconsistent when: (1) he testified on July 7, 1997 that he saw Maclang for the first time in the morning of June 22, 1995 at the duplex seated at the balcony; while during his December 17, 1997 testimony, he said that when he fetched Mamarion's group on June 22, 1995 at the duplex, he saw Maclang seated on the chair facing the table, and that he already knew Maclang because the latter used to attend occasions hosted by Porquez for whom Gale used to work;[57] (2) he did not state in his July 7, 1997 testimony when and where the kidnapping will take place as discussed during their July 10, 1995 meeting; while in his December 17, 1997 testimony, he specified that Maclang said on July 10, 1995 that Roberta Cokin will be kidnapped on July 15, 1995 at the Tangub cockpit;[58] and (3) during the August 8, 1996 re-investigation, he said that Mamarion and Roger Biona informed him that the duplex house was owned by appellant Harisco, while when further examined, he said that he found out that the duplex was owned by Harisco only after his affidavit was taken.[59]

These alleged inconsistencies, if they can be considered as such, are negligible and merely refer to minor details that do not bear relevance on the material and significant fact that appellants were part of the group which concocted and carried out the kidnapping of Roberta Cokin.

Moreover, while it is true that, Gale did not state during his July 7, 1997 testimony that the details of the kidnapping were discussed during the group's July 10, 1995 breakfast meeting at the duplex house, it is because the prosecution did not ask him particularly as to what took place during such breakfast conference. What was asked of him during that portion of his direct examination merely pertained to his companions at that time, thus:

Q Now, on July 10, 1995 in the morning, where were you?

WITNESS:

A

On July 10, I went to the Duplex house to fetch John Mamarion alias "Oloy" and Roger Biona. And that was the time I recognized Juliet Harisco.

ATTY. BANZON:

Q

Now, in that breakfast conference with Major Maclang and Juliet Harisco on July 10, 1995, who were the other

persons present in the morning of July 10, 1995?

A

I saw some people. Some people are matured and some are young. I don't know their names but I can recognize them by face if I saw again.

Q

How about John Mamarion, Felipe "Oloy" Mamarion, alias "Jack" and Roger Biona, were they also in that conference?

WITNESS:

A

Yes, sir, they were present while Major Maclang and Juliet Harisco instructed them while they were eating their breakfast.

Q

Now, Mr. Gale, after that breakfast conference on July 10, 1995, do you know where did you proceed?

WITNESS:

A

After the breakfast conference, Juliet Harisco told me that she will borrow or rent the car for four (4) days. She will pay the car Five Hundred (P500.00) Pesos, a day, because they are going to North Negros for a very confidential transaction and I am not needed.[60]

Obviously, Gale could not have testified as to the details of their breakfast meeting because proper questions on direct examination were not propounded by the prosecution. The above-quoted testimony cannot be considered an inconsistency but rather it is the result of an omission on the part of the prosecutor who conducted the direct examination. It must be emphasized that a response to a question is not to be isolated in relation to other queries and answers thereto.[61] The rule is that testimonies must be taken in their entirety.[62]

Thus, during the cross-examination of Gale by counsel for Mamarion on July 24, 1997, the Court finds that Gale elucidated on the participation of appellant Maclang, viz.:

ATTY. ROMERO:

Q

You testified here that while in Bacolod City, there was an occasion that you ate breakfast at the duplex house at Capitol Heights, wherein Rolando Maclang, during that breakfast suggested that the kidnapping of Roberta Cokin will be in Bacolod City?

A Yes, sir.

ATTY. ROMERO:

Q

And during that meeting, what Major Maclang had only told you group that the kidnapping will be in Bacolod City, and that is all?

COURT:

Only "said". Maclang said.

WITNESS:

A Yes, sir.

ATTY. ROMERO:

Q And that was all that Maclang said in that meeting?

A There were many other things.

x x x x x x x x

ATTY. ROMERO:

Q

Now, in Iloilo City, what was told to you by Ronal Porquez was that, "We will kidnap a certain businesswoman in Bacolod City." And while in Bacolod, it was Rolando Maclang who finally decided that the kidnapping will be held in Bacolod City. That is your testimony here in court, is that correct?

x x x x x x x x

WITNESS:

A Yes, sir.

x x x x x x x x

COURT:

Q

Porquez in that meeting in Iloilo never mentioned Rolando Maclang and to be the person who will meet you here in Bacolod City? Is that correct or not?

A Yes, he has mentioned that.

ATTY. ROMERO:

Q What was the statement about Rolando Maclang made by Roland Porquez?

WITNESS:

A That here in Bacolod, everything will be taken cared of by Major Maclang.[63]

This is further reinforced when Gale testified about the participation of appellants Maclang and Harisco on December 17, 1997, to wit:

x x x x x x x x

Q

Now, after arriving at Bacolod City on July 8, 1995, where did you and your group proceed?

A

We proceed directly to the duplex house at Capitol Heights, where Rolando Maclang and Juliet Harisco live.

x x x x x x x x

ATTY. BANZON:

Q

So what happened, when you arrived at the duplex house from San Carlos on July 8, 1995?

A

John Mamarion, Carlito Domingo, Roger Biona, and Oloy Mamarion alighted, and then I proceeded to Mansilingan. They instructed me again to come back the following day, that is already July 9, 1995.

Q

Now, as instructed by them, were you able to fetch them in the morning of July 9, 1995 at the duplex house?

A Yes, sir.

Q

After fetching them in the morning of July 9, 1995, where did you and your group proceed?

WITNESS:

A

We went around the city to look for a safehouse. We proceeded to Goldenfield, Mansilingan, Airport, and Tangub, until they decided to go back to the duplex . . .

x x x x x x x x

A

We went back to the duplex house at Capitol Heights. John Mamarion instructed me again to fetch them early in the morning the following day.

Q

Now, on July 10, 1995 in the morning, as instructed by John Mamarion, were you able to fetch them?

A

In the morning I went back to the duplex house and when I arrived there, Juliet Harisco and Rolando Maclang were there as well as the group. We took our breakfast there and had a meeting.

Q

Now, in that breakfast meeting where you also attended and participated on July 10, 1995, who are present?

A

Major Maclang, Juliet Harisco, John Mamarion, Roger Biona, Charlito Domingo, Oloy Mamarion and myself, and some young persons whom I do not know, but I could identify them if ever I could see them.

ATTY. BANZON:

Q

Now, what transpired in the breakfast meeting that you said you attended on the morning of July 10, 1995 with Major Maclang and Juliet Harisco among others?

A

Major Maclang told us that Roberta Cokin will be kidnapped at the cockpit of Tangub.

Q What else has transpired in that breakfast meeting?

A

In the course of our meeting, Juliet Harisco stated further that John Mamarion will be the one to get Roberta Cokin because they trust John Mamarion, and she will be the one to finance. She told me that only the group will go, and that I will not go with them. So, I told them that if ever they will use the car, they have to pay me in advance the amount of P500.00 pesos per day because they will use the car for four (4) days.

Q What else happened in that breakfast meeting?

A

Juliet Harisco stated further that they will go to Central Market, and that I will follow them.

Q

When you said they will leave for the Central Market, and your group will follow them, who were those are you referring to?

WITNESS:

A

John Mamarion, Charlito Domingo, Roger Biona and myself. It was Juliet Harisco who instructed us to follow them because we will get the money and the group, composed of John Mamarion, Charlito Domingo, Roger Biona, Oloy Mamarion and myself will get the money in the amount of P2,000.00 pesos from her.

Q

Were you able to receive that P2,000.00 pesos from Juliet Harisco on July 10, 1995?

A

Yes, sir. After I received the P2,000.00 pesos, they proceeded north, but they dropped me at the corner of Pepsi/Bata because John Mamarion told me that I could not go with them as their travel is confidential. He instructed me that I have to wait again in that same place where they dropped me on July 14, 1995 when they will return the vehicle.

COURT:

Q This P2,000.00 pesos represents the advance rental of the vehicle?

WITNESS:

A Yes, Your Honor.

ATTY. BANZON:

Q

Now, let's go back to that breakfast meeting on July 10, 1995. You said earlier in your direct testimony that Major Maclang told you and the group that Roberta Cokin would be kidnapped in the . . . at the Tangub cockpit. My question is, was there a date mentioned as to when the kidnap should be effected or made?

WITNESS:

A Yes, sir. Because he knew that Roberta Cokin would be joining the derby.

Q What date?

A

July 15, 1995. But he stated further that whatever happens, he will not be pointed to as a participant in the kidnapping.[64] (*Italics supplied*)

Furthermore, while it is true that the names of Maclang and Harisco do not appear in the affidavits previously executed by Gale and that the latter failed to identify them during the re-investigation of the case, still, they were specifically pointed out and unequivocally identified by Gale during the trial as those who were with the group when the plan to kidnap the victim was hatched. Such testimony prevails over the affidavits which Gale previously executed. It is settled that whenever there is inconsistency between the affidavit and the testimony of a witness in court, the testimony commands greater weight considering that affidavits taken *ex parte* are inferior to testimony given in court, the former being almost invariably incomplete and oftentimes inaccurate.[65]

Moreover, delay in revealing the identity of the perpetrators of a crime does not necessarily impair the credibility of a witness, especially where the delay is explained.[66] Gale was able to satisfactorily explain why he did not name or identify Maclang and Harisco in his affidavits and during the re-investigation of the case. On cross-examination by counsel for appellant Maclang, Gale staunchly declared: "I purposely did not make mention of Major Maclang because the person who was taking my affidavit was a policeman and I am afraid because Major Maclang was also a policeman, I was afraid because even Oloy Mamarion, our companion was even killed." [67] Gale further explained that he was afraid because Major Maclang and Juliet Harisco have warned him not to implicate them.[68] Upon further questioning, Gale stated that he was not afraid anymore "because when my family had already left, I trusted myself to the Lord and I said to myself that I will tell the truth." [69] Thus, the omission of the names of appellants Maclang and Harisco by Gale in his affidavits does not demolish his credibility when he subsequently implicated them on the witness stand.

Witnesses are usually reluctant to volunteer information about a criminal case or are unwilling to be involved in or dragged into criminal investigations due to a variety of valid reasons.[70] Fear of the criminal is one such reason.[71] On that account, Gale's fear was not without basis. In his testimony Gale revealed that on July 23, 1995, after arriving from Manila, several armed men went to his house in Old Escalante at around 11:00 p.m., and looked for him, but he hid.[72] Meanwhile, his wife who likewise came from Manila on the same day, dropped by Benjie Bernaje's house, and there, Bernaje's maid handed her a note coming from John Mamarion which contained two bullet slugs and read: "(T)his two (2) slugs let Amado eat this dispense slug." [73] Gale also received a death threat on May 8, 1996 during the re-investigation of the case at the City Prosecutor's office while he was in the comfort room and someone sidled up to him and handed him a note warning him not to name Maclang or else he will not return to Bacolod alive.[74]

Gale's escorts, JO1 Leo Joven and JO1 Jose Gerard Simpas, testified that they did not see Gale leave Prosecutor Baldago's office at the Iloilo City Hall of Justice during the re-investigation on May 8, 1996, nor did they notice any unusual behavior on his part at the time he allegedly received the death threat.[75] This, however, should not be taken as proof that he did not actually receive those death threats. As the trial court aptly elucidated:

. . . they certainly based their perception on the outward appearance and actuations of Amado. They certainly were not in the position to observe the anxiety on Amado's mind and fear that digs deep in Amado's heart. The Court observed Amado to be a quiet and pensive person. By keeping to himself and remaining quiet, Amado acted normally. Without claiming expertise on the field of human behavior, the Court is nevertheless

convinced that Amado is the type who would remain outwardly quiet although an inner turmoil gnaws inveterately inside his guts.

JO1 Joven declared that Amado did not leave the re-investigation room to go to the comfort room. The matter of Amado going to the comfort room during the re-investigation is so insignificant and trivial that it could not possibly leave a mark in Mr. Joven's memory. In any event, JO1 Joven left Amado Gale and the other detainee he was guarding (Charlito Domingo) when he bought coke and siopao on the ground floor of the building. JO1 Simpas also left the detainees when he purchased coffee for Amado who requested for the change of the coke to coffee.[76]

There being no showing that Gale has any ill motive to testify against appellants, the presumption is that he was not so moved and his testimony was untainted with bias, and thus entitled to full faith and credit.[77]

In sum, the trial court did not commit any error when it gave probative weight and credence to Gale's testimony.

On the second issue:

The prosecution evidence clearly shows that appellants were conspirators in the perpetration of the kidnapping for ransom of Roberta Cokin. Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[78] Appellants Mamarion's and Domingo's acts of monitoring the victim's activities, coordinating the abduction, handing the ransom note, collecting the ransom, and detaining Roberta Cokin; and the concerted acts of appellants Maclang and Harisco in giving instructions and providing funds for their operations, prove that they acted in concert in committing the crime. Appellants' individual participation, viewed in its totality, point to a joint purpose and criminal design. Thus, they are all equally liable given that in a conspiracy, the act of one is the act of all.[79]

Appellant Mamarion questions the failure of the prosecution to present the money allegedly paid as ransom. On this score, it must be pointed out that the corpus delicti in the crime of kidnapping for ransom does not pertain to the ransom money itself. It is the fact of the commission of the crime which may be proved by the testimony of the witnesses who saw it. To prove the corpus delicti, it is sufficient for the prosecution to be able to show that (1) a certain fact has been proven, and (2) a particular person is criminally responsible for the act.[80]

From the evidence brought before the trial court, the name and participation of appellant Mamarion in the planning and execution of the crime of Kidnapping with Ransom consistently and persistently crop up. However, for reasons known only to himself, he chose to remain silent. In open court, his counsel manifested that he was waiving his right to present evidence in his defense. Mamarion confirmed said manifestation, thus:

COURT:

Q

Your lawyer declared in Court that you are not adducing any evidence by way of your defense. Did your lawyer give you that information?

JOHN MAMARION

Yes, Your Honor.

COURT:

Q Do you confirm that information of your lawyer?

A Yes, your Honor.

Q Did your lawyer explain to you the consequences of your not presenting evidence?

A Yes, Sir.

Q

Now, the Court will explain to you that if you do not present any evidence for your own behalf the case will be decided solely on the basis of the evidence presented by the prosecution against you. Do you understand that?

A Yes, Your Honor.

Q Do you still insist that you will not present any evidence?

A Yes, Your Honor.

Q

And you confirm to the Court that you were not enticed or persuaded by your lawyer, but this is your own voluntary decision that you will not be presenting evidence? Of course, upon conferring with your lawyer?

A Yes, Your Honor.

Q

I think you are aware that this is a heinous crime that you are charged with in this court?

A Yes, Your Honor.

Q

Are you aware of the penalty that may be imposed if you are found guilty of the offense?

A Yes, Your Honor.

Q What do you know?

A Death penalty.

Q

And inspite of that, are you still insisting that you will not testify here, or you will not present any other witness to testify on your behalf?

A Yes, Your Honor.[81]

His silence works against him as it goes against the principle that the first impulse of an innocent man when accused of wrongdoing is to express his innocence at the first opportune time.[82]

Appellant Domingo's defense is alibi. He claims that he was on duty from June 15 to July 25, 1995 as Apprentice Specialist at the 2nd Air Division of the Philippine Air Force based in Mactan although he went on leave of absence from June 23 to June 26, 1995. The trial court refused to give any weight to the Morning Reports presented by Domingo showing that he was on duty on the dates Gale stated as these documents do not appear to be tamper-proof,[83] and that they do not accurately reflect absences of Air Force personnel out on a pass.[84] Aside from this, prosecution witness Brgy. Capt. Marlon Villa testified that he saw Domingo whom he knows as "Jack", together with Roger Biona at the Odiongan barrio fiesta on June 29, 1995,[85] and again, on the first week of July 1995 also in Brgy. Odiongan although they didn't talk to each other,[86] while Gale positively identified Domingo as the alias "Jack" who was part of their group.[87] Given these testimonies, the trial court was correct

in disregarding Domingo's alibi as jurisprudence gives greater weight to the positive narration of prosecution witnesses than to the negative testimonies of the defense.[88]

The defense of appellant Harisco is denial and alibi. The Court will first deal on her alibi. Her defense of denial will be taken up together with that of appellant Maclang.

It is axiomatic that alibi is inherently weak and unavailing,[89] and should be established with clear and convincing evidence in order to be acceptable.[90] The burden is upon the accused to present credible and tangible proof of physical impossibility to be at the scene of the crime; otherwise, an alibi may not prevail over the positive testimony and clear identification of the accused by prosecution witnesses.[91]

Harisco claims that at 5:15 in the morning of July 10, 1995, she was already in the airport refuting Gale's testimony that they had a breakfast meeting on said date at 5:30 in the morning.

The trial court was not persuaded with her alibi. In disregarding Harisco's alibi, the trial court found that her PAL plane ticket shows that the flight for Cebu on July 10, 1995 was scheduled to leave at 8:40 in the morning, and Harisco and her companion can be at the airport minutes before the flight such that her presence during the breakfast meeting at 5:30 in the morning cannot be foreclosed. Harisco, however, points out that the trial court was mistaken when it stated that the flight was at 8:40 in the morning, because the time reflected on the ticket refers to her connecting flight from Cebu to Zamboanga on the same date, not from Bacolod City to Cebu.

On this score, the best evidence that would prove Harisco's flight details on July 10, 1995 would be the plane ticket itself.[92] A review of Harisco's plane ticket indeed discloses that the 8:40 flight indicated therein pertains to the connecting flight from Cebu to Zamboanga.[93] However, there is nothing on record that will buttress Harisco's denial that she was present at the breakfast meeting as she had an early morning flight for Cebu. It must be pointed out that it devolves upon Harisco to prove the truth of her allegations, or denials, for that matter. Her plane ticket does not state the specific time of her flight from Bacolod to Cebu as said flight was booked with an open date.[94] Harisco's witness, May Luzuriaga, testified that the flight from Bacolod to Cebu was at 6:10 in the morning.[95] But further review of the evidence on record shows that the flight was in fact at 6:50 in the morning. Particularly, in the passenger manifest brought and presented by Bacolod Branch PAL Manager Job Lamela, it was specifically written that the time of Flight No. 371 on July 10, 1995 was at 0650H, or in layman's term, 6:50 in the morning,[96] thus debunking Harisco's claim. Absent proof therefore, Harisco's claim is reduced to an unsupported allegation that bears little persuasive effect, definitely insufficient to prevail over Gale's positive identification.[97]

And even assuming that Harisco's flight was at 6:10 in the morning, it does not follow that it was physically impossible for her to negotiate the distance between her house and the airport. From 5:30 in the morning up to boarding time, Harisco had ample time to be at the meeting and subsequently board the plane bound for Cebu.

The trial court took judicial notice that Harisco can be at the airport even minutes before the flight with her ticket and baggage already checked-in earlier in her behalf.[98]

Physical impossibility takes into consideration not only the geographical distance between the scene of the crime, in the present case, the scene of the planning of the crime and the place where appellant maintains she was at, but more importantly, the accessibility between these two points — how this distance translates to number of hours of travel.[99] Geographical distances may be taken judicial notice of, but this alone will not suffice for purposes of proving an alibi.[100]

The burden is on Harisco to demonstrate that it was physically impossible for her to have been in her duplex in Capitol Heights where Gale testified that she had breakfast meeting with and gave instructions to members of the

group in carrying out the kidnapping with ransom of Roberta Cokin.[101] Harisco, failed to discharge such burden. The Court does not find any evidence that shows that the trial court erred in taking judicial notice of the fact that appellant Harisco can be at the airport in a few minutes time thus making it possible for her to be in the breakfast meeting before going to the airport for the 6:10 a.m. flight, if indeed the flight of appellant Harisco from Bacolod City to Cebu was actually 6:10 in the morning of July 10, 1995.

In the light of Gale's positive testimony that Harisco participated in the planning of the kidnapping and was present at the breakfast meeting on July 10, 1995, her defense of alibi must fail, especially when there is no showing that Gale had any improper motive to testify falsely against her[102] or that it was physically impossible for her to be at the duplex during the meeting.

Appellant Maclang denies any involvement, claiming that his indictment was politically motivated and that at the time the alleged conspiracy was brewing, he was already assigned in the Regional Special Office in Camp Delgado, Iloilo City,[103] and later at the Iloilo Police Provincial Command in Sta. Barbara, Iloilo.[104] Maclang's denials are futile. As a defense, denials are insipid and weak, being easy to fabricate and difficult to disprove.[105] Mere denial of involvement in a crime cannot take precedence over positive testimony.[106] Also, as in the case of Harisco and Domingo, Maclang failed to prove the impossibility of his presence when the crime was being planned or that Gale was ill-motivated in identifying him as one of those who spearheaded the crime.

The participation of both appellants Harisco and Maclang is spelled-out very clearly by the trial court, based on the evidence adduced before it, as follows:

. . . The facts and circumstances which indubitably show the participation of Major Maclang and Juliet Harisco in the conspiracy may be succinctly summed up, thus:

1. Major Maclang is the benefactor of the accused John Mamarion whom he took in as an asset in the Task Force Iron Eagle of which he was the Operations Officer. John Mamarion also worked for Juliet Harisco in the latter's barter trade business. Both Maclang and Harisco exercised moral ascendancy and influence over Mamarion;
2. Maj. Maclang is a friend of the accused Ronaldo Porquez. Porquez' participation in the conspiracy as instigator was duly established. If the kidnapping is to be segmented, Major Maclang and Juliet Harisco handles the Bacolod City segment while Porquez is in-charge of the Iloilo side. Porquez expressly made known to Mamarion and the kidnap group that in Bacolod City, Maj. Maclang and Juliet Harisco will answer for their expenses;
3. Maclang and Harisco have an illicit affair and both stay at the duplex house at Homesite. John Mamarion and the kidnap group stay at the duplex house in the course of the preparations for the kidnapping;
4. The fact that the kidnap group did not return to the duplex house after snatching Roberta reinforces the evidence of the duo's participation. This is too obvious to be further explained;
5. Maclang and Harisco actually delivered moneys to John Mamarion which were spent during the preparations for the kidnapping;
6. It was Maj. Maclang who ordered the kidnapping to be held on July 15, 1995 at the Tangub cockpit. Juliet Harisco pointed to John Mamarion reiterating his assigned role as the one who will actually snatch Roberta Cokin. This incident took place during the breakfast meeting at the duplex house in the morning of July 10, 1995. It was during that time when Major Maclang gave out a warning that whatever happens, his name should not be mentioned in connection with the kidnapping;
7. After the filing of the charges against them, both Maclang and Harisco took flight and evaded arrest. They were arrested in the same house at Taytay, Rizal on October 25, 1997. As testified by Lt. Col. Rolando Lopez,

both Maclang and Harisco occupy adjacent rooms at the upper portion of the building.

The evidence clearly show that both Maj. Maclang and Juliet Harisco were aware of the filing of the present case against them and they both evaded arrest. Maclang's feeble explanation for his flight was that he was trying to recover the folder in the possession of Roger Biona as the documents therein contained would unravel the mystery of the Cokin kidnapping. This claim is too shallow and too nebulous as to be given any serious consideration. Harisco's explanation is that she could not accept being charged for a crime she did not commit. This explanation wilts and fades in illuminating brightness of clear and positive evidence pointing to her participation in the kidnap-slay as a principal by inducement.[107]

Both appellants Maclang and Harisco argue that: (1) it is inconceivable that they should be involved in a crime involving such a measly mount considering that Harisco is engaged in a successful business and owns several properties,[108] and that Maclang is a be-medalled military officer;[109] (2) Harisco has no motive for committing the crime;[110] (3) the bungled crime cannot be the handiwork of an experienced military man like Maclang;[111] (4) it is illogical that Maclang will allow Harisco to give instructions to the group when he is supposedly to be the one to do it.[112]

These arguments, which are vain attempts on appellants' part to discredit Gale, are plain surmises and conjectures that pale in the light of Gale's positive identification and unwavering testimony. That Harisco is well-off is irrelevant. As the Court has declared in *People vs. Deang* possession of wealth does not make one a saint and poverty alone does not make one a criminal.[113] Thus, lack of motive on the part of Harisco is a moot point in the face of the positive identification and testimony of Gale on Harisco's participation. Proof of ill motive to commit the crime then becomes irrelevant.[114] Likewise, Maclang's so-called achievements do not necessarily connote that he is innocent of the crime charged or that he is incapable of committing it. An accused is not entitled to an acquittal simply because of his previous, or even present, good moral character and exemplary conduct.[115]

Under Article 267 of the Revised Penal Code, as amended by Section 8 of R.A. No. 7659 kidnapping for ransom is penalized as follows:

Kidnapping and serious illegal detention. — Any private individual who shall kidnap or detain another, or in any manner deprive him of his liberty, shall suffer the penalty of reclusion perpetua to death:

- If the kidnapping or detention shall have lasted more than five days.
- If it shall have been committed simulating public authority.
- If any serious physical injuries shall have been inflicted upon the person kidnapped or detained; or if threats to kill him shall have been made.
- If the person kidnapped or detained shall be a minor, female or a public officer.

The penalty shall be death where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances above-mentioned were present in the commission of the offense.

When the victim is killed or dies as a consequence of the detention or is raped, or is subjected to torture or dehumanizing acts, the maximum penalty shall be imposed. (*Italics supplied*)

The prosecution has established beyond reasonable doubt that appellants conspired to commit, and in fact, committed the crime of Kidnapping for Ransom, as charged in the Information. In addition, the prosecution adduced proof beyond reasonable doubt that as a consequence of the detention of the victim, she sustained

physical injuries which resulted in her death. Applying Article 4, paragraph 1 of the Revised Penal Code, the appellants are criminally liable for the death of the victim. There being no evidence that any modifying circumstances attended the killing of the victim, the appellants are guilty only of the special complex crime of kidnapping for ransom with homicide.[116]

Kidnapping for ransom is punishable by death. Under the last paragraph of Article 267 of the Revised Penal Code, if the victim of the kidnapping dies as a result of her detention, the penalty is also death. However, since the appellants committed only one felony namely, the special complex crime of kidnapping for ransom with homicide, the appellant should be sentenced to only one death penalty.[117]

Three Justices of the Court maintain their position that R.A. No. 7659 is unconstitutional insofar as it prescribes the death penalty; nevertheless, they submit to the ruling of the majority that the law is constitutional and that the death penalty can be lawfully imposed in the case at bar.

As regards the civil liability of appellants resulting from the death of Roberta Cokin, Article 110 of the Revised Penal Code is explicit: "(N)otwithstanding the provisions of the next preceding article, the principals, accomplices, and accessories, each within their respective class, shall be liable severally (in solidum) among themselves for their quotas, and subsidiarily liable for those of the other persons liable." Hence, the trial court did not err in declaring that appellants' liability for the civil indemnity, as principals, is solidary[118] or joint and several.

The trial court did not err in awarding P50,000.00 as civil indemnity for the death of Roberta Cokin.

In addition, the trial court is correct in not awarding actual damages to the heirs of Roberta Cokin. While Teresita Cokin testified that she incurred and defrayed the expenses of transferring the remains of the victim from the funeral parlor in Anilao to Somo Funeral Home in Iloilo, no receipt or any document was presented in support thereof.

However, the Court has ruled in recent cases that when no sufficient proof of actual damages is offered, the heirs of the victim may be awarded temperate damages in the amount of P25,000.00.[119]

The trial court is likewise correct in not awarding moral damages. When Teresita Cokin testified that she emotionally suffered as a result of the death of Roberta Cokin,[120] the defense timely objected to its introduction[121] on the ground that the prosecution inadvertently failed to offer Teresita's testimony for the purpose of proving moral damages,[122] in which case, the trial court did not err in disallowing said evidence.

Hence, actual and moral damages may not be awarded for lack of legal basis.

In view of the presence of two circumstances, namely, the ransom demand and the death of the victim, exemplary damages in the amount of P100,000.00 should be awarded to the heirs of Roberta Cokin, conformably with the ruling of this Court in *People vs. Deang*,[123] to wit:

The law also allows exemplary damages in criminal cases as part of the civil liability of the malefactors when the crime is attended by one or more aggravating circumstances. As discussed above, this requisite had already been met. Exemplary damages are, however, imposed "not to enrich one party or impoverish another but to serve as a deterrent against or as a negative incentive to curb socially deleterious actions." In the case at bar, exemplary damages in the amount of P100,000.00 are awarded to the private complainants, by way of example or correction, in addition to the damages herein awarded.

WHEREFORE, the Court AFFIRMS the decision of the Regional Trial Court of Bacolod City (Branch 50) in Criminal Case No. 96-17590, convicting appellants John Mamarion y Hisugan, Charlito Domingo y Gorospe,

Rolando Maclang y Ventura and Juliet Harisco y Carrera of the crime of Kidnapping for Ransom, sentencing them to suffer the penalty of DEATH and ordering them to pay jointly and severally, to the heirs of Roberta Cokin the amount of Fifty Thousand Pesos (P50,000.00) as civil indemnity with MODIFICATION that they are further ordered to pay an additional amounts of Twenty Five Thousand Pesos (P25,000.00) as temperate damages and One Hundred Thousand Pesos (P100,000.00) as exemplary damages.

Upon finality of this decision, pursuant to Section 25 of R.A. No. 7659, amending Article 83 of the Revised Penal Code, let the records of this case be immediately forwarded to the Office of the President for possible exercise of the pardoning power.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Carpio Morales, Callejo, Sr., Azcuna and Tinga, JJ., concur.

Corona, J., on leave.

[1] Penned by Judge Roberto S. Chiongson, RTC (Branch 50), Bacolod City.

[2] Records, Vol. 1, p. 1.

[3] Id., at pp. 4-29.

[4] Id., at p. 68.

[5] Id., at p. 204.

[6] Id., at pp. 204-205.

[7] Records, Vol. 2, p. 468.

[8] Id., at p. 845.

[9] Id., at p. 829.

[10] TSN, May 13, 1997, p. 8; Folder of TSN, Vol. 1, p. 2614.

[11] Id., at p. 2612.

[12] Records, Vol. 3, at p. 879.

[13] Id., at p. 910.

[14] Records, Vol. 6, p. 8745; RTC Decision, p. 133.

[15] Records, Vol. 3, pp. 1059, 1066.

[16] Id., at p. 1080.

[17] Record, Vol. 4, pp. 1171, 1172.

[18] Id., at p. 1177.

[19] Records, Vol. 6, pp. 8683-8696; RTC Decision, pp. 72-84.

[20] Felipe "Oloy" Mamarion was found dead in a deserted area of the Circumferential Road a few days after the

kidnapping of Roberta Cokin (Records, Vol. 6, pp. 8726; RTC Decision, p. 114).

[21] TSN, Testimony of Amado Gale, July 7, 1997, pp. 35-43; Folder of TSN, Vol. 3, pp. 3287-3295; July 24, 1997, p. 57; Folder of TSN, Vol. 3, p. 3704; December 17, 1997, pp. 23-27; Folder of TSN, Vol. 6, pp. 4857-4861.

[22] TSN, Testimony of Amado Gale, July 7, 1997, pp. 45-76; Folder of TSN, Vol. 3, pp. 3297-3325; December 17, 1997, pp. 27-40, Folder of TSN, Vol. 6, pp. 4861-4874.

[23] TSN, Testimony of Amado Gale, July 7, 1997, pp. 68-73; Folder of TSN, Vol. 3, pp. 3319-3323; December 17, 1997, pp. 36-39; Folder of TSN, Vol. 6, pp. 4870-4874.

[24] TSN, Testimony of Amado Gale, July 7, 1997, p. 75; Folder of TSN, Vol. 3, p. 3325; December 17, 1997, pp. 36-39; Folder of TSN, Vol. 6, p. 4874.

[25] TSN, Testimony of Amado Gale, July 7, 1997, pp. 75-79; Folder of TSN, Vol. 3, pp. 3325-3328; July 24, 1997, pp. 53-54; Folder of TSN, Vol. 3, pp. 3700-3701; December 17, 1997, pp. 41-42, Folder of TSN, Vol. 6, pp. 4875-4876.

[26] TSN, Testimony of Amado Gale, July 7, 1997, pp. 75-97; Folder of TSN, Vol. 3, pp. 3344-3346; July 24, 1997, p. 33; Folder of TSN, Vol. 3, p. 3680; December 17, 1997, Vol. 6, pp. 4888-4889.

[27] TSN, Testimony of Amado Gale, July 7, 1997, pp. 105-108; Folder of TSN, Vol. 3, pp. 3354-3357, p. 3362; July 24, 1997, pp. 25-26; Folder of TSN, Vol. 3, pp. 3672-3673; December 17, 1997, pp. 63-68; Folder of TSN, Vol. 6, pp. 4897-4902.

[28] TSN, Testimony of Amado Gale, July 7, 1997, pp. 117-118; Folder of TSN, Vol. 3, pp. 3365-3368; December 17, 1997, pp. 70-76; Folder of TSN, Vol. 6, pp. 4904-4910.

[29] TSN, Testimony of Amado Gale, July 7, 1997, pp. 121-123; Folder of TSN, Vol. 3, pp. 3369-3371; December 17, 1997, pp. 77-80; Folder of TSN, Vol. 6, pp. 4911-4914.

[30] TSN, Testimony of Amado Gale, July 7, 1997, pp. 124-145; Folder of TSN, Vol. 3, pp. 3372-3393; December 17, 1997, pp. 80-99; Folder of TSN, Vol. 6, pp. 4914-4933.

[31] TSN, Testimony of Amado Gale, July 7, 1997, pp. 147-153; Folder of TSN, Vol. 3, pp. 3395-3401; December 17, 1997, pp. 101-103; Folder of TSN, Vol. 6, pp. 4935-4937.

[32] TSN, Testimony of Andres Sumpay, February 26, 1997, Records, Vol. 2, pp. 658-664, 667-668; February 11, 1998, pp. 114-129; Folder of TSN, Vol. 8, pp. 6384-6395.

[33] TSN, Testimony of Teresita Cokin, June 10, 1997, pp. 12-19; Folder of TSN, Vol. 2, pp. 3149-3156; March 12, 1998, pp. 14-25; Folder of TSN, Vol. 8, pp. 6777-6788.

[34] TSN, Testimony of Amado Gale, July 7, 1997, pp. 153-159; Folder of TSN, Vol. 3, pp. 3401-3407; December 17, 1997, pp. 104-105; Folder of TSN, Vol. 6, pp. 4938-4939.

[35] TSN, Testimony of Amado Gale, July 7, 1997, pp. 156-161; Folder of TSN, Vol. 3, pp. 3404-3409; December 17, 1997, pp. 106-108; Folder of TSN, Vol. 6, pp. 4940-4942.

[36] TSN, Testimony of Amado Gale, July 7, 1997, pp. 161-166; Folder of TSN, Vol. 3, pp. 3409-3414; December 17, 1997, pp. 109-110; Folder of TSN, Vol. 6, pp. 4943-4944.

[37] TSN, Testimony of Teresita Cokin, June 10, 1997, pp. 23-25; Folder of TSN, Vol. 2, pp. 3160-3162; March

12, 1998, pp. 33-34; Folder of TSN, Vol. 8, pp. 6796-6797.

[38] TSN, Testimony of Marion Mahusay, March 22, 1997, Records, Vol. 2, pp. 707-723, 724-725; March 12, 1998, pp. 20-39; Folder of TSN, Vol. 8, pp. 6936-6955.

[39] Records, Vol. 6, pp. 8748-8749; RTC Decision, pp. 136-137.

[40] Rollo, p. 394.

[41] Id., at p. 631.

[42] Id., at pp. 281-282.

[43] Id., at pp. 570-571.

[44] 343 SCRA 20, 24 and 42.

[45] Section 2, Rule 116 of the Revised Rules of Criminal Procedure, effective December 1, 2001, now reads:

SEC. 2. Plea of guilty to a lesser offense — At arraignment, the accused, with the consent of the offended party and prosecutor, may be allowed by the trial court to plead guilty to a lesser offense which is necessarily included in the offense charged. After arraignment but before trial, the accused may still be allowed to plead guilty to said lesser offense after withdrawing his plea of not guilty. No amendment of the complaint or information is necessary. (Sec. 4, circ. 38-98)

[46] TSN, May 13, 1997, pp. 4-5; Folder of TSN, Vol. 1, pp. 2610-2611.

[47] Id., at p. 8; Folder of TSN, p. 2614.

[48] 210 SCRA 246 (1992).

[49] Id., at p. 252.

[50] People vs. Quibido, 338 SCRA 607, 617 (2000); People vs. Sia, G.R. No. 137457, November 21, 2001, 370 SCRA 123, 133.

[51] People vs. Sala, G.R. Nos. 76340-41, July 28, 1999, 311 SCRA 301; People vs. Cuya, Jr., 141 SCRA 351, 354 (1986).

[52] 311 SCRA 301, 337 (1999).

[53] Records, Vol. 6, p. 8724; RTC Decision, p. 112.

[54] Id., at p. 336.

[55] People vs. Navarro, G.R. Nos. 132696-97, February 12, 2001, 351 SCRA 462, 481.

[56] Ibid.

[57] Brief for Appellant Maclang, Rollo, p. 600.

[58] Id., at p. 601; Brief for Appellant Harisco, Rollo, p. 288.

[59] Brief for Appellant Harisco, Rollo, p. 288.

[60] TSN, July 7, 1997, pp. 105-108; Folder of TSN, Vol. 3, pp. 3354-3357.

- [61] *People vs. Zamora*, G.R. No. 101829, August 21, 1997, 278 SCRA 60, 69.
- [62] *Ibid.*
- [63] TSN, July 24, 1997, pp. 25, 29, 31-33; Folder of TSN, Vol. 3, pp. 3672-3676, 3678-3680.
- [64] TSN, December 17, 1997, pp. 60-68; Folder of TSN, Vol. 6, pp. 4894-4902.
- [65] *People vs. Garcia*, G.R. No. 139753, May 7, 2002.
- [66] *People vs. Ramos*, G.R. No. 124765, July 2, 1999, 309 SCRA 643, 655.
- [67] TSN, December 18, 1997, pp. 31-32; Folder of TSN, Vol. 6, pp. 5132-5133.
- [68] *Id.*, at p. 165; Folder of TSN, p. 5265.
- [69] *Id.*, pp. 31-34; Folder of TSN, pp. 5132-5135.
- [70] *Ramos case*, *supra.*, Note 66.
- [71] *Ibid.*
- [72] TSN, July 7, 1997, p. 172; Folder of TSN, Vol. 3, p. 3420.
- [73] *Id.*, at pp. 3421-3422;
- [74] *Id.*, at pp. 3450-3451.
- [75] TSN, May 7, 1998, pp. 27, 41, 92, 94; Folder of TSN, Vol. 9, pp. 7295, 7309, 7360, 7363.
- [76] Records, Vol. 6, pp. 8733-8734; RTC Decision, pp. 121-122.
- [77] *People vs. Quilang*, G.R. Nos. 123265-66, August 12, 1999, 371 Phil. 241, 255.
- [78] *People vs. Bacungay*, G.R. No. 125017, March 12, 2002.
- [79] *People vs. Medina*, 292 SCRA 436, 448 (1998).
- [80] *Rimorin Sr. vs. People*, G.R. No. 146481, April 30, 2003, citing *People vs. Mittu*, 333 SCRA 121, June 8, 2000.
- [81] TSN, October 14, 1997, pp. 63-66; Folder of TSN, Vol. 4, pp. 4698-4701.
- [82] *People vs. Castillo*, G.R. Nos. 111734-35, June 16, 2000, 333 SCRA 506, 519.
- [83] Records, Vol. 6, p. 8721; Decision, p. 109.
- [84] *Id.*, at p. 111.
- [85] TSN, April 30, 1997, pp. 38-29; Folder of TSN, Vol. 1, p. 2411-2412.
- [86] *Id.*, TSN, at p. 68; Folder of TSN, at p. 2451.
- [87] TSN, July 7, 1997, pp. 34-35; Folder of TSN, Vol. 3, pp. 3286-3287.
- [88] *People vs. Kulais*, G.R. Nos. 100901-08, July 16, 1998, 354 Phil. 565, 592.
- [89] *People vs. Perucho*, G.R. No. 128869, April 14, 1999, 365 Phil. 323, 339.
- [90] *People vs. Gomez*, G.R. No. 132171, May 31, 2000, 332 SCRA 661, 669.

[91] Ibid.

[92] Rule 130, Section 3, Revised Rules on Evidence.

[93] Records, Vol. 5, p. 1953, Exhibit "20".

[94] Ibid.

[95] TSN, June 11, 1998, p. 16; Folder of TSN, Vol. 10, p. 8123.

[96] Records, Vol. 5, p. 1954, Exhibit "21".

[97] People vs. Marollano, G.R. No. 105004, July 24, 1997, 276 SCRA 84, 112.

[98] Records, Vol. 6, p. 8742; Decision, p. 130.

[99] Gomez case, supra., Note 90, at p. 668.

[100] Ibid.

[101] People vs. Consejero, 352 SCRA 276, 290 (2001).

[102] People vs. Licayan, G.R. Nos. 140900 & 140911, August 15, 2001, 363 SCRA 234, 245.

[103] TSN, June 1, 1998, pp. 49-26; Folder of TSN, Vol. 9, pp. 7517-7524.

[104] Id., at pp. 7529-7532.

[105] People vs. Hamton, G.R. Nos. 134823-25, January 14, 2003.

[106] Ibid.

[107] Records, Vol. 6, pp. 8736-8739; RTC Decision, pp. 124-127.

[108] Rollo, p. 291.

[109] Id., at pp. 603-605.

[110] Id., at p. 291.

[111] Id., at p. 602.

[112] Ibid.

[113] 338 SCRA 657, 673 (2000).

[114] Ibid.; People vs. Lucena, G.R. No. 137281, April 3, 2001, 356 SCRA 90, 102.

[115] Bacungay case, supra, Note 78.

[116] People vs. Ramos, 297 SCRA 618, 641 (1998); People vs. Mercado, 346 SCRA 256, 289 (2000).

[117] Supra, Note 113.

[118] People vs. Bautista, G.R. No. 131840, April 27, 2000, 331 SCRA 170, 190.

[119] People vs. de la Cruz, G.R. Nos. 138931-32, July 17, 2003; People vs. Sapigao, G.R. No. 144975, June 18, 2003; People vs. Garcia, G.R. No. 145505, March 14, 2003.

[120] TSN, June 10, 1997, pp. 44-49; Folder of TSN, Vol. 2, pp. 3181-3186; March 12, 1998, pp. 49, 52-56;

Folder of TSN, Vol. 4, pp. 6812, 6815-6819.

[121] TSN, June 10, 1997, pp. 5-6; Folder of TSN, Vol. 2, pp. 3142-3143; March 12, 1998, pp. 7-8; Folder of TSN, Vol. 4, pp. 6770-6771.

[122] TSN, June 10, 1997, pp. 47-48; Folder of TSN, Vol. 2, pp. 3184-3185.

[123] Supra, Note 113, at p. 676.

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